



The Commonwealth of Massachusetts
Executive Office of Manpower Affairs
Department of Labor and Industries
Board of Conciliation and Arbitration
Leverett Saltonstall Building, Government Center
100 Cambridge Street, Boston 02202

ANNUAL REPORT
OF
BOARD OF CONCILIATION AND ARBITRATION

July 1, 1974 - June 30, 1975

The Board of Conciliation and Arbitration administers procedures for resolving collective bargaining impasses under the new public employee collective bargaining law. These procedures comprise mediation, fact-finding, and interest arbitration. The Board also administers a grievance arbitration program which is designed to resolve both public sector and private sector disputes arising during the life of a collective bargaining agreement.

MEDIATION

After a reasonable period of negotiation, the parties acting individually or jointly may petition the Board for the determination of an impasse and the initiation of mediation. A staff mediator will promptly investigate the dispute and make recommendations to the Board which determines whether an impasse exists.

Once an impasse is found, a staff mediator, usually the same person who investigated the impasse, may meet with the parties for a period of up to 20 days in an effort to assist the parties in reaching agreement. If the dispute survives the best efforts of the mediator, the mediator will recommend to the Board that the case be certified to fact-finding when either or both parties have requested fact-finding.

FACT-FINDING

A fact-finder will generally be selected from a list of fact-finders sent to the parties from the Board. In the event that the parties cannot agree, the Board will appoint a fact-finder. The fact-finder's primary responsibility is to preside at fact-finding hearings and issue a written report with recommendations for resolving all the issues in dispute. The fact-finder also has the authority to mediate the dispute at the request of both parties.

At the fact-finding hearing each party is afforded an opportunity to present evidence relevant to the case. At the close of the hearing each party has the right to make an oral argument as well as to file a brief with the fact-finder arguing its position.

Within 30 days from the date of his or her appointment, the fact-finder must submit a written report to the parties and to the Board. The report serves to summarize the facts which have been found and it makes recommendations for the settlement of each and every item in dispute. The recommendations are advisory only and do not bind the

parties. The report becomes a public document 10 days after its receipt by the Board. If the report does not serve to resolve all the issues, then the unresolved issues go back to the parties for further bargaining.

INTEREST ARBITRATION

There are two types of interest arbitration authorized by the bargaining law. One type, which might be referred to as voluntary arbitration, authorizes employer and employee organizations to enter into arbitration of contract impasse issues provided they both agree to do so and binds the local legislative body only in those cases where the local legislative body has agreed in advance to be bound by the arbitrator's award. In voluntary arbitration the parties may agree upon any form of arbitration that suits their interest.

The other type of interest arbitration which might be referred to as compulsory arbitration authorizes firefighter and police unions to carry contract impasse issues to arbitration even if the employer does not agree to arbitrate. The result of this arbitration is binding on all the parties as well as the local legislative body. There is a difference in the scope of issues that may be carried by compulsory arbitration by police and firefighter unions. The scope of arbitration is more limited for police in that the police may not arbitrate issues involving the employer's right to appoint, promote, assign and transfer employees. Also, if police and firefighters unions engage in compulsory arbitration it is limited to what is known as "final offer arbitration."

In order to initiate "final offer arbitration" an employee organization must fill out and send to the employer and to the Board, a petition to initiate such arbitration. Upon receipt of the petition, the Board must determine that four prerequisites to "final offer arbitration" have been met. These are:

- 1) The procedures outlined in Section 9, of the Article; namely, negotiation impasse certification, mediation, and fact-finding have been exhausted;
- 2) Thirty days must have elapsed since the date of publication of the fact-finder's report;
- 3) An impasse continues to exist;
- 4) Any complaints of prohibited practices which were filed prior to the date of the fact-finder's report before the Labor Relations Commission have been adjudicated.

After the Board has investigated the four preconditions listed above, it notifies the parties by letter to the effect that all conditions are satisfied, or that one or more prerequisites have not been met. In either event, the parties have 10 days from the date of the Board's letter to file written objections.

The parties have 14 days from the date of the Board's official approval of the final offer petition in which to select and notify the Board of the identity of the three-member panel. If the parties are unsuccessful in completing the panel the Board may intervene and appoint the necessary arbitrators. With regard to the neutral number of the arbitration panel, the Board's practice is to try to obtain agreement between the parties before it appoints.

Once the arbitration panel is designated, the Chairman is obliged to immediately schedule a hearing to be held within a week's time. The arbitrators are in complete charge of the informal hearing. They have sole discretion as to who or what shall be admitted or excluded at the hearing.

The panel has 40 days from the commencement of the hearing within which to take all the necessary evidence and conclude the proceedings. The panel weighs the testimony according to the clear guidelines provided by law. Factors which must be considered are:

- 1) The financial ability of the municipality to meet costs.
- 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 communities.
- 5) The decisions and recommendations of the fact-finder.
- 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 the parties, in the public service or in private employment.

10) The stipulation of the parties. At the conclusion of the hearing, when both parties have offered their evidence and heard the testimony, each party submits its last best offer on each issue in dispute. At the point of submission each party is given the opportunity to make a final oral or written argument to support its last best offer.

If the parties resolve all the issues in dispute prior to the panel's award, they may jointly make a written request to terminate the proceedings, or, if the Chairman of the panel sees possible benefit in further bargaining with or without mediation, he or she may remand the dispute for that purpose for a period of up to three weeks.

Within 10 days of presentation of final offer, the majority of the panel must select the final offer of one party or other as the award.

The award is binding on both parties and upon the appropriate legislative body.

GRIEVANCE ARBITRATION

Grievance arbitration differs from the other functions discussed in that mediation, fact-finding, interest arbitration deal with the negotiation of a contract while grievance arbitration deals with a contract already negotiated.

Despite the best efforts of all parties involved in the drafting of a contract, situations arise which require an arbitrator's interpretation of contract provisions.

When a dispute arises as to the interpretation or application of a collective bargaining agreement, either an employer or a labor organization, or both may petition the Board for a hearing.

The arbitration hearing is held before the three Associate Commissioners of the Board. The Commissioners meet in Executive session and decide each case by majority vote. One Commissioner then writes the "award and opinion," which provides a statement of the rationale by which the result was reached.

Attached hereto is a statistical report of the current fiscal year on the functions of the Board.

Respectfully submitted,

Roberta L. Golick

Roberta L. Golick
General Counsel

ANNUAL REPORT FOR THE FISCAL PERIOD OF
July 1, 1974 THROUGH June 30, 1975

I/ GRIEVANCE ARBITRATION

Cases pending 6/30/74	17	
Cases received during fiscal yr.	<u>173</u>	
Tot. Arbitration docket for fiscal yr.		190
Cases withdrawn or settled	58	
Cases closed by awards	80	
Cases pending 6/30/75	52	

II/ PRIVATE CONCILIATION

Cases pending 6/30/74	4	
Cases received during fiscal yr.	<u>111</u>	
Tot. Conciliation docket for fiscal yr.		115
Cases settled by conciliation	87	
cases pending 6/30/75	28	

111/ PUBLIC SECTOR IMPASSE RESOLUTION

Police & Fire Cases pending 6/30/74	21	
Public Sector Cases pending 6/30/74	<u>10</u>	
Total Public Sector caseload pending 6/30/74		31
New Police & Fire cases during fiscal yr.	143	
New Public Sector cases during fiscal yr.	<u>251</u>	
Total new Public Sector caseload		394
Police & Fire caseload during fiscal year	164	
Public Sector caseload during fiscal year	<u>261</u>	
Total Public Sector caseload during fiscal yr.		425

A. MEDIATION

Police and Fire cases settled by mediation	43	
Public Sector cases settled by mediation	<u>130</u>	
Total Public Sector caseload settled by med.		173
Police and Fire cases pending in med. 6/30/75	19	
Public Sector cases pending in med. 6/30/75	70	
Tot. Public Sector caseload pending in mediation		89

B. FACT FINDING

Police & Fire cases transferred to factfinding during fiscal yr.	102
Public Sector cases transferred to factfinding during fiscal yr.	<u>61</u>
Tot. Public Sector caseload transferred to factfinding during fiscal year	163

C. FINAL OFFER ARBITRATION

Police & Fire cases which entered final offer arbitration during fiscal yr.	25
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IV. REFERRAL ARBITRATION

Cases pending 6/30/74	4
Cases received during fiscal year	<u>27</u>
Total caseload during fiscal year	31
Cases settled or withdrawn	7
Awards received	15
Cases pending 6/30/75	9

FIVE-YEAR CASELOAD ANALYSES FISCAL YEAR 1970
THROUGH FISCAL YEAR 1975

GRIEVANCE ARBITRATION

<u>FISCAL YEAR</u>	<u>CASES DOCKED</u>
1970	152
1971	148
1972	100
1973	95
1974	87
1975	173

MEDIATION

<u>FISCAL YEAR</u>	<u>PRIVATE SECTOR</u>	<u>PUBLIC SECTOR</u>	<u>TOTAL</u>
1970	270	165	435
1971	217	240	457
1972	152	160	312
1973	135	217	355
1974	127	211	338
1975	111	394	505

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FACTFINDING

<u>FISCAL YEAR</u>	<u>CASES DOCKETED</u>
1970	figure unavailable
1971	93
1972	53
1973	51
1974	37
1975	38