

**HOUSE . . . . . No. 2738**

By Mr. Scaccia of Boston, petition of Angelo M. Scaccia relative to further regulating collective bargaining impasses involving public employees. Public Service.

**The Commonwealth of Massachusetts**

In the Year Two Thousand and Seven.

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:*

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

5 Section 9. After a reasonable period of negotiation over the terms  
6 of a collective bargaining agreement, either party or the parties  
7 acting jointly may petition the board for a determination of the exist-  
8 tence of an impasse. Upon receipt of such petition, the board shall  
9 commence an investigation forthwith to determine if the parties have  
10 negotiated for a reasonable period of time and if an impasse exists,  
11 within ten days of the receipt of such petition, the board shall notify  
12 the parties of the results of its investigation. Failure to notify the par-  
13 ties within ten days shall be taken to mean that an impasse exists.

14 Within five days after such determination, the board shall appoint  
15 a mediator to assist the parties in the resolution of the impasse. In  
16 the alternative, the parties may agree upon a person to serve as a  
17 mediator and shall notify the board of such agreement and choice of  
18 mediator. Any such mediator shall be empowered to order the parties  
19 to provide specific representatives authorized to enter into a collec-  
20 tive bargaining agreement to be present at meetings held for said  
21 purpose of resolving the impasse and negotiating such an agreement.

22 After a reasonable period of mediation, not to exceed twenty days  
23 from the date of appointment, said mediator shall issue to the board

24 a report indicating the results of his services in resolving the  
25 impasse.

26 If the impasse continues after the conclusion of mediation, either  
27 party or the parties acting jointly may petition the board to initiate  
28 fact finding proceedings. Upon receipt of such petition, the board  
29 shall appoint a fact finder, representative of the public, from a list of  
30 qualified persons maintained by the board. In the alternative, the par-  
31 ties may agree upon a person to serve as fact finder and shall notify  
32 the board of such agreement and choice of fact finder. No person  
33 shall be named as a fact finder who has represented an employer or  
34 employee organization within the proceeding twelve months. The  
35 fact finder shall be subject to the rules of the board and shall, in  
36 addition to powers delegated to him by the board, have the power to  
37 mediate and to recommendations for the resolution of the impasse.  
38 The fact finder shall transmit his findings and any recommendations  
39 for the resolution of the impasse to the board and to both within  
40 thirty days after the date of his appointment. If the impasse remains  
41 unresolved ten days after the transmittal of such findings and recom-  
42 mendations, the board shall make them public.

43 The parties by their own agreement may mutually waive the fact  
44 finding provisions contained herein and may petition the board for  
45 arbitration pursuant to Sections 4 or 4B of Chapter one thousand and  
46 seventy-eight of the Acts of nineteen hundred and seventy-three.  
47 Said waiver shall not constitute a bar to any arbitration award.

48 Any arbitration award in a proceeding voluntarily agreed to by the  
49 parties to resolve an impasse shall be binding on the parties and on  
50 the appropriate legislative body and effective and enforceable pur-  
51 suant to the provisions of Chapter one hundred and fifty C, provided  
52 that said arbitration proceeding has been authorized by the appro-  
53 priate legislative body or in the case of school employees, by the  
54 appropriate school committee.

55 If the impasse continues after the publication of the fact finder's  
56 report, the issues in dispute shall be returned to the parties for further  
57 bargaining.

58 Any time limitations prescribed in this section may be extended  
59 by mutual agreement of the parties and the board.

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

4 Section 4B. If an employee organization is engaged in an impasse  
5 with a public employer which has continued for thirty days after the  
6 publication of the fact finder's report pursuant to Section nine of  
7 Chapter one hundred and fifty E of the General Laws or, if the par-  
8 ties have mutually waived the fact finding provisions contained in  
9 said Section nine of said Chapter one hundred and fifty E said  
10 employee organization shall petition the board to make an investiga-  
11 tion.

12 If, after an investigation, the board determines that:—

13 1.) The requirements of Section nine of said Chapter one hundred  
14 and fifty E have been complied with in good faith by the employee  
15 organization;

16 2.) Thirty days have passed since the date of publication of the  
17 fact finding report pursuant to said Section nine;

18 3.) The proceedings for the prevention of any prohibited practices  
19 have been exhausted provided that any such complaints have been  
20 filed with the commission prior to the date of the fact finder's report;  
21 and

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

27 Said panel shall be comprised of three arbitrators, one selected by  
28 the employer, one selected by the employee organization and a third  
29 impartial arbitrator, who shall act as chairman of the panel who shall  
30 be selected by the two previously selected arbitrators. In the event  
31 that their party fails to select an arbitrator, or for any reason there is  
32 a delay in the naming of an arbitrator, or if the arbitrators fail to  
33 select a third arbitrator within the time prescribed by the board, the  
34 board shall appoint the arbitrator or arbitrators necessary to complete  
35 the panel which shall act with the same force and effect as if the  
36 panel had been selected without intervention of the board,

37 In the event that the parties mutually elect to use a single arbi-  
38 trator, selected by the board to appoint said arbitrator, who shall act

39 with the same force and effect as if a three-member panel had been  
40 selected by the parties.

41 The single arbitrator or the arbitration panel acting through its  
42 chairman, shall conduct a hearing within ten days after the date of  
43 appointment of its chairman, at a place within the locality of the  
44 municipality involved where feasible. The chairman shall give at  
45 least seven days notice in writing to each of the other arbitrators.  
46 The chairman or single arbitrator shall give like notice to the repre-  
47 sentatives of the municipal employer and employee organizations of  
48 the time and place of such hearing.

49 The single arbitrator or chairman shall preside over the hearing  
50 and shall take testimony. Upon application and for good cause  
51 shown, a person, labor organization, or government unit having sub-  
52 stantial interest therein may be granted leave to intervene by the  
53 arbitration panel. The proceedings shall be informal. Any oral or  
54 documentary evidence and other data deemed relevant by the arbi-  
55 tration panel or single arbitrator may be received into evidence. The  
56 arbitrators shall have the power to administer oaths and to require by  
57 subpoena the attendance and testimony of witnesses, the production  
58 of books, records and other evidence relative to or pertinent to the  
59 issues presented to them for determination. If any person refuses to  
60 obey a subpoena or refuses to be sworn or to testify, or if any wit-  
61 ness, party or attorney is guilty of any contempt while in attendance  
62 at any hearing, the arbitration panel or single arbitrator may, or the  
63 district attorney if requested, shall invoke the aid of the superior  
64 court within the jurisdiction in which the hearing is being held for  
65 the court to issue an appropriate order.

66 A record of the proceedings shall be kept, and the chairman or  
67 single arbitrator shall arrange for the necessary recording service.  
68 Transcripts may be ordered at the expense of the party ordering  
69 them, but the transcripts shall not be necessary for an award by the  
70 panel or single arbitrator. The hearing may be continued at the dis-  
71 cretion of the panel or single arbitrator and shall be concluded within  
72 forty days from the time of commencement. At the conclusion of the  
73 hearing, each party shall submit a written statement containing its  
74 last and best offer for each of the issues in dispute to the panel or  
75 single arbitrator, who shall take said statements under advisement.  
76 Within ten days after the conclusion of the hearing, a majority of the  
77 panel, or the single arbitrator, shall select as the last and best arbitra-

78 tion award either the employer's written statement of its last and best  
79 offer, the employee organization's written statement of its last and  
80 best offer, or the recommendations of the fact finder, if a fact finding  
81 report and recommendations have been issued, and immediately  
82 shall give written notice of the selection to the parties. The selection  
83 shall be final and binding upon the parties and upon the appropriate  
84 legislative body. Within thirty calendar days of the last and best offer  
85 selection and award, the impartial chairperson of the arbitration  
86 panel, or the single arbitrator, shall issue a written opinion inclusive  
87 of an analysis of all statutory facts applicable to the proceedings.

88 At any time before the rendering of an award, the chairman of the  
89 arbitration panel or single arbitrator, if he is of the opinion that it  
90 would be useful or beneficial to do so, may remand the dispute to  
91 the parties for further collective bargaining. If the dispute is  
92 remanded for further collective bargaining, the time provisions of  
93 this act shall be extended for a period equal to that of the remand.

94 In the event that the representatives of the parties mutually  
95 resolve each of the issues in dispute and agree to be bound accord-  
96 ingly, said representatives may, at any time prior to the final deci-  
97 sions by the panel, or single arbitrator, request that the arbitration  
98 proceedings be terminated, the panel, acting through its chairman or  
99 single arbitrator, shall terminate the proceedings.

100 The factors among others, to be given right by the arbitration  
101 panel or single arbitrator in arriving at the decision shall include:—

102 1.) The financial ability of the municipality to meet costs. Such  
103 factors which shall be taken into consideration shall include but not  
104 be limited to

105 (a) the city, town or district's state reimbursements and assess-  
106 ments;

107 (b) the city, town or district's long and short term bonded indebt-  
108 edness;

109 (c) the city, town or district's estimated share in the metropolitan  
110 district commission deficit;

111 (d) the city, town or district's estimated share in the Massachusetts  
112 Bay Transportation Authority's deficit; and

113 (e) consideration of the average per capita property tax burden,  
114 average annual income of members of the community, the effect any  
115 accord by the panel or single arbitrator might have on the respective  
116 property tax rates on the city or town.

- 117 2.) The interests and welfare of the public.
- 118 3.) The hazards of employment, physical, educational. and mental  
119 qualifications, job training and skills involved.
- 120 4.) A comparison of wages, hours and conditions of employment  
121 of the employees involved in the arbitration proceedings with the  
122 wages, hours and conditions of employment of other employees per-  
123 forming similar services and with other employees generally in  
124 public and private employment in comparable communities.
- 125 5.) The decisions and recommendations of the fact finder, if any.
- 126 6.) The average consumer prices for goods and services com-  
127 monly known as the cost of living.
- 128 7.) The overall compensation presently received by the employees  
129 including direct wages and fringe benefits.
- 130 8.) Changes in any of the foregoing circumstances while the arbi-  
131 tration proceedings were pending.
- 132 9.) Such other factors, not confined to the foregoing, which are  
133 normally or traditionally taken into consideration in the determina-  
134 tion of wages, hours and conditions of employment through volun-  
135 tary collective bargaining, mediation, fact finding, arbitration or  
136 otherwise between parties, in the public service or in private  
137 employment.
- 138 10.) The stipulation of the parties.
- 139 Any determination or decision of the arbitration panel or single  
140 arbitrator if supported by material and substantive evidence on the  
141 whole record shall be binding upon the parties and may be enforced  
142 at the instance of either party, the single arbitrator or the arbitration  
143 panel in the superior court in equity, provided however, that the  
144 scope of arbitration in police matters shall be limited to wages,  
145 hours, and conditions of employment and shall not include the  
146 following matters of inherent managerial policy:— the right to  
147 appoint, promote, assign and transfer employees; and provided, fur-  
148 ther, that the scope of arbitration in firefighter matters shall not  
149 include the right to appoint and promote employees. Assignments  
150 shall not be within the scope; provided, however, that the subject  
151 matters of initial station assignment upon appointment or promotion  
152 shall be within the scope of arbitration. The subject matter of  
153 transfer shall not be within the scope of arbitration, provided, how-  
154 ever, that the subject matters of relationship of seniority to transfers  
155 and disciplinary and punitive transfers shall be within the scope of

156 arbitration. Notwithstanding any other provisions of this chapter to  
157 the contrary, no municipal employer shall be required to negotiate  
158 over subjects of minimum manning of shift coverage, with an  
159 employee organization representing municipal police officers and  
160 firefighters.

161 The commencement of a new municipal finance year prior to the  
162 final awards by the arbitration panel shall not be deemed to render a  
163 dispute moot, or to otherwise impair the jurisdiction or authority of  
164 the arbitration panel or its award. Any award of the arbitration panel  
165 may be retroactive to the expiration date of the last contract.

166 If a municipal employer, or an employee organization willfully  
167 disobeys a lawful order of enforcement pursuant to this section, or  
168 willfully encourages or offers resistance to such order whether by  
169 strike or otherwise, the punishment for each day that such contempt  
170 continues may be a fine for each day to be determined at the discre-  
171 tion of said court.

172 Each of the parties shall provide compensation for the arbitrator  
173 which he has selected pursuant to this section. The remaining costs  
174 of arbitration proceedings under this section shall be divided equally  
175 between the parties. Compensation for the arbitrators shall be in  
176 accordance with a schedule of payment established by the American  
177 Arbitration Association.