

Chapter 1078 Of The Acts Of 1973, As Amended

CHAPTER 1078, SECTION 4A OF THE ACTS OF 1973, AS AMENDED[1]: AN ACT RELATIVE TO COLLECTIVE BARGAINING BY PUBLIC EMPLOYEES

Section 4A. (1)(a)(i) There shall be in the executive office of labor, but not subject to the jurisdiction thereof, a committee to be known as the joint labor-management committee, in this section referred to as the committee. The committee shall be composed of 15 members including a chairman and a vice-chairman and such alternate members as the committee shall approve. Twelve committee members shall be appointed by the governor as follows: 3 firefighters from nominations submitted by the Professional Firefighters of Massachusetts, International Association of Firefighters, AFL-CIO; 3 police officers from nominations submitted by the International Brotherhood of Police Officers, NAGE, SEIU, AFL-CIO, the Boston Patrolmen's Association IUPA, AFL-CIO, the Massachusetts Coalition of Police, IUPA, AFL-CIO; and the Massachusetts Police Association and 6 from nominations submitted by the Advisory Committee on Local Government established under section 62 of chapter 3 of the General Laws. Said twelve members shall be appointed for a term of three years; provided however that in making his initial appointments, the governor shall appoint one member nominated by said professional firefighters organization for a term of one year, one such member for a term of two years, and one such member for a term of three years; one member nominated by said professional police organization for a term of one year, one such member for a term of two years, and one such member for a term of three years; and two members nominated by said advisory commission for a term of one year; two such members for a term of two years, and two such members for a term of three years. Any member of the committee may be removed by the governor for neglect of duty, malfeasance in office, or upon request by the nominating body.

(ii) The chairman and vice-chairman shall be nominated by the committee, and appointed by the governor for a term of three years. The chairman shall be the chief administrative officer of the committee. The vice-chairman shall assist the chairman and may be authorized by the chairman to act for him in his absence and shall have the full powers of the chairman when so authorized and he shall vote only in the absence of the chairman.

(iii) Alternate members may serve for such term and under such conditions, as the committee shall determine. Said professional police organizations, professional fire organizations, and said advisory commission shall specify alternate members to represent their respective members, subject to the approval of the full committee.

(b) In matters exclusively pertaining to municipal firefighters, committee members nominated for appointment by professional police officer organizations shall not vote. In matters exclusively pertaining to municipal police officers, committee members nominated for appointment by professional firefighter organizations shall not vote. All committee members shall be eligible to vote on matters of common and general interest. The number of committee members representing the local government advisory committee and the number of committee members representing the professional firefighter or police organizations entitled to vote on any matter coming before the committee shall be equal. The chairman may cast the deciding vote on any matter relating to a dispute concerning negotiations over the terms and provisions of a collective bargaining agreement, including any decision to take jurisdiction over a dispute.

(c) Members and alternate members of the committee shall serve without compensation, but shall be entitled to reimbursement, out of any funds available for the purpose, for reasonable travel or other expenses actually incurred in the performance of their committee duties. The chairman and vice-chairman shall be compensated for time spent for the committee business on a per diem basis at a rate to be determined by the secretary of administration and finance. The committee may purchase supplies and equipment, and may employ clerical staff and other personnel who shall not be subject to the provisions of section nine A of chapter thirty or chapter thirty-one of the General Laws, as they deem necessary to the conduct of committee business out of any funds available for the purpose. Members and alternate members of the committee employed by a municipality shall be granted leave, if on duty, by the municipal employer for those regularly scheduled work hours spent in the performance of committee business.

(2)(a) The committee shall have oversight responsibility for all collective bargaining negotiations involving municipal police officers and firefighters. The committee shall, at its discretion, have jurisdiction in any dispute over the negotiations of the terms of a collective bargaining agreement involving municipal firefighters or police officers; provided, however, that the committee may determine whether the proceedings for the prevention of any prohibited practices filed with the labor relations commission shall or shall not prevent arbitration pursuant to this section.

(b) After notification by the committee, the parties to any municipal police and fire negotiations shall file with the committee, in such time as the committee orders:

(1) copies of all requests to bargain and of all bargaining agenda;

(2) notification of the apparent exhaustion of the processes of collective bargaining;

(3) notification of all pending unfair labor practice proceedings between the parties;

(4) copies of any fact-finding reports;

(5) notification of any impasse extending beyond completion of fact-finding procedures;

(6) copies of any collective bargaining agreements, and any relevant personnel ordinances, by-laws, and rules and regulations; and

(7) such other information as the committee may reasonably require.

(c) Notwithstanding the provisions of the first paragraph of section nine of chapter one-hundred and fifty E of the General Laws to the contrary, when either party or the parties acting jointly to a municipal police and fire collective bargaining negotiations believe that the process of collective bargaining has been exhausted the party or both parties shall petition first the committee for the exercise of jurisdiction and for the determination of the apparent exhaustion of the process of collective bargaining.

The committee shall forthwith review the petition and shall make a determination within thirty days whether to exercise jurisdiction over the dispute. Subject to the second paragraph of clause (d) of this subdivision, if the committee declines to exercise jurisdiction over the dispute or fails to act within thirty days of receipt of the petition on jurisdiction, the petition shall be automatically referred to the board of arbitration and conciliation hereinafter referred to as the board, for disposition in accordance with the provisions of section nine of chapter one hundred and fifty E of the General Laws.

The petition to the committee shall identify the issues in dispute, the parties, the efforts of the parties to resolve the dispute and such other information as may be prescribed in the rules of the committee.

Said board shall not accept any petition from a party to a municipal police and fire negotiation under section nine of chapter one hundred and fifty E of the General Laws if the petition has not been first reviewed in accordance with the provisions of this section by the committee.

(d) The committee or its representatives or mediators appointed by it may meet with the parties to a dispute, conduct formal or informal conferences, and take other steps including mediation to encourage the parties to agree on the terms of a collective bargaining agreement or the procedures to resolve the dispute. The committee shall make every effort to encourage the parties to engage in good faith negotiations to reach settlement through negotiation or mediation, and may, upon a vote of the committee, initiate fact-finding proceedings.

The committee after consultation with the board of arbitration and conciliation may remove at any time from the jurisdiction of the board any dispute in which the board has exercised jurisdiction, and the board shall then take no further action in such dispute. The committee may, at any time, remand to the board

any dispute over which the committee has exercised jurisdiction. The board shall assist and cooperate with the committee in its performance of the committee's duties. Disputes over which the committee does not exercise jurisdiction shall be governed by all other applicable provisions of law.

(3)(a) The committee shall have exclusive jurisdiction in matters over which it assumes jurisdiction and shall determine whether issues in negotiations have remained unresolved for an unreasonable period of time resulting in the apparent exhaustion of the processes of collective bargaining. If the committee makes such a determination it is authorized to hold a hearing to identify:

- (1) the issues that remain in dispute;
- (2) the current positions of the parties;
- (3) the views of the parties as to how the continuing dispute should be resolved; and
- (4) the preferences of the parties as to the mechanism to be followed in order to reach a final agreement between the parties.

If the committee, after a full hearing, finds there is an apparent exhaustion of the processes of collective bargaining which constitutes a potential threat to public welfare, it shall so notify the parties of its findings.

Within ten days of such notification, the committee shall also notify the parties of its intent to invoke such procedures and mechanisms as it deems appropriate for the resolution of the collective bargaining negotiations. Such procedures and mechanisms may include, but need not be limited to:

- (1) any form of arbitration, including, but not limited to, conventional arbitration, issue by issue or last best offer;
- (2) arbitration for all or any issue in dispute; provided, however, that the committee may direct the parties to conduct further negotiations concerning issues not specified for arbitration;
- (3) single arbitrators, including the chairman, vice-chairman or an outside neutral arbitrator;
- (4) an arbitration board, which may include labor and public management representatives as voting or non-voting members;
- (5) separate stages or procedures for the executive and legislative bodies of a municipality.

The factors to be given weight in any decision or determination resulting from the mechanism or procedures determined by the committee to be followed by the parties in order to reach final agreement pursuant to this section shall include, but not be limited to:

- (1) such an award which shall be consistent with: (i) section twenty-one C of chapter fifty-nine of the General Laws, and (ii) any appropriation for that fiscal year from the fund established in section two D of chapter twenty-nine of the General Laws;
- (2) the financial ability of the municipality to meet costs. The commissioner of revenue shall assist the committee in determining such financial ability. Such factors which shall be taken into consideration shall include but not be limited to: (i) the city, town, or district's state reimbursements and assessments; (ii) the city, town or district's long and short term bonded indebtedness; (iii) the city, town, or district's estimated share in the metropolitan district commission's deficit; (iv) the city, town, or district's estimated share in the Massachusetts Bay Transportation Authority's deficit; and (v) consideration of the average per capita property tax burden, average annual income of members of the community, the effect any accord might have on the respective property tax rates on the city or town;

- (3) the interests and welfare of the public;
- (4) the hazards of employment, physical, educational and mental qualifications, job training and skills involved;
- (5) 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;
- (6) the decisions and recommendations of the factfinder, if any;
- (7) the average consumer prices for goods and services, commonly known as the cost of living;
- (8) the overall compensation presently received by the employees, including direct wages and fringe benefits;
- (9) changes in any of the foregoing circumstances during the pendency of the dispute;
- (10) 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 parties, in the public service or in private employment;
- (11) the stipulation of the parties.

Any decision or determination resulting from the mechanism or procedures determined by the committee if supported by material and substantive evidence on the whole record shall be, subject to the approval by the legislative body of a funding request as set forth in this section, binding upon the public employer and employee organization, as set forth in chapter one hundred and fifty E of the General Laws, and may be enforced at the instance of either party or the committee in the superior court in equity; provided, however, that the scope of arbitration in police matters shall be limited to wages, hours, and conditions of employment and shall not include the following matters of inherent managerial policy: the right to appoint, promote, assign, and transfer employees; and provided, further, that the scope of arbitration in firefighter matters shall not include the right to appoint and promote employees. Assignments shall not be within the scope of arbitration; provided, however that the subject matters of initial station assignment upon appointment or promotion shall be within the scope of arbitration. The subject matter of transfer shall not be within the scope of arbitration, provided however, that the subject matters of relationship of seniority to transfers and disciplinary and punitive transfers shall be within the scope of arbitration. Notwithstanding any other provisions of this act to the contrary, no municipal employer shall be required to negotiate over subjects of minimum manning of shift coverage, with an employee organization representing municipal police officers and firefighters. Nothing in this section shall be construed to include within the scope of arbitration any matters not otherwise subject to collective bargaining under the provisions of chapter one hundred and fifty E of the General Laws. The employer shall submit to the appropriate legislative body within thirty days after the date on which the decision or determination is issued a request for the appropriation necessary to fund such decision or determination, with his recommendation for approval of said request. Notwithstanding the foregoing, where the legislative body is a town meeting, such request shall be made to the earlier of (i) the next occurring annual town meeting, or (ii) the next occurring special town meeting. The employer and the exclusive employee representative shall support any such decision or determination in the same way and to the same extent that the employer or the exclusive representative, respectively, is required to support any other decision or determination agreed to by an employer and an exclusive employee representative pursuant to the provisions of said chapter one hundred and fifty E of the General Laws. If the municipal legislative body votes not to approve the request for appropriation, the decision or determination shall cease to be binding on the parties and the matter

shall be returned to the parties for further bargaining. The committee may take such further action as it deems appropriate, including without limitation, inquiring as to the municipal legislative body's vote.

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

If a municipal employer, or an employee organization willfully disobeys a lawful order of enforcement pursuant to this section, or willfully encourages or offers resistance to such order, whether by strike or otherwise, the punishment for each day that such contempt continues may be a fine for each day to be determined at the discretion of said court. Such fine shall be in addition to such other remedies as the court may determine.

No member of a unit of municipal police officers or firefighters who is employed on a less than full-time basis shall be subject to the provisions of this clause.

When the parties to a municipal police or fire collective bargaining negotiation jointly design their own dispute resolution procedures, they may divest the committee of jurisdiction by presenting a written agreement of their procedures to the committee; provided, however, that the committee finds that said procedures provide for a final resolution of the dispute, without resort to strike, job action, or lockout; and provided, further that if the committee subsequently finds that either of the parties fails to abide by said procedures, the committee shall assume jurisdiction of the dispute. (Section 3 of chapter five hundred and eight-nine of the acts of 1987 provides that clause (a) of subdivision (3) of section four A shall cease to be operative on April first, nineteen hundred and ninety, and any arbitration proceeding pending on April first, nineteen hundred and ninety shall be completed under the provisions of said clause (a).)

(b) In any dispute resolution conducted by other than the committee or its members or staff, the parties shall share and pay equally the costs involved in such resolution; provided, however, that pursuant to a vote of the committee and subject to the availability of funds for the purpose thereof, said costs may be paid by the committee.

(c) The committee shall have jurisdiction in any particular dispute concerning job titles over which the parties have negotiated or to remove specific job titles from collective bargaining for individuals performing certain specific management duties.

(4) The committee shall promulgate rules and regulations necessary for the performance and enforcement of the responsibilities and powers set forth in this act; provided, however, that said committee file a copy of any regulations or amendments thereto with the clerks of the senate and the house of representatives who, with the approval of the president of the senate and speaker of the house of representatives, shall refer such regulations to an appropriate committee of the general court. Within thirty days after such filing, the appropriate committee of the general court shall hold a hearing on such regulations and shall issue a report and file a copy with the joint labor-management committee. Said joint labor-management committee shall consider such report and make revisions in the regulations as it deems appropriate in view of such report and shall forthwith file a copy of the final regulations with the chairman of the committee of the general court to which the regulations were referred.

On or before the first Wednesday of each year in which the provisions of clause (a) of subdivision (3) of this section are in effect, the committee shall file with the clerks of the senate and the house of representatives, and with the chairmen of the special commission on dispute resolution established under chapter two of the resolves of nineteen hundred and eighty-four, a report assessing the efficacy of the provisions of said clause in decreasing the length and severity of municipal public safety bargaining disputes, and the other impacts, if any, of said provisions of the collective bargaining process. Such report shall include a full listing of any matters in which the provisions of said clause were invoked during the previous twelve months, and the final disposition of any such matters, together with the committee's recommendations, if any, for the modification or extension of said provisions.

The provisions of chapter thirty A of the General Laws, unless otherwise provided, shall apply to the committee.

The committee shall have the power to administer oaths to require by subpoena the attendance and testimony of witnesses, production of books, records, and other evidence relative to or pertinent to the issues presented to the committee.

[1] Chapter 1078, Section 4 of the Acts of 1973 created a dispute resolution procedure for municipal police officers and fire fighters, and provided that the procedure would expire on June 30, 1977; Chapter 347 of the Acts of 1977 rewrote Section 4 and extended its provisions through June 30, 1979; Chapter 730 of the Acts of 1977 added Section 4A, creating the Joint Labor-Management Committee; Chapter 154 of the Acts of 1979 rewrote Section 4A and extended the provisions of Section 4 through June 30, 1983; Chapter 580, Section 10 of the Acts of 1980 repealed Section 4; Chapter 351, Section 239 of the Acts of 1981 amended Section 4A; Chapter 594 of the Acts of 1979 inserted a Section 4B, adding a dispute resolution procedure for certain members of the State Police and Metropolitan District Commission and providing that the procedure would expire on June 30, 1983; Chapter 726 of the Acts of 1985 rewrote Section 4B to apply only to certain members of the State Police and inserted a Section 4C, applying to certain members of the Metropolitan District Commission, and extended the provisions of Sections 4B and 4C through June 30, 1988; Chapter 589 of the Acts of 1987 rewrote Section 4A, creating a new dispute resolution procedure for municipal police officers and fire fighters; Chapter 333 of the Acts of 1988 extended the provisions of Sections 4B and 4C through June 30, 1991 (however, there were no further extensions); and Chapter 300, Section 14 of the Acts of 2002 amended Section 4A.