

HOUSE No. 2639

The Commonwealth of Massachusetts

PRESENTED BY:

Martin J. Walsh

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the resolution of school labor disputes .

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Martin J. Walsh	13th Suffolk
William M. Straus	10th Bristol
Bill Bowles	2nd Bristol
James Dwyer	30th Middlesex
Lida E. Harkins	13th Norfolk
David B. Sullivan	6th Bristol
Joyce A. Spilotis	12th Essex
Matthew C. Patrick	3rd Barnstable
Robert L. Rice, Jr.	2nd Worcester
Thomas M. Stanley	9th Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 591 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO THE RESOLUTION OF SCHOOL LABOR DISPUTES .

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. Section 9 of chapter one hundred fifty E, as appearing in the 2006 Official Edition, is
2 hereby amended by rescinding the fifth paragraph and inserting in place thereof the following paragraph:

3 The parties by their own agreement may mutually waive the fact finding provisions contained
4 herein and may petition the board for arbitration pursuant to sections four, or four B, or four D of
5 chapter one thousand and seventy-eight of the acts of nineteen hundred and seventy-three when
6 applicable. Said waiver shall not constitute a bar to any arbitration award.

7 Section 2. Chapter 1078 of the acts of 1973, as most recently amended by section 14 of
8 chapter 300 of the Acts of 2002, is hereby amended by inserting after Section 4C the following section:

9 Section 4D. (1) There shall be within the board of conciliation and arbitration, herein referred
10 to as the board, but not subject to the jurisdiction thereof, a committee to be known as the joint
11 school labor-management committee, referred to in this section as the joint committee. The joint
12 committee shall be composed of five members. Two committee members shall be appointed by the
13 governor from nominations submitted by the Massachusetts Association of School
14 Committees, one member shall be selected by the Massachusetts Teachers Association, and one

15 member shall be selected by the American Federation of Teachers Massachusetts. The four joint
16 committee members so designated shall mutually agree upon the fifth member of the joint committee,
17 which member shall serve as chairperson and chief administrative officer of the joint committee. Said
18 chairperson shall have substantial, current experience as an impartial arbitrator of labor-
19 management disputes in the schools. If the selected members of the joint committee cannot agree upon a
20 chairperson, the current chair of the board shall serve as the joint committee chairperson. The
21 chairperson shall serve for a term of three years, subject to re-appointment thereafter by the joint
22 committee.

23 Members of the joint committee shall serve without compensation, but shall be entitled
24 to reimbursement for reasonable travel or other expenses actually incurred in the performance of
25 any joint committee duties. Any such reimbursement shall be shared equally by the parties. Members
26 of the joint committee who are employed by a school committee shall be granted leave, if on duty,
27 by the municipal employer for those regularly scheduled work hours spent in the performance of
28 committee business. Supplies, equipment, and clerical or other personnel support shall be
29 provided by the board on an as-needed basis. (2) If an employee organization

30 duly certified or recognized as representing school employees of a city, town, or regional school district
31 is engaged in an impasse with said city, town, or district which has continued for thirty days after
32 the publication of the fact finders report pursuant to section nine of chapter one hundred fifty E of the
33 General Laws, or, if the parties have mutually waived the fact finding provisions contained in said
34 section nine of said chapter one hundred fifty E, either party to the impasse may elect to petition the
35 board of conciliation and arbitration to assemble a three-member arbitration panel composed
36 of the chairperson and two members of the joint committee. The chair of the arbitration panel
37 shall be mutually selected by the parties to the impasse, provided that, in the event said parties are
38 unable to agree upon a panel chairperson, the current chairperson of the board shall request from the
39 American Arbitration Association a list of three arbitrators with experience in the area of labor

40 dispute resolution. The parties to the impasse shall have the right to strike one of the three
41 arbitrators' names if they are unable to agree upon a single arbitrator from among the three. The
42 selection of the arbitration panel chairperson shall be conducted in accordance with the rules of the
43 American Arbitration Association to be consistent with the provisions of this section. The remaining
44 two members of the arbitration panel shall be selected in the following manner. The
45 Massachusetts Association of School Committees shall select one arbitration panelist from among the
46 joint committee members as an advocate for management. In matters pertaining to a bargaining unit
47 represented by one of the employee organizations, or its affiliates, referred to in the preceding sub-
48 section of this act, the arbitration panel shall include as an advocate for labor one joint committee
49 member elected by that employee organization. If no selection is made within ten days of the filing of a
50 petition to the board, the current chair of the board shall determine which joint committee members
51 shall sit on the arbitration panel. Nothing herein shall preclude the parties from reaching a mutual
52 agreement to select a single arbitrator in lieu of said arbitration panel.

53 (3) The petition to the committee shall identify the issues in dispute, the parties, and
54 the efforts of the parties to resolve the dispute. The negotiating parties shall further file with the joint
55 committee, in such time as the committee orders: (1) copies of all requests to bargain and of all
56 bargaining agenda;

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

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

61 (4) copies of any fact-finding reports;

62 (5) copies of any collective bargaining agreements, and any relevant rules
63 and regulations; and

64 (6) such other information as the joint committee or the arbitration panel
65 may reasonably require.

66 (4) Within thirty days of receipt of the information set forth herein, the arbitration
67 panel shall review the petition and the submitted materials and shall make a determination whether
68 to exercise jurisdiction over the dispute. The panel shall, at its discretion, have jurisdiction in any
69 dispute over the negotiations of the terms of a collective bargaining agreement involving school
70 employees; provided, however, that the panel may determine whether the proceedings for the
71 prevention of any prohibited practices filed with the labor relations commission shall or shall
72 not prevent arbitration pursuant to this section. If the arbitration panel declines to exercise
73 jurisdiction over the dispute or fails to act within thirty days of receipt of the petition on
74 jurisdiction, the petition shall be automatically referred to the board for disposition in accordance with
75 the provisions of section nine of chapter one hundred and fifty E of the General Laws. Disputes over
76 which the panel does not exercise jurisdiction shall be governed by all other applicable provisions of
77 law.

78 (5) The arbitration panel may meet with the parties to a dispute, conduct formal or
79 informal conferences, and take other steps including mediation to encourage the parties to agree
80 on the terms of a collective bargaining agreement or the procedures to resolve the dispute. The
81 panel shall make every effort to encourage the parties to engage in good faith negotiations to reach
82 settlement through negotiation or mediation. The panel may remove at any time from the
83 jurisdiction of the board any dispute in which the board has exercised jurisdiction, and the
84 board shall then take no further action in such dispute. The panel may, at any time, remand to the
85 board any dispute over which the panel has exercised jurisdiction. The board shall assist and cooperate
86 with the panel in the performance of its arbitration duties.

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

91 (1) the issues that remain in dispute;

92 (2) the current positions of the parties;

93 (3) the views of the parties as to how the continuing dispute should be
94 resolved; and

95 (4) the preferences of the parties as to the mechanism to be followed in
96 order to reach a final agreement between the parties.

97 If the panel, after a full hearing, finds there is an apparent exhaustion of the processes of
98 collective bargaining which constitutes a potential threat to public education, it shall so notify the
99 parties of its findings. Within ten days of such notification, the panel shall also notify the parties of its
100 intent to invoke such procedures and mechanisms as it deems appropriate for the resolution of the
101 collective bargaining negotiations. Such procedures and mechanisms may include, but
102 need not be limited to:

103 (1) any form of arbitration, including, but not limited to, conventional
104 arbitration, issue by issue or last best offer;

105 (2) arbitration for all or any issue in dispute; provided, however, that the
106 panel may direct the parties to conduct further negotiations concerning issues
107 not specified for arbitration;

108 (3) separate stages or procedures for the executive and legislative bodies
109 of a municipality.

110 (7) The factors to be given weight in any decision or determination
111 resulting from the mechanism or procedures determined by the panel to be
112 followed by the parties in order to reach final agreement pursuant to this section
113 shall include, but not be limited to:

114 (1) such an award which shall be consistent with section twenty
115 one C of chapter fifty-nine of the General Laws;

116 (2) the financial ability of the municipality to meet costs. The
117 commissioner of revenue shall assist the panel in determining such
118 financial ability. Such factors which shall be taken into consideration shall include
119 but not be limited to:

120 (i) the city, town, or district's state reimbursements and
121 assessments, including any state appropriation to the city, town, or
122 district made, or scheduled to be made, pursuant to chapter 70 of
123 the General Laws;

124 (ii) the city, town or district's long and short term bonded
125 indebtedness;

126 (iii) the city, town, or district's estimated share in the metropolitan
127 district commission's deficit;

128 (iv) the city, town, or district's estimated share in the
129 Massachusetts Bay Transportation Authority's deficit; and

130 (v) consideration of the average per capita property tax burden,
131 average annual income of members of the community, the effect
132 any accord might have on the respective property tax rates on the
133 city or town;

134 (3) the interests and welfare of the public;

135 (4) the hazards of employment, physical, educational and mental
136 qualifications, job training and skills involved;

137 (5) a comparison of wages, hours and conditions of employment of
138 the employees involved in the arbitration proceedings with the wages, hours
139 and conditions of employment of other employees performing similar services and
140 with other employees generally in public and private employment in comparable
141 communities;

142 (6) the decisions and recommendations of the fact finder, if any;

143 (7) the average consumer prices for goods and services, commonly known
144 as the cost of living;

145 (8) the overall compensation presently received by the employees,
146 including direct wages and fringe benefits;

147 (9) changes in any of the foregoing circumstances during the pendency of
148 the dispute;

149 (10) such other factors, not confined to the foregoing, which are normally
150 or traditionally taken into consideration in the determination of wages, hours
151 and conditions of employment through voluntary collective bargaining,

152 mediation, fact-finding, arbitration or otherwise between parties, in the public
153 service or in private employment;

154 (11) the stipulation of the parties.

155 (8) Any decision or determination resulting from the mechanism or
156 procedures determined by the arbitration panel, if supported by material and
157 substantive evidence on the whole record, shall be, subject to the approval by the
158 legislative body of a funding request as set forth in this section, binding upon the public employer and
159 employee organization, as set forth in chapter one hundred and fifty E of the General Laws, and may be
160 enforced at the instance of either party in the superior court; provided, however, that the scope of
161 arbitration shall be limited to wages, hours, and conditions of employment and shall not include any
162 matters not otherwise subject to collective bargaining under the provisions of chapter one hundred and
163 fifty E of the General Laws. The employer shall submit to the appropriate legislative body within thirty
164 days after the date on which the decision or determination is issued a request for the appropriation
165 necessary to fund such decision or determination, with a recommendation for approval of said request.
166 Notwithstanding the foregoing, where the legislative body is a town meeting, such request shall be made
167 to the earlier of

168 (i) the next occurring annual town meeting, or

169 (ii) the next occurring special town meeting.

170 In a regional school district, the regional school committee shall be
171 deemed to be the legislative body for purposes of this act. The employer and the
172 exclusive employee representative shall support any such decision or
173 determination in the same way and to the same extent that the employer or the
174 exclusive representative, respectively, is required to support any other decision or determination agreed to
175 by an employer and an exclusive employee representative pursuant to the provisions of said chapter one

176 hundred and fifty E of the General Laws. If the municipal legislative body votes not to approve the
177 request for appropriation, the decision or determination shall cease to be binding on the parties and the
178 matter shall be returned to the parties for further bargaining. The joint committee may take such further
179 action as it deems appropriate, including without limitation, inquiring as to the municipal legislative
180 body's vote.

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

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

190 (10) In any dispute resolution conducted by other than the board or the joint committee or its
191 members or its staff, the parties shall share and pay equally the costs involved in such resolution;
192 provided, further, that the parties shall share and pay equally the daily arbitration fee that the chair of the
193 arbitration panel, if said chair is not otherwise employed by the Commonwealth or any of its
194 governmental subdivisions, may reasonably charge.