

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

---

**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:

Martin J. Walsh

DISTRICT/ADDRESS:

13th Suffolk

[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  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11

Section 1. Section 9 of chapter one hundred fifty E, as appearing in the 2006 Official Edition, is hereby amended by rescinding the fifth paragraph and inserting in place thereof the following paragraph:

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

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

14  
15 Section 4D. (1) There shall be within the board of conciliation and arbitration, herein referred  
16 to as the board, but not subject to the jurisdiction thereof, a committee to be known as the joint  
17 school labor-management committee, referred to in this section as the joint committee. The joint  
18 committee shall be composed of five members. Two committee members shall be appointed by  
19 the governor from nominations submitted by the Massachusetts Association of School  
20 Committees, one member shall be selected by the Massachusetts Teachers Association, and one  
21 member shall be selected by the American Federation of Teachers Massachusetts. The four joint  
22 committee members so designated shall mutually agree upon the fifth member of the joint  
23 committee, which member shall serve as chairperson and chief administrative officer of the joint  
24 committee. Said chairperson shall have substantial, current experience as an impartial arbitrator  
25 of labor-management disputes in the schools. If the selected members of the joint committee  
26 cannot agree upon a chairperson, the current chair of the board shall serve as the joint committee  
27 chairperson. The chairperson shall serve for a term of three years, subject to re-appointment  
28 thereafter by the joint committee.

29 Members of the joint committee shall serve without compensation, but shall be entitled  
30 to reimbursement for reasonable travel or other expenses actually incurred in the performance of  
31 any joint committee duties. Any such reimbursement shall be shared equally by the parties. Members  
32 of the joint committee who are employed by a school committee shall be granted leave, if on  
33 duty, by the municipal employer for those regularly scheduled work hours spent in the  
34 performance of committee business. Supplies, equipment, and clerical or other personnel

35 support shall be provided by the board on an as-needed basis. (2) If an employee  
36 organization duly certified or recognized as representing school employees of a city, town, or  
37 regional school district is engaged in an impasse with said city, town, or district which has  
38 continued for thirty days after the publication of the fact finders report pursuant to section nine  
39 of chapter one hundred fifty E of the General Laws, or, if the parties have mutually  
40 waived the fact finding provisions contained in said section nine of said chapter one hundred fifty E,  
41 either party to the impasse may elect to petition the board of conciliation and arbitration to  
42 assemble a three-member arbitration panel composed of the chairperson and two members of the  
43 joint committee. The chair of the arbitration panel shall be mutually selected by the parties to the  
44 impasse, provided that, in the event said parties are unable to agree upon a panel  
45 chairperson, the current chairperson of the board shall request from the American  
46 Arbitration Association a list of three arbitrators with experience in the area of labor dispute  
47 resolution. The parties to the impasse shall have the right to strike one of the three arbitrators'  
48 names if they are unable to agree upon a single arbitrator from among the three. The selection of the  
49 arbitration panel chairperson shall be conducted in accordance with the rules of the American  
50 Arbitration Association to be consistent with the provisions of this section. The remaining two  
51 members of the arbitration panel shall be selected in the following manner. The Massachusetts  
52 Association of School Committees shall select one arbitration panelist from among the joint  
53 committee members as an advocate for management. In matters pertaining to a bargaining unit  
54 represented by one of the employee organizations, or its affiliates, referred to in the preceding  
55 sub-section of this act, the arbitration panel shall include as an advocate for labor one joint  
56 committee member elected by that employee organization. If no selection is made within  
57 ten days of the filing of a petition to the board, the current chair of the board shall determine which

58 joint committee members shall sit on the arbitration panel. Nothing herein shall preclude the parties  
59 from reaching a mutual agreement to select a single arbitrator in lieu of said arbitration panel.

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

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

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

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

69 (5) copies of any collective bargaining agreements, and any relevant rules  
70 and regulations; and

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

73

74 (4) Within thirty days of receipt of the information set forth herein, the arbitration  
75 panel shall review the petition and the submitted materials and shall make a determination whether  
76 to exercise jurisdiction over the dispute. The panel shall, at its discretion, have jurisdiction in any  
77 dispute over the negotiations of the terms of a collective bargaining agreement involving school  
78 employees; provided, however, that the panel may determine whether the proceedings for the

79 prevention of any prohibited practices filed with the labor relations commission shall or shall  
80 not prevent arbitration pursuant to this section. If the arbitration panel declines to  
81 exercise jurisdiction over the dispute or fails to act within thirty days of receipt of the  
82 petition on jurisdiction, the petition shall be automatically referred to the board for disposition in  
83 accordance with the provisions of section nine of chapter one hundred and fifty E of the General  
84 Laws. Disputes over which the panel does not exercise jurisdiction shall be governed by all other  
85 applicable provisions of law.

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

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

99 (1) the issues that remain in dispute;

100 (2) the current positions of the parties;

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

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

105

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

112

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

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

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

120

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

125

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

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

132 (i) the city, town, or district's state reimbursements and  
133 assessments, including any state appropriation to the city, town, or  
134 district made, or scheduled to be made, pursuant to chapter 70 of  
135 the General Laws;

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

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

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



142 (v) consideration of the average per capita property tax burden,  
143 average annual income of members of the community, the effect  
144 any accord might have on the respective property tax rates on the  
145 city or town;

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

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

149 (5) a comparison of wages, hours and conditions of employment of  
150 the employees involved in the arbitration proceedings with the wages, hours  
151 and conditions of employment of other employees performing similar services and  
152 with other employees generally in public and private employment in comparable  
153 communities;

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

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

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

159 (9) changes in any of the foregoing circumstances during the pendency of  
160 the dispute;

161 (10) such other factors, not confined to the foregoing, which are normally  
162 or traditionally taken into consideration in the determination of wages, hours

163 and conditions of employment through voluntary collective bargaining,  
164 mediation, fact-finding, arbitration or otherwise between parties, in the public  
165 service or in private employment;

166 (11) the stipulation of the parties.

167

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

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

182 (ii) the next occurring special town meeting.

183 In a regional school district, the regional school committee shall be  
184 deemed to be the legislative body for purposes of this act. The employer

185 and the exclusive employee representative shall support any such decision  
186 or determination in the same way and to the same extent that the  
187 employer or the exclusive representative, respectively, is required to support any other decision  
188 or determination agreed to by an employer and an exclusive employee representative pursuant to the  
189 provisions of said chapter one hundred and fifty E of the General Laws. If the municipal legislative body  
190 votes not to approve the request for appropriation, the decision or determination shall cease to be  
191 binding on the parties and the matter shall be returned to the parties for further bargaining. The joint  
192 committee may take such further action as it deems appropriate, including without limitation, inquiring  
193 as to the municipal legislative body's vote.

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

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

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

