

HOUSE No. 1830

By Mr. Patrick of Falmouth, petition of Matthew C. Patrick and others relative to binding arbitration. Labor and Workforce Development.

The Commonwealth of Massachusetts

PETITION OF:

Matthew C. Patrick
Cleon H. Turner

Antonio F. D. Cabral

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO BINDING ARBITRATION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 701 of the Acts of 1960, as most recently amended by
2 Chapter 243 of the acts of 2002, is hereby amended by inserting
3 after Section 15, the following new sections:—

4 Section 15A. Notwithstanding any general or special law to the
5 contrary, the authority or any organizations representing employees
6 of the authority shall not be permitted to submit any dispute over the
7 terms of a collective bargaining agreement to arbitration except in
8 accordance with Section 15A through Section 15D, inclusive; pro-
9 vided, however, that this section shall not limit the rights of organi-
10 zations representing employees of the authority to submit grievances
11 to arbitration in accordance with the collective bargaining agreement
12 between the parties.

13 In the event the directors and any organizations representing
14 employees of the authority have not reached an agreement within 90
15 days from the date of the expiration of the agreement, either party
16 may notify the other that it desires mediation. The parties may agree
17 upon a person to serve as a mediator or, if unable to agree on said
18 mediator, either party or the parties acting jointly may petition the

19 board of conciliation and arbitration to appoint a mediator from a list
20 of qualified persons maintained by the board.

21 Section 15B. After a reasonable period of mediation, not to
22 exceed 45 days from the date of appointment, said mediator shall
23 issue a report indicating the results of his services in resolving the
24 impasse. If at the conclusion of mediation the impasse still exists,
25 the mediator shall so certify. In the event, the mediator shall certify
26 in his report the last best offer of each party on each unresolved
27 issue which has been submitted to mediation and shall also certify
28 the agreement of the parties on each issue on which agreement has
29 been reached and shall submit such certifications to the arbitrator
30 selected by the parties. In such event, so long as the mediator shall
31 also certify that the parties have bargained in good faith, either party
32 may notify the other that it desires arbitration of the dispute. Within
33 10 days of said notice, the parties shall meet to select a single neutral
34 arbitrator.

35 If, within 15 days, the parties fail to select such single arbitrator,
36 either party may forthwith petition the board of conciliation and
37 arbitration to request a list of five arbitrators from the American
38 Arbitration Association and said Association shall certify to the
39 board that such arbitrators on the list it provides possess the qualifi-
40 cations as provided in Section 30. The parties shall thereupon meet
41 to select such arbitrator by striking one name each until one name
42 remains and that person shall serve as the neutral arbitrator. If, after
43 10 days, one of the parties declines to strike their names, the other
44 party shall strike two names and the board shall forthwith select the
45 arbitrator from the remaining three names.

46 Section 15C. The single arbitrator, whether agreed upon by the
47 parties or selected by the board of conciliation and arbitration, shall
48 be a legal resident of the Commonwealth and shall be experienced in
49 state and local finance. The arbitrator shall rely primarily on the
50 following factors in determining the basis for an award:—

51 (a) The financial ability of the authority to meet additional costs,
52 which shall include but not be limited to:—

53 (i) the statutory requirement that the authority produce revenues
54 in excess of expenses;

55 (ii) the financial ability of the individual communities and the
56 Commonwealth to meet additional costs;

57 (iii) the average per capita tax burden, average annual income and
58 sources of revenue within the Commonwealth, and the effect of any
59 arbitration award on the respective property tax rates of the cities
60 and towns within the authority's district.

61 (b) The overall compensation presently received by the
62 employees, having regard not only for wages for time actually
63 worked but also for wages for time not worked, including vacations,
64 holidays and other excused time.

65 (c) All benefits received by the employees, including insurance,
66 pension, as well as the continuity and stability of employment.

67 (d) The hazards of employment, physical, educational and mental
68 qualifications, job training and skills involved.

69 (e) A comparison of wages, hours, and conditions of employment
70 of the employees involved in the arbitration proceedings with the
71 wages, hours and conditions of employment of other employees per-
72 forming similar services within the Commonwealth and with other
73 employees generally in public and private employment within the
74 Commonwealth.

75 (f) The average consumer price for goods and services, commonly
76 known as the cost of living.

77 (g) Changes in any of the foregoing circumstances during the pen-
78 dency of the arbitration proceedings.

79 (h) Such other factors, not confined to the foregoing, which are
80 normally or traditionally taken into consideration in the determina-
81 tion of wages, hours and conditions of employment through volun-
82 tary collective bargaining, mediation, fact-finding, arbitration or
83 otherwise between parties, in the public service of the Common-
84 wealth, and which are not precluded from bargaining under Section
85 25.

86 (i) The stipulation of the parties.

87 Section 15D. The arbitrator shall be limited in making his award
88 to choosing between the last best offers of the parties on each issue
89 as certified in the mediator's report or any award in the range
90 between the last best offers of the parties. The arbitrator shall make
91 no award on any issue found by him to be not authorized by law to
92 be submitted to arbitration, but shall state such finding in his written
93 opinion. Within 30 calendar days of an award, the arbitrator shall
94 issue a written opinion inclusive of an analysis of all statutory fac-
95 tors applicable to the proceedings. Any determination by the arbi-

96 trator, if supported by material and substantial evidence on the
97 record, shall be binding upon the parties and upon the appropriate
98 legislative or appropriating body and may be enforced at the insis-
99 tence of either party or by the arbitrator in the superior court. The
100 scope of arbitration shall be limited to wages, hours, and conditions
101 of employment and shall not include any provisions for any cost of
102 living adjustment which are based on changes in the consumer price
103 index after the expiration of the contract period covered by the
104 award. In addition, any wage or salary adjustments shall be
105 expressed in percent or dollar amounts, and in no case shall there be
106 any provision for salary adjustments to occur after the expiration of
107 the contract period covered by the award.

108 The cost, if any, of the mediation and of arbitration proceedings,
109 exclusive of the expenses of the individual parties shall, be divided
110 equally by the parties and shall be in accordance with a schedule of
111 payments established by the American Arbitration Association.