

HOUSE No. 2542

By Miss Garry of Dracut, petition of Colleen M. Garry for legislation to provide for binding arbitration for fire fighters and police officers. Public Service.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT PROVIDING FOR BINDING ARBITRATION FOR FIRE FIGHTERS AND POLICE OFFICERS.

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

- 1 If an employee organization duly recognized as representing the
- 2 firefighters or police officers of a city, town or district is engaged in
- 3 an impasse with said city, town or district which has continued for
- 4 thirty days after the publication of the fact-finders report pursuant to
- 5 section nine of chapter one hundred and fifty E of the General Laws,
- 6 or, if the parties have mutually waived the fact-finding provisions
- 7 contained in said section nine of said chapter one hundred and fifty
- 8 E, said employee organization shall petition the board to make an
- 9 investigation. If, after an investigation, the board determines that:—
- 10 1.) the requirements of section nine of said chapter one hundred
- 11 and fifty E have been complied with in good faith by the employee
- 12 organization;
- 13 2.) thirty days have passed since the date of publication of the
- 14 fact-finding report pursuant to said section nine;
- 15 3.) the proceedings for the prevention of any prohibited practices
- 16 have been exhausted, provided that any such complaints have been
- 17 filed with the commission prior to the date of the fact finder’s report;
- 18 and
- 19 4.) an impasse exists, the board shall notify the employer and the
- 20 employee organization that the issues in dispute shall be resolved by
- 21 a three-member arbitration panel, or when the parties mutually
- 22 agree, the board shall select a single arbitrator in lieu of the arbitra-
- 23 tion panel.

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

34 In the event that the parties mutually elect to use a single arbi-
35 trator, selected by the board, the parties shall immediately request
36 the board to appoint said arbitrator, who shall act with the same
37 force and effect as if a three member panel had been selected by the
38 parties.

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

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

62 court within the jurisdiction in which the hearing is being held,
63 which court shall issue an appropriate order.

64 A record of the proceedings shall be kept, and the chairman or
65 single arbitrator shall arrange for the necessary recording service.
66 Transcripts may be ordered at the expense of the party ordering
67 them, but the transcripts shall not be necessary for an award by the
68 panel or single arbitrator. The hearing may be continued at the dis-
69 cretion of the panel or single arbitrator and shall be concluded within
70 forty days from the time of commencement. At the conclusion of the
71 hearing, each party shall submit a written statement containing its
72 last and best offer for each of the issues in dispute to the panel or
73 single arbitrator, who shall take said statements under advisement.
74 Within ten days after the conclusion of the hearing, a majority of the
75 panel, or the single arbitrator, shall select as the last and best arbitra-
76 tion award either the employer's written statement of its last and best
77 offer, the employee organization's written statement of its last and
78 best offer, or the recommendation of the fact-finder, if a fact-finding
79 report and recommendations have been issued, and immediately
80 shall give written notice of the selection to the parties. The selection
81 shall be final and binding upon the parties and upon the appropriate
82 legislative body. Within thirty calendar days of the last and best offer
83 selection and award, the impartial chairperson of the arbitration
84 panel or, the single arbitrator, shall issue a written opinion inclusive
85 of an analysis of all statutory factors applicable to the proceedings.

86 At any time before the rendering of an award, the chairman of the
87 arbitration panel or single arbitrator, if he is of the opinion that it
88 would be useful or beneficial to do so, may remand the dispute to
89 the parties for further collective bargaining for the period not to
90 exceed three weeks and notify the board of the remand. If the dis-
91 pute is remanded for further collective bargaining the time provi-
92 sions of this act shall be extended for a time period equal to that of
93 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 weight 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 or

112 (d) the city, town, or district's estimated share in the Massachu-
113 setts Bay Transportation Authority's deficit; and

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

118 (2) The interests and welfare of the public.

119 (3) The hazards of employment, physical, educational and mental
120 qualifications, job training and skills involved.

121 (4) A comparison of wages, hours and conditions of employment
122 of the employees involved in the arbitration proceedings with the
123 wages, hours and conditions of employment of other employees per-
124 forming similar services and with other employees generally in
125 public and private employment in comparable communities.

126 (5) The decisions and recommendations of the fact-finder, if any.

127 (6) The average consumer prices for goods and services, com-
128 monly known as the cost of living.

129 (7) The overall compensation presently received by the
130 employees, including direct wages and fringe benefits.

131 (8) Changes in any of the foregoing circumstances during the pen-
132 dency of the arbitration proceedings.

133 (9) Such other factors, not confined to the foregoing, which are
134 normally or traditionally taken into consideration in the determina-
135 tion of wages, hours and conditions of employment through volun-
136 tary collective bargaining, mediation, fact-finding, arbitration or
137 otherwise between parties, in the public service or in private
138 employment.

139 (10) The stipulation of the parties.

140 Any determination or decision of the arbitration panel or single
141 arbitrator if supported by material and substantive evidence on the
142 whole record shall be binding upon the parties and may be enforced
143 at the instance of either party, the single arbitrator or the arbitration
144 panel in the superior court in equity; provided however, that the
145 scope of arbitration in police matters shall be limited to wages,
146 hours, and conditions of employment and shall not include the
147 following matters of inherent managerial policy; the right to appoint,
148 promote, assign, and transfer employees; and provided, further, that
149 the scope of arbitration in firefighter matters shall not include the
150 right to appoint and promote employees. Assignments shall not be
151 within the scope; provided, however, that the subject matter of initial
152 station assignment upon appointment or promotion shall be within
153 the scope of arbitration. The subject matter of transfer shall not be
154 within the scope of arbitration; provided however, that the subject
155 matters of relationship of seniority to transfers and disciplinary and
156 punitive transfers shall be within the scope of arbitration. Notwith-
157 standing any other provisions of this chapter to the contrary, no
158 municipal employer shall be required to negotiate over subjects of
159 minimum manning of shift coverage, with an employee organization
160 representing municipal police officers and 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.

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