HOUSE . . . . . No. 2791

By Mr. Walsh of Boston, petition of Martin J. Walsh and Robert B. McCarthy that provision be made 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:

If an employee organization duly recognized as representing the firefighters or police officers of a city, town or district is engaged in an impasse with said city, town, district or authority which has continued for thirty days after the publication of the fact-finders report pursuant to section nine of Chapter one hundred and fifty E of the General Laws, or, if the parties have mutually waived the fact-finding provisions contained in said section nine of said Chapter one hundred and fifty E, said employee organization shall petition the board to make an investigation. If, after an investigation, the board determines that: —

1.) the requirements of section nine of said Chapter one hundred and fifty E have been complied with in good faith by the employee organization;

2.) thirty days have passed since the date of publication of the fact-finding report pursuant to said section nine;

3.) the proceedings for the prevention of any prohibited practices have been exhausted, provided that any such complaints have been filed with the commission prior to the date of the fact finder's report; and

4.) an impasse exists, the board shall notify the employer and the employee organization that the issues in dispute shall be resolved by a three-member arbitration panel, or when• the parties mutually agree, the board shall select a single arbitrator in lieu of the arbitration panel. Said panel shall be comprised of three arbitrators, one

selected by the employer, one selected by the employee organization, and a third impartial arbitrator, who shall act as chairman of the panel, who shall be selected by the two previously selected arbitrators. In the event that either party fails to select an arbitrator or for any reason there is a delay in the naming of an arbitrator, or if the arbitrators fail to select a third arbitrator within the time prescribed by the board, the board shall appoint the arbitrator or arbitrators necessary to complete the panel, which shall act with the same force and effect as if the panel had been selected without intervention of the board. In the event that the parties mutually elect to use a single arbitrator, selected by the board, the parties shall immediately request the board to appoint said arbitrator, who shall act with the same force and effect as if a three member panel had been selected by the parties. The single arbitrator or the arbitration panel acting through its chairman, shall conduct a hearing within ten days after the date of appointment of its chairman, at a place within the locality of the municipality involved, where feasible. The chairman shall give at least seven days notice in writing to each of the other• arbitrators. The chairman or single arbitrator shall give like notice to the representative of the municipal employer and employee organizations of the time and place of such hearing. The single arbitrator or chairman shall preside over the hearing and shall take testimony. Upon application and for good cause shown, a person, labor organization, or governmental unit having substantial interest therein may be granted leave to intervene by the arbitration panel. The proceedings shall be informal. Any oral or documentary evidence and other data deemed relevant by the arbitration panel or single arbitrator may be received into evidence. The arbitrators shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of books, records, and other evidence relative to or pertinent to the issues presented to them for determination. If any person refuses to obey a subpoena, or refuses to be sworn or to testify, or if any witness, party, or attorney is guilty of any contempt while in attendance at any hearing, the arbitration panel or single arbitrator may, or the district attorney if requested, shall invoke the aid of the superior court within the jurisdiction in which the hearing is being held, which court shall issue an appropriate order. A record of the proceedings shall be kept, and the chairman or single arbitrator shall arrange for the necessary

recording service. Transcripts may be ordered at the expense of the party ordering them, but the transcripts shall not be necessary for an award by the panel or single arbitrator. The hearing may be continued at the discretion of the panel or single arbitrator and shall be concluded within forty days from the time of commencement. At the conclusion of the hearing, each party shall submit a written statement containing its last and best offer for each of the issues in dispute to the panel or single arbitrator, who shall take said statements under advisement. Within ten days after the conclusion of the hearing, a majority of the panel, or the single arbitrator, shall select as the last and best arbitration award either the employer's written statement of its last and best offer, the employee organization's written statement of its last and best offer, or the recommendation of the fact-finder, if a fact-finding report and recommendations have been issued, and immediately shall give written notice of the selection to the parties. The selection shall be final and binding upon the parties and upon the appropriate legislative body. Within thirty calendar days of the last and best offer selection and award, the impartial chairperson of the arbitration panel or, the single arbitrator, shall issue a written opinion inclusive of an analysis of all statutory factors applicable to the proceedings. At any time before the rendering of an award, the chairman of the arbitration panel or single arbitrator, if he is of the opinion that it would be useful or beneficial to do so, may remand the dispute to the parties for further collective bargaining for the period not to exceed three weeks and notify the board of the remand. If the dispute is remanded for further collective bargaining the time provisions of this act shall be extended for a time period equal to that of the remand. In the event that the representatives of the parties mutually resolve each of the issues in dispute and agree to be bound accordingly, said representatives may, at any time prior to the final decisions by the panel, or single arbitrator, request that the contempt while in attendance at any hearing, the arbitration panel or single arbitrator may, or the district attorney if requested, shall invoke the aid of the superior court within the jurisdiction in which the hearing is being held, which court shall issue an appropriate order. A record of the proceedings shall be kept, and the chairman or single arbitrator shall arrange for the necessary recording service. Transcripts may be ordered at the expense of the party ordering them, but the transcripts shall not be necessary for an

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(1) The financial ability of the municipality to meet costs. Such factors which shall be taken into consideration shall include but not be limited to:—

(a) the city, town or district's state reimbursements and assessments;

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

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

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

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

(2) The interests and welfare of the public.

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

(4) 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.

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

(6) The average consumer prices for goods and services, commonly known as the cost of living.

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

(8) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(9) 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.

(10) The stipulation of the parties. Any determination or decision of the arbitration panel or single arbitrator if supported material and substantive evidence on the whole record shall be binding upon the parties and may be enforced at the instance of either party, the single arbitrator or the arbitration panel 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; provided, however, that the subject matter 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 chapter 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. 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. Each of the parties shall provide compensation for the arbitrator which he has selected pursuant to this section. The remaining costs of arbitration proceedings under this section shall be divided equally between the parties. Compensation for the arbitrators shall be in accordance with a schedule of payment established by the American Arbitration Association. 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 section.

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