

SENATE NO. 1656

AN ACT LEGISLATION TO PROVIDE 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 SECTION 1. If an employee organization duly recognized as representing the firefighters or police
2 officers of a city, town or district is engaged in an impasse with said city, town or district which has
3 continued for thirty days after the publication of the fact-finders report pursuant to section nine of
4 chapter one hundred and fifty E of the General Laws, or, if the parties have mutually waived the fact-
5 finding provisions contained in said section nine of said chapter one hundred and fifty E, said
6 employee organization shall petition the board to make an investigation. If, after an investigation, the
7 board determines that:
- 8 1. the requirements of section nine of said chapter one hundred and fifty E have been complied with in
9 good faith by the employee organization;
 - 10 2. thirty days have passed since the date of publication of the fact-finding report pursuant to said
11 section nine;
 - 12 3. the proceedings for the prevention of any prohibited practices have been exhausted, provided that

13 any such complaints have been filed with the commission prior to the date of the fact-finders report;
14 and

15 4. an impasse exists; the board shall notify the employer and the employee organization that the issues
16 in dispute shall be resolved by a three-member arbitration panel, or when the parties mutually agree,
17 the board shall select a single arbitrator in lieu of the arbitration panel. Said panel shall be comprised
18 of three arbitrators, one selected by the employee organization, one selected by the employer, and a
19 third impartial arbitrator, who shall act as chairman of the panel, and who shall be selected by the two
20 previously selected arbitrators. In the event that either party fails to select an arbitrator or for any
21 reason there is a delay in the naming of an arbitrator, or if the arbitrators fail to select a third arbitrator
22 within the time prescribed by the board, the board shall appoint the arbitrator or arbitrators necessary
23 to complete the panel, which shall act with the same force and effect as if the panel had been selected
24 without intervention of the board.

25 In the event that the parties mutually elect to use a single arbitrator, selected by the board, the parties
26 shall immediately request the board to appoint said arbitrator, who shall act with the same force and
27 effect as if a three member panel had been selected by the parties. The single arbitrator or the
28 arbitration panel acting through its chairman, shall conduct a hearing within ten days after the date of
29 appointment of its chairman, at a place within the locality of the municipality involved, where feasible.
30 The chairman shall give at least seven days notice in writing to each of the other arbitrators. The
31 chairman or single arbitrator shall give like notice to the representative of the municipal employer and
32 employee organizations of the time and place of such hearing.

33 The single arbitrator or chairman shall preside over the hearing and shall take testimony. Upon
34 application and for good cause shown, a person, labor organization, or governmental unit having

35 substantial interest therein may be granted leave to intervene by the arbitration panel. The proceedings
36 shall be informal. Any oral or documentary evidence and other data deemed relevant by the arbitration
37 panel or single arbitrator may be received into evidence. The arbitrators shall have the power to
38 administer oaths and to require by subpoena the attendance and testimony of witnesses, the production
39 of books, records, and other evidence relative to or pertinent to the issues presented to them for
40 determination. If any person refuses to obey a subpoena, or refuses to be sworn or to testify, or if any
41 witness, party, or attorney is guilty of any contempt while in attendance at any hearing, the arbitration
42 panel or single arbitrator may, or the district attorney if requested, shall invoke the aid of the superior
43 court within the jurisdiction in which the hearing is being held, which the court shall issue an
44 appropriate order.

45 A record of the proceedings shall be kept, and the chairman or single arbitrator shall arrange for the
46 necessary recording service. Transcripts may be ordered at the expense of the party ordering them, but
47 the transcripts shall not be necessary for an award by the panel or single arbitrator. The hearing may be
48 continued at the discretion of the panel or single arbitrator and shall be concluded within forty days
49 from the time of commencement. At the conclusion of the hearing, each party shall submit a written
50 statement containing its last and best offer for each of the issues in dispute to the panel or single
51 arbitrator, who shall take said statements under advisement. Within ten days after the conclusion of the
52 hearing, a majority of the panel, or the single arbitrator, shall select as the last and best arbitration
53 award either the employer's written statement of its last and best offer, the employee organization's
54 written statement of its last and best offer, or the recommendations of the fact-finder, if a fact-finding
55 report and recommendations have been issued, and immediately shall give written notice of the
56 selection to the parties. The selection shall be final and binding upon the parties and upon the
57 appropriate legislative body. Within thirty calendar days of the last and best offer selection and award,

58 the impartial chairperson of the arbitration panel or, the single arbitrator, shall issue a written opinion
59 inclusive of an analysis of all statutory factors applicable to the proceedings.

60 At any time before the rendering of an award, the chairman of the arbitration panel or single arbitrator,
61 if he is of the opinion that it would be useful or beneficial to do so, may remand the dispute to the
62 parties for further collective bargaining for the period not to exceed three weeks and notify the board
63 of the remand. If the dispute is remanded for further collective bargaining the statutory time frames of
64 this act shall be tolled for a time period equal to the duration of the remand.

65 In the event that the representatives of the parties mutually resolve each of the issues in dispute and
66 agree to be bound accordingly, said representatives may, at any time prior to the final decisions by the
67 panel, or single arbitrator, request that the arbitration proceedings be terminated. The panel, acting
68 through its chairman or single arbitrator, shall terminate the proceedings.

69 The factors among others, to be considered by the arbitration panel or single arbitrator in arriving at
70 the decision shall include:

71 (1) The financial ability of the municipality to meet costs. Such factors which shall be taken into
72 consideration shall include but not be limited to, (a) the city, town, or district's state reimbursements
73 and assessments; (b) the city, town, or district's long and short term bonded indebtedness; (c) the city,
74 town, or district's estimated share in the metropolitan district commission deficit; (d) the city, town, or
75 district's estimated share in the Massachusetts Bay Transportation Authority's deficit; and (e)
76 consideration of the average per capita property tax burden, average annual income of members of the
77 community, the effect any accord by the panel or single arbitrator might have on the respective
78 property tax rates of the city or town.

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

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

82 (4) A comparison of wages, hours and conditions of employment of the employees involved in the
83 arbitration proceedings with the wages, hours and conditions of employment of other employees
84 performing similar services and with other employees generally in public and private employment in
85 comparable communities.

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

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

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

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

91 (9) Such other factors, not confined to the foregoing, which are normally or traditionally taken into
92 consideration in the determination of wages, hours and conditions of employment through voluntary
93 collective bargaining, mediation, fact-finding, arbitration or otherwise between parties, in the public
94 service or in private employment.

95 (10) The stipulation of the parties.

96 Any determination or decision of the arbitration panel or single arbitrator, if supported by material and
97 substantive evidence on the whole record shall be binding upon the parties and may be enforced at the

98 election of either party, the single arbitrator or the arbitration panel in the superior court in equity,
99 provided however, that the scope of arbitration in police matters shall be limited to wages, hours, and
100 conditions of employment and shall not include the following matters of inherent managerial policy:
101 the right to appoint, promote, assign, and transfer employees; and provided, further, that the scope of
102 arbitration in firefighter matters shall not include the right to appoint and promote employees.
103 Assignments shall not be within the scope; provided, however, that the subject matters of initial station
104 assignment upon appointment or promotion shall be within the scope of arbitration. The subject matter
105 of transfer shall not be within the scope of arbitration, provided however, that the subject matters of
106 relationship of seniority to transfers and disciplinary and punitive transfers shall be within the scope of
107 arbitration. Notwithstanding any other provisions of this chapter to the contrary, no municipal
108 employer shall be required to negotiate over subjects of minimum manning of shift coverage, with an
109 employee organization representing municipal police officers and firefighters.

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

114 If a municipal employer, or an employee organization willfully disobeys a lawful order of enforcement
115 pursuant to this section, or willfully encourages or offers resistance to such order, whether by strike or
116 otherwise, the punishment for each day that such contempt continues may be a fine for each day to be
117 determined by the court.

118 Each of the parties shall provide compensation for the arbitrator which he has selected pursuant to this
119 section. The remaining costs of arbitration proceedings under this section shall be divided equally

120 between the parties. Compensation for the arbitrators shall be in accordance with a schedule of
121 payment established by the American Arbitration Association.

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