HOUSE DOCKET, NO. FILED ON: 1/12/2009

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

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The Commonwealth of Massachusetts

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PRESENTED BY:

**Thomas A. Golden, Jr., Michael A. Costello**

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*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 establishing binding arbitration.

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PETITION OF:

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| --- | --- |
| Name: | District/Address: |
| Michael A. Costello | 1st Essex |
| Stephen L. DiNatale | 3rd Worcester |
| Thomas A. Golden, Jr. | 16th Middlesex |
| Joyce A. Spiliotis | 12th Essex |
| David M. Nangle | 17th Middlesex |
| Christine E. Canavan | 10th Plymouth |

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2552 OF 2007-2008.]

The Commonwealth of Massachusetts

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**In the Year Two Thousand and Nine**

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An Act relative to establishing 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:*

SECTION 1. Chapter 150E of the General Laws, appearing in the 2004 Official edition, is hereby amended by adding the following new section:

Section 16. If an employee organization duly recognized as representing employees of the Commonwealth in Bargaining Unit 4 is engaged in successor contract negotiations with the employer which have not resulted in an agreement, then such employee organization shall petition the board to make an investigation.

If, after an investigation, the board determines that such negotiations have not resulted in agreement, then the board shall notify the employer and the employee organization that the unresolved issues in such negotiations shall be resolved by an arbitration before an arbitrator selected by the employee organization and the employer pursuant to the voluntary labor arbitration rules and procedures of the American Arbitration Association.

The arbitrator so designated shall establish a hearing schedule, shall preside over the hearing, and shall take evidence.

The arbitrator shall preside over the hearing and shall take testimony. The proceedings shall be informal. Any oral or documentary evidence and other date deemed relevant by the arbitrator may be received into evidence. The arbitrator 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 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, the 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 arbitrator.  The hearing may be continued at the discretion of the 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 the issues in dispute to the  arbitrator, who shall take said statements under advisement. Within ten days after the conclusion of the hearing, the arbitrator shall select as the last and best arbitration award either the employer’s written statement of its last and best offer, or the employee organization’s written statement of its last and best offer, 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 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 by the arbitrator, if he is of the opinion that it would be useful or beneficial to do so, he 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 decision by the arbitrator, request that the arbitration proceedings be terminated arbitrator, shall terminate the proceedings.

The factors among others, to be given weight by the arbitrator in arriving at the decision shall include;

(1) The financial ability of the commonwealth to meet the costs. Such factors which shall be taken into consideration shall include, but not be limited to, the commonwealth’s long and short term bonded indebtedness.

(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 districts, communities, or other state or federal jurisdictions.

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

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

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

(8) 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.

(9) The stipulation of the parties.

Any determination or decision of the arbitrator if supported by 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 arbitrator in the superior court in equity, provided however, that the scope of arbitration shall include wages, hours, standards of productivity and performance, and any other term and condition of employment.

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

If an 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.

The costs of arbitration proceedings under this section shall be divided equally between the parties.  Compensation for the arbitrator shall be in accordance with a schedule of payment established by the American Arbitration Association.