

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

John P. Fresolo

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 providing for binding arbitration for fire fighters and police officers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
John P. Fresolo	16th Worcester
David Holway	National Association of Government Employees 159 Burgin Parkway Quincy, MA 02169

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2530 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 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 firefighters or police officers of a city,
2 town or district is engaged in an impasse with said city, town or district which has continued for thirty days after
3 the publication of the fact-finders report pursuant to section nine of chapter one hundred and fifty E of the
4 General Laws, or, if the parties have mutually waived the fact-finding provisions contained in said section nine of
5 said chapter one hundred and fifty E, said employee organization shall petition the board to make an investigation.
6 If, after an investigation, the board determines that:
- 7 1. the requirements of section nine of said chapter one hundred and fifty E have been complied with in good faith
 - 8 by the employee organization;
 - 9 2. thirty days have passed since the date of publication of the fact-finding report pursuant to said section nine;
 - 10 3. the proceedings for the prevention of any prohibited practices have been exhausted, provided that any such
 - 11 complaints have been filed with the commission prior to the date of the fact-finders report; and
 - 12 4. an impasse exists, the board shall notify the employer and the employee organization that the issues in dispute
 - 13 shall be resolved by a three-member arbitration panel, or when the parties mutually agree, the board shall select a
 - 14 single arbitrator in lieu of the arbitration panel.
- 15 Said panel shall be comprised of three arbitrators, one selected by the employee organization, and a third
16 impartial arbitrator, who shall act as chairman of the panel, who shall be selected by the two previously selected
17 arbitrators. In the event that either party fails to select an arbitrator or for any reason there is a delay in the
18 naming of an arbitrator, or if the arbitrators fail to select a third arbitrator within the time prescribed by the board,

19 the board shall appoint the arbitrator or arbitrators necessary to complete the panel, which shall act with the same
20 force and effect as if the panel had been selected without intervention of the board.

21 In the event that the parties mutually elect to use a single arbitrator, selected by the board, the parties shall
22 immediately request the board to appoint said arbitrator, who shall act with the same force and effect as if a three
23 member panel had been selected by the parties.

24 The single arbitrator or the arbitration panel acting through its chairman, shall conduct a hearing within ten days
25 after the date of appointment of its chairman, at a place within the locality of the municipality involved, where
26 feasible. The chairman shall give at least seven days notice in writing to each of the other arbitrators. The chairman
27 or single arbitrator shall give like notice to the representative of the municipal employer and employee
28 organizations of the time and place of such hearing.

29 The single arbitrator or chairman shall preside over the hearing and shall take testimony. Upon application and for
30 good cause shown, a person, labor organization, or governmental unit having substantial interest therein may be
31 granted leave to intervene by the arbitration panel. The proceedings shall be informal. Any oral or documentary
32 evidence and other data deemed relevant by the arbitration panel or single arbitrator may be received into
33 evidence. The arbitrators shall have the power to administer oaths and to require by subpoena the attendance and
34 testimony of witnesses, the production of books, records, and other evidence relative to or pertinent to the issues
35 presented to them for determination. If any person refuses to obey a subpoena, or refuses to be sworn or to
36 testify, or if any witness, party, or attorney is guilty of any contempt while in attendance at any hearing, the
37 arbitration panel or single arbitrator may, or the district attorney if requested, shall invoke the aid of the superior
38 court within the jurisdiction in which the hearing is being held, which court shall issue an appropriate order.

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

53 At any time before the rendering of an award, the chairman of the arbitration panel or single arbitrator, if he is of
54 the opinion that it would be useful or beneficial to do so, may remand the dispute to the parties for further
55 collective bargaining for the period not to exceed three weeks and notify the board of the remand. If the dispute is
56 remanded for further collective bargaining the time provisions of this act shall be extended for a time period equal

57 to that of the remand.

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

62 The factors among others, to be given weight by the arbitration panel or single arbitrator in arriving at the decision
63 shall include:

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

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

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

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

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

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

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

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

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

83 (10) The stipulation of the parties.

84 Any determination or decision of the arbitration panel or single arbitrator if supported by material and substantive
85 evidence on the whole record shall be binding upon the parties and may be enforced at the instance of either
86 party, the single arbitrator or the arbitration panel in the superior court in equity, provided however, that the
87 scope of arbitration in police matters shall be limited to wages, hours, and conditions of employment and shall not
88 include the following matters of inherent managerial policy: the right to appoint, promote, assign, and transfer
89 employees; and provided, further, that the scope of arbitration in firefighter matters shall not include the right to
90 appoint and promote employees. Assignments shall not be within the scope; provided, however, that the subject
91 matters of initial station assignment upon appointment or promotion shall be within the scope of arbitration. The
92 subject matter of transfer shall not be within the scope of arbitration, provided however, that the subject matters
93 of relationship of seniority to transfers and disciplinary and punitive transfers shall be within the scope of
94 arbitration. Notwithstanding any other provisions of this chapter to the contrary, no municipal employer shall be

95 required to negotiate over subjects of minimum manning of shift coverage, with an employee organization
96 representing municipal police officers and firefighters.

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

100 If a municipal employer, or an employee organization willfully disobeys a lawful order of enforcement pursuant to
101 this section, or willfully encourages or offers resistance to such order, whether by strike or otherwise, the
102 punishment for each day that such contempt continues may be a fine for each day to be determined at the
103 discretion of said court.

104 Each of the parties shall provide compensation for the arbitrator which he has selected pursuant to this section.

105 The remaining costs of arbitration proceedings under this section shall be divided equally between the parties.

106 Compensation for the arbitrators shall be in accordance with a schedule of payment established by the American
107 Arbitration Association.

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