

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Martin J. Walsh

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 providing for binding arbitration for fire fighters and police officers .

PETITION OF:

NAME:

Martin J. Walsh

DISTRICT/ADDRESS:

13th Suffolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2791 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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

12 with the commission prior to the date of the fact finder's report; and 4. an impasse exists, the
13 board shall notify the employer and the employee organization that the issues in dispute shall
14 be resolved by a three-member arbitration panel, or when the parties mutually agree, the
15 board shall select a single arbitrator in lieu of the arbitration panel. Said panel shall be
16 comprised of three arbitrators, one selected by the employer, one selected by the employee
17 organization, and a third impartial arbitrator, who shall act as chairman of the panel, who shall
18 be selected by the two previously selected arbitrators. In the event that either party fails to
19 select an arbitrator or for any reason there is a delay in the naming of an arbitrator, or if the
20 arbitrators fail to select a third arbitrator within the time prescribed by the board, the board
21 shall appoint the arbitrator or arbitrators necessary to complete the panel, which shall act with
22 the same force and effect as if the panel had been selected without intervention of the board.
23 In the event that the parties mutually elect to use a single arbitrator, selected by the board, the
24 parties shall immediately request the board to appoint said arbitrator, who shall act with the
25 same force and effect as if a three member panel had been selected by the parties. The single
26 arbitrator or the arbitration panel acting through its chairman, shall conduct a hearing within
27 ten days after the date of appointment of its chairman, at a place within the locality of the
28 municipality involved, where feasible. The chairman shall give at least seven days notice in
29 writing to each of the other arbitrators. The chairman or single arbitrator shall give like notice
30 to the representative of the municipal employer and employee organizations of the time and
31 place of such hearing. The single arbitrator or chairman shall preside over the hearing and shall
32 take testimony. Upon application and for good cause shown, a person, labor organization, or
33 governmental unit having substantial interest therein may be granted leave to intervene by the

34 arbitration panel. The proceedings shall be informal. Any oral or documentary evidence and
35 other data deemed relevant by the arbitration panel or single arbitrator may be received into
36 evidence. The arbitrators shall have the power to administer oaths and to require by subpoena
37 the attendance and testimony of witnesses, the production of books, records, and other
38 evidence relative to or pertinent to the issues presented to them for determination. If any
39 person refuses to obey a subpoena, or refuses to be sworn or to testify, or if any witness, party,
40 or attorney is guilty of any contempt while in attendance at any hearing, the arbitration panel
41 or single arbitrator may, or the district attorney if requested, shall invoke the aid of the superior
42 court within the jurisdiction in which the hearing is being held, which court shall issue an
43 appropriate order. A record of the proceedings shall be kept, and the chairman or single
44 arbitrator shall arrange for the necessary recording service. Transcripts may be ordered at the
45 expense of the party ordering them, but the transcripts shall not be necessary for an award by
46 the panel or single arbitrator. The hearing may be continued at the discretion of the panel or
47 single arbitrator and shall be concluded within forty days from the time of commencement. At
48 the conclusion of the hearing, each party shall submit a written statement containing its last
49 and best offer for each of the issues in dispute to the panel or single arbitrator, who shall take
50 said statements under advisement. Within ten days after the conclusion of the hearing, a
51 majority of the panel, or the single arbitrator, shall select as the last and best arbitration award
52 either the employer's written statement of its last and best offer, the employee organization's
53 written statement of its last and best offer, or the recommendation of the fact-finder, if a fact-
54 finding report and recommendations have been issued, and immediately shall give written
55 notice of the selection to the parties. The selection shall be final and binding upon the parties

56 and upon the appropriate legislative body. Within thirty calendar days of the last and best offer
57 selection and award, the impartial chairperson of the arbitration panel or, the single arbitrator,
58 shall issue a written opinion inclusive of an analysis of all statutory factors applicable to the
59 proceedings. At any time before the rendering of an award, the chairman of the arbitration
60 panel or single arbitrator, if he is of the opinion that it would be useful or beneficial to do so,
61 may remand the dispute to the parties for further collective bargaining for the period not to
62 exceed three weeks and notify the board of the remand. If the dispute is remanded for further
63 collective bargaining the time provisions of this act shall be extended for a time period equal to
64 that of the remand. In the event that the representatives of the parties mutually resolve each
65 of the issues in dispute and agree to be bound accordingly, said representatives may, at any
66 time prior to the final decisions by the panel, or single arbitrator, request that the contempt
67 while in attendance at any hearing, the arbitration panel or single arbitrator may, or the district
68 attorney if requested, shall invoke the aid of the superior court within the jurisdiction in which
69 the hearing is being held, which court shall issue an appropriate order. A record of the
70 proceedings shall be kept, and the chairman or single arbitrator shall arrange for the necessary
71 recording service. Transcripts may be ordered at the expense of the party ordering them, but
72 the transcripts shall not be necessary for an award by the panel or single arbitrator The hearing
73 may be continued at the discretion of the panel or single arbitrator and shall be concluded
74 within forty days from the time of commencement. At the conclusion of the hearing, each party
75 shall submit a written statement containing its last and best offer for each of the issues in
76 dispute to the panel or single arbitrator, who shall take said statements under advisement.
77 Within ten days after the conclusion of the hearing, a majority of the panel, or the single

78 arbitrator, shall select as the last and best arbitration award either the employer's written
79 statement of its last and best offer, the employee organization's written statement of its last
80 and best offer, or the recommendation of the fact-finder, if a fact-finding report and
81 recommendations have been issued, and immediately shall give written notice of the selection
82 to the parties. The selection shall be final and binding upon the parties and upon the
83 appropriate legislative body. Within thirty calendar days of the last and best offer selection and
84 award, the impartial chairperson of the arbitration panel or, the single arbitrator, shall issue a
85 written opinion inclusive of an analysis of all statutory factors applicable to the proceedings. At
86 any time before the rendering of an award, the chairman of the arbitration panel or single
87 arbitrator, if he is of the opinion that it would be useful or beneficial to do so, may remand the
88 dispute to the parties for further collective bargaining for the period not to exceed three weeks
89 and notify the board of the remand. If the dispute is remanded for further collective bargaining
90 the time provisions of this act shall be extended for a time period equal to that of the remand.
91 In the event that the representatives of the parties mutually resolve each of the issues in
92 dispute and agree to be bound accordingly, said representatives may, at any time prior to the
93 final decisions by the panel, or single arbitrator, request that the arbitration proceedings be
94 terminated, the panel, acting through its chairman or single arbitrator, shall terminate the
95 proceedings. The factors among others, to be given weight by the arbitration panel or single
96 arbitrator in arriving at the decision shall include: (1) The financial ability of the municipality to
97 meet costs. Such factors which shall be taken into consideration shall include but not be limited
98 to: (a) the city, town or district's state reimbursements and assessments; (b) the city, town or
99 district's long and short term bonded indebtedness; (c) the city, town or district's estimated

100 share in the metropolitan district commission deficit; or (d) the city, town, or district's
101 estimated share in the Massachusetts Bay Transportation Authority's deficit; and (e)
102 consideration of the average per capita property tax burden, average annual income of
103 members of the community, the effect any accord by the panel or single arbitrator might have
104 on the respective property tax rates of the city or town. (2) The interests and welfare of the
105 public. (3) The hazards of employment, physical, educational and mental qualifications, job
106 training and skills involved. (4) A comparison of wages, hours and conditions of employment of
107 the employees involved in the arbitration proceedings with the wages, hours and conditions of
108 employment of other employees performing similar services and with other employees
109 generally in public and private employment in comparable communities. (5) The decisions and
110 recommendations of the, fact-finder, if any. (6) The average consumer prices for goods and
111 services, commonly known as the cost of living. (7) The overall compensation presently
112 received by the employees, including direct wages and fringe benefits. (8) Changes in any of the
113 foregoing circumstances during the pendency of the arbitration proceedings. (9) Such other
114 factors, not confined to the foregoing, which are normally or traditionally taken into
115 consideration in the determination of wages, hours and conditions of employment through
116 voluntary collective bargaining, mediation fact-finding, arbitration or otherwise between
117 parties, in the public service or in private employment. (10) The stipulation of the parties. Any
118 determination or decision of the arbitration panel or single arbitrator if supported material and
119 substantive evidence on the whole record shall be binding upon the parties and may be
120 enforced at the instance of either party, the single arbitrator or the arbitration panel in the
121 superior court in equity, provided however, that the scope of arbitration in police matters shall

122 be limited to wages, hours, and conditions of employment and shall not include the following
123 matters of inherent managerial policy; the right to appoint, promote, assign, and transfer
124 employees; and provided, further, that the scope of arbitration in firefighter matters shall not
125 include the right to appoint and promote employees. Assignments shall not be within the
126 scope; provided, however, that the subject matter of initial station assignment upon
127 appointment or promotion shall be within the scope of arbitration. The subject matter of
128 transfer shall not be within the scope of arbitration, provided however, that the subject matters
129 of relationship of seniority to transfers and disciplinary and punitive transfers shall be within
130 the scope of arbitration. Notwithstanding any other provisions of this chapter to the contrary,
131 no municipal employer shall be required to negotiate over subjects of minimum manning of
132 shift coverage, with an employee organization representing municipal police officers and
133 firefighters. The commencement of a new municipal finance year prior to the final awards by
134 the arbitration panel shall not be deemed to render a dispute moot, or to otherwise impair the
135 jurisdiction or authority of the arbitration panel or its award. Any award of the arbitration panel
136 may be retroactive to the expiration date of the last contract. If a municipal employer, or an
137 employee organization willfully disobeys a lawful order of enforcement pursuant to this section,
138 or willfully encourages or offers resistance to such order, whether by strike or otherwise, the
139 punishment for each day that such contempt continues may be a fine for each day to be
140 determined at the discretion of said court. Each of the parties shall provide compensation for
141 the arbitrator which he has selected pursuant to this section. The remaining costs of arbitration
142 proceedings under this section shall be divided equally between the parties. Compensation for
143 the arbitrators shall be in accordance with a schedule of payment established by the American

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

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