

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Tolman, Steven (SEN)

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 legislation to provide for binding arbitration for fire fighters and police officers

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Tolman, Steven (SEN)	Second Suffolk and Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S01656 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

**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
2 police officers of a city, town or district is engaged in an impasse with said city, town or district
3 which has continued for thirty days after the publication of the fact-finders report pursuant to
4 section nine of chapter one hundred and fifty E of the General Laws, or, if the parties have
5 mutually waived the fact-finding provisions contained in said section nine of said chapter one
6 hundred and fifty E, said employee organization shall petition the board to make an
7 investigation. If, after an investigation, the board determines that:
- 8 1. the requirements of section nine of said chapter one hundred and fifty E have been complied
9 with in 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
13 that any such complaints have been filed with the commission prior to the date of the fact-finders
14 report; and

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

25 In the event that the parties mutually elect to use a single arbitrator, selected by the board, the
26 parties shall immediately request the board to appoint said arbitrator, who shall act with the same
27 force and effect as if a three member panel had been selected by the parties. The single arbitrator
28 or the arbitration panel acting through its chairman, shall conduct a hearing within ten days after
29 the date of appointment of its chairman, at a place within the locality of the municipality
30 involved, where feasible. The chairman shall give at least seven days notice in writing to each of
31 the other arbitrators. The chairman or single arbitrator shall give like notice to the representative
32 of the municipal employer and 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
36 proceedings shall be informal. Any oral or documentary evidence and other data deemed relevant
37 by the arbitration panel or single arbitrator may be received into evidence. The arbitrators shall
38 have the power to administer oaths and to require by subpoena the attendance and testimony of
39 witnesses, the production of books, records, and other evidence relative to or pertinent to the
40 issues presented to them for determination. If any person refuses to obey a subpoena, or refuses
41 to be sworn or to testify, or if any witness, party, or attorney is guilty of any contempt while in
42 attendance at any hearing, the arbitration panel or single arbitrator may, or the district attorney if
43 requested, shall invoke the aid of the superior court within the jurisdiction in which the hearing is
44 being held, which the court shall issue an appropriate order.

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

56 recommendations have been issued, and immediately shall give written notice of the selection to
57 the parties. The selection shall be final and binding upon the parties and upon the appropriate
58 legislative body. Within thirty calendar days of the last and best offer selection and award, the
59 impartial chairperson of the arbitration panel or, the single arbitrator, shall issue a written
60 opinion inclusive of an analysis of all statutory factors applicable to the proceedings.

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

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

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

73 (1) The financial ability of the municipality to meet costs. Such factors which shall be taken into
74 consideration shall include but not be limited to, (a) the city, town, or district's state
75 reimbursements and assessments; (b) the city, town, or district's long and short term bonded
76 indebtedness; (c) the city, town, or district's estimated share in the metropolitan district

77 commission deficit; (d) the city, town, or district's estimated share in the Massachusetts Bay
78 Transportation Authority's deficit; and (e) consideration of the average per capita property tax
79 burden, average annual income of members of the community, the effect any accord by the panel
80 or single arbitrator might have on the respective property tax rates of the city or town.

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

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

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

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

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

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

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

94 (9) Such other factors, not confined to the foregoing, which are normally or traditionally taken
95 into consideration in the determination of wages, hours and conditions of employment through

96 voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between parties,
97 in the public service or in private employment.

98 (10) The stipulation of the parties.

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

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

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

122 Each of the parties shall provide compensation for the arbitrator which he has selected pursuant
123 to this section. The remaining costs of arbitration proceedings under this section shall be divided
124 equally between the parties. Compensation for the arbitrators shall be in accordance with a
125 schedule of payment established by the American Arbitration Association.

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