

**SENATE . . . . . No.**

---

**The Commonwealth of Massachusetts**

PRESENTED BY:

**Marc R. Pacheco**

---

*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 binding arbitration.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Marc R. Pacheco	First Plymouth and Bristol
Byron Rushing	9th Suffolk
Martha M. Walz	8th Suffolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. S01627 OF 2007-2008.]

**The Commonwealth of Massachusetts**

---

**In the Year Two Thousand and Nine**

---

**AN ACT RELATIVE TO 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:*

1 SECTION 1. Chapter 701 of the Acts of 1960, as most recently amended by chapter 243 of the acts of  
2 2002, is hereby amended by inserting after section 15, the following new sections:-

3 Section 15A. Notwithstanding any general or special law to the contrary, the authority or any  
4 organizations representing employees of the authority shall not be permitted to submit any  
5 dispute over the terms of a collective bargaining agreement to arbitration except in accordance  
6 with Section 15A through section 15D, inclusive; provided, however, that this section shall not  
7 limit the rights of organizations representing employees of the authority to submit grievances to  
8 arbitration in accordance with the collective bargaining agreement between the parties.

9 In the event the directors and any organizations representing employees of the authority have not  
10 reached an agreement within 90 days from the date of the expiration of the agreement, either party  
11 may notify the other that it desires mediation. The parties may agree upon a person to serve as a

12 mediator or, if unable to agree on said mediator, either party or the parties acting jointly may petition  
13 the board of conciliation and arbitration to appoint a mediator from a list of qualified persons  
14 maintained by the board.

15 Section 15B. After a reasonable period of mediation, not to exceed 45 days from the date of  
16 appointment, said mediator shall issue a report indicating the results of his services in resolving the  
17 impasse. If at the conclusion of mediation the impasse still exists, the mediator shall so certify. In the  
18 event, the mediator shall certify in his report the last best offer of each party on each unresolved issue  
19 which has been submitted to mediation and shall also certify the agreement of the parties on each issue  
20 on which agreement has been reached and shall submit such certifications to the arbitrator selected by  
21 the parties. In such event, so long as the mediator shall also certify that the parties have bargained in  
22 good faith, either party may notify the other that it desires arbitration of the dispute. Within 10 days of  
23 said notice, the parties shall meet to select a single neutral arbitrator.

24 If, within 15 days, the parties fail to select such single arbitrator, either party may forthwith petition the  
25 board of conciliation and arbitration to request a list of five arbitrators from the American Arbitration  
26 Association and said Association shall certify to the board that such arbitrators on the list it provides  
27 possess the qualifications as provided in section 30. The parties shall thereupon meet to select such  
28 arbitrator by striking one name each until one name remains and that person shall serve as the neutral  
29 arbitrator. If, after 10 days, one of the parties declines to strike their names, the other party shall strike  
30 two names and the board shall forthwith select the arbitrator from the remaining three names.

31 Section 15C. The single arbitrator, whether agreed upon by the parties or selected by the board of  
32 conciliation and arbitration, shall be a legal resident of the commonwealth and shall be experienced in  
33 state and local finance. The arbitrator shall rely primarily on the following factors in determining the  
34 basis for an award:

35 (a) The financial ability of the authority to meet additional costs, which shall include but not be limited  
36 to: (i) the statutory requirement that the authority produce revenues in excess of expenses; (ii) the  
37 financial ability of the individual communities and the commonwealth to meet additional costs; (iii) the  
38 average per capita tax burden, average annual income and sources of revenue within the  
39 commonwealth, and the effect of any arbitration award on the respective property tax rates of the cities  
40 and towns within the authority's district.

41 (b) The overall compensation presently received by the employees, having regard not only for wages for  
42 time actually worked but also for wages for time not worked, including vacations, holidays and other  
43 excused time.

44 (c) All benefits received by the employees, including insurance, pension, as well as the continuity and  
45 stability of employment.

46 (d) The hazards of employment, physical, educational and mental qualifications, job training and skills  
47 involved.

48 (e) A comparison of wages, hours, and conditions of employment of the employees involved in the  
49 arbitration proceedings with the wages, hours and conditions of employment of other employees  
50 performing similar services within the commonwealth and with other employees generally in public and  
51 private employment within the commonwealth.

52 (f) The average consumer price for goods and services, commonly known as the cost of living.

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

54 (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into  
55 consideration in the determination of wages, hours and conditions of employment through voluntary  
56 collective bargaining, mediation, fact-finding, arbitration or otherwise between parties, in the public  
57 service of the commonwealth, and which are not precluded from bargaining under section 25.

58 (i) The stipulation of the parties.

59 Section 15D. The arbitrator shall be limited in making his award to choosing between the last best offers  
60 of the parties on each issue as certified in the mediator's report or any award in the range between the  
61 last best offers of the parties. The arbitrator shall make no award on any issue found by him to be not  
62 authorized by law to be submitted to arbitration, but shall state such finding in his written opinion.

63 Within 30 calendar days of an award, the arbitrator shall issue a written opinion inclusive of an analysis  
64 of all statutory factors applicable to the proceedings. Any determination by the arbitrator, if supported  
65 by material and substantial evidence on the record, shall be binding upon the parties and upon the  
66 appropriate legislative or appropriating body and may be enforced at the insistence of either party or by  
67 the arbitrator in the superior court. The scope of arbitration shall be limited to wages, hours, and  
68 conditions of employment and shall not include any provisions for any cost of living adjustment which  
69 are based on changes in the consumer price index after the expiration of the contract period covered by  
70 the award. In addition, any wage or salary adjustments shall be expressed in percent or dollar amounts,  
71 and in no case shall there be any provision for salary adjustments to occur after the expiration of the  
72 contract period covered by the award.

73 The cost, if any, of the mediation and of arbitration proceedings, exclusive of the expenses of the  
74 individual parties shall, be divided equally by the parties and shall be in accordance with a schedule of  
75 payments established by the American Arbitration Association.