

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Steven A. Tolman

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 to resolve collective bargaining disputes.

PETITION OF:

NAME:

Steven A. Tolman

DISTRICT/ADDRESS:

Second Suffolk and Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S01657 OF 2007-2008.]

The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine
—————

AN ACT TO RESOLVE COLLECTIVE BARGAINING DISPUTES.

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 150E, Section 9 is hereby amended by deleting paragraphs six through
2 eight and inserting the following new paragraphs:

3 If the parties are unable to resolve the issues in dispute within thirty days after publication of the
4 fact finders report, either party may petition the board to order arbitration pursuant to the
5 following:

6 If an employee organization duly recognized as representing the bargaining unit is engaged in an
7 impasse which has continued for thirty days after the publication of the fact-finder's report
8 pursuant to section nine of chapter one hundred and fifty E of the General Laws, or, if the parties
9 have mutually waived the fact-finding provisions contained in said section nine of said chapter
10 one hundred and fifty E, said employee organization shall petition the board to make an
11 investigation. If, after an investigation, the board determines that:

- 12 (1) the requirements of section nine of said chapter one hundred and fifty E have been
13 complied with in good faith by the employee organization;
- 14 (2) thirty days have passed since the date of publication of the fact-finding report
15 pursuant to said section nine;
- 16 (3) the proceedings for the prevention of any prohibited practices have been exhausted,
17 provided that any such complaints have been filed with the commission prior to the
18 date of the fact-finder's report; and
- 19 (4) an impasse exists, the board shall notify the employer and the employee organization
20 that the issues in dispute shall be resolved by a three-member arbitration panel, or

21 when the parties mutually agree, the board shall select a single arbitrator in lieu of the
22 arbitration panel.

23 Said panel shall be comprised of three arbitrators, one selected by the employer, one
24 selected by the employee organization, and a third impartial arbitrator, who shall act as chairman
25 of the panel, who shall be selected by the two previously selected arbitrators. In the event that
26 either party fails to select an arbitrator or for any reason there is a delay in the naming of an
27 arbitrator, or if the arbitrators fail to select a third arbitrator within the time prescribed by the
28 board, the board shall appoint the arbitrator or arbitrators necessary to complete the panel, which
29 shall act with the same force and effect as if the panel had been selected without intervention of
30 the board.

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

34 The single arbitrator or the arbitration panel acting through its chairman, shall conduct a
35 hearing within ten days after the date of appointment of its chairman. The chairman shall give at
36 least seven days notice of the time and place of such hearing in writing to each of the other
37 arbitrators and to the representatives of such employer and employee organizations.

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

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

59 statement of its last and best offer, the employee organization's written statement of its last and
60 best offer, or the recommendations of the fact-finder, if a fact-finding report and
61 recommendations have been issued, and immediately shall give written notice of the selection to
62 the parties. The selection shall be final and binding upon the parties, subject to appropriation.
63 Within thirty calendar days of the last and best offer selection and award, the impartial
64 chairperson of the arbitration panel, or the single arbitrator, shall issue a written opinion
65 inclusive of an analysis of all statutory factors applicable to the proceedings.

66 The factors, among others, to be given weight by the arbitration panel or single arbitrator
67 in arriving at the decision shall include, when applicable:

- 68 (1) The financial ability of the commonwealth to meet the costs. Such factors which
69 shall be taken into consideration shall include, but not be limited to, the
70 commonwealth's long and short term bonded indebtedness.
- 71 (2) The interests and welfare of the public.
- 72 (3) The hazards of employment, physical, educational and mental qualifications, job
73 training and skills involved.
- 74 (4) A comparison of wages, hours and conditions of employment of the employees
75 involved in the arbitration proceedings with the wages, hours and conditions of
76 employment of other employees performing similar services and with other
77 employees generally in public or private employment in comparable districts,
78 communities, or other state of federal jurisdictions.
- 79 (5) The decisions and recommendations of the fact-finder, if any.
- 80 (6) The average consumer prices for goods and services, commonly known as the cost
81 of living.
- 82 (7) The overall compensation presently received by the employees, including direct
83 wages and fringe benefits.
- 84 (8) Changes in any of the foregoing circumstances during the pendency of the
85 arbitration proceedings.
- 86 (9) Such other factors not confined to the foregoing, which are normally or traditionally
87 taken into consideration in the determination of wages, hours and conditions of
88 employment through voluntary collective bargaining, mediation, fact-finding,
89 arbitration or otherwise between parties, in the public service or in private
90 employment.
- 91 (10) The stipulation of the parties.

92 Any determination or decision of the arbitration panel or single arbitrator if supported by
93 material and substantive evidence on the whole record shall be subject to appropriation, binding
94 upon the parties and may be enforced at the instance of either party, the single arbitrator or the
95 arbitration panel in the superior court in equity.

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

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

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

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109 Any arbitration awarded shall be binding on the parties and on the appropriate legislative body
110 and made effective and enforceable pursuant to the provisions of chapter one hundred and fifty
111 C, provided that said arbitration proceeding has been authorized by the appropriate legislative
112 body and in the case of school employees, by the appropriate school committee.