

By Mr. Fitzgerald of Boston, petition of the Professional Fire Fighters of Massachusetts and Kevin W. Fitzgerald relative to negotiation disputes between the Massachusetts Port Authority and the labor organization representing the employees of the fire department of said authority. Public Service.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Two.

AN ACT PROVIDING FOR PEACEFUL RESOLUTION OF NEGOTIATION DISPUTES BETWEEN THE MASSACHUSETTS PORT AUTHORITY AND THE LABOR ORGANIZATION REPRESENTING THE EMPLOYEES OF THE MASSACHUSETTS PORT AUTHORITY FIRE DEPARTMENT.

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. Notwithstanding the provisions of any law to the
2 contrary, negotiation disputes between the Massachusetts Port
3 Authority and the labor organization duly recognized by the
4 Massachusetts Port Authority as representing the bargaining unit
5 as established by collective bargaining agreement between the
6 Massachusetts Port Authority and said labor organization shall
7 be subject to resolution pursuant to sections two, three and four
8 of this act.

1 SECTION 2. The provisions of section nine of chapter one
2 hundred and fifty E of the General Laws shall apply to said
3 negotiation disputes.

1 SECTION 3. If said labor organization is engaged in an
2 impasse which has continued for thirty days after the publication
3 of the fact-finder's report pursuant to section nine of chapter one
4 hundred and fifty E of the General Laws, or, if the Massachu-
5 setts Port Authority and said labor organization have mutually

6 waived the fact-finding provisions contained in said section nine
7 of said chapter one hundred and fifty E, said labor organization
8 shall petition the board to make an investigation. If, after an
9 investigation, the board determines that:

10 (1) the requirements of section nine of said chapter one
11 hundred and fifty E have been complied with in good faith by the
12 labor organization;

13 (2) thirty days have passed since the date of publication of the
14 fact-finding report pursuant to said section nine;

15 (3) the proceedings for the prevention of any unfair labor
16 practices have been exhausted, provided that any such complaints
17 have been filed with the commission prior to the date of the fact-
18 finder's report; and

19 (4) an impasse exists, the board shall notify the Massachusetts
20 Port Authority and the labor organization that the issues in
21 dispute shall be resolved by a three-member arbitration panel or
22 when the parties mutually agree, the board shall select a single
23 arbitrator in lieu of the arbitration panel.

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

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

40 The single arbitrator or the arbitration panel acting through its
41 chairman, shall conduct a hearing within ten days after the date
42 of appointment of its chairman. The chairman shall give at least
43 seven days notice of the time and place of such hearing in writing

44 to each of the other arbitrators and to the representatives of such
45 employer and employee organizations.

46 The single arbitrator or chairman shall preside over the hearing
47 and shall take testimony. The proceedings shall be informal. Any
48 oral or documentary evidence and other data deemed relevant by
49 the arbitration panel or single arbitrator may be received into
50 evidence. The arbitrators shall have the power to administer oaths
51 and to require by subpoena the attendance and testimony of
52 witnesses, the production of books, records, and other evidence
53 relative to or pertinent to the issues presented to them for deter-
54 mination. If any person refuses to obey a subpoena, refuses to
55 be sworn or to testify, or if any witness, party, or attorney is guilty
56 of any contempt while in attendance at any hearing, the
57 arbitration panel or single arbitrator may, or the district attorney
58 if requested, shall invoke the aid of the superior court within the
59 jurisdiction in which the hearing is being held, whereupon the
60 court shall issue an appropriate order.

61 A record of the proceedings shall be kept, and the chairman
62 or single arbitrator shall arrange for the necessary recording
63 service. Transcripts may be ordered at the expense of the party
64 ordering them, but the transcripts shall not be necessary for an
65 award by the panel or single arbitrator. The hearing may be
66 continued at the discretion of the panel or single arbitrator and
67 shall be concluded within forty days from the time of
68 commencement. At the conclusion of the hearing, each party shall
69 submit a written statement containing its last and best offer for
70 all of the issues in dispute to the panel or single arbitrator, who
71 shall take said statements under advisement. Within ten days after
72 the conclusion of the hearing, a majority of the panel, or the single
73 arbitrator, shall select as the last and best arbitration award either
74 the Massachusetts Port Authority's written statement of its last
75 and best offer, the labor organization's written statement of its
76 last and best offer, or the recommendations of the fact-finder, if
77 a fact-finding report and recommendations have been issued, and
78 immediately shall give written notice of the selection to the parties.
79 The selection shall be final and binding upon the parties. Within
80 thirty calendar days of the last and best offer selection and award,
81 the impartial chairperson of the arbitration panel, or the single

82 arbitrator, shall issue a written opinion inclusive of an analysis
83 of all statutory factors applicable to the proceedings.

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

92 In the event that the representatives of the parties mutually
93 resolve all of the issues in dispute and agree to be bound
94 accordingly, said representatives may, at any time prior to the final
95 decision by the panel or single arbitrator, request that the
96 arbitration proceedings be terminated. The panel, acting through
97 its chairman or single arbitrator, shall terminate the proceedings.

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

101 (1) The financial ability of the Massachusetts Port Authority
102 to meet the costs.

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

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

106 (4) A comparison of wages, hours and conditions of
107 employment of the employees involved in the arbitration
108 proceedings with the wages, hours and conditions of employment
109 of other employees performing similar services and with other
110 employees generally in public or private employment in
111 comparable districts, communities, or other state or federal juris-
112 dictions.

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

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

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

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

121 (9) Such other factors not confined to the foregoing, which are
122 normally or traditionally taken into consideration in the deter-
123 mination of wages, hours and conditions of employment through
124 voluntary collective bargaining, mediation, fact-finding,
125 arbitration or otherwise between parties, in the public service or
126 in private employment.

127 (10) The stipulation of the parties.

128 Any determination or decision of the arbitration panel or single
129 arbitrator if supported by material and substantive evidence on
130 the whole record shall be binding upon the parties and may be
131 enforced at the instance of either party, the single arbitrator or
132 the arbitration panel in the superior court in equity.

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

138 If the Massachusetts Port Authority or said labor organization
139 willfully disobeys a lawful order of enforcement pursuant to this
140 section, or willfully encourages or offers resistance to such order,
141 whether by strike or otherwise, the punishment for each day that
142 such contempt continues may be a fine for each day to be
143 determined at the discretion of said court.

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

1 SECTION 4. This act shall take effect upon its passage and
2 shall be applicable to any negotiations between the Massachusetts
3 Port Authority and said labor organization in progress upon such
4 passage.

