

By Mr. Fitzgerald of Boston, petition of the Professional Fire Fighters of Massachusetts and Kevin W. Fitzgerald that provision be made for binding arbitration for fire fighters and police officers. Public Service.

The Commonwealth of Massachusetts

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

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 If an employee organization duly recognized as representing
2 the firefighters or police officers of a city, town or district is
3 engaged in an impasse with said city, town or district which has
4 continued for thirty days after the publication of the fact-finders
5 report pursuant to section nine of chapter one hundred and fifty E
6 of the General Laws, or, if the parties have mutually waived the
7 fact-finding provisions contained in said section nine of said
8 chapter one hundred and fifty E, said employee organization shall
9 petition the board to make an investigation. If, after an investiga-
10 tion, the board determines that:

11 1. the requirements of section nine of said chapter one hundred
12 and fifty E have been complied with in good faith by the employee
13 organization;

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

16 3. the proceedings for the prevention of any prohibited prac-
17 tices have been exhausted, provided that any such complaints
18 have been filed with the commission prior to the date of the fact-
19 finder's report; and

20 4. an impasse exists, the board shall notify the employer and
21 the employee organization that the issues in dispute shall be
22 resolved by a three-member arbitration panel, or when the parties

23 mutually agree, the board shall select a single arbitrator in lieu of
24 the arbitration panel.

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

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

41 The single arbitrator or the arbitration panel acting through its
42 chairman, shall conduct a hearing within ten days after the date of
43 appointment of its chairman, at a place within the locality of the
44 municipality involved, where feasible. The chairman shall give at
45 least seven days notice in writing to each of the other arbitrators.
46 The chairman or single arbitrator shall give like notice to the rep-
47 resentative of the municipal employer and employee organizations
48 of the time and place of such hearing.

49 The single arbitrator or chairman shall preside over the hearing
50 and shall take testimony. Upon application and for good cause
51 shown, a person, labor organization, or governmental unit having
52 substantial interest therein may be granted leave to intervene by
53 the arbitration panel. The proceedings shall be informal. Any oral
54 or documentary evidence and other data deemed relevant by the
55 arbitration panel or single arbitrator may be received into evi-
56 dence. The arbitrators shall have the power to administer oaths
57 and to require by subpoena the attendance and testimony of wit-
58 nesses, the production of books, records, and other evidence relative
59 to or pertinent to the issues presented to them for determination. If
60 any person refuses to obey a subpoena, or refuses to be sworn
61 or to testify, or if any witness, party, or attorney is guilty of any

62 contempt while in attendance at any hearing, the arbitration panel
63 or single arbitrator may, or the district attorney if requested, shall
64 invoke the aid of the superior court within the jurisdiction in
65 which the hearing is being held, which court shall issue an appro-
66 priate order.

67 A record of the proceedings shall be kept, and the chairman or
68 single arbitrator shall arrange for the necessary recording service.
69 Transcripts may be ordered at the expense of the party ordering
70 them, but the transcripts shall not be necessary for an award by
71 the panel or single arbitrator. The hearing may be continued at the
72 discretion of the panel or single arbitrator and shall be concluded
73 within forty days from the time of commencement. At the conclu-
74 sion of the hearing, each party shall submit a written statement
75 containing its last and best offer for each of the issues in dispute
76 to the panel or single arbitrator, who shall take said statements
77 under advisement. Within ten days after the conclusion of the
78 hearing, a majority of the panel, or the single arbitrator, shall
79 select as the last and best arbitration award either the employer's
80 written statement of its last and best offer, the employee organiza-
81 tion's written statement of its last and best offer, or the recommen-
82 dation of the fact-finder, if a fact-finding report and recommenda-
83 tions have been issued, and immediately shall give written notice
84 of the selection to the parties. The selection shall be final and
85 binding upon the parties and upon the appropriate legislative
86 body. Within thirty calendar days of the last and best offer selec-
87 tion and award, the impartial chairperson of the arbitration panel
88 or, the single arbitrator, shall issue a written opinion inclusive of
89 an analysis of all statutory factors applicable to the proceedings.

90 At any time before the rendering of an award, the chairman of
91 the arbitration panel or single arbitrator, if he is of the opinion that
92 it would be useful or beneficial to do so, may remand the dispute
93 to the parties for further collective bargaining for the period not to
94 exceed three weeks and notify the board of the remand. If the dis-
95 pute is remanded for further collective bargaining the time provi-
96 sions of this act shall be extended for a time period equal to that
97 of the remand.

98 In the event that the representatives of the parties mutually
99 resolve each of the issues in dispute and agree to be bound
100 accordingly, said representatives may, at any time prior to the

101 final decisions by the panel, or single arbitrator, request that the
102 arbitration proceedings be terminated, the panel, acting through its
103 chairman or single arbitrator, shall terminate the proceedings.

104 The factors among others, to be given weight by the arbitration
105 panel or single arbitrator in arriving at the decision shall include:

106 (1) The financial ability of the municipality to meet costs. Such
107 factors which shall be taken into consideration shall include but
108 not be limited to: (a) the city, town or district's state reimburse-
109 ments and assessments; (b) the city, town or district's long and
110 short term bonded indebtedness; (c) the city, town or district's
111 estimated share in the metropolitan district commission deficit; or
112 (d) the city, town, or district's estimated share in the
113 Massachusetts Bay Transportation Authority's deficit; and
114 (e) consideration of the average per capita property tax burden, aver-
115 age annual income of members of the community, the effect any
116 accord by the panel or single arbitrator might have on the respec-
117 tive property tax rates of the city or town.

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

119 (3) The hazards of employment, physical, educational and men-
120 tal qualifications, job training and skills involved.

121 (4) A comparison of wages, hours and conditions of employ-
122 ment of the employees involved in the arbitration proceedings
123 with the wages, hours and conditions of employment of other
124 employees performing similar services and with other employees
125 generally in public and private employment in comparable com-
126 munities.

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

129 (6) The average consumer prices for goods and services, com-
130 monly known as the cost of living.

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

133 (8) Changes in any of the foregoing circumstances during the
134 pendency of the arbitration proceedings.

135 (9) Such other factors, not confined to the foregoing, which are
136 normally or traditionally taken into consideration in the determi-
137 nation of wages, hours and conditions of employment through
138 voluntary collective bargaining, mediation, fact-finding, arbitra-
139 tion or otherwise between parties, in the public service or in pri-
140 vate employment.

141 (10) The stipulation of the parties.

142 Any determination or decision of the arbitration panel or single
143 arbitrator if supported by material and substantive evidence on the
144 whole record shall be binding upon the parties and may be
145 enforced at the instance of either party, the single arbitrator or the
146 arbitration panel in the superior court in equity, provided however,
147 that the scope of arbitration in police matters shall be limited to
148 wages, hours, and conditions of employment and shall not include
149 the following matters of inherent managerial policy; the right to
150 appoint, promote, assign, and transfer employees; and provided,
151 further, that the scope of arbitration in firefighter matters shall not
152 include the right to appoint and promote employees. Assignments
153 shall not be within the scope; provided, however, that the subject
154 matter of initial station assignment upon appointment or promo-
155 tion shall be within the scope of arbitration. The subject matter of
156 transfer shall not be within the scope of arbitration, provided how-
157 ever, that the subject matters of relationship of seniority to trans-
158 fers and disciplinary and punitive transfers shall be within the
159 scope of arbitration. Notwithstanding any other provisions of this
160 chapter to the contrary, no municipal employer shall be required
161 to negotiate over subjects of minimum manning of shift coverage,
162 with an employee organization representing municipal police offi-
163 cers and firefighters.

164 The commencement of a new municipal finance year prior to
165 the final awards by the arbitration panel shall not be deemed to
166 render a dispute moot, or to otherwise impair the jurisdiction or
167 authority of the arbitration panel or its award. Any award of the
168 arbitration panel may be retroactive to the expiration date of the
169 last contract.

170 If a municipal employer, or an employee organization willfully
171 disobeys a lawful order of enforcement pursuant to this section, or
172 willfully encourages or offers resistance to such order, whether by
173 strike or otherwise, the punishment for each day that such con-
174 tempt continues may be a fine for each day to be determined at the
175 discretion of said court.

176 Each of the parties shall provide compensation for the arbitrator
177 which he has selected pursuant to this section. The remaining
178 costs of arbitration proceedings under this section shall be divided
179 equally between the parties. Compensation for the arbitrators shall

180 be in accordance with a schedule of payment established by the
181 American Arbitration Association.

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

