

By Mr. Thompson of Cambridge, petition of Alvin E. Thompson and another 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 finders 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 employee organization, and a third impartial arbitrator, who  
27 shall act as chairman of the panel, who shall be selected by the  
28 two previously selected arbitrators. In the event that either party  
29 fails to select an arbitrator or for any reason there is a delay in the  
30 naming of an arbitrator, or if the arbitrators fail to select a third  
31 arbitrator within the time prescribed by the board, the board shall  
32 appoint the arbitrator or arbitrators necessary to complete the  
33 panel, which shall act with the same force and effect as if the  
34 panel had been selected without intervention of the board.

35 In the event that the parties mutually elect to use a single arbi-  
36 trator, selected by the board, the parties shall immediately request  
37 the board to appoint said arbitrator, who shall act with the same  
38 force and effect as if a three member panel had been selected by  
39 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 of  
42 appointment of its chairman, at a place within the locality of the  
43 municipality involved, where feasible. The chairman shall give at  
44 least seven days notice in writing to each of the other arbitrators.  
45 The chairman or single arbitrator shall give like notice to the rep-  
46 resentative of the municipal employer and employee organizations  
47 of the time and place of such hearing.

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

64 which the hearing is being held, which the court shall issue an  
65 appropriate order.

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

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

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

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

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

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

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

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

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

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

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

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

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

140 (10) The stipulation of the parties.

141 Any determination or decision of the arbitration panel or single  
142 arbitrator if supported by material and substantive evidence on the

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

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

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

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

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





