

**SENATE . . . . . No. 1284**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Michael F. Rush***

*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 adoption of the accompanying bill:

**An Act to resolve collective bargaining disputes.**

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Michael F. Rush</i>	<i>Norfolk and Suffolk</i>
<i>Christopher G. Fallon</i>	<i>33rd Middlesex</i>
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>

**SENATE . . . . . No. 1284**

By Mr. Rush, a petition (accompanied by bill, Senate, No. 1284) of Michael F. Rush, Christopher G. Fallon, Thomas J. Calter, Angelo J. Puppolo, Jr. and others for legislation to resolve collective bargaining disputes. Public Service.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 1402 OF 2011-2012.]

**The Commonwealth of Massachusetts**

**In the Year Two Thousand Thirteen**

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. Section 9 of chapter 150E of the General Laws, as appearing in the 2010  
2 Official Edition, is hereby amended by striking paragraphs six through eight and inserting in  
3 place thereof the following new paragraphs:-

4 If the parties are unable to resolve the issues in dispute within thirty (30) days after  
5 publication of the fact finder's report, either party may petition the board to order arbitration  
6 pursuant to the following. If an employee organization duly recognized as representing the  
7 bargaining unit is engaged in an impasse which has continued for thirty days after the publication  
8 of the fact-finder's report pursuant to section 9 of chapter 150E of the General Laws, or, if the  
9 parties have mutually waived the fact-finding provisions contained in said section 9 of said  
10 chapter 150EE, said employee organization shall petition the board to make an investigation. If,  
11 after an investigation, the board determines that: the requirements of section 9 of said chapter  
12 150E have been complied with in good faith by the employee organization; thirty (30) days have  
13 passed since the date of publication of the fact-finding report pursuant to said section nine; the  
14 proceedings for the prevention of any prohibited practices have been exhausted, provided that  
15 any such complaints have been filed with the commission prior to the date of the fact-finder's  
16 report; and an impasse exists, the board shall notify the employer and the employee organization

17 that the issues in dispute shall be resolved by a three-member arbitration panel, or when the  
18 parties mutually agree, the board shall select a single arbitrator in lieu of the arbitration panel.

19 Said panel shall be comprised of 3 arbitrators, one selected by the employer, one selected  
20 by the employee organization, and a third impartial arbitrator, who shall act as chairman of the  
21 panel, who shall be selected by the two previously selected arbitrators. In the event that either  
22 party fails to select an arbitrator or for any reason there is a delay in the naming of an arbitrator,  
23 or if the arbitrators fail to select a third arbitrator within the time prescribed by the board, the  
24 board shall appoint the arbitrator or arbitrators necessary to complete the panel, which shall act  
25 with the same force and effect as if the panel had been selected without intervention of the board.

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

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

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

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

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

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

63 (1) The financial ability of the commonwealth to meet the costs. Such factors which shall  
64 be taken into consideration shall include, be not be limited to, the commonwealth's long and  
65 short term bonded indebtedness;

66 (2) the interests and welfare of the public;

67 (3) the hazards of employment, physical, educational and mental qualifications, job  
68 training and skills involved;

69 (4) a comparison of wages, hours and conditions of employment of the employees  
70 involved in the arbitration proceedings with the wages, hours and conditions of employment of  
71 other employees performing similar services and with other employees generally in public or  
72 private employment in comparable districts, communities, or other sate of federal jurisdictions;

73 (5) the decisions and recommendations of the fact-finder, if any;

74 (6) the average consumer prices for goods and services, commonly known as the cost of  
75 living;

76 (7) the overall compensation presently received by the employees, including direct wages  
77 and fringe benefits; and

78 (8) changes in any of the foregoing circumstances during the pendency of the arbitration  
79 proceedings.

80 Such other factors not confined to the foregoing, which are normally or traditionally  
81 taken into consideration in the determination of wages, hours and conditions of employment  
82 through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise  
83 between parties, in the public service or in private employment.

84 The stipulation of the parties.

85 Any determination or decision of the arbitration panel or single arbitrator if supported by  
86 material and substantive evidence on the whole record shall be subject to appropriation, binding

87 upon the parties and may be enforced at the instance of either party, the single arbitrator or the  
88 arbitration panel in the superior court in equity.

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

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

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

101 Any arbitration awarded shall be binding on the parties and on the appropriate legislative  
102 body and made effective and enforceable pursuant to the provisions of chapter 150C, provided  
103 that said arbitration proceeding has been authorized by the appropriate legislative body and in the  
104 case of school employees, by the appropriate school committee.