

HOUSE No. 2419

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to 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 the firefighters or police
2 officers of a city, town or district is engaged in an impasse with said city, town or district which
3 has continued for thirty days after the publication of the fact-finders report pursuant to section
4 nine of chapter one hundred and fifty E of the General Laws, or, if the parties have mutually
5 waived the fact-finding provisions contained in said section nine of said chapter one hundred and
6 fifty E, said employee organization shall petition the board to make an investigation. If, after an
7 investigation, the board determines that: 1. the requirements of section nine of said chapter one
8 hundred and fifty E have been complied with in good faith by the employee organization;2. thirty
9 days have passed since the date of publication of the fact-finding report pursuant to said section
10 nine; 3. the proceedings for the prevention of any prohibited practices have been exhausted,
11 provided that any such complaints have been filed with the commission prior to the date of the
12 fact-finders report; and 4. an impasse exists, the board shall notify the employer and the
13 employee organization that the issues in dispute shall be resolved by a three-member arbitration
14 panel, or when the parties mutually agree, the board shall select a single arbitrator in lieu of the

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

22 In the event that the parties mutually elect to use a single arbitrator, selected by the board,
23 the parties shall immediately request the board to appoint said arbitrator, who shall act with the
24 same force and effect as if a three member panel had been selected by the parties.The single
25 arbitrator or the arbitration panel acting through its chairman, shall conduct a hearing within ten
26 days after the date of appointment of its chairman, at a place within the locality of the
27 municipality involved, where feasible. The chairman shall give at least seven days notice in
28 writing to each of the other arbitrators. The chairman or single arbitrator shall give like notice to
29 the representative of the municipal employer and employee organizations of the time and place
30 of such hearing. The single arbitrator or chairman shall preside over the hearing and shall take
31 testimony. Upon application and for good cause shown, a person, labor organization, or
32 governmental unit having substantial interest therein may be granted leave to intervene by the
33 arbitration panel. The proceedings shall be informal. Any oral or documentary evidence and
34 other data deemed relevant by the arbitration panel or single arbitrator may be received into
35 evidence. The arbitrators shall have the power to administer oaths and to require by subpoena the
36 attendance and testimony of witnesses, the production of books, records, and other evidence
37 relative to or pertinent to the issues presented to them for determination. If any person refuses to

38 obey a subpoena, or refuses to be sworn or to testify, or if any witness, party, or attorney is guilty
39 of any contempt while in attendance at any hearing, the arbitration panel or single arbitrator may,
40 or the district attorney if requested, shall invoke the aid of the superior court within the
41 jurisdiction in which the hearing is being held, which court shall issue an appropriate order. A
42 record of the proceedings shall be kept, and the chairman or single arbitrator shall arrange for the
43 necessary recording service. Transcripts may be ordered at the expense of the party ordering
44 them, but the transcripts shall not be necessary for an award by the panel or single arbitrator. The
45 hearing may be continued at the discretion of the panel or single arbitrator and shall be
46 concluded within forty days from the time of commencement. At the conclusion of the hearing,
47 each party shall submit a written statement containing its last and best offer for each of the issues
48 in dispute to the panel or single arbitrator, who shall take said statements under advisement.
49 Within ten days after the conclusion of the hearing, a majority of the panel, or the single
50 arbitrator, shall select as the last and best arbitration award either the employer's written
51 statement of its last and best offer, the employee organization's written statement of its last and
52 best offer, or the recommendations of the fact-finder, if a fact-finding report and
53 recommendations have been issued, and immediately shall give written notice of the selection to
54 the parties. The selection shall be final and binding upon the parties and upon the appropriate
55 legislative body. Within thirty calendar days of the last and best offer selection and award, the
56 impartial chairperson of the arbitration panel or, the single arbitrator, shall issue a written
57 opinion inclusive of an analysis of all statutory factors applicable to the proceedings. At any time
58 before the rendering of an award, the chairman of the arbitration panel or single arbitrator, if he
59 is of the opinion that it would be useful or beneficial to do so, may remand the dispute to the
60 parties for further collective bargaining for the period not to exceed three weeks and notify the

61 board of the remand. If the dispute is remanded for further collective bargaining the time
62 provisions of this act shall be extended for a time period equal to that of the remand. In the event
63 that the representatives of the parties mutually resolve each of the issues in dispute and agree to
64 be bound accordingly, said representatives may, at any time prior to the final decisions by the
65 panel, or single arbitrator, request that the arbitration proceedings be terminated, the panel,
66 acting through its chairman or single arbitrator, shall terminate the proceedings. The factors
67 among others, to be given weight by the arbitration panel or single arbitrator in arriving at the
68 decision shall include: (1) The financial ability of the municipality to meet costs. Such factors
69 which shall be taken into consideration shall include but not be limited to: (a) the city, town, or
70 district's state reimbursements and assessments; (b) the city, town, or district's long and short
71 term bonded indebtedness; (c) the city, town, or district's estimated share in the metropolitan
72 district commission deficit; (d) the city, town, or district's estimated share in the Massachusetts
73 Bay Transportation Authority's deficit; and (e) consideration of the average per capita property
74 tax burden, average annual income of members of the community, the effect any accord by the
75 panel or single arbitrator might have on the respective property tax rates of the city or town. (2)
76 The interests and welfare of the public. (3) The hazards of employment, physical, educational and
77 mental qualifications, job training and skills involved. (4) A comparison of wages, hours and
78 conditions of employment of the employees involved in the arbitration proceedings with the
79 wages, hours and conditions of employment of other employees performing similar services and
80 with other employees generally in public and private employment in comparable
81 communities. (5) The decisions and recommendations of the fact-finder, if any. (6) The average
82 consumer prices for goods and services, commonly known as the cost of living. (7) The overall
83 compensation presently received by the employees, including direct wages and fringe

84 benefits.(8) Changes in any of the foregoing circumstances during the pendency of the arbitration
85 proceedings.(9) Such other factors, not confined to the foregoing, which are normally or
86 traditionally taken into consideration in the determination of wages, hours and conditions of
87 employment through voluntary collective bargaining, mediation, fact-finding, arbitration or
88 otherwise between parties, in the public service or in private employment.(10) The stipulation of
89 the parties.Any determination or decision of the arbitration panel or single arbitrator if supported
90 by material and substantive evidence on the whole record shall be binding upon the parties and
91 may be enforced at the instance of either party, the single arbitrator or the arbitration panel in the
92 superior court in equity, provided however, that the scope of arbitration in police matters shall be
93 limited to wages, hours, and conditions of employment and shall not include the following
94 matters of inherent managerial policy: the right to appoint, promote, assign, and transfer
95 employees; and provided, further, that the scope of arbitration in firefighter matters shall not
96 include the right to appoint and promote employees. Assignments shall not be within the scope;
97 provided, however, that the subject matters of initial station assignment upon appointment or
98 promotion shall be within the scope of arbitration. The subject matter of transfer shall not be
99 within the scope of arbitration, provided however, that the subject matters of relationship of
100 seniority to transfers and disciplinary and punitive transfers shall be within the scope of
101 arbitration. Notwithstanding any other provisions of this chapter to the contrary, no municipal
102 employer shall be required to negotiate over subjects of minimum manning of shift coverage,
103 with an employee organization representing municipal police officers and firefighters.The
104 commencement of a new municipal finance year prior to the final awards by the arbitration panel
105 shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority
106 of the arbitration panel or its award. Any award of the arbitration panel may be retroactive to the

107 expiration date of the last contract.If a municipal employer, or an employee organization
108 willfully disobeys a lawful order of enforcement pursuant to this section, or willfully encourages
109 or offers resistance to such order, whether by strike or otherwise, the punishment for each day
110 that such contempt continues may be a fine for each day to be determined at the discretion of
111 said court.Each of the parties shall provide compensation for the arbitrator which he has selected
112 pursuant to this section. The remaining costs of arbitration proceedings under this section shall
113 be divided equally between the parties. Compensation for the arbitrators shall be in accordance
114 with a schedule of payment established by the American Arbitration Association.No member of
115 a unit of municipal police officers or firefighters who is employed on a less than full-time basis
116 shall be subject to the provisions of this section.