

**HOUSE . . . . . No. 2441**

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**The Commonwealth of Massachusetts**

**In the Year Two Thousand Nine**

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

15 single arbitrator in lieu of the arbitration panel.Said panel shall be comprised of three arbitrators,  
16 one selected by the employer, one selected by the employee organization, and a third impartial  
17 arbitrator, who shall act as chairman of the panel, who shall be selected by the two previously  
18 selected arbitrators. In the event that either party fails to select an arbitrator or for any reason  
19 there is a delay in the naming of an arbitrator, or if the arbitrators fail to select a third arbitrator  
20 within the time prescribed by the board, the board shall appoint the arbitrator or arbitrators  
21 necessary to complete the panel, which shall act with the same force and effect as if the panel  
22 had been selected without intervention of the board.In the event that the parties mutually elect to  
23 use a single arbitrator, selected by the board, the parties shall immediately request the board to  
24 appoint said arbitrator, who shall act with the same force and effect as if a three member panel  
25 had been selected by the parties.The single arbitrator or the arbitration panel acting through its  
26 chairman, shall conduct a hearing within ten days after the date of appointment of its chairman,  
27 at a place within the locality of the municipality involved, where feasible. The chairman shall  
28 give at least seven days notice in writing to each of the other arbitrators. The chairman or single  
29 arbitrator shall give like notice to the representative of the municipal employer and employee  
30 organizations of the time and place of such hearing.The single arbitrator or chairman shall  
31 preside over the hearing and shall take testimony. Upon application and for good cause shown, a  
32 person, labor organization, or governmental unit having substantial interest therein may be  
33 granted leave to intervene by the arbitration panel. The proceedings shall be informal. Any oral  
34 or documentary evidence and other data deemed relevant by the arbitration panel or single  
35 arbitrator may be received into evidence. The arbitrators shall have the power to administer oaths  
36 and to require by subpoena the attendance and testimony of witnesses, the production of books,  
37 records, and other evidence relative to or pertinent to the issues presented to them for

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

61 and notify the board of the remand. If the dispute is remanded for further collective bargaining  
62 the time provisions of this act shall be extended for a time period equal to that of the remand. In  
63 the event that the representatives of the parties mutually resolve each of the issues in dispute and  
64 agree to be bound accordingly, said representatives may, at any time prior to the final decisions  
65 by the panel, or single arbitrator, request that the arbitration proceedings be terminated, the  
66 panel, acting through its chairman or single arbitrator, shall terminate the proceedings. The  
67 factors among others, to be given weight by the arbitration panel or single arbitrator in arriving at  
68 the 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; or (d) the city, town, or district's estimated share in the  
73 Massachusetts Bay Transportation Authority's deficit; and (e) consideration of the average per  
74 capita property tax burden, average annual income of members of the community, the effect any  
75 accord by the panel or single arbitrator might have on the respective property tax rates of the city  
76 or town. (2) The interests and welfare of the public. (3) The hazards of employment, physical,  
77 educational and mental qualifications, job training and skills involved. (4) A comparison of  
78 wages, hours and conditions of employment of the employees involved in the arbitration  
79 proceedings with the wages, hours and conditions of employment of other employees performing  
80 similar services and with other employees generally in public and private employment in  
81 comparable communities. (5) The decisions and recommendations of the fact-finder, if any. (6)  
82 The average consumer prices for goods and services, commonly known as the cost of living. (7)  
83 The overall compensation presently received by the employees, including direct wages and

84 fringe benefits.(8) Changes in any of the foregoing circumstances during the pendency of the  
85 arbitration proceedings.(9) Such other factors, not confined to the foregoing, which are normally  
86 or 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 matter 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.