

HOUSE No. 2447

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to establishing binding arbitration..

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. Chapter 150E of the General Laws, appearing in the 2004 Official edition,
2 is hereby amended by adding the following new section:

3 Section 16. If an employee organization duly recognized as representing employees of
4 the Commonwealth in Bargaining Unit 4 is engaged in successor contract negotiations with the
5 employer which have not resulted in an agreement, then such employee organization shall
6 petition the board to make an investigation.

7 If, after an investigation, the board determines that such negotiations have not resulted in
8 agreement, then the board shall notify the employer and the employee organization that the
9 unresolved issues in such negotiations shall be resolved by an arbitration before an arbitrator
10 selected by the employee organization and the employer pursuant to the voluntary labor
11 arbitration rules and procedures of the American Arbitration Association.

12 The arbitrator so designated shall establish a hearing schedule, shall preside over the
13 hearing, and shall take evidence.

14 The arbitrator shall preside over the hearing and shall take testimony. The proceedings
15 shall be informal. Any oral or documentary evidence and other data deemed relevant by the
16 arbitrator may be received into evidence. The arbitrator shall have the power to administer oaths
17 and to require by subpoena the attendance and testimony of witnesses, the production of books,
18 records, and other evidence relative to or pertinent to the issues presented to them for
19 determination. If any person refuses to obey a subpoena, or refuses to be sworn or to testify, or if
20 any witness, party, or attorney is guilty of any contempt while in attendance at any hearing, the
21 arbitrator may, or the district attorney if requested, shall invoke the aid of the superior court
22 within the jurisdiction in which the hearing is being held, which court shall issue an appropriate
23 order.

24 A record of the proceedings shall be kept, the arbitrator shall arrange for the necessary
25 recording service. Transcripts may be ordered at the expense of the party ordering them, but the
26 transcripts shall not be necessary for an award by the arbitrator. The hearing may be continued
27 at the discretion of the arbitrator and shall be concluded within forty days from the time of
28 commencement. At the conclusion of the hearing, each party shall submit a written statement
29 containing its last and best offer for the issues in dispute to the arbitrator, who shall take said
30 statements under advisement. Within ten days after the conclusion of the hearing, the arbitrator
31 shall select as the last and best arbitration award either the employer's written statement of its
32 last and best offer, or the employee organization's written statement of its last and best offer, and
33 immediately shall give written notice of the selection to the parties. The selection shall be final
34 and binding upon the parties and upon the appropriate legislative body. Within thirty calendar
35 days of the last and best offer selection and award, the arbitrator, shall issue a written opinion
36 inclusive of an analysis of all statutory factors applicable to the proceedings.

37 At any time before the rendering of an award by the arbitrator, if he is of the opinion that
38 it would be useful or beneficial to do so, he may remand the dispute to the parties for further
39 collective bargaining for the period not to exceed three weeks and notify the board of the
40 remand. If the dispute is remanded for further collective bargaining the time provisions of this
41 act shall be extended for a time period equal to that of the remand.

42 In the event that the representatives of the parties mutually resolve each of the issues in
43 dispute and agree to be bound accordingly, said representatives may, at any time prior to the final
44 decision by the arbitrator, request that the arbitration proceedings be terminated arbitrator, shall
45 terminate the proceedings.

46 The factors among others, to be given weight by the arbitrator in arriving at the decision
47 shall include;

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

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

52 (3) The hazards of employment, physical, educational and mental qualifications, job
53 training and skills involved.

54 (4) A comparison of wages, hours and conditions of employment of the employees
55 involved in the arbitration proceedings with the wages, hours and conditions of employment of
56 other employees performing similar services and with other employees generally in public and
57 private employment in comparable districts, communities, or other state or federal jurisdictions.

58 (5) The average consumer prices for goods and services, commonly known as the cost of
59 living.

60 (6) The overall compensation presently received by the employees, including direct
61 wages and fringe benefits.

62 (7) Changes in any of the foregoing circumstances during the pendency of the arbitration
63 proceedings.

64 (8) Such other factors, not confined to the foregoing, which are normally or traditionally
65 taken into consideration in the determination of wages, hours and conditions of employment
66 through voluntary collective bargaining, mediation fact-finding, arbitration or otherwise between
67 parties, in the public service or in private employment.

68 (9) The stipulation of the parties.

69 Any determination or decision of the arbitrator if supported by material and substantive
70 evidence on the whole record shall be binding upon the parties and may be enforced at the
71 instance of either party, the arbitrator in the superior court in equity, provided however, that the
72 scope of arbitration shall include wages, hours, standards of productivity and performance, and
73 any other term and condition of employment.

74 The commencement of a new municipal finance year prior to the final awards by the
75 arbitrator shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or
76 authority of the arbitrator or his award. Any award of the arbitrator may be retroactive to the
77 expiration date of the last contract.

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

82 The costs of arbitration proceedings under this section shall be divided equally between
83 the parties. Compensation for the arbitrator shall be in accordance with a schedule of payment
84 established by the American Arbitration Association.