

SENATE No. 1120

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to interest arbitration for state employed health care professionals..

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. Amend Chapter 150E of the General Laws of Massachusetts, as amended
2 by Chapter 1078 of the Acts of 1973, by adding a new section 4D as follows:—If an employee
3 organization duly recognized as representing a bargaining unit of the health care professionals
4 employed by the Commonwealth of Massachusetts (or by any political subdivision thereof) is
5 engaged in an impasse which has continued for thirty days after the publication of the fact-
6 finder’s report pursuant to section nine of chapter one hundred and fifty E of the General Laws,
7 or, if the parties have mutually waived the fact-finding provisions contained in said section nine
8 of said chapter one hundred and fifty E, said employee organization shall petition the Board of
9 Arbitration and Conciliation hereinafter referred to as the Board, to make an investigation. If,
10 after an investigation, the Board determines that: (1) the requirements of section nine of said
11 chapter one hundred and fifty E have been complied with in good faith by the employee
12 organization; (2) thirty days have passed since the date of publication of the fact-finding report
13 pursuant to said section nine, unless waived by the parties, and an impasse exists, the Board shall
14 notify the employer and the employee organization that the issues in dispute shall be resolved by

15 an impartial single arbitrator selected by the parties in the same manner established by the Board
16 for the selection of a fact-finder. The single arbitrator shall conduct a hearing within thirty days
17 after the date of appointment, or as soon thereafter as is practicable. The form of arbitration shall
18 be traditional on an issue by issue basis, with the arbitrator having the authority on each issue to
19 accept the employer's proposal, the employee organization's proposal or such other term, which
20 the arbitrator deems appropriate. The single arbitrator shall preside over the hearing and shall take
21 testimony. The proceedings shall be informal. Any oral or documentary evidence and other data
22 deemed relevant by the single arbitrator may be received into evidence. The arbitrator shall have
23 the power to administer oaths and to require by subpoena, the attendance and testimony of
24 witnesses, the production of books, records, and other evidence relative to or pertinent to the
25 issues presented to him for determination. If any person refuses to obey a subpoena, refuses to be
26 sworn or to testify, or if any witness, party, or attorney is guilty of any contempt while in
27 attendance at any hearing, the single arbitrator may, or the district attorney if requested, shall
28 invoke the aid of the superior court within the jurisdiction in which the hearing is being held,
29 whereupon the court shall issue an appropriate order. A record of the proceedings shall be kept,
30 and the single arbitrator shall arrange for the necessary recording service. Transcripts may be
31 ordered at the expense of the party ordering them, but the transcripts shall not be necessary for an
32 award by the single arbitrator. The hearing may be continued at the discretion of the single
33 arbitrator and shall be concluded within forty days from the time of commencement, or as soon
34 thereafter as is practicable. Within ten days after the conclusion of the hearing, or as soon as
35 practicable thereafter, the single arbitrator shall issue an award on all issues, which shall be final
36 and binding upon the parties, subject to appropriation. Within thirty calendar days of the issuance
37 of the award, or as soon as is practicable thereafter, the single arbitrator shall issue a written

38 opinion inclusive of an analysis of all statutory factors applicable to the proceedings. At any time
39 before the rendering of an award, the single arbitrator, if he is of the opinion that it would be
40 useful or beneficial to do so, may remand the dispute to the parties for further collective
41 bargaining for a period not to exceed three weeks and notify the Board of the remand. If the
42 dispute is remanded for further collective bargaining the time provisions of this act shall be
43 extended for a time period equal to that of the remand. In the event that the representatives of the
44 parties mutually resolve each of the issues in dispute and agree to be bound accordingly, said
45 representatives may, at any time prior to the final decision by the single arbitrator, request that
46 the arbitration proceedings be terminated. The single arbitrator shall then terminate the
47 proceedings. The factors, among others, to be given weight by the single arbitrator in arriving at
48 the decision shall include, when applicable: (1) the financial ability of the commonwealth (or of
49 the political subdivision) to meet the costs. Such factors which shall be taken into consideration
50 shall include, but not be limited to, the commonwealth's long and short-term bonded
51 indebtedness; (2) the interests and health and welfare of the public; (3) the hazards of
52 employment, physical, educational and mental qualifications, training and skills involved; (4) a
53 comparison of wages, hours and conditions of employment of the employees involved in the
54 arbitration proceedings with the wages, hours and conditions of employment of other employees
55 performing similar services and with other employees generally in public or private employment
56 in comparable communities, or other state or federal jurisdictions; (5) the decisions and
57 recommendations of the fact-finder, if any; (6) the average consumer prices for goods and
58 services, commonly known as the cost of living; (7) the overall compensation presently received
59 by the employees, including direct wages and fringe benefits; (8) changes in any of the foregoing
60 circumstances during the pendency of the arbitration proceedings; (9) such other factors not

61 confined to the foregoing, which are normally or traditionally taken into consideration in the
62 determination of wages, hours and conditions of employment through voluntary collective
63 bargaining, mediation, fact-finding, arbitration or otherwise between parties, in the public service
64 or in private employment; (10) the stipulation of the parties. Any determination or decision of the
65 single-arbitrator, if supported by material and substantive evidence on the whole record shall be
66 subject to appropriation, binding upon the parties, and may be enforced at the instance of either
67 party, in the superior court in equity, provided however, that the scope of arbitration shall be
68 limited to wages, hours and conditions of employment. The commencement of a new fiscal year
69 prior to the final award by the single arbitrator shall not be deemed to render a dispute moot, or
70 to otherwise impair the jurisdiction or authority of the single arbitrator or the award. Any award
71 of the arbitrator may be retroactive to the expiration date of the last contract. If the employer, or
72 the employee organization, willfully disobeys a lawful order of enforcement pursuant to this
73 section, or willfully encourages or offers resistance to such order, the punishment for each day
74 that such contempt continues may be a fine for each day to be determined at the discretion of
75 said court. The costs for the arbitrator under this section shall be divided equally between the
76 parties. Compensation for the arbitrator shall be in accordance with a schedule of payment
77 established by the American Arbitration Association. The provisions of this amendment shall take
78 effect immediately.