

SENATE No. 1176

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to 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 701 of the Acts of 1960, as most recently amended by chapter 243
2 of the acts of 2002, is hereby amended by inserting after section 15, the following new sections:-

3 Section 15A. Notwithstanding any general or special law to the contrary, the authority or
4 any organizations representing employees of the authority shall not be permitted to submit any
5 dispute over the terms of a collective bargaining agreement to arbitration except in accordance
6 with Section 15A through section 15D, inclusive; provided, however, that this section shall not
7 limit the rights of organizations representing employees of the authority to submit grievances to
8 arbitration in accordance with the collective bargaining agreement between the parties.

9 In the event the directors and any organizations representing employees of the authority
10 have not reached an agreement within 90 days from the date of the expiration of the agreement,
11 either party may notify the other that it desires mediation. The parties may agree upon a person
12 to serve as a mediator or, if unable to agree on said mediator, either party or the parties acting
13 jointly may petition the board of conciliation and arbitration to appoint a mediator from a list of
14 qualified persons maintained by the board.

15 Section 15B. After a reasonable period of mediation, not to exceed 45 days from the date
16 of appointment, said mediator shall issue a report indicating the results of his services in
17 resolving the impasse. If at the conclusion of mediation the impasse still exists, the mediator
18 shall so certify. In the event, the mediator shall certify in his report the last best offer of each
19 party on each unresolved issue which has been submitted to mediation and shall also certify the
20 agreement of the parties on each issue on which agreement has been reached and shall submit
21 such certifications to the arbitrator selected by the parties. In such event, so long as the mediator
22 shall also certify that the parties have bargained in good faith, either party may notify the other
23 that it desires arbitration of the dispute. Within 10 days of said notice, the parties shall meet to
24 select a single neutral arbitrator.

25 If, within 15 days, the parties fail to select such single arbitrator, either party may
26 forthwith petition the board of conciliation and arbitration to request a list of five arbitrators from
27 the American Arbitration Association and said Association shall certify to the board that such
28 arbitrators on the list it provides possess the qualifications as provided in section 30. The parties
29 shall thereupon meet to select such arbitrator by striking one name each until one name remains
30 and that person shall serve as the neutral arbitrator. If, after 10 days, one of the parties declines to
31 strike their names, the other party shall strike two names and the board shall forthwith select the
32 arbitrator from the remaining three names.

33 Section 15C. The single arbitrator, whether agreed upon by the parties or selected by the
34 board of conciliation and arbitration, shall be a legal resident of the commonwealth and shall be
35 experienced in state and local finance. The arbitrator shall rely primarily on the following
36 factors in determining the basis for an award:

37 (a) The financial ability of the authority to meet additional costs, which shall include but
38 not be limited to: (i) the statutory requirement that the authority produce revenues in excess of
39 expenses; (ii) the financial ability of the individual communities and the commonwealth to meet
40 additional costs; (iii) the average per capita tax burden, average annual income and sources of
41 revenue within the commonwealth, and the effect of any arbitration award on the respective
42 property tax rates of the cities and towns within the authority's district.

43 (b) The overall compensation presently received by the employees, having regard not
44 only for wages for time actually worked but also for wages for time not worked, including
45 vacations, holidays and other excused time.

46 (c) All benefits received by the employees, including insurance, pension, as well as the
47 continuity and stability of employment.

48 (d) The hazards of employment, physical, educational and mental qualifications, job
49 training and skills involved.

50 (e) A comparison of wages, hours, and conditions of employment of the employees
51 involved in the arbitration proceedings with the wages, hours and conditions of employment of
52 other employees performing similar services within the commonwealth and with other
53 employees generally in public and private employment within the commonwealth.

54 (f) The average consumer price for goods and services, commonly known as the cost of
55 living.

56 (g) Changes in any of the foregoing circumstances during the pendency of the arbitration
57 proceedings.

58 (h) Such other factors, not confined to the foregoing, which are normally or traditionally
59 taken into consideration in the determination of wages, hours and conditions of employment
60 through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise
61 between parties, in the public service of the commonwealth, and which are not precluded from
62 bargaining under section 25.

63 (i) The stipulation of the parties.

64 Section 15D. The arbitrator shall be limited in making his award to choosing between the
65 last best offers of the parties on each issue as certified in the mediator's report or any award in
66 the range between the last best offers of the parties. The arbitrator shall make no award on any
67 issue found by him to be not authorized by law to be submitted to arbitration, but shall state such
68 finding in his written opinion. Within 30 calendar days of an award, the arbitrator shall issue a
69 written opinion inclusive of an analysis of all statutory factors applicable to the proceedings. Any
70 determination by the arbitrator, if supported by material and substantial evidence on the record,
71 shall be binding upon the parties and upon the appropriate legislative or appropriating body and
72 may be enforced at the insistence of either party or by the arbitrator in the superior court. The
73 scope of arbitration shall be limited to wages, hours, and conditions of employment and shall not
74 include any provisions for any cost of living adjustment which are based on changes in the
75 consumer price index after the expiration of the contract period covered by the award. In
76 addition, any wage or salary adjustments shall be expressed in percent or dollar amounts, and in
77 no case shall there be any provision for salary adjustments to occur after the expiration of the
78 contract period covered by the award.

79 The cost, if any, of the mediation and of arbitration proceedings, exclusive of the
80 expenses of the individual parties shall, be divided equally by the parties and shall be in
81 accordance with a schedule of payments established by the American Arbitration Association.