HOUSE DOCKET, NO. 2452 FILED ON: 1/20/2011

HOUSE . . . . . No. 3180

The Commonwealth of Massachusetts

PRESENTED BY:

John P. Fresolo

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to providing for binding arbitration for fire fighters and police officers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
John P. Fresolo	*16th Worcester*
Raymond McGrath	*159 Burgin Parkway Quincy, MA 02169-4213*

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HOUSE . . . . . No. 3180

By Mr. Fresolo of Worcester, a petition (accompanied by bill, House, No. 3180) of John P. Fresolo and Raymond McGrath relative to providing for binding arbitration for fire fighters and police officers. Public Service.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *2419* OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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:

If an employee organization duly recognized as representing the firefighters or police officers of a city, town or district is engaged in an impasse with said city, town or district which has continued for thirty days after the publication of the fact-finders report pursuant to section nine of chapter one hundred and fifty E of the General Laws, or, if the parties have mutually waived the fact-finding provisions contained in said section nine of said chapter one hundred and fifty E, said employee organization shall petition the board to make an investigation. If, after an investigation, the board determines that: 1. the requirements of section nine of said chapter one hundred and fifty E have been complied with in good faith by the employee organization; 2. thirty days have passed since the date of publication of the fact-finding report pursuant to said section nine; 3. the proceedings for the prevention of any prohibited practices have been exhausted, provided that any such complaints have been filed with the commission prior to the

12 date of the fact-finders report; and 4. an impasse exists, the board shall notify the employer and
13 the employee organization that the issues in dispute shall be resolved by a three-member
14 arbitration panel, or when the parties mutually agree, the board shall select a single arbitrator in
15 lieu of the arbitration panel. Said panel shall be comprised of three arbitrators, one selected by
16 the employee organization, and a third impartial arbitrator, who shall act as chairman of the
17 panel, who shall be selected by the two previously selected arbitrators. In the event that either
18 party fails to select an arbitrator or for any reason there is a delay in the naming of an arbitrator,
19 or if the arbitrators fail to select a third arbitrator within the time prescribed by the board, the
20 board shall appoint the arbitrator or arbitrators necessary to complete the panel, which shall act
21 with the same force and 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, the
23 parties shall immediately request the board to appoint said arbitrator, who shall act with the same
24 force and effect as if a three member panel had been selected by the parties. The single arbitrator
25 or the arbitration panel acting through its chairman, shall conduct a hearing within ten days after
26 the date of appointment of its chairman, at a place within the locality of the municipality
27 involved, where feasible. The chairman shall give at least seven days notice in writing to each of
28 the other arbitrators. The chairman or single arbitrator shall give like notice to the representative
29 of the municipal employer and employee organizations of the time and place of such hearing.
30 The single arbitrator or chairman shall preside over the hearing and shall take testimony. Upon
31 application and for good cause shown, a person, labor organization, or governmental unit having
32 substantial interest therein may be granted leave to intervene by the arbitration panel. The
33 proceedings shall be informal. Any oral or documentary evidence and other data deemed relevant
34 by the arbitration panel or single arbitrator may be received into evidence. The arbitrators shall

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

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

81 recommendations of the fact-finder, if any. (6) The average consumer prices for goods and
82 services, commonly known as the cost of living. (7) The overall compensation presently received
83 by the employees, including direct wages and fringe benefits. (8) Changes in any of the
84 foregoing circumstances during the pendency of the arbitration proceedings. (9) Such other
85 factors, not confined to the foregoing, which are normally or traditionally taken into
86 consideration in the determination of wages, hours and conditions of employment through
87 voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between parties,
88 in the public service or in private employment. (10) The stipulation of the parties. Any
89 determination or decision of the arbitration panel or single arbitrator if supported by material and
90 substantive evidence on the whole record shall be binding upon the parties and may be enforced
91 at the instance of either party, the single arbitrator or the arbitration panel in the superior court in
92 equity, provided however, that the scope of arbitration in police matters shall be limited to
93 wages, hours, and conditions of employment and shall not include the following matters of
94 inherent managerial policy: the right to appoint, promote, assign, and transfer employees; and
95 provided, further, that the scope of arbitration in firefighter matters shall not include the right to
96 appoint and promote employees. Assignments shall not be within the scope; provided, however,
97 that the subject matters of initial station assignment upon appointment or promotion shall be
98 within the scope of arbitration. The subject matter of transfer shall not be within the scope of
99 arbitration, provided however, that the subject matters of relationship of seniority to transfers and
100 disciplinary and punitive transfers shall be within the scope of arbitration. Notwithstanding any
101 other provisions of this chapter to the contrary, no municipal employer shall be required to
102 negotiate over subjects of minimum manning of shift coverage, with an employee organization
103 representing municipal police officers and firefighters. The commencement of a new municipal

104 finance year prior to the final awards by the arbitration panel shall not be deemed to render a
105 dispute moot, or to otherwise impair the jurisdiction or authority of the arbitration panel or its
106 award. Any award of the arbitration panel may be retroactive to the expiration date of the last
107 contract. If a municipal employer, or an employee organization willfully disobeys a lawful order
108 of enforcement pursuant to this section, or willfully encourages or offers resistance to such order,
109 whether by strike or otherwise, the punishment for each day that such contempt continues may
110 be a fine for each day to be determined at the discretion of said court. Each of the parties shall
111 provide compensation for the arbitrator which he has selected pursuant to this section. The
112 remaining costs of arbitration proceedings under this section shall he divided equally between
113 the parties. Compensation for the arbitrators shall be in accordance with a schedule of payment
114 established by the American Arbitration Association. No member of a unit of municipal police
115 officers or firefighters who is employed on a less than full-time basis shall be subject to the
116 provisions of this section.