SENATE DOCKET, NO. 444 FILED ON: 1/19/2011

# SENATE . . . . . No. 1867

## The Commonwealth of Massachusetts

PRESENTED BY:

***Steven A. Tolman***

*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 to provide for binding arbitration for firefighters and police officers..

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|---|---|
| *Steven A. Tolman* | |

SENATE DOCKET, NO. 444 FILED ON: 1/19/2011

# SENATE . . . . . No. 1867

By Mr. Tolman, a petition (accompanied by bill, Senate, No. 1867) of Steven A. Tolman for legislation to provide for binding arbitration for fire fighters and police officers. Public Service.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *1205* OF 2009-2010.]

## The Commonwealth of Massachusetts

**In the Year Two Thousand Eleven**

An Act to provide for binding arbitration for firefighters 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:*

SECTION 1. 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;

10 2. thirty days have passed since the date of publication of the fact-finding report pursuant
11 to said section nine;

12 3. the proceedings for the prevention of any prohibited practices have been exhausted,
13 provided that any such complaints have been filed with the commission prior to the date
14 of the fact-finders report; and

15 4. an impasse exists; the board shall notify the employer and the employee organization
16 that the issues in dispute shall be resolved by a three-member arbitration panel, or when the
17 parties mutually agree, the board shall select a single arbitrator in lieu of the arbitration panel.
18 Said panel shall be comprised of three arbitrators, one selected by the employee organization,
19 one selected by the employer, and a third impartial arbitrator, who shall act as chairman of the
20 panel, and who shall be selected by the two previously selected arbitrators. In the event that
21 either party fails to select an arbitrator or for any reason there is a delay in the naming of an
22 arbitrator, or if the arbitrators fail to select a third arbitrator within the time prescribed by the
23 board, the board shall appoint the arbitrator or arbitrators necessary to complete the panel, which
24 shall act with the same force and effect as if the panel had been selected without intervention of
25 the board.

26 In the event that the parties mutually elect to use a single arbitrator, selected by the board,
27 the parties shall immediately request the board to appoint said arbitrator, who shall act with the
28 same force and effect as if a three member panel had been selected by the parties. The single
29 arbitrator or the arbitration panel acting through its chairman, shall conduct a hearing within ten
30 days after the date of appointment of its chairman, at a place within the locality of the
31 municipality involved, where feasible. The chairman shall give at least seven days notice in

32 writing to each of the other arbitrators. The chairman or single arbitrator shall give like notice to
33 the representative of the municipal employer and employee organizations of the time and place
34 of such hearing.

35 The single arbitrator or chairman shall preside over the hearing and shall take testimony.
36 Upon application and for good cause shown, a person, labor organization, or governmental unit
37 having substantial interest therein may be granted leave to intervene by the arbitration panel. The
38 proceedings shall be informal. Any oral or documentary evidence and other data deemed relevant
39 by the arbitration panel or single arbitrator may be received into evidence. The arbitrators shall
40 have the power to administer oaths and to require by subpoena the attendance and testimony of
41 witnesses, the production of books, records, and other evidence relative to or pertinent to the
42 issues presented to them for determination. If any person refuses to obey a subpoena, or refuses
43 to be sworn or to testify, or if any witness, party, or attorney is guilty of any contempt while in
44 attendance at any hearing, the arbitration panel or single arbitrator may, or the district attorney if
45 requested, shall invoke the aid of the superior court within the jurisdiction in which the hearing is
46 being held, which the court shall issue an appropriate order.

47 A record of the proceedings shall be kept, and the chairman or single arbitrator shall
48 arrange for the necessary recording service. Transcripts may be ordered at the expense of the
49 party ordering them, but the transcripts shall not be necessary for an award by the panel or single
50 arbitrator. The hearing may be continued at the discretion of the panel or single arbitrator and
51 shall be concluded within forty days from the time of commencement. At the conclusion of the
52 hearing, each party shall submit a written statement containing its last and best offer for each of
53 the issues in dispute to the panel or single arbitrator, who shall take said statements under
54 advisement. Within ten days after the conclusion of the hearing, a majority of the panel, or the

55 single arbitrator, shall select as the last and best arbitration award either the employer's written
56 statement of its last and best offer, the employee organization's written statement of its last and
57 best offer, or the recommendations of the fact-finder, if a fact-finding report and
58 recommendations have been issued, and immediately shall give written notice of the selection to
59 the parties. The selection shall be final and binding upon the parties and upon the appropriate
60 legislative body. Within thirty calendar days of the last and best offer selection and award, the
61 impartial chairperson of the arbitration panel or, the single arbitrator, shall issue a written
62 opinion inclusive of an analysis of all statutory factors applicable to the proceedings.

63 At any time before the rendering of an award, the chairman of the arbitration panel or
64 single arbitrator, if he is of the opinion that it would be useful or beneficial to do so, may remand
65 the dispute to the parties for further collective bargaining for the period not to exceed three
66 weeks and notify the board of the remand. If the dispute is remanded for further collective
67 bargaining the statutory time frames of this act shall be tolled for a time period equal to the
68 duration of the remand.

69 In the event that the representatives of the parties mutually resolve each of the issues in
70 dispute and agree to be bound accordingly, said representatives may, at any time prior to the final
71 decisions by the panel, or single arbitrator, request that the arbitration proceedings be terminated.
72 The panel, acting through its chairman or single arbitrator, shall terminate the proceedings.

73 The factors among others, to be considered by the arbitration panel or single
74 arbitrator in arriving at the decision shall include:

75 (1) The financial ability of the municipality to meet costs. Such factors which shall be
76 taken into consideration shall include but not be limited to,

77 (a) the city, town, or district's state reimbursements and assessments;

78 (b) the city, town, or district's long and short term bonded indebtedness;

79 (c) the city, town, or district's estimated share in the metropolitan district commission
80 deficit;

81 (d) the city, town, or district's estimated share in the Massachusetts Bay Transportation
82 Authority's deficit; and

83 (e) consideration of the average per capita property tax burden, average annual income of
84 members of the community, the effect any accord by the panel or single arbitrator might have
85 on the respective property tax rates of the city or town.

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

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

89 (4) A comparison of wages, hours and conditions of employment of the employees
90 involved in the arbitration proceedings with the wages, hours and conditions of
91 employment of other employees performing similar services and with other employees
92 generally in public and private employment in comparable communities.

93 (5) The decisions and recommendations of the fact-finder, if any.

94 (6) The average consumer prices for goods and services, commonly known as the cost of
95 living.

96 (7) The overall compensation presently received by the employees, including direct
97 wages and fringe benefits.

98 (8) Changes in any of the foregoing circumstances during the pendency of the arbitration
99 proceedings.

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

104 (10) The stipulation of the parties.

105 Any determination or decision of the arbitration panel or single arbitrator, if supported by
106 material and substantive evidence on the whole record shall be binding upon the parties and may
107 be enforced at the election of either party, the single arbitrator or the arbitration panel in the
108 superior court in equity, provided however, that the scope of arbitration in police matters shall be
109 limited to wages, hours, and conditions of employment and shall not include the following
110 matters of inherent managerial policy: the right to appoint, promote, assign, and transfer
111 employees; and provided, further, that the scope of arbitration in firefighter matters shall not
112 include the right to appoint and promote employees. Assignments shall not be within the scope;
113 provided, however, that the subject matters of initial station assignment upon appointment or
114 promotion shall be within the scope of arbitration. The subject matter of transfer shall not be
115 within the scope of arbitration, provided however, that the subject matters of relationship of
116 seniority to transfers and disciplinary and punitive transfers shall be within the scope of
117 arbitration. Notwithstanding any other provisions of this chapter to the contrary, no municipal

118 employer shall be required to negotiate over subjects of minimum manning of shift coverage,
119 with an employee organization representing municipal police officers and firefighters.

120 The commencement of a new municipal finance year prior to the final awards by the
121 arbitration panel shall not be deemed to render a dispute moot, or to otherwise impair the
122 jurisdiction or authority of the arbitration panel or its award. Any award of the arbitration panel
123 may be retroactive to the expiration date of the last contract.

124 If a municipal employer, or an employee organization willfully disobeys a lawful order of
125 enforcement pursuant to this section, or willfully encourages or offers resistance to such order,
126 whether by strike or otherwise, the punishment for each day that such contempt continues may
127 be a fine for each day to be determined by the court.

128 Each of the parties shall provide compensation for the arbitrator which he has selected
129 pursuant to this section. The remaining costs of arbitration proceedings under this section shall
130 be divided equally between the parties. Compensation for the arbitrators shall be in accordance
131 with a schedule of payment established by the American Arbitration Association.

132 No member of a unit of municipal police officers or firefighters who is employed on a
133 less than full-time basis shall be subject to the provisions of this section.