

# HOUSE . . . . . No. 2324

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## The Commonwealth of Massachusetts

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PRESENTED BY:

***John P. Fresolo***

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*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.

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PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>John P. Fresolo</i>	<i>16th Worcester</i>	<i>1/17/2013</i>

# HOUSE . . . . . No. 2324

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By Mr. Fresolo of Worcester, a petition (accompanied by bill, House, No. 2324) of John P. Fresolo relative to providing binding arbitration for fire fighters and police officers. Public Service.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 3180 OF 2011-2012.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand Thirteen  
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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:*

1           If an employee organization duly recognized as representing the firefighters or police  
2 officers of a city, town or district is engaged in an impasse with said city, town or district which  
3 has continued for thirty days after the publication of the fact-finders report pursuant to section  
4 nine of chapter one hundred and fifty E of the General Laws, or, if the parties have mutually  
5 waived the fact-finding provisions contained in said section nine of said chapter one hundred and  
6 fifty E, said employee organization shall petition the board to make an investigation. If, after an  
7 investigation, the board determines that: 1. the requirements of section nine of said chapter one  
8 hundred and fifty E have been complied with in good faith by the employee organization; 2.  
9 thirty days have passed since the date of publication of the fact-finding report pursuant to said  
10 section nine; 3. the proceedings for the prevention of any prohibited practices have been  
11 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,

may remand the dispute to the parties for further collective bargaining for the period not to exceed three weeks and notify the board of the remand. If the dispute is remanded for further collective bargaining the time provisions of this act shall be extended for a time period equal to that of the remand. In the event that the representatives of the parties mutually resolve each of the issues in dispute and agree to be bound accordingly, said representatives may, at any time prior to the final decisions by the panel, or single arbitrator, request that the arbitration proceedings be terminated, the panel, acting through its chairman or single arbitrator, shall terminate the proceedings. The factors among others, to be given weight by the arbitration panel or single arbitrator in arriving at the decision shall include: (1) The financial ability of the municipality to meet costs. Such factors which shall be taken into consideration shall include but not be limited to: (a) the city, town, or district's state reimbursements and assessments; (b) the city, town, or district's long and short term bonded indebtedness; (c) the city, town, or district's estimated share in the metropolitan district commission deficit; (d) the city, town, or district's estimated share in the Massachusetts Bay Transportation Authority's deficit; and (e) consideration of the average per capita property tax burden, average annual income of members of the community, the effect any accord by the panel or single arbitrator might have on the respective property tax rates of the city or town. (2) The interests and welfare of the public. (3) The hazards of employment, physical, educational and mental qualifications, job training and skills involved. (4) A comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public and private employment in comparable communities. (5) The decisions and recommendations of the fact-finder, if any. (6) The average consumer prices for goods and services, commonly known as the cost of living. (7) The overall compensation presently received by the employees, including direct wages and fringe benefits. (8) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings. (9) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between parties, in the public service or in private employment. (10) The stipulation of the parties. Any determination or decision of the arbitration panel or single arbitrator if supported by material and substantive evidence on the whole record shall be binding upon the parties and may be enforced at the instance of either party, the single arbitrator or the arbitration panel in the superior court in equity, provided however, that the scope of arbitration in police matters shall be limited to wages, hours, and conditions of employment and shall not include the following matters of inherent managerial policy: the right to appoint, promote, assign, and transfer employees; and provided, further, that the scope of arbitration in firefighter matters shall not include the right to appoint and promote employees. Assignments shall not be within the scope; provided, however, that the subject matters of initial station assignment upon appointment or promotion shall be 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 be 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.