

**HOUSE . . . . . No. 2340**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*Colleen M. Garry*

*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 providing for binding arbitration for fire fighters and police officers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>	<i>1/16/2013</i>

**HOUSE . . . . . No. 2340**

By Miss Garry of Dracut, a petition (accompanied by bill, House, No. 2340) of Colleen M. Garry for legislation to provide for binding arbitration for fire fighters and police officers. Public Service.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 1605 OF 2011-2012.]

**The Commonwealth of Massachusetts**

**In the Year Two Thousand Thirteen**

An Act 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 SECTION 1. If an employee organization duly recognized as representing the  
2 firefighters or police officers of a city, town or district is engaged in an impasse with said city,  
3 town or district which has continued for thirty days after the publication of the fact-finders report  
4 pursuant to section nine of chapter one hundred and fifty E of the General Laws, or, if the parties  
5 have mutually waived the fact-finding provisions contained in said section nine of said chapter  
6 one hundred and fifty E, said employee organization shall petition the board to make an  
7 investigation. If, after an investigation, the board determines that: 1. the requirements of section  
8 nine of said chapter one hundred and fifty E have been complied with in good faith by the  
9 employee organization; 2. thirty days have passed since the date of publication of the fact-  
10 finding report pursuant to said section nine; 3. the proceedings for the prevention of any  
11 prohibited practices have been exhausted, provided that any such complaints have been filed  
12 with the commission prior to the date of the fact finder’s report; and 4. an impasse exists, the  
13 board shall notify the employer and the employee organization that the issues in dispute shall be  
14 resolved by a three-member arbitration panel, or when the parties mutually agree, the board shall  
15 select a single arbitrator in lieu of the arbitration panel. Said panel shall be comprised of three  
16 arbitrators, one selected by the employer, one selected by the employee organization, and a third  
17 impartial arbitrator, who shall act as chairman of the panel, who shall be selected by the two  
18 previously selected arbitrators. In the event that either party fails to select an arbitrator or for any

19 reason there is a delay in the naming of an arbitrator, or if the arbitrators fail to select a third  
20 arbitrator within the time prescribed by the board, the board shall appoint the arbitrator or  
21 arbitrators necessary to complete the panel, which shall act with the same force and effect as if  
22 the panel had been selected without intervention of the board. In the event that the parties  
23 mutually elect to use a single arbitrator, selected by the board, the parties shall immediately  
24 request the board to appoint said arbitrator, who shall act with the same force and effect as if a  
25 three member panel had been selected by the parties. The single arbitrator or the arbitration panel  
26 acting through its chairman, shall conduct a hearing within ten days after the date of appointment  
27 of its chairman, at a place within the locality of the municipality involved, where feasible. The  
28 chairman shall give at least seven days notice in writing to each of the other arbitrators. The  
29 chairman or single arbitrator shall give like notice to the representative of the municipal  
30 employer and employee organizations of the time and place of such hearing. The single arbitrator  
31 or chairman shall preside over the hearing and shall take testimony. Upon application and for  
32 good cause shown, a person, labor organization, or governmental unit having substantial interest  
33 therein may be granted leave to intervene by the arbitration panel. The proceedings shall be  
34 informal. Any oral or documentary evidence and other data deemed relevant by the arbitration  
35 panel or single arbitrator may be received into evidence. The arbitrators shall have the power to  
36 administer oaths and to require by subpoena the attendance and testimony of witnesses, the  
37 production of books, records, and other evidence relative to or pertinent to the issues presented to  
38 them for determination. If any person refuses to obey a subpoena, or refuses to be sworn or to  
39 testify, or if any witness, party, or attorney is guilty of any contempt while in attendance at any  
40 hearing, the arbitration panel or single arbitrator may, or the district attorney if requested, shall  
41 invoke the aid of the superior court within the jurisdiction in which the hearing is being held,  
42 which court shall issue an appropriate order. A record of the proceedings shall be kept, and the  
43 chairman or single arbitrator shall arrange for the necessary recording service. Transcripts may  
44 be ordered at the expense of the party ordering them, but the transcripts shall not be necessary for  
45 an award by the panel or single arbitrator. The hearing may be continued at the discretion of the  
46 panel or single arbitrator and shall be concluded within forty days from the time of  
47 commencement. At the conclusion of the hearing, each party shall submit a written statement  
48 containing its last and best offer for each of the issues in dispute to the panel or single arbitrator,  
49 who shall take said statements under advisement. Within ten days after the conclusion of the  
50 hearing, a majority of the panel, or the single arbitrator, shall select as the last and best  
51 arbitration award either the employer's written statement of its last and best offer, the employee  
52 organization's written statement of its last and best offer, or the recommendation of the fact-  
53 finder, if a fact-finding report and recommendations have been issued, and immediately shall  
54 give written notice of the selection to the parties. The selection shall be final and binding upon  
55 the parties and upon the appropriate legislative body. Within thirty calendar days of the last and  
56 best offer selection and award, the impartial chairperson of the arbitration panel or, the single  
57 arbitrator, shall issue a written opinion inclusive of an analysis of all statutory factors applicable  
58 to the proceedings. At any time before the rendering of an award, the chairman of the arbitration

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

99 within the scope of arbitration. The subject matter of transfer shall not be within the scope of  
100 arbitration; provided however, that the subject matters of relationship of seniority to transfers and  
101 disciplinary and punitive transfers shall be within the scope of arbitration. Notwithstanding any  
102 other provisions of this chapter to the contrary, no municipal employer shall be required to  
103 negotiate over subjects of minimum manning of shift coverage, with an employee organization  
104 representing municipal police officers and firefighters. The commencement of a new municipal  
105 finance year prior to the final awards by the arbitration panel shall not be deemed to render a  
106 dispute moot, or to otherwise impair the jurisdiction or authority of the arbitration panel or its  
107 award. Any award of the arbitration panel may be retroactive to the expiration date of the last  
108 contract. If a municipal employer, or an employee organization willfully disobeys a lawful order  
109 of enforcement pursuant to this section, or willfully encourages or offers resistance to such order,  
110 whether by strike or otherwise, the punishment for each day that such contempt continues may  
111 be a fine for each day to be determined at the discretion of said court. Each of the parties shall  
112 provide compensation for the arbitrator which he has selected pursuant to this section. The  
113 remaining costs of arbitration proceedings under this section shall be divided equally between  
114 the parties. Compensation for the arbitrators shall be in accordance with a schedule of payment  
115 established by the American Arbitration Association. No member of a unit of municipal police  
116 officers or firefighters who is employed on a less than full-time basis shall be subject to the  
117 provisions of this section.