HOUSE DOCKET, NO. 1858 FILED ON: 1/17/2013

HOUSE . . . . . No. 2425

The Commonwealth of Massachusetts

PRESENTED BY:

Angelo M. Scaccia

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 regulating collective bargaining impasses involving public employees.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Angelo M. Scaccia	*14th Suffolk*

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HOUSE . . . . . No. 2425

By Mr. Scaccia of Boston, a petition (accompanied by bill, House, No. 2425) of Angelo M. Scaccia relative to further regulating collective bargaining impasses involving public employees. Public Service.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *2971* OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act regulating collective bargaining impasses involving public employees.

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. Chapter 150E of the General Laws is hereby amended by striking out Section 9, as

appearing in Section 1 of Chapter 347 of the Acts of 1977, and inserting in place thereof the following

section—

Section 9. After a reasonable period of negotiation over the terms of a collective bargaining agreement,

either party or the parties acting jointly may petition the board for a determination of the existence of an

impasse. Upon receipt of such petition, the board shall commence an investigation forthwith to determine

if the parties have negotiated for a reasonable period of time and if an impasse exists, within ten days of

14 the receipt of such petition, the board shall notify the parties of the results of its
15 investigation. Failure to

16 notify the parties within ten days shall be taken to mean that an impasse exists.

17 Within five days after such determination, the board shall appoint a mediator to assist the
18 parties in the

19 resolution of the impasse. In the alternative, the parties may agree upon a person to serve
20 as a mediator

21 and shall notify the board of such agreement and choice of mediator. Any such mediator
22 shall be

23 empowered to order the parties to provide specific representatives authorized to enter into
24 a collective

25 bargaining agreement to be present at meetings held for said purpose of resolving the
26 impasse and

27 negotiating such an agreement.

28 After a reasonable period of mediation, not to exceed twenty days from the date of
29 appointment, said

30 mediator shall issue to the board a report indicating the results of his services in resolving
31 the impasse.

32 If the impasse continues after the conclusion of mediation, either party or the parties
33 acting jointly may

34 petition the board to initiate fact finding proceedings. Upon receipt of such petition, the
35 board shall

36 appoint a fact finder, representative of the public, from a list of qualified persons
37 maintained by the board.

38 In the alternative, the parties may agree upon a person to serve as fact finder and shall
39 notify the board of

40 such agreement and choice of fact finder. No person shall be named as a fact finder who
41 has represented

42 an employer or employee organization within the proceeding twelve months. The fact
43 finder shall be

44 subject to the rules of the board and shall, in addition to powers delegated to him by the
45 board, have the

46 power to mediate and to recommendations for the resolution of the impasse. The fact
47 finder shall transmit

48 his findings and any recommendations for the resolution of the impasse to the board and
49 to both within

50 thirty days after the date of his appointment. If the impasse remains unresolved ten days
51 after the

52 transmittal of such findings and recommendations, the board shall make them public.

53 The parties by their own agreement may mutually waive the fact finding provisions
54 contained herein and

55 may petition the board for arbitration pursuant to Sections 4 or 4B of Chapter one
56 thousand and seventyeight

57 of the Acts of nineteen hundred and seventy-three. Said waiver shall not constitute a bar
58 to any

59 arbitration award.

60 Any arbitration award in a proceeding voluntarily agreed to by the parties to resolve an
61 impasse shall be

62 binding on the parties and on the appropriate legislative body and effective and
63 enforceable pursuant to

64 the provisions of Chapter one hundred and fifty C, provided that said arbitration
65 proceeding has been

66 authorized by the appropriate legislative body or in the case of school employees, by the
67 appropriate

68 school committee.

69 If the impasse continues after the publication of the fact finder's report, the issues in
70 dispute shall be

71 returned to the parties for further bargaining.

72 Any time limitations prescribed in this section may be extended by mutual agreement of
73 the parties and

the board.

SECTION 2. Chapter 1078 of the Acts of 1973 is hereby amended by inserting after Section 4A, as added

by Section 1 of Chapter 730 of the Acts of 1977, the following section:—

Section 4B. If an employee organization is engaged in an impasse with a public employer which has

continued for thirty days after the publication of the fact finder's 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 date of the fact finder's report; and

4. An impasse exists, the board shall notify the employer and the employee organization that the issues in

dispute shall be resolved by a three-member arbitration panel or when the parties mutually agree, the

board shall select a single arbitrator in lieu of the arbitration panel.

Said panel shall be comprised of three arbitrators, one selected by the employer, one selected by the

employee organization and a third impartial arbitrator, who shall act as chairman of the panel who shall

be selected by the two previously selected arbitrators. In the event that their party fails to select an

arbitrator, or for any reason there is a delay in the naming of an arbitrator, or if the arbitrators fail to select

a third arbitrator within the time prescribed by the board, the board shall appoint the arbitrator or

arbitrators necessary to complete the panel which shall act with the same force and effect as if the panel

had been selected without intervention of the board,

In the event that the parties mutually elect to use a single arbitrator, selected by the board to appoint said

arbitrator, who shall act with the same force and effect as if a three-member panel had been selected by

the parties.

The single arbitrator or the arbitration panel acting through its chairman, shall conduct a hearing within

ten days after the date of appointment of its chairman, at a place within the locality of the municipality

involved where feasible. The chairman shall give at least seven days notice in writing to each of the other

arbitrators. The chairman or single arbitrator shall give like notice to the representatives of the municipal

employer and employee organizations of the time and place of such hearing.

The single arbitrator or chairman shall preside over the hearing and shall take testimony. Upon

132 application and for good cause shown, a person, labor organization, or government unit
133 having substantial

134 interest therein may be granted leave to intervene by the arbitration panel. The
135 proceedings shall be

136 informal. Any oral or documentary evidence and other data deemed relevant by the
137 arbitration panel or

138 single arbitrator may be received into evidence. The arbitrators shall have the power to
139 administer oaths

140 and to require by subpoena the attendance and testimony of witnesses, the production of
141 books, records

142 and other evidence relative to or pertinent to the issues presented to them for
143 determination. If any person

144 refuses to obey a subpoena or refuses to be sworn or to testify, or if any witness, party or
145 attorney is guilty

146 of any contempt while in attendance at any hearing, the arbitration panel or single
147 arbitrator may, or the

148 district attorney if requested, shall invoke the aid of the superior court within the
149 jurisdiction in which the

150 hearing is being held for the court to issue an appropriate order.

151 A record of the proceedings shall be kept, and the chairman or single arbitrator shall
152 arrange for the

153 necessary recording service. Transcripts may be ordered at the expense of the party
154 ordering them, but the

155 transcripts shall not be necessary for an award by the panel or single arbitrator. The
156 hearing may be

157 continued at the discretion of the panel or single arbitrator and shall be concluded within
158 forty days from

159 the time of commencement. At the conclusion of the hearing, each party shall submit a
160 written statement

161 containing its last and best offer for each of the issues in dispute to the panel or single
162 arbitrator, who

163 shall take said statements under advisement. Within ten days after the conclusion of the
164 hearing, a

165 majority of the panel, or the single arbitrator, shall select as the last and best arbitration
166 award either the

167 employer's written statement of its last and best offer, the employee organization's
168 written statement of

169 its last and best offer, or the recommendations of the fact finder, if a fact finding report
170 and

171 recommendations have been issued, and immediately shall give written notice of the
172 selection to the

173 parties. The selection shall be final and binding upon the parties and upon the appropriate
174 legislative

175 body. Within thirty calendar days of the last and best offer selection and award, the
176 impartial chairperson

177 of the arbitration panel, or the single arbitrator, shall issue a written opinion inclusive of
178 an analysis of all

179 statutory facts applicable to the proceedings.

180 At any time before the rendering of an award, the chairman of the arbitration panel or
181 single arbitrator, if

182 he is of the opinion that it would be useful or beneficial to do so, may remand the dispute
183 to the parties for

184 further collective bargaining. If the dispute is remanded for further collective bargaining,
185 the time

186 provisions of this act shall be extended for a period equal to that of the remand.

187 In the event that the representatives of the parties mutually resolve each of the issues in
188 dispute and agree

189 to be bound accordingly, said representatives may, at any time prior to the final decisions
190 by the panel, or

191 single arbitrator, request that the arbitration proceedings be terminated, the panel, acting
192 through its

193 chairman or single arbitrator, shall terminate the proceedings.

194 The factors among others, to be given right by the arbitration panel or single arbitrator in
195 arriving at the

196 decision shall include:

197 1. The financial ability of the municipality to meet costs. Such factors which shall be
198 taken into

199 consideration shall include but not be limited to (a) the city, town or district's state
200 reimbursements and

201 assessments; (b) the city, town or district's long and short term bonded indebtedness; (c)
202 the city, town or

203 district's estimated share in the metropolitan district commission deficit; (d) the city,
204 town or district's

205 estimated share in the Massachusetts Bay Transportation Authority's deficit; and (e)
206 consideration of the

207 average per capita property tax burden, average annual income of members of the
208 community, the effect

209 any accord by the panel or single arbitrator might have on the respective property tax
210 rates on the city or

211 town.

212 2. The interests and welfare of the public.

213 3. The hazards of employment, physical, educational. and mental qualifications, job
214 training and skills

215 involved.

216 4. A comparison of wages, hours and conditions of employment of the employees
217 involved in the

218 arbitration proceedings with the wages, hours and conditions of employment of other
219 employees

220 performing similar services and with other employees generally in public and private
221 employment in

222 comparable communities.

223 5. The decisions and recommendations of the fact finder, if any.

224 6. The average consumer prices for goods and services commonly known as the cost of
225 living.

226 7. The overall compensation presently received by the employees including direct wages
227 and fringe

228 benefits.

229 8. Changes in any of the foregoing circumstances while the arbitration proceedings were
230 pending.

231 9. Such other factors, not confined to the foregoing, which are normally or traditionally
232 taken into

233 consideration in the determination of wages, hours and conditions of employment
234 through voluntary

235 collective bargaining, mediation, fact finding, arbitration or otherwise between parties, in
236 the public

237 service or in private employment.

238 10. The stipulation of the parties.

239 Any determination or decision of the arbitration panel or single arbitrator if supported by
240 material and

241 substantive evidence on the whole record shall be binding upon the parties and may be
242 enforced at the

243 instance of either party, the single arbitrator or the arbitration panel in the superior court
244 in equity,

245 provided however, that the scope of arbitration in police matters shall be limited to
246 wages, hours, and

247 conditions of employment and shall not include the following matters of inherent
248 managerial policy: the

249 right to appoint, promote, assign and transfer employees; and provided, further, that the
250 scope of

251 arbitration in firefighter matters shall not include the right to appoint and promote
252 employees.

253 Assignments shall not be within the scope; provided, however, that the subject matters of
254 initial station

255 assignment upon appointment or promotion shall be within the scope of arbitration. The
256 subject matter of

257 transfer shall not be within the scope of arbitration, provided, however, that the subject
258 matters of

259 relationship of seniority to transfers and disciplinary and punitive transfers shall be within
260 the scope of

261 arbitration. Notwithstanding any other provisions of this chapter to the contrary, no
262 municipal employer

263 shall be required to negotiate over subjects of minimum manning of shift coverage, with
264 an employee

265 organization representing municipal police officers and firefighters.

266 The commencement of a new municipal finance year prior to the final awards by the
267 arbitration panel

268 shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or
269 authority of the

270 arbitration panel or its award. Any award of the arbitration panel may be retroactive to
271 the expiration date

272 of the last contract.

273 If a municipal employer, or an employee organization willfully disobeys a lawful order of
274 enforcement

275 pursuant to this section, or willfully encourages or offers resistance to such order whether
276 by strike or

277 otherwise, the punishment for each day that such contempt continues may be a fine for
278 each day to be

279 determined at the discretion of said court.

280 Each of the parties shall provide compensation for the arbitrator which he has selected
281 pursuant to this

282 section. The remaining costs of arbitration proceedings under this section shall be divided
283 equally

284 between the parties. Compensation for the arbitrators shall be in accordance with a
285 schedule of payment

286 established by the American Arbitration Association.