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:	DATE ADDED:
Angelo M. Scaccia	*14th Suffolk*	*1/17/2013*

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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

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

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

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

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

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

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

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

negotiating such an agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

arbitration award.

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

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

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

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

school committee.

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

returned to the parties for further bargaining.

Any time limitations prescribed in this section may be extended by mutual agreement of 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

statutory facts applicable to the proceedings.

At any time before the rendering of an award, the chairman of the arbitration 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. If the dispute is remanded for further collective bargaining, the time

provisions of this act shall be extended for a 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 right 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 on 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 while the arbitration proceedings were pending.

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 arbitration, provided, however, that the subject matters of

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

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

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

organization representing municipal police officers and firefighters.

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

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

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

of the last contract.

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

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

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

determined at the discretion of said court.

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

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

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

established by the American Arbitration Association.