SENATE DOCKET, NO. 770 FILED ON: 1/17/2013

SENATE . . . . . No. 1215

The Commonwealth of Massachusetts

PRESENTED BY:

Sal N. DiDomenico

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 rAn Act esolving collective bargaining disputes.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Sal N. DiDomenico	*Middlesex and Suffolk*
Benjamin Swan	*11th Hampden*

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SENATE . . . . . No. 1215

By Mr. DiDomenico, a petition (accompanied by bill, Senate, No. 1215) of Sal N. DiDomenico and Benjamin Swan for legislation relative to collective bargaining disputes. Public Service.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act rAn Act esolving collective bargaining disputes.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Chapter 150E, Section 9, as appearing in the 2010 Official Edition, is hereby amended by striking paragraphs 6 through 8 and inserting the following new paragraphs:-

If the parties are unable to resolve the issues in dispute within 30 days after publication of the fact finders report, either party may petition the board to order arbitration pursuant to the following:

If an employee organization duly recognized as representing the bargaining unit is engaged in an impasse which has continued for 30 days after the publication of the fact-finder's report pursuant to section 9 of chapter 150E of the General Laws, or, if the parties have mutually waived the fact-finding provisions contained in section 9 of chapter 150E, the employee organization shall petition the board to make an investigation. If, after an investigation, the board determines that: the requirements of section 9 of said chapter 150E have been complied with in good faith by the employee organization; 30 days have passed since the date of publication of the fact-finding report pursuant to said section 9; 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 an impasse exists, the board shall notify the employer and the employee organization that the issues in dispute shall be resolved by a 3 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 3 arbitrators, 1 selected by the employer, 1 selected by the employee organization, and a third impartial arbitrator, who shall act as chairman of the panel, who shall be selected by the 2 previously selected arbitrators. In the event that either 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, the parties shall immediately request the board to appoint said arbitrator, who shall act with the same force and effect as if a 3 member panel had been selected by the parties.

The single arbitrator or the arbitration panel acting through its chairman, shall conduct a hearing within 10 days after the date of appointment of its chairman. The chairman shall give at least 7 days notice of the time and place of such hearing in writing to each of the other arbitrators and to the representatives of such employer and employee organizations.

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 governmental 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, 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, whereupon the court shall 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 40 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 10 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, subject to appropriation. Within 30 calendar days of the last and best offer selection and award, the impartial chairperson

59 of the arbitration panel, or the single arbitrator, shall issue a written opinion inclusive of an
60 analysis of all statutory factors applicable to the proceedings.

61 The factors, among others, to be given weight by the arbitration panel or single arbitrator
62 in arriving at the decision shall include, when applicable:

63 (a) The financial ability of the Commonwealth to meet the costs, including, but not
64 be limited to, the commonwealth's long and short term bonded indebtedness.

65 (b) The interests and welfare of the public.

66 (c) The hazards of employment, physical, educational and mental qualifications, job
67 training and skills involved.

68 (d) A comparison of wages, hours and conditions of employment of the employees
69 involved in the arbitration proceedings with the wages, hours and conditions of employment of
70 other employees performing similar services and with other employees generally in public or
71 private employment in comparable districts, communities, or other sate of federal jurisdictions.

72 (e) The decisions and recommendations of the fact-finder, if any.

73 (f) The average consumer prices for goods and services, commonly known as the
74 cost of living.

75 (g) The overall compensation presently received by the employees, including direct
76 wages and fringe benefits.

77 (h) Changes in any of the foregoing circumstances during the pendency of the
78 arbitration proceedings.

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

83 (j) The stipulation of the parties.

84 Any determination or decision of the arbitration panel or single arbitrator if supported by
85 material and substantive evidence on the whole record shall be subject to appropriation, binding
86 upon the parties and may be enforced at the instance of either party, the single arbitrator or the
87 arbitration panel in the superior court in equity. The commencement of a new fiscal year prior to
88 the final awards by the arbitration panel shall not be deemed to render a dispute moot, or to
89 otherwise impair the jurisdiction or authority of the arbitration panel or its award. Any award of
90 the arbitration panel may be retroactive to the expiration date of the last contract.

91 If an employer, or an employee organization willfully disobeys a lawful order of
92 enforcement pursuant to this section, or willfully encourages or offers resistance to such order,
93 whether by strike or otherwise, the punishment for each day that such contempt continues may
94 be a fine for each day to be determined at the discretion of said court.

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

99 Any arbitration awarded shall be binding on the parties and on the appropriate legislative
100 body and made effective and enforceable pursuant to the provisions of chapter 150C, provided
101 that said arbitration proceeding has been authorized by the appropriate legislative body and in the
102 case of school employees, by the appropriate school committee.