

HOUSE No. 2404

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:

Angelo M. Scaccia

DISTRICT/ADDRESS:

14th Suffolk

HOUSE No. 2404

By Mr. Scaccia of Boston, a petition (accompanied by bill, House, No. 2404) 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. 2425 OF 2013-2014.]

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

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:

1 SECTION 1. Chapter 150E of the General Laws is hereby amended by striking out
2 Section 9, as appearing in Section 1 of Chapter 347 of the Acts of 1977, and inserting in place
3 thereof the following section—

4 Section 9. After a reasonable period of negotiation over the terms of a collective
5 bargaining agreement, either party or the parties acting jointly may petition the board for a
6 determination of the existence of an impasse. Upon receipt of such petition, the board shall
7 commence an investigation forthwith to determine if the parties have negotiated for a reasonable
8 period of time and if an impasse exists, within ten days of the receipt of such petition, the board
9 shall notify the parties of the results of its investigation. Failure to notify the parties within ten
10 days shall be taken to mean that an impasse exists.

11 Within five days after such determination, the board shall appoint a mediator to assist the
12 parties in the resolution of the impasse. In the alternative, the parties may agree upon a person to
13 serve as a mediator and shall notify the board of such agreement and choice of mediator. Any
14 such mediator shall be empowered to order the parties to provide specific representatives
15 authorized to enter into a collective bargaining agreement to be present at meetings held for said
16 purpose of resolving the impasse and negotiating such an agreement.

17 After a reasonable period of mediation, not to exceed twenty days from the date of
18 appointment, said mediator shall issue to the board a report indicating the results of his services
19 in resolving the impasse. If the impasse continues after the conclusion of mediation, either party
20 or the parties acting jointly may petition the board to initiate fact finding proceedings. Upon
21 receipt of such petition, the board shall appoint a fact finder, representative of the public, from a
22 list of qualified persons maintained by the board.

23 In the alternative, the parties may agree upon a person to serve as fact finder and shall
24 notify the board of such agreement and choice of fact finder. No person shall be named as a fact
25 finder who has represented an employer or employee organization within the proceeding twelve
26 months. The fact finder shall be subject to the rules of the board and shall, in addition to powers
27 delegated to him by the board, have the power to mediate and to recommendations for the
28 resolution of the impasse. The fact finder shall transmit his findings and any recommendations
29 for the resolution of the impasse to the board and to both within thirty days after the date of his
30 appointment. If the impasse remains unresolved ten days after the transmittal of such findings
31 and recommendations, the board shall make them public. The parties by their own agreement
32 may mutually waive the fact finding provisions contained herein and may petition the board for
33 arbitration pursuant to Sections 4 or 4B of Chapter one thousand and seventy eight of the Acts of

34 nineteen hundred and seventy-three. Said waiver shall not constitute a bar to any arbitration
35 award.

36 Any arbitration award in a proceeding voluntarily agreed to by the parties to resolve an
37 impasse shall be binding on the parties and on the appropriate legislative body and effective and
38 enforceable pursuant to the provisions of Chapter one hundred and fifty C, provided that said
39 arbitration proceeding has been authorized by the appropriate legislative body or in the case of
40 school employees, by the appropriate school committee.

41 If the impasse continues after the publication of the fact finder's report, the issues in
42 dispute shall be returned to the parties for further bargaining.

43 Any time limitations prescribed in this section may be extended by mutual agreement of
44 the parties and the board.

45 SECTION 2. Chapter 1078 of the Acts of 1973 is hereby amended by inserting after
46 Section 4A, as added by Section 1 of Chapter 730 of the Acts of 1977, the following section:—

47 Section 4B. If an employee organization is engaged in an impasse with a public employer
48 which has continued for thirty days after the publication of the fact finder's report pursuant to
49 Section nine of Chapter one hundred and fifty E of the General Laws or, if the parties have
50 mutually waived the fact finding provisions contained in said Section nine of said Chapter one
51 hundred and fifty E said employee organization shall petition the board to make an investigation.
52 If, after an investigation, the board determines that:

53 1. The requirements of Section nine of said Chapter one hundred and fifty E have been
54 complied with in good faith by the employee organization;

55 2. Thirty days have passed since the date of publication of the fact finding report pursuant
56 to said section nine;

57 3. The proceedings for the prevention of any prohibited practices have been exhausted
58 provided that any such complaints have been filed with the commission prior to the date of the
59 fact finder's report; and

60 4. An impasse exists, the board shall notify the employer and the employee organization
61 that the issues in dispute shall be resolved by a three-member arbitration panel or when the
62 parties mutually agree, the board shall select a single arbitrator in lieu of the arbitration panel.
63 Said panel shall be comprised of three arbitrators, one selected by the employer, one selected by
64 the employee organization and a third impartial arbitrator, who shall act as chairman of the panel
65 who shall be selected by the two previously selected arbitrators. In the event that their party fails
66 to select an arbitrator, or for any reason there is a delay in the naming of an arbitrator, or if the
67 arbitrators fail to select a third arbitrator within the time prescribed by the board, the board shall
68 appoint the arbitrator or arbitrators necessary to complete the panel which shall act with the same
69 force and effect as if the panel had been selected without intervention of the board, In the event
70 that the parties mutually elect to use a single arbitrator, selected by the board to appoint said
71 arbitrator, who shall act with the same force and effect as if a three-member panel had been
72 selected by the parties.

73 The single arbitrator or the arbitration panel acting through its chairman, shall conduct a
74 hearing within ten days after the date of appointment of its chairman, at a place within the
75 locality of the municipality involved where feasible. The chairman shall give at least seven days
76 notice in writing to each of the other arbitrators. The chairman or single arbitrator shall give like

77 notice to the representatives of the municipal employer and employee organizations of the time
78 and place of such hearing.

79 The single arbitrator or chairman shall preside over the hearing and shall take testimony.
80 Upon application and for good cause shown, a person, labor organization, or government unit
81 having substantial interest therein may be granted leave to intervene by the arbitration panel. The
82 proceedings shall be informal. Any oral or documentary evidence and other data deemed relevant
83 by the arbitration panel or single arbitrator may be received into evidence. The arbitrators shall
84 have the power to administer oaths

85 and to require by subpoena the attendance and testimony of witnesses, the production of
86 books, records and other evidence relative to or pertinent to the issues presented to them for
87 determination. If any person refuses to obey a subpoena or refuses to be sworn or to testify, or if
88 any witness, party or attorney is guilty of any contempt while in attendance at any hearing, the
89 arbitration panel or single arbitrator may, or the district attorney if requested, shall invoke the aid
90 of the superior court within the jurisdiction in which the hearing is being held for the court to
91 issue an appropriate order.

92 A record of the proceedings shall be kept, and the chairman or single arbitrator shall
93 arrange for the necessary recording service. Transcripts may be ordered at the expense of the
94 party ordering them, but the transcripts shall not be necessary for an award by the panel or single
95 arbitrator. The hearing may be continued at the discretion of the panel or single arbitrator and
96 shall be concluded within forty days from the time of commencement. At the conclusion of the
97 hearing, each party shall submit a written statement containing its last and best offer for each of
98 the issues in dispute to the panel or single arbitrator, who shall take said statements under

99 advisement. Within ten days after the conclusion of the hearing, a majority of the panel, or the
100 single arbitrator, shall select as the last and best arbitration award either the employer's written
101 statement of its last and best offer, the employee organization's written statement of its last and
102 best offer, or the recommendations of the fact finder, if a fact finding report and

103 recommendations have been issued, and immediately shall give written notice of the
104 selection to the parties. The selection shall be final and binding upon the parties and upon the
105 appropriate legislative body. Within thirty calendar days of the last and best offer selection and
106 award, the impartial chairperson of the arbitration panel, or the single arbitrator, shall issue a
107 written opinion inclusive of an analysis of all statutory facts applicable to the proceedings.

108 At any time before the rendering of an award, the chairman of the arbitration panel or
109 single arbitrator, if he is of the opinion that it would be useful or beneficial to do so, may remand
110 the dispute to the parties for further collective bargaining. If the dispute is remanded for further
111 collective bargaining, the time provisions of this act shall be extended for a period equal to that
112 of the remand.

113 In the event that the representatives of the parties mutually resolve each of the issues in
114 dispute and agree to be bound accordingly, said representatives may, at any time prior to the final
115 decisions by the panel, or single arbitrator, request that the arbitration proceedings be terminated,
116 the panel, acting through its chairman or single arbitrator, shall terminate the proceedings.

117 The factors among others, to be given right by the arbitration panel or single arbitrator in
118 arriving at the decision shall include:

119 1. The financial ability of the municipality to meet costs. Such factors which shall be
120 taken into consideration shall include but not be limited to (a) the city, town or district's state

121 reimbursements and assessments; (b) the city, town or district's long and short term bonded
122 indebtedness; (c) the city, town or district's estimated share in the metropolitan district
123 commission deficit; (d) the city, town or district's estimated share in the Massachusetts Bay
124 Transportation Authority's deficit; and (e) consideration of the average per capita property tax
125 burden, average annual income of members of the community, the effect any accord by the panel
126 or single arbitrator might have on the respective property tax rates on the city or town.

127 2. The interests and welfare of the public.

128 3. The hazards of employment, physical, educational. and mental qualifications, job
129 training and skills involved.

130 4. A comparison of wages, hours and conditions of employment of the employees
131 involved in the arbitration proceedings with the wages, hours and conditions of employment of
132 other employees performing similar services and with other employees generally in public and
133 private employment in comparable communities.

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

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

137 7. The overall compensation presently received by the employees including direct wages
138 and fringe benefits.

139 8. Changes in any of the foregoing circumstances while the arbitration proceedings were
140 pending.

141 9. Such other factors, not confined to the foregoing, which are normally or traditionally
142 taken into consideration in the determination of wages, hours and conditions of employment
143 through voluntary collective bargaining, mediation, fact finding, arbitration or otherwise between
144 parties, in the public service or in private employment.

145 10. The stipulation of the parties.

146 Any determination or decision of the arbitration panel or single arbitrator if supported by
147 material and substantive evidence on the whole record shall be binding upon the parties and may
148 be enforced at the instance of either party, the single arbitrator or the arbitration panel in the
149 superior court in equity, provided however, that the scope of arbitration in police matters shall be
150 limited to wages, hours, and conditions of employment and shall not include the following
151 matters of inherent managerial policy: the right to appoint, promote, assign and transfer
152 employees; and provided, further, that the scope of arbitration in firefighter matters shall not
153 include the right to appoint and promote employees. Assignments shall not be within the scope;
154 provided, however, that the subject matters of initial station assignment upon appointment or
155 promotion shall be within the scope of arbitration. The subject matter of transfer shall not be
156 within the scope of arbitration, provided, however, that the subject matters of relationship of
157 seniority to transfers and disciplinary and punitive transfers shall be within the scope of
158 arbitration. Notwithstanding any other provisions of this chapter to the contrary, no municipal
159 employer shall be required to negotiate over subjects of minimum manning of shift coverage,
160 with an employee organization representing municipal police officers and firefighters. The
161 commencement of a new municipal finance year prior to the final awards by the arbitration panel
162 shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority

163 of the arbitration panel or its award. Any award of the arbitration panel may be retroactive to the
164 expiration date of the last contract.

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

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