

SENATE No. 1425

The Commonwealth of Massachusetts

PRESENTED BY:

Michael F. Rush

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 to resolve collective bargaining disputes.

PETITION OF:

NAME:

Michael F. Rush

DISTRICT/ADDRESS:

Norfolk and Suffolk

SENATE No. 1425

By Mr. Rush, a petition (accompanied by bill, Senate, No. 1425) of Michael F. Rush for legislation to resolve collective bargaining disputes. Public Service.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1284 OF 2013-2014.]

The Commonwealth of Massachusetts

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

An Act to resolve 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:

1 SECTION 1. Section 9 of chapter 150E of the General Laws, as appearing in the 2012
2 Official Edition, is hereby amended by striking paragraphs six through eight and inserting in
3 place thereof the following new paragraphs:-

4 If the parties are unable to resolve the issues in dispute within thirty (30) days after
5 publication of the fact finder's report, either party may petition the board to order arbitration
6 pursuant to the following. If an employee organization duly recognized as representing the
7 bargaining unit is engaged in an impasse which has continued for thirty days after the publication
8 of the fact-finder's report pursuant to section 9 of chapter 150E of the General Laws, or, if the
9 parties have mutually waived the fact-finding provisions contained in said section 9 of said
10 chapter 150EE, said employee organization shall petition the board to make an investigation. If,

11 after an investigation, the board determines that: the requirements of section 9 of said chapter
12 150E have been complied with in good faith by the employee organization; thirty (30) days have
13 passed since the date of publication of the fact-finding report pursuant to said section nine; the
14 proceedings for the prevention of any prohibited practices have been exhausted, provided that
15 any such complaints have been filed with the commission prior to the date of the fact-finder's
16 report; and an impasse exists, the board shall notify the employer and the employee organization
17 that the issues in dispute shall be resolved by a three-member arbitration panel, or when the
18 parties mutually agree, the board shall select a single arbitrator in lieu of the arbitration panel.

19 Said panel shall be comprised of 3 arbitrators, one selected by the employer, one selected
20 by the employee organization, and a third impartial arbitrator, who shall act as chairman of the
21 panel, who shall be selected by the two previously selected arbitrators. In the event that either
22 party fails to select an arbitrator or for any reason there is a delay in the naming of an arbitrator,
23 or if the arbitrators fail to select a third arbitrator within the time prescribed by the board, the
24 board shall appoint the arbitrator or arbitrators necessary to complete the panel, which shall act
25 with the same force and effect as if the panel had been selected without intervention of the board.

26 In the event that the parties mutually elect to use a single arbitrator, selected by the board,
27 the parties shall immediately request the board to appoint said arbitrator, who shall act with the
28 same force and effect as if a three-member panel had been selected by the parties.

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

33 The single arbitrator or chairman shall preside over the hearing and shall take testimony.
34 Upon application and for good cause shown, a person, labor organization, or governmental unit
35 having substantial interest therein may be granted leave to intervene by the arbitration panel.
36 The proceedings shall be informal. Any oral or documentary evidence and other data deemed
37 relevant by the arbitration panel or single arbitrator may be received into evidence. The
38 arbitrators shall have the power to administer oaths and to require by subpoena the attendance
39 and testimony of witnesses, the production of books, records, and other evidence relative to or
40 pertinent to the issues presented to them for determination. If any person refuses to obey a
41 subpoena, refuses to be sworn or to testify, or if any witness, party, or attorney is guilty of any
42 contempt while in attendance at any hearing, the arbitration panel or single arbitrator may, or the
43 district attorney if requested, shall invoke the aid of the superior court within the jurisdiction in
44 which the hearing is being held, whereupon the court shall issue an appropriate order.

45 A record of the proceedings shall be kept, and the chairman or single arbitrator shall
46 arrange for the necessary recording service. Transcripts may be ordered at the expense of the
47 party ordering them, but the transcripts shall not be necessary for an award by the panel or single
48 arbitrator. The hearing may be continued at the discretion of the panel or single arbitrator and
49 shall be concluded within forty days from the time of commencement. At the conclusion of the
50 hearing, each party shall submit a written statement containing its last and best offer for each of
51 the issues in dispute to the panel or single arbitrator, who shall take said statements under
52 advisement. Within ten days after the conclusion of the hearing, a majority of the panel, or the
53 single arbitrator, shall select as the last and best arbitration award either the employer's written
54 statement of its last and best offer, the employee organizations written statement of its last and
55 best offer, or the recommendations of the fact-finder, if a fact-finding report and

56 recommendations have been issued, and immediately shall give written notice of the selection to
57 the parties. The selection shall be final and binding upon the parties, subject to appropriation.
58 Within thirty calendar days of the last and best offer selection and award, the impartial
59 chairperson of the arbitration panel, or the single arbitrator, shall issue a written opinion
60 inclusive of an 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 (1) The financial ability of the commonwealth to meet the costs. Such factors which shall
64 be taken into consideration shall include, be not be limited to, the commonwealth's long and
65 short term bonded indebtedness;

66 (2) the interests and welfare of the public;

67 (3) the hazards of employment, physical, educational and mental qualifications, job
68 training and skills involved;

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

73 (5) the decisions and recommendations of the fact-finder, if any;

74 (6) the average consumer prices for goods and services, commonly known as the cost of
75 living;

76 (7) the overall compensation presently received by the employees, including direct wages
77 and fringe benefits; and

78 (8) changes in any of the foregoing circumstances during the pendency of the arbitration
79 proceedings.

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

84 The stipulation of the parties.

85 Any determination or decision of the arbitration panel or single arbitrator if supported by
86 material and substantive evidence on the whole record shall be subject to appropriation, binding
87 upon the parties and may be enforced at the instance of either party, the single arbitrator or the
88 arbitration panel in the superior court in equity.

89 The commencement of a new fiscal year prior to the final awards by the arbitration panel
90 shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority
91 of the arbitration panel or its award. Any award of the arbitration panel may be retroactive to the
92 expiration date of the last contract.

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

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

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