

SENATE No. 1149

The Commonwealth of Massachusetts

PRESENTED BY:

Nick Collins

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 relative to collective bargaining right.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Nick Collins</i>	<i>First Suffolk</i>	
<i>Paul R. Feeney</i>	<i>Bristol and Norfolk</i>	<i>3/16/2023</i>

SENATE No. 1149

By Mr. Collins, a petition (accompanied by bill, Senate, No. 1149) of Nick Collins for legislation relative to collective bargaining right. Labor and Workforce Development.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act relative to collective bargaining right.

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

1 If an employee organization duly recognized as representing employees of the
2 commonwealth is engaged in an impasse with the commonwealth which has continued for thirty
3 days after the publication of the fact-finders report pursuant to section nine of chapter one
4 hundred and fifty E of the General Laws, or, if the parties have mutually waived the fact-finding
5 provisions contained in said section nine of said chapter one hundred and fifty E, said employee
6 organization shall petition the board to make an investigation. If, after an investigation, the board
7 determines that: 1. the requirements of section nine of said chapter one hundred and fifty E have
8 been complied with in good faith by the employee organization; 2. thirty days have passed since
9 the date of publication of the fact-finding report pursuant to said section nine; 3. the proceedings
10 for the prevention of any prohibited practices have been exhausted, provided that any such
11 complaints have been filed with the commission prior to the date of the fact-finders report; and 4.
12 an impasse exists, the board shall notify the commonwealth and the employee organization that

13 the issues in dispute shall be resolved by a three-member arbitration panel, or when the parties
14 mutually agree, the board shall select a single arbitrator in lieu of the arbitration panel.

15 Said panel shall be comprised of three arbitrators, one selected by the employee
16 organization, and a third impartial arbitrator, who shall act as chairman of the panel, who shall be
17 selected by the two previously selected arbitrators. In the event that either party fails to select an
18 arbitrator or for any reason there is a delay in the naming of an arbitrator, or if the arbitrators fail
19 to select a third arbitrator within the time prescribed by the board, the board shall appoint the
20 arbitrator or arbitrators necessary to complete the panel, which shall act with the same force and
21 effect as if the panel had been selected without intervention of the board. In the event that the
22 parties mutually elect to use a single arbitrator, selected by the board, the parties shall
23 immediately request the board to appoint said arbitrator, who shall act with the same force and
24 effect as if a three member panel had been selected by the parties. The single arbitrator or the
25 arbitration panel acting through its chairman, shall conduct a hearing within ten days after the
26 date of appointment of its chairman, at a place mutually convenient to both parties, where
27 feasible. The chairman shall give at least seven days notice in writing to each of the other
28 arbitrators. The chairman or single arbitrator shall give like notice to the representative of the
29 Commonwealth and employee organizations of the time and place of such hearing.

30 The single arbitrator or chairman shall preside over the hearing and shall take testimony.
31 Upon application and for good cause shown, a person, labor organization, or governmental unit
32 having substantial interest therein may be granted leave to intervene by the arbitration panel. The
33 proceedings shall be informal. Any oral or documentary evidence and other data deemed relevant
34 by the arbitration panel or single arbitrator may be received into evidence. The arbitrators shall
35 have the power to administer oaths and to require by subpoena the attendance and testimony of

36 witnesses, the production of books, records, and other evidence relative to or pertinent to the
37 issues presented to them for determination. If any person refuses to obey a subpoena or refuses to
38 be sworn or to testify, or if any witness, party, or attorney is guilty of any contempt while in
39 attendance at any hearing, the arbitration panel or single arbitrator may, or the district attorney if
40 requested, shall invoke the aid of the superior court within the jurisdiction in which the hearing is
41 being held, which court shall issue an appropriate order. A record of the proceedings shall be
42 kept, and the chairman or single arbitrator shall arrange for the necessary recording service.
43 Transcripts may be ordered at the expense of the party ordering them, but the transcripts shall not
44 be necessary for an award by the panel or single arbitrator. The hearing may be continued at the
45 discretion of the panel or single arbitrator and shall be concluded within forty days from the time
46 of commencement. At the conclusion of the hearing, each party shall submit a written statement
47 containing its last and best offer for each of the issues in dispute to the panel or single arbitrator,
48 who shall take said statements under advisement.

49 Within ten days after the conclusion of the hearing, a majority of the panel, or the single
50 arbitrator, shall select as the last and best arbitration award either the commonwealth's written
51 statement of its last and best offer, the employee organization's written statement of its last and
52 best offer, or the recommendations of the fact-finder, if a fact-finding report and
53 recommendations have been issued, and immediately shall give written notice of the selection to
54 the parties. The selection shall be final and binding upon the parties and upon the appropriate
55 legislative body. Within thirty calendar days of the last and best offer selection and award, the
56 impartial chairperson of the arbitration panel or, the single arbitrator, shall issue a written
57 opinion inclusive of an analysis of all statutory factors applicable to the proceedings. At any time
58 before the rendering of an award, the chairman of the arbitration panel or single arbitrator, if he

59 is of the opinion that it would be useful or beneficial to do so, may remand the dispute to the
60 parties for further collective bargaining for the period not to exceed three weeks and notify the
61 board of the remand. If the dispute is remanded for further collective bargaining the time
62 provisions of this act shall be extended for a time period equal to that of the remand.

63 In the event that the representatives of the parties mutually resolve each of the issues in
64 dispute and agree to be bound accordingly, said representatives may, at any time prior to the final
65 decisions by the panel, or single arbitrator, request that the arbitration proceedings be terminated,
66 the panel, acting through its chairman or single arbitrator, shall terminate the proceedings. The
67 factors among others, to be given weight by the arbitration panel or single arbitrator in arriving at
68 the decision shall include: (1) The financial ability of the commonwealth to meet costs. Such
69 factors which shall be taken into consideration shall include but not be limited to: (a) the city,
70 town, or district's state reimbursements and assessments; (b) the city, town, or district's long and
71 short-term bonded indebtedness; (c) the city, town, or district's estimated share in the
72 metropolitan district commission deficit; (d) the city, town, or district's estimated share in the
73 Massachusetts Bay Transportation Authority's deficit; and (e) consideration of the average per
74 capita property tax burden, average annual income of members of the community, the effect any
75 accord by the panel or single arbitrator might have on the respective property tax rates of the city
76 or town. (2) The interests and welfare of the public. (3) The hazards of employment, physical,
77 educational and mental qualifications, job training and skills involved. (4) A comparison of
78 wages, hours and conditions of employment of the employees involved in the arbitration
79 proceedings with the wages, hours and conditions of employment of other employees performing
80 similar services and with other employees generally in public and private employment in
81 comparable communities. (5) The decisions and recommendations of the fact-finder, if any. (6)

82 The average consumer prices for goods and services, commonly known as the cost of living. (7)
83 The overall compensation presently received by the employees, including direct wages and
84 fringe benefits. (8) Changes in any of the foregoing circumstances during the pendency of the
85 arbitration proceedings. (9) Such other factors, not confined to the foregoing, which are normally
86 or traditionally taken into consideration in the determination of wages, hours and conditions of
87 employment through voluntary collective bargaining, mediation, fact-finding, arbitration or
88 otherwise between parties, in the public service or in private employment. (10) The stipulation of
89 the parties.

90 Any determination or decision of the arbitration panel or single arbitrator if supported by
91 material and substantive evidence on the whole record shall be binding upon the parties and may
92 be enforced at the instance of either party, the single arbitrator or the arbitration panel in the
93 superior court in equity, provided however, that the scope of arbitration in police matters shall be
94 limited to wages, hours, and conditions of employment and shall not include the following
95 matters of inherent managerial policy: the right to appoint, promote, assign, and transfer
96 employees; and provided, further, that the scope of arbitration in firefighter matters shall not
97 include the right to appoint and promote employees. Assignments shall not be within the scope;
98 provided, however, that the subject matters of initial station assignment upon appointment or
99 promotion shall be within the scope of arbitration. The subject matter of transfer shall not be
100 within the scope of arbitration, provided however, that the subject matters of relationship of
101 seniority to transfers and disciplinary and punitive transfers shall be within the scope of
102 arbitration. Notwithstanding any other provisions of this chapter to the contrary, the
103 commonwealth shall be required to negotiate over subjects of minimum manning of shift
104 coverage.

105 The commencement of a new fiscal year prior to the final awards by the arbitration panel
106 shall not be deemed to render a dispute moot or to otherwise impair the jurisdiction or authority
107 of the arbitration panel or its award. Any award of the arbitration panel shall be retroactive to the
108 expiration date of the last contract. If the commonwealth, or an employee organization willfully
109 disobeys a lawful order of enforcement pursuant to this section, or willfully encourages or offers
110 resistance to such order, whether by strike or otherwise, the punishment for each day that such
111 contempt continues may be a fine for each day to be determined at the discretion of said court.
112 Each of the parties shall provide compensation for the arbitrator which he has selected pursuant
113 to this section. The remaining costs of arbitration proceedings under this section shall be divided
114 equally between the parties. Compensation for the arbitrators shall be in accordance with a
115 schedule of payment established by the American Arbitration Association.