

SENATE No. 1402

The Commonwealth of Massachusetts

PRESENTED BY:

Steven A. Tolman

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:

Steven A. Tolman

DISTRICT/ADDRESS:

.....

SENATE No. 1402

By Mr. Tolman, petition (accompanied by bill, Senate, No. 1402) of Tolman for legislation to resolve collective bargaining disputes [Joint Committee on Public Service].

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1218 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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. Chapter 150E, Section 9 is hereby amended by deleting paragraphs six
2 through eight and inserting the following new paragraphs:

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

6 If an employee organization duly recognized as representing the bargaining unit is
7 engaged in an impasse which has continued for thirty days after the publication of the fact-
8 finder?s report pursuant to section nine of chapter one hundred and fifty E of the General Laws,
9 or, if the parties have mutually waived the fact-finding provisions contained in said section nine
10 of said chapter one hundred and fifty E, said employee organization shall petition the board to

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

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

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

31 The single arbitrator or the arbitration panel acting through its chairman, shall conduct a
32 hearing within ten days after the date of appointment of its chairman. The chairman shall give at

33 least seven days notice of the time and place of such hearing in writing to each of the other
34 arbitrators and to the representatives of such employer and employee organizations.

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

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

56 statement of its last and best offer, the employee organization's written statement of its last and
57 best offer, or the recommendations of the fact-finder, if a fact-finding report and
58 recommendations have been issued, and immediately shall give written notice of the selection to
59 the parties. The selection shall be final and binding upon the parties, subject to appropriation.
60 Within thirty calendar days of the last and best offer selection and award, the impartial
61 chairperson of the arbitration panel, or the single arbitrator, shall issue a written opinion
62 inclusive of an analysis of all statutory factors applicable to the proceedings.

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

65 The financial ability of the commonwealth to meet the costs. Such factors which shall be
66 taken into consideration shall include, but not be limited to, the commonwealth's long and short
67 term bonded indebtedness.

68 The interests and welfare of the public.

69 The hazards of employment, physical, educational and mental qualifications, job training
70 and skills involved.

71 A comparison of wages, hours and conditions of employment of the employees involved
72 in the arbitration proceedings with the wages, hours and conditions of employment of other
73 employees performing similar services and with other employees generally in public or private
74 employment in comparable districts, communities, or other state or federal jurisdictions.

75 The decisions and recommendations of the fact-finder, if any.

76 The average consumer prices for goods and services, commonly known as the cost of
77 living.

78 The overall compensation presently received by the employees, including direct wages
79 and fringe benefits.

80 Changes in any of the foregoing circumstances during the pendency of the arbitration
81 proceedings.

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

86 The stipulation of the parties.

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

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

95 If an employer, or an employee organization willfully disobeys a lawful order of
96 enforcement pursuant to this section, or willfully encourages or offers resistance to such order,

97 whether by strike or otherwise, the punishment for each day that such contempt continues may
98 be a fine for each day to be determined at the discretion of said court.

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

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