

HOUSE No. 1829

The Commonwealth of Massachusetts

PRESENTED BY:

Matthew C. Patrick

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 passage of the accompanying bill:

An Act Act relative binding arbitration.

PETITION OF:

NAME:

Matthew C. Patrick

DISTRICT/ADDRESS:

3rd Barnstable

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1830 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT ACT RELATIVE BINDING ARBITRATION.

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 701 of the Acts of 1960, as most recently amended by chapter 243 of the
2 acts of 2002, is hereby amended by inserting after section 15, the following new sections:-

3 Section 15A. Notwithstanding any general or special law to the contrary, the authority or any
4 organizations representing employees of the authority shall not be permitted to submit any dispute over
5 the terms of a collective bargaining agreement to arbitration except in accordance with Section 15A
6 through section 15D, inclusive; provided, however, that this section shall not limit the rights of
7 organizations representing employees of the authority to submit grievances to arbitration in accordance
8 with the collective bargaining agreement between the parties.

9 In the event the directors and any organizations representing employees of the authority have not reached
10 an agreement within 90 days from the date of the expiration of the agreement, either party may notify the
11 other that it desires mediation. The parties may agree upon a person to serve as a mediator or, if unable to
12 agree on said mediator, either party or the parties acting jointly may petition the board of conciliation and
13 arbitration to appoint a mediator from a list of qualified persons maintained by the board.

14 Section 15B. After a reasonable period of mediation, not to exceed 45 days from the date of appointment,
15 said mediator shall issue a report indicating the results of his services in resolving the impasse. If at the
16 conclusion of mediation the impasse still exists, the mediator shall so certify. In the event, the mediator
17 shall certify in his report the last best offer of each party on each unresolved issue which has been
18 submitted to mediation and shall also certify the agreement of the parties on each issue on which
19 agreement has been reached and shall submit such certifications to the arbitrator selected by the parties. In

20 such event, so long as the mediator shall also certify that the parties have bargained in good faith, either
21 party may notify the other that it desires arbitration of the dispute. Within 10 days of said notice, the
22 parties shall meet to select a single neutral arbitrator.

23 If, within 15 days, the parties fail to select such single arbitrator, either party may forthwith petition the
24 board of conciliation and arbitration to request a list of five arbitrators from the American Arbitration
25 Association and said Association shall certify to the board that such arbitrators on the list it provides
26 possess the qualifications as provided in section 30. The parties shall thereupon meet to select such
27 arbitrator by striking one name each until one name remains and that person shall serve as the neutral
28 arbitrator. If, after 10 days, one of the parties declines to strike their names, the other party shall strike
29 two names and the board shall forthwith select the arbitrator from the remaining three names.

30 Section 15C. The single arbitrator, whether agreed upon by the parties or selected by the board of
31 conciliation and arbitration, shall be a legal resident of the commonwealth and shall be experienced in
32 state and local finance. The arbitrator shall rely primarily on the following factors in determining the
33 basis for an award:

34 (a) The financial ability of the authority to meet additional costs, which shall include but not be limited to:
35 (i) the statutory requirement that the authority produce revenues in excess of expenses; (ii) the financial
36 ability of the individual communities and the commonwealth to meet additional costs; (iii) the average per
37 capita tax burden, average annual income and sources of revenue within the commonwealth, and the
38 effect of any arbitration award on the respective property tax rates of the cities and towns within the
39 authority's district.

40 (b) The overall compensation presently received by the employees, having regard not only for wages for
41 time actually worked but also for wages for time not worked, including vacations, holidays and other
42 excused time.

43 (c) All benefits received by the employees, including insurance, pension, as well as the continuity and
44 stability of employment.

45 (d) The hazards of employment, physical, educational and mental qualifications, job training and skills
46 involved.

47 (e) A comparison of wages, hours, and conditions of employment of the employees involved in the
48 arbitration proceedings with the wages, hours and conditions of employment of other employees
49 performing similar services within the commonwealth and with other employees generally in public and
50 private employment within the commonwealth.

51 (f) The average consumer price for goods and services, commonly known as the cost of living.

52 (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

53 (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into
54 consideration in the determination of wages, hours and conditions of employment through voluntary
55 collective bargaining, mediation, fact-finding, arbitration or otherwise between parties, in the public
56 service of the commonwealth, and which are not precluded from bargaining under section 25.

57 (i) The stipulation of the parties.

58 Section 15D. The arbitrator shall be limited in making his award to choosing between the last best offers
59 of the parties on each issue as certified in the mediator's report or any award in the range between the last
60 best offers of the parties. The arbitrator shall make no award on any issue found by him to be not
61 authorized by law to be submitted to arbitration, but shall state such finding in his written opinion. Within
62 30 calendar days of an award, the arbitrator shall issue a written opinion inclusive of an analysis of all
63 statutory factors applicable to the proceedings. Any determination by the arbitrator, if supported by
64 material and substantial evidence on the record, shall be binding upon the parties and upon the
65 appropriate legislative or appropriating body and may be enforced at the insistence of either party or by
66 the arbitrator in the superior court. The scope of arbitration shall be limited to wages, hours, and
67 conditions of employment and shall not include any provisions for any cost of living adjustment which
68 are based on changes in the consumer price index after the expiration of the contract period covered by
69 the award. In addition, any wage or salary adjustments shall be expressed in percent or dollar amounts,
70 and in no case shall there be any provision for salary adjustments to occur after the expiration of the
71 contract period covered by the award.

72 The cost, if any, of the mediation and of arbitration proceedings, exclusive of the expenses of the
73 individual parties shall, be divided equally by the parties and shall be in accordance with a schedule of
74 payments established by the American Arbitration Association