

HOUSE No. 2363

The Commonwealth of Massachusetts

PRESENTED BY:

Daniel J. Ryan

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 representation.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|--------------------------------|-----------------------|
| <i>Daniel J. Ryan</i> | <i>2nd Suffolk</i> |
| <i>Harold P. Naughton, Jr.</i> | <i>12th Worcester</i> |
| <i>John H. Rogers</i> | <i>12th Norfolk</i> |
| <i>David Biele</i> | <i>4th Suffolk</i> |

HOUSE No. 2363

By Mr. Ryan of Boston, a petition (accompanied by bill, House, No. 2363) of Daniel J. Ryan and others relative to collective bargaining representation for public employees. Public Service.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to collective bargaining representation.

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 1 of Chapter 150E of the general laws is hereby amended by inserting
2 after the paragraph entitled “Legislative body” the following: “Non-member” An employee who
3 has not maintained membership within the employee organization.

4 Section 2 – Section 2 of Chapter 150E of the general laws is hereby amended by deleting
5 the last sentence and inserting the following: An employee shall have the right to refrain from
6 any or all such activities and thereby be classified as a “non-member” of the employee
7 organization recognized as the exclusive representative.

8 Section 3 -- Section 3 of Chapter 150E of the general laws is hereby amended by
9 inserting, at the end of the first paragraph, the following: Notwithstanding the above, the
10 commission shall consider union membership as a primary factor in determining whether a group
11 shares a community of interest. Any union which desires not to represent one or more non-
12 member(s) in a collective bargaining unit shall have the right to submit a unit clarification

13 petition to the commission for a clarification of the appropriate bargaining unit to exclude non-
14 members. The commission is hereby directed to amend the provisions of 465 CMR 14.03(2) to
15 reflect this legislative policy directive.

16 Section 4 – Section 5 of Chapter 150E of the general laws is hereby amended by deleting
17 the current language of Section 5 in its entirety and by inserting in its place the following as
18 Section 5:

19 For a union that has chosen not to represent and exclude non-members from its collective
20 bargaining unit it shall have no obligation, nor will it be a violation of Chapter 150E, to refuse to
21 represent non-members or to refuse to process any statutory or administrative appeal(s),
22 contractual grievances or to refuse to file for arbitration, or to refuse to represent any non-
23 member at any level of the grievance and arbitration process under the parties' collective
24 bargaining agreement or any statutory or administrative proceeding under the general or special
25 laws of the Commonwealth or its political subdivisions.

26 For a union that has not chosen to exclude non-members from its collective bargaining
27 unit the exclusive representative shall have the right to act for and negotiate agreements covering
28 all employees in the unit and shall be responsible for representing the interests of all such
29 employees without discrimination and without regard to employee organization membership
30 unless the exclusive representative has petitioned the commission to exclude non-members from
31 the bargaining unit. Provided, however, that notwithstanding this or any other general or special
32 law to the contrary, the exclusive representative may require a non-member to pay for the
33 reasonable costs of advancing a grievance on his or her behalf to arbitration, or the statutory or
34 administrative hearing including arbitrator's or hearing officer's fees and the fees of the attorney

35 representing the employee organization. Employee organizations may require non-members to
36 pre-pay all such anticipated costs and fees prior to any grievance or arbitration, or the statutory
37 or administrative hearing. Failure to pay such costs and fees shall relieve the exclusive
38 representative of any further responsibility to the non-member regarding the grievance or
39 arbitration matter or the statutory or administrative hearing.

40 Notwithstanding this or any other general or special law to the contrary, an exclusive
41 representative's duty of fair representation to a public employee who is in the bargaining unit
42 shall be limited to the negotiation and enforcement of the terms of agreements with the public
43 employer. Nothing in the laws of the Commonwealth shall be construed to require an employee
44 organization to provide its members any legal, economic or job-related services or benefits
45 outside of the collective bargaining agreement.

46 Notwithstanding any general or special law, or any collective bargaining agreement to the
47 contrary, the employee organization, recognized as the exclusive representative for both
48 members and non-members shall not be required to process any statutory or administrative
49 appeal(s), contractual grievances or file for arbitration, or represent any non-member of the
50 employee organization at any level of the grievance and arbitration process under the parties'
51 collective bargaining agreement or any statutory or administrative proceeding under the general
52 or special laws of the Commonwealth or its political subdivisions. The non-member shall be
53 fully responsible for the timely filing of all grievances, and arbitrations, statutory and
54 administrative proceedings. The non-member shall be fully responsible for securing his or her
55 private attorney for all grievances, arbitrations, statutory and administrative proceedings and for
56 the payment of all filing fees, attorney fees, and arbitrator's fees related to the above
57 proceedings. The non-member shall be fully responsible for the timely filing of any court

58 enforcement action and for any court costs and attorney fees related to enforcement or appeal of
59 an arbitration, statutory or administrative decision.

60 It shall not be a prohibited labor practice under this Chapter 150E for an employee
61 organization, recognized as the exclusive representative, not to advise, not to represent or not to
62 financially assist a non-member during any level of the grievance, arbitration of the above
63 proceedings and/or the court enforcement and/or appeal process.

64 Section 5 – Section 8 of Chapter 150E of the general laws is hereby amended by adding
65 the following second paragraph: Notwithstanding the above, as outlined more fully in Sections 5
66 and 12 herein, the employee organization, recognized as the exclusive representative, shall not be
67 required to process statutory or administrative appeals, grievances or file for arbitration or
68 represent any non-member of the employee organization at any level of the statutory or
69 administrative process or the grievance and arbitration process under the parties’ collective
70 bargaining agreement. The non-member shall be fully responsible for the timely filing of all
71 statutory appeals, grievances and arbitrations. The non-member shall be fully responsible for
72 securing his or her private attorney and for the payment of all filing fees, all attorney fees, and all
73 hearing officer and arbitrator’s fees related to all statutory appeals and the grievance and
74 arbitration process. Alternatively, the Union may choose to represent the non-member and
75 charge the non-member for these services.

76 Section 6 – Section 10(a)(3) of Chapter 150E of the general laws is hereby amended by
77 adding after the word “organization” the following: “except that a collective bargaining
78 agreement that includes only members of a collective bargaining representative may provide
79 different terms and conditions of employment for members of the employee organization than

80 those terms and conditions applied by the public employer to employees who have elected not to
81 maintain membership in the employee organization.

82 Section 7 – Section 10(a)(6) of Chapter 150E of the general laws is hereby amended by
83 adding after the word “nine” the following: “Provided that notwithstanding any other provision
84 in this Chapter, in no event will a public employer or its designated representatives be under any
85 obligation to grant, provide or extend any wage, term of employment or any other benefit which
86 is contained in a collective bargaining agreement that covers only members of the collective
87 bargaining representative to any employee who is a non-member of the collective bargaining
88 representative.”

89 Section 8 – Section 10(b)(1) of Chapter 150E of the general laws is hereby amended by
90 adding after the word “chapter” the following: “Provided that it shall not be a prohibited practice
91 for an employee organization, recognized as the exclusive representative, not to process
92 grievances, not to file for arbitration and/or not to represent any non-member of the employee
93 organization at any level of the grievance and arbitration process under the parties’ collective
94 bargaining agreement or any statutory or administrative proceeding under the general or special
95 laws of the Commonwealth or its political subdivisions. Alternatively, it shall not be an unfair
96 labor practice for a union to decide to represent the non-member and to charge the non-member
97 for the above services. “

98 Section 9 – Section 10(b)(3) of Chapter 150E of the general laws is hereby amended by
99 adding after the word “nine” the following: “except that a collective bargaining agreement may
100 provide different terms and conditions of employment for members of the employee organization
101 than those terms and conditions applied by the public employer to employees who have elected

102 not to maintain membership within the employee organization. Provided further that
103 notwithstanding any other provision in this Chapter, it shall not be a prohibited practice for an
104 employee organization, recognized as the exclusive representative, or its designated
105 representatives, not to process grievances, not to file for arbitration and/or not to represent any
106 non-member of the employee organization at any level of the grievance and arbitration process
107 under the parties' collective bargaining agreement or any statutory or administrative proceeding
108 under the general or special laws of the Commonwealth or its political subdivisions.
109 Alternatively, it shall not be an unfair labor practice for a union to decide to represent the non-
110 member and to charge the non-member for the above services. “

111 Section 10 – Section 12 of Chapter 150E of the general laws is hereby amended by
112 deleting the current language of Section 12 in its entirety and by inserting in its place thereof the
113 following:

114 All “Service Fee” provisions of all public-sector state, county and municipal collective
115 bargaining agreements within the Commonwealth, that were based, in whole or in part, upon
116 former requirements of Section 12 of Chapter 150E, are hereby void and the remaining
117 provisions of the above public sector collective bargaining agreements shall hereby remain valid
118 and fully enforceable. The parties to the above agreements are hereby strongly encouraged to
119 reopen their agreements for the limited purpose of incorporating language consistent with the
120 provisions outlined below.

121 The employee organization, recognized as the exclusive representative shall have the
122 right to negotiate wages, benefits, hours of work and all other working conditions on behalf of all
123 employees in the bargaining unit whether such an employee is a member or non-member of the

124 employee organization. A union that has not chosen to exclude non-members from its collective
125 bargaining unit shall not be required to process statutory or administrative appeals, grievances or
126 file for arbitration or represent any non-member of the employee organization at any level of the
127 statutory or administrative process or the grievance and arbitration process under the parties'
128 collective bargaining agreement. The non-member shall be fully responsible for the timely filing
129 of all statutory and administrative appeals, grievances and arbitrations. The non-member shall be
130 fully responsible for securing his or her private attorney and for the payment of all filing fees, all
131 attorney fees, all hearing officer and arbitrator's fees related to all statutory appeals and the
132 grievance and arbitration process. The non-member shall be fully responsible for the timely
133 filing of any court appeal or enforcement action based upon the above proceedings and for any
134 court costs and attorney fees related the above proceedings. It shall not be a prohibited labor
135 practice under this Chapter 150E for an employee organization not to advise, not to represent or
136 not to financially assist a non-member during any level of the above statutory and administrative
137 appeals, grievance, arbitration and/or court enforcement process. Alternatively, a Union may
138 decide to represent the non-member and to charge the non-member for the above services.

139 The employee organization, recognized as the exclusive bargaining agent, shall be
140 allowed to attend and participate at every level of the grievance and arbitration process and must
141 agree in writing with the employer to any proposed settlement of any grievance or arbitration
142 filed by any member or non-member of the employee organization.

143 Section 11 - Chapter 180 of the general laws is hereby amended by striking section 17A
144 and inserting the following section:

145 Section 17A. Deductions on payroll schedules may be made from the wages of any
146 employee of any amount which such employee may specify in writing to any public employer
147 under Chapter 150E or by any employer made subject to the provisions of Chapter 150A by
148 Chapter 760 of the Acts of 1982 by whom or which he is employed, for the payment of union
149 dues or fees to any labor organization or employee organization. The authorization for payroll
150 deduction may be irrevocable pursuant to the terms of such authorization for a period of no
151 longer than one year from the anniversary of the authorization and shall be revocable solely
152 pursuant to the terms of revocation specified in the employee authorization. Any authorization
153 consistent with the terms of this section shall be accepted by the employer or public employer.
154 The treasurer of the labor organization or employee organization or relief association shall notify
155 the office of the employer or public employer responsible for implementing payroll deductions
156 of any authorization revocation within fifteen days of receipt.

157 If the authorization for payroll deduction does not specify the terms for revocation, then
158 any such authorization may be withdrawn by the employee by giving at least sixty days' notice
159 in writing of such withdrawal to the office of the employer or public employer responsible for
160 implementing payroll deductions by whom or which he is then employed and by filing a copy
161 thereof with the treasurer of the labor organization or employee organization.

162 The state treasurer or the treasurer of the employer or public employer by which such
163 employee is employed, shall deduct from the wages of such employee such amount of union
164 dues or fees, as may be certified to him on the payroll, and transmit the sum so deducted to the
165 treasurer of said labor organization or employee organization; provided, that the state treasurer or
166 the treasurer of the employer or public employer, as the case may be, is satisfied by such
167 evidence as he may require that the treasurer of such employee organization or labor

168 organization has given to said employee organization or labor organization a bond, in a form
169 approved by the commissioner of revenue, for the faithful performance of his duties, in a sum
170 and with such surety or sureties as are satisfactory to the state treasurer or treasurer of the
171 employer or public employer; and provided, further, that whenever a labor organization or
172 employee organization is certified or obtains consent recognition under the provisions of Chapter
173 150A or Chapter 150E, such deductions shall be made for dues or fees only to the certified or
174 recognized labor organization or employee organization.

175 This section shall be effective in any county, city or town which has accepted it in the
176 manner provided by section two of chapter seven hundred and forty of the acts of nineteen
177 hundred and fifty, or which accepts it in the following manner:-- In a county by vote of the
178 county commissioners; in a city having a Plan D or Plan E charter by majority vote of its city
179 council; in any other city by vote of its city council, approved by the mayor; and in a town by
180 vote of the board of selectmen.

181 Section 12 – Savings Clause – If one or more provisions of the above legislation is
182 determined to be unconstitutional by a court of competent jurisdiction, and if this determination
183 is upheld after the parties have exhausted all of their appeal rights, the provision or provisions
184 determined to be unconstitutional shall then be rendered void and without effect, and the
185 remaining provisions of the above legislation shall be fully enforceable.

186 And further,

187 Chapter 32B of the Massachusetts General Laws is hereby amended by adding the
188 following section

189 Section 16 1/2 - Notwithstanding any other general or special law to the contrary,
190 including but not limited to M.G.L. c. 32B, section 19, a public employer may negotiate and
191 provide separate annuity, medical, dental, life and disability insurance plans for each of its
192 collective bargaining units provided that the public employer contributes the same percentage of
193 any premium charges on a uniform basis for all of its collective bargaining units.