

**HOUSE . . . . . No. 2419**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**John P. Fresolo**

*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 relative to providing for binding arbitration for fire fighters and police officers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
John P. Fresolo	16th Worcester
David Holway	National Association of Government Employees 159 Burgin Parkway Quincy, MA 02169

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 2530 OF 2007-2008.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine

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### AN ACT RELATIVE TO PROVIDING FOR BINDING ARBITRATION FOR FIRE FIGHTERS AND POLICE OFFICERS.

*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 the firefighters or police officers of a city,  
2 town or district is engaged in an impasse with said city, town or district which has continued for thirty days after the  
3 publication of the fact-finders report pursuant to section nine of chapter one hundred and fifty E of the General  
4 Laws, or, if the parties have mutually waived the fact-finding provisions contained in said section nine of said  
5 chapter one hundred and fifty E, said employee organization shall petition the board to make an investigation. If,  
6 after an investigation, the board determines that:

- 7   1. the requirements of section nine of said chapter one hundred and fifty E have been complied with in good faith by
- 8   the employee organization;
- 9   2. thirty days have passed since the date of publication of the fact-finding report pursuant to said section nine;
- 10   3. the proceedings 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
- 12   4. an impasse exists, the board shall notify the employer and the employee organization that the issues in dispute
- 13   shall be resolved by a three-member arbitration panel, or when the parties mutually agree, the board shall select a
- 14   single arbitrator in lieu of the arbitration panel.

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

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

24 The single arbitrator or the arbitration panel acting through its chairman, shall conduct a hearing within ten days  
25 after the date of appointment of its chairman, at a place within the locality of the municipality involved, where  
26 feasible. The chairman shall give at least seven days notice in writing to each of the other arbitrators. The chairman  
27 or single arbitrator shall give like notice to the representative of the municipal employer and employee organizations  
28 of the time and place of such hearing.

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

39 A record of the proceedings shall be kept, and the chairman or single arbitrator shall arrange for the necessary  
40 recording service. Transcripts may be ordered at the expense of the party ordering them, but the transcripts shall not  
41 be necessary for an award by the panel or single arbitrator. The hearing may be continued at the discretion of the  
42 panel or single arbitrator and shall be concluded within forty days from the time of commencement. At the  
43 conclusion of the hearing, each party shall submit a written statement containing its last and best offer for each of  
44 the issues in dispute to the panel or single arbitrator, who shall take said statements under advisement. Within ten  
45 days after the conclusion of the hearing, a majority of the panel, or the single arbitrator, shall select as the last and  
46 best arbitration award either the employer's written statement of its last and best offer, the employee organization's  
47 written statement of its last and best offer, or the recommendations of the fact-finder, if a fact-finding report and  
48 recommendations have been issued, and immediately shall give written notice of the selection to the parties. The  
49 selection shall be final and binding upon the parties and upon the appropriate legislative body. Within thirty calendar  
50 days of the last and best offer selection and award, the impartial chairperson of the arbitration panel or, the single  
51 arbitrator, shall issue a written opinion inclusive of an analysis of all statutory factors applicable to the proceedings.  
52 At any time before the rendering of an award, the chairman of the arbitration panel or single arbitrator, if he is of the  
53 opinion that it would be useful or beneficial to do so, may remand the dispute to the parties for further collective  
54 bargaining for the period not to exceed three weeks and notify the board of the remand. If the dispute is remanded  
55 for further collective bargaining the time provisions of this act shall be extended for a time period equal to that of the  
56 remand.

57 In the event that the representatives of the parties mutually resolve each of the issues in dispute and agree to be  
58 bound accordingly, said representatives may, at any time prior to the final decisions by the panel, or single  
59 arbitrator, request that the arbitration proceedings be terminated, the panel, acting through its chairman or single  
60 arbitrator, shall terminate the proceedings.

61 The factors among others, to be given weight by the arbitration panel or single arbitrator in arriving at the decision  
62 shall include:

63 (1) The financial ability of the municipality to meet costs. Such factors which shall be taken into consideration shall  
64 include but not be limited to: (a) the city, town, or district's state reimbursements and assessments; (b) the city,  
65 town, or district's long and short term bonded indebtedness; (c) the city, town, or district's estimated share in the  
66 metropolitan district commission deficit; (d) the city, town, or district's estimated share in the Massachusetts Bay  
67 Transportation Authority's deficit; and (e) consideration of the average per capita property tax burden, average  
68 annual income of members of the community, the effect any accord by the panel or single arbitrator might have on  
69 the respective property tax rates of the city or town.

70 (2) The interests and welfare of the public.

71 (3) The hazards of employment, physical, educational and mental qualifications, job training and skills involved.

72 (4) A comparison of wages, hours and conditions of employment of the employees involved in the arbitration  
73 proceedings with the wages, hours and conditions of employment of other employees performing similar services  
74 and with other employees generally in public and private employment in comparable communities.

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

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

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

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

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

82 (10) The stipulation of the parties.

83 Any determination or decision of the arbitration panel or single arbitrator if supported by material and substantive  
84 evidence on the whole record shall be binding upon the parties and may be enforced at the instance of either party,  
85 the single arbitrator or the arbitration panel in the superior court in equity, provided however, that the scope of  
86 arbitration in police matters shall be limited to wages, hours, and conditions of employment and shall not include the  
87 following matters of inherent managerial policy: the right to appoint, promote, assign, and transfer employees; and  
88 provided, further, that the scope of arbitration in firefighter matters shall not include the right to appoint and  
89 promote employees. Assignments shall not be within the scope; provided, however, that the subject matters of initial  
90 station assignment upon appointment or promotion shall be within the scope of arbitration. The subject matter of  
91 transfer shall not be within the scope of arbitration, provided however, that the subject matters of relationship of  
92 seniority to transfers and disciplinary and punitive transfers shall be within the scope of arbitration. Notwithstanding  
93 any other provisions of this chapter to the contrary, no municipal employer shall be required to negotiate over  
94 subjects of minimum manning of shift coverage, with an employee organization representing municipal police  
95 officers and firefighters.

96 The commencement of a new municipal finance year prior to the final awards by the arbitration panel shall not be  
97 deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitration panel or its  
98 award. Any award of the arbitration panel may be retroactive to the expiration date of the last contract.

99 If a municipal employer, or an employee organization willfully disobeys a lawful order of enforcement pursuant to  
100 this section, or willfully encourages or offers resistance to such order, whether by strike or otherwise, the

101 punishment for each day that such contempt continues may be a fine for each day to be determined at the discretion  
102 of said court.

103 Each of the parties shall provide compensation for the arbitrator which he has selected pursuant to this section. The  
104 remaining costs of arbitration proceedings under this section shall be divided equally between the parties.

105 Compensation for the arbitrators shall be in accordance with a schedule of payment established by the American  
106 Arbitration Association.

107 No member of a unit of municipal police officers or firefighters who is employed on a less than full-time basis shall  
108 be subject to the provisions of this section.