

**HOUSE . . . . . No. 2447**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Thomas A. Golden, Jr., Michael A. Costello**

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*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 establishing binding arbitration.**

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Michael A. Costello	1st Essex
Stephen L. DiNatale	3rd Worcester
Thomas A. Golden, Jr.	16th Middlesex
Joyce A. Spiliotis	12th Essex
David M. Nangle	17th Middlesex
Christine E. Canavan	10th Plymouth
Frank I. Smizik	15th Norfolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 2552 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 ESTABLISHING 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 150E of the General Laws, appearing in the 2004 Official edition, is  
2 hereby amended by adding the following new section:

3 Section 16. If an employee organization duly recognized as representing employees of the  
4 Commonwealth in Bargaining Unit 4 is engaged in successor contract negotiations with the  
5 employer which have not resulted in an agreement, then such employee organization shall  
6 petition the board to make an investigation.

7 If, after an investigation, the board determines that such negotiations have not resulted in  
8 agreement, then the board shall notify the employer and the employee organization that the  
9 unresolved issues in such negotiations shall be resolved by an arbitration before an arbitrator  
10 selected by the employee organization and the employer pursuant to the voluntary labor  
11 arbitration rules and procedures of the American Arbitration Association.

12 The arbitrator so designated shall establish a hearing schedule, shall preside over the hearing, and  
13 shall take evidence.

14 The arbitrator shall preside over the hearing and shall take testimony. The proceedings shall be  
15 informal. Any oral or documentary evidence and other data deemed relevant by the arbitrator  
16 may be received into evidence. The arbitrator shall have the power to administer oaths and to  
17 require by subpoena the attendance and testimony of witnesses, the production of books, records,  
18 and other evidence relative to or pertinent to the issues presented to them for determination. If  
19 any person refuses to obey a subpoena, or refuses to be sworn or to testify, or if any witness,  
20 party, or attorney is guilty of any contempt while in attendance at any hearing, the arbitrator  
21 may, or the district attorney if requested, shall invoke the aid of the superior court within the  
22 jurisdiction in which the hearing is being held, which court shall issue an appropriate order.

23 A record of the proceedings shall be kept, the arbitrator shall arrange for the necessary recording  
24 service. Transcripts may be ordered at the expense of the party ordering them, but the transcripts  
25 shall not be necessary for an award by the arbitrator. The hearing may be continued at the  
26 discretion of the arbitrator and shall be concluded within forty days from the time of  
27 commencement. At the conclusion of the hearing, each party shall submit a written statement  
28 containing its last and best offer for the issues in dispute to the arbitrator, who shall take said  
29 statements under advisement. Within ten days after the conclusion of the hearing, the arbitrator  
30 shall select as the last and best arbitration award either the employer's written statement of its  
31 last and best offer, or the employee organization's written statement of its last and best offer, and  
32 immediately shall give written notice of the selection to the parties. The selection shall be final  
33 and binding upon the parties and upon the appropriate legislative body. Within thirty calendar  
34 days of the last and best offer selection and award, the arbitrator, shall issue a written opinion  
35 inclusive of an analysis of all statutory factors applicable to the proceedings.

36 At any time before the rendering of an award by the arbitrator, if he is of the opinion that it  
37 would be useful or beneficial to do so, he may remand the dispute to the parties for further  
38 collective bargaining for the period not to exceed three weeks and notify the board of the  
39 remand. If the dispute is remanded for further collective bargaining the time provisions of this  
40 act shall be extended for a time period equal to that of the remand.

41 In the event that the representatives of the parties mutually resolve each of the issues in dispute  
42 and agree to be bound accordingly, said representatives may, at any time prior to the final  
43 decision by the arbitrator, request that the arbitration proceedings be terminated arbitrator, shall  
44 terminate the proceedings.

45 The factors among others, to be given weight by the arbitrator in arriving at the decision shall  
46 include;

47 (1) The financial ability of the commonwealth to meet the costs. Such factors which shall be  
48 taken into consideration shall include, but not be limited to, the commonwealth's long and short  
49 term bonded indebtedness.

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

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

53 (4) A comparison of wages, hours and conditions of employment of the employees involved in  
54 the arbitration proceedings with the wages, hours and conditions of employment of other

55 employees performing similar services and with other employees generally in public and private  
56 employment in comparable districts, communities, or other state or federal jurisdictions.

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

58 (6) The overall compensation presently received by the employees, including direct wages and  
59 fringe benefits.

60 (7) Changes in any of the foregoing circumstances during the pendency of the arbitration  
61 proceedings.

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

66 (9) The stipulation of the parties.

67 Any determination or decision of the arbitrator if supported by material and substantive evidence  
68 on the whole record shall be binding upon the parties and may be enforced at the instance of  
69 either party, the arbitrator in the superior court in equity, provided however, that the scope of  
70 arbitration shall include wages, hours, standards of productivity and performance, and any other  
71 term and condition of employment.

72 The commencement of a new municipal finance year prior to the final awards by the arbitrator  
73 shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority

74 of the arbitrator or his award. Any award of the arbitrator may be retroactive to the expiration  
75 date of the last contract.

76 If an employer, or an employee organization willfully disobeys a lawful order of enforcement  
77 pursuant to this section, or willfully encourages or offers resistance to such order, whether by  
78 strike or otherwise, the punishment for each day that such contempt continues may be a fine for  
79 each day to be determined at the discretion of said court.

80 The costs of arbitration proceedings under this section shall be divided equally between the  
81 parties. Compensation for the arbitrator shall be in accordance with a schedule of payment  
82 established by the American Arbitration Association.