

SENATE No. 1120

The Commonwealth of Massachusetts

PRESENTED BY:

Thomas M. McGee

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 interest arbitration for state employed health care professionals.

PETITION OF:

NAME:

Thomas M. McGee

DISTRICT/ADDRESS:

Third Essex and Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S01536 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO INTEREST ARBITRATION FOR STATE EMPLOYED HEALTH CARE PROFESSIONALS.

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. Amend Chapter 150E of the General Laws of Massachusetts, as amended
2 by Chapter 1078 of the Acts of 1973, by adding a new section 4D as follows:—
3 If an employee organization duly recognized as representing a bargaining unit of the health care
4 professionals employed by the Commonwealth of Massachusetts (or by any political subdivision
5 thereof) is engaged in an impasse which has continued for thirty days after the publication of the
6 fact-finder's report pursuant to section nine of chapter one hundred and fifty E of the General
7 Laws, or, if the parties have mutually waived the fact-finding provisions contained in said
8 section nine of said chapter one hundred and fifty E, said employee organization shall petition
9 the Board of Arbitration and Conciliation hereinafter referred to as the Board, to make an
10 investigation.
11 If, after an investigation, the Board determines that:
12 (1) the requirements of section nine of said chapter one hundred and fifty E have been complied

13 with in good faith by the employee organization;

14 (2) thirty days have passed since the date of publication of the fact-finding report pursuant to said
15 section nine, unless waived by the parties, and an impasse exists, the Board shall notify the
16 employer and the employee organization that the issues in dispute shall be resolved by an
17 impartial single arbitrator selected by the parties in the same manner established by the Board for
18 the selection of a fact-finder.

19 The single arbitrator shall conduct a hearing within thirty days after the date of appointment, or
20 as soon thereafter as is practicable. The form of arbitration shall be traditional on an issue by
21 issue basis, with the arbitrator having the authority on each issue to accept the employer's
22 proposal, the employee organization's proposal or such other term, which the arbitrator deems
23 appropriate.

24 The single arbitrator shall preside over the hearing and shall take testimony. The proceedings
25 shall be informal. Any oral or documentary evidence and other data deemed relevant by the
26 single arbitrator may be received into evidence. The arbitrator shall have the power to administer
27 oaths and to require by subpoena, the attendance and testimony of witnesses, the production of
28 books, records, and other evidence relative to or pertinent to the issues presented to him for
29 determination. If any person refuses to obey a subpoena, refuses to be sworn or to testify, or if
30 any witness, party, or attorney is guilty of any contempt while in attendance at any hearing, the
31 single arbitrator may, or the district attorney if requested, shall invoke the aid of the superior
32 court within the jurisdiction in which the hearing is being held, whereupon the court shall issue
33 an appropriate order.

34 A record of the proceedings shall be kept, and the single arbitrator shall arrange for the necessary
35 recording service. Transcripts may be ordered at the expense of the party ordering them, but the

36 transcripts shall not be necessary for an award by the single arbitrator. The hearing may be
37 continued at the discretion of the single arbitrator and shall be concluded within forty days from
38 the time of commencement, or as soon thereafter as is practicable. Within ten days after the
39 conclusion of the hearing, or as soon as practicable thereafter, the single arbitrator shall issue an
40 award on all issues, which shall be final and binding upon the parties, subject to appropriation.
41 Within thirty calendar days of the issuance of the award, or as soon as is practicable thereafter,
42 the single arbitrator shall issue a written opinion inclusive of an analysis of all statutory factors
43 applicable to the proceedings.

44 At any time before the rendering of an award, the single arbitrator, if he is of the opinion that it
45 would be useful or beneficial to do so, may remand the dispute to the parties for further
46 collective bargaining for a period not to exceed three weeks and notify the Board of the remand.
47 If the dispute is remanded for further collective bargaining the time provisions of this act shall be
48 extended for a time period equal to that of the remand.

49 In the event that the representatives of the parties mutually resolve each of the issues in dispute
50 and agree to be bound accordingly, said representatives may, at any time prior to the final
51 decision by the single arbitrator, request that the arbitration proceedings be terminated. The
52 single arbitrator shall then terminate the proceedings.

53 The factors, among others, to be given weight by the single arbitrator in arriving at the decision
54 shall include, when applicable:

55 (1) the financial ability of the commonwealth (or of the political subdivision) to meet the costs.

56 Such factors which shall be taken into consideration shall include, but not be limited to, the
57 commonwealth's long and short-term bonded indebtedness;

58 (2) the interests and health and welfare of the public;

- 59 (3) the hazards of employment, physical, educational and mental qualifications, training and
60 skills involved;
- 61 (4) a comparison of wages, hours and conditions of employment of the employees involved in
62 the arbitration proceedings with the wages, hours and conditions of employment of other
63 employees performing similar services and with other employees generally in public or private
64 employment in comparable communities, or other state or federal jurisdictions;
- 65 (5) the decisions and recommendations of the fact-finder, if any;
- 66 (6) the average consumer prices for goods and services, commonly known as the cost of living;
- 67 (7) the overall compensation presently received by the employees, including direct wages and
68 fringe benefits;
- 69 (8) changes in any of the foregoing circumstances during the pendency of the arbitration
70 proceedings;
- 71 (9) such other factors not confined to the foregoing, which are normally or traditionally taken
72 into consideration in the determination of wages, hours and conditions of employment through
73 voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between parties,
74 in the public service or in private employment;
- 75 (10) the stipulation of the parties.

76 Any determination or decision of the single-arbitrator, if supported by material and substantive
77 evidence on the whole record shall be subject to appropriation, binding upon the parties, and may
78 be enforced at the instance of either party, in the superior court in equity, provided however, that
79 the scope of arbitration shall be limited to wages, hours and conditions of employment.

80 The commencement of a new fiscal year prior to the final award by the single arbitrator shall not
81 be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the

82 single arbitrator or the award. Any award of the arbitrator may be retroactive to the expiration
83 date of the last contract.

84 If the employer, or the employee organization, willfully disobeys a lawful order of enforcement
85 pursuant to this section, or willfully encourages or offers resistance to such order, the punishment
86 for each day that such contempt continues may be a fine for each day to be determined at the
87 discretion of said court.

88 The costs for the arbitrator under this section shall be divided equally between the parties.

89 Compensation for the arbitrator shall be in accordance with a schedule of payment established by
90 the American Arbitration Association.

91 The provisions of this amendment shall take effect immediately.