HOUSE DOCKET, NO. 1432 FILED ON: 1/20/2011

HOUSE . . . . . No. 1605

The Commonwealth of Massachusetts

PRESENTED BY:

Colleen M. Garry

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:

An Act providing for binding arbitration for fire fighters and police officers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Colleen M. Garry	*36th Middlesex*

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HOUSE . . . . . No. 1605

By Ms. Garry of Dracut, a petition (accompanied by bill, House, No. 1605) of Colleen M. Garry providing for binding arbitration for fire fighters and police officers. Public Service.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *2441* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act 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:

SECTION 1. If an employee organization duly recognized as representing the firefighters or police officers of a city, town or district is engaged in an impasse with said city, town or district which has continued for thirty days after the publication of the fact-finders report pursuant to section nine of chapter one hundred and fifty E of the General Laws, or, if the parties have mutually waived the fact-finding provisions contained in said section nine of said chapter one hundred and fifty E, said employee organization shall petition the board to make an investigation. If, after an investigation, the board determines that: 1. the requirements of section nine of said chapter one hundred and fifty E have been complied with in good faith by the employee organization; 2. thirty days have passed since the date of publication of the fact-finding report pursuant to said section nine; 3. the proceedings for the prevention of any prohibited practices have been exhausted, provided that any such complaints have been filed with the commission prior to the date of the fact finder's report; and4. an impasse exists, the board shall notify the employer and the employee organization that the issues in dispute shall be resolved by a three-member arbitration panel, or when the parties mutually agree, the board shall select a single arbitrator in lieu of the arbitration panel. Said panel shall be comprised of three arbitrators, one selected by the employer, one selected by the employee organization, and a third impartial arbitrator, who shall act as chairman of the panel, who shall be selected by the two previously selected arbitrators. In the event that either party fails to select an arbitrator or for any reason there is a delay in the naming of an arbitrator, or if the arbitrators fail to select a third arbitrator within the time prescribed by the board, the board shall appoint the arbitrator or

21 arbitrators necessary to complete the panel, which shall act with the same force and effect as if
22 the panel had been selected without intervention of the board. In the event that the parties
23 mutually elect to use a single arbitrator, selected by the board, the parties shall immediately
24 request the board to appoint said arbitrator, who shall act with the same force and effect as if a
25 three member panel had been selected by the parties. The single arbitrator or the arbitration panel
26 acting through its chairman, shall conduct a hearing within ten days after the date of appointment
27 of its chairman, at a place within the locality of the municipality involved, where feasible. The
28 chairman shall give at least seven days notice in writing to each of the other arbitrators. The
29 chairman or single arbitrator shall give like notice to the representative of the municipal
30 employer and employee organizations of the time and place of such hearing. The single arbitrator
31 or chairman shall preside over the hearing and shall take testimony. Upon application and for
32 good cause shown, a person, labor organization, or governmental unit having substantial interest
33 therein may be granted leave to intervene by the arbitration panel. The proceedings shall be
34 informal. Any oral or documentary evidence and other data deemed relevant by the arbitration
35 panel or single arbitrator may be received into evidence. The arbitrators shall have the power to
36 administer oaths and to require by subpoena the attendance and testimony of witnesses, the
37 production of books, records, and other evidence relative to or pertinent to the issues presented to
38 them for determination. If any person refuses to obey a subpoena, or refuses to be sworn or to
39 testify, or if any witness, party, or attorney is guilty of any contempt while in attendance at any
40 hearing, the arbitration panel or single arbitrator may, or the district attorney if requested, shall
41 invoke the aid of the superior court within the jurisdiction in which the hearing is being held,
42 which court shall issue an appropriate order. A record of the proceedings shall be kept, and the
43 chairman or single arbitrator shall arrange for the necessary recording service. Transcripts may
44 be ordered at the expense of the party ordering them, but the transcripts shall not be necessary for
45 an award by the panel or single arbitrator. The hearing may be continued at the discretion of the
46 panel or single arbitrator and shall be concluded within forty days from the time of
47 commencement. At the conclusion of the hearing, each party shall submit a written statement
48 containing its last and best offer for each of the issues in dispute to the panel or single arbitrator,
49 who shall take said statements under advisement. Within ten days after the conclusion of the
50 hearing, a majority of the panel, or the single arbitrator, shall select as the last and best
51 arbitration award either the employer's written statement of its last and best offer, the employee
52 organization's written statement of its last and best offer, or the recommendation of the fact-
53 finder, if a fact-finding report and recommendations have been issued, and immediately shall
54 give written notice of the selection to the parties. The selection shall be final and binding upon
55 the parties and upon the appropriate legislative body. Within thirty calendar days of the last and
56 best offer selection and award, the impartial chairperson of the arbitration panel or, the single
57 arbitrator, shall issue a written opinion inclusive of an analysis of all statutory factors applicable
58 to the proceedings. At any time before the rendering of an award, the chairman of the arbitration
59 panel or single arbitrator, if he is of the opinion that it would be useful or beneficial to do so,
60 may remand the dispute to the parties for further collective bargaining for the period not to

61 exceed three weeks and notify the board of the remand. If the dispute is remanded for further
62 collective bargaining the time provisions of this act shall be extended for a time period equal to
63 that of the remand. In the event that the representatives of the parties mutually resolve each of
64 the issues in dispute and agree to be bound accordingly, said representatives may, at any time
65 prior to the final decisions by the panel, or single arbitrator, request that the arbitration
66 proceedings be terminated, the panel, acting through its chairman or single arbitrator, shall
67 terminate the proceedings. The factors among others, to be given weight by the arbitration panel
68 or single arbitrator in arriving at the decision shall include: (1) The financial ability of the
69 municipality to meet costs. Such factors which shall be taken into consideration shall include but
70 not be limited to: (a) the city, town or district's state reimbursements and assessments; (b) the
71 city, town or district's long and short term bonded indebtedness; (c) the city, town or district's
72 estimated share in the metropolitan district commission deficit; or (d) the city, town, or district's
73 estimated share in the Massachusetts Bay Transportation Authority's deficit; and (e)
74 consideration of the average per capita property tax burden, average annual income of members
75 of the community, the effect any accord by the panel or single arbitrator might have on the
76 respective property tax rates of the city or town. (2) The interests and welfare of the public. (3)
77 The hazards of employment, physical, educational and mental qualifications, job training and
78 skills involved. (4) A comparison of wages, hours and conditions of employment of the
79 employees involved in the arbitration proceedings with the wages, hours and conditions of
80 employment of other employees performing similar services and with other employees generally
81 in public and private employment in comparable communities. (5) The decisions and
82 recommendations of the fact-finder, if any.(6) The average consumer prices for goods and
83 services, commonly known as the cost of living. (7) The overall compensation presently received
84 by the employees, including direct wages and fringe benefits. (8) Changes in any of the
85 foregoing circumstances during the pendency of the arbitration proceedings. (9) Such other
86 factors, not confined to the foregoing, which are normally or traditionally taken into
87 consideration in the determination of wages, hours and conditions of employment through
88 voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between parties,
89 in the public service or in private employment. (10) The stipulation of the parties. Any
90 determination or decision of the arbitration panel or single arbitrator if supported by material and
91 substantive evidence on the whole record shall be binding upon the parties and may be enforced
92 at the instance of either party, the single arbitrator or the arbitration panel in the superior court in
93 equity; provided however, that the scope of arbitration in police matters shall be limited to
94 wages, hours, and conditions of employment and shall not include the following matters of
95 inherent managerial policy; the right to appoint, promote, assign, and transfer employees; and
96 provided, further, that the scope of arbitration in firefighter matters shall not include the right to
97 appoint and promote employees. Assignments shall not be within the scope; provided, however,
98 that the subject matter of initial station assignment upon appointment or promotion shall be
99 within the scope of arbitration. The subject matter of transfer shall not be within the scope of
100 arbitration; provided however, that the subject matters of relationship of seniority to transfers and

101 disciplinary and punitive transfers shall be within the scope of arbitration. Notwithstanding any
102 other provisions of this chapter to the contrary, no municipal employer shall be required to
103 negotiate over subjects of minimum manning of shift coverage, with an employee organization
104 representing municipal police officers and firefighters. The commencement of a new municipal
105 finance year prior to the final awards by the arbitration panel shall not be deemed to render a
106 dispute moot, or to otherwise impair the jurisdiction or authority of the arbitration panel or its
107 award. Any award of the arbitration panel may be retroactive to the expiration date of the last
108 contract. If a municipal employer, or an employee organization willfully disobeys a lawful order
109 of enforcement pursuant to this section, or willfully encourages or offers resistance to such order,
110 whether by strike or otherwise, the punishment for each day that such contempt continues may
111 be a fine for each day to be determined at the discretion of said court. Each of the parties shall
112 provide compensation for the arbitrator which he has selected pursuant to this section. The
113 remaining costs of arbitration proceedings under this section shall be divided equally between
114 the parties. Compensation for the arbitrators shall be in accordance with a schedule of payment
115 established by the American Arbitration Association. No member of a unit of municipal police
116 officers or firefighters who is employed on a less than full-time basis shall be subject to the
117 provisions of this section.