

**SENATE . . . . . No. 1402**

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The Commonwealth of Massachusetts

PRESENTED BY:

*Steven A. Tolman*

*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 to resolve collective bargaining disputes..

PETITION OF:

NAME:

*Steven A. Tolman*

DISTRICT/ADDRESS:

- 
- 

*[District]*

**SENATE . . . . . No. 1402**

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By Mr. Tolman, petition (accompanied by bill, Senate, No. 1402) of Tolman for legislation to resolve collective bargaining disputes [Joint Committee on Public Service].

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE  
□ SENATE  
□ , NO. 1218 OF 2009-2010.]

**The Commonwealth of Massachusetts**

An Act to resolve collective bargaining disputes..

*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, Section 9 is hereby amended by deleting paragraphs six  
2 through eight and inserting the following new paragraphs:

3 If the parties are unable to resolve the issues in dispute within thirty days after  
4 publication of the fact finders report, either party may petition the board to order arbitration  
5 pursuant to the following:

6 If an employee organization duly recognized as representing the bargaining unit is  
7 engaged in an impasse which has continued for thirty days after the publication of the fact-  
8 finder?s report pursuant to section nine of chapter one hundred and fifty E of the General Laws,  
9 or, if the parties have mutually waived the fact-finding provisions contained in said section nine  
10 of said chapter one hundred and fifty E, said employee organization shall petition the board to  
11 make an investigation. If, after an investigation, the board determines that: the requirements of  
12 section nine of said chapter one hundred and fifty E have been complied with in good faith by  
13 the employee organization; thirty days have passed since the date of publication of the fact-  
14 finding report pursuant to said section nine; the proceedings for the prevention of any prohibited  
15 practices have been exhausted, provided that any such complaints have been filed with the  
16 commission prior to the date of the fact-finder?s report; and an impasse exists, the board shall  
17 notify the employer and the employee organization that the issues in dispute shall be resolved by  
18 a three-member arbitration panel, or when the parties mutually agree, the board shall select a  
19 single arbitrator in lieu of the arbitration panel.

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

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

31 The single arbitrator or the arbitration panel acting through its chairman, shall conduct a  
32 hearing within ten days after the date of appointment of its chairman. The chairman shall give at  
33 least seven days notice of the time and place of such hearing in writing to each of the other  
34 arbitrators and to the representatives of such employer and employee organizations.

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

47 A record of the proceedings shall be kept, and the chairman or single arbitrator shall  
48 arrange for the necessary recording service. Transcripts may be ordered at the expense of the  
49 party ordering them, but the transcripts shall not be necessary for an award by the panel or single  
50 arbitrator. The hearing may be continued at the discretion of the panel or single arbitrator and  
51 shall be concluded within forty days from the time of commencement. At the conclusion of the  
52 hearing, each party shall submit a written statement containing its last and best offer for each of  
53 the issues in dispute to the panel or single arbitrator, who shall take said statements under  
54 advisement. Within ten days after the conclusion of the hearing, a majority of the panel, or the  
55 single arbitrator, shall select as the last and best arbitration award either the employer's written  
56 statement of its last and best offer, the employee organization's written statement of its last and  
57 best offer, or the recommendations of the fact-finder, if a fact-finding report and

58 recommendations have been issued, and immediately shall give written notice of the selection to  
59 the parties. The selection shall be final and binding upon the parties, subject to appropriation.  
60 Within thirty calendar days of the last and best offer selection and award, the impartial  
61 chairperson of the arbitration panel, or the single arbitrator, shall issue a written opinion  
62 inclusive of an analysis of all statutory factors applicable to the proceedings.

63 The factors, among others, to be given weight by the arbitration panel or single arbitrator  
64 in arriving at the decision shall include, when applicable:

65 The financial ability of the commonwealth to meet the costs. Such factors which shall be  
66 taken into consideration shall include, but not be limited to, the commonwealth's long and short  
67 term bonded indebtedness.

68 The interests and welfare of the public.

69 The hazards of employment, physical, educational and mental qualifications, job training  
70 and skills involved.

71 A comparison of wages, hours and conditions of employment of the employees involved  
72 in the arbitration proceedings with the wages, hours and conditions of employment of other  
73 employees performing similar services and with other employees generally in public or private  
74 employment in comparable districts, communities, or other state or federal jurisdictions.

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

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

78 The overall compensation presently received by the employees, including direct wages  
79 and fringe benefits.

80 Changes in any of the foregoing circumstances during the pendency of the arbitration  
81 proceedings.

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

86 The stipulation of the parties.

87 Any determination or decision of the arbitration panel or single arbitrator if supported by  
88 material and substantive evidence on the whole record shall be subject to appropriation, binding  
89 upon the parties and may be enforced at the instance of either party, the single arbitrator or the  
90 arbitration panel in the superior court in equity.

91           The commencement of a new fiscal year prior to the final awards by the arbitration panel  
92 shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority  
93 of the arbitration panel or its award. Any award of the arbitration panel may be retroactive to the  
94 expiration date of the last contract.

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

99           Each of the parties shall provide compensation for the arbitrator which it has selected  
100 pursuant to this section. The remaining costs of arbitration proceedings under this section shall  
101 be divided equally between the parties. Compensation for the arbitrators shall be in accordance  
102 with a schedule of payment established by the American Arbitration Association.

103           Any arbitration awarded shall be binding on the parties and on the appropriate legislative  
104 body and made effective and enforceable pursuant to the provisions of chapter one hundred and  
105 fifty C, provided that said arbitration proceeding has been authorized by the appropriate  
106 legislative body and in the case of school employees, by the appropriate school committee.