

Assembly Bill 814

Published
July 21, 1966.

Chapter 612

AN ACT to amend subchapter IV of chapter 111 (title only); and to create subchapter V of chapter 111 (111.80 to 111.94) of the statutes, relating to bargaining between the states and its employes, and granting rule-making power.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Subchapter IV of chapter 111 of the statutes (title only) is amended to read:

CHAPTER 111.

SUBCHAPTER IV.

RIGHT OF MUNICIPAL EMPLOYES TO ORGANIZE AND
JOIN LABOR ORGANIZATIONS; BARGAINING
IN MUNICIPAL EMPLOYMENT.

SECTION 2. Subchapter V of chapter 111 of the statutes is created to read:

CHAPTER 111.

SUBCHAPTER V.

(111.80 to 111.94)

STATE EMPLOYMENT LABOR RELATIONS ACT.

111.80 DECLARATION OF POLICY. The public policy of the state as to labor relations and collective bargaining in state employment, in the furtherance of which this subchapter is enacted, is as follows:

(1) It recognizes that there are 3 major interests involved, namely: that of the public, the state employe, and the state as an employer. These 3 interests are to a considerable extent interrelated. It is the policy of this state to protect and promote each of these interests with due regard to the situation and to the rights of the others.

(2) Orderly and constructive employment relations for state employes and the efficient administration of state government are promotive of all these interests. They are largely dependent upon the maintenance of fair, friendly and mutually satisfactory employe-management relations

in state employment, and the availability of suitable machinery for fair and peaceful adjustment of whatever controversies may arise. It is recognized that whatever may be the rights of disputants with respect to each other in any controversy regarding state employment relations neither party has any right to engage in acts or practices which jeopardize the public safety and interest and interfere with the effective conduct of public business.

(3) Where permitted hereby, negotiations of terms and conditions of state employment should result from voluntary agreement from the state, and its agents, as an employer and its employes. For that purpose a state employe has the right, if he desires, to associate with others in organizing, in bargaining collectively through representatives of his own choosing, without intimidation or coercion from any source.

(4) It is the policy of this state, in order to preserve and promote the interests of the public, the state employe and the state as an employer alike, to encourage the practices and procedure of collective bargaining in state employment subject to the requirements of the public service and related laws, rules and policies governing state employment, by establishing standards of fair conduct in state employment relations by providing a convenient, expeditious and impartial tribunal in which these interests may have their respective rights determined. In the furtherance of this policy the director shall establish a division of employment relations, which shall, along with the particular appointing authority, or his representative, represent the state in its responsibility as an employer under this subchapter. The division shall be responsible for establishing and maintaining, wherever practicable, consistent employment relations policies and practices throughout the state service.

111.81 DEFINITIONS. When used in this subchapter:

(1) "Board" means the Wisconsin employment relations board created by s. 111.03.

(2) "Collective bargaining" means the negotiating by the state as an employer, by its officers and agents, and a majority of its employes, by their representatives in an appropriate collective bargaining unit, concerning terms and conditions of employment of all employes in said unit in a mutually genuine effort to reach an agreement with reference to the subject under negotiation.

(3) "Collective bargaining unit" means the unit determined to be appropriate by the board for the purposes of collective bargaining. Employes in a single craft or profession may constitute a separate and single collective bargaining unit. The board may, and in order to effectuate the policies of this subchapter, determine the appropriate bargaining unit and whether the employes engaged in a single or several departments, divisions, institutions, crafts, professions, or occupational groupings, constitute an appropriate collective bargaining unit. The board may make such a determination with or without providing the employes involved an opportunity to determine for themselves whether they desire to establish themselves as an appropriate collective bargaining unit. Where the board permits employes to determine for themselves whether they desire to constitute a separate collective bargaining unit, such unit determination shall be as provided in s. 111.05 (2). A collective bargaining unit thus established by the board shall be subject to all rights by termination or modification given by subch. I in reference to collective bargaining units otherwise established under said subchapter. Nothing herein shall prevent 2 or more collective bargaining units from bargaining collectively through the same representative.

(4) "Craft employe" means a skilled journeyman craftsman, including his apprentices and helpers, but shall not include employes not in direct line of progression in the craft.

(5) "Director" means the state director of personnel.

(6) "Election" means a proceeding conducted by the board in which the employes in a collective bargaining unit cast a secret ballot for collective bargaining representatives, or for any other purpose specified in this subchapter.

(7) "Labor organization" means any employe organization whose purpose is to represent state employes in collective bargaining with the state, or its agents, on matters pertaining to terms and conditions of employment; but the term shall not include any organization:

(a) Which advocates the overthrow of the constitutional form of government in the United States; or

(b) Which discriminates with regard to the terms or conditions of membership because of race, color, creed or national origin.

(8) "Person" includes one or more individuals, labor organizations, associations, corporations or legal representatives.

(9) "Professional employe" means:

(a) Any employe engaged in work:

1. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;

2. Involving the consistent exercise of discretion and judgment in its performance;

3. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;

4. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes; or

(b) Any employe, who:

1. Has completed the courses of specialized intellectual instruction and study described in par. (a) 4; and

2. Is performing related work under the supervision of a professional person to qualify himself to become a professional employe as defined in par. (a).

(10) "Prohibited practice" means any prohibited practice as defined in s. 111.84.

(11) "Representative" includes any person chosen by a state employe to represent him.

(12) "State employe" includes any employe in the classified service of the state, as defined in s. 16.08, except employes who are performing in a supervisory capacity, and individuals having privy to confidential matters affecting the employer-employe relationship, as well as all employes of the board.

(13) "State employer" means the state of Wisconsin, and any department thereof, or appointing officer, as defined in s. 16.02 (3), and includes any person acting on behalf of the state and any of its departments or agencies within the scope of his authority, express or implied.

(14) "Strike" includes any strike or other concerted stoppage of work by employes, and any concerted slowdown or other concerted interruption of operations or services by employes. The establishment of a strike and the participation therein by a state employe is not intended to affect the right of the state employer, in law or equity, to deal with such strike, including:

(a) The right to impose discipline, including discharge, or suspension without pay, of any employe participating therein;

(b) The right to cancel the civil service status of any employe engaging therein; and

(c) The right of the employer to seek an injunction or to request the imposition of fines, either against the labor organization or the employe engaging therein, or to sue for damages because of such strike activity.

(15) "Supervisor" means any individual having authority, in the interest of the state employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employes, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

111.82 RIGHTS OF STATE EMPLOYES. State employes shall have the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection; and such employes shall also have the right to refrain from any or all of such activities.

111.83 REPRESENTATIVES AND ELECTIONS. (1) Representatives chosen for the purposes of collective bargaining by a majority of the state employes voting in a collective bargaining unit shall be the exclusive representative of all of the employes in such unit for the purposes of collective bargaining. Any individual employe, or any minority group of employes in any collective bargaining unit, shall have the right to present grievances to the state employer in person, or through representatives of their own choosing, and the state employer shall confer with said employe in relation thereto, provided that the majority representative has been afforded the opportunity to be present in such conferences and that any adjustment resulting from such conferences is not inconsistent with the conditions of employment established by the majority representative and the state.

(2) Whenever the board concludes to permit the employes an opportunity to determine for themselves whether they desire to establish themselves as an appropriate collective bargaining unit as defined in s. 111.81 (3), such determination shall be conducted by secret ballot, and, in such instances, the board shall cause the ballot to be taken in such a manner as to show separately the wishes of the employes in the voting group involved as to the determination of the collective bargaining unit.

(3) Whenever a question arises concerning the representation of state employes in a collective bargaining unit the board shall determine the representative thereof by taking a secret ballot of the employes and certifying in writing the results thereof to the interested parties and to the state and its agents. There shall be included on any ballot for the election of representatives the names of all persons, having an interest in representing state employes, submitted by a state employe or group of state employes participating in the election, except that the board may exclude from the ballot one who, at the time of the election, stands deprived of his rights under this subchapter by reason of a prior adjudication of his having engaged in a prohibited practice. The ballot shall be so prepared as to permit a vote against representation by anyone named on the ballot. The board's certification of the results of any election shall be conclusive as to the findings included therein unless reviewed under s. 111.07 (8).

(4) Whenever an election has been conducted pursuant to sub. (3) in which the name of more than one proposed representative appears on the ballot and results in no conclusion, the board may if requested by any party to the proceeding within 30 days from the date of the certification of the results of such election, conduct a runoff election. In such runoff election, the board may drop from the ballot the name of the representative that received the least number of votes at the original election, or the board shall drop from the ballot the privilege of voting against any

representative when the least number of votes cast at the first election was against representation by any named representative.

(5) Questions concerning the determination of collective bargaining units or representation of state employes may be raised by petition of any state employe or the state employer, or the representative of either of them. Where it appears by the petition that any emergency exists requiring prompt action, the board shall act upon said petition forthwith and hold the election requested within such time as will meet the requirements of the emergency presented. The fact that one election has been held shall not prevent the holding of another election among the same group of state employes, if it appears to the board that sufficient reason therefor exists.

111.84 PROHIBITED PRACTICES. (1) It shall be a prohibited practice for a state employer individually or in concert with others:

(a) To interfere with, restrain or coerce state employes in the exercise of their rights guaranteed in s. 111.82.

(b) To initiate, create, dominate or interfere with the formation or administration of any labor or employe organization or contribute financial support to it, but the state employer shall not be prohibited from reimbursing state employes at their prevailing wage rate for the time spent conferring with its officers or agents. It shall not be a prohibited practice, however, for an officer or supervisor of the state employer to remain or become a member of the same labor organization of which its employes are members, when they perform the same work or are engaged in the same profession, provided, that after 4 years from the effective date of this subchapter said supervisor shall not participate as an active member or officer of said organization.

(c) To encourage or discourage membership in any labor organization, employe agency, committee, association or representation plan by discrimination in regard to hiring, tenure or other terms or conditions of employment.

(d) To refuse to bargain collectively on those matters set forth in s. 111.91 with the representative of a majority of its employes in an appropriate collective bargaining unit, however, where the state employer files with the board a petition requesting a determination as to majority representation, it shall not be deemed to have refused to bargain until an election has been held and the result thereof has been certified to it by the board. Such refusal to bargain shall include, but not be limited to, the refusal to execute a collective bargaining agreement previously orally agreed upon.

(e) To violate the provisions of any written agreement with respect to terms and conditions of employment affecting state employes, including an agreement to arbitrate, or to accept the terms of an arbitration award, where previously the parties have agreed to accept such award as final and binding upon them.

(f) To deduct labor organization dues or assessments from a state employe's earnings, unless the state employer has been presented with an individual order therefor, signed by the state employe personally, and terminable at the end of any year of its life by the state employe giving at least 30 days' written notice of such termination to the state employer and to the representative organization.

(2) It is an unfair labor practice for a state employe individually or in concert with others:

(a) To coerce or intimidate a state employe in the enjoyment of his legal rights, including those guaranteed in s. 111.82.

(b) To coerce, intimidate or induce any officer or agent of the state employer to interfere with any of its employes in the enjoyment of their legal rights, including those guaranteed in s. 111.82 or to engage in any

practice with regard to its employes which would constitute a prohibited practice if undertaken by him on his own initiative.

(c) To refuse to bargain collectively on those matters set forth in s. 111.91 with the duly authorized officer or agent of the state employer, provided it is the recognized or certified exclusive collective bargaining representative of employes in an appropriate collective bargaining unit. Such refusal to bargain shall include, but not be limited to, the refusal to execute a collective bargaining agreement previously orally agreed upon.

(d) To violate the provisions of any written agreement with respect to terms and conditions of employment affecting state employes, including an agreement to arbitrate or to accept the terms of an arbitration award, where previously the parties have agreed to accept such award as final and binding upon them.

(e) To engage in, induce or encourage any state employes to engage in a strike, or a concerted refusal to work or perform their usual duties as an employe of the state.

(f) To coerce or intimidate a supervisory employe, officer or agent of the state employer, working at the same trade or profession as its employes, to induce him to become a member of or act in concert with the labor organization of which they are members, pursuant to s. 111.84 (1) (b).

(3) It is a prohibited practice for any person to do or cause to be done on behalf of or in the interest of state employers or state employes, or in connection with or to influence the outcome of any controversy as to employment relations, any act prohibited by subs. (1) and (2).

111.85 PREVENTION OF PROHIBITED PRACTICES. Any controversy concerning prohibited practices may be submitted to the board as provided in s. 111.07, except that references therein to "unfair labor practices" shall be construed to refer to "prohibited practices"; and except that the board shall fix hearing on complaints involving alleged violations of s. 111.84 (2) (e) within 3 days after the filing of such complaints, and notice shall be given to each party interested by service on him personally, or by telegram advising him of the nature of the complaint and of the date, time and place of hearing thereon.

111.86 ARBITRATION. Parties to a labor dispute arising from the interpretation or application of a collective bargaining agreement affecting terms and conditions of state employment may agree in writing to have the board act or name arbitrators in all or any part of such dispute, and thereupon the board shall have the power to act. The board shall appoint as arbitrators only competent, impartial and disinterested persons. Proceedings in any such arbitration shall be as provided in ch. 298 where applicable.

111.87 MEDIATION. The board may appoint any competent, impartial, disinterested person to act as mediator in any labor dispute either upon its own initiative or upon the request of one of the parties to the dispute. It is the function of such mediator to bring the parties together voluntarily under such favorable auspices as will tend to effectuate settlement of the dispute, but neither the mediator nor the board shall have any power of compulsion in mediation proceedings.

111.88 FACT FINDING. Whenever the representative, which has either been certified by the board after an election, or has been duly recognized by the state employer as the exclusive representative of state employes in an appropriate collective bargaining unit, and the appointing authority, together with the division of employment relations, after a reasonable period of negotiation, are deadlocked with respect to any dispute existing between them arising from collective bargaining or from the

application or interpretation of any provisions of a collective bargaining agreement existing between them, either party, or the parties jointly, may petition the board in writing, to initiate fact finding, as hereafter provided, to make recommendations to resolve the existing deadlock.

(1) Upon receipt of a petition to initiate fact finding, the board shall make an investigation, either informally or by a formal hearing, to determine whether the parties are, after a reasonable period of negotiations, deadlocked with respect to any dispute as previously provided. After its investigation the board shall certify the results thereof. If the certification requires that fact finding be initiated, the board shall appoint from a list established by the board a qualified disinterested person or 3-member panel, when jointly requested by the parties, to function as a fact finder.

(2) The fact finder may establish times and place of hearings which shall be where feasible in the jurisdiction of the state, and shall conduct the hearings pursuant to rules established by the board. Upon request, the board shall issue subpoenas for hearings conducted by the fact finder. The fact finder may administer oaths. Upon completion of the hearing, the fact finder shall make written findings of fact and recommendations for solution of the dispute and shall cause the same to be served on the parties. In making such findings and recommendations, the fact finder shall take into consideration among other pertinent factors the logical and traditional concept of public personnel and merit system administration concepts and principles vital to the public interest in efficient and economical governmental administration. Cost of fact finding proceedings shall be divided equally between the parties. The fact finder shall, at the time he submits his recommendations and costs to the parties, send copies thereof to the board at its Madison office.

(3) Nothing herein shall be construed as prohibiting any fact finder from endeavoring to mediate the dispute, in which he is involved, at any time prior to the issuance of his recommendations.

(4) Within 30 days of the receipt of the fact finder's recommendations or within such time period as is mutually agreed upon by the parties, both parties shall advise each other, in writing, as to their acceptance or rejection, in whole or in part, of the fact finder's recommendations and, at the same time, send a copy of such notification to the board at its Madison office. Failure to comply herewith, by the state employer or employe representative shall be deemed a violation of s. 111.84 (1) (d) or (2) (c).

111.89 AGREEMENTS. Upon the completion of negotiations with a labor organization representing a majority of the employes in a collective bargaining unit and the appointing officer, together with the division of employment relations, if a settlement is reached, the employer shall reduce the same to writing in the form of an agreement. Such agreement may include a term for which it shall remain in effect not to exceed 3 years. Either party to such agreement shall have a right of action to enforce the same by petition to the board. No agreement shall become effective until it has been submitted by the appointing authority or his representative to the division of employment relations and approved by the division.

111.90 MANAGEMENT RIGHTS. Nothing in this subchapter shall interfere with the right of the employer, in accordance with applicable law, rules and regulations to:

(1) Carry out the statutory mandate and goals assigned to the agency utilizing personnel, methods and means in the most appropriate and efficient manner possible.

(2) Manage the employes of the agency; to hire, promote, transfer, assign or retain employes in positions within the agency and in that regard to establish reasonable work rules.

(3) Suspend, demote, discharge or take other appropriate disciplinary action against the employe for just cause; or to lay off employes in the event of lack of work or funds or under conditions where continuation of such work would be inefficient and nonproductive.

111.91 SUBJECTS OF COLLECTIVE BARGAINING. (1) Matters subject to collective bargaining are the following conditions of employment for which the appointing officer has discretionary authority:

- (a) Grievance procedures;
- (b) Application of seniority rights as affecting the matters contained herein;
- (c) Work schedules relating to assigned hours and days of the week and shift assignments;
- (d) Scheduling of vacations and other time off;
- (e) Use of sick leave;
- (f) Application and interpretation of established work rules;
- (g) Health and safety practices;
- (h) Intradepartmental transfers; and
- (i) Such other matters consistent with this section and the statutes, rules and regulations of the state and its various agencies.

(2) Nothing herein shall require the employer to bargain in relation to statutory and rule provided prerogatives of promotion, layoff, position classification, compensation and fringe benefits, examinations, discipline, merit salary determination policy and other actions provided for by law and rules governing civil service.

111.92 BOARD RULES AND REGULATIONS. The board may adopt reasonable and proper rules and regulations relative to the exercise of its powers and authority and proper rules to govern its proceedings and to regulate the conduct of all elections and hearings.

111.93 ADVISORY COMMITTEE. The board shall enlarge its advisory committee, established pursuant to s. 111.13, to permit representation therein by officers or agents of the state, and officers or agents of organizations representing state employes for the purpose of collective bargaining. Such membership on the advisory committee shall be in accordance with and pursuant to s. 111.13.

111.94 TITLE OF SUBCHAPTER V. This subchapter may be cited as the "State Employment Labor Relations Act."

SECTION 3. This act shall become effective January 1, 1967.

Approved June 27, 1966.
