CHAPTER 111.

EMPLOYMENT RELATIONS.

SUBCHAPTER I.

EMPLOYMENT PEACE ACT.

111.01 Declaration of policy. The public policy of the state as to employment relations and collective bargaining, in the furtherance of which this subchapter is enacted, is declared to be as follows:

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

(2) Industrial peace, regular and adequate income for the employe, and uninterrupted production of goods and services are promotive of all of these interests. They are largely dependent upon the maintenance of fair, friendly and mutually satisfactory employment relations and the availability of suitable machinery for the peaceful adjustment of whatever controversies may arise. It is recognized that certain employers, including farmers and farmer co-operatives, in addition to their general employer problems, face special problems arising from perishable commodities and seasonal production which require adequate consideration. It is also recognized that whatever may be the rights of disputants with respect to each other in any controversy regarding employment relations, they should not be permitted, in the conduct of their controversy, to intrude directly into the primary rights of third parties to earn a livelihood, transact business and engage in the ordinary affairs of life by any lawful means and free from molestation, interference, restraint or coercion.

(3) Negotiations of terms and conditions of work should result from voluntary agreement between employer and employe. For the purpose of such negotiation an employe has the right, if he desires, to associate with others in organizing and bargaining collectively through representatives of his own choosing, without intimidation or coercion from any source.

(4) It is the policy of the state, in order to preserve and promote the interests of the public, the employe, and the employer alike, to establish standards of fair conduct in employment relations and to provide a convenient, expeditious and impartial tribunal by which these interests may have their respective rights and obligations adjudicated. While limiting individual and group rights of aggression and defense, the state substitutes processes of justice for the more primitive methods of trial by combat.

111.02 Definitions. When used in this subchapter:

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees or receivers.

(2) The term "employer" means a person who engages the services of an employe, and includes any person acting on behalf of an employer within the scope of his authority, express or implied, but shall not include the state or any political subdivision thereof, or any labor organization or anyone acting in behalf of such organization other than when it is acting as an employer in fact.

(3) The term "employe" shall include any person, other than an independent contractor, working for another for hire in the state of Wisconsin in a nonexecutive or nonsupervisory capacity, and shall not be limited to the employes of a particular employer unless the context clearly indicates otherwise; and shall include any individual whose work has ceased solely as a consequence of or in connection with any current labor dispute or because of any unfair labor practice on the part of an employer and (a) who has not refused or failed to return to work upon the final disposition of a labor dispute or a charge of an unfair labor practice by a tribunal having competent jurisdiction of the same or whose jurisdiction was accepted by the employe or his representative, (b) who has not been found to have committed or to have been a party to any unfair labor practice hereunder, (c) who has not obtained regular and substantially equivalent employment elsewhere, or (d) who has not been absent from his employment for a substantial period of time during which reasonable expectancy of settlement has ceased (except by an employer's unlawful refusal to bargain) and whose place has been filled by another engaged in the regular manner for an indefinite or protracted period and not merely for the duration of a strike or lockout; but shall not include any individual employed in the domestic service of a family or person at his home or any individual employed by his parent or spouse or any employe who is subject to the federal railway labor act.

(4) The term "representative" includes any person chosen by an employe to represent him.

(5) "Collective bargaining" is the negotiating by an employer and a majority of his employes in a collective bargaining unit (or their representatives) concerning representation or terms and conditions of employment of such employes in a mutually genuine effort to reach an agreement with reference to the subject under negotiation.

(6) The term "collective bargaining unit" shall mean all of the employes of one employer (employed within the state), except that where a majority of such employes engaged in a single craft, division, department or plant shall have voted by secret ballot as provided in section 111.05 (2) to constitute such group a separate bargaining unit they shall be so considered, provided, that in appropriate cases, and to aid in the more efficient administration of the employment peace act, the board may find, where agreeable to all parties affected in any way thereby, an industry, trade or business comprising more than one employer in an association in any geographical area to be a "collective bargaining unit". A collective bargaining unit thus established by the board shall be subject to all rights by termination or modification given by this subchapter I of chapter 111 in reference to collective bargaining units otherwise established under said subchapter. Two or more collective bargaining units may bargain collectively through the same representative where a majority of the employes in each separate unit shall have voted by secret ballot as provided in section 111.05 (2) so to do.

(7) The term "unfair labor practice" means any unfair labor practice as defined in section 111.06.

(8) The term "labor dispute" means any controversy between an employer and the majority of his employes in a collective bargaining unit concerning the right or process or details of collective bargaining or the designation of representatives. Any organization with which either the employer or such majority is affiliated may be considered a party to the labor dispute.

(9) The term "all-union agreement" shall mean an agreement between an employer and the representative of his employes in a collective bargaining unit whereby all or any of the employes in such unit are required to be members of a single labor organization.

(10) The term "board" means the Wisconsin employment relations board, as created by section 111.03.

(11) The term "election" shall mean a proceeding 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 and shall include elections conducted by the board, or, unless the context clearly indicates otherwise, by any tribunal having competent jurisdiction or whose jurisdiction was accepted by the parties.

(12) The term "secondary boycott" shall include combining or conspiring to cause or threaten to cause injury to one with whom no labor dispute exists, whether by (a) withholding patronage, labor, or other beneficial business intercourse, (b) picketing, (c) refusing to handle, install, use or work on particular materials, equipment or supplies, or (d) by any other unlawful means, in order to bring him against his will into a concerted plan to coerce or inflict damage upon another.

(14) The term "jurisdictional strike" shall mean a strike growing out of a dispute between 2 or more employes or representatives of employes as to the appropriate unit for collective bargaining, or as to which representative is entitled to act as collective bargaining representative, or as to whether employes represented by one or the other representative are entitled to perform particular work.

111.03 Employment relations board. (1) There is hereby created a board to be known as Wisconsin employment relations board, which shall be composed of 3 members, who shall be appointed by the governor by and with the consent of the senate. No appointee at the time of the creation of the board shall serve on said board without first having been confirmed by the senate. On September 1, 1963 the term of office of each incumbent member of the board shall expire and the 3 offices of member of the Wisconsin employment relations board shall be vacant. Thereupon appointment shall be made of successor members to said board for terms beginning on the date of appointment, one such term to expire October 1, 1963, one May 12, 1967, and one May 12, 1965. Thereafter successors shall be appointed for terms of 6 years each, except that any individual appointed to fill a vacancy shall be appointed only for the unexpired term of the member whom he succeeds. The governor shall designate one member to serve as chairman of the board. Each member of the board shall take and file the official oath. A vacancy in the board shall not impair the right of the remaining members to exercise all the powers of the board and 2 members of the board shall constitute a quorum. The board shall have a seal for the authentication of its orders and proceedings, upon which shall be inscribed the words "Wisconsin Employment Relations Board—Seal". Each member of the board shall be eligible for the reappointment and shall not engage in any other business, vocation, or employment. The board may employ, promote and remove a secretary, deputies, clerks, stenographers and other assistants and examiners, fix their compensation and assign their duties, consistent with this subchapter. The board shall maintain its office at Madison. The board may hold sessions at any place within the state when the convenience of the board and the parties so requires. At the close of each fiscal year the board shall make a written report to the governor of such facts as it deems essential to describe its activities, including the cases it has heard, its disposition of the same, and the names, duties and salaries of its officers and employes. A single member of the board is, in this subchapter, referred to as a commissioner.

(2) The administrative and executive authority of the board shall be vested in the chairman, to be administered by him under the statutes and rules of the board and subject to the policies established by the board. The board shall make rules for administering the internal affairs of the board.

History: 1963 c. 225; 1965 c. 587.

A newly appointed member of the board, after hearing on a matter, may participate in deciding it if he has an opportunity to review the record. Tecumseh Products Co. v. W.E.R. Board, 23 W (2d) 118, 126 NW (2d) 520.

Board has authority to adopt rule for conduct of hearings by examiners, while reserving to the board the function of making findings and orders on the records of such hearings. 51 Atty. Gen. 70.

111.04 Rights of employes. 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.

111.05 Representatives and elections. (1) Representatives chosen for the purposes of collective bargaining by a majority of the employes voting in a collective bargaining

unit shall be the exclusive representatives of all of the employes in such unit for the purposes of collective bargaining, provided that any individual employe or any minority group of employes in any collective bargaining unit shall have the right at any time to present grievances to their employer in person or through representatives of their own choosing, and the employer shall confer with them in relation thereto.

(2) Whenever a question arises concerning the determination of a collective bargaining unit as defined in section 111.02 (6), it shall be determined by secret ballot, and the board, upon request, shall cause the ballot to be taken in such manner as to show separately the wishes of the employes in any craft, division, department or plant as to the determination of the collective bargaining unit.

(3) Whenever a question arises concerning the representation of employes in a collective bargaining unit the board shall determine the representatives thereof by taking a secret ballot of employes and certifying in writing the results thereof to the interested parties and to their employer or employers. There shall be included on any ballot for the election of representatives the names of all persons submitted by an employe or group of employes participating in the election, except that the board may, in its discretion, 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 an unfair labor practice. The ballot shall be so prepared as to permit of 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 in the same manner as provided by subsection (8) of section 111.07 for review of orders of the board.

(3m) Whenever an election has been conducted pursuant to subsection (3) in which the name of more than one proposed representative appears on the ballot and results in no conclusion, the board may, in its discretion, 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 run-off election. In such run-off 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 privilege of voting against any representative when the least number of votes cast at the first election was against representation by any named representative.

(4) Questions concerning the determination of collective bargaining units or representation of employes may be raised by petition of any employe or his 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 employes, provided that it appears to the board that sufficient reason therefor exists.

Where one brewery purchased another, a modification of contract as to seniority rights of employes, approved by mutual agreement of the parties and voted on by all workers was not an invalid amendment of a labor contract. O'Donnell v. Pabst Brewing Co. 12 W (2d) 491, 107 NW (2d) 484.

The board is not required to discard ballots not marked with an "X" in the box or bearing other marks which might serve to identify the voter. Milwaukee County Dist. Council v. Wis. E. R. Bd. 23 W (2d) 303, 127 NW (2d) 59.

111.06 What are unfair labor practices. (1) It shall be an unfair labor practice for an employer individually or in concert with others:

(a) To interfere with, restrain or coerce his employes in the exercise of the rights guaranteed in section 111.04.

(b) To initiate, create, dominate or interfere with the formation or administration of any labor organization or contribute financial support to it, provided that an employer shall not be prohibited from reimbursing employes at their prevailing wage rate for the time spent conferring with him, nor from co-operating with representatives of at least a majority of his employes in a collective bargaining unit, at their request, by permitting employe organizational activities on company premises or the use of company property facilities where such activities or use create no additional expense to the company, provided, however, that it shall not be an unfair labor practice for an employer to become a member of the same labor organization of which his employes are members, when he and they work at the same trade.

(c) 1. 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. An employer shall not be prohibited from entering into an all-union agreement with the representatives of his employes in a collective bargaining unit, where at least two-thirds of such employes voting (provided such two-thirds of the employes also constitute at least a majority of the employes in such collective bargaining unit) have voted affirmatively by secret

ballot in favor of such all-union agreement in a referendum conducted by the board. Such authorization of an all-union agreement shall be deemed to continue thereafter, subject to the right of either party to the all-union agreement to request the board in writing to conduct a new referendum on the subject. Upon receipt of such request by either party to the agreement, the board shall determine whether there is reasonable ground to believe that there exists a change in the attitude of the employes concerned toward the all-union agreement since the prior referendum and upon so finding the board shall conduct a new referendum. If the continuance of the all-union agreement is supported on any such referendum by a vote at least equal to that hereinabove provided for its initial authorization, it may be continued in force thereafter, subject to the right to request a further vote by the procedure hereinabove set forth. If the continuance of the all-union agreement is not thus supported on any such referendum, it shall be deemed terminated at the termination of the contract of which it is then a part or at the end of one year from the date of the announcement by the board of the result of the referendum, whichever proves to be the earlier date. The board shall declare any such all-union agreement terminated whenever it finds that the labor organization involved has unreasonably refused to receive as a member any employe of such employer, and each such all-union agreement shall be made subject to this duty of the board. Any person interested may come before the board as provided in s. 111.07 and ask the performance of this duty. Any all-union agreement in existence on May 5, 1939, and renewed or amended continuously since that time shall be deemed valid and enforcible in all respects. It is not a violation of this subchapter for an employer engaged primarily in the building and construction industry where the employes of such employer in a collective bargaining unit usually perform their duties on building and construction sites, to negotiate, execute and enforce an all-union agreement with a labor organization which has not been subjected to a referendum vote as provided in this subchapter. It is not a violation of this subchapter for an employer engaged in the truck transportation of freight in the motor freight industry as a common or contract carrier of property as defined in s. 194.01 (5) and (11) to negotiate, execute and enforce an all-union agreement with a labor organization representing employes in a multi-state bargaining unit which has not been subjected to a referendum vote as provided in this subchapter; except that an election shall be held if a petition requesting such election is signed by 30% of the employes affected.

2. No petition by an employer for a referendum to determine whether an all-union agreement is desired by his employes shall be entertained by the board where such employer has a contract or is negotiating for a contract with a labor organization which has been duly constituted as the bargaining representative of his employes unless such employer has made an agreement with such labor organization that he will make a contract for an all-union shop if it is determined as a result of the referendum held by the board that his employes duly approve such all-union shop.

(d) To refuse to bargain collectively with the representative of a majority of his employes in any collective bargaining unit; provided, however, that where an employer files with the board a petition requesting a determination as to majority representation, he shall not be deemed to have refused to bargain until an election has been held and the result thereof has been certified to him by the board.

(e) To bargain collectively with the representatives of less than a majority of his employes in a collective bargaining unit, or to enter into an all-union agreement except in the manner provided in subsection (1) (c) of this section.

(f) To violate the terms of a collective bargaining agreement (including an agreement to accept an arbitration award).

(g) To refuse or fail to recognize or accept as conclusive of any issue in any controversy as to employment relations the final determination (after appeal, if any) of any tribunal having competent jurisdiction of the same or whose jurisdiction the employer accepted.

(h) To discharge or otherwise discriminate against an employe because he has filed charges or given information or testimony in good faith under the provisions of this subchapter.

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

(j) To employ any person to spy upon employes or their representatives respecting their exercise of any right created or approved by this subchapter.

(k) To make, circulate or cause to be circulated a blacklist as described in s. 134.02.

(l) To commit any crime or misdemeanor in connection with any controversy as to employment relations.

(2) It shall be an unfair labor practice for an employe individually or in concert with others:

(a) To coerce or intimidate an employe in the enjoyment of his legal rights, including those guaranteed in section 111.04, or to intimidate his family, picket his domicile, or injure the person or property of such employe or his family.

(b) To coerce, intimidate or induce any employer to interfere with any of his employes in the enjoyment of their legal rights, including those guaranteed in section 111.04, or to engage in any practice with regard to his employes which would constitute an unfair labor practice if undertaken by him on his own initiative.

(c) To violate the terms of a collective bargaining agreement (including an agreement to accept an arbitration award).

(d) To refuse or fail to recognize or accept as conclusive of any issue in any controversy as to employment relations the final determination (after appeal, if any) of any tribunal having competent jurisdiction of the same or whose jurisdiction the employes or their representatives accepted.

(e) To co-operate in engaging in, promoting or inducing picketing (not constituting an exercise of constitutionally guaranteed free speech), boycotting or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employes of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike.

(f) To hinder or prevent, by mass picketing, threats, intimidation, force or coercion of any kind the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance.

(g) To engage in a secondary boycott; or to hinder or prevent, by threats, intimidation, force, coercion or sabotage, the obtaining, use or disposition of materials, equipment or services; or to combine or conspire to hinder or prevent, by any means whatsoever, the obtaining, use or disposition of materials, equipment or services, provided, however, that nothing herein shall prevent sympathetic strikes in support of those in similar occupations working for other employers in the same craft.

(h) To take unauthorized possession of property of the employer or to engage in any concerted effort to interfere with production except by leaving the premises in an orderly manner for the purpose of going on strike.

(i) To fail to give the notice of intention to strike provided in section 111.11.

(j) To commit any crime or misdemeanor in connection with any controversy as to employment relations.

(l) To engage in, promote or induce a jurisdictional strike.

(m) To coerce or intimidate an employer working at the same trade of his employes to induce him to become a member of the labor organization of which they are members, permissible pursuant to section 111.06 (1) (b).

(3) It shall be an unfair labor practice for any person to do or cause to be done on behalf of or in the interest of employers or employes, or in connection with or to influence the outcome of any controversy as to employment relations any act prohibited by subsections (1) and (2) of this section.

History: 1961 c. 124; 1967 c. 113.

The Federal act displaces our statute where the question concerns the right of a union to fine members for crossing a picket line during a strike called by the union. Local 248, U.A.,A.&A.I.W. v. Wis. E. R. Board, 11 W (2d) 277, 105 NW (2d) 271.

Unfair labor practices in Wisconsin. Smith, 45 MLR 223, 338.

Power of states to regulate union internal discipline; federal pre-emption. 1962 WLR 166.

See note to 111.70, citing Muskego-Norway C. S. J. S. D. No. 9 v. W. E. R. B. 35 W (2d) 540, 151 NW (2d) 617.

111.07 Prevention of unfair labor practices. (1) Any controversy concerning unfair labor practices may be submitted to the board in the manner and with the effect provided in this subchapter, but nothing herein shall prevent the pursuit of legal or equitable relief in courts of competent jurisdiction.

(2) (a) Upon the filing with the board by any party in interest of a complaint in writing, on a form provided by the board, charging any person with having engaged in any specific unfair labor practice, it shall mail a copy of such complaint to all other parties in interest. Any other person claiming interest in the dispute or controversy, as an employer, an employe, or their representative, shall be made a party upon application. The board may bring in additional parties by service of a copy of the complaint. Only one such complaint shall issue against a person with respect to a single controversy, but any such complaint may be amended in the discretion of the board at any time prior to the issuance of a final order based thereon. The person or persons so complained of shall

have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the notice of hearing. The board shall fix a time for the hearing on such complaint, which will be not less than ten nor more than forty days after the filing of such complaint, and notice shall be given to each party interested by service on him personally or by mailing a copy thereof to him at his last known post-office address at least ten days before such hearing. In case a party in interest is located without the state and has no known post-office address within this state, a copy of the complaint and copies of all notices shall be filed in the office of the secretary of state and shall also be sent by registered mail to the last known post-office address of such party. Such filing and mailing shall constitute sufficient service with the same force and effect as if served upon the party located within this state. Such hearing may be adjourned from time to time in the discretion of the board and hearings may be held at such places as the board shall designate.

(b) The board shall have the power to issue subpoenas and administer oaths. Depositions may be taken in the manner prescribed by section 101.21. No person shall be excused from attending and testifying or from producing books, records, correspondence, documents or other evidence in obedience to the subpoena of the board on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture under the laws of the state of Wisconsin; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, before the board in obedience to a subpoena issued by it; provided, that an individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(c) Any person who shall wilfully and unlawfully fail or neglect to appear or testify or to produce books, papers and records as required, shall, upon application to a circuit court, be ordered to appear before the board, there to testify or produce evidence if so ordered, and failure to obey such order of the court may be punished by the court as a contempt thereof.

(d) Each witness who shall appear before the board by its order or subpoena shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of record, which shall be audited and paid by the state in the same manner as other expenses are audited and paid, upon the presentation of properly verified vouchers approved by the chairman of the board and charged to the proper appropriation for the board.

(3) A full and complete record shall be kept of all proceedings had before the board, and all testimony and proceedings shall be taken down by the reporter appointed by the board. Any such proceedings shall be governed by the rules of evidence prevailing in courts of equity and the party on whom the burden of proof rests shall be required to sustain such burden by a clear and satisfactory preponderance of the evidence.

(4) Within 60 days after hearing all testimony and arguments of the parties the board shall make and file its findings of fact upon all of the issues involved in the controversy, and its order, which shall state its determination as to the rights of the parties. Pending the final determination by it of any controversy before it the board may, after hearing, make interlocutory findings and orders which may be enforced in the same manner as final orders. Final orders may dismiss the charges or require the person complained of to cease and desist from the unfair labor practices found to have been committed, suspend his rights, immunities, privileges or remedies granted or afforded by this subchapter for not more than one year, and require him to take such affirmative action, including reinstatement of employes with or without pay, as the board may deem proper. Any order may further require such person to make reports from time to time showing the extent to which he has complied with the order.

(5) The board may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the board as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the board as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the board shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the board, the board shall

either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the board is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the board.

(6) The board shall have the power to remove or transfer the proceedings pending before a commissioner or examiner. It may also, on its own motion, set aside, modify or change any order, findings or award (whether made by an individual commissioner, an examiner, or by the board as a body) at any time within twenty days from the date thereof if it shall discover any mistake therein, or upon the grounds of newly discovered evidence.

(7) If any person fails or neglects to obey an order of the board while the same is in effect the board may petition the circuit court of the county wherein such person resides or usually transacts business for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court its record in the proceedings, including all documents and papers on file in the matter, the pleadings and testimony upon which such order was entered, and the findings and order of the board. Upon such filing the board shall cause notice thereof to be served upon such person by mailing a copy to his last known post-office address, and thereupon the court shall have jurisdiction of the proceedings and of the question determined therein. Said action may thereupon be brought on for hearing before said court upon such record by the board serving ten days' written notice upon the respondent; subject, however, to provisions of law for a change of the place of trial or the calling in of another judge. Upon such hearing the court may confirm, modify, or set aside the order of the board and enter an appropriate decree. No objection that has not been urged before the board shall be considered by the court unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of fact made by the board, if supported by credible and competent evidence in the record, shall be conclusive. The court may, in its discretion, grant leave to adduce additional evidence where such evidence appears to be material and reasonable cause is shown for failure to have adduced such evidence in the hearing before the board. The board may modify its findings as to facts, or make new findings by reason of such additional evidence, and it shall file such modified or new findings with the same effect as its original findings and shall file its recommendations, if any, for the modification or setting aside of its original order. The court's judgment and decree shall be final except that the same shall be subject to review by the supreme court in the same manner as provided in section 102.25.

(8) The order of the board shall also be subject to review in the manner provided in chapter 227, except that the place of review shall be the circuit court of the county in which the appellant or any party resides or transacts business.

(10) Commencement of proceedings under subsection (7) shall, unless otherwise specifically ordered by the court, operate as a stay of the board's order.

(11) Petitions filed under this section shall have preference over any civil cause of a different nature pending in the circuit court, shall be heard expeditiously, and the circuit courts shall always be deemed open for the trial thereof.

(12) A substantial compliance with the procedure of this subchapter shall be sufficient to give effect to the orders of the board, and they shall not be declared inoperative, illegal, or void for any omission of a technical nature in respect thereto.

(13) A transcribed copy of the evidence and proceedings or any part thereof on any hearing taken by the stenographer appointed by the board, being certified by such stenographer to be a true and correct transcript, carefully compared by him with his original notes, and to be a correct statement of such evidence and proceedings, shall be received in evidence with the same effect as if such reporter were present and testified to the fact so certified. A copy of such transcript shall be furnished on demand free of cost to any party (all of the members of a single organization being considered a single party).

(14) The right of any person to proceed under this section shall not extend beyond one year from the date of the specific act or unfair labor practice alleged.

History: 1967 c. 43.

Where the employment relations board had issued a cease-and-desist order against certain picketing for being an unlawful labor practice because of hindering and preventing the pursuance of lawful work and constituting a secondary boycott, the circuit court, on review of such order, had no authority to modify it by directing its termination on the ground that it had served its purpose and was no longer necessary. Madison B. & C. T. Council v. Wisconsin E. R. Bd. 11 W (2d) 337, 105 NW (2d) 556.

The legislature intended the board to have the power to make orders for the payment of money, such as for earned vacation pay which the employer has refused to pay, notwithstanding the fact that the claimed unfair labor practice arose after the termination of the contract which was allegedly violated. General D. & H. Union v. Wisconsin E. R. Board, 21 W (2d) 242, 124 NW (2d) 123.

The union, as a party to the collective-bargaining contract allegedly breached, was

the statutory representative of the employes and therefore a "party in interest," as that term is used in (2) (a). General D. & H. Union v. Wisconsin E. R. Board, 21 W (2d) 242, 124 NW (2d) 123.

The board has authority to resolve certain labor disputes, whether state or federal substantive law is to be applied. Tecumseh Products Co. v. W.E.R. Board, 23 W (2d) 118, 126 NW (2d) 520.

(14) does not apply to actions brought under sec. 301 (a) of the Labor Management Relations Act. Tully v. Fred Olson Motor Service Co. 27 W (2d) 476, 134 NW (2d) 393.

A respondent in a proceeding before the WERB upon a complaint charging unfair labor practices who was adjudged in contempt for failure to comply with an enforcement judgment could not as a defense to the contempt judgment on appeal therefrom raise procedural defects in connection with the underlying board order and enforcement judgment where no timely attempt had been made to appeal from either. Wisconsin E. R. Board v. Mews, 29 W (2d) 44, 138 NW (2d) 147.

Collective-bargaining contracts can be enforced even though they would have been enforceable by other remedies in a direct court action. Wisconsin E. R. Board v. Mews, 29 W (2d) 44, 138 NW (2d) 147.

The WERB can enforce a collective bargaining contract under section 301 of the Labor Management Relations Act. The defendant could remove the cause to federal court. The fact that the contract provides for grievance machinery but not for arbitration does not bar the union from resorting to the WERB after the grievance procedure was exhausted. American Motors Corp. v. Wisconsin E. R. Board, 32 W (2d) 237, 145 NW (2d) 137.

The 60-day limit in (4) is directory, not mandatory. A 9-month delay in the making of the decision does not deprive the board of jurisdiction. Muskego-Norway Etc. v. W.E.R.B. 32 W (2d) 478, 145 NW (2d) 680, 147 NW (2d) 541, 151 NW (2d) 84, 151 NW (2d) 617.

Legislation imposing more restrictive conditions on remedies to be granted by the WERB against employes and employe organizations than against employers, would not be invalid. 54 Atty. Gen. 115.

111.08 Financial reports to employes. Every person acting as the representative of employes for collective bargaining shall keep an adequate record of its financial transactions and shall present annually to each member within sixty days after the end of its fiscal year a detailed written financial report thereof in the form of a balance sheet and an operating statement. In the event of failure of compliance with this section, any member may petition the board for an order compelling such compliance. An order of the board on such petition shall be enforcible in the same manner as other orders of the board under this subchapter.

111.09 Board shall make rules, regulations and orders. 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.

111.10 Arbitration. Parties to a labor dispute 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 so to act. The board shall appoint as arbitrators only competent, impartial and disinterested persons. Proceedings in any such arbitration shall be as provided in chapter 298 of the statutes.

111.11 Mediation. (1) The board shall have power to 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 shall be 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. The board shall provide necessary expenses for such mediators as it may appoint, order reasonable compensation not exceeding ten dollars per day for each such mediator, and prescribe reasonable rules of procedure for such mediators.

(2) Where the exercise of the right to strike by employes of any employer engaged in the state of Wisconsin in the production, harvesting or initial processing (the latter after leaving the farm) of any farm or dairy product produced in this state would tend to cause the destruction or serious deterioration of such product, the employes shall give to the board at least ten days' notice of their intention to strike and the board shall immediately notify the employer of the receipt of such notice. Upon receipt of such notice, the board shall take immediate steps to effect mediation, if possible. In the event of the failure of the efforts to mediate, the board shall endeavor to induce the parties to arbitrate the controversy.

111.12 Duties of the attorney-general and district attorneys. Upon the request of the board, the attorney-general or the district attorney of the county in which a proceeding is brought before the circuit court for the purpose of enforcing or reviewing an order of the board shall appear and act as counsel for the board in such proceeding and in any proceeding to review the action of the circuit court affirming, modifying or reversing such order.

111.13 Advisory committee. The board shall appoint an advisory committee con-

sisting of one member of the board who shall represent the general public and who shall act as chairman, and an equal number of representatives of employes and employers. In selecting the representatives of employes, the board shall give representation to organizations representing labor unions both affiliated and nonaffiliated; and in selecting representatives of employers it shall give representation to employers in agricultural, industrial and commercial pursuits. The board may refer to such committee for its study and advice any matter having to do with the relations of employers and employes. Such committee shall give consideration to the practical operation and application of this subchapter and may make recommendations with respect to amendments of this subchapter and shall report to the proper legislative committee its view on any pending bill relating to this subchapter. Regular meetings of such committee shall be held on the first Monday of each alternate month following May 2, 1947. Special meetings of the committee may be called at other times by the board. Members of the advisory committee shall receive no salary or compensation for service on said committee, but shall be entitled to reimbursement for necessary expenses.

111.14 Penalty. Any person who shall wilfully assault, resist, prevent, impede or interfere with any member of the board or any of its agents or agencies in the performance of duties pursuant to this subchapter shall be punished by a fine of not more than $500 or by imprisonment in the county jail for not more than one year, or both.

111.15 Construction of subchapter I. Except as specifically provided in this subchapter, nothing therein shall be construed so as to interfere with or impede or diminish in any way the right to strike or the right of individuals to work; nor shall anything in this subchapter be so construed as to invade unlawfully the right to freedom of speech. And nothing in this subchapter shall be so construed or applied as to deprive any employe of any unemployment benefit which he might otherwise be entitled to receive under chapter 108 of the statutes.

111.17 Conflict of provisions; effect. Wherever the application of the provisions of other statutes or laws conflict with the application of the provisions of this subchapter, this subchapter shall prevail, provided that in any situation where the provisions of this subchapter cannot be validly enforced the provisions of such other statutes or laws shall apply.

111.19 Title of subchapter I. This subchapter may be cited as the "Employment Peace Act."

SUBCHAPTER II.
FAIR EMPLOYMENT.

111.31 Declaration of policy. (1) The practice of denying employment and other opportunities to, and discriminating against, properly qualified persons by reason of their age, race, creed, color, handicap, sex, national origin or ancestry, is likely to foment domestic strife and unrest, and substantially and adversely affect the general welfare of a state by depriving it of the fullest utilization of its capacities for production. The denial by some employers, licensing agencies and labor unions of employment opportunities to such persons solely because of their age, race, creed, color, handicap, sex, national origin or ancestry, and discrimination against them in employment, tends to deprive the victims of the earnings which are necessary to maintain a just and decent standard of living, thereby committing grave injury to them.

(2) It is believed by many students of the problem that protection by law of the rights of all people to obtain gainful employment, and other privileges free from discrimination because of age, race, creed, color, handicap, sex, national origin or ancestry, would remove certain recognized sources of strife and unrest, and encourage the full utilization of the productive resources of the state to the benefit of the state, the family and to all the people of the state.

(3) In the interpretation and application of this subchapter, and otherwise, it is declared to be the public policy of the state to encourage and foster to the fullest extent practicable the employment of all properly qualified persons regardless of their age, race, creed, color, handicap, sex, national origin or ancestry. This subchapter shall be liberally construed for the accomplishment of this purpose.

History: 1961 c. 529; 1965 c. 230; 1967 c. 234.

111.32 Definitions. When used in this subchapter:

(1) The term "labor organization" shall include any collective bargaining unit composed of employes.

(2) The term "employes" shall not include any individual employed by his parents, spouse or child.

(3) (a) The term "employer" shall not include a social club, fraternal or religious association not organized for private profit.

(4) The term "commission" means the industrial commission of the state of Wisconsin.

(5) (a) "Discrimination" means discrimination because of age, race, color, handicap, sex, creed, national origin or ancestry, by an employer or licensing agency individually or in concert with others, against any employe or any applicant for employment or licensing, in regard to his hire, tenure or term, condition or privilege of employment or licensing and by any labor organization against any member or applicant for membership, and also includes discrimination on any of said grounds in the fields of housing, recreation, education, health and social welfare as related to a condition or privilege of employment.

(b) It is discrimination because of age:

1. For an employer, labor organization, or person in the fields of housing, recreation, education, health and social welfare, or any licensing agency, because an individual is between the ages of 40 and 65, to refuse to hire, employ, admit or license, or to bar or to terminate from employment such individual, or to discriminate against such individual in promotion, compensation or in terms, conditions or privileges of employment;

2. For any employer, licensing agency or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which implies or expresses any limitation, specification or discrimination respecting individuals between the ages of 40 and 65, or any intent to make such limitation, specification or discrimination;

3. For any employer, licensing agency or employment agency to discharge or otherwise discriminate against any person because he has opposed any discriminatory practices under this section or because he has made a complaint, testified or assisted in any proceeding under this section.

(c) Nothing in this subsection shall be construed to prevent termination of the employment of any person physically or otherwise unable to perform his duties, nor to affect any retirement policy or system of any employer where such policy or system is not a subterfuge to evade the purposes of this subsection, nor to preclude the varying of insurance coverage according to an employe's age; nor to prevent the exercise of an age distinction with respect to employment of persons in capacities in which the knowledge and experience to be gained might reasonably be expected to aid in the development of capabilities required for future advancement to supervisory, managerial, professional or executive positions.

(d) The prohibition against discrimination because of sex does not apply to the exclusive employment of one sex in positions where the nature of the work or working conditions provide valid reasons for hiring only men or women, or to a differential in pay between employes which is based in good faith on any factor other than sex.

(e) The prohibition against discrimination because of age shall not apply to hazardous occupations including, without limitation because of enumeration, law enforcement or fire fighting.

(f) The prohibition against discrimination because of handicap does not apply to failure of an employer to employ or to retain as an employe any person who because of a handicap is physically or otherwise unable to efficiently perform, at the standards set by the employer, the duties required in that job. An employer's exclusion of a handicapped employe from life or disability insurance coverage, or reasonable restriction of such coverage, shall not constitute discrimination.

(g) It is discrimination because of sex: 1. For an employer, labor organization, licensing agency or person to refuse to hire, employ, admit or license, or to bar or to terminate from employment or licensing such individual, or to discriminate against such individual in promotion, compensation or in terms, conditions or privileges of employment or licensing;

2. For any employer, licensing agency or employment agency to discharge or otherwise discriminate against any person because he has opposed any discriminatory practices under this section or because he has made a complaint, testified or assisted in any proceeding under this section.

History: 1961 c. 529, 628; 1965 c. 230, 439, 625 s. 38; 1967 c. 234.

Retirement of employes over 60 at an increased pension until they reach 65, pursuant to a union contract, does not constitute discrimination. Walker Mfg. Co. v. Industrial Comm. 27 W (2d) 669, 135 NW (2d) 307.

111.325 Unlawful to discriminate. It is unlawful for any employer, labor organization, licensing agency or person to discriminate against any employe or any applicant for employment or licensing.

History: 1967 c. 234.

111.33 Industrial commission to administer. Sections 111.31 to 111.36 shall be administered by the industrial commission. The commission shall have authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out this subchapter. The commission may, by one or more of its members, or by such agents or agencies as it may designate, conduct in any part of this state any proceeding, hearing, investigation or inquiry necessary to the performance of its functions. The commission shall at the end of every year make a report in writing to the government, stating in detail the work it has done and its recommendations, if any.

111.34 Advisory committee. The governor shall appoint an advisory committee consisting of 7 members. Two shall be representatives of labor organizations, one to be chosen from each of the 2 major labor organizations of the state, 2 members shall be representatives of business and industrial management, and the remaining 3 members shall be representative of the public at large. The term of members shall be for 3 years. The members of the committee shall elect their own chairman. The commission may refer to such committee for study and advice on any matter relating to fair employment. Such committee shall give consideration to the practical operation and application of this subchapter and may report to the proper legislative committee its view on any pending bill relating to the subject matter of this subchapter. Members of the committee shall receive no salary or compensation for services on said committee, but shall be entitled to reimbursement for necessary expenses.

111.35 Investigation and study of discrimination. The commission shall:

(1) Investigate the existence, character, causes and extent of discrimination in this state and the extent to which the same is susceptible of elimination.

(2) Study the best and most practicable ways of eliminating any discrimination found to exist, and formulate plans for the elimination thereof by education or other practicable means.

(3) Publish and disseminate reports embodying its findings and the results of its investigations and studies relating to discrimination and ways and means of reducing or eliminating it.

(4) Confer, co-operate with and furnish technical assistance to employers, labor unions, educational institutions and other public or private agencies in formulating programs, educational and otherwise, for the elimination of discrimination.

(5) Make specific and detailed recommendations to the interested parties as to the methods of eliminating discrimination.

(6) Transmit to the legislature from time to time recommendations for any legislation which may be deemed desirable in the light of the commission's findings as to the existence, character and causes of any discrimination.

111.36 Commission powers. (1) The commission may receive and investigate complaints charging discrimination or discriminatory practices in particular cases, and give publicity to its findings with respect thereto.

(2) In carrying out the provisions of this subchapter the commission and its duly authorized agents are empowered to hold hearings, subpoena witnesses, take testimony and make investigations in the manner provided in chapter 101. The commission or its duly authorized agents may privilege witnesses testifying before them under the provisions of this subchapter against self-incrimination.

(3) If the commission finds probable cause to believe that any discrimination as defined in this subchapter has been or is being committed, it shall immediately endeavor to eliminate the practice by conference, conciliation or persuasion. In case of failure so to eliminate the discrimination, the commission shall issue and serve a written notice of hearing, specifying the nature of the discrimination which appears to have been committed, and requiring the person named, hereinafter called the "respondent" to answer the complaint at a hearing before the commission. The notice shall specify a time of hearing not less than 10 days after service of the complaint, and a place of hearing within either the county of the respondent's residence or the county in which the discrimination appears to have occurred. The testimony at the hearing shall be taken down by a reporter appointed by the commission. If, after hearing, the commission finds that the respondent has engaged in discrimination, the commission shall make written findings and

recommend such action by the respondent as will effectuate the purpose of this subchapter and shall serve a certified copy of the findings and recommendations on the respondent together with an order requiring the respondent to comply with the recommendations, the order to have the same force as other orders of the commission and be enforced as provided in ch. 101. Any person aggrieved by noncompliance with the order shall be entitled to have the same enforced specifically by suit in equity. If the commission finds that the respondent has not engaged in discrimination as alleged in the complaint, it shall serve a certified copy of its findings on the complainant together with an order dismissing the complaint.

(4) It is unlawful for any organization or person referred to in s. 111.32 (1), (2) and (3) or for any employment agency which undertakes to procure employes or opportunities to work, to engage in any discrimination pursuant to this subchapter.

(5) If an order issued under sub. (3) is unenforceable against any labor organization in which membership is a privilege, the employer with whom such labor organization has an all-union shop agreement shall not be held accountable under this chapter, when such employer is not responsible for the discrimination.

111.37 Judicial review. Findings and orders of the commission under this subchapter shall be subject to review under ch. 227.

SUBCHAPTER III.

PUBLIC UTILITIES.

111.50 Declaration of policy. It is hereby declared to be the public policy of this state that it is necessary and essential in the public interest to facilitate the prompt, peaceful and just settlement of labor disputes between public utility employers and their employes which cause or threaten to cause an interruption in the supply of an essential public utility service to the citizens of this state and to that end to encourage the making and maintaining of agreements concerning wages, hours and other conditions of employment through collective bargaining between public utility employers and their employes, and to provide settlement procedures for labor disputes between public utility employers and their employes in cases where the collective bargaining process has reached an impasse and stalemate and as a result thereof the parties are unable to effect such settlement and which labor disputes, if not settled, are likely to cause interruption of the supply of an essential public utility service. The interruption of public utility service results in damage and injury to the public wholly apart from the effect upon the parties immediately concerned and creates an emergency justifying action which adequately protects the general welfare.

111.51 Definitions. When used in this subchapter:

(1) "Public utility employer" means any employer (other than the state or any political subdivision thereof) engaged in the business of furnishing water, light, heat, gas, electric power, public passenger transportation or communication, or any one or more of them, to the public in this state; and shall be deemed to include a rural electrification co-operative association engaged in the business of furnishing any one or more of such services or utilities to its members in this state. Nothing in this subsection shall be interpreted or construed to mean that rural electrification co-operative associations are hereby brought under or made subject to chapter 196 or other laws creating, governing or controlling public utilities, it being the intent of the legislature to specifically exclude rural electrification co-operative associations from the provisions of such laws. This subchapter does not apply to railroads nor railroad employes.

(2) "Essential service" means furnishing water, light, heat, gas, electric power, public passenger transportation or communication, or any one or more of them, to the public in this state.

(3) "Collective bargaining" means collective bargaining of or similar to the kind provided for by subchapter I of this chapter.

(4) "Board" means the Wisconsin employment relations board.

(5) "Arbitrators" refers to the arbitrators provided for in this subchapter.

111.52 Settlement of labor disputes through collective bargaining and arbitration. It shall be the duty of public utility employers and their employes in public utility operations to exert every reasonable effort to settle labor disputes by the making of agreements through collective bargaining between the parties, and by maintaining the agreements when made, and to prevent, if possible, the collective bargaining process from reaching a state of impasse and stalemate.

111.53 Appointment of conciliators and arbitrators. Within 30 days after July 25, 1947, the board shall appoint a panel of persons to serve as conciliators or arbitrators under the provisions of this subchapter. No person shall serve as a conciliator and arbitrator in the same dispute. Each person appointed to said panels shall be a resident of this state, possessing, in the judgment of the board, the requisite experience and judgment to qualify such person capably and fairly to deal with labor dispute problems. All such appointments shall be made without a consideration of the political affiliations of the appointee. Each appointee shall take an oath to perform honestly and to the best of his ability the duties of conciliator or arbitrator, as the case may be. Any appointee may be removed by the board at any time or may resign his position at any time by notice in writing to the board. Any vacancy in the panels shall be filled by the board within 30 days after such vacancy occurs. Such conciliators and arbitrators shall be paid reasonable compensation for services and for necessary expenses, in an amount to be fixed by the board, such compensation and expenses to be paid out of the appropriation made to the board by s. 20.425 upon such authorizations as the board may prescribe.

History: 1965 c. 433 s. 121; 1967 c. 291 s. 14.

111.54 Conciliation. If in any case of a labor dispute between a public utility employer and its employes, the collective bargaining process reaches an impasse and stalemate, with the result that the employer and the employes are unable to effect a settlement thereof, then either party to the dispute may petition the board to appoint a conciliator from the panel, provided for by section 111.53. Upon the filing of such petition, the board shall consider the same, and if in its opinion, the collective bargaining process, notwithstanding good faith efforts on the part of both sides to such dispute, has reached an impasse and stalemate and such dispute, if not settled, will cause or is likely to cause the interruption of an essential service, the board shall appoint a conciliator from the panel to attempt to effect the settlement of such dispute. The conciliator so named shall expeditiously meet with the disputing parties and shall exert every reasonable effort to effect a prompt settlement of the dispute.

111.55 Conciliator unable to effect settlement; appointment of arbitrators. If the conciliator so named is unable to effect a settlement of such dispute within a 15-day period after his appointment, he shall report such fact to the board; and the board, if it believes that a continuation of the dispute will cause or is likely to cause the interruption of an essential service, shall submit to the parties the names of either 3 or 5 persons from the panel provided for in section 111.53. Each party shall alternately strike one name from such list of persons. The person or persons left on the list shall be appointed by the board as the arbitrator (or arbitrators) to hear and determine such dispute.

111.56 Status quo to be maintained. During the pendency of proceedings under this subchapter existing wages, hours, and conditions of employment shall not be changed by action of either party without the consent of the other.

111.57 Arbitrator to hold hearings. (1) The arbitrator shall promptly hold hearings and shall have the power to administer oaths and compel the attendance of witnesses and the furnishing by the parties of such information as may be necessary to a determination of the issue or issues in dispute. Both parties to the dispute shall have the opportunity to be present at the hearing, both personally and by counsel, and to present such oral and documentary evidence as the arbitrator shall deem relevant to the issue or issues in controversy.

(2) It shall be the duty of the arbitrator to make written findings of fact, and to promulgate a written decision and order, upon the issue or issues presented in each case. In making such findings the arbitrator shall consider only the evidence in the record. When a valid contract is in effect defining the rights, duties and liabilities of the parties with respect to any matter in dispute, the arbitrators shall have power only to determine the proper interpretation and application of contract provisions which are involved.

(3) Where there is no contract between the parties, or where there is a contract but the parties have begun negotiations looking to a new contract or amendment of the existing contract, and wage rates or other conditions of employment under the proposed new or amended contract are in dispute, the factors, among others, to be given weight by the arbitrator in arriving at decision, shall include:

(a) Comparison of wage rates or other conditions of employment of the utility in question with prevailing wage rates or other conditions of employment in the local operating area involved;

(b) Comparison of wage rates or other working conditions with wage rates or other working conditions maintained for the same or similar work of workers exhibiting like

or similar skills under the same or similar working conditions in the local operating area involved;

(c) The value of the service to the consumer in the local operating area involved;

(d) Where a public utility employer has more than one plant or office and some or all of such plurality of plants or offices are found by the arbitrator to be located in separate areas with different characteristics, consideration shall be given to the establishment of separate wage rates or schedule of wage rates and separate conditions of employment for plants and offices in different areas;

(e) The overall compensation presently received by the employes, having regard not only to wages for time actually worked but also to wages for time not worked, including (without limiting the generality of the foregoing) vacation, holidays, and other excused time, and all benefits received, including insurance and pensions, medical and hospitalization benefits and the continuity and stability of employment enjoyed by the employes. The foregoing enumeration of factors shall not be construed as precluding the arbitrator from taking into consideration other factors not confined to the local labor market area which are normally or traditionally taken into consideration in the determination of wages, hours and working conditions through voluntary collective bargaining or arbitration between the parties.

111.58 Standards for arbitration. The arbitrator shall not make any award which would infringe upon the right of the employer to manage his business or which would interfere with the internal affairs of the union.

111.59 Filing order with clerk of circuit court; period effective; retroactivity. The arbitrator shall hand down his findings, decision and order (hereinafter referred to as the order) within 30 days after his appointment; except that the parties may agree to extend, or the board may for good cause extend the period for not to exceed an additional 30 days. If the arbitrators do not agree, then the decision of the majority shall constitute the order in the case. The arbitrator shall furnish to each of the parties and to the public service commission a copy of the order. A certified copy thereof shall be filed in the office of the clerk of the circuit court of the county wherein the dispute arose or where the majority of the employes involved in the dispute resides. Unless such order is reversed upon a petition for review filed pursuant to the provisions of section 111.60, such order, together with such agreements as the parties may themselves have reached, shall become binding upon, and shall control the relationship between the parties from the date such order is filed with the clerk of the circuit court, as aforesaid, and shall continue effective for one year from that date, but such order may be changed by mutual consent or agreement of the parties. No order of the arbitrators relating to wages or rates of pay shall be retroactive to a date before the date of the termination of any contract which may have existed between the parties, or, if there was no such contract, to a date before the day on which the demands involved in the dispute were presented to the other party. The question whether or not new contract provisions or amendments to an existing contract are retroactive to the terminating date of a present contract, amendments or part thereof, shall be matter for collective bargaining or decision by the arbitrator.

111.60 Judicial review of order of arbitrator. Either party to the dispute may within 15 days from the date such order is filed with the clerk of the court, petition the court for a review of such order on the ground (1) that the parties were not given reasonable opportunity to be heard, or (2) that the arbitrator exceeded his powers, or (3) that the order is not supported by the evidence, or (4) that the order was procured by fraud, collusion, or other unlawful means. A summons to the other party to the dispute shall be issued as provided by law in other civil cases; and either party shall have the same rights to a change of venue from the county, or to a change of judge, as provided by law in other civil cases. The judge of the circuit court shall review the order solely upon the grounds for review hereinabove set forth and shall affirm, reverse, modify or remand such order to the arbitrator as to any issue or issues for such further action as the circumstances require.

111.61 Board to establish rules. The board shall establish appropriate rules and regulations to govern the conduct of conciliation and arbitration proceedings under this subchapter.

111.62 Strikes, work stoppages, slowdowns, lockouts, unlawful; penalty. It shall be unlawful for any group of employes of a public utility employer acting in concert to call a strike or to go out on strike, or to cause any work stoppage or slowdown which would cause an interruption of an essential service; it also shall be unlawful for any public utility employer to lock out his employes when such action would cause an inter-

ruption of essential service; and it shall be unlawful for any person or persons to instigate, to induce, to conspire with, or to encourage any other person or persons to engage in any strike or lockout or slowdown or work stoppage which would cause an interruption of an essential service. Any violation of this section by any member of a group of employes acting in concert or by any employer or by any officer of an employer acting for such employer, or by any other individual, shall constitute a misdemeanor.

111.63 Enforcement. The board shall have the responsibility for enforcement of compliance with the provisions of this subchapter and to that end may file an action in the circuit court of the county in which any such violation occurs to restrain and enjoin such violation and to compel the performance of the duties imposed by this subchapter. In any such action the provisions of ss. 103.51 to 103.62 shall not apply.

111.64 Construction. (1) Nothing in this subchapter shall be construed to require any individual employe to render labor or service without his consent, or to make illegal the quitting of his labor or service or the withdrawal from his place of employment unless done in concert or agreement with others. No court shall have power to issue any process to compel an individual employe to render labor or service or to remain at his place of employment without his consent. It is the intent of this subchapter only to forbid employes of a public utility employer to engage in a strike or to engage in a work slowdown or stoppage in concert, and to forbid a public utility employer to lock out his employes, where such acts would cause an interruption of essential service.

(2) All laws and parts of laws in conflict herewith are to the extent of such conflict concerning the subject matter dealt with in this subchapter supplanted by the provisions of this subchapter.

SUBCHAPTER IV.

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

111.70 Municipal employment. (1) DEFINITIONS. When used in this section:

(a) "Municipal employer" means any city, county, village, town, metropolitan sewerage district, school district or any other political subdivision of the state.

(b) "Municipal employe" means any employe of a municipal employer except city and village policemen, sheriff's deputies, and county traffic officers.

(c) "Board" means the Wisconsin employment relations board.

(2) RIGHTS OF MUNICIPAL EMPLOYES. Municipal employes shall have the right of self-organization, to affiliate with labor organizations of their own choosing and the right to be represented by labor organizations of their own choice in conferences and negotiations with their municipal employers or their representatives on questions of wages, hours and conditions of employment, and such employes shall have the right to refrain from any and all such activities.

(3) PROHIBITED PRACTICES. (a) Municipal employers, their officers and agents are prohibited from:

1. Interfering with, restraining or coercing any municipal employe in the exercise of the rights provided in sub. (2).

2. Encouraging or discouraging 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.

3. Prohibiting a duly authorized representative of an organization certified pursuant to sub. (4) (d) or (j) from appearing before any governmental unit or body but nothing herein shall prevent the enactment of reasonable rules adopted by the employer necessary to maintain continuity of public service or the adoption of a negotiated agreement on the subject.

(b) Municipal employes individually or in concert with others are prohibited from:

1. Coercing, intimidating or interfering with municipal employes in the enjoyment of their legal rights including those set forth in sub. (2).

2. Attempting to induce a municipal employer to coerce, intimidate or interfere with a municipal employe in the enjoyment of his legal rights including those set forth in sub. (2).

(c) It is a prohibited practice for any person to do or cause to be done, on behalf of or in the interest of any municipal employer or employe, or in connection with or to influence the outcome of any controversy, as to employment relations, any act prohibited by pars. (a) and (b).

(4) POWERS OF THE BOARD. The board shall be governed by the following provisions relating to bargaining in municipal employment:

(a) *Prevention of prohibited practices.* Section 111.07 shall govern procedure in all cases involving prohibited practices under this subchapter.

(b) *Mediation.* The board may function as a mediator in disputes between municipal employes and their employers upon the request of both parties, and the parties may select a mediator by agreement or mutual consent.

(d) *Collective bargaining units.* Whenever a question arises between a municipal employer and a labor union as to whether the union represents the employes of the employer, either the union or the municipality may petition the board to conduct an election among said employes to determine whether they desire to be represented by a labor organization. Proceedings in representation cases shall be in accordance with ss. 111.02 (6) and 111.05 insofar as applicable, except that where the board finds that a proposed unit includes a craft the board shall exclude such craft from the unit. The board shall not order an election among employes in a craft unit except on separate petition initiating representation proceedings in such craft unit.

(e) *Fact finding.* Fact finding may be initiated in the following circumstances: 1. If after a reasonable period of negotiation the parties are deadlocked, either party or the parties jointly may initiate fact finding; 2. Where an employer or union fails or refuses to meet and negotiate in good faith at reasonable times in a bona fide effort to arrive at a settlement.

(f) *Same.* Upon receipt of a petition to initiate fact findings, the board shall make an investigation and determine whether or not the condition set forth in par. (e) 1 or 2 has been met and shall certify the results of said investigation. 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.

(g) *Same.* The fact finder may establish dates and place of hearings which shall be where feasible in the jurisdiction of the municipality involved, and shall conduct said 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 hearings, 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 municipal employer and the union.

(h) *Parties.* 1. Proceedings to prevent prohibitive practices. Any labor organization or any individual affected by prohibited practices herein is a proper party to proceedings by the board to prevent such practice under this subchapter.

2. Fact finding cases. Only labor unions which have been certified as representative of the employes in the collective bargaining unit or which the employer has recognized as the representative of said employes shall be proper parties in initiating fact finding proceedings. Cost of fact finding proceedings shall be divided equally between said labor organization and the employer.

(i) *Agreements.* Upon the completion of negotiations with a labor organization representing a majority of the employes in a collective bargaining unit, if a settlement is reached, the employer shall reduce the same to writing either in the form of an ordinance, resolution or agreement. Such agreement may include a term for which it shall remain in effect not to exceed one year. Such agreements shall be binding on the parties only if express language to that effect is contained therein.

(j) *Personnel relations in law enforcement.* In any case in which a majority of the members of a police or sheriff or county traffic officer department shall petition the governing body for changes or improvements in the wages, hours or working conditions and designates a representative which may be one of the petitioners or otherwise, the procedures in pars. (e) to (g) shall apply. Such representative may be required by the board to post a cash bond in an amount determined by the board to guarantee payment of one-half of the costs of fact finding.

(k) *Civil service exception.* Paragraphs (e) to (g) shall not apply to discipline or discharge cases under civil service provisions of a state statute or local ordinance.

(l) *Strikes prohibited.* Nothing contained in this subchapter shall constitute a grant of the right to strike by any county or municipal employe and such strikes are hereby expressly prohibited.

(m) *Local ordinances control.* The board shall not initiate fact finding proceedings in any case when the municipal employer through ordinance or otherwise has established fact finding procedures substantially in compliance with this subchapter.

(5) PROCEDURES. Any municipal employer may employ a qualified person to discharge the duties of labor negotiator and to represent such municipal employer in conferences and negotiations under this section. In cities of the 1st class a member of the city council who resigns therefrom may, during the term for which he is elected, be eligible to the position of labor negotiator under this subsection, which position during said term has been created by or the selection to which is vested in such city council, and s. 66.11 (2) shall be deemed inapplicable thereto.

History: 1961 c. 663; 1963 c. 6, 87; 1965 c. 85; 1967 c. 62, 318.

111.70 (4) (d), which authorizes the board to conduct an election among employes of a municipality to determine whether they desire to be represented by a labor organization, by its terms imports the procedure for review prescribed in 111.05 (3) and 111.07 (8), thus subjecting an order of the board to review in the manner prescribed in ch. 227, in the circuit court of the county in which the appellant or any party resides or transacts business. Milwaukee County Dist. Council v. Wis. E. R. Bd. 23 W (2d) 303, 127 NW (2d) 59.

A local ordinance cannot bar the board from making an initial determination that conditions for fact-finding exist. The validity of variations between the ordinance and the statute discussed. The board has jurisdiction to determine whether an ordinance is in substantial compliance with the statute. Whitefish Bay v. Wisconsin E. R. Board, 34 W (2d) 432, 149 NW (2d) 662.

The enactment of (4), which accords law-enforcement officers the right to invoke fact-finding procedure, did not by implication repeal so much of the 1959 enactment which by its terms specifically excludes law-enforcement personnel from the definition of municipal employes afforded the right to affiliate with labor unions and to conduct collective bargaining through such organizations. Greenfield v. Local 1127, 35 W (2d) 175, 150 NW (2d) 476.

A collective bargaining agreement between a city and its employes, which contained arbitration provisions and which provided it was binding on both parties, is enforceable. Local 1226 v. Rhinelander, 35 W (2d) 209, 151 NW (2d) 30.

An employe may not be fired when one of the motivating factors is his union activities, no matter how many other valid reasons exist for firing him. Muskego-Norway C.S.J.S.D. No. 9 v. W.E.R.B. 35 W (2d) 540, 151 NW (2d) 617.

If a petition is filed with the board under (4) (f) to initiate fact-finding in a labor dispute between a municipal employer and its employes, the board must conduct an investigation and determine whether the conditions exist under which fact finding should be initiated. If requirements of (4) (m) are met, the board should certify the results of its investigations to local agency. 51 Atty. Gen. 90.

A law authorizing municipal employers to enter collective bargaining agreements requiring municipal employes to pay to the bargaining representatives fees to cover costs of negotiating and administering contracts is lawful. 54 Atty. Gen. 56.

Legal aspects of public school teacher negotiating and participating in concerted activities. Seitz, 49 MLR 487.

A municipality's rights and responsibilities under the municipal labor law. Mulcahy, 49 MLR 512.

Public employes' right to picket. 50 MLR 541.

Labor relations in the public service. Anderson, 1961 WLR 601.

Municipal employment relations in Wisconsin. 1965 WLR 652.

The strike and its alternatives in public employment. 1966 WLR 549.

SUBCHAPTER V.
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 interferes 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.

History: 1965 c. 612.

The strike and its alternatives in public employment. 1966 WLR 549.

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.

History: 1965 c. 612.

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.

History: 1965 c. 612.

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.

History: 1965 c. 612.

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 January 1, 1967 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 sub. (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).

History: 1965 c. 612.

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.

History: 1965 c. 612.

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.

History: 1965 c. 612.

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.

History: 1965 c. 612.

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).

History: 1965 c. 612.

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.

History: 1965 c. 612.

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.

History: 1965 c. 612.

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.

History: 1965 c. 612.

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.

History: 1965 c. 612.

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.

History: 1965 c. 612.

111.94 Title of subchapter V. This subchapter may be cited as the "State Employment Labor Relations Act."

History: 1965 c. 612.