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 cooperatives, 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.

A labor agreement offering special parking privileges to county employes in a county ramp does not violate this section. Dane Co. v. McManus, 55 W (2d) 413, 198 NW (2d) 667.

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 commission 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 commission 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) "Commission" means the employment relations commission.

(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 commission, 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.

111.04 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 s. 111.02 (6), it shall be determined by secret ballot, and the commission, 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 commission 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 commission 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 commission'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 s. 111.07 (8) for review of orders of the commission.

(3m) 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 commission 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 runoff election. In such runoff election, the commission 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 commission 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 commission that sufficient reason therefor exists.

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 is not prohibited from entering into an all-union agreement with the voluntarily recognized representative of the employes in a collective bargaining unit, where at least a majority of such employes voting have voted affirmatively, by secret ballot, in favor of such all-union agreement in a referendum conducted by the commission, except that where the bargaining representative has been certified by either the commission or the national labor relations board as the result of a representation election, no referendum is required to authorize the entry into such an all-union agreement. 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 petition the commission to conduct a new referendum on the subject. Upon receipt of such petition, the commission shall determine whether there is reasonable ground to believe that the employes concerned have changed their attitude toward the all-union agreement and upon so finding the commission shall conduct a referendum. If the continuance of the all-union agreement is supported on any such referendum by a vote at least equal to that provided in this subdivision for its initial authorization, it may be continued in force thereafter, subject to the right to petition for a further vote by the procedure set forth in this subdivision. If the continuance of the all-union agreement is not thus supported on any such referendum, it is 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 commission of the result of the referendum, whichever is earlier. The commission shall declare any 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 commission. Any person interested may come before the commission as provided in s. 111.07 and ask the performance of this duty. Any all-union agreement in effect on October 4, 1975, made in accordance with the law in effect at the time it is made is valid.

2. 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.

3. 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.

4. It is not a violation of this subchapter for an orchestra or band leader engaged to provide live musical entertainment to enter into or comply with a policy, practice or contract in which all of the musicians must be members of a labor organization as a condition of hire or employment without such policy, practice or contract being subject to a referendum vote as provided in this subchapter.

(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 commission 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 commission.

(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: 1971 c. 245; 1973 c. 320; 1975 c. 74, 199.

A company is not required to bargain over a decision to use equipment which eliminates jobs, but it is required to bargain over the effects of the decision on the rights of the employes to severance pay, seniority, etc. Libby, McNeill & Libby v. Wisconsin E. R. Comm. 48 W (2d) 272, 179 NW (2d) 805.

Federal law has preempted the question of whether a union rule imposing a fine for exceeding production ceilings constitutes an unfair labor practice. UAW, LOcal 283 v. Scofield, 50 W (2d) 117, 183 NW (2d) 103.

The failure of an employe who was allegedly discharged in violation of the contract to exhaust the available procedure precludes recourse to the courts absent a wrongful refusal by the union to process the grievance. Mahnke v. WERC, 66 W (2d) 524, 225 NW (2d) 617.

The doctrine of federal pre-emption does not require the WERC to refrain from relating the union's conduct in authorizing concerted refusal of employes to accept overtime

assignments Lodge 76 v. WERC, 67 W (2d) 13, 226 NW (2d) 203.

Duty to bargain over decision to mechanize operations Boivin, 55 MLR 179.

Duty to bargain basic business decisions prior to implementation 1971 WLR 1250.

111.07 Prevention of unfair labor practices. (1) Any controversy concerning unfair labor practices may be submitted to the commission 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 commission by any party in interest of a complaint in writing, on a form provided by the commission, 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 commission 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 commission 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 commission shall fix a time for the hearing on such complaint, which will be not less than 10 nor more than 40 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 10 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 commission and hearings may be held at such places as the commission shall designate.

(b) The commission shall have the power to issue subpoenas and administer oaths. Depositions may be taken in the manner prescribed by s. 101.02 (14) (c). 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 commission 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 commission 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 commission, 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 commission 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 commission and charged to the proper appropriation for the commission.

(3) A full and complete record shall be kept of all proceedings had before the commission, and all testimony and proceedings shall be taken down by the reporter appointed by the commission. 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 commission 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 commission 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 commission deems 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 commission 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 commission 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 commission 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 commission 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 commission, the commission 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 commission 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 commission.

(6) The commission 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 commission as a body) at any time within 20 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 commission while the same is in effect the commission 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 commission. Upon such filing the commission 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 commission serving 10 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 commission and enter an appropriate decree. No objection that has not been urged before the commission 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 commission, 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 commission. The commission 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 s. 102.25.

(8) The order of the commission shall also be subject to review in the manner provided in ch. 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 sub. (7) shall, unless otherwise specifically ordered by the court, operate as a stay of the commission'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 commission, 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 commission, 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.

(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: 1971 c. 228 s. 44; 1973 c. 90.

Policy of WERC sustained which limits "parties in interest" those engaged in a controversy as to employment relations and defining such controversies as involving an employer and his employes or a union representing the employes or seeking to represent them. Chauffeurs, Teamsters & Helpers v. WERC, 51 W (2d) 391, 187 NW (2d) 364.

Since the NLRB has no jurisdiction to require collective bargaining with a one-employe unit, the WERC may do so. WERC v. Atlantic Richfield Co. 52 W (2d) 126, 187 NW (2d) 805.

The grant of authority to the WERC by 111.70 (4) (a), to prevent the commission of prohibited labor practices incorporates the provisions of 111.07 (4) not merely for procedural purposes—but for substantive remedial purposes as well. WERC v. Evansville, 69 W (2d) 140, 230 NW (2d) 688.

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 60 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 commission for an order compelling such compliance. An order of the commission on such petition shall be enforceable in the same manner as other orders of the commission under this subchapter.

111.09 Rules, regulations and orders; transcripts. The commission 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. The commission shall, upon request, provide transcripts of proceedings to any party to the proceeding at a rate of 60 cents per 25-line page for the first copy and 20 cents per 25-line page for each additional copy.

History: 1973 c. 90.

111.10 Arbitration. Parties to a labor dispute may agree in writing to have the commission act or name arbitrators in all or any part of such dispute, and thereupon the commission shall have the power so to act. The commission shall appoint as arbitrators only competent, impartial and disinterested persons. Proceedings in any such arbitration shall be as provided in ch. 298.

111.11 Mediation. (1) The commission 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 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 commission shall have any power of compulsion in mediation proceedings. The commission shall provide necessary expenses for such mediators as it may appoint, order reasonable compensation not exceeding $10 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 commission at least 10 days' notice of their intention to strike and the commission shall immediately notify the employer of the receipt of such notice. Upon receipt of such notice, the commission shall take immediate steps to effect mediation, if possible. In the event of the failure of the efforts to mediate, the commission 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 commission, 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 commission shall appear and act as counsel for the commission in such proceeding and in any proceeding to review the action of the circuit court affirming, modifying or reversing such order.

111.13 Council on employment relations. The commission may refer to the council on employment relations for its study and advice any matter having to do with the relations of employers and employes. The council shall give consideration to the practical operation and application of this subchapter and subch. V and may make recommendations with respect to amendments of these subchapters and shall report to the proper legislative committee its view on any pending bill relating to these subchapters.

111.14 Penalty. Any person who shall wilfully assault, resist, prevent, impede or interfere with any member of the commission 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.

Summary discharge after 2 weeks of satisfactory employment of persons with history of asthma violated the fair employment act in that it constituted a discriminatory practice against the claimant based on handicap. Chicago, M., St P & P RR Co v ILHR Dept 62 W (2d) 392, 215 NW (2d) 443.

The department is not limited to finding sex discrimination only where a 14th amendment equal protection violation could also be found. Wisconsin Telephone Co v ILHR Dept 68 W (2d) 345, 228 NW (2d) 649.

The Wisconsin Fair Employment Act is more direct and positive in prohibiting sex discrimination in employment than is the basic constitutional guarantee of equal protection of the laws, and enforcement of the law is not limited by the "rational basis" or "reasonableness" test employed in 14th amendment cases. Ray-O-Vac v ILHR Dept 70 W (2d) 919, 236 NW (2d) 209.

Wisconsin's fair employment act: coverage, procedures, substance, remedies. 1975 WLR 696.

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) The term "employer" shall include this state and any employer as defined in s. 41.02 (4), but shall not include a social club, fraternal or religious association not organized for private profit.

Note: Chapter 31, laws of 1975, renumbered and amended sub. (3) and contained the following language on applicability:

"This act applies to complaints filed under subchapter II of chapter 111 of the statutes prior to and on the effective date of this act [July 15, 1975] and to causes of action arising under that subchapter which the statute of limitations has not extinguished".

(4) "Department" means the department of industry, labor and human relations.

(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.

(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) It is discrimination because of handicap:

1. For an employer, labor organization, licensing agency or other person to refuse to hire, employ, admit or license, or to bar or to terminate from employment, membership or licensure any individual, or to discriminate against any individual in promotion, compensation or in terms, conditions or privileges of employment unless such handicap is reasonably related to the individual's ability adequately to undertake the job-related responsibilities of that individual's employment, membership or licensure.

2. For an employer to contribute a lesser amount to the fringe benefits, including life or disability insurance coverage, of any employe because of a handicap.

(g) It is discrimination because of sex:

1. For an employer, labor organization, licensing agency or person, on the basis of sex where sex is not a bona fide occupational qualification, to refuse to hire, employ, admit or license, or to bar or to terminate from employment or licensing any individual;

1m. For an employer, labor organization, licensing agency or person, on the basis of sex where sex is not a bona fide occupational qualification, to discriminate against any individual in promotion, compensation paid for equal or substantially similar work, 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.

3. For an employer, licensing agency, employment agency, or any publisher to print or circulate or cause to be printed or circulated any employment advertisement offering or requesting employment, publicizing employment opportunities or offering to help persons secure employment which is classified on the basis of sex, or which implies or expresses any preference, limitation, specification or discrimination based on sex, unless sex is a bona fide occupational qualification for the particular job involved.

4. For the purposes of this paragraph, sex is a bona fide occupational qualification where all of the members of one sex are physically incapable of performing the essential duties required by a job, or where the essence of the employer's business operation would be undermined if employes were not hired exclusively from one sex.

History: 1975 c. 31, 94, 275, 421.

The word "handicap", although not statutorily defined in (5), includes such diseases as asthma, which make achievement unusually difficult. Chicago, M., St. P. & P. R. R. Co. v. ILHR Dept. 62 W (2d) 392, 215 NW (2d) 443.

The differing treatment of pregnancy disability is not based upon a difference in type of disability, as contended by the

employer, rather than upon the sex of the employe, since pregnancy is undisputedly sex-linked, and to isolate disabilities associated with pregnancy for less favorable treatment in a benefit plan designed to relieve the economic burden of physical incapacity constitutes discrimination by sex. Ray-O-Vac v. ILHR Dept. 70 W (2d) 919, 236 NW (2d) 209.

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.

111.33 Department to administer. This subchapter shall be administered by the department of industry, labor and human relations. The department may make, amend and rescind such rules and regulations as are necessary to carry out this subchapter. The department may, by a commissioner or such agents or agencies as it designates, conduct in any part of this state any proceeding, hearing, investigation or inquiry necessary to the performance of its functions. The department shall preserve the anonymity of any employe who is the aggrieved party in a complaint of discrimination in promotion, compensation or terms and conditions of employment against his or her present employer until a determination as to probable cause has been made, unless the department determines that such anonymity will substantially impede the investigation.

History: 1975 c. 94.

111.35 Investigation and study of discrimination. The department 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 department's findings as to the existence, character and causes of any discrimination.

111.36 Powers of department. (1) The department 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 this subchapter the department and its duly authorized agents are empowered to hold hearings, subpoena witnesses, take testimony and make investigations in the manner provided in ch. 101. The department or its duly authorized agents may privilege witnesses testifying before them under the provisions of this subchapter against self-incrimination.

(3) (a) If the department finds probable cause to believe that any discrimination 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 department 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 department. The notice shall specify a time of hearing not less than 30 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 recorded or taken down by a reporter appointed by the department.

(b) If, after hearing, the department finds that the respondent has engaged in discrimination, it shall make written findings and order such action by the respondent as will effectuate the purpose of this subchapter, with or without back pay. Back pay liability shall not accrue from a date more than 2 years prior to the filing of a complaint with the department. Interim earnings or amounts earnable with reasonable diligence by the person discriminated against shall operate to reduce back pay otherwise allowable. Amounts received by the person discriminated against as unemployment benefits or welfare payments shall not reduce the back pay otherwise allowable, but shall be withheld from the person discriminated against and immediately paid to the unemployment reserve fund or, in the case of a welfare payment, to the welfare agency making such payment.

(c) The department shall serve a certified copy of the findings and order on the respondent, the order to have the same force as other orders of the department and be enforced as provided in ch. 101. Any person aggrieved by noncompliance with the order may have the same enforced specifically by suit in equity. If the department

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.

History: 1973 c. 268.

The department's order was overbroad in that it exceeded the nature of the discrimination set forth in the notice of hearing. Chicago, M., St. P. & P. RR. Co. v. ILHR Dept. 62 W (2d) 392, 215 NW (2d) 443.

Although (3) (b) became effective subsequent to discrimination against the plaintiff, it and the language of 111.31 indicate a legislative design to prevent the loss of wages resulting from employment discrimination, hence plaintiff's complaint seeking back pay states a cause of action. Yanta v. Montgomery Ward & Co., Inc. 66 W (2d) 53, 224 NW (2d) 389.

An employer found to have discriminated against a female employe with respect to required length of pregnancy leave and employe benefits applicable thereto was denied adequate notice of the maternity leave benefits issue prior to hearing as required by (3) and 227.09, because: (1) The notice received by the employer merely charged "an act of discrimination due to sex;" (2) a copy of the complaint included therewith specified the discriminatory act as the refusal to rehire the employe as soon as she was able to return to work; (3) the ILHR department itself characterized the complaint as involving only length of the required leave; and (4) the discriminatory aspects of the required pregnancy leave and the benefits applicable thereto constitute separate legal issues. Wisconsin Telephone Co. v. ILHR Dept. 68 W (2d) 345, 228 NW (2d) 649.

Proposed rule which would prohibit departmental employes from making public any information obtained under 111.36 prior to the time an adjudicatory hearing takes place, if used as a blanket to prohibit persons from inspecting or copying public papers and records, would be in violation of 19.21 Open meeting statute, 66.77, discussed. 60 Atty. Gen. 43.

111.37 Judicial review. Findings and orders of the department 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) "Commission" means the employment relations commission.

(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 commission shall appoint a panel of persons to serve as conciliators or arbitrators under 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 commission, 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 commission at any time or may resign his position at any time by notice in writing to the commission. Any vacancy in the panels shall be filled by the commission 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 commission, such compensation and expenses to be paid out of the appropriation made to the commission by s. 20.425 upon such authorizations as the commission may prescribe.

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 commission to appoint a conciliator from the panel, provided for by s. 111.53. Upon the filing of such petition, the commission 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 commission 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 commission; and the commission, 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 s. 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 commission 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 commission 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 Commission to establish rules. The commission 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 interruption 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 commission 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

MUNICIPAL EMPLOYMENT RELATIONS ACT

111.70 Municipal employment. (1) DEFINITIONS. As used in this subchapter:

(a) "Municipal employer" means any city, county, village, town, metropolitan sewerage district, school district, or any other political subdivision of the state which engages the services of an employe and includes any person acting on behalf of a municipal employer within the scope of his authority, express or implied.

(b) "Municipal employe" means any individual employed by a municipal employer other than an independent contractor, supervisor, or confidential, managerial or executive employe.

(c) "Commission" means the employment relations commission.

(d) "Collective bargaining" means the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representatives of its employes, to meet and confer at reasonable times, in good faith, with respect to wages, hours and conditions of employment with the intention of reaching an agreement, or to resolve questions arising under such an agreement. The duty to bargain, however, does not compel either party to agree to a proposal or require the making of a concession. Collective bargaining includes the reduction of any agreement reached to a written and signed document. The employer shall not be required to bargain on subjects reserved to management and direction of the governmental unit except insofar as the manner of exercise of such functions affects the wages, hours and conditions of employment of the employes. In creating this subchapter the legislature recognizes that the public employer must exercise its powers and responsibilities to act for the government and good order of the municipality, its commercial benefit and the health, safety and welfare of the public to assure orderly operations and functions within its jurisdiction, subject to those rights secured to public employes by the constitutions of this state and of the United States and by this subchapter.

(e) "Collective bargaining unit" means the unit determined by the commission to be appropriate for the purpose of collective bargaining.

(f) "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.

(g) "Election" means a proceeding conducted by the commission 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.

(h) "Fair-share agreement" means an agreement between a municipal employer and a labor organization under which all or any of the employes in the collective bargaining unit are required to pay their proportionate share of the cost of the collective bargaining process and contract administration measured by the amount of dues uniformly required of all members. Such an agreement shall contain a provision requiring the employer to deduct the amount of dues as certified by the labor organization from the earnings of the employes

affected by said agreement and to pay the amount so deducted to the labor organization.

(i) "Labor dispute" means any controversy concerning wages, hours and conditions of employment, or concerning the representation of persons in negotiating, maintaining, changing or seeking to arrange wages, hours and conditions of employment.

(j) "Labor organization" means any employe organization in which employes participate and which exists for the purpose, in whole or in part, of engaging in collective bargaining with municipal employers concerning grievances, labor disputes, wages, hours or conditions of employment.

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

(l) "Professional employe" means:

1. Any employe engaged in work:

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

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

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

d. 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 education 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 process; or

2. Any employe who:

a. Has completed the courses of specialized intellectual instruction and study described in subd. 1. d;

b. Is performing related work under the supervision of a professional person to qualify himself to become a professional employe as defined in subd. 1.

(m) "Prohibited practice" means any practice prohibited under this subchapter.

(n) "Referendum" means a proceeding conducted by the commission in which employes in a collective bargaining unit may cast a secret ballot on the question of authorizing a labor organization and the employer to continue a fair-share agreement. Unless a majority of the eligible employes vote in favor of the fair-share agreement, it shall be deemed terminated and that portion of the collective bargaining agreement deemed null and void.

(o) "Supervisor" means:

1. As to other than municipal and county firefighters, any individual who has authority, in the interest of the municipal 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.

2. As to firefighters employed by municipalities with more than one fire station, the term "supervisor" shall include all officers above the rank of the highest ranking officer at each single station. In municipalities where there is but one fire station, the term "supervisor" shall include only the chief and the officer in rank immediately below the chief. No other firefighter shall be included under the term "supervisor" for the purposes of this subchapter.

(2) RIGHTS OF MUNICIPAL EMPLOYES. Municipal 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 have the right to refrain from any and all such activities except that employes may be required to pay dues in the manner provided in a fair-share agreement. Such fair-share agreement shall be subject to the right of the municipal employer or a labor organization to petition the commission to conduct a referendum. Such petition must be supported by proof that at least 30% of the employes in the collective bargaining unit desire that the fair-share agreement be terminated. Upon so finding, the commission shall conduct a referendum. If the continuation of the agreement is not supported by at least the majority of the eligible employes, it shall be deemed terminated. The commission shall declare any fair-share agreement suspended upon such conditions and for such time as the commission decides whenever it finds that the labor organization involved has refused on the basis of race, color, creed or sex to receive as a member any employe of the municipal employer in the bargaining unit involved, and such agreement shall be made subject to this duty of the commission. Any of the parties to such agreement or any municipal employe covered thereby may come before the commission, as provided in s. 111.07, and ask the performance of this duty.

(3) PROHIBITED PRACTICES AND THEIR PREVENTION. (a) It is a prohibited practice for a municipal employer individually or in concert with others:

1. To interfere with, restrain or coerce municipal employes in the exercise of their rights guaranteed in sub. (2).

2. 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 employer shall not be prohibited from reimbursing its employes at their prevailing wage rate for the time spent conferring with the employes, officers or agents. Supervisors may remain members of the same labor organization of which their subordinates are members, but such supervisor shall not participate in determinations of the collective bargaining policies of such labor organization or resolution of grievances of employes. After January 1, 1974, said supervisors shall not remain members of such organizations.

3. To encourage or discourage a membership in any labor organization by discrimination in regard to hiring, tenure, or other terms or conditions of employment; but the prohibition shall not apply to a fair-share agreement.

4. To refuse to bargain collectively with a representative of a majority of its employes in an appropriate collective bargaining unit. Such refusal shall include action by the employer to issue or seek to obtain contracts, including those provided for by statute, with individuals in the collective bargaining unit while collective bargaining, mediation or fact-finding concerning the terms and conditions of a new collective bargaining agreement is in progress, unless such individual contracts contain express language providing that the contract is subject to amendment by a subsequent collective bargaining agreement. Where the employer has a good faith doubt as to whether a labor organization claiming the support of a majority of its employes in an appropriate bargaining unit does in fact have that support, it may file with the commission a petition requesting an election to that claim. An employer shall not be deemed to have refused to bargain until an election has been held and the results thereof certified to the employer by the commission. The violation shall include, though not be limited thereby, to the refusal to execute a collective bargaining agreement previously agreed upon. The term of any collective bargaining agreement shall not exceed 3 years.

5. To violate any collective bargaining agreement previously agreed upon by the parties with respect to wages, hours and conditions of employment affecting municipal employes, including an agreement to arbitrate questions arising as to the meaning or application of the terms of a collective bargaining agreement or to accept the terms of such arbitration award, where previously the parties have agreed to accept such award as final and binding upon them.

6. To deduct labor organization dues from an employe's or supervisor's earnings, unless the municipal employer has been presented with an individual order therefor, signed by the municipal employe personally, and terminable by at least the end of any year of its life or earlier by the municipal employe giving at least 30 days' written notice of such termination to the municipal employer and to the representative organization, except where there is a fair-share agreement in effect.

(b) It is a prohibited practice for a municipal employe, individually or in concert with others:

1. To coerce or intimidate a municipal employe in the enjoyment of his legal rights, including those guaranteed in sub. (2).

2. To coerce, intimidate or induce any officer or agent of a municipal employer to interfere with any of its employes in the enjoyment of their legal rights, including those guaranteed in sub. (2), 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.

3. To refuse to bargain collectively with the duly authorized officer or agent of a municipal 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 agreed upon.

4. To violate any collective bargaining agreement previously agreed upon by the parties with respect to wages, hours and conditions of employment affecting municipal employes, including an agreement to arbitrate questions arising as to the meaning or application of the terms of a collective bargaining agreement or to accept the terms of such arbitration award, where previously the parties have agreed to accept such awards as final and binding upon them.

5. To coerce or intimidate an independent contractor, supervisor, confidential, managerial or executive employe, officer or agent of the municipal employer, to induce him to become a member of the labor organization of which employes are members.

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

(d) Nothing in this subchapter shall preclude law enforcement or fire-fighting supervisors from organizing separate units of supervisors for purposes of negotiating with their municipal employers. The commission shall by rule establish procedures for certification of such units of supervisors and the levels of supervisors to be included. The commission may require that the representative in a supervisory unit shall be an organization that is a separate local entity from the representative of the employes but such requirement shall not prevent affiliation by a supervisory representative with the same parent state or national organization as the employe representative.

(4) POWERS OF THE COMMISSION. The commission shall be governed by the following provisions relating to bargaining in municipal employment in addition to other powers and duties provided in this subchapter:

(a) *Prevention of prohibited practices.* Section 111.07 shall govern procedure in all cases involving prohibited practices under this subchapter except that wherever the term "unfair labor practices" appears in s. 111.07 the term "prohibited practices" shall be substituted.

(b) *Failure to bargain.* Whenever a dispute arises between a municipal employer and a union of its employes concerning the duty to bargain on any subject, the dispute shall be resolved by the commission on petition for a declaratory ruling. The decision of the commission shall be issued within 15 days of submission and shall have the effect of an order issued under s. 111.07. The filing of a petition under this paragraph shall not prevent the inclusion of the same allegations in a complaint involving prohibited practices in which it is alleged that the failure to bargain on the subjects of the declaratory ruling is part of a series of acts or pattern of conduct prohibited by this subchapter.

(c) *Methods for peaceful settlement of disputes.* 1. "Mediation". The commission may function as a mediator in labor disputes. Such mediation may be carried on by a person designated to act by the commission upon request of one or both of the parties or upon initiation of the commission. The function of the mediator shall be to encourage voluntary settlement by the parties but no mediator shall have the power of compulsion.

2. "Arbitration". Parties to a dispute pertaining to the meaning or application of the terms of a written collective bargaining agreement may agree in writing to have the commission or any other appropriate agency serve as arbitrator or may designate any other competent, impartial and disinterested person to so serve.

3. "Fact-finding". If a dispute has not been settled after a reasonable period of negotiation and after the settlement procedures, if any, established by the parties have been exhausted, and the parties are deadlocked with respect to any dispute between them arising in the collective bargaining process, either party, or the parties jointly, may petition the commission, in writing, to initiate fact-finding, as provided hereafter, and to make recommendations to resolve the deadlock.

a. Upon receipt of a petition to initiate fact-finding, the commission shall make an investigation with or without a formal hearing, to determine whether a deadlock in fact exists. After its investigation the commission shall certify the results thereof. If the commission decides that fact-finding should be initiated, it shall appoint a qualified, disinterested person or 3-member panel, when jointly requested by the parties, to function as a fact finder.

b. The fact finder may establish dates and place of hearings which shall be where feasible, and shall conduct the hearings pursuant to rules established by the commission. Upon request, the commission 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 and the commission. Cost of fact-finding proceedings shall be divided equally between the parties. At the time the fact finder submits a statement of his costs to the parties, he shall submit a copy thereof to the commission at its Madison office.

c. 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.

d. Within 30 days of the receipt of the fact finder's recommendations, or within the time period mutually agreed upon by the parties, each party shall advise the other, in writing as to its acceptance or rejection, in whole or in part, of the fact finder's recommendations and, at the same time, transmit a copy of such notice to the commission at its Madison office.

(d) *Selection of representatives and determination of appropriate units for collective bargaining.* 1. A representative chosen for the purposes of collective bargaining by a majority of the municipal employes voting in a collective bargaining unit shall be the exclusive representative of all employes in the unit for the purpose 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 municipal employer in person or through representatives of their own

choosing, and the municipal employer shall confer with said employe in relation thereto, if the majority representative has been afforded the opportunity to be present at the conferences. Any adjustment resulting from these conferences shall not be inconsistent with the conditions of employment established by the majority representative and the municipal employer.

2. a. The commission shall determine the appropriate bargaining unit for the purpose of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force. In making such a determination, the commission may decide whether, in a particular case, the employes in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a unit. Before making its determination, the commission may provide an opportunity for the employes concerned to determine, by secret ballot, whether or not they desire to be established as a separate collective bargaining unit. The commission shall not decide, however, that any unit is appropriate if the unit includes both professional employes and nonprofessional employes, unless a majority of the professional employes vote for inclusion in the unit. The commission shall not decide that any unit is appropriate if the unit includes both craft and noncraft employes unless a majority of the craft employes vote for inclusion in the unit. Any vote taken under this subsection shall be by secret ballot.

b. Any election held under subd. 2. a. shall be conducted by secret ballot taken in such a manner as to show separately the wishes of the employes voting as to the unit they prefer.

c. A collective bargaining unit shall be subject to termination or modification as provided in this subchapter.

d. Nothing in this section shall be construed as prohibiting 2 or more collective bargaining units from bargaining collectively through the same representative.

3. Whenever, in a particular case, a question arises concerning representation or appropriate unit, calling for a vote, the commission shall certify the results in writing to the municipal employer and the labor organization involved and to any other interested parties. Any ballot used in a representation proceeding shall include the names of all persons having an interest in representing or the results. The ballot should be so designed as to permit a vote against representation by any candidate named on the ballot. The findings of the commission, on which a certification is based, shall be conclusive unless reviewed as provided by s. 111.07 (8).

4. Whenever the result of an election conducted pursuant to subd. 3 is inconclusive, the commission, on request of any party to the proceeding, may conduct a runoff election. Any such request must be made within 30 days from the date of certification. In a runoff election the commission may drop from the ballot the name of the candidate or choice receiving the least number of votes.

5. Questions as to representation may be raised by petition of the municipal employer or any municipal employe or any representative thereof. Where it appears by the petition that a situation exists requiring prompt action so as to prevent or terminate an emergency, the commission shall act upon the petition forthwith. The fact that an election has been held shall not prevent the holding of another election among the same group of employes, if it appears to the commission that sufficient reason for another election exists.

(jm) *Binding arbitration, Milwaukee.* This paragraph shall apply only to members of a police department employed by cities of the 1st class. If the representative of members of the police department, as determined under par. (d), and representatives of the city reach an impasse on the terms of the agreement, the dispute shall be resolved in the following manner:

1. Either the representative of the members of the police department or the representative of the city may petition the commission for appointment of an arbitrator to determine the terms of the agreement relating to the wages, hours and working conditions of the members of the police department.

2. The commission shall conduct a hearing on the petition, and upon a determination that the parties have reached an impasse on matters relating to wages, hours and conditions of employment on which there is no mutual agreement, the commission shall appoint an arbitrator to determine those terms of the agreement on which there is no mutual agreement. The commission may appoint any person it deems qualified, except that the arbitrator may not be a resident of the city which is party to the dispute.

3. Within 14 days of his appointment, the arbitrator shall conduct a hearing to determine the terms of the agreement relating to wages, hours and working conditions. The arbitrator may subpoena witnesses at the request of either party or on his own motion. All testimony shall be given under oath. The arbitrator shall take judicial notice of all economic and social data presented by the parties which is relevant to the wages, hours and working conditions of the police department members. The other party

shall have an opportunity to examine and respond to such data. The rules of evidence applicable to a contested case, as defined in s. 227.01 (2), shall apply to the hearing before the arbitrator.

4. In determining those terms of the agreement on which there is no mutual agreement and on which the parties have negotiated to impasse, as determined by the commission, the arbitrator, without restriction because of enumeration, shall have the power to:

a. Set all items of compensation, including base wages, longevity pay, health, accident and disability insurance programs, pension programs, including amount of pension, relative contributions, and all eligibility conditions, the terms and conditions of overtime compensation, vacation pay, and vacation eligibility, sickness pay amounts, and sickness pay eligibility, life insurance, uniform allowances and any other similar item of compensation.

b. Determine regular hours of work, what activities shall constitute overtime work and all standards and criteria for the assignment and scheduling of work.

c. Determine a seniority system, and how seniority shall affect wages, hours and working conditions.

d. Determine a promotional program.

e. Determine criteria for merit increases in compensation and the procedures for applying such criteria.

f. Determine all work rules affecting the members of the police department, except those work rules created by law.

g. Establish any educational program for the members of the police department deemed appropriate, together with a mechanism for financing the program.

h. Establish a system for resolving all disputes under the agreement, including final and binding 3rd party arbitration.

i. Determine the duration of the agreement and the members of the department to which it shall apply.

5. In determining the proper compensation to be received by members of the department under subd. 4, the arbitrator shall utilize:

a. The most recently published U.S. bureau of labor statistics "Standards of Living Budgets for Urban Families, Moderate and Higher Level", as a guideline to determine the compensation necessary for members to enjoy a standard of living commensurate with their needs, abilities and responsibilities; and

b. Increases in the cost of living as measured by the average annual increases in the U.S. bureau of labor statistics "Consumer Price Index" since the last adjustment in compensation for those members.

6. In determining all noncompensatory working conditions and relationships under subd. 4, including methods for resolving disputes under the labor agreement, the arbitrator shall consider the patterns of employe-employer relationships generally prevailing between technical and professional employes and their employers in both the private and public sectors of the economy where those relationships have been established by a labor agreement between the representative of those employes and their employer.

7. All subjects described in subd. 4 shall be negotiable between the representative of the members of the police department and the city.

8. Within 30 days after the close of the hearing, the arbitrator shall issue a written decision determining the terms of the agreement between the parties which were not the subject of mutual agreement and on which the parties negotiated in good faith to impasse, as determined by the commission, and which were the subject of the hearing under this paragraph. The arbitrator shall state reasons for each determination. Each proposition or fact accepted by the arbitrator must be established by a preponderance of the evidence.

9. Subject to subds. 11 and 12, within 14 days of the arbitrator's decision, the parties shall reduce to writing the total agreement composed of those items mutually agreed to between the parties and the determinations of the arbitrator. The document shall be signed by the arbitrator and the parties, unless either party seeks judicial review of the determination pursuant to subd. 11.

10. All costs of the arbitration hearing, including the arbitrator's fee, shall be borne equally by the parties.

11. Within 60 days of the arbitrator's decision, either party may petition the circuit court for Dane county to set aside or enforce the arbitrator's decision. If the decision was within the subject matter jurisdiction of the arbitrator as set forth in subd. 4, the court must enforce the decision, unless the court finds by a clear preponderance of the evidence that the decision was procured by fraud, bribery or collusion. The court may not review the sufficiency of the evidence supporting the arbitrator's determination of the terms of the agreement.

12. Within 30 days of a final court judgment, the parties shall reduce the agreement to writing and with the arbitrator execute the agreement pursuant to subd. 9.

13. Subsequent to the filing of a petition before the commission pursuant to subd. 1 and prior to the execution of an agreement pursuant to subd. 9, neither party may unilaterally alter any term of the wages, hours and working

conditions of the members of the police department.

(1) *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.

(5) PROCEDURES. Municipal employers, jointly or individually, may employ a qualified person to discharge the duties of labor negotiator and to represent such municipal employers, jointly or individually, in conferences and negotiations under this section. In cities of the 1st, 2nd or 3rd class any member including the mayor 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.

(6) DECLARATION OF POLICY. The public policy of the state as to labor disputes arising in municipal employment is to encourage voluntary settlement through the procedures of collective bargaining. Accordingly, it is in the public interest that municipal employes so desiring be given an opportunity to bargain collectively with the municipal employer through a labor organization or other representative of the employes' own choice. If such procedures fail, the parties should have available to them a fair, speedy, effective and, above all, peaceful procedure for settlement as provided in this subchapter.

(7) PENALTY FOR STRIKER. Whoever violates sub. (4) (1) after an injunction against such a strike has been issued shall be fined $10. After the injunction has been issued, any employe who is absent from work because of purported illness shall be presumed to be on strike unless the illness is verified by a written report from a physician to the employer. Each day of continued violation constitutes a separate offense. The court shall order that any fine imposed under this subsection be paid by means of a salary deduction at a rate to be determined by the court.

History: 1971 c. 124, 246, 247, 307, 336; 1973 c. 64, 65

Revisor's Note, 1971: [As to sub. (1) (b)] The restoration of the amendment by ch. 124 does not affect the application of the other changes made by ch. 247 to the rights of policemen. Firemen were and are already covered by the law. Approved by representatives of the school boards association, the League of Municipalities, the County Board Assn. and by John Lawton, representing various public employes organizations.

[As to sub. (4) (b)] It was earlier repealed by ch. 124, laws of 1971. The substance of the amendment is fully covered by s. 111.70 (4) (c) 1 as created by ch. 124, laws of 1971. Approved by the same interested parties as listed in the note to the last preceding section. [Bill 3-A, Spec. Sess. 1972]

A collective bargaining provision which releases only teacher members of a majority union from in-service days to attend, with pay, a state convention of the union is discriminatory, but the school board can deny compensation to minority union members who attend a regional convention of their union if they do so in good faith. Bd. of Education v. WERC, 52 W (2d) 625, 191 NW (2d) 242.

A school district may discharge teachers who engage in a strike. Hortonville Ed. Asso. v. Jt. Sch. Dist. No. 1, 66 W (2d) 469, 225 NW (2d) 658.

During the course of a representation election among municipal employes, the municipal employer committed a prohibited labor practice in violation of (3) (a) 1, when a letter to employes signed by the city mayor and aldermen coercively and erroneously warned employes that all fringe benefits would cease if union representation were accepted, and "benign generalities" contained elsewhere in the letter were insufficient to overcome its specific threats. A 2nd letter sent to employes just prior to the representation election predicting a relative loss in benefits if the union were approved, citing the cost of union dues, the possibility of loss of freedom of action, and emphasizing wage rates and fringe benefits, also constituted a prohibited labor practice, since an employer may not camouflage threats under the guise of predictions, and the statements in context were intended as threats and accepted as such by the employes. WERC v. Evansville, 69 W (2d) 140, 230 NW (2d) 688.

Although employes seeking to enforce the terms of a collective bargaining agreement are bound by the remedial provisions therein, plaintiffs were not required to exhaust contractual remedies prior to filing their action in court. Browne v. Milwaukee Bd. of School Directors, 69 W (2d) 169, 230 NW (2d) 704.

The board committed a prohibited labor practice when it allowed a representative of an ad hoc minority teacher group at a regular public meeting to speak concerning a fair-share agreement which was then a subject of negotiation between board and organization. Madison Jt. Sch. Dist. No. 8 v. WERC, 69 W (2d) 200, 231 NW (2d) 206.

The board of education of a city school district was a proper party and had the capacity to maintain an action to enjoin a strike by district teachers. Joint School v. Wisconsin Rapids Ed. Asso. 70 W (2d) 292, 234 NW (2d) 289.

Sub. (7), providing a $10 per day fine for whoever violates an injunction against a strike by municipal employes, with the fine to be paid by salary deduction, is inapplicable to a labor association composed of such employes. Kenosha Unified Sch. Dist. v. Kenosha Ed. Asso. 70 W (2d) 325, 234 NW (2d) 311.

A municipal employer may agree to pay the employes' portion of retirement contributions to the state fund. 59 Atty. Gen. 186.

A county ordinance implementing a collective bargaining agreement providing for the payment to county employes, upon their leaving government employment, compensation for accumulated sick leave, earned both before and after the effective date of the ordinance is valid. 59.07, 59.15, and 111.70 discussed. Applicability of 39 OAG 314 limited. 59 Atty. Gen. 209.

See note to 118.21, citing 63 Atty. Gen. 16.

See note to 59.38, citing 63 Atty. Gen. 147.

Attorney general declines to render an opinion on what is subject to collective bargaining in view of a preferred legislative intent that under (4) (b) such questions be resolved through the declaratory judgment procedure before the Wisconsin employment relations commission subject to judicial review. 63 Atty. Gen. 590.

The crisis of the 70's—who will manage municipal government? Mulcahy, 54 MLR 315.

Municipal personnel problems and solutions. Mulcahy, 56 MLR 529.

Right to strike and compulsory arbitration: panacea or placebo? Coughlin, Rader, 58 MLR 205.

Fact-finding in public employment disputes. Marshall, 43 WBB, No. 6.

Public sector collective bargaining. Anderson, 1973 WLR 986.

111.71 General provisions. (1) The commission may adopt reasonable rules relative to the exercise of its powers and authority and its proceedings thereunder. The commission shall, upon request, provide transcripts of proceedings to any party to the proceeding at a rate of 60 cents per 25-line page for the first copy and 20 cents per 25-line page for each additional copy.

(2) This subchapter may be cited as "Municipal Employment Relations Act".

History: 1971 c. 124; 1973 c. 90.

111.77 Settlement of disputes in collective bargaining units composed of law enforcement personnel and firefighters. In fire departments and city and county law enforcement agencies municipal employers and employes have the duty to bargain collectively in good faith including the duty to refrain from strikes or lockouts and to comply with the procedures set forth below:

(1) If a contract is in effect, the duty to bargain collectively means that a party to such contract shall not terminate or modify such contract unless the party desiring such termination or modification:

(a) Serves written notice upon the other party to the contract of the proposed termination or modification 180 days prior to the expiration date thereof or, if the contract contains no expiration date, 60 days prior to the time it is proposed to make such termination or modification. This paragraph shall not apply to negotiations initiated or occurring in 1971.

(b) Offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications.

(c) Notifies the commission within 90 days after the notice provided for in par. (a) of the existence of a dispute.

(d) Continues in full force and effect without resorting to strike or lockout all terms and conditions of the existing contract for a period of 60 days after such notice is given or until the expiration date of the contract, whichever occurs later.

(e) Participates in mediation sessions by the commission or its representatives if specifically requested to do so by the commission.

(f) Participates in procedures, including binding arbitration, agreed to between the parties.

(2) If there has never been a contract in effect, the union shall notify the commission within 30 days after the first demand upon the employer of the existence of a dispute provided no agreement is reached by that time, and in such case sub. (1) (b), (e) and (f) shall apply.

(3) Where the parties have no procedures for disposition of a dispute and an impasse has been reached, either party may petition the commission to initiate compulsory, final and binding arbitration of the dispute. If in determining whether an impasse has been reached the commission finds that any of the procedures set forth in sub. (1) have not been complied with and that compliance would tend to result in a settlement, it may require such compliance as a prerequisite to ordering arbitration. If after such procedures have been complied with or the commission has determined that compliance would not be productive of a settlement and the commission determines that an impasse has been reached, it shall issue an order requiring arbitration. The commission shall in connection with the order for arbitration submit a panel of 5 arbitrators from which the parties may alternately strike names until a single name is left, who shall be appointed by the commission as arbitrator, whose expenses shall be shared equally between the parties. Arbitration proceedings under this section shall not be interrupted or terminated by reason of any prohibited practice charge filed by either party at any time.

(4) There shall be 2 alternative forms of arbitration:

(a) *Form 1.* The arbitrator shall have the power to determine all issues in dispute involving wages, hours and conditions of employment.

(b) *Form 2.* The commission shall appoint an investigator to determine the nature of the impasse. The commission's investigator shall advise the commission in writing, transmitting copies of such advice to the parties of each issue which is known to be in dispute. Such advice shall also set forth the final offer of each party as it is known to the investigator at the time that the investigation is closed. Neither party may amend its final offer thereafter, except with the written agreement of the other party. The arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification.

(5) The proceedings shall be pursuant to form 2 unless the parties shall agree prior to the hearing that form 1 shall control.

(6) In reaching a decision the arbitrator shall give weight to the following factors:

(a) The lawful authority of the employer.

(b) Stipulations of the parties.

(c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs.

(d) Comparison of the wages, hours and conditions of employment of the employes involved in the arbitration proceeding with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally:

1. In public employment in comparable communities.

2. In private employment in comparable communities.

(e) The average consumer prices for goods and services, commonly known as the cost of living.

(f) The overall compensation presently received by the employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

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

(7) Proceedings, except as specifically provided in this section, shall be governed by ch. 298.

(8) This section shall not apply to cities having a population of 500,000 or more nor to cities, villages or towns having a population of less than 2,500.

(9) Section 111.70 (4) (c) 3 shall not apply to employments covered by this section.

History: 1971 c. 247, 307; 1973 c. 64; 1975 c. 259.

After a petition for final and binding arbitration is filed under (4) (b), one of the parties may not amend its final offer to include a contract period which was not the subject of collective bargaining negotiations prior to petitioning. Milw. Deputy Sheriffs' Asso. v. Milw. County, 64 W (2d) 651, 221 NW (2d) 673.

Arbitration under (4) (b), which requires the arbitrator to select the final offer of one of the parties and then issue an award incorporating that offer "without modification," does not preclude restatement or alteration of the offer to comprise a proper, final arbitration award finally disposing of the controversy. Manitowoc v. Manitowoc Police Dept. 70 W (2d) 1006, 236 NW (2d) 231.

Under the common law an arbitrator need not render an account of the reasons for his award, nor is a written decision required by ch. 298, although he must weigh the criteria suggested by (6). Manitowoc v. Manitowoc Police Dept. 70 W (2d) 1006, 236 NW (2d) 231.

Right to strike and compulsory arbitration: panacea or placebo? Coughlin, Rader, 58 MLR 205.

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

(2) Orderly and constructive employment relations for state employes and the efficient administration of state government are promotive of all these interests. They are largely dependent upon the maintenance of fair, friendly and mutually satisfactory employe management relations in state employment, and the availability of suitable machinery for fair and peaceful adjustment of whatever controversies may arise. It is recognized that whatever may be the rights of disputants with respect to each other in any controversy regarding state employment relations, neither party has any right to engage in acts or practices which jeopardize the public safety and interest and interfere with the effective conduct of public business.

(3) Where permitted under this subchapter, negotiations of terms and conditions of state employment should result from voluntary agreement between the state and its agents as an employer, and its employes. For that purpose a state employe may, if he desires, associate with others in organizing and in bargaining collectively through representatives of his own choosing without intimidations 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 procedures 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 and 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 secretary of administration shall establish an employment relations capability within the department of administration and shall, along with the appointing authorities or their representatives, represent the state in its responsibility as an employer under this subchapter. The department shall establish and maintain, wherever practicable, consistent employment relations policies and practices throughout the state service.

History: 1971 c. 270.

Collective negotiations in higher education; a symposium. 1971 WLR 1.

Public sector collective bargaining. Anderson, 1973 WLR 986.

111.81 Definitions. In this subchapter:

(1) "Commission" means the employment relations commission.

(2) "Collective bargaining" means the performance of the mutual obligation of the state

as an employer, by its officers and agents, and the representatives of its employes, to meet and confer at reasonable times, in good faith, with respect to the subjects of bargaining provided in s. 111.91 (1) with the intention of reaching an agreement, or to resolve questions arising under such an agreement. The duty to bargain, however, does not compel either party to agree to a proposal or require the making of a concession. Collective bargaining includes the reduction of any agreement reached to a written and signed document.

(3) "Collective bargaining unit" means a unit established under this subsection.

(a) It is the express legislative intent that in order to foster meaningful collective bargaining, units must be structured in such a way as to avoid excessive fragmentation whenever possible. In accordance with this policy, bargaining units shall be structured on a statewide basis with one unit for each of the following occupational groups:

1. Clerical and related.
2. Blue collar and nonbuilding trades.
3. Building trades crafts.
4. Security and public safety.
5. Technical.
6. Professional:

a. Fiscal and staff services.
b. Research, statistics and analysis.
c. Legal.
d. Patient treatment.
e. Patient care.
f. Social services.
g. Education.
h. Engineering.
i. Science.

(b) The commission shall assign eligible employes to the appropriate statutory bargaining units set forth in par. (a).

(c) 1. Where a single labor organization has been certified prior to April 30, 1972 as the bargaining representative for employes assigned to a particular statutory bargaining unit, and the certification represents a majority of eligible employes assigned to the statutory bargaining unit, such organization shall be recognized as the exclusive representative for all employes assigned to the particular statutory unit without an election proceeding under s. 111.83.

2. If more than one labor organization has been certified prior to April 30, 1972 as the bargaining representative for employes assigned to a particular statutory unit and one of these organizations desires to be designated as the exclusive bargaining representative for the unit, a statewide election for all employes assigned to the particular statutory bargaining unit shall be held within one year under s. 111.83.

3. If a single labor organization has been certified prior to April 30, 1972 as the bargaining representative for employes assigned to a particular collective bargaining unit and the certification represents a minority of eligible employes assigned to the particular collective bargaining unit, a statewide election among all employes of the unit shall be held upon petition of the minority representative without regard to the one-year limitation under subd. 2, provided the petitioner proves, in the form of signed authorization cards, that at least 30% of the eligible employes in the collective bargaining unit want the petitioner to be the bargaining representative for the unit. Each additional labor organization seeking to be included on the election ballot must file petitions within 60 days of the original petition and prove, through signed authorization cards, that at least 10% of the eligible employes want it to be the bargaining representative.

4. Notwithstanding subds. 1, 2 and 3, any labor organization may petition for recognition as the exclusive representative of a statutory bargaining unit in accordance with the election procedures set forth in s. 111.83, provided the petition is accompanied by a 30% showing of interest in the form of signed authorization cards. Each additional labor organization seeking to be on the ballot must file petitions within 60 days and prove, through signed authorization cards, that at least 10% of the eligible employes want it to be the bargaining representative.

(d) Although supervisory personnel are not considered employes for purposes of this subchapter, the commission may consider petitions for a statewide unit of professional supervisory employes and a statewide unit of nonprofessional supervisory employes, but the certified representatives may not be affiliated with labor organizations representing employes assigned to the statutory units set forth in s. 111.81 (3) (a). The certified representatives for supervisory personnel may not bargain on any matter other than wages and fringe benefits as defined in s. 111.91 (1).

(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) "Election" means a proceeding conducted by the commission 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.

(6) "Fair-share agreement" means an agreement between an employer and a labor organization including supervisory units under which all or any of the employes in the collective

bargaining unit are required to pay their proportionate share of the cost of the collective bargaining process and contract administration measured by the amount of dues uniformly required of all members. Such an agreement shall contain a provision requiring the employer to deduct the amount of dues as certified by the labor organization from the earnings of the employes affected by said agreement and to pay the amount so deducted to the labor organization. Unless the parties agree to an earlier date, the fair-share agreement shall take effect 60 days after certification by the commission that the referendum vote favored the fair-share agreement. The employer shall be held harmless against any and all claims, demands, suits or other forms of liability which may arise for actions taken or not taken by the employer in compliance with this subsection. All such claims, demands, suits or other forms of liability made by employes or local labor organizations shall be under the control of the labor organization designated by the contract negotiated under this subchapter.

(7) "Department" means the department of administration.

(8) "Labor dispute" means any controversy with respect to the subjects of bargaining provided in this subchapter.

(9) "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, sex, age or national origin.

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

(11) "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).

(12) "Unfair labor practice" means any unfair labor practice specified in s. 111.84.

(13) "Referendum" means a proceeding conducted by the commission in which employes in a collective bargaining unit may cast a secret ballot on the question of directing the labor organization and the employer to enter into a fair-share agreement. For a fair-share agreement to be effective, at least two-thirds of the eligible employes voting in a referendum must vote in favor of the agreement.

(14) "Representative" includes any person chosen by an employe to represent him.

(15) "Employe" includes any state employe in the classified service of the state, as defined in s. 16.08, except limited term employes, sessional employes, employes who are performing in a supervisory capacity, management employes and individuals privy to confidential matters affecting the employer-employe relationship, as well as all employes of the commission.

(16) "Employer" means the state of Wisconsin. In the furtherance of this subchapter, the state shall be considered as a single employer and employment relations policies and practices throughout the state service shall be as consistent as practicable. It is the responsibility of the executive branch to negotiate collective bargaining agreements, and to administer such agreements. To coordinate the employer position in the negotiation of agreements, the executive branch shall maintain close liaison with the legislature relative to the negotiation of agreements and the fiscal ramifications thereof. The department of administration is responsible for the employer functions of the executive branch under this section, and shall coordinate its collective bargaining activities with operating agencies on matters of agency concern. It is the responsibility of the legislative branch to act upon those portions of tentative agreements negotiated by the executive branch which require legislative action.

(17) "Joint committee on employment relations" means the legislative committee created under s. 13.111.

(18) "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, or any concerted refusal to work or perform their usual duties as employes of the state. The occurrence of a strike and the participation therein by an employe do not affect the right of the employer, in law or equity, to deal with such strike.

(19) "Supervisor" means any individual whose principal work is different from that of his subordinates and who has authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline employes, or to adjust their grievances, or to authoritatively recommend such action, if his exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(20) "Management" includes those personnel engaged predominately in executive and managerial functions, including such officials as division administrators, bureau directors, institutional heads and employes exercising similar functions and responsibilities as determined by the commission.

History: 1971 c. 270; 1975 c. 238.

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 under this subchapter, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection. Such employes shall also have the right to refrain from any or all of such activities.

History: 1971 c. 270.

111.83 Representatives and elections. (1) A representative 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, may 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 if the majority representative has been afforded the opportunity to be present at the conference. Any adjustment resulting from such a conference may not be inconsistent with the conditions of employment established by the majority representative and the state.

(2) Whenever the commission decides to permit employes to determine for themselves whether they desire to establish themselves as a collective bargaining unit, such determination shall be conducted by secret ballot. In such instances, the commission shall cause the balloting to be conducted so 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 employes in a collective bargaining unit the commission 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 employes submitted by an employe or group of employes participating in the election, except that the commission 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 an unfair labor practice. The ballot shall be so prepared as to permit a vote against representation by anyone named on the ballot. The commission'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 under sub. (3) in which the name of more than one proposed representative appears on the ballot and results in no conclusion, the commission 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 commission may drop from the ballot the name of the representative who received the least number of votes at the original election. The commission 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) While an agreement between a labor organization and an employer is in force under this subchapter, a petition for election may only be filed during October in the calendar year prior to the expiration of such agreement. An election held pursuant to such petition shall be held only if the petition is supported by proof that at least 30% of the employes desire a change or discontinuance of existing representation.

History: 1971 c. 270; 1975 c. 238.

111.84 Unfair labor practices. (1) It is an unfair labor practice for an 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. However, it is not an unfair labor practice for the employer to reimburse state employes at their prevailing wage rate for the time spent during the employe's regularly scheduled hours conferring with the employer's officers or agents and for attendance at commission or court hearings necessary for the administration of this subchapter. Professional supervisory or craft personnel may maintain membership in professional or craft organizations; however, as members of such organizations they shall be prohibited from those activities related to collective bargaining in which the organizations may engage.

(c) To encourage or discourage membership in any labor organization by discrimination in regard to hiring, tenure or other terms or conditions of employment, but the prohibition shall not apply to fair-share agreements.

(d) To refuse to bargain collectively with a representative of a majority of its employes in an appropriate collective bargaining unit. Where the employer has a good faith doubt as to whether a labor organization claiming the support of a majority of its employes in appropriate bargaining unit does in fact have that support, it may file with the commission a petition requesting an election as to that claim. It shall not be deemed to have refused to bargain until an election has been held and the results thereof certified to it by the commission. The violation shall include, though not be limited to, the refusal to execute a collective bargaining agreement previously orally agreed upon.

(e) To violate any collective bargaining agreement previously agreed upon by the parties with respect to wages, hours 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 from an employe's earnings, unless the state employer has been presented with an individual order therefor, signed by the state employe personally, and terminable by at least the end of any year of its life or earlier by the state employe giving at least 30 but not more than 120 days' written notice of such termination to the state employer and to the representative organization, except where there is a fair-share agreement in effect. The employer shall give notice to the union of receipt of such notice of termination.

(2) It is unfair 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 under s. 111.82.

(b) To coerce, intimidate or induce any officer or agent of the employer to interfere with any of its employes in the enjoyment of their legal rights including those guaranteed under s. 111.82 or to engage in any practice with regard to its employes which would constitute an unfair labor practice if undertaken by him on his own initiative.

(c) To refuse to bargain collectively on matters set forth in s. 111.91 (1) with the duly authorized officer or agent of the employer which 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 employes, including an agreement to arbitrate or to accept the terms of an arbitration award, where previously the parties have agreed to accept such awards as final and binding upon them.

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

(f) To coerce or intimidate a supervisory employe, officer or agent of the 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 the employe is a member.

(3) It is 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 subs. (1) and (2).

(4) Any controversy concerning unfair labor practices may be submitted to the commission as provided in s. 111.07, except that the commission shall fix hearing on complaints involving alleged violations of sub. (2) (e) within 3 days after 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. The commission may in its discretion appoint a substitute tribunal to

hear unfair labor practice charges by either appointing a 3-member panel or submitting a 7-member panel to the parties and allowing each to strike 2 names. Such panel shall report its finding to the commission for appropriate action.

History: 1971 c. 270; 1973 c. 212

111.85 Encouragement of voluntary procedures to promote stability, peace and responsibility in state employment. (1) No fair-share agreement shall become effective unless authorized by referendum. The authorization of such fair-share agreement shall continue thereafter subject to the right of the employer or labor organization concerned to petition the commission to conduct a new referendum on the subject. Such petition must be supported by proof that at least 30% of the employes in the collective bargaining unit desire that the fair-share agreement be discontinued. Upon so finding, the commission shall conduct a new referendum. If the continuance of the agreement is approved by the referendum by at least the number of employes required for its initial authorization, it shall be continued in effect, subject to the right of the employer or labor organization to later initiate a further vote following the above procedure. If the continuation of the agreement is not supported in any referendum, it shall be deemed terminated at the termination of the collective bargaining agreement, or one year from the date of the certification of the result of the referendum, whichever is earlier. The commission shall declare any fair-share agreement suspended upon such conditions and for such time as the commission decides whenever it finds that the labor organization involved has refused on the basis of race, color or creed to receive as a member any employe in the bargaining unit involved, and such agreement shall be made subject to the findings and orders of the commission. Any of the parties to such agreement or any employe covered thereby, may come before the commission, as provided in s. 111.07, and allege a violation of this provision.

(2) A stipulation for a referendum executed by an employer and a labor organization may not be filed until after the representation election has been held and the results certified.

(3) The commission may, under rules adopted for that purpose, appoint as its agent an official of the state department or agency involved to conduct the referenda provided for herein.

History: 1971 c. 270

111.86 Arbitration in general. Parties to the dispute pertaining to the interpretation of a collective bargaining agreement may agree in writing to have the commission or any other appointing agency serve as arbitrator or may designate any other competent, impartial and disinterested persons to so serve. Such arbitration proceedings shall be governed by ch. 298.

History: 1971 c. 270

111.87 Mediation. The commission 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 commission shall have any power of compulsion in mediation proceedings.

History: 1971 c. 270

111.88 Fact-finding. (1) If a dispute has not been settled after a reasonable period of negotiation and after the settlement procedures, if any, established by the parties have been exhausted, the representative, which has either been certified by the commission after an election, or has been duly recognized by the employer, as the exclusive representative of employes in an appropriate collective bargaining unit, and the employer, its officers and agents, after a reasonable period of negotiation, are deadlocked with respect to any dispute between them arising in the collective bargaining process, the parties jointly, may petition the commission, in writing, to initiate fact-finding under this section, and to make recommendations to resolve the deadlock.

(2) Upon receipt of a petition to initiate fact-finding, the commission shall make an investigation with or without a formal hearing, to determine whether a deadlock in fact exists. After its investigation, the commission shall certify the results thereof. If the commission decides that fact-finding should be initiated, it shall appoint a qualified, disinterested person or 3-member panel, when jointly requested by the parties, to function as a fact finder.

(3) The fact finder may establish dates and place of hearings and shall conduct the hearings under rules established by the commission. Upon request, the commission 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 and the commission. In making such findings and recommendations, the fact finder shall take into consideration among other pertinent factors the

principles vital to the public interest in efficient and economical governmental administration. Cost of fact-finding proceedings shall be divided equally between the parties. At the time the fact finder submits a statement of his costs to the parties, he shall submit a copy thereof to the commission at its Madison office.

(4) Nothing herein shall be construed as prohibiting any fact finder from endeavoring to mediate the dispute at any time prior to the issuance of his recommendations.

(5) Within 30 days of the receipt of the fact finder's recommendations or within such time period mutually agreed upon by the parties, each party shall advise the other, in writing, as to his 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 commission at its Madison office. Failure to comply with this subsection, by the state employer or employe representative constitutes a violation of s. 111.84 (1) (d) or (2) (c).

History: 1971 c. 270

111.89 Strike prohibited. (1) Upon establishing that a strike is in progress, the employer may at his option either seek an injunction or file an unfair labor practice charge with the commission under s. 111.84 (2) (e) or both. In this regard it shall be the responsibility of the department of administration to decide whether to seek an injunction or file an unfair labor practice charge. The existence of an administrative remedy shall not constitute grounds for denial of injunctive relief.

(2) The occurrence of a strike and the participation therein by a state employe do not affect the rights given to the employer to deal with the 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 reinstatement eligibility of any employe engaging therein; and

(c) The right of the employer 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.

History: 1971 c. 270

111.90 Management rights. Nothing in this subchapter shall interfere with the right of the employer, in accordance with this subchapter 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; hire, promote, transfer, assign or retain employes in positions within the agency; and in that regard 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: 1971 c. 270

111.91 Subjects of bargaining. (1) Matters subject to collective bargaining to the point of impasse are wage rates, as related to general salary scheduled adjustments consistent with sub. (2), and salary adjustments upon temporary assignment of employes to duties of a higher classification or downward reallocations of an employe's position; fringe benefits; hours and conditions of employment, except as follows:

(a) The employer shall not be required to bargain on management rights under s. 111.90, except that procedures for the adjustment or settlement of grievances or disputes arising out of any type of disciplinary action referred to in s. 111.90 (3) shall be a subject of bargaining.

(b) The employer shall be prohibited from bargaining on matters contained in sub. (2), except as provided under sub. (3).

(c) Demands relating to retirement and group insurance shall be submitted to the employer at least one year prior to commencement of negotiations.

(d) The employer shall not be required to bargain on matters related to employe occupancy of houses or other lodging provided by the state.

(2) Except as provided in sub. (3), the employer is prohibited from bargaining on:

(a) The mission and goals of state agencies as set forth in the statutes.

(b) Policies, practices and procedures of the civil service merit system relating to:

1. Original appointments and promotions specifically including recruitment, examinations, certification, appointments, and policies with respect to probationary periods.

2. The job evaluation system specifically including position classification, position qualification standards, establishment and abolition of classifications, assignment and reassignment of classifications to salary ranges, and allocation and reallocation of positions to classifications, and the determination of an incumbent's status resulting from position reallocations.

(c) Amendments to this subchapter.

(3) The employer may bargain and reach agreement with a union representing a certified unit to provide for an impartial hearing officer to hear appeals on differences arising under actions taken by the employer under sub. (2) (b) 1 and

2. The hearing officer shall make a decision accompanied by findings of fact and conclusions of law. The decision shall be reviewed by the personnel board on the record and either affirmed, modified or reversed, and the personnel's board's action shall be subject to review pursuant to ch. 227. Nothing in this subsection shall empower the hearing officer to expand the basis of adjudication beyond the test of "arbitrary and capricious" action, nor shall anything in this subsection diminish the authority of the personnel board under s. 16.05 (1).

History: 1971 c. 270; 1975 c. 39, 224.

111.92 Agreements. (1) Tentative agreements reached between the department of administration, acting for the executive branch, and any certified labor organization shall, after official ratification by the union, be submitted to the joint committee on employment relations, which shall hold a public hearing before determining its approval or disapproval. If the committee approves the tentative agreement, it shall introduce in companion bills, to be put on the calendar, that portion of the tentative agreement which requires legislative action for implementation, such as salary and wage adjustments, changes in fringe benefits, and any proposed amendments, deletions or additions to existing law. Such bills shall not be subject to ss. 13.10 (1), 13.50 (6) (a) and (b) and 16.47 (2). The committee may, however, submit suitable portions of the tentative agreement to appropriate legislative committees for advisory recommendations on the proposed terms. The committee shall accompany the introduction of such proposed legislation with a message that informs the legislature of the committee's concurrence with the matters under consideration and which recommends the passage of such legislation without change. If the joint committee on employment relations does not approve the tentative agreement, it shall be returned to the parties for renegotiation. If the legislature does not adopt without change that portion of the tentative agreement introduced by the joint committee on employment relations, the tentative agreement shall be returned to the parties for negotiation.

(2) No portion of any tentative agreement shall become effective separately.

(3) Agreements shall coincide with the fiscal year or biennium.

(4) It is the declared intention under this subchapter that the negotiation of collective bargaining agreements and their approval by the parties should coincide with the overall fiscal planning and processes of the state.

History: 1971 c. 270.

111.93 Effect of labor organization: status of existing benefits and rights. (1) If no labor agreement exists between the state and a union representing a certified bargaining unit, employes in the unit shall retain the right of appeal under s. 16.05 (1) (e).

(2) All civil service and other applicable statutes concerning wages, hours and conditions of employment shall apply to employes not included in certified bargaining units.

(3) If a labor agreement exists between the state and a union representing a certified or recognized bargaining unit, the provisions of such agreement shall supersede such provisions of civil service and other applicable statutes related to wages, hours and conditions of employment whether or not the matters contained in such statutes are set forth in such labor agreement.

History: 1971 c. 270, 336.

111.94 Commission rules; transcripts. The commission may adopt reasonable and proper rules 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. The commission shall, upon request, provide transcripts of proceedings to any party to the proceeding at a rate of 60 cents per 25-line page for the first copy and 20 cents per 25-line page for each additional copy.

History: 1971 c. 270; 1973 c. 90.

111.95 Council. The commission shall enlarge the council on employment relations 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.

History: 1971 c. 270.

111.96 Effective date: transitional provisions. (1) EFFECTIVE DATE. This subchapter shall take effect upon passage and publication (published April 29, 1972), subject to the following procedure.

(a) Collective bargaining under this subchapter shall not commence prior to July 1, 1972.

(b) The provisions of any agreement negotiated under this subchapter shall not become effective prior to July 1, 1973.

(2) EXISTING AGREEMENTS, EXPIRATION AND EXTENSION. (a) The provisions of all collective bargaining agreements in effect on April 30, 1972 shall be extended without change to June 30, 1973, at which time all agreements shall expire.

(b) Any additional collective bargaining agreements negotiated under the provision of the

prior law must be signed and ratified prior to July 1, 1972, and such agreements shall expire on or before June 30, 1973.

(3) STATE EMPLOYES. Notwithstanding any other provision of the statutes, all compensation adjustments for state employes shall be effective on the beginning date of the pay period nearest the statutory or administrative date.

History: 1971 c. 270.

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

History: 1971 c. 270.