

CHAPTER 111.

EMPLOYMENT RELATIONS.

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SUBCHAPTER I.

EMPLOYMENT PEACE ACT.

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

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

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

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

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

111.01 to 111.19 should be liberally construed to secure the objectives stated in the declaration of policy. *Dunphy Boat Corp. v.* Wisconsin E. R. Board, 267 W 316, 64 NW (2d) 866.

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

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

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

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

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

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

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

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

(11) The term "election" shall mean a proceeding in which the employes in a collective bargaining unit cast a secret ballot for collective bargaining representatives or for any other purpose specified in this subchapter and shall include elections conducted by the board, or, unless the context clearly indicates otherwise, by any tribunal having competent jurisdiction or whose jurisdiction was accepted by the parties.

(12) The term "secondary boycott" shall include combining or conspiring to cause or threaten to cause injury to one with whom no labor dispute exists, whether by (a) withholding patronage, labor, or other beneficial business intercourse, (b) picketing, (c)

refusing to handle, install, use or work on particular materials, equipment or supplies, or (d) by any other unlawful means, in order to bring him against his will into a concerted plan to coerce or inflict damage upon another.

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

See note to 111.05, citing Dairy Employees Ind. Union v. Wisconsin E. R. Board, 262 W 280, 55 NW (2d) 3.

111.03 Employment relations board. There is hereby created a board to be known as Wisconsin employment relations board, which shall be composed of 3 members, who shall be appointed by the governor by and with the consent of the senate. No appointee at the time of the creation of the board shall serve on said board without first having been confirmed by the senate. On the effective date of this amendment (1957) the term of office of each incumbent member of the board shall expire and the 3 offices of member of the Wisconsin employment relation board shall be vacant. Thereupon appointment shall be made of successor members to said board for terms beginning on the date of appointment, one such term to expire May 12, 1959, one May 12, 1961, and one May 12, 1963. Thereafter successors shall be appointed for terms of 6 years each, except that any individual appointed to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The governor shall designate one member to serve as chairman of the board. Each member of the board shall take and file the official oath. A vacancy in the board shall not impair the right of the remaining members to exercise all the powers of the board and 2 members of the board shall constitute a quorum. The board shall have a seal for the authentication of its orders and proceedings, upon which shall be inscribed the words "Wisconsin Employment Relations Board—Seal". Each member of the board shall be eligible for the reappointment and shall not engage in any other business, vocation, or employment. The board may employ, promote and remove a secretary, deputies, clerks, stenographers and other assistants, and examiners, fix their compensation and assign them to their duties, consistent with the provisions of this subchapter. The board shall maintain its office at Madison and shall be provided by the director of purchases with suitable rooms, necessary furniture, stationery, books, periodicals, maps and other necessary supplies. The board may hold sessions at any place within the state when the convenience of the board and the parties so requires. At the close of each fiscal year the board shall make a written report to the governor of such facts as it deems essential to describe its activities, including the cases it has heard, its disposition of the same, and the names, duties and salaries of its officers and employes. A single member of the board is hereinafter in this subchapter referred to as a commissioner.

History: 1951 c. 97 s. 39; 1957 c. 263.

For discussion of jurisdiction of national ing, see Wisconsin E. R. Board v. Chauff-labor relations board and stranger picket- feurs, 267 W 356, 66 NW (2d) 318.

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

111.05 Representatives and elections. (1) Representatives chosen for the purposes of collective bargaining by a majority of the employes voting in a collective bargaining unit shall be the exclusive representatives of all of the employes in such unit for the purposes of collective bargaining, provided that any individual employe or any minority group of employes in any collective bargaining unit shall have the right at any time to present grievances to their employer in person or through representatives of their own choosing, and the employer shall confer with them in relation thereto.

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

(3) Whenever a question arises concerning the representation of employes in a collective bargaining unit the board shall determine the representatives thereof by taking a secret ballot of employes and certifying in writing the results thereof to the interested parties and to their employer or employers. There shall be included on any ballot for the election of representatives the names of all persons submitted by an employe or group of employes participating in the election, except that the board may, in its discretion,

exclude from the ballot one who, at the time of the election, stands deprived of his rights under this subchapter by reason of a prior adjudication of his having engaged in an unfair labor practice. The ballot shall be so prepared as to permit of a vote against representation by anyone named on the ballot. The board's certification of the results of any election shall be conclusive as to the findings included therein unless reviewed in the same manner as provided by subsection (8) of section 111.07 for review of orders of the board.

(3m) Whenever an election has been conducted pursuant to subsection (3) in which the name of more than one proposed representative appears on the ballot and results in no conclusion, the board may, in its discretion, if requested by any party to the proceeding within 30 days from the date of the certification of the results of such election, conduct a run-off election. In such run-off election, the board may drop from the ballot the name of the representative that received the least number of votes at the original election, or the privilege of voting against any representative when the least number of votes cast at the first election was against representation by any named representative.

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

The evidence in a proceeding before the employment relations board was sufficient, under 227.20 (1) (d), to support a finding that the applicants, who were "outside" employes as distinguished from "inside" employes of the employer dairy company, constituted a single division or department of the employer, so as to authorize the board, under 111.02 (6), 111.05 (2), to order an election to determine whether such "outside" employes desired to constitute themselves a separate collective-bargaining unit and whether they desired to be represented for the purposes of collective bargaining by one union or by another or by neither. Dairy Employees Ind. Union v. Wisconsin E. R. Board, 262 W 280, 55 NW (2d) 3.

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; provided, that an employer shall not be prohibited from entering into an all-union agreement with the representatives of his employes in a collective bargaining unit, where at least two-thirds of such employes voting (provided such two-thirds of the employes also constitute at least a majority of the employes in such collective bargaining unit) shall have voted affirmatively by secret ballot in favor of such all-union agreement in a referendum conducted by the board. Such authorization of an all-union agreement shall be deemed to continue thereafter, subject to the right of either party to the all-union agreement to request the board in writing to conduct a new referendum on the subject. Upon receipt of such request by either party to the agreement, the board shall determine whether there is reasonable ground to believe that there exists a change in the attitude of the employes concerned toward the all-union agreement since the prior referendum and upon so finding the board shall conduct a new referendum. If the continuance of the all-union agreement is supported on any such referendum by a vote at least equal to that hereinabove provided for its initial authorization, it may be continued in force and effect thereafter, subject to the right to request a further vote by the procedure hereinabove set forth. If the continuance of the all-union agreement is not thus supported on any such referendum, it shall be deemed terminated at the termination of the contract of which it is then a part or at the end of one year from the date of the announcement by the board of the result of the referendum, whichever proves to be the earlier date. The board shall declare any such all-

union agreement terminated whenever it finds that the labor organization involved has unreasonably refused to receive as a member any employe of such employer, and each such all-union agreement shall be made subject to this duty of the board. Any person interested may come before the board as provided in section 111.07 and ask the performance of this duty. Any all-union agreement in existence on May 5, 1939, and renewed or amended continuously since that time shall be deemed valid and enforceable in all respects.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) To engage in a secondary boycott; or to hinder or prevent, by threats, intima-

tion, 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: 1951 c. 661.

An employer's contribution of financial support to a labor organization is an unfair labor practice, and the initiation fees and dues to be paid by the employers as members of the union would constitute such a contribution and would be substantial in amount. The term "financial support" includes dues paid by an employer to a union, but the term is much broader and covers and includes financial support of any kind, character or description, whether large or small in amount. *Wisconsin E. R. Board v. Journeymen Barbers*, 256 W 77, 39 NW (2d) 725.

The record in a proceeding before the board warranted its order directing a union to cease and desist from picketing the premises or attempting to compel or induce employers operating beauty shops, by picketing or otherwise, to enter into a collective-bargaining agreement containing an all-union-shop provision as to which there had been no referendum or approval by the employes as required by (1) (c). *Wisconsin E. R. Board v. Journeymen Barbers*, 256 W 77, 39 NW (2d) 725.

Conduct of members of a striking union in picketing in such proximity to a train as to impede its movement toward the railroad entrance to the employer's plant, pushing police officers onto the rails after having been told to discontinue their resistance to the officers in the officers' effort to maintain the peace, and forcing their way through a cordon formed by the officers to permit movement of the train, and swearing and cursing, was prohibited as an unfair labor practice. *Teske v. State*, 256 W 440, 41 NW (2d) 642.

In (2) (h), the word "unauthorized" does not apply to "concerted effort to interfere with production," and such statutory provision does not imply that there may be an "authorized" concerted effort to interfere with production, except as the right to strike is recognized. *International Union v. Wisconsin E. R. Board*, 258 W 481, 46 NW (2d) 185.

In view of provisions in 111.01 (1), (4) declaring public policy, a union may not acquire by contract with the employer a right to engage in practices which 111.06 (2) has prohibited and has declared to be unfair labor practices. *International Union v. Wisconsin E. R. Board*, 258 W 481, 46 NW (2d) 185.

Under (2) (c) the board may be required to interpret such an agreement and determine whether it has been violated, as incidental to the board's administration of the employment peace act, but such requirement is not a delegation of judicial power to the board which violates sec. 2, art. VII, vesting judicial power in the courts. *International Union v. Wisconsin E. R. Board*, 258 W 481, 46 NW (2d) 185.

For the purpose of determining whether there was interference with production within the meaning of (2) (h), in the absence of a contract to establish standards and of a

definition of "production" in the employment peace act, production should be considered as that volume which was being freely produced by the employes after the termination of a collective-bargaining contract and before the acts or interference complained of; and where such former production, which had remained reasonably stable for many weeks before the acts of the union officials and the action taken at the union meeting, was thereafter uniformly reduced to about 80 per cent of such former volume, there was interference with production within the meaning of the statute. *International Union v. Wisconsin E. R. Board*, 258 W 481, 46 NW (2d) 185.

If picketing is carried on by a union for an unlawful purpose, there is no invasion of the union's right of free speech by an order directing it to cease and desist from engaging in such picketing. Peaceful picketing, although recognized as an exercise of the right of free speech and therefore lawful, cannot be made the cover for concerted action against an employer in order to achieve an unlawful or prohibited object, such as to compel an employer to coerce his employes to join a union. Picketing may not be enjoined on the sole ground that it results or may result in a reduction in the volume of the business of the picketed employer. *Wisconsin E. R. Board v. Retail Clerks Int. Union*, 264 W 189, 58 NW (2d) 655.

In a proceeding before the board on charges of unfair labor practices against a union picketing in front of a store by carrying signs stating that employes in the store were not members of the union, evidence as to a demand of the business representative of the union that the employer recognize the union as the collective-bargaining agent for the employes, followed immediately by an effort to persuade the employes to join and then by such representative's statement published in a labor paper, owned by a corporation of which he was an officer and director, that there would be intermittent picketing until the employes joined, and his testimony that picketing would be discontinued if they became members, supported a finding of the board that the picketing, although without violence, was conducted for the unlawful purpose of inducing the employer to interfere with the rights of its employes to refrain from joining the union, contrary to 111.04, 111.06 (2) (a) (b). *Wisconsin E. R. Board v. Retail Clerks Int. Union*, 264 W 189, 58 NW (2d) 655.

The violation by an employer of a clause in its collective bargaining agreement, requiring arbitration of future disputes arising during the term of such contract, constitutes an unfair labor practice within the meaning of (1) (f). *Dunphy Boat Corp. v. Wisconsin E. R. Board*, 267 W 316, 64 NW (2d) 866.

See note to 111.03, citing *Wisconsin E. R.*

Board v. Chauffeurs, 267 W 356, 66 NW (2d) 318.

Under decisions of the United States supreme court, the National Labor Relations Act, as amended by the Taft-Hartley Act so as to bring unfair labor practices by employes within its scope, has not conferred on the national labor relations board exclusive jurisdiction over mass picketing, intimidation, and obstruction of public streets during a strike against an employer producing and marketing articles in interstate commerce, such as involved in the instant case. Wisconsin E. R. Board v. United A. & A. I. Workers, 269 W 578, 70 NW (2d) 191.

Picketing conducted by signs saying "The men on this job are not 100 per cent affiliated with the A. F. of L." constituted a violation of (2) (b), when conducted on a rural highway at the entrance to a gravel pit where few patrons of the employer ever came, and where the obvious purpose was to coerce the employer to induce his employes to join the union against their wishes. Vogt, Inc. v. International Brotherhood, 270 W 315, 71 NW (2d) 359, 74 NW (2d) 749, 77 S. Ct. 1166.

Under (1) (b) it is a legitimate objective for a barbers union to seek to have barber-shop operators working at the barber trade, as well as their employes, belong to such

union. Wisconsin E. R. Board v. Journey-men Barbers, 272 W 84, 74 NW (2d) 815.

The words "coerce or intimidate" appearing in (2) (m) must be construed in the light of 111.15, which provides that nothing in the Employment Peace Act shall be so construed as to invade unlawfully the right to freedom of speech, and under such construction, a contract whereby a barbers union, which had furnished a union-shop card to be displayed on the wall of a barber-shop, reserved the right to remove the card on the shop ceasing to be a "union" shop within the regulations of the union, and the union's action in removing the card, when the working proprietor of the shop ceased to be a union member and the shop thereby ceased to be a "union" shop, did not constitute "coercion" of such proprietor to become a union member. Wisconsin E. R. Board v. Journeymen Barbers, 272 W 84, 74 NW (2d) 815.

Union constitution which would penalize a member for working in a nonunion barber shop violates (2) (m) by coercion against the nonunion proprietor, and enforcement of such provision will be enjoined. Wisconsin E. R. Board v. Journeymen Barbers, 272 W 94, 74 NW (2d) 821.

See note to 111.07, citing United Auto., A. & A. I. W. v. Wisconsin Emp. Rel. Bd. 76 S. Ct. 794.

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

(2) (a) Upon the filing with the board by any party in interest of a complaint in writing, on a form provided by the board, charging any person with having engaged in any specific unfair labor practice, it shall mail a copy of such complaint to all other parties in interest. Any other person claiming interest in the dispute or controversy, as an employer, an employe, or their representative, shall be made a party upon application. The board may bring in additional parties by service of a copy of the complaint. Only one such complaint shall issue against a person with respect to a single controversy, but any such complaint may be amended in the discretion of the board at any time prior to the issuance of a final order based thereon. The person or persons so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the notice of hearing. The board shall fix a time for the hearing on such complaint, which will be not less than ten nor more than forty days after the filing of such complaint, and notice shall be given to each party interested by service on him personally or by mailing a copy thereof to him at his last known post-office address at least ten days before such hearing. In case a party in interest is located without the state and has no known post-office address within this state, a copy of the complaint and copies of all notices shall be filed in the office of the secretary of state and shall also be sent by registered mail to the last known post-office address of such party. Such filing and mailing shall constitute sufficient service with the same force and effect as if served upon the party located within this state. Such hearing may be adjourned from time to time in the discretion of the board and hearings may be held at such places as the board shall designate.

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

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

(d) Each witness who shall appear before the board by its order or subpoena shall receive for his attendance the fees and mileage provided for witnesses in civil cases in

courts of record, which shall be audited and paid by the state in the same manner as other expenses are audited and paid, upon the presentation of properly verified vouchers approved by the chairman of the board and charged to the proper appropriation for the board.

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

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

(5) The board may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the board as a body to review the findings or order. If no petition is filed within twenty days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the board as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the board shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within ten days after the filing of such petition with the board, the board shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the board is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another twenty days for filing a petition with the board.

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

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

tions, if any, for the modification or setting aside of its original order. The court's judgment and decree shall be final except that the same shall be subject to review by the supreme court in the same manner as provided in section 102.25.

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

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

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

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

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

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

In proceedings before the board on charges of unfair labor practices against a union and union officials, the evidence was sufficient under (7) to sustain the board's findings that there was a slowdown or reduction in production in the employer's plant during a certain period, and that there was a causal connection between the union and union leaders' activity on the one hand and the reduced production on the other. *International Union v. Wisconsin E. R. Board*, 258 W 481, 46 NW (2d) 185.

The board was not bound to accept the union's claim that the picketing involved was carried on solely for the lawful purpose of publicizing the fact that the employees of the complainant store were not members of such union, but the board was required to determine, from the evidence, the real end sought by the union. In making findings, the board is to find ultimate facts only, and not evidentiary facts. The omission of the board to make a specific finding, one which is necessary to support its cease-and-desist order, is equivalent to a finding favorable to the plaintiff. *Wisconsin E. R. Board v. Retail Clerks Int. Union*, 264 W 189, 58 NW (2d) 655.

In order to support ultimate findings of fact, inferences from other testimony before the employment relations board may not be based on conjecture but must be drawn from established facts which logically support them; but the drawing of inferences from other facts in the record is a function of the board and the weight to be given to those facts is for the board to determine; and such findings, when made, cannot be disturbed by a court unless they are unsupported by substantial evidence in view of the entire record submitted. *St. Joseph's Hospital v. Wisconsin E. R. Board*, 264 W 396, 59 NW (2d) 448.

A nonprofit, charitable hospital, as an employer of nonprofessional employees, is subject to the employment peace act, and the court, in reviewing a determination of the employment relations board under the act, does not have equitable powers to except such a hospital nor to refuse to grant a

judgment enforcing a valid order of the board. The references in (3), to the rules prevailing in courts of equity, refer to hearings before the employment relations board, and not to proceedings for the review of determinations of the board; the review of such determinations being governed by the provisions of ch. 227, and the powers of the court on review of such determinations being the same as those governing the review of orders of other state agencies. *St. Joseph's Hospital v. Wisconsin E. R. Board*, 264 W 396, 59 NW (2d) 448.

Where an employer has violated a clause in its collective bargaining agreement, requiring arbitration of future disputes arising during the term of such contract, the board, under (4) in particular, has the power to entertain a complaint alleging such unfair labor practice, conduct a hearing, and issue an order directing the employer not only to cease and desist from violating the contract but also to affirmatively comply with and carry out such provisions with respect to the particular dispute at issue. *Dunphy Boat Corp. v. Wisconsin E. R. Board*, 267 W 316, 64 NW (2d) 866.

The Wisconsin employment relations board, if satisfied that its order directing unions and individual defendants to cease and desist from certain unfair labor practices has been disobeyed, may, without having conducted some proceeding establishing that the order has been disobeyed, apply to the circuit court for enforcement of the order by a petition alleging disobedience thereto, and the circuit court thereby acquires jurisdiction. *Wisconsin E. R. Board v. United A., A. & A. I. Workers*, 269 W 578, 70 NW (2d) 191.

The general rule, that a state may not in furtherance of public policy enjoin conduct which has been made an unfair labor practice under federal statutes, does not take from state the power to prevent mass picketing, violence and overt threats of violence, even if such power is entrusted by the state to a labor board. *United Auto., A. & A. I. W. v. Wisconsin E. R. Board*, 76 S. Ct. 794.

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

111.09 Board shall make rules, regulations and orders. The board may adopt reasonable and proper rules and regulations relative to the exercise of its powers and authority and proper rules to govern its proceedings and to regulate the conduct of all elections and hearings.

History: 1955 c. 221.

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

This section does not operate to limit the powers of the board as to dealing with violations of clauses in collective bargaining agreements requiring arbitration of future disputes between the parties. *Dunphy Boat Corp. v. Wisconsin E. R. Board*, 267 W 316, 64 NW (2d) 866.

111.11 Mediation. (1) The board shall have power to appoint any competent, impartial, disinterested person to act as mediator in any labor dispute either upon its own initiative or upon the request of one of the parties to the dispute. It shall be the function of such mediator to bring the parties together voluntarily under such favorable auspices as will tend to effectuate settlement of the dispute, but neither the mediator nor the board shall have any power of compulsion in mediation proceedings. The board shall provide necessary expenses for such mediators as it may appoint, order reasonable compensation not exceeding ten dollars per day for each such mediator, and prescribe reasonable rules of procedure for such mediators.

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

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

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

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

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

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

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

SUBCHAPTER II.
FAIR EMPLOYMENT.

111.31 Declaration of policy. (1) The practice of denying employment and other opportunities to, and discriminating against, properly qualified persons by reason of their race, creed, color, 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 and labor unions of employment opportunities to such persons solely because of their race, creed, color, 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 race, creed, color, 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 race, creed, color, national origin, or ancestry. All the provisions of this subchapter shall be liberally construed for the accomplishment of this purpose.

111.31 to 111.36 were not intended to give persons discriminated against on the basis of race a right of action to compel an unincorporated labor union to accept them as members following recommendations made by the commission that the union admit them. *Ross v. Ebert*, 275 W 523, 82 NW (2d) 315. The amendments made by ch. 266, Laws 1957, would alter the law applied in *Ross v. Ebert*, 275 W 523, and would be constitutional. 46 Atty. Gen. 123.

111.32 Definitions. When used in this subchapter:

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

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

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

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

(5) The term "discrimination" means discrimination because of race, color, creed, national origin, or ancestry, by an employer individually or in concert with others against any employee or any applicant for employment in regard to his hire, tenure or term, condition or privilege of employment, 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.

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

111.34 Advisory committee. The governor shall appoint an advisory committee consisting of 7 members. Two shall be representatives of labor organizations, one to be chosen from each of the 2 major labor organizations of the state, 2 members shall be representatives of business and industrial management, and the remaining 3 members shall be representative of the public at large. The term of members shall be for 3 years. The members of the committee shall elect their own chairman. The commission may refer

to such committee for study and advice on any matter relating to fair employment. Such committee shall give consideration to the practical operation and application of this subchapter and may report to the proper legislative committee its view on any pending bill relating to the subject matter of this subchapter. Members of the committee shall receive no salary or compensation for services on said committee, but shall be entitled to reimbursement for necessary expenses.

General responsibilities of advisory committee, under 111.34, and of governor's commission on human rights under 15.85, in the field of fair employment, discussed. 41 Atty. Gen. 245.

111.35 Investigation and study of discrimination. The commission shall:

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

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

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

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

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

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

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

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

(3) If the commission finds probable cause to believe that any discrimination as defined in this subchapter has been or is being committed, it shall immediately endeavor to eliminate the practice by conference, conciliation or persuasion. In case of failure so to eliminate the discrimination, the commission shall issue and serve a written notice of hearing, specifying the nature of the discrimination which appears to have been committed, and requiring the person named, hereinafter called the "respondent" to answer the complaint at a hearing before the commission. The notice shall specify a time of hearing not less than 10 days after service of the complaint, and a place of hearing within either the county of the respondent's residence or the county in which the discrimination appears to have occurred. The testimony at the hearing shall be taken down by a reporter appointed by the commission. If, after hearing, the commission finds that the respondent has engaged in discrimination, the commission shall make written findings and recommend such action by the respondent as will effectuate the purpose of this subchapter and shall serve a certified copy of the findings and recommendations on the respondent together with an order requiring the respondent to comply with the recommendations, the order to have the same force as other orders of the commission and be enforced as provided in ch. 101. Any person aggrieved by noncompliance with the order shall be entitled to have the same enforced specifically by suit in equity. If the commission finds that the respondent has not engaged in discrimination as alleged in the complaint, it shall serve a certified copy of its findings on the complainant together with an order dismissing the complaint.

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

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

History: 1957 c. 266.

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

History: 1957 c. 266.

SUBCHAPTER III.
PUBLIC UTILITIES.

See note to 111.62, citing *Amalgamated Asso. etc. v. Wisconsin E. R. Board*, 71 S. Ct. 373.

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

111.51 Definitions. When used in this subchapter:

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

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

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

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

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

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

111.53 Appointment of conciliators and arbitrators. Within 30 days after July 25, 1947, the board shall appoint a panel of persons to serve as conciliators or arbitrators under the provisions of this subchapter. No person shall serve as a conciliator and arbitrator in the same dispute. Each person appointed to said panels shall be a resident of this state, possessing, in the judgment of the board, the requisite experience and judgment to qualify such person capably and fairly to deal with labor dispute problems. All such appointments shall be made without a consideration of the political affiliations of the appointee. Each appointee shall take an oath to perform honestly and to the best of his ability the duties of conciliator or arbitrator, as the case may be. Any appointee may be removed by the board at any time or may resign his position at any time by notice in writing to the board. Any vacancy in the panels shall be filled by the board within 30 days after such vacancy occurs. Such conciliators and arbitrators shall be paid reasonable compensation for services and for necessary expenses, in an amount to be fixed by the board, such compensation and expenses to be paid out of the appropriation made to the board by s. 20.340 (2) upon such authorizations as the board 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 board to appoint a conciliator from the panel, provided for by section 111.53. Upon the filing of such peti-

tion, the board shall consider the same, and if in its opinion, the collective bargaining process, notwithstanding good faith efforts on the part of both sides to such dispute, has reached an impasse and stalemate and such dispute, if not settled, will cause or is likely to cause the interruption of an essential service, the board shall appoint a conciliator from the panel to attempt to effect the settlement of such dispute. The conciliator so named shall expeditiously meet with the disputing parties and shall exert every reasonable effort to effect a prompt settlement of the dispute.

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

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

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

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

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

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

(b) Comparison of wage rates or other working conditions with wage rates or other working conditions maintained for the same or similar work of workers exhibiting like or similar skills under the same or similar working conditions in the local operating area involved;

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

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

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

In *St. John et al. v. Wisconsin E. R. Board*, 90 F Supp. 347, petitioner was denied injunctive and declaratory relief against the board on the ground that the matter was res adjudicata because of the judgment in *United C. C. and C. Workers v. Wisconsin E. R. Board*, 255 W 154, 38 NW (2d) 692. The de-

cision of the 3-judge federal court was vacated, since in the light of *Amalgamated Asso. etc. v. Wisconsin E. R. Board*, 71 S. Ct. 359, declaring public utility antistrike law invalid, no need for injunctive relief remains. *St. John et al. v. Wisconsin E. R. Board*, 71 S. Ct. 375.

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

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

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

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

111.62 Strikes, work stoppages, slowdowns, lockouts, unlawful; penalty. It shall be unlawful for any group of employees 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 employees 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 employees 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.

The public utility antistrike law, as applied to the Milwaukee Elec. Ry. and Trans. Co. and to the Milwaukee Gas Light Co. and their employees was held valid in Wisconsin E. R. Board v. Amalgamated Asso. 257 W 43, 42 NW (2d) 471 and in Wisconsin E. R. Board v. Milwaukee Gas Light Co. 253 W 1, 44 NW (2d) 547, against claims that it violated the federal and state constitutions and conflicted with the national labor management relations act. The first case affirmed a judgment granting a perpetual injunction against a strike; the second affirmed a judgment find-

ing the union guilty of contempt. Both judgments were reversed in Amalgamated Asso. etc. v. Wisconsin E. R. Board, 71 S. Ct. 359, on ground that federal legislation had occupied the field and that national labor management relations act applies to a privately owned public utility whose business and activities are carried on wholly within a single state. Amalgamated Asso. v. Wisconsin E. R. Board, 257 W 53, 42 NW (2d) 496, was held moot, and the judgment vacated in Amalgamated Asso. etc. v. Wisconsin E. R. Board, 71 S. Ct. 373.

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

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

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

History: 1951 c. 247 s. 42.