power of an officer to arrest the driver and hold him to bail. 44 Atty. Gen. 330.

State traffic patrol officers have power to arrest without warrant for all misdemeanor violations of the vehicle code committed in their presence and for violations not committed in their presence, upon probable cause and under the conditions mentioned in 954.03 (1), Stats. 1955. 45 Atty. Gen. 289.

State patrol officers are entitled to charge the same fees for mileage, court appearances, service of papers and like services in state traffic patrol cases, as the sheriff would be entitled to for performing like service. Such fees should be deposited in the highway fund. 47 Atty. Gen. 168.

On the subject of assistance in handling violations of criminal laws, see 47 Atty. Gen. 209 and 56 Atty. Gen. 96.

The state traffic patrol may permit local law enforcement personnel to ride in state patrol squad cars for training purposes, providing the municipality requests that the officers participate in such training. 48 Atty. Gen. 159.

110.075 History: 1967 c. 257; Stats. 1967 s. 110.075; 1969 c. 500 s. 30 (3) (a).

110.08 History: 1955 c. 226; Stats. 1955 c. 110.08; 1957 c. 260 s. 26; 1957 c. 652, 672, 684; 1961 c. 539; 1963 c. 318; 1965 c. 232; 1969 c. 500 s. 30 (3) (g), (i).

110.20 History: 1965 c. 591; Stats. 1965 s. 110.20; 1969 c. 500 s. 30 (3) (g), (h), (i).

110.99 History: 1965 c. 232; 1965 c. 432 s. 6; Stats. 1965 s. 15.87; 1967 c. 291 s. 14; 1967 c. 327; Stats. 1967 s. 110.99; 1969 c. 154 s. 377; 1969 c. 500.

CHAPTER 111.

Employment Relations.

111.01 History: 1939 c. 57; Stats. 1939 s. 111.01.

On exercises of police power see notes to sec. 1, art. I; and on trusts and monopolies see notes to various sections of ch. 133.

On exercises of police power see notes to sec. 1, art. I; and on trusts and monopolies see notes to various sections of ch. 133.

The legislature, in dealing with labor disputes in the employment peace act, 111.01 et seq., and other acts, has recognized a public interest in the relation between employer and employe; and the enactments do not destroy and are not calculated to invade contract rights, but seek to protect the public against unfair labor practices and to foster the continuance of that relation in which the public is interested; and the legislature deals with labor disputes, not primarily as a method of enforcing private rights, but to enforce the public right as well. Appleton Chair Corp. v. United Brotherhood, 239 W 337, 1 NW (2d) 188.

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.

Select aspects of the Wisconsin employment peace act. Smith, 45 MLR 338.

The "compelling state interest" exception to the federal preemption doctrine. Dunaj, 51 MLR 89.

The Wisconsin employment peace act. Lampert, 1946 WLR 193.

A study of the Wisconsin employment peace act; selection of collective bargaining representatives; union security. Hafer, 1956 WLR 283 and 481.

111.02 History: 1939 c. 57; Stats. 1939 s. 111.02; 1945 c. 424; 1947 c. 530; 1969 c. 276 ss. 413, 593.

Under the employment peace act, a mere finding of the employment relations board that employes picketed their employer's plant without a majority vote by secret ballot to strike does not terminate their employe status for the purposes of the act, and such finding does not require the board to find or order that their employe status was thereby terminated for having committed an unfair labor practice, the act being construed to vest in the board a discretion to determine whether the conduct of an employe or employes shall result in a termination of the employe status. Appleton Chair Corp. v. United Brotherhood, 239 W 337, 1 NW (2d) 188.

A nonprofit charitable hospital corporation, as an employer of nonprofessional employes, is subject to the employment peace act, ch. 111, regulating employment relations, so as to be subject to an order requiring it to bargain collectively with a labor union, such an employer not being within the named exceptions in the act, and the act not indicating an intent on the part of the legislature to exempt charitable institutions. Wisconsin E. R. Board v. Evangelical Deaconess Soc. 242 W 78, 7 NW (2d) 590.

A matter involving a resident employer and resident employes, under a claim that the employer had violated the state law in respect to unfair labor practices, was within the jurisdiction of the state employment relations board although the employer also had employes without the state. International B. of E. W. v. Wisconsin E. R. Board, 245 W 532, 15 NW (2d) 823.

The term "craft," as used in 111.02 (6), Stats. 1945, was intended to comprehend any group of skilled workers whose functions have common characteristics distinguishing them sufficiently from others so as to give such group separate problems as to working conditions for which they might desire a separate bargaining agent. Ray-O-Vac v. Wisconsin E. R. Board, 249 W 112, 23 NW (2d) 489.

An employer and a union had the burden to establish their claim that a wrongfully discharged employe had obtained "regular and substantially equivalent employment elsewhere" and hence, was not an "employe" entitled to reinstatement with the former employer, and evidence showing only that the employe presently had a steady job, and was receiving wages substantially more than equivalent to his former wages, and was not sufficient to preclude the employment relations board from ordering his reinstatement, since factors other than wages are to be considered. Wisconsin E. R. Board v. Plankinton Packing Co. 255 W 285, 38 NW (2d) 688.

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

111.04 History: 1939 c. 57; Stats. 1939 s. 111.04.

This section is not in conflict with a similar provision of the national labor relations act, 29 USC, sec. 157. Christoffel v. Wisconsin E. R. Board, 243 W 332, 10 NW (2d) 197.

Judicial interpretation of Wisconsin employment peace act. Lescohier, 29 MLR 116.

111.05 History: 1939 c. 57; 1939 c. 515 s. 7; Stats. 1939 s. 111.05; 1947 c. 2; 1969 c. 276 s. 593.

A written agreement entered into by original bus drivers and former streetcar operators and their common employer, setting up a seniority list determining seniority rights on the basis of length of service as bus drivers, was a valid and enforceable contract, under which the individual rights of seniority were determined and remained fixed. A labor union, later organized by the employes and accepting such seniority list, was without authority to modify it, as against the protesting original bus drivers, without any reason except arbitrarily to give the former streetcar operators better seniority, by a provision in a collective-bargaining contract entered into with the employer, although the union was the exclusive collective-bargaining representative of all the employes. Belanger v. Local Division No. 1128, 254 W 344, 36 NW (2d) 414.

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 Employes Ind. Union v. Wisconsin E. R. Board, 262 W 280, 55 NW (2d) 3.

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

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

A study of the Wisconsin employment peace act; selection of collective bargaining representatives; union security. Hafer, 1956 WLR 283, 481.

111.06 History: 1939 c. 57; 1939 c. 515 s. 8; Stats. 1939 s. 111.06; 1943 c. 465; 1945 c. 424, 504; 1947 c. 530; 1951 c. 661; 1961 c. 124; 1967 c. 113; 1969 c. 276 s. 593.

1. By employers.
2. By employes.
3. By any person.

1. By Employers.

If an employer rightly or wrongly supposes his employes to be in any stage of organizational activities leading to co-operative bargaining and he discriminates against those whom he supposes to be so engaged by dismissing them or otherwise discriminating against them with respect to the conditions of their employment, the employer engages in an "unfair labor practice" within 111.06 (1) (c), Stats. 1939. Century Building Co. v. Wisconsin E. R. Board, 235 W 376, 291 NW 305.

Provisions in an order of the employment relations board requiring a union to cease and desist from asserting that the company was unfair to organized labor or to the union, unless such charge was based on some reason other than that the company had declined to enter into an all-union contract with the union, were proper, where the union had used placards proclaiming the company as "unfair to organized labor, Local 225," and the company had merely refused to sign an all-union contract in the absence of a vote therefor by its employes constituting a collective bargaining unit, as required by 111.06 (1) (c), Stats. 1939, in order to authorize entering into such a contract. Wisconsin E. R. Board v. Milk, etc., Union, 238 W 379, 299 NW 31.

Where the contract was not an all-union contract, evidence that an employer made a contract with a labor union which was the bargaining agent for the employes, requiring that employes who were members of such union remain in good standing therein, and that employes who were not members either join such union or secure work permits therefrom at a cost of 1½ times the monthly union dues, as a condition of employment or further employment, and that pursuant to such contract the employer discharged employes who were not members of and did not have work permits from such union, warranted findings of the state board that the employer was guilty of unfair labor practices, within 111.06 (1) (c), by encouraging membership in a union by discrimination in regard to hiring and tenure of employment. International Union, etc. v. Wisconsin E. R. Board, 245 W 417, 14 NW (2d) 872.

As between sec. 8 (3) of the national labor relations act, 29 USCA, sec.1158 (3), and the employment peace act, 111.06 (1) (c), Stats. 1943, there is no conflict in policy although there is a difference in method; but if the national labor relations board takes jurisdiction in a particular case, its determination is superior in legal effect to that of the state board, if there is a conflict. Where the national labor relations board had not taken jurisdiction, the state board had jurisdiction to entertain charges that an employer had engaged in unfair labor practices in that he had discharged employes for not joining a union as required by a collective-bargaining agreement which was not an all-union agreement in compliance with 111.06 (1) (c). International B. of E. W. v. Wisconsin E. R. Board, 245 W 532, 15 NW (2d) 823.

An order of the employment relations

board, made on the petition of an employer and providing that a referendum by the petitioner's employes be conducted under the direction of the board, pursuant to 111.06 (1) (c), to determine whether the required number of employes desire an all-union agreement, is subject to judicial review only if some statutory provision so authorizes, and such order is not made subject to judicial review by provisions in the employment peace act or by the administrative procedure act. In the absence of a showing that it has been aggrieved by an order, which does not direct it to do or to refrain from doing anything, a labor union is not entitled to a review thereof. United R. & W. D. S. E. of A. v. Wisconsin E. R. Board, 245 W 636, 15 NW (2d) 844.

The provision in sec. 8 (3), national labor relations act, and 111.06 (1) (c), authorizing the making of a closed-shop agreement, are not in conflict, and the national labor relations act does not deprive the state board of jurisdiction over matters arising under the state act. International B. of P. M. v. Wisconsin E. R. Board, 249 W 362, 24 NW (2d) 672.

When an employer agrees to submit to the jurisdiction of a tribunal, and the tribunal makes what for it is a final determination of the matter, the employer may not without committing an unfair labor practice decline to accept the determination as conclusive of the controversy. Allis-Chalmers Mfg. Co. v. Wisconsin E. R. Board, 254 W 484, 37 NW (2d) 36.

The employment relations board had jurisdiction over charges of unfair labor practices under (1) (a) and (c), brought on behalf of discharged employes against a Wisconsin corporation conducting its manufacturing operations in Wisconsin with Wisconsin employes, although it might be engaged in interstate commerce, where it did not appear that the national labor relations board had ever accepted or attempted to exercise jurisdiction in a matter affecting such employer or its employes, or that any petition had ever been filed requesting it so to act. Wisconsin E. R. Board v. Gilson Brothers, 255 W 316, 38 NW (2d) 492.

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 111.06 (1) (f). Dunphy Boat Corp. v. Wisconsin E. R. Board, 267 W 316, 64 NW (2d) 866.

Under 111.06 (1) (b) it is a legitimate objective for a barbers union to seek to have barbershop operators working at the barber trade, as well as their employes, belong to such union. Wisconsin E. R. Board v. Journeymen Barbers, 272 W 84, 74 NW (2d) 815.

A unilateral wage increase granted by an employer during wage negotiations by a union is evidence that the employer is not bargaining in good faith. St. Francis Hospital v. Wisconsin E. R. Board, 8 W (2d) 308, 98 NW (2d) 908.

The collective bargaining ordered by 111.06 (1) (d) does not compel either party to surrender to the demands of the other, but such bargaining does require the parties in good faith to engage in a mutually genuine effort to reach a collective-bargaining agreement. Once a union has been duly certified as the statutory bargaining representative of a unit of employes, the employer is under a duty to enter into sincere, good-faith negotiations with that union, with an intent to settle the differences and to arrive at an agreement. St. Francis Hospital v. Wisconsin E. R. Board, 8 W (2d) 308, 98 NW (2d) 908.

A complaint, under a collective-bargaining agreement, which charged unfair labor practices by failing to pay certain mechanized assembly-line employes so-called downtime pay thereunder, which contract provided for such compensation on occasions when an employe encountered unavoidable delay beyond his control and the delay was brought to the foreman's attention immediately, was substantiated by the evidence. Tecumseh Products Co. v. Wisconsin E. R. Board, 23 W (2d) 118, 126 NW (2d) 520.

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

Evidence necessary to sustain allegation of discriminatory discharge. 34 MLR 129.

Agreements for the arbitration of labor disputes. 36 MLR 117.

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

A study of the Wisconsin employment peace act; unfair labor practices. Hafer, 1957 WLR 136.

2. By Employes.

Picketing done at the places of business of a dairy company's customers constituted a picketing of the places of business before which it occurred and not merely a picketing of the company's delivery trucks and drivers, and the acts done, although they did not constitute putting the customers in fear of physical harm, did constitute "coercion." Picketing carried on to enforce a union's demand that a dairy company enter into an all-union contract was unlawful, although free from violence, where under 111.06 (1) (c), Stats. 1939, the company could not enter into such a contract unless its employes constituting a collective-bargaining unit had voted therefor, and there had been no election. Wisconsin E. R. Board v. Milk, etc., Union, 238 W 379, 299 NW 31.

See note to 111.02, citing Appleton Chair Corp. v. United Brotherhood, 239 W 337, 1 NW (2d) 188.

Whether or not some of the matters demanded of the employer by the authorized bargaining union were either prohibited by the state statutes or permissible under the federal statutes, and whether or not picketing and the other peaceful activities in which the authorized bargaining union and other interested unions engaged, in the absence of any strike by the picketed employer's employes, constituted an unfair labor practice under 111.06 (2) (e), because not directed by a majority vote of a collective-bargaining unit of such employes—an order of the state board, so far as purporting to prohibit the exercise of the right of free speech in the manner and under the circumstances stated, cannot be sustained. Wisconsin E. R. Board v. International Asso., etc. 241 W 286, 6 NW (2d) 339.

The fact that the coercive and intimidatory

acts of the defendant union and its members against the complainant employes did not succeed in compelling the latter to join the union did not make such acts any the less unfair labor practices within the ban of the statute. From the evidence in this case as to the participation of members of the union, including a committeeman thereof, in the continuous solicitation of complainant employe nonmembers against their will to pay back dues and come back into the union, and as to the participation of such members in acts of violence against such non-members, and as to the union president's demanding their discharge by the employer company under threat of a strike, the state board could properly infer that the acts complained of were done for and on behalf of the union and were acts of the union, justifying a cease-and-desist order directed against the union, as against a contention that the union was not bound by such acts of its members. Christoffel v. Wisconsin E. R. Board, 243 W 332, 10 NW (2d) 197, cert. denied, Christoffel v. Wisconsin E. R. Board, 320 U. S. 776.

In a proceeding before the state board against a labor union and its president on charges of unfair labor practices it appeared that the union had entered into a collective-bargaining agreement with an employer providing for arbitration of any differences arising, and that the president of the union, without asking for arbitration or giving the employer a reasonable opportunity to comply with a demand for a meeting, and without any strike having been lawfully authorized, called out the employes, and they proceeded to picket the employer's premises. An order of the state board, directing the union to cease and desist from violating the terms of the collective-bargaining agreement by any strike, walkout, or other work stoppage, did not violate the rights of the union. Public S. E. Union v. Wisconsin E. R. Board, 246 W 190, 16 NW (2d) 823.

The union and the individual defendants were guilty of an unfair labor practice under 111.06 (2) (a), where they coerced and intimidated employes in the enjoyment of their legal rights to continue their work, by threatening them with punishment if they failed to engage in the unlawful work stoppages involved, and by injuring property of those who failed and refused to take part in such work stoppages. Concerted action by employes, at the instance of their union, in walking out during their regularly scheduled working hours and refraining from work, and not appearing for work until the commencement of their next shift, for the purpose of exerting economic pressure against their employer, constituted co-operation in engaging in overt acts concomitant of a strike, and an unfair labor practice under 111.06 (2) (e), in the absence of any vote by secret ballot to call a strike. International Union v. Wisconsin E. R. Board, 250 W 550, 27 NW (2d) 875, affirmed International Union v. Wisconsin E. R. Board, 336 US 245.

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 111.06 (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 an unfair labor practice. Teske v. State, 256 W 440, 41 NW (2d) 642.

In view of 111.01 (1) and (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. Under 111.06 (2) (c) the board may be required to interpret such an agreement and determine whether it has been violated. In (2) (h), the 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. For the purpose of determining whether there was interference with production within the meaning of 111.06 (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.

In a proceeding before the employment relations 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.

Under decisions of the U. S. 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. Wisconsin E. R. Board v. United A., A. & A. I. Workers, 269 W 578, 70 NW (2d) 191.

The words "coerce or intimidate" appearing in 111.06 (2) (m) must be construed in the light of 111.15, 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 barbershop, 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.

See notes to sec. 1, art. I, on limitations imposed by the Fourteenth Amendment, citing Hotel Employes' Local v. Wisconsin E. R. Board, 315 US 437, and International Brotherhood v. Vogt, Inc. 354 US 284.

Judicial interpretation of the Wisconsin employment peace act. Lescohier, 29 MLR 116.

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

Free speech and the Wisconsin employment relations act. Schwartzman, 1943 WLR 260.

A study of the Wisconsin employment peace act; unfair labor practices. Hafer, 1957 WLR 136.

3. By Any Person.

The union and the individual defendants in the instant case, by causing the walkouts and the refraining from work involved for the purpose of interfering with production, were all guilty of an unfair labor practice under 111.06 (3), whether or not they in fact were among the employes who did those things. International Union v. Wisconsin E. R. Board, 250 W 550, 27 NW (2d) 875, affirmed International Union v. Wisconsin E. R. Board, 336 US 245.

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.

See note to 111.03, citing Wisconsin E. R. Board v. Chauffeurs, 267 W 356, 66 NW (2d) 318.

Picketing conducted by signs saying "The men on this job are not 100% affiliated with the A. F. of L." constituted a violation of 111.06 (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, affirmed International Brotherhood v. Vogt, Inc. 354 US 284.

A union constitution which would penalize a member for working in a nonunion barber shop violates 111.06 (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.

Picketing of a courthouse addition by one man carrying a placard stating that some employes were nonunion, which resulted in stoppage of construction, can be enjoined on the ground that the purpose of the picketing was to coerce the employer to pressure his employes into joining the union. The federal government has not pre-empted the field in cases where the state or a county is complainant. Door County v. Plumbers, etc., Local No. 298, 4 W (2d) 142, 89 NW (2d) 920.

Enforcement of terms of collective-bargaining agreements. Rice, 34 MLR 233.

The status of organizational picketing in Wisconsin. Gigure, 37 MLR 151.

111.07 History: 1939 c. 57; Stats. 1939 s. 111.07; 1943 c. 375 s. 46 to 48; 1967 c. 43; 1969 c. 276 s. 593.

1. Jurisdiction.
2. Beginning proceeding.
3. Record; proof.
4. Findings and order.
5. Compliance proceeding.
6. Review of order.
7. Limitation.

1. Jurisdiction.

In respect to proceedings before the state employment relations board under the employment peace act, the state board was not without jurisdiction on the ground of conflict with the jurisdiction of the national labor relations board, where the matters involved were not in issue before the national board, and, in any event, were not under the jurisdiction of the national board, in that the national act, 29 USC, sec. 151 et seq., covers only unfair labor practices affecting commerce, and does not cover unfair labor practices by employes or controversies between employes respecting the same. Christoffel v. Wisconsin E. R. Board, 243 W 332, 10 NW (2d) 197, cert. denied, Christoffel v. Wisconsin E. R. Board, 320 US 776.

The national labor relations act is not so inconsistent with the employment peace act in respect to unfair labor practices as to suspend the state act. Until in a proper proceeding some practice of an employer which is denounced by the national act as an unfair labor practice operates to impede or obstruct inter-

state commerce, the national labor relations board, has no jurisdiction in the premises. International B. of E. W. v. Wisconsin E. R. Board, 245 W 532, 15 NW (2d) 823.

Where the national labor relations board has not taken jurisdiction of a controversy involving unfair practices, no conflict exists between the national labor relations act, 29 USCA, and the employment peace act which deprives the state employment relations board of jurisdiction in the premises or to render an order of the state board void under sec. 8, art. I, and art. IV, U. S. Constitution, as conflicting with rights guaranteed to employes and unions by the national act. Public S. E. Union v. Wisconsin E. R. Board, 246 W 190, 16 NW (2d) 823.

The mere fact that the national labor relations board had conducted a collective-bargaining election of the employes did not pass the matter of labor relations between the employer and its employes to that board so as to exclude jurisdiction of the state employment relations board in respect to unfair labor practices under the employment peace act. International B. of P. M. v. Wisconsin E. R. Board, 249 W 362, 24 NW (2d) 672.

The state employment relations board has the representative interest defined in the preamble of the employment peace act, 111.01; as plaintiff in an action resulting in a restraining order giving effect to its orders, it is injured by acts in violation of the restraining order which affect these interests. Wisconsin E. R. Board v. Allis-Chalmers W. Union, 249 W 590, 25 NW (2d) 425.

Under the facts of the instant case, involving charges of unfair labor practices brought by an employer against a union which was picketing the employer's nonunion warehousing place of business, the matter was one within the exclusive jurisdiction of the national labor relations board, so that the Wisconsin employment relations board was without jurisdiction. Wisconsin E. R. Board v. Chauffeurs, etc., Local 200, 267 W 356, 66 NW (2d) 318.

Where a petition alleges that an unfair labor practice has been committed and it is shown that the enterprise involves a substantial amount of interstate commerce, the state board must decline jurisdiction, even though the enterprise is only a small one, and regardless of whether the national labor relations board has taken or will take jurisdiction of the particular case, save only where the national board has ceded jurisdiction to the state agency pursuant to sec. 10 (a) of the national labor relations act. Since jurisdiction of the subject cannot be conferred by consent or estoppel, the question can be raised at any time and by the court on its own motion. Wisconsin E. R. Board v. Lucas, 3 W (2d) 464, 89 NW (2d) 300.

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

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

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

Certification of the state employment relations board established legal rights and relationships and is therefore a final judgment and reviewable by the U. S. supreme court. Since the employer is in interstate commerce, since the national labor relations board has consistently exercised jurisdiction over the industry, and since Wisconsin law as to the appropriate unit differs from federal law, the Wisconsin board could not take jurisdiction even though the national labor relations board had not acted in the particular case. (LaCrosse T. Corp. v. Wisconsin E. R. Board, 251 W 583, reversed.) LaCrosse T. Corp. v. Wisconsin E. R. Board, 336 US 18.

Recurrent unannounced stoppages of work to gain unstated ends were neither approved nor forbidden by federal law, so the state police power was not superseded. It is the objectives and not the tactics of a strike which bring it within the power of the national labor relations board. (International U. v. Wisconsin E. R. Board, 250 W 550, affirmed.) International U. v. Wisconsin E. R. Board, 336 US 245.

A union-management contract was entered into under pressure from the U. S. war labor board without complying with Wisconsin unfair labor practice provisions. Upon dissolution of the war labor board the state board could require the abrogation of provisions of the contract in conflict with Wisconsin law. (Wisconsin E. R. Board v. Algoma P. & V. Co. 252 W 549, affirmed.) Algoma P. & V. Co. v. Wisconsin E. R. Board, 336 US 301.

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 the 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. (Wisconsin E. R. Board v. United Auto., A. & A. I. W. 269 W 578, 70 NW (2d) 191, affirmed.) United Auto., A. & A. I. W. v. Wisconsin E. R. Board, 351 US 266.

A county is a "person" entitled to protection from unfair labor practices prescribed by federal legislation, and the mere fact that the county sued in a state court to enjoin picketing did not deprive the national labor relations board of jurisdiction and reestablish state power. (Door County v. Plumbers, etc., Local 298, 4 W (2d) 142, reversed.) Plumbers, etc., Local 298 v. Door County, 359 US 354.

The state has the power to provide the procedure by which, and the forum before which, actions for breach of collective-bargaining agreements will be resolved. But

where such proceedings constitute judicial proceedings they can be removed to a federal district court. Tool & Die Makers, etc. v. General Elec. Co., X-Ray Dept. 170 F Supp. 945.

Power of states to regulate union internal discipline; federal preemption. 1962 WLR 166.

2. Beginning Proceeding.

A petition by citizens, requesting the employment relations board to order an election among employes to determine whether such employes would accept an offer of their employer to settle a strike, could not have initiated a proceeding before the board under 111.07 (2) (a), since it was not filed by a party in interest and did not relate to a specific unfair labor practice. International Union v. Gooding, 251 W 362, 29 NW (2d) 730.

The union, as a party to the collective-bargaining contract allegedly breached, was the statutory representative of the employes and therefore a "party in interest," as that term is used in 111.07 (2) (a). General D. & H. Union v. Wisconsin E. R. Board, 21 W (2d) 242, 124 NW (2d) 123.

3. Record; Proof.

The party on whom the burden of proof rests in a proceeding before the employment relations board is required to sustain such burden by a clear and satisfactory preponderance of the evidence, but the findings of the board, if supported by credible and competent evidence, are conclusive on review. Wisconsin E. R. Board v. Milk, etc. Union, 238 W 379, 299 NW 31.

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.

4. Findings and Order.

The board's findings furnish the factual situation to which the board, in the exercise of discretion, applies the law. It is the order of the board which determines the status and rights of the parties. Appleton Chair Corp. v. United Brotherhood, 239 W 337, 1 NW (2d) 188.

The employment relations board, in a proceeding on charges of unfair labor practices, may require the reinstatement of employes with or without pay and the obligation to pay is on the employer and not on the union, but the board has no authority to require the union to reimburse the employer for half the amount. International of B. of P. M. v. Wisconsin E. R. Board, 249 W 362, 24 NW (2d) 672.

An order of the employment relations board, containing a provision banning the doing of things which the defendants have no right to do, is not void merely because there are only isolated instances of such action. The quitting and remaining from work by employes, done pursuant to a conspiracy to carry out an unlawful plan to interfere with production, may be enjoined by order of the employment relations board without violating the provision in the 13th amendment against imposing involuntary servitude. International Union v. Wisconsin E. R. Board, 250 W 550, 27 NW (2d) 875, affirmed International Union v. Wisconsin E. R. Board, 336 US 245.

In an order to reinstate employes it is proper to require the payment of a reasonable amount of back pay to the reinstated employes based upon what was deemed necessary to effectuate the policies of the act (ch. 111, Stats. 1937). In this case the order was made on an erroneous view of the statute. The board's power to require back pay is limited to the amount that is necessary to effectuate the policies of the labor act. The power to command affirmative action is remedial, not punitive, and is to be exercised by the board to restrain violations as a means of removing or avoiding the consequences of violations. The order for back pay in this case was beyond the power of the board to make because of the enormity of the amount ordered. Folding Furniture Works v. Wisconsin L. R. Board, 232 W 170, 285 NW 851.

An order of the state board, requiring an employer to reimburse an employe for loss of pay resulting from the employe's wrongful discharge for refusal to pay union dues, was not an abuse of discretion under 111.07 (4). The matter of requiring an employer, found guilty of unfair labor practices, to take affirmative action, is committed to the discretion of the state board, and the court, in order to reverse an order requiring reinstatement of an employe with pay, must find that the order had no reasonable tendency to effectuate the purposes of the state act. Back pay in its ordinary sense and in 111.07 (4) indicates that its source is the employer. The opinion in this case reviews and analyzes federal and state decisions on the subject of federal versus state jurisdiction in labor cases. Wisconsin E. R. Board v. Algoma P. & V. Co. 252 W 549, 32 NW (2d) 417, affirmed Algoma P. & V. Co. v. Wisconsin E. R. Board, 336 US 301.

The employment relations 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 employes 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.

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 employment relations board 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.

Under 111.07 (4) an issue of fact arises when a fact is maintained by one party and is controverted by the other party in the pleadings. A board, such as the employment relations board, is not entitled to make a finding with respect to a situation that is not in issue; but the complaint may be amended and hearing granted on the new issue; and under 111.07 (2) (a) amendment of the complaint in a proceeding concerning unfair labor practices may be made at any time before the issuance of the final order. General Elec. Co. v. Wisconsin E. R. Board, 3 W (2d) 227, 88 NW (2d) 691.

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

The 60-day limit in 111.07 (4) is directory, not mandatory. A 9-month delay in the making of the decision does not deprive the employment relations board of jurisdiction. Muskego-Norway C. S. J. S. D. No. 9 v. Wisconsin E. R. Board, 32 W (2d) 478, 145 NW (2d) 680, 147 NW (2d) 541, 151 NW (2d) 84.

5. Compliance Proceeding.

Findings of fact by the Wisconsin labor relations board should conform to well established rules, and should not be argumentative, nor mere narration of events, nor tentative and inconclusive on material issues. United Shoe Workers v. Wisconsin L. R. Board, 227 W 569, 279 NW 37.

Under 111.07 (3), Stats. 1939, the party seeking to arouse the action of the employment relations board has the burden of establishing his facts by a clear and satisfactory preponderance of the evidence, but under 111.07 (7) the standard by which the findings of the board are to be tested by a court on a petition to review is not the same as that prescribed for the board. The findings, if supported by credible and competent evidence in the record, are conclusive. A refusal to permit an employer to adduce further evidence before the board, was not an abuse of discretion where the point which the employer sought to establish thereby was immaterial. Century Building Co. v. Wisconsin E. R. Board, 235 W 376, 291 NW 305.

The rights of parties to a labor controversy pending before the employment relations board are affected only in the manner and to the extent prescribed by the order of the board, and hence a finding of the board that striking employes were guilty of unfair labor practices did not deprive such employes of their employe status where the order of the board did not so prescribe, and hence such finding did not result in a conflict between state and federal authority on the ground that such employes would still be employes under the terms of the national labor relations act. Allen-Bradley Local 1111 v. Wisconsin E. R. Board, 237 W 164, 295 NW 791, affirmed Allen-Bradley Local 1111 v. Wisconsin E. R. Board, 315 US 740.

Under 111.07 (7), Stats. 1941, the findings of fact made by the employment relations board in a proceeding before it, if supported by credible and competent evidence, are conclusive on review. If there is some credible and competent evidence tending to support the finding, the court may not weigh the evidence to ascertain whether it preponderates in favor of the finding. The drawing of inferences from the facts is a function of the board and not of the court. Peaceful picketing, although recognized as an exercise of the constitutional 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. Retail Clerks' Union v. Wisconsin E. R. Board, 242 W 21, 6 NW (2d) 698.

The employment relations board asserts a public right vested in it as a public body charged in the public interest with the duty of preventing unfair labor practices, and the board's appeal from judgments vacating its orders against an employer and a union is justified as in the line of its duty under 111.07 (7), although none of the parties interested complain of the judgments. International Union, etc. v. Wisconsin E. R. Board, 245 W 417, 14 NW (2d) 872.

The purpose of 111.07 (7), so far as authorizing the employment relations board to enforce its orders relating to unfair labor practices by actions in the circuit court, is to enable the board to administer the act efficiently in the interests named (employer, employe and the general public) in the preamble of the act, 111.01. Wisconsin E. R. Board v. Allis-Chalmers W. Union, 249 W 590, 25 NW (2d) 425.

The proof in the record made before the employment relations board must be sufficent to sustain the circuit court in setting aside an order of the board, and the record cannot be supplemented, while being reviewed in the circuit court, with additional evidence and proof necessary to sustain the position of the party offering such proof; but the matter may be returned by the court to the board for the taking of additional evidence. In an action under 111.07 (7), the court is confined to the record made before the board, and hence a contract, claimed to show that the board was without jurisdiction, but not introduced in evidence before the board, cannot become evidence in the action before the court. Wisconsin E. R. Board v. Cullen, 253 W 105, 32 NW (2d) 182.

In proceedings before the employment relations board on charges of unfair labor practices against a union and union officials, the evidence was sufficient 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 leader's activity on the one hand and the reduced production on the other. Interna-

tional Union v. Wisconsin E. R. Board, 258 W 481, 46 NW (2d) 185.

The 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.

Where the parties assumed that the employment relations board had jurisdiction, but there was some evidence of interstate commerce, the court should remand the case to the board for a specific finding on jurisdiction, and the board should be granted leave to take additional testimony. The circuit court has discretion whether to grant the parties the right to present additional testimony. Wisconsin E. R. Board v. Lucas, 3 W (2d) 464, 89 NW (2d) 300.

The existence or nonexistence of good faith in collective bargaining in labor cases involves only inquiry as to fact, and the findings of fact made by the employment relations board, if supported by credible and competent evidence, are conclusive under 111.07 (7). St. Francis Hospital v. Wisconsin E. R. Board, 8 W (2d) 308, 98 NW (2d) 908.

6. Review of Order.

Under the provisions of 111.10, Stats. 1937, the employment relations board determined whether the employer was guilty of unfair labor practices and, if he was, what affirmative action, if any, was required to effectuate the policies of the act. If evidence, in addition to that certified up, was to be taken, it should be taken by the board or one of its agencies pursuant to directions of the court. The court makes its decisions upon the evidence certified by the board upon which the board rendered its decision. In this case the defendant filed with the trial court a petition alleging the conduct of the board that the petitioner claims denied the defendant due process and asked the court to vacate the order of the board as void for that reason. If a party wishes to attack an order of the board for want of due process because of an act of the board not appearing in the record certified by the board, the only way open appears to be to proceed by an action in equity to set aside the action of the board. He may concurrently procure a review on the merits by appeal or if the board is prosecuting an enforcement proceeding his equity action must be brought in the same court. It follows that the court should have granted the board's motion to strike the petition and should have refused to hear evidence in support of it. Folding Furniture Works v. Wisconsin E. R. Board, 232 W 170, 285 NW 851, 286 NW 875.

Where a person aggrieved brings a proceeding for a judicial review of an order of the employment relations board relating to unfair labor practices, it is proper practice for the board to file a cross petition for the enforcement of the order, and the court, instead of denying such petition as premature, should direct obedience of the order, if valid, and provide for its enforcement on the court's being informed of failure or neglect to obey it, there being no need for a separate action by the board when relief may be had in an action already in court. Nash-Kelvinator Corp. v. Wisconsin E. R. Board, 247 W 202, 19 NW (2d) 255.

Any objection to the manner in which the employment relations board proposed to hold the election should have been submitted to the board prior to the election, and where none was so submitted although there was opportunity to do so, it cannot be raised for the first time on review in court. La Crosse Tel. Corp. v. Wisconsin E. R. Board, 251 W 583, 30 NW (2d) 241.

A nonprofit, charitable hospital, as an employer of nonprofessional employes, 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 111.07 (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.

An employe member of a union, who did not have the right under a collective-bargaining agreement to initiate arbitration of an alleged wrongful discharge and who was not a party to proceedings instituted by the union against the employer, was not a party "aggrieved" by the board's decision dismissing the union's complaint, within the meaning of 227.16 and hence not entitled to a judicial review of such decision under 227.15 on his individually filed petition for review. Dressler v. Wisconsin E. R. Board, 6 W (2d) 243, 94 NW (2d) 609, 95 NW (2d) 788.

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

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

Collective-bargaining agreements can be

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

Proceedings before the employment relations board on union's complaint that collective-bargaining agreements were violated by employer are judicial proceedings which can be removed to federal district court, even though the board only declares the facts and law and a state court enforces the board's rulings. Tool & Die Makers, etc. v. General Elec. Co. 170 F Supp. 945.

7. Limitation.

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

111.08 History: 1939 c. 57; Stats. 1939 s. 111.08; 1969 c. 276 s. 593.

111.09 History: 1939 c. 57; Stats. 1939 s. 111.09; 1955 c. 221 s. 43; 1969 c. 276 s. 593.

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

111.10 History: 1939 c. 57; Stats. 1939 s. 111.10; 1969 c. 276 s. 593.

This section does not operate to limit the powers of the employment relations 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 History: 1939 c. 57; Stats. 1939 s. 111.11; 1969 c. 276 s. 593.

111.12 History: 1939 c. 57; Stats. 1939 s. 111.12; 1969 c. 276 s. 593.

111.13 History: 1939 c. 57; Stats. 1939 s. 111.13; 1943 c. 493; 1947 c. 88; 1969 c. 276.

111.14 History: 1939 c. 57; Stats. 1939 s. 111.14; 1969 c. 276 s. 593.

111.15 History: 1939 c. 57; Stats. 1939 s. 111.15.

111.17 History: 1939 c. 57; Stats. 1939 s. 111.17.

111.19 History: 1939 c. 57; Stats. 1939 s. 111.19.

111.31 History: 1945 c. 490; Stats. 1945 s. 111.31; 1959 c. 149; 1961 c. 529; 1965 c. 230; 1967 c. 234.

Editor's Note: In connection with 111.31-111.37, as amended, see Ross v. Ebert, 275 W 523, 82 NW (2d) 315, an opinion of the attorney general published in 46 Atty. Gen. 123, and a comment published in 1958 WLR 294.

111.32 History: 1945 c. 490; Stats. 1945 s. 111.32; 1959 c. 149, 687; Stats. 1959 s. 111.32, 111.38; 1961 c. 529, 628; Stats. 1961 s. 111.32; 1965 c. 230, 439; 1965 c. 625 s. 38; 1967 c. 234; 1969 c. 276.

See note to sec. 1, art. I, on exercises of police power, citing Walker Mfg. Co. v. Industrial Comm. 27 W (2d) 669, 135 NW (2d) 307.

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

Mention of age or date of birth in connection with an application for employment is not per se discrimination. 48 Atty. Gen. 290.

111.325 History: 1967 c. 234; Stats. 1967 s. 111.325.

111.33 History: 1945 c. 490, 586; Stats. 1945 s. 111.33; 1969 c. 276.

111.35 History: 1945 c. 490; Stats. 1945 s. 111.35; 1969 c. 276 s. 584 (1) (a).

111.36 History: 1945 c. 490; Stats. 1945 s. 111.36; 1957 c. 266; 1969 c. 276 ss. 419, 584 (1) (a).

The provisions of 111.36 (3), Stats. 1967, limits the circumstances in which the industrial commission can enter orders in the first instance by initially requiring it to *endeavor to eliminate* discriminatory practices by conference, conciliation, or persuasion, and only if unsuccessful may it after a hearing order a recalcitrant respondent to comply with its recommendations. Murphy v. Industrial Comm. 37 W (2d) 704, 155 NW (2d) 545, 157 NW (2d) 568.

The industrial commission is not restricted under the statute to merely ordering a respondent found to have been guilty of discrimination against employes on account of sex or otherwise to cease and desist from such practice, but has the authority in an appropriate case to order the hiring, reinstatement, or whatever is appropriate to eliminate the discrimination in the future. Murphy v. Industrial Comm. 37 W (2d) 704, 155 NW (2d) 545, 157 NW (2d) 568.

The industrial commission has no authority under 111.31 - 111.37, either during or after conciliation or after hearing, to award back pay to parties discriminated against on account of their sex in the wages paid them. Murphy v. Industrial Comm. 37 W (2d) 704, 155 NW (2d) 545, 157 NW (2d) 568.

Under 111.36 (3), Stats. 1967, as construed in Murphy v. Industrial Comm. 37 W (2d) 704, the industrial commission is without authority in cases of discrimination in employment to award back pay, but may order a person who violates the statute to cease and desist from such discrimination, and to hire, reinstate, or upgrade employment. 57 Atty. Gen. 179.

111.37 History: 1957 c. 266; Stats. 1957 s. 111.37; 1969 c. 276 s. 584 (1) (a).

111.50 History: 1947 c. 414; Stats. 1947 s. 111.50.

See note to 111.62, citing Amalgamated Asso. etc. v. Wisconsin E. R. Board, 340 US 383.

111.51 History: 1947 c. 414; Stats. 1947 s. 111.51; 1949 c. 37; 1969 c. 276.

111.52 History: 1947 c. 414; Stats. 1947 s. 111.52.

111.53 History: 1947 c. 414; Stats. 1947 s. 111.53; 1965 c. 433 s. 121; 1967 c. 291 s. 14; 1969 c. 276 s. 593.

111.54 History: 1947 c. 414; Stats. 1947 s. 111.54; 1969 c. 276 s. 593.

111.55 History: 1947 c. 414; Stats. 1947 s. 111.55; 1969 c. 276 s. 593.

111.56 History: 1947 c. 414; Stats. 1947 s. 111.56.

111.57 History: 1947 c. 414; Stats. 1947 s. 111.57.

111.58 History: 1947 c. 414; Stats. 1947 s. 111.58.

111.59 History: 1947 c. 414; Stats. 1947 s. 111.59; 1949 c. 634; 1969 c. 276 s. 593.

111.60 History: 1947 c. 414; Stats. 1947 s. 111.60.

111.61 History: 1947 c. 414; Stats. 1947 s. 111.61; 1969 c. 276 s. 593.

111.62 History: 1947 c. 414; Stats. 1947 s. 111.62.

The public utility antistrike law is invalid as conflicting with federal legislation in that the national labor management relations act occupies the field and applies to a privately owned public utility whose business and activities are carried on wholly within a single state. (Wisconsin E. R. Board v. Amalgamated Asso. 257 W 43, 42 NW (2d) 71, and Wisconsin E. R. Board v. Milwaukee G. L. Co. 258 W 1, 44 NW (2d) 547, reversed.) Amalgamated Asso. v. Wisconsin E. R. Board, 340 US 383.

111.63 History: 1947 c. 414; Stats. 1947 s. 111.63; 1969 c. 276 s. 593.

111.64 History: 1947 c. 414; Stats. 1947 s. 111.64; 1951 c. 247.

111.70 History: 1959 c. 509; Stats. 1959 s. 111.70; 1961 c. 663; 1963 c. 6, 87; 1965 c. 85; 1967 c. 62, 318; 1969 c. 276 ss. 421, 593; 1969 c. 370.

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

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

The enactment of 111.70 (4), which accords law-enforcement officers the right to invoke fact-finding procedure, did not by implication repeal so much of the 1959 enactment which by its terms specifically excludes law-enforcement personnel from the definition of municipal employes afforded the right to affiliate with labor unions and to conduct collective bargaining through such organizations. Greenfield v. Local 1127, 35 W (2d) 175, 150 NW (2d) 476.

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

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

The language of 111.70 (2), enumerating the rights conferred upon municipal employes is sufficiently broad to cover the items constituting the school calendar year, for the days on which teachers must teach or be in service have a significant relationship to the "hours and conditions", if not the salaries, of teachers, and hence render the school calendar subject to conference and negotiation contemplated under the statute. Joint School Dist. No. 8 v. Wisconsin E. R. Board, 37 W (2d) 483, 155 NW (2d) 78.

111.70 (4), Stats. 1967, which gives to municipal employes the right to petition for fact-finding if the municipal employer or union refuses to meet and negotiate, or if the parties are deadlocked, is applicable to personnel relations in law enforcement. Medford v. Local 446, 42 W (2d) 581, 167 NW (2d) 414.

111.70, Stats. 1963, provides for exclusive bargaining with the organization held to represent the majority. Board of School Directors v. Wisconsin E. R. Commission, 42 W (2d) 637, 168 NW (2d) 92.

While an employer who recognizes the duly elected majority union representative as the exclusive bargaining agent for all the employes has in effect encouraged membership in the majority union to a certain extent, that cannot be considered a prohibited practice as defined by 111.70 (3). Board of School Directors v. Wisconsin E. R. Commission, 42 W (2d) 637, 168 NW (2d) 92.

The broad definition of "municipal employe" found in 111.70, Stats. 1967, indicates a legislative desire to make collective bargaining units available for as many municipal employes as is consistent with sound municipal government. Milwaukee v. Wisconsin E. R. Commission, 43 W (2d) 596, 168 NW (2d) 809.

If a petition is filed with the employment relations board under 111.70 (4) (f) to initiate fact-finding in a labor dispute between a municipal employer and its employes, the board must conduct an investigation and determine whether the conditions exist under which fact finding should be initiated. If requirements of 111.70 (4) (m) are met, the board should certify the results of its investigations to local agency. 51 Atty. Gen. 90.

A law authorizing municipal employers to enter collective bargaining agreements re-

quiring municipal employes to pay to the bargaining representatives fees to cover costs of negotiating and administering contracts is lawful. 54 Atty. Gen. 56.

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

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

Public employes' right to picket. 50 MLR 541.

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

Municipal employment relations in Wisconsin. Love, 1965 WLR 652.

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

The strike ban in public employment. Rowe, 1969 WLR 930.

111.80 History: 1965 c. 612; Stats. 1965 s. 111.80; 1969 c. 276.

111.81 History: 1965 c. 612; Stats. 1965 s. 111.81; 1969 c. 276 ss. 423, 424, 593.

111.82 History: 1965 c. 612; Stats. 1965 s. 111.82.

111.83 History: 1965 c. 612; Stats. 1965 s. 111.83; 1969 c. 276 s. 593.

111.84 History: 1965 c. 612; Stats. 1965 s. 111.84; 1969 c. 276 s. 593.

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

The strike ban in public employment. Rowe, 1969 WLR 930.

111.85 History: 1965 c. 612; Stats. 1965 s. 111.85; 1969 c. 276 s. 593.

111.86 History: 1965 c. 612; Stats. 1965 s. 111.86; 1969 c. 276 s. 593.

111.87 History: 1965 c. 612; Stats. 1965 s. 111.87; 1969 c. 276 s. 593.

111.88 History: 1965 c. 612; Stats. 1965 s. 111.88; 1969 c. 276 ss. 425, 593.

111.89 History: 1965 c. 612; Stats. 1965 s. 111.89; 1969 c. 276.

111.90 History: 1965 c. 612; Stats. 1965 s. 111.90.

111.91 History: 1965 c. 612; Stats. 1965 s. 111.91.

111.92 History: 1965 c. 612; Stats. 1965 s. 111.92; 1969 c. 276 s. 593.

111.94 History: 1965 c. 612; Stats. 1965 s. 111.94.

CHAPTER 112.

Fiduciaries.

112.01 History: 1925 c. 227; Stats. 1925 s. 112.01; 1951 c. 238; 1959 c. 43.

Editor's Note: For foreign decisions construing the "Uniform Fiduciaries Act," consult Uniform Laws, Annotated.

The surety of a fiduciary who has been compelled to respond for the fiduciary's breach of trust is entitled to be subrogated to all rights of action which the cestui que trust or creditor has against the fiduciary and all parties who participated in his wrongful acts which were the cause of the default. Martineau v. Mehlberg, 221 W 347, 267 NW 9.

The executor's knowledge as president of the bank that his misappropriations as executor from the state funds in the bank were in breach of his trust as a fiduciary was not imputed to the bank so as to render the bank liable for his defalcations and thus deprive his surety in other estates of the right to subrogation in the premises. Fidelity & Casualty Co. v. Maryland C. Co. 222 W 174, 268 NW 226.

Where the cashier of a bank, who was also guardian for certain minors whose funds he had deposited in a checking account in his name as guardian, withdrew the funds from the bank on checks issued by him as guardian payable to a corporation of which he was secretary-treasurer, which checks were indorsed by the payee corporation and honored by the bank, the bank was not liable to the wards under 112.01 (8), or otherwise, for the amount of the funds because of the cashier's alleged misappropriation thereof, since the cashier withdrew the funds as guardian, and the bank (the cashier's knowledge of his own alleged unlawful acts not being imputed to the bank) had the right in good faith to pay out the funds on checks issued by the cashier as guardian, and the bank had no further responsibility in the matter. Matz v. Ibach, 235 W 45, 291 NW 377.

112.02 History: 1943 c. 283; Stats. 1943 s. 112.02.

112.03 History: 1959 c. 141; Stats. 1959 s. 112.03.

112.05 History: 1909 c. 347; Stats. 1911 s. 4539m; 1925 c. 4; Stats. 1925 s. 348.179; 1955 c. 696 s. 200; Stats. 1955 s. 112.05.

348.179, Stats. 1933, does not apply to a director of a bank. Shinners v. State, 219 W 23, 261 NW 880.

112.06 History: 1959 c. 43; Stats. 1959 s. 112.06.

Editor's Note: For foreign decisions construing the "Uniform Simplification of Fiduciary Security Transfers Act" consult Uniform Laws, Annotated.

Fiduciary security transfers simplified by uniform act. Bolliger, WBB, Aug. 1959.

CHAPTER 113.

Uniform Joint Obligations Act.

Editor's Note: For foreign decisions construing the "Uniform Joint Obligations Act," consult Uniform Laws, Annotated.

113.01 History: 1927 c. 235; Stats. 1927 s. 113.01; 1929 c. 482 s. 5.

Where independent torts result in separate injuries, each tort-feasor is separately liable for his own torts; but where independent torts concur to inflict a single injury, each tort-feasor is liable for the entire damage. Bolick v. Gallagher, 268 W 421, 67 NW (2d) 860.

Where injuries resulting from a tort are ag-