

## CHAPTER 111.

## EMPLOYMENT RELATIONS.

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111.01 to 111.14 [Renumbered sections 99.01 to 99.14 by 1935 c. 550 s. 318 to 331]

111.01 to 111.20 [Repealed by 1939 c. 57]

**111.01 Declaration of policy.** The public policy of the state as to employment relations and collective bargaining, in the furtherance of which this chapter 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. [1939 c. 57]

**Note:** Chapter 111, Stats., created by ch. 57, Laws 1939, is constitutional. It was assailed chiefly on the ground that it violated the constitutional guarantee of freedom of speech. The act is examined and discussed at length by the supreme court in a test case. The order of the Wisconsin employment relations board was affirmed. The order commanded named labor unions and their officers and members thereof to cease picketing the Plankinton House. It is not easy to give a comprehensive abridgment of the court's opinion. Persons interested will wish to read the case. *Hotel and R. E. I. Alliance v. Wisconsin Employment Relations Board*. 236 W 329, 294 NW 632, 295 NW 634.

**111.02 Definitions.** When used in this chapter:

(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 con-

tractor, 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. 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 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 chapter 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. [1939 c. 57]

**111.03 Employment relations board.** There is hereby created a board to be known as Wisconsin employment relations board, which shall be composed of three 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. The term of office of the members first to be appointed shall be two, four and six years respectively, but their successors shall be appointed for terms of six 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 two 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 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 chapter. 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 may deem 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 employees. A single member of the board is hereinafter in this chapter referred to as a commissioner. [1939 c. 57]

**111.04 Rights of employees.** Employees 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 employees shall also have the right to refrain from any or all of such activities. [1939 c. 57]

**Note:** Under ch. 111, Stats. 1937, an employer may enter into an all-union agreement with a listed union although it may represent only a minority of the employees. *United Shoe Workers v. Wisconsin Labor Relations Board*, 227 W 569, 279 NW 37.

**111.05 Representatives and elections.** (1) Representatives chosen for the purposes of collective bargaining by a majority of the employees voting in a collective bargaining unit shall be the exclusive representatives of all of the employees 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 chapter 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 therein unless reviewed in the same manner as provided by subsection (8) of section 111.07 for review of orders of the board.

(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. [1939 c. 57; 1939 c. 515 s. 7]

**Note:** A decision by the board that it would not act in a controversy between a union and an employer charged with unfair labor practices because no order which the board could enter would effectuate the policies of the act is not reviewable since the board acted in the exercise of a discretion expressly conferred by 111.09 (2), Stats. 1937. *United Shoe Workers v. Wisconsin Labor Relations Board*, 227 W 569, 279 NW 37.

**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 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 facilities where such activities or use create no additional expense to the company.

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

(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 chapter.

(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 chapter.

(k) To make, circulate or cause to be circulated a blacklist as described in section 343.682.

(1) 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, boycotting or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employes of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike.

(f) To hinder or prevent, by mass picketing, threats, intimidation, force or coercion of any kind the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with

free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance.

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

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

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

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

(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. [1939 c. 57; 1939 c. 515 s. 8]

**Note:** If an employer rightly or wrongly discriminates 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.

**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 chapter, 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) After the final hearing the board shall promptly 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 chapter 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 it 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) Within thirty days from the date of the order of the board as a body any party aggrieved thereby may petition the circuit court for the county in which he or any party resides or transacts business for review of the same; subject, however, to provisions of law for a change of the place of trial or the calling in of another judge. Where different parties in the same proceeding file petitions for review in two or more courts having proper jurisdiction, the jurisdiction of the court first petitioned shall be exclusive and the other petitions shall be transferred to it. Such petition shall state the grounds upon which a review is sought, and shall be served with the summons. Service upon the secretary of the board or any member of the board shall be deemed completed service on all parties, but there shall be left with the person so served as many copies of the summons and complaint as there are respondents, and the board shall mail one such copy to each respondent. If the circuit court is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of the findings or order, it may extend the time another thirty days in which such action may be commenced. The board shall thereupon file in the said court its record in the proceedings, as provided in the next preceding subsection. Such return of the board, when filed in the office of the clerk of the circuit court, shall constitute a judgment roll in such action, and it shall not be necessary to settle a bill of exceptions in order to make such return part of the record of such court in such action. Said action may thereupon be brought on for hearing before said court upon such record by either party on ten days' written notice to the other. Upon such hearing the court may confirm, modify or set aside the order of the board and enter an appropriate decree. Except as specifically provided otherwise herein the proceedings shall be the same as provided for in subsection (7) of this section.

(9) In any proceedings for review of an order of the board the court shall disregard any irregularity or error unless it be made to appear affirmatively that the complaining party was prejudiced thereby.

(10) Commencement of proceedings under subsections (7) or (8) of this section 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 chapter 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. [1939 c. 57]

**Note:** 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 Labor Relations Board*, 227 W 569, 279 NW 37.

Under section 111.10, Stats. 1937, in reviewing an order of the board, the court must examine the record to discover whether the findings of fact are supported by any evidence, if the findings are challenged, inquire whether the facts found support the conclusions of the board and determine whether the board acted within the scope of its jurisdiction in making the order; but the court cannot exercise the powers conferred on the board as an administrative agency and substitute its judgment for the judgment of the board. The board must have made an order before the jurisdiction of the court to review can be invoked. *United Shoe Workers v. Wisconsin Labor Relations Board*, 227 W 569, 279 NW 37.

If there is any evidence to support the finding of the board the finding is conclusive and the court may not weigh the evidence. *Wisconsin Labor Relations Board v. Fred Rueping L. Co.*, 228 W 473, 279 NW 673.

The taking a half-day off without permission by an employe of an industrial plant was sufficient ground for his discharge as a matter of law. To uphold a finding of the labor relations board requiring reinstatement of a discharged employe on the ground that he had been discharged because of union activity required sufficient evidence that the real and actual cause for his discharge was his union activity. *Blum Bros. Box Co. v. Wisconsin Labor Relations Board*, 229 W 615, 282 NW 98.

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 Labor Relations Board*, 235 NW 851.

Under the provisions of section 111.10, Stats. 1937, the board did not determine any question of due process. It only 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 labor 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 Labor Relations Board*, 232 W 170, 285 NW 851, 286 NW 875.

The provision in 111.10 (2), Stats. 1937 which says "The rules of evidence prevailing in courts of law or equity shall not be controlling" does not warrant the board in receiving as evidence statements as to matters that are entirely without probative value. Hearsay may be received if corroborative of other evidence or otherwise of such a nature as to have some reasonable bearing on the facts for determination. But nonlegal evidence to be admissible must have some substantial probative force and not be a mere opinion. *Folding Furniture Works v. Wisconsin Labor Relations Board*, 232 W 170, 285 NW 851, 286 NW 875.

In the labor relations act of 1937 (111.10 (5)) "the findings of the board as to the facts, if supported by evidence in the record, shall be conclusive," means supported by "substantial evidence," and this is more

than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, or which affords a substantial basis of fact from which the fact in issue can be reasonably inferred. *E. G. Shinner & Co. v. Wra-betz*, 235 W 195, 292 NW 902.

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 (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 and the findings, if supported by credible and competent evidence in the record, are conclusive. *Century Building Co. v. Wisconsin E. R. Board*, 235 W 376, 291 NW 305.

Under 111.07 (7), (8), Stats. 1939, on the petition of an employer to review an order of the employment relations board, the trial court in its discretion may grant leave to adduce additional evidence, but the additional evidence is to be adduced before the board, which may modify its findings on the basis of the additional evidence and file new findings with the same effect as the original findings. A refusal to permit an employer to adduce further evidence 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.

Failure of the national labor relations act to define unfair labor practices of employes does not operate as a license to employes in the enforcement of their demands against employers to do any or all of the things declared by the Wisconsin employment peace act to be unfair labor practices by employes. The rights of parties to a labor controversy pending before the Wisconsin 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 state 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.

**111.08 Financial reports to employes.** Every person acting as the representative of employes for collective bargaining shall keep an adequate record of its financial transactions and shall present annually to each member within sixty days after the end of its fiscal year a detailed written financial report thereof in the form of a balance sheet and an operating statement. In the event of failure of compliance with this section, any member may petition the board for an order compelling such compliance. An order of the board on such petition shall be enforceable in the same manner as other orders of the board under this chapter. [1939 c. 57]

**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. Such rules and regulations shall not be effective until ten days after their publication in the official state paper. [1939 c. 57]

**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. [1939 c. 57]

**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 com-



pensation 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. [1939 c. 57]

**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. [1939 c. 57]

**111.13 Employer and employe committees.** The board may, from time to time, appoint joint standing or special committees composed in equal numbers of representatives of employes and employers. The board may refer to any such committee for its study and advice any matters having to do with the relations of employers and employes or the operation of this chapter. [1939 c. 57]

**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 chapter shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for not more than one year, or both. [1939 c. 57]

**111.15 Construction of this chapter.** Except as specifically provided in this chapter, 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 chapter be so construed as to invade unlawfully the right to freedom of speech. And nothing in this chapter 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. [1939 c. 57]

**111.16 Existing contracts unaffected.** Nothing in this chapter shall operate to abrogate, annul, or modify any valid agreement respecting employment relations existing on the effective date hereof. [1939 c. 57]

**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 chapter, this chapter shall prevail, provided that in any situation where the provisions of this chapter cannot be validly enforced the provisions of such other statutes or laws shall apply. [1939 c. 57]

**111.18 Separability of provisions.** If any provision of this chapter or the application of such provision to any person or circumstances shall be held invalid the remainder of this chapter or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby. [1939 c. 57]

**111.19 Title of chapter.** This chapter may be cited as the "Employment Peace Act". [1939 c. 57]