CHAPTER 111.

EMPLOYMENT RELATIONS.

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SUBCHAPTER I.
EMPLOYMENT PEACE ACT.

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

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

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

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

(4) It is the policy of the state, in order to preserve and promote the interests of the public, the employe, and the employer alike, to establish standards of fair conduct in employment relations and to provide a convenient, expeditious and impartial tribunal by which these interests may have their respective rights and obligations adjudicated. While

limiting individual and group rights of aggression and defense, the state substitutes processes of justice for the more primitive methods of trial by combat. [*1939 c. 57; 43.08 (2)*]

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. Wisconsin hotel employees' local v. Board was affirmed on certiorari by the U. S. supreme court. Hotel Employees' Local v. Board, 315 U. S. 437.

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.

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, especially in view of its declared policy and purpose, not indicating an intent on the part of the legislature to exempt charitable institutions. Wis. E. R. Board v. Evangelical Deaconess Soc., 242 W 78, 7 NW (2d) 590.

This is a leading case on the subject of employer-employe relations. In respect to proceedings before the state employment relations board under the Wisconsin 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 USCA, 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. [Certiorari denied. 320 US 776]

The national labor relations act is not so inconsistent with the state 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 interstate commerce, the national board, by the terms of the national act, has no jurisdiction in the premises. International B. of E. W. v. Wisconsin E. R. Board, 245 W 532, 15 NW (2d) 823.

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.

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 state 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. Const., 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 Wisconsin employment peace act. International B. of P.M. v. Wisconsin E. R. Board, 249 W 362, 24 NW (2d) 672.

The employment relations board has the representative interest defined in the preamble of the employment peace act, 111.01 and, as the plaintiff in an action resulting in a restraining order giving effect to its orders, 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.

111.02 Definitions. When used in this subchapter:

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

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

(3) The term "employe" shall include any person, other than an independent contractor, working for another for hire in the state of Wisconsin in a nonexecutive or nonsupervisory capacity, and shall not be limited to the employes of a particular employer unless the context clearly indicates otherwise; and shall include any individual whose work has ceased solely as a consequence of or in connection with any current labor dispute or because of any unfair labor practice on the part of an employer and (a) who has not refused or failed to return to work upon the final disposition of a labor dispute or a charge of an unfair labor practice by a tribunal having competent jurisdiction of the same or whose jurisdiction was accepted by the employe or his representative, (b) who has not been found to have committed or to have been a party to any unfair labor practice hereunder, (c) who has not obtained regular and substantially equivalent employment elsewhere, or (d) who has not been absent from his employment for a substantial period of time during which reasonable expectancy of settlement has ceased (except by an em-

ployer's unlawful refusal to barga'n) and whose place has been filled by another engaged in the regu'ar manner for an indefinite or protracted period and not merely for the duration of a strike or lockout; but shall not include any individual employed in the domestic service of a family or person at his home or any individual employed by his parent or spouse or any employe who is subject to the federal railway labor act.

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

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

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

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

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

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

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

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

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

(14) The term "jurisdictional strike" shall mean a strike growing out of a dispute between 2 or more employes or representatives of employes as to the appropriate unit for collective bargaining, or as to which representative is entitled to act as collective bargaining representative, or as to whether employes represented by one or the other representative are entitled to perform particular work. [*1939 c. 57; 1945 c. 424; 43.08 (2); 1947 c. 530*]

Note: 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.

The term "craft," as used in (6), employment peace act, 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.

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 subchapter. The board shall maintain its office at Madison and shall be provided by the director of purchases with suitable rooms, necessary furniture, stationery, books, periodicals, maps and other necessary supplies. The board may hold sessions at any place within the state when the convenience of the board and the parties so requires. At the close of each fiscal year the board shall make a written report to the governor of such facts as it 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 employes. A single member of the board is hereinafter in this subchapter referred to as a commissioner. [*1939 c. 57; 43.08 (2)*]

111.04 Rights of employes. Employes shall have the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection; and such employes shall also have the right to refrain from any or all of such activities. [*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 employes. United Shoe Workers v. Wisconsin Labor Relations Board, 227 W 569, 279 NW 37.

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

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 band of the statute. Christoffel v. Wisconsin E. R. Board, 243 W 332, 10 NW (2d) 197. [Certiorari denied. 320 US 776]

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

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

(3) Whenever a question arises concerning the representation of employes in a collective bargaining unit the board shall determine the representatives thereof by taking a secret ballot of employes and certifying in writing the results thereof to the interested parties and to their employer or employers. There shall be included on any ballot for the election of representatives the names of all persons submitted by an employe or group of employes participating in the election, except that the board may, in its discretion, exclude from the ballot one who, at the time of the election, stands deprived of his rights under this subchapter by reason of a prior adjudication of his having engaged in an unfair labor practice. The ballot shall be so prepared as to permit of a vote against representation by anyone named on the ballot. The board's certification of the results of any election shall be conclusive as to the findings included therein unless reviewed in the same manner as provided by subsection (8) of section 111.07 for review of orders of the board.

(3m) Whenever an election has been conducted pursuant to subsection (3) in which the name of more than one proposed representative appears on the ballot and results in no conclusion, the board may, in its discretion, if requested by any party to the proceeding within 30 days from the date of the certification of the results of such election, conduct a run-off election. In such run-off election, the board may drop from the ballot the

name of the representative that received the least number of votes at the original election, or the privilege of voting against any representative when the least number of votes cast at the first election was against representation by any named representative.

(4) Questions concerning the determination of collective bargaining units or representation of employes may be raised by petition of any employe or his employer (or the representative of either of them). Where it appears by the petition that any emergency exists requiring prompt action, the board shall act upon said petition forthwith and hold the election requested within such time as will meet the requirements of the emergency presented. The fact that one election has been held shall not prevent the holding of another election among the same group of employes, provided that it appears to the board that sufficient reason therefor exists. [*1939 c. 57; 1939 c. 515 s. 7; 43.08 (2); 1947 c. 2*]

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) 1. To encourage or discourage membership in any labor organization, employe agency, committee, association or representation plan by discrimination in regard to hiring, tenure or other terms or conditions of employment; provided, that an employer shall not be prohibited from entering into an all-union agreement with the representatives of his employes in a collective bargaining unit, where at least two thirds of such employes voting (provided such two-thirds of the employes also constitute at least a majority of the employes in such collective bargaining unit) shall have voted affirmatively by secret ballot in favor of such all-union agreement in a referendum conducted by the board. Such authorization of an all-union agreement shall be deemed to continue thereafter, subject to the right of either party to the all-union agreement to request the board in writing to conduct a new referendum on the subject. Upon receipt of such request by either party to the agreement, the board shall determine whether there is reasonable ground to believe that there exists a change in the attitude of the employes concerned toward the all-union agreement since the prior referendum and upon so finding the board shall conduct a new referendum. If the continuance of the all-union agreement is supported on any such referendum by a vote at least equal to that hereinabove provided for its initial authorization, it may be continued in force and effect thereafter, subject to the right to request a further vote by the procedure hereinabove set forth. If the continuance of the all-union agreement is not thus supported on any such referendum, it shall be deemed terminated at the termination of the contract of which it is then a part or at the end of one year from the date of the announcement by the board of the result of the referendum, whichever proves to be the earlier date. The board shall declare any such all-union agreement terminated whenever it finds that the labor organization involved has unreasonably refused to receive as a member any employe of such employer, and each such all-union agreement shall be made subject to this duty of the board. Any person interested may come before the board as provided in section 111.07 and ask the performance of this duty. Any all-union agreement in existence on May 5, 1939, and renewed or amended continuously since that time shall be deemed valid and enforcible in all respects.

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

(d) To refuse to bargain collectively with the representative of a majority of his employes in any collective bargaining unit; provided, however, that where an employer files with the board a petition requesting a determination as to majority representation,

he shall not be deemed to have refused to bargain until an election has been held and the result thereof has been certified to h m by the board.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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 sub-

sections (1) and (2) of this section. [*1939 c. 57; 1939 c. 515 s. 8; 1943 c. 465; 1945 c. 424, 504; 43.08 (2); 1947 c. 530*]

Note: If an employer rightly or wrongly supposes his employes to be in any stage of organizational activities leading to cooperative bargaining and 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.

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 three-fourths of its employes constitute 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.

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 three-fourths of 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.

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), Stats. 1939, 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. Wis. E. R. Bd. v. International Asso., etc., 241 W 286, 6 NW (2d) 339.

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 nonmembers, 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. (Stats. 1941) Christoffel v. Wisconsin E. R. Board, 243 W 332, 10 NW (2d) 197. [Certiorari denied. 320 US 776]

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 one and one-half 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 (1) (c), Stats. 1943, 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. 158 (3), and the state act, 111.06 (1) (c), Stats. 1943, there is no conflict in policy although there is a difference in method; but if the national 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 board had not taken jurisdiction, the state board had jurisdiction to entertain charges that an employer had engaged in unfair labor practices in that the employer 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 state 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 (1) (c), Stats. 1943, 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 (analyzed in the opinion) or by the uniform 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.

In a proceeding before the state board against a labor union and its president on charges of unfair labor practices in violation of this section, where 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 under the Fourteenth amendment. Public S. E. Union v. Wisconsin E. R. Board, 246 W 190, 16 NW (2d) 823.

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 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.

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 cooperation in engaging in overt acts concomitant of a strike, and an unfair

labor practice under (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.

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 (3), whether they in fact were among the employes who did those things or not. International Union v. Wisconsin E. R. Board, 250 W 550, 27 NW (2d) 875.

The union and the individual defendants were guilty of an unfair labor practice under (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. International Union v. Wisconsin E. R. Board, 250 W 550, 27 NW (2d) 875.

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

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

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

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

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

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

(4) 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 subchapter for not more than one year, and require him to take such affirmative action, including reinstatement of employes with or without pay, as the board may deem proper. Any order may further require such person to make reports from time to time showing the extent to which 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 recommendations, if any, for the modification or setting aside of its original order. The court's judgment and decree shall be final except that the same shall be subject to review by the supreme court in the same manner as provided in section 102.25.

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

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

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

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

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

(14) The right of any person to proceed under this section shall not extend beyond one year from the date of the specific act or unfair labor practice alleged. [*1939 c. 57; 1943 c. 375 s. 46 to 48; 43.08 (2)*]

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, 285 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. Wrabetz, 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. (Stats. 1939) Allen-Bradley Local 1111 v. Wisconsin E. R. Board, 237 W 164, 295 NW 791. Allen-Bradley Local v. Wis. E. R. Board was affirmed on appeal to the U. S. supreme court. Allen-Bradley Local v. Board, 315 U. S. 740.

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. (Stats. 1939) Wisconsin E. R. Board v. Milk, etc., Union, 238 W 379, 299 NW 31.

In proceedings before the state employment relations board on charges of unfair labor practices, involving, among others, a union which had been duly selected as the exclusive collective bargaining representative of a unit of workers in an election conducted by the national labor relations board, the continuity of the selected union's status as such representative at the times of the alleged unfair practices was to be presumed in the absence of action duly taken in the manner prescribed by law to enable the workers to express a new choice as to their representative or otherwise to evidence definitely the effective termination of the union's status as such representative. (Stats. 1939) Wis. E. R. Bd. v. International Asso., etc., 241 W 286, 6 NW (2d) 339.

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 state 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 (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.

Cease-and-desist provisions of the orders of the state board, requiring the union to pay to the employer half of the sum which the employer is properly required to pay to a wrongfully discharged employe for loss of wages pending his reinstatement is set aside as not authorized by the state act. International Union, etc., v. Wisconsin E. R. Board, 245 W 417, 14 NW (2d) 872.

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.

The state 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 B. of P.M. v. Wisconsin E. R. Board, 249 W 362, 24 NW (2d) 672.

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.

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 such provision forbids others from doing what the offending employes did. 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 Thirteenth Amendment against imposing involuntary servitude. International Union v. Wisconsin E. R. Board, 250 W 550, 27 NW (2d) 875.

111.08 Financial reports to employes. Every person acting as the representative of employes for collective bargaining shall keep an adequate record of its financial transactions and shall present annually to each member within sixty days after the end of its fiscal year a detailed written financial report thereof in the form of a balance sheet and an operating statement. In the event of failure of compliance with this section, any member may petition the board for an order compelling such compliance. An order of the board on such petition shall be enforcible in the same manner as other orders of the board under this subchapter. [*1939 c. 57; 43.08 (2)*]

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 compensation not exceeding ten dollars per day for each such mediator, and prescribe reasonable rules of procedure for such mediators.

(2) Where the exercise of the right to strike by employes of any employer engaged in the state of Wisconsin in the production, harvesting or initial processing (the latter after leaving the farm) of any farm or dairy product produced in this state would tend to cause the destruction or serious deterioration of such product, the employes shall give to the board at least ten days' notice of their intention to strike and the board shall immediately notify the employer of the receipt of such notice. Upon receipt of such notice, the board shall take immediate steps to effect mediation, if possible. In the event of the failure of the efforts to mediate, the board shall endeavor to induce the parties to arbitrate the controversy. [*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 Advisory committee. The board shall appoint an advisory committee consisting of one member of the board who shall represent the general public and who shall act as chairman, and an equal number of representatives of employes and employers. In selecting the representatives of employes, the board shall give representation to organizations representing labor unions both affiliated and nonaffiliated; and in selecting representatives of employers it shall give representation to employers in agricultural, industrial and commercial pursuits. The board may refer to such committee for its study and advice any matter having to do with the relations of employers and employes. Such committee shall give consideration to the practical operation and application of this subchapter and may make recommendations with respect to amendments of this subchapter and shall report to the proper legislative committee its view on any pending bill relating to this subchapter. Regular meetings of such committee shall be held on the first Monday of each alternate month following May 2, 1947. Special meetings of the committee may be called at other times by the board. Members of the advisory committee shall receive no salary or compensation for service on said committee, but shall be entitled to reimbursement for necessary expenses. [*1939 c. 57; 1943 c. 493; 43.08 (2), (3); 1947 c. 88*]

111.14 Penalty. Any person who shall wilfully assault, resist, prevent, impede or interfere with any member of the board or any of its agents or agencies in the performance of duties pursuant to this subchapter shall be punished by a fine of not more than $500 or by imprisonment in the county jail for not more than one year, or both. [*1939 c. 57; 43.08 (2)*]

111.15 Construction of subchapter I. Except as specifically provided in this subchapter, nothing therein shall be construed so as to interfere with or impede or diminish in any way the right to strike or the right of individuals to work; nor shall anything in this subchapter be so construed as to invade unlawfully the right to freedom of speech. And nothing in this subchapter shall be so construed or applied as to deprive any employe of any unemployment benefit which he might otherwise be entitled to receive under chapter 108 of the statutes. [*1939 c. 57; 43.08 (2)*]

111.16 Existing contracts unaffected. Nothing in this subchapter shall operate to abrogate, annul, or modify any valid agreement respecting employment relations existing on May 5, 1939. [*1939 c. 57; 43.08 (2)*]

111.17 Conflict of provisions; effect. Wherever the application of the provisions of other statutes or laws conflict with the application of the provisions of this subchapter, this subchapter shall prevail, provided that in any situation where the provisions of this subchapter cannot be validly enforced the provisions of such other statutes or laws shall apply. [*1939 c. 57; 43.08 (2)*]

111.18 Separability of provisions. If any provision of this subchapter or the application of such provision to any person or circumstances shall be held invalid the remainder

of this subchapter 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; 43.08 (2)*]

111.19 Title of subchapter I. This subchapter may be cited as the "Employment Peace Act." [*1939 c. 57; 43.08 (2)*]

SUBCHAPTER II.

FAIR EMPLOYMENT.

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

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

(3) In the interpretation and application of this subchapter, and otherwise, it is declared to be the public policy of the state to encourage and foster to the fullest extent practicable the employment of all properly qualified persons regardless of their race, creed, color, national origin, or ancestry. All the provisions of this subchapter shall be liberally construed for the accomplishment of this purpose. [*1945 c. 490*]

111.32 Definitions. When used in this subchapter:

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

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

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

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

(5) The term "discrimination" means discrimination because of race, color, creed, national origin, or ancestry, by an employer individually or in concert with others against any employe or any applicant for employment in regard to his hire, tenure or term, condition or privilege of employment, and by any labor organization against any member or applicant for membership, and also includes discrimination on any of said grounds in the fields of housing, recreation, education, health and social welfare. [*1945 c. 490*]

111.33 Industrial commission to administer. Sections 111.31 to 111.37 shall be administered by the industrial commission. The commission shall have authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out this subchapter. The commission may, by one or more of its members, or by such agents or agencies as it may designate, conduct in any part of this state any proceeding, hearing, investigation or inquiry necessary to the performance of its functions. The commission shall at the end of every year make a report in writing to the government, stating in detail the work it has done and its recommendations, if any. [*1945 c. 490, 586*]

111.34 Advisory committee. The governor shall appoint an advisory committee consisting of 7 members. Two shall be representatives of labor organizations, one to be chosen from each of the 2 major labor organizations of the state, 2 members shall be representatives of business and industrial management, and the remaining 3 members shall be representative of the public at large. The term of members shall be for 3 years. The members of the committee shall elect their own chairman. The commission may refer to such committee for study and advice on any matter relating to fair employment. Such committee shall give consideration to the practical operation and application of this subchapter and may report to the proper legislative committee its view on any pending bill relating to the subject matter of this subchapter. Members of the committee shall receive no salary or compensation for services on said committee, but shall be entitled to reimbursement for necessary expenses. [*1945 c. 490*]

Note: Industrial commission does not have power to designate members of the advisory committee appointed as provided in 111.34 to act as agents of the commission in administering 111.31 to 111.37 nor does it have power to designate a tripartite panel made up of members of said advisory committee to investigate complaints under said sections. 35 Atty. Gen. 49.

111.35 Investigation and study of discrimination. The commission shall:

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

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

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

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

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

(6) Transmit to the legislature from time to time recommendations for any legislation which may be deemed desirable in the light of the commission's findings as to the existence, character and causes of any discrimination. [*1945 c. 490*]

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

(2) In carrying out the provisions of this subchapter the commission and its duly authorized agents are empowered to hold hearings, subpoena witnesses, take testimony and make investigations in the manner provided in chapter 101. The commission or its duly authorized agents may privilege witnesses testifying before them under the provisions of this subchapter against self incrimination. [*1945 c. 490*]

111.37 Separability. It is the intent of the legislature that the provisions of this subchapter are separable and if any provision shall be held unconstitutional, such decision shall not affect the remainder of this subchapter. [*1945 c. 490*]

SUBCHAPTER III.

PUBLIC UTILITIES.

111.50 Declaration of policy. It is hereby declared to be the public policy of this state that it is necessary and essential in the public interest to facilitate the prompt, peaceful and just settlement of labor disputes between public utility employers and their employes which cause or threaten to cause an interruption in the supply of an essential public utility service to the citizens of this state and to that end to encourage the making and maintaining of agreements concerning wages, hours and other conditions of employment through collective bargaining between public utility employers and their employes, and to provide settlement procedures for labor disputes between public utility employers and their employes in cases where the collective bargaining process has reached an impasse and stalemate and as a result thereof the parties are unable to effect such settlement and which labor disputes, if not settled, are likely to cause interruption of the supply of an essential public utility service. The interruption of public utility service results in damage and injury to the public wholly apart from the effect upon the parties immediately concerned and creates an emergency justifying action which adequately protects the general welfare. [*1947 c. 414*]

111.51 Definitions. When used in this subchapter:

(1) "Public utility employer" means any employer (other than the state or any political subdivision thereof) engaged in the business of furnishing water, light, heat, gas, electric power, public passenger transportation or communication, or any one or more of them, to the public in this state. This subchapter does not apply to railroads nor railroad employes.

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

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

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

(5) "Arbitrators" refers to the arbitrators provided for in this subchapter. [*1947 c. 414*]

111.52 Settlement of labor disputes through collective bargaining and arbitration. It shall be the duty of public utility employers and their employes in public utility operations to exert every reasonable effort to settle labor disputes by the making of agreements through collective bargaining between the parties, and by maintaining the agreements when made, and to prevent, if possible, the collective bargaining process from reaching a state of impasse and stalemate. [*1947 c. 414*]

111.53 Appointment of conciliators and arbitrators. Within 30 days after July 25, 1947, the board shall appoint a panel of persons to serve as conciliators or arbitrators under the provisions of this subchapter. No person shall serve as a conciliator and arbitrator in the same dispute. Each person appointed to said panels shall be a resident of this state, possessing, in the judgment of the board, the requisite experience and judgment to qualify such person capably and fairly to deal with labor dispute problems. All such appointments shall be made without a consideration of the political affiliations of the appointee. Each appointee shall take an oath to perform honestly and to the best of his ability the duties of conciliator or arbitrator, as the case may be. Any appointee may be removed by the board at any time or may resign his position at any time by notice in writing to the board. Any vacancy in the panels shall be filled by the board within 30 days after such vacancy occurs. Such conciliators and arbitrators shall be paid reasonable compensation for services and for necessary expenses, in an amount to be fixed by the board, such compensation and expenses to be paid out of the appropriation made to the board by section 20.585 upon such authorizations as the board may prescribe. [*1947 c. 414; 43.08 (3)*]

111.54 Conciliation. If in any case of a labor dispute between a public utility employer and its employes, the collective bargaining process reaches an impasse and stalemate, with the result that the employer and the employes are unable to effect a settlement thereof, then either party to the dispute may petition the board to appoint a conciliator from the panel, provided for by section 111.53. Upon the filing of such petition, the board shall consider the same, and if in its opinion, the collective bargaining process, notwithstanding good faith efforts on the part of both sides to such dispute, has reached an impasse and stalemate and such dispute, if not settled, will cause or is likely to cause the interruption of an essential service, the board shall appoint a conciliator from the panel to attempt to effect the settlement of such dispute. The conciliator so named shall expeditiously meet with the disputing parties and shall exert every reasonable effort to effect a prompt settlement of the dispute. [*1947 c. 414*]

111.55 Conciliator unable to effect settlement; appointment of arbitrators. If the conciliator so named is unable to effect a settlement of such dispute within a 15-day period after his appointment, he shall report such fact to the board; and the board, if it believes that a continuation of the dispute will cause or is likely to cause the interruption of an essential service, shall submit to the parties the names of either 3 or 5 persons from the panel provided for in section 111.53. Each party shall alternately strike one name from such list of persons. The person or persons left on the list shall be appointed by the board as the arbitrator (or arbitrators) to hear and determine such dispute. [*1947 c. 414*]

111.56 Status quo to be maintained. During the pendency of proceedings under this subchapter existing wages, hours, and conditions of employment shall not be changed by action of either party without the consent of the other. [*1947 c. 414*]

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

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

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

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

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

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

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

(e) The overall compensation presently received by the employes, having regard not only to wages for time actually worked but also to wages for time not worked, including (without limiting the generality of the foregoing) vacation, holidays, and other excused time, and all benefits received, including insurance and pensions, medical and hospitalization benefits and the continuity and stability of employment enjoyed by the employes. The foregoing enumeration of factors shall not be construed as precluding the arbitrator from taking into consideration other factors not confined to the local labor market area which are normally or traditionally taken into consideration in the determination of wages, hours and working conditions through voluntary collective bargaining or arbitration between the parties. [*1947 c. 414*]

111.58 Standards for arbitration. The arbitrator shall not make any award which would infringe upon the right of the employer to manage his business or which would interfere with the internal affairs of the union. [*1947 c. 414*]

111.59 Filing order with clerk of circuit court; period effective; retroactivity. The arbitrator shall hand down his findings, decision and order (hereinafter referred to as the order) within 30 days after his appointment; except that the parties may agree to extend, or the board may for good cause extend the period for not to exceed an additional 30 days. If the arbitrators do not agree, then the decision of the majority shall constitute the order in the case. The arbitrator shall furnish to each of the parties and to the public service commission a copy of the order. A certified copy thereof shall be filed in the office of the clerk of the circuit [court] of the county wherein the dispute arose or where the majority of the employes involved in the dispute resides. Unless such order is reversed upon a petition for review filed pursuant to the provisions of section 111.60, such order, together with such agreements as the parties may themselves have reached, shall become binding upon, and shall control the relationship between the parties from the date such order is filed with the clerk of the circuit court, as aforesaid, and shall continue effective for one year from that date, but such order may be changed by mutual consent or agreement of the parties. No order of the arbitrators relating to wages or rates of pay shall be retroactive to a date before the date of the termination of any contract which may have existed between the parties, or, if there was no such contract, to a date before the day on which the demands involved in the dispute were presented to the other party. The question whether or not new contract provisions or amendments to an existing contract are retroactive to the terminating date of a present contract, amendments or part thereof, shall be matter for collective bargaining or decision by the arbitrator. [*1947 c. 414*]

111.60 Judicial review of order of arbitrator. Either party to the dispute may within 15 days from the date such order is filed with the clerk of the court, petition the court for a review of such order on the ground (1) that the parties were not given reasonable opportunity to be heard, or (2) that the arbitrator exceeded his powers, or (3) that the order is not supported by the evidence, or (4) that the order was procured by fraud, collusion, or other unlawful means. A summons to the other party to the dispute shall be issued as provided by law in other civil cases; and either party shall have the same rights to a change of venue from the county, or to a change of judge, as provided by law in other civil cases. The judge of the circuit court shall review the order solely upon the grounds for review hereinabove set forth and shall affirm, reverse, modify or remand such order to the arbitrator as to any issue or issues for such further action as the circumstances require. [*1947 c. 414*]

111.61 Board to establish rules. The board shall establish appropriate rules and regulations to govern the conduct of conciliation and arbitration proceedings under this subchapter. [*1947 c. 414*]

111.62 Strikes, work stoppages, slowdowns, lockouts, unlawful; penalty. It shall be unlawful for any group of employes of a public utility employer acting in concert to

call a strike or to go out on strike, or to cause any work stoppage or slowdown which would cause an interruption of an essential service; it also shall be unlawful for any public utility employer to lock out his employes when such action would cause an interruption of essential service; and it shall be unlawful for any person or persons to instigate, to induce, to conspire with, or to encourage any other person or persons to engage in any strike or lockout or slowdown or work stoppage which would cause an interruption of an essential service. Any violation of this section by any member of a group of employes acting in concert or by any employer or by any officer of an employer acting for such employer, or by any other individual, shall constitute a misdemeanor. [*1947 c. 414*]

111.63 Enforcement. The board shall have the responsibility for enforcement of compliance with the provisions of this subchapter and to that end may file an action in the circuit court of the county in which any such violation occurs to restrain and enjoin such violation and to compel the performance of the duties imposed by this subchapter. In any such action the provisions of sections 103.51 to 103.63 shall not apply. [*1947 c. 414*]

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

(b) All laws and parts of laws in conflict herewith are to the extent of such conflict concerning the subject matter dealt with in this subchapter, supplanted by the provisions of this subchapter. [*1947 c. 414*]

111.65 Separability. It is hereby declared to be the legislative intent that if any provision of this subchapter, or the application thereof to any person or circumstance is held invalid, the remainder of the subchapter and the application of such provisions to persons or circumstances other than those as to which it is held invalid shall not be affected thereby. [*1947 c. 414*]