



WISCONSIN STATE LEGISLATURE

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- (2) "Collective bargaining" means the negotiation by an employer and a majority of the employer's employees in a collective bargaining unit, or their representatives, concerning representation or terms and conditions of employment of such employees, in a mutually genuine effort to reach an agreement with reference to the subject under negotiation.
- (3) "Collective bargaining unit" means all of the employees of one employer, employed within the state, except that where a majority of the employees engaged in a single craft, division, department or plant have voted by secret ballot as provided in s. 111.05 (2) to constitute such group a separate bargaining unit they shall be so considered, but, in appropriate cases, and to aid in the more efficient administration of this subchapter, the commission may find, where agreeable to all parties affected in any way thereby, an industry, trade or business comprising more than one employer in an association in any geographical area to be a "collective bargaining unit". A collective bargaining unit thus established by the commission shall be subject to all rights by termination or modification given by this subchapter in reference to collective bargaining units otherwise established under this subchapter. Two or more collective bargaining units may bargain collectively through the same representative where a majority of the employees in each separate unit have voted by secret ballot as provided in s. 111.05 (2) so to do.
- (4) "Commission" means the employment relations commission.
- (5) The term "election" shall mean a proceeding in which the employees in a collective bargaining unit cast a secret ballot for collective bargaining representatives or for any other purpose specified in this subchapter and shall include elections conducted by the commission, or, unless the context clearly indicates otherwise, by any tribunal having competent jurisdiction or whose jurisdiction was accepted by the parties.
- (6)
- (a) "Employee" shall include any person, other than an independent contractor, working for another for hire in the state of Wisconsin in a nonconfidential, nonmanagerial, nonexecutive and nonsupervisory capacity, and shall not be limited to the employees of a particular employer unless the context clearly indicates otherwise.
- (b) "Employee" 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 who has not:
1. 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 employee or the employee's representative;
 2. Been found to have committed or to have been a party to any unfair labor practice hereunder;
 3. Obtained regular and substantially equivalent employment elsewhere; or
 4. Been absent from his or her employment for a substantial period of time during which reasonable expectancy of settlement has ceased (except by an employer's unlawful refusal to bargain) and whose place has been filled by another engaged in the regular manner for an indefinite or protracted period and not merely for the duration of a strike or lockout.
- (c) "Employee" shall not include any individual employed in the domestic service of a family or person at the person's home or any individual employed by his or her parent or spouse or any employee who is subject to the federal railway labor act.
- (7)

- (a) "Employer" means a person who engages the services of an employee, and includes a person acting on behalf of an employer within the scope of his or her authority, express or implied.
- (b) "Employer" does not include any of the following:
 1. The state or any political subdivision thereof.
 2. Any labor organization or anyone acting in behalf of such organization other than when it is acting as an employer in fact.
- (8) The term "jurisdictional strike" shall mean a strike growing out of a dispute between 2 or more employees or representatives of employees 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 employees represented by one or the other representative are entitled to perform particular work.
- (9) The term "labor dispute" means any controversy between an employer and the majority of the employer's employees 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.
- (9g) "Labor organization" means any employee organization in which employees participate and that exists for the purpose, in whole or in part, of engaging in collective bargaining with any employer concerning grievances, labor disputes, wages, hours, benefits, or other terms or conditions of employment.
- (10) The term "person" includes one or more individuals, partnerships, associations, corporations, limited liability companies, legal representatives, trustees or receivers.
- (11) The term "representative" includes any person chosen by an employee to represent the employee.
- (12) The term "secondary boycott" shall include combining or conspiring to cause or threaten to cause injury to a person with whom no labor dispute exists in order to bring that person, against that person's will, into a concerted plan to coerce or inflict damage upon another, 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) Any other unlawful means.
- (13) The term "unfair labor practice" means any unfair labor practice as defined in s. 111.06.

History: 1979 c. 89; 1983 a. 189; 1993 a. 112, 492; 1995 a. 27, 225; 1999 a. 65, 83; 2009 a. 28, 185; 2011 a. 10; 2015 a. 1.

111.04 Rights of employees.

- (1) Employees shall have the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection.
- (2) Employees shall have the right to refrain from self-organization; forming, joining, or assisting labor organizations; bargaining collectively through representatives; or engaging in activities for the purpose of collective bargaining or other mutual aid or protection.
- (3)
 - (a) No person may require, as a condition of obtaining or continuing employment, an individual to do any of the following:
 1. Refrain or resign from membership in, voluntary affiliation with, or voluntary financial support of a labor organization.
 2. Become or remain a member of a labor organization.
 3. Pay any dues, fees, assessments, or other charges or expenses of any kind or amount, or provide anything of value, to a labor organization.
 4. Pay to any 3rd party an amount that is in place of, equivalent to, or any portion of dues, fees, assessments, or other charges or expenses required of members of, or employees represented by, a labor organization.
 - (b) This subsection applies to the extent permitted under federal law. If a provision of a contract violates this subsection, that provision is void.

History: 2015 a. 1.

111.05 Representatives and elections.

- (1) Representatives chosen for the purposes of collective bargaining by a majority of the employees voting in a collective bargaining unit shall be the exclusive representatives of all of the employees in such unit for the purposes of collective bargaining, provided that any individual employee or any minority group of employees 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, it shall be determined by secret ballot, and the commission, upon request, shall cause the ballot to be taken in such manner as to show separately the wishes of the employees 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 employees in a collective bargaining unit the commission shall determine the representatives thereof by taking a secret ballot of employees 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 employee or group of employees participating in the election, except that the commission may, in its discretion, exclude from the ballot a person who, at the time of the election, stands deprived of the person's rights under this subchapter by reason of a prior adjudication of the person's having engaged in an unfair labor practice. The ballot shall be so prepared as to permit of a vote against representation by anyone named on the ballot. The commission's certification of the results of any election shall be conclusive as to the findings included therein unless reviewed in the same manner as provided by s. 111.07 (8) for review of orders of the commission.
- (3m) Whenever an election has been conducted pursuant to sub. (3) in which the name of more than one proposed representative appears on the ballot and results in no conclusion, the commission may, in its discretion, if requested by any party to the proceeding within 30 days from the date of the certification of the results of such election, conduct a runoff election. In such runoff election, the commission may drop from the ballot the name of the representative that received the least number of votes at the original election, or the privilege of voting against any representative when the least number of votes cast at the first election was against representation by any named representative.
- (4) Questions concerning the determination of collective bargaining units or representation of employees may be raised by petition of any employee or the employee's employer, or the representative of either of them. Where it appears by the petition that any emergency exists requiring prompt action, the commission shall act on the petition immediately 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 does not prevent the holding of another election among the same group of employees, provided that it appears to the commission that sufficient reason for another election exists.

History: 1983 a. 189 s. 329 (4); 1993 a. 492; 1995 a. 27; 1999 a. 83; 2009 a. 28; 2011 a. 10.

Cross-reference: See also chs. ERC 3, 7, and 17, Wis. adm. code.

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 the employer's employees in the exercise of the rights guaranteed in s. 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 employees at their prevailing wage rate for the time spent conferring with the employer, nor from cooperating with representatives of at least a majority of the employer's employees in a collective bargaining unit, at their request, by permitting employee organizational activities on company premises or the use of company property facilities where such activities or use create no additional expense to the company, provided, however, that it shall not be an unfair labor practice for an employer to become a member of the same labor organization of which the employer's employees are members, when the employer and the employer's employees work at the same trade.
 - (c) To encourage or discourage membership in any labor organization, employee agency, committee, association, or representation plan by discrimination in regard to hiring, tenure, or other terms or conditions of employment.
 - (d) To refuse to bargain collectively with the representative of a majority of the employer's employees in any collective bargaining unit with respect to representation or terms and conditions of employment, provided, however, that where an employer files with the commission a petition requesting a determination as to majority representation, the employer shall not be deemed to have refused to bargain until an election has been held and the result thereof has been certified to the employer by the commission.

- (e) To bargain collectively with the representatives of less than a majority of the employer's employees in a collective bargaining unit, or to enter into an all-union agreement.
 - (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 employee because the employee 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 employee's earnings, unless the employer has been presented with an individual order therefor, signed by the employee personally, and terminable by the employee giving to the employer at least 30 days' written notice of the termination. This paragraph applies to the extent permitted under federal law.
 - (j) To employ any person to spy upon employees or their representatives respecting their exercise of any right created or approved by this subchapter.
 - (k) To make, circulate or cause to be circulated a blacklist as described in s. 134.02.
 - (L) To commit any crime or misdemeanor in connection with any controversy as to employment relations.
- (2)** It shall be an unfair labor practice for an employee individually or in concert with others:
- (a) To coerce or intimidate an employee in the enjoyment of the employee's legal rights, including those guaranteed in s. 111.04, or to intimidate the employee's family, picket the employee's domicile, or injure the person or property of the employee or the employee's family.
 - (b) To coerce, intimidate or induce any employer to interfere with any of the employer's employees in the enjoyment of their legal rights, including those guaranteed in s. 111.04, or to engage in any practice with regard to the employer's employees which would constitute an unfair labor practice if undertaken by the employer on the employer's own initiative.
 - (c) To violate the terms of a collective bargaining agreement, including an agreement to accept an arbitration award.
 - (d) To refuse or fail to recognize or accept as conclusive of any issue in any controversy as to employment relations the final determination, after appeal, if any, of any tribunal having competent jurisdiction of the same or whose jurisdiction the employees or their representatives accepted.
 - (e) To cooperate in engaging in, promoting or inducing picketing that does not constitute 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 employees of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike.
 - (f) To hinder or prevent, by mass picketing, threats, intimidation, force or coercion of any kind the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance.
 - (g) To engage in a secondary boycott; or to hinder or prevent, by threats, intimidation, force, coercion or sabotage, the obtaining, use or disposition of materials, equipment or services; or to combine or conspire to hinder or prevent, by any means whatsoever, the obtaining, use or disposition of materials, equipment or services, provided, however, that nothing herein shall prevent sympathetic strikes in support of those in similar occupations working for other employers in the same craft.
 - (h) To take unauthorized possession of property of the employer or to engage in any concerted effort to interfere with production except by leaving the premises in an orderly manner for the purpose of going on strike.
 - (i) To fail to give the notice of intention to engage in a strike provided in s. 111.115 (3).
 - (j) To commit any crime or misdemeanor in connection with any controversy as to employment relations.
 - (L) To engage in, promote or induce a jurisdictional strike.
 - (m) To coerce or intimidate an employer working at the same trade of the employer's employees to induce the employer to become a member of the labor organization of which they are members, permissible pursuant to s. 111.06 (1) (b).
- (3)** It shall be an unfair labor practice for any person to do or cause to be done on behalf of or in the interest of employers or employees, or in connection with or to influence the outcome of any controversy as to employment relations any act prohibited by subs. (1) and (2).

History: 1971 c. 245; 1973 c. 320; 1975 c. 74, 199; 1983 a. 189 s. 329 (29); 1993 a. 492; 1995 a. 27, 225; 1999 a. 83; 2011 a. 10; 2015 a. 1.

Cross-reference: See also ch. ERC 2, Wis. adm. code.

A company is not required to bargain over a decision to use equipment that eliminates jobs, but it is required to bargain over the effects of the decision on the rights of the employees to severance pay, seniority, and related issues. *Libby, McNeill & Libby v. WERC*, 48 Wis. 2d 272, 179 N.W.2d 805 (1970).

Federal law has preempted the question of whether a union rule imposing a fine for exceeding production ceilings constitutes an unfair labor practice. *UAW, Local 283 v. Scofield*, 50 Wis. 2d 117, 183 N.W.2d 103 (1971).

The failure to exhaust the available grievance remedies by an employee who was allegedly discharged in violation of the contract precluded recourse to the courts absent a wrongful refusal by the union to process the employee's grievance. *Mahnke v. WERC*, 66 Wis. 2d 524, 225 N.W.2d 617 (1975).

WERC is authorized by s. 111.06 (1) (L) to determine whether conduct in violation of criminal law has occurred. Such authorization is not a delegation of judicial power in violation of Art. VII, s. 2 nor does the procedure violate Art. I, s. 8. *Layton School of Art & Design v. WERC*, 82 Wis. 2d 324, 262 N.W.2d 218 (1978).

State jurisdiction was preempted when a secondary boycott violated the federal act. *Clarkin v. Dingeldein*, 107 Wis. 2d 373, 320 N.W.2d 40 (Ct. App. 1982).

Federal preemption of labor relations is discussed. *Machinists v. WERC*, 427 U.S. 132.

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

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

111.07 Prevention of unfair labor practices.

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

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