CHAPTER 179

LABOR RELATIONS

179.01 DEFINITIONS

Labor Relations Act, as affected by Laws 1943, Chapter 624, and particularly affecting sections 179.01, 179.11, and 179.13. 31 MLR 56.

Applicability of the state statute of limitations to federally created rights under the Fair Labor Standards Act. 32 MLR 65.

Fair Labor Standards Act; overtime compensation; determination of the regular rate. 32 MLR 189.

Picketing and concerted activity by employees. 35 MLR 601.

National Labor Relations Act; jurisdiction of state labor boards. 32 MLR 411.

The "New" National Labor Relations Act in operation during the first eight months. 32 MLR 663.

Right to join trade unions. Effect of the Labor Management Relations Act of 1947. 32 MLR 796.

The Taft-Hartley Act and union political contributions and expenditures. 33 MLR 1.

Union political contributions and expenditures. 33 MLR 1.

Suability of certain persons, labor organizations, and employer organizations. 33 MLR 38.

National Labor Relations Act; applicability to unorganized employees. 333 MLR 85.

Trade unions; members; judicial interference; members' rights in connection with disciplinary proceedings, expulsion, union property and benefits. 33 MLR 156.

Due process; involuntary servitude; compulsory arbitration of labor disputes. 33 MLR 314.

State Labor Relations Act. 33 MLR 678.

Effect on employees involuntarily unemployed because of a strike, lockout, or labor dispute. 33 MLR 758.

Substantive due process; labor unions and union practices. 34 MLR 113.

Right of municipal employees union to strike and to bargain collectively. 34 MLR 260.

Labor dispute disqualification provisions and lockout as they relate to unemployment compensation. 34 MLR 271.

Restraint of trade as applicable to labor or other organizations. Application of the Clayton and Sherman Act to an association of real estate brokers. 34 MLR 364.

Constitutionality of the non-communistic affidavit requirement in the Labor Relations Act of 1947. 35 MLR 200.

Federal court jurisdiction to review the discharge of government employees. 35 MLR 659.

The scope of review under the Administrative Procedure Act relating to labor-management relations. 35 MLR 661.

Power of the state to regulate labor disputes in public utilities. 35 MLR 669.

Wage-hour coverage of the Federal Fair Labor Standards Act. 36 MLR 454.

Settlement agreement as a bar to representation. 36 MLR 784.

Freedom of speech; restrictions of public employment; the Feinberg Act. 36 MLR 961.

The provisions of 45 U.S.C.A., sections 151 and 152, vest in an employee's statutory bargaining representative exclusive authority to contract prospectively with their railroad employer with reference to rates of pay, rules and working conditions; and this includes provisions for the establishment of a system of employees' seniority employment rights. Such contract is binding on all employees regardless of their affiliation with the bargaining representative or the lack of it. An individual contract between a railroad and an employee in conflict with an employment contract between the railroad and the employee's statutory bargaining representative, is void. Parties may waive provisions of the contract by ignoring them and act as if they had no application. Edelstein v Duluth & Iron Range Ry., 225 M 508, 31 NW(2d) 465.

The supreme court will not interfere upon appeal from an order granting or refusing a temporary injunction where evidence as to facts is conflicting and no refutable injury impends. Hotel & Restaurant Union v Tzakis, 227 M 32, 33 NW(2d) 859.

Either a labor union or an employer, under proper circumstances, is entitled to injunctive relief where there is a violation of a collective bargaining agreement by either of the parties to the contract. Granting or refusing a temporary injunction rests so largely in the discretion of the trial court that an appellate court is not justified in interfering unless the action of the trial court is clearly erroneous and will result in an injury which it is the duty of the court to prevent. Hotel & Restaurant Emp. Union v Tzakis, 227 M 32, 33 NW(2d) 859.

A member of an unincorporated voluntary association does not acquire a severable right to any of the association's property or funds but acquires merely the enjoyment of joint use of the funds and property so long as he continues a member; and members who withdraw singly or as a majority group lose their rights to the association property. Liggett v Koivunen, 227 M 114, 34 NW(2d) 345.

The constitution and bylaws of unincorporated association, if they are not immoral, contrary to public policy or the law of the land or unreasonable, constitute an enforceable contract between the members by which their rights, duties, powers, and liabilities are measured. The majority of the members may direct the use of the funds of the association with the scope of its declared purposes but the majority cannot against the will of the minority lawfully direct association funds for uses other than those permitted by the constitution and bylaws. In the instant case the majority cannot, contrary to the wishes of the minority, transfer the funds of the local to another organization where members in excess of seven in number continue their allegiance to the parent union and continue to function under the original charter. Liggett v Koivunen, 227 M 114, 34 NW(2d) 345.

It is not a province of a court of equity to rewrite or abrogate contracts to protect parties from the consequences attendant upon their voluntary abandonment of the contract. Liggett v Koivunen, 227 M 114, 34 NW(2d) 345.

In order for a labor dispute to disqualify an employee for unemployment benefits under our employment and security law such labor dispute must be in progress at the establishment to which the claimant was or is employed. Determination of whether a unit of employment within the meaning of the disqualifying provisions must be based on the facts relating to the relationship of the employee to the unit of employment rather than on the determination of whether an entire enterprise or industry is highly integrated or unified for the purpose of efficient management or production. Nordling v Ford Motor Co., 231 M 68, 42 NW(2d) 576.

In an action by plaintiff against certain defendants to restrain them from picketing plaintiff's grain elevators, to justify the issuance of a writ of prohibition,

it must appear: (1) that the court, officer, or person against whom it issues is about to exercise judicial or quasi-judicial power; (2) that the exercise of such power by such court, officer, or person is unauthorized by law; and (3) that it will result in injury for which there is no other adequate remedy at law. Where it appears from the face of the record that the court has no jurisdiction over the subject matter, its orders are a nullity, and prohibition may properly be used to test its jurisdiction to act in the matter at all. In cases involving labor disputes in the field of interstate or foreign commerce covered by the Labor Management Relations Act, 1947, 29 U.S.C.A., section 141 et seq, the National Labor Relations Board has exclusive jurisdiction and the state courts have none. Norris Grain Co., v Nordaas, 232 M 91, 45 NW(2d) 94.

Where the employer undertook the design and development of an engine to be used as an auxiliary power plant and an employee was engaged in making drawings and in checking and in layout work, the employee was engaged in "production of goods for commerce" even though the plans were rejected and the project abandoned and he was entitled to the benefits under the fair labor standards act. Tormey v Kiekhaefer, 76 F. Supp. 557.

In an action under the fair labor standards act amendments were made to the complaint consisting of general allegations that compensation sued for was based on express provisions of contracts in effect at the time the work was performed by the plaintiff, and that such work was compensable by custom or practice, without attaching any existing written contract or giving any adequate factual description of a non-written contract or practice, was insufficient to avoid specific prohibition of the Portal-to-Portal Act. Smith v Cudahy Packing Co., 76 F. Supp. 575.

Operations in logging camps of cooks, cookees, bull cooks, barn boss, watchman, and clerk, are closely related to and directly essential to logging operations which produce goods for commerce, and an injunction against a violation of the Fair Labor Standards Act regarding the payment of overtime compensation is authorized. Tobin v Promersberger, 104 F. Supp. 314.

A fuel company whose sales of coal from one yard were respectively 44.6 percent and 37.5 percent steam and dealer sales and whose sales from another yard were 96.6 percent steam and dealer sales had sufficiently substantial non-retail sales so that it could not be classified as a "retail or service establishment" whose employees were exempt from the Fair Labor Standards Act. Northwestern-Hanna Fuel Co. v McComb, 166 F(2d) 932.

Municipal corporations not being subject to the provisions of chapter 179 cannot make through one of its departments or agencies a contract or agreement with the bargaining representative of the union. OAG Dec. 19, 1946 (270-D).

A school board not being subject to the provisions of chapter 179 cannot grant to a union sole and exclusive bargaining rights. OAG Dec. 27, 1946 (270-D).

The power of a village to adopt rules and regulations is a legislative power delegated to it by the legislature. A village ordinance prescribing such rules and regulations is, when it has been duly enacted, a local law. To be effective it must operate uniformly upon all who are situated alike. A school board or municipality may adopt reasonable rules and regulations with reference to its employees. Such rules and regulations may prescribe hours of work, wages to be paid, length of vacations, seniority rights of employees, requirements as to the method of hiring, hearings on grievances submitted to the board either by employees or representatives of an organization to which they belong, and the appointment of committees to confer with representatives of committees of unions or others. OAG May 3, 1948 (270-D).

Notwithstanding the provisions of Territorial Charter Laws 1851, Chapter 3, propounded in the State Constitution, Article VIII, Section 4, the legislature has the right within reason to condition appropriations as it sees fit. In such cases the regents may accept or reject such appropriation. If they accept, the conditions are binding upon them. The first proviso attached to Laws 1941, Chapter 743, Item 1 of Section 2 and Item 1 of Section 3, is legally binding upon the University in payment of salaries to non-academic employees. OAG Dec. 16, 1949 (270-D).

There is no law forbidding public employees to be members of labor unions and no legal reason why a school board should not permit a union to appear as a representative of the employees, and the board may in its discretion provide for seniority rights, wages, dismissals, transfers and tenure, by adopting reasonable rules and regulations, but the board cannot legally enter into a contract with the union. OAG June 19, 1950 (270-D).

Minneapolis General Hospital is not within the jurisdiction of the labor conciliator for certification purposes. The word "employer" does not include the state or any political or governmental subdivision thereof except when used in section 179.13. OAG Oct. 20, 1949 (270-D-12).

179.02 DIVISION OF CONCILIATION

HISTORY. 1939 c 440 s 2; 1949 c 739 s 14; 1951 c 713 s 17.

Enforcement of an order issued by a labor relations board in the absence of reasonably recent evidence. 34 MLR 476.

Federal fair labor standards act. 34 MLR 670.

Appropriate bargaining unit; fringe groups denied self-determination election. 35 MLR 509.

It would be illegal on the part of the board of regents to delegate to any outside agency the discretionary duties and powers conferred upon members of the board. Such duties and powers are not subject to arbitration by any outside agency. Under the proposed civil service rules, upon a grievance being presented by an employee, the facts may be determined by arbitrators, and the facts applied to the civil service rules. Such procedure is purely ministerial and administrative, and confers only advisory duties on the arbitrators. OAG May 20, 1948 (270-D).

Special conciliators and commission members appointed by the governor under the state labor relations act, for a particular labor dispute, are in the unclassified service of the state civil service. OAG Dec. 6, 1951 (644-B).

179.05 RULES AND REGULATIONS FOR HEARINGS

Portal-to-portal Act; constitutionality; retrospective. 33 MLR 68.

Where notice of hearing, on petition of employer to determine whether election should be had to determine representatives for collective bargaining, was addressed to union and sent by registered mail by labor conciliator, and return receipt was signed by an agent of the union, if purported agent was not in fact the agent of the union, union had burden to offer proof of that fact, and, in absence of proof to the contrary, presumption of delivery of notice to union must prevail. Actual notice of a hearing before labor conciliator on question of holding an election to determine representatives for collective bargaining received by mail, is equivalent to personal service. In absence of proof to contrary, it is presumed that mail properly addressed and posted, with postage prepaid, is duly received by addressee. Nemo v Local Joint Executive Board, 227 M 263, 35 NW(2d) 337.

179.06 COLLECTIVE BARGAINING AGREEMENTS; NOTICE OF INTENTION TO STRIKE OR LOCKOUT

Employment contracts; illusory. 33 MLR 663.

Collective bargaining in labor disputes. 35 MLR 24.

Collective bargaining; duty of employer to bargain. 36 MLR 109.

Negotiations and solicitation by employees regarding union rights during company's time. 37 MLR 293.

Where a legal agreement expressly confirms a prior oral understanding and states exactly what it confirms, is clear, unambiguous, and does not appear incomplete on its face or to vary its terms is inadmissible. The evidence sustained the find-

ing that the purpose of labor union representatives in mailing a strike notice to the state labor conciliator was to compel the employer to discharge non-union employees or to compel non-union employees to join labor unions, which would constitute an unfair labor practice on the part of the union unless negotiations pursuant to the statute were first engaged in where the union had no closed shop agreement with the employer and such a strike would be enjoined. Dayton Co. v Carpet & Floor Decorators Union, 229 M 87, 39 NW(2d) 183.

Where members of a local labor organization delivered to the employer written demands for amendments of a contract under which they were employed and subsequently delivered proper and timely notices of intention to strike to such employer and the labor conciliator, and did not thereafter terminate their employment earlier than 90 days from the service of such notice upon the conciliator, such procedure is not in conflict with section 179.06. Anderson v Tuomi, 230 M 490, 42 NW(2d) 204.

Where interstate commerce is involved and a strike is peaceful and for lawful purpose, that part of section 179.06 which provides that it shall be unlawful for any labor organization or representative to institute or aid in the conduct of a strike unless notice of intention to strike has been served upon the state labor conciliator and upon the other parties to the labor dispute at least ten days before the strike is to become effective is invalid, since Congress by 29 USCA, section 157, does not require such notice and the federal law has occupied the field of regulation of peaceful strikes for a lawful purpose and closed it to state regulation. The alternative writ of prohibition is made absolute. Faribault Daily News v International Typographical Union, 236 M 303, 53 NW(2d) 36.

If the 90-day period referred to in the statute is extended by written agreement of the parties filed with the labor conciliator the rights of the parties are the same during the extended period as during the statutory period. OAG March 9, 1949 (270-D-9).

179.07 LABOR DISPUTE AFFECTING PUBLIC INTERESTS; PROCEDURE

Retrospective loss; Portal-to-portal Act. 33 MLR 68.

Conflict between state and federal legislation requiring arbitration of labor disputes. 35 MLR 669.

The employees of a corporation, which during the war period operated a government-owned munitions plant under a cost-plus-a-fixed-fee contract with the United States, were not engaged in commerce or the production of goods for commerce within the meaning of the Fair Labor Standards Act. Brenna v Federal Cartridge Corp., 174 F(2d) 732.

State conciliators and commission members appointed under the State Labor Relations Act are in the unclassified service of the state civil service. OAG Dec. 6, 1951 (644-B).

179.08 POWERS OF COMMISSION APPOINTED BY GOVERNOR

Enforcement of an order issued by a labor relations board in the absence of reasonably recent evidence. 34 MLR 476.

179.083 JURISDICTIONAL CONTROVERSIES

Jurisdiction of strike subsequent to certification; jurisdiction of federal courts to enjoin picketing. 31 MLR 619.

Fair Labor Standards Act; overtime compensation; determination of regular rate. 31 MLR 745.

Fringe groups denied self-determination election. 35 MLR 509.

Recognition of picketing. 36 MLR 418.

179.09 ARBITRATION

United States conciliation service. 31 MLR 680.

There being no statutory provisions authorizing payment of compensation of expense of an arbitrator appointed by the labor conciliator they must be paid as provided in section 572.03. OAG April 27, 1949 (270-D-1).

179.10 JOINING LABOR ORGANIZATIONS; UNITING FOR COLLECTIVE BARGAINING

Right to join trade unions. 32 MLR 796.

Where each union seeking to represent bargaining unit desires inclusion of "fringe workers," the fringe group is not entitled under N.L.R.B. ruling to self-determination election. 35 MLR 509.

The provisions of 45 USCA, sections 151 and 152, vest in an employee's statutory bargaining representative exclusive authority to contract prospectively with their railroad employer with reference to rates of pay, rules and working conditions; and this includes provisions for the establishment of a system of employees' seniority employment rights. Such contract is binding on all employees regardless of their affiliation with the bargaining representative or the lack of it. An individual contract between a railroad and an employee in conflict with an employment contract between the railroad and the employee's statutory bargaining representative, is void. Parties may waive provisions of the contract by ignoring them and act as if they had no application. Edelstein v Duluth & Iron Range Ry., 225 M 508, 31 NW(2d) 465.

The courts have jurisdiction to determine the rights of an employee under a contract between a railroad and its employees' statutory bargaining representative even if the statutory remedies under the federal railway labor act have not been exhausted. A point raised for the first time on appeal will not be considered. Edelstein v Duluth & Iron Range Ry., 225 M 508, 31 NW(2d) 465.

The theory on which a case is tried becomes the law of the case and must be adhered to on appeal; and where an action against a railroad employer, brought by an employee to recover damages for discharge in violation of the employment contract, and where the case was tried upon the theory that a certain labor organization was, under the Railway Labor Act, the bargaining representative, and that the Act governed as to all matters arising under the contract of employment, that theory must be adhered to on appeal. Edelstein v Duluth & Iron Range Ry., 225 M 508, 31 NW(2d) 465.

"Concerted activities" includes striking. Faribault Daily News v International Typographical Union, 236 M 303, 53 NW(2d) 36.

179.11 UNFAIR LABOR PRACTICES BY EMPLOYEES

Where a legal agreement expressly confirms a prior oral understanding and states exactly what it confirms, is clear, unambiguous, and does not appear incomplete on its face or to vary its terms, it is inadmissible. The evidence sustained the finding that the purpose of labor union representatives in mailing a strike notice to the state labor conciliator was to compel the employer to discharge non-union employees or to compel the employer to discharge non-union employees which would constitute an unfair labor practice on the part of the union unless negotiations pursuant to the statute were first engaged in where the union had no closed shop agreement with the employer and such a strike would be enjoined. Dayton Co. v Carpet & Floor Decorators Union, 229 M 87, 39 NW(2d) 183.

Where no collective bargaining agreement was in effect from the date on which the employees of the plaintiff withdrew from his employment, such withdrawal, even though done with concerted action, would not constitute an unfair labor practice under section 179.11. Anderson v Tuomi, 230 M 490, 42 NW(2d) 204.

Where interstate commerce is involved and a strike is peaceful and for lawful purpose, that part of section 179.06 which provides that it shall be unlawful for any labor organization or representative to institute or aid in the conduct of a strike unless notice of intention to strike has been served upon the state labor conciliator and upon the other parties to the labor dispute at least ten days before the strike is to

become effective is invalid, since Congress by 29 USCA, section 157, does not require such notice and the federal law has occupied the field of regulation of peaceful strikes for a lawful purpose and closed it to state regulation. The alternative writ of prohibition is made absolute. Faribault Daily News v International Typographical Union, 236 M 303, 53 NW(2d) 36.

The provisions of section 179.11 (8) prohibiting a strike unless it is approved by a majority vote of the voting employees in a collective bargaining unit of the employees of an employer or association of employers against whom such strike is directed, is invalid as against employees of employers engaged in interstate commerce. State ex rel v Finkelnburg, 236 M 349, 53 NW(2d) 128.

Employees of commercial airline engaged by government during the war to modify army planes were engaged in production of "goods" for "commerce" within Fair Labor Standards Act. Jackson v Northwest Airlines, 74 F. Supp. 32.

The timekeeper for a contractor conducting air bases for federal government in Alaska with materials and supplies from the United States was not engaged in "commerce" so as to be entitled to overtime compensation under the Fair Labor Standards Act. Maitrejean v Metcalfe, 165 F(2d) 571.

A court of equity will enjoin the unlawful practice of law at the suit of a bar association, but the giving of legal advice or information by an industrial relations consultant, provided no separate fee is charged for the legal advice or information and provided the legal question is subordinate and incidental to a major non-legal problem, is not unlawful practice of law. Auerbacher v Wood, 53 Atl. 800.

179.12 UNFAIR LABOR PRACTICES BY EMPLOYERS

Fair Labor Standards Act; overtime compensation; determination of the regular rate. 32 MLR 189.

The act of employer compelling his employee to join a labor organization by signing a closed shop contract without their acquiescence is an unfair labor practice. Nemo v Local Hotel & Restaurant, 227 M 263, 35 NW(2d) 337.

179.13 INTERFERENCES WHICH ARE UNLAWFUL

Right to join trade unions. Effect of the Labor Management Relations Act of 1947. 32 MLR 796.

Minneapolis General hospital is not within the jurisdiction of the labor conciliator for certification purposes. The word "employer" does not include the state or any political or governmental subdivision thereof except when used in section 179.13. OAG Oct. 20, 1949 (270-D-12).

179.135 PROTECTION OF COLLECTIVE BARGAINING AGREEMENTS

Collective bargaining. 33 MLR 43.

179.15 VIOLATORS NOT ENTITLED TO BENEFIT OF CERTAIN SECTIONS

Under a writ of prohibition to restrain the state labor conciliator from holding the election to determine whether relator was the bargaining representative for the employees of Nemo, the labor conciliator was acting in a governmental capacity; there being no express statutory provision so declaring, he is not liable for costs and disbursements. The petition in this case was tried against both Nemo and the conciliator. Both appeared and filed briefs. Both presented oral arguments. Under such circumstances, the court could if justice required it, order costs and disbursements taxed against Nemo. Nemo v Local Joint Executive Board, 227 M 263, 35 NW(2d) 811.

179.16 REPRESENTATIVES FOR COLLECTIVE BARGAINING

Where an employee in the course of his employment sustains an apparently trivial injury which does not result in present disability and which no person of ordi-

nary prudence, similarly situated, would reasonably anticipate as likely to cause future disability, the time for giving notice of the occurrence of the injury to the employer, runs from the time when it became reasonably apparent that such an injury has resulted in or is likely to cause compensable disability. Whether an individual case comes within latent or trivial injury rule is a question of fact. Bruggeman v Ford Co., 225 M 427, 30 NW(2d) 711.

The courts have jurisdiction to determine the rights of an employee under a contract between a railroad and its employees' statutory bargaining representative even though statutory remedies under the Federal Railway Labor Act have not been exhausted. A contract between a railroad and its employees' statutory bargaining representative is binding on all employees, regardless of their affiliation with the bargaining representative or the lack of it; but an individual contract between a railroad and an employee thereof in conflict with an employment contract between the railroad and its employees' statutory bargaining representative is void. Edelstein v Duluth Ry. Co., 225 M 508, 31 NW(2d) 465.

Where notice of hearing, on petition of employer to determine whether election should be had to determine representatives for collective bargaining, was addressed to union and sent by registered mail by labor conciliator, and return receipt was signed by an agent of the union, if purported agent was not in fact the agent of the union, union had burden to offer proof of that fact, and, in absence of proof to the contrary, presumption of delivery of notice to union must prevail. Actual notice of a hearing before labor conciliator on question of holding an election to determine representatives for collective bargaining received by mail is equivalent to personal service. In absence of proof to contrary, it is presumed that mail properly addressed and posted, with postage prepaid, is duly received by addressee. Nemo v Local Joint Executive Board, 227 M 263, 35 NW(2d) 337.

A writ of prohibition is not available to prevent performance of purely ministerial or administrative acts. It is an extraordinary writ issued to prevent inferior courts or tribunals or other individuals, invested by law with judicial or quasi-judicial authority from going beyond their jurisdiction. The labor conciliator acts in a quasi-judicial capacity and a writ of prohibition will issue to restrain him from acting under the statute if his actions are unauthorized by law and will result in injury for which there is no other adequate remedy at law. Nemo v Local Joint Executive Board, 227 M 263, 35 NW(2d) 337.

To justify the issuance of a writ of prohibition, it must appear (1) that the court, officer, or person against whom it issues is about to exercise judicial or quasi-judicial power; (2) that the exercise of such power by such court, officer, or person is unauthorized by law; and (3) that it will result in injury for which there is no other adequate remedy at law. All three prerequisites having been met, writ of prohibition is available and a proper remedy to enjoin labor conciliator from proceeding with an unauthorized election. Nemo v Local Joint Executive Board, 227 M 263, 35 NW(2d) 337.

In a "secret ballot" ordered by the state conciliator to aid in determining a controversy between two rival unions over representation and selection of an appropriate bargaining agent, a specific instruction on the printed ballot read: "Mark only in one place." Four hundred votes were cast, one of which was considered to be void. Of the other 399 ballots, 199 were for the C.I.O. and 199 were for the A.F.L. The remaining ballot creates the controversy. In view of the wide discretion given the labor conciliator by the statute, he was justified in finding the contested ballot void which was marked in one place "A.F.L." and in another place "No" respectively in the square opposite the choice of A.F.L. and the C.I.O. unions on the grounds that the markings on the ballot made it identifiable. State v Hanson, 229 M 579, 38 NW(2d) 844.

An injunction lies to restrain the Minnesota labor conciliator from attempting to exercise jurisdiction in a matter within the jurisdiction of the national labor relations board, such as certification of a union for collective bargaining, on the grounds that submission to state authority would amount to the pursuit of a futile course involving time and expense for which there is no adequate remedy at law, and on the ground that irreparable injury might result. Linde v Johnson, 77 F. Supp. 655.

In certification of the representative for collective bargaining the vote at the election must be substantial and representative and the labor conciliator must so find; and a majority of the employees voting is required for certification. OAG Dec. 29, 1948 (270-D-12).

179.17 Unnecessary.

179.18 DEFINITIONS

Unemployment compensation; effect on union member refusing offer of employment, accepting of which would subject him to penalties or expulsion from the union. 31 MLR 748.

Enforcement of an order issued by a labor relations board in the absence of reasonably recent evidence. 34 MLR 476.

Two separate suits for declared judgment and injunctive relief were brought by two separate local unions against the national organizations. In each suit the defendants demurred to the compiaint and the district court overruled both demurrers, whereupon the defendant appealed. The supreme court held that plaintiffs were entitled to judgment declaring their right to disaffiliate from the parent union and to retain their assets. A local labor union is a separate and distinct voluntary association which owes its creation and continued existence to the will of its members and upon its disaffiliation from the international union its relationship with international is severed, even though it continues to exist as an independent organization and is entitled to retain its organization's assets. In the absence of enforceable provisions in the parent union's constitution preventing disaffiliation of local union intact with its property, the local union could by majority sever its relationship with the parent union and take its property with it. Local United Electrical Workers v United Electrical Workers, 232 M 217, 45 NW(2d) 408.

179.24 UNLAWFUL ACTS

A court of equity will enjoin the unlawful practice of law at the suit of a bar association; but the giving of legal advice or information by an industrial relations consultant, provided no separate fee is charged for the legal advice or information and provided the legal question is subordinate and incidental to a major non-legal problem, is not unlawful practice of law. Auerbacher v Wood, 53 At. 800.

179.25 Unnecessary.

179.26 DEFINITIONS

HISTORY. 1945 c 414 s 1; 1949 c 299 s 1.

179.28 RECOVERY FOR TORT

Jurisdiction of federal court to enjoin picketing. 31 MLR 619.

179.35 DEFINITIONS

Lockouts and strikes by or against charitable hospitals prohibited. 33 MLR 41.

Right of municipal employees union to strike and to bargain collectively. 34 MLR 260.

Labor dispute disqualification provisions and lockout as they relate to unemployment compensation. 34 MLR 271.

Under the police power the legislature had authority to enact Laws 1947, Chapter 335, (coded as sections 179.35 to 179.39); and except as restricted by the provisions of the state constitution the above cited sections apply to the regents of the University of Minnesota. OAG July 8, 1947 (207-D).

179.36 STRIKES PROHIBITED

Right of municipal employees union to strike and to bargain collectively. 34 MLR 260.

Notice of intention to strike may be treated as a notice invoking the provisions of sections 179.35 to 179.39. OAG Nov. 13, 1950 (270-D-9).

179.38 ARBITRATION MANDATORY.

Conflict between state and federal legislation in arbitration of labor disputes in public utilities. 35 MLR 669.

Minnesota Constitution, Article VIII, Section 4, is not violated by the first sentence of section 179.38 and consequently the regents of the University of Minnesota are required to be present at a meeting designed to accomplish a conciliation of a dispute between the university and its employees. Section 179.38 other than the first section is unconstitutional as applies to the University of Minnesota because in conflict with the provisions of Minnesota Constitution, Article VIII, Section 4. OAG July 8, 1947 (270-D).

There being no statutory provisions authorizing payment of compensation of expense of an arbitrator appointed by the labor conciliator, they must be paid as provided in section 572.03. OAG April 27, 1949 (270-D-1).

179.40 SECONDARY BOYCOTT; DECLARATION OF POLICY

Secondary boycotts, 33 MLR 43.

Strike-bound carrier, use of secondary boycott, legislation to relieve. 33 MLR 255, 280.

The right to publicize labor disputes or problems through the medium of picketing, boycotting, and otherwise is guaranteed by the constitution as an incident of the right of "free speech, press, and assembly;" but while various means of economic suasion may be performed in the exercise of civil liberties guaranteed by both federal and state constitutions, the Hot Cargo and Secondary Boycott Act is unconstitutional because it is too sweeping, vague, and uncertain, because it permits prior censorship undeniably protected by constitutional guarantee of free speech and press, and because it makes enjoinable the mere combination or agreement resulting in the refusal by employees to handle goods for their employer because of a dispute between some other employer and his employees or a labor organization. In re Blaney, 30 Cal. 643, 184 Pac. (2) 893.

179.42 UNLAWFUL ACT AND UNFAIR LABOR PRACTICE

Peaceful picketing to accomplish a lawful purpose is an exercise of the right of free speech, but picketing cannot be used to compel an employer to coerce his employees to join a union contrary to existing law. Dayton Co. v Carpet & Floor Decorators Union, 229 M 87, 39 NW(2d) 183.

Section 179.42 does not violate Minnesota Constitution, Article I, Section 3, or United States Constitution, Amendment 14. Where the purpose of a strike is to coerce the employer into compelling non-union men to join the union, and where the union agreement does not provide for a closed or union shop, such action seems to change an existing agreement, and compliance with section 179.06 is necessary. In the absence of such compliance a strike was properly enjoined as an unfair labor practice and an unlawful act under section 179.11. Dayton Co. v Carpet & Floor Decorators Union, 229 M 87, 39 NW(2d) 183.

Where a legal agreement expressly confirms a prior oral understanding and states exactly what it confirms, is clear, unambiguous, and does not appear incomplete on its face or to vary its terms, it is inadmissible. The evidence sustained the finding that the purpose of labor union representatives in mailing a strike notice to the state labor conciliator was to compel the employer to discharge non-union employees or to compel non-union employees to join labor unions, which would consti-

tute an unfair labor practice on the part of the union unless negotiations pursuant to the statute were first engaged in where the union had no closed shop agreement with the employer and such a strike would be enjoined. Dayton Co. v Carpet & Floor Decorators Union, 229 M 87, 39 NW(2d) 183.

179.44 UNFAIR LABOR PRACTICE

A court of equity will enjoin the unlawful practice of law at the suit of a bar association; but the giving of legal advice or information by an industrial relations consultant, provided no separate fee is charged for the legal advice or information and provided the legal question is subordinate and incidental to a major nonlegal problem, is not unlawful practice of law. Auerbacher v Wood, 53 At. 800.

179.51 STRIKES BY PUBLIC EMPLOYEES PROHIBITED

HISTORY. 1951 c 146 s 1.

Employees of a municipal liquor store are subject to the "no strike" provisions of Laws 1951, Chapter 146. OAG Jan. 14, 1952 (279-D).

179.52 RIGHT OF COMPLAINT NOT LIMITED

HISTORY. 1951 c 146 s 2.

179.53 SUBMISSION OF GRIEVANCES

HISTORY. 1951 c 146 s 3.

179.54 VIOLATION, PENALTY

HISTORY. 1951 c 146 s 4.

179.55 REEMPLOYMENT OF STRIKING EMPLOYEE

HISTORY. 1951 c 146 s 5.

179.56 EMPLOYEE ENTITLED TO ESTABLISH FACT OF NO VIOLATION

HISTORY. 1951 c 146 s 6.

179.57 ADJUSTMENT PANEL

HISTORY. 1951 c 146 s 7.

A majority of public employees may request the appointment of an adjustment panel under Laws 1951, Chapter 146, Section 7. The inadequacy of compensation paid to public employees is a grievance within the meaning of the law regardless of any decision of a village council pertaining to the wages or compensation of a public employee. OAG Nov. 15, 1951 (270-D).

Members of a panel appointed under Laws 1951, Chapter 146, cannot be paid any compensation for services. The law permits payment of necessary expenses only. OAG Dec. 12, 1951 (270-D).

The authority of a city to contract must be found either in a charter or in the general laws of the state. Section 179.57 contains no reference to collective bargaining agreements between a municipality and its employees. OAG July 18, 1952 (270-D).

Members of a panel selected under the provisions of section 179.57 can be paid their necessary personal expenses; but whether incurrence of expenses by an individual panel member for stenographic and clerical work, supplies, and postage is a necessary expense presents a question of fact. Where a school board makes an allowance to a panel member for necessary expenses in a lesser sum than claimed, the action of the board is reviewable by certiorari. OAG Aug. 6, 1953 (270-D).