WEST VIRGINIA CODE: §21-1A-6

§21-1A-6. Prevention of unfair labor practices.

(a) The board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice specified in section four of this article. The authority and power to prevent unfair labor practices prescribed in this article is exclusively vested in the board, and shall be limited to the procedures provided in this section, except for the rights of action explicitly granted to and against employers and labor organizations by section seven of this article: Provided, That nothing contained in this article shall be deemed to preempt, limit or restrict any person in the enforcement or prosecution of any action now or at any time in the future in any court of this state to enforce any legal right or cause of action heretofore or otherwise existing under law, including, but not limited to, any right to injunctive relief against violence, threats of violence, mass picketing, obstruction, or injury or threatened injury to property or person, in connection with labor disputes.

(b) Whenever it is charged by a charge filed with the board that any person has engaged in or is engaging in any such unfair labor practice, the board's executive secretary, provided for in article one-b of this chapter, shall have power to investigate such charge and if he concludes that there is probable cause to believe that such person has engaged in or is engaging in such unfair labor practice, to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the board, at a place therein fixed, not less than ten days after the serving of said complaint: Provided, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the board and the service of a copy thereof upon the person against whom the charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the Armed Forces, in which event the six months' period shall be computed from the day of his discharge. Any such complaint may be amended by the board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise at a hearing scheduled thereon and give testimony. Any such hearing may be conducted by the board, any member thereof or any agent of the board designated by the board for such purpose. In the discretion of the board, member or agent conducting the hearing, any other person may be allowed to intervene in the said proceeding and present testimony. Any scheduled hearing may be continued by the board, member or agent conducting the hearing upon its or his own motion or for good cause shown by any person thereto.

(c) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in this subsection, with the following modifications or exceptions:

(1) Any such proceeding shall, so far as is practicable, be conducted in accordance with the

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rules of evidence as applied in civil cases in the circuit courts of this state; and

(2) The testimony taken by the board, member or agent conducting the hearing shall in every case be reduced to writing and filed with the board.

(d) For the purpose of conducting any such hearing any member of the board or agent designated to conduct such hearing shall have the power and authority to issue subpoenas and subpoenas duces tecum which shall be issued and served within the time, for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-a, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

(e) Subsequent to the conclusion of the hearing, the board, in its discretion, may upon notice take further testimony or hear argument.

(f) If upon consideration of the record by the board, and upon a preponderance of the evidence, the board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the board shall state its findings of fact and conclusions of law and shall issue and cause to be served upon such person, by certified mail, return receipt requested, an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees, with or without back pay, as will effectuate the purposes of this article. Such order may further require such person to make reports from time to time showing the extent to which such person has complied with the order. If upon the preponderance of the evidence the board shall not be of opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the board shall state its findings of fact and conclusions of law and shall issue an order dismissing the said complaint. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause.

(g) The decision of the board shall be final unless reversed, vacated or modified upon judicial review thereof in accordance with the provisions of subsection (h) of this section.

(h) The board shall have power to petition the circuit court of any county wherein the unfair labor practice in question occurred, for the enforcement of such order and for appropriate temporary relief or a restraining order. Any person aggrieved by a final order of the board granting or denying in whole or in part the relief sought may obtain a review of such order in the circuit court of any county wherein the unfair labor practice in question was alleged to have occurred, and such review may be had only in such court notwithstanding the provisions of section four, article five, chapter twenty-nine-a of this code. Upon the filing of any such petition for enforcement or review, the court shall have jurisdiction and power to grant such temporary relief or restraining order as it deems just and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in

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part, the order of the board. Except as provided above in this subsection any petition for review shall be governed by the provisions of section four, article five, chapter twenty-nine-a of this code with like effect as if the provisions of said section four were set forth in this subsection (h).

(i) The board shall have the power, upon issuance of a complaint as provided in subsection (b) of this section charging that any person has engaged in or is engaging in an unfair labor practice, to petition the circuit court of the county wherein the unfair labor practice in question is alleged to have occurred or to be occurring for appropriate temporary injunction or a restraining order. Upon the filing of any such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the board such temporary injunction or restraining order as it deems just and proper.

(j) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of subparagraphs (A), (B) or (C), subdivision (4), subsection (b), section four of this article, or subsection (e) of said section four or subdivision (7), subsection (b) of said section four, the preliminary investigation of such charge shall be made forthwith and given priority over all cases except cases of like character. If, after such investigation, the executive secretary of the board has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the board, petition the circuit court of any county wherein the unfair labor practice in question has occurred or is occurring, for appropriate temporary injunctive relief pending the final adjudication of the board with respect to such matter. Upon the filing of any such petition the circuit court shall have jurisdiction to grant such temporary injunctive relief or temporary restraining order as it deems just and proper.

(k) An appeal from any decision of a circuit court pursuant to this article may be had, notwithstanding the provisions of section one, article six, chapter twenty-nine-a of this code, by filing a petition for a writ of certiorari with the Supreme Court of Appeals of West Virginia within sixty days of the date of entry of final order by the circuit court.

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