

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1971



ENROLLED

*Committee Substitute
for*

HOUSE BILL No. 691

Originating in the Committee

(By Mr. on the Judiciary)



PASSED March 13 1971

In Effect July 1, 1971 Passage



FILED IN THE OFFICE
JOHN D. ROBERTSON, IV
SECRETARY OF STATE
THIS DATE 4-2-71

1691

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COMMITTEE SUBSTITUTE
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[Passed March 13, 1971; in effect July 1, 1971.]

AN ACT to amend and reenact article one-a, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said chapter by adding thereto a new article, designated article one-b, providing a labor-management relations act for the private sector; setting forth a public policy and the purposes of said article; relating to mediation; relating to decisions of the national labor relations board and of the courts with respect to the national labor relations act; defining terms; providing a rule for the determination of the existence of an agency relationship; relating to rights of employees; specifying various unfair

labor practices; relating to representatives of employees and petition and election procedures with respect thereto; authorizing intervention; relating to the prevention of unfair labor practices; specifying that said article one-a shall not preempt, limit or restrict various state court actions and remedies; authorizing actions to prevent unfair labor practices; providing that various provisions of the administrative procedures act shall be applicable; relating to suits by or against labor organizations; providing that labor organizations may sue or be sued as entities; relating to the service of summonses, subpoenas and other legal process under said article one-a; providing a severability clause; creating the West Virginia labor-management relations board; relating to its composition, the terms of its members, vacancies on the board and grounds for removal of members; relating to the quorum of such board; providing for an executive secretary of such board; relating to the oath of such board members and of the executive secretary; relating to the salary and expenses of the members of such board and of the execu-

tive secretary; relating to the employees of such board;

and relating to rules and regulations of such board.

Be it enacted by the Legislature of West Virginia:

That article one-a, chapter twenty-one, of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article one-b, all to read as follows:

ARTICLE 1A. LABOR-MANAGEMENT RELATIONS ACT FOR THE PRIVATE SECTOR.

§21-1A-1. Public policy and purposes of article; mediation; construction.

1 (a) It is hereby declared to be the public policy of
2 this state and the purposes of this article to encourage
3 the practice and procedure of collective bargaining by
4 protecting the exercise by employees of full freedom
5 of association, self-organization and designation of rep-
6 resentatives of their own choosing, for the purpose of
7 negotiating the terms and conditions of their employ-
8 ment or other mutual aid or protection; to prescribe
9 the legitimate rights of both employees and employers
10 in their relations; to provide orderly and peaceful pro-

11 cedures for preventing the interference by either with
12 the legitimate rights of the other; to protect the rights
13 of individual employees in their relations with labor
14 organizations; to define and prescribe practices on the
15 part of labor and management which are inimical to
16 the welfare, prosperity, health and peace of the people
17 of this state; and to protect the rights of the public in
18 connection with labor disputes. This article shall be
19 deemed an exercise of the police power of the state for
20 the protection of the welfare, prosperity, health and
21 peace of the people of this state.

22 (b) The commissioner of labor or his designated
23 representative may investigate and mediate labor dis-
24 putes between an employer and a labor organization,
25 whether or not a collective bargaining agreement ex-
26 ists between such parties providing both parties to such
27 dispute request in writing such intervention or provided
28 the commissioner offers such service to both parties and
29 both parties to the dispute agree in writing to the investi-
30 gation or mediation. The commissioner may arbitrate
31 such disputes or arrange for the selection of boards of

32 arbitration on such terms as all of the parties to such dis-
33 putes may agree upon. Records of the department re-
34 lating to labor disputes shall be confidential.

35 (c) This article is patterned after the provisions of the
36 "National Labor Relations Act," as amended, and except
37 insofar as the provisions of this article differ from the
38 provisions of said act, as amended, the decisions of the
39 national labor relations board and of the courts with
40 respect to said act, as amended, shall be authoritative in
41 the interpretation, administration and application of the
42 provisions of this article.

§21-1A-2. Definitions; determination of agency.

1 (a) When used in this article:

2 (1) "Person" includes one or more individuals, labor
3 organizations, partnerships, associations, corporations,
4 legal representatives, trustees, trustees in bankruptcy or
5 receivers.

6 (2) "Employer" includes any person acting as an agent
7 of an employer, directly or indirectly, who employs fif-
8 teen or more persons, but shall not include the United

9 States or any wholly owned United States government
10 corporation, or any federal reserve bank, or any person
11 subject to the provisions of the "National Labor Relations
12 Act," as amended, unless the national labor relations
13 board has declined to assert jurisdiction over such per-
14 son, or any person subject to the "Railway Labor Act,"
15 as amended from time to time, or any labor organizations,
16 other than when acting as an employer, or the state of
17 West Virginia or any political subdivision or agency
18 thereof, or any corporation or association operating a hos-
19 pital, if no part of the net earnings inures to the benefit
20 of any private shareholder or individual.

21 (3) "Employee" includes any employee, and shall not
22 be limited to the employees of a particular employer,
23 unless otherwise explicitly provided in this article, and
24 among others shall include any individual whose work
25 has ceased as a consequence of, or in connection with, any
26 current labor dispute or because of any unfair labor
27 practice, and who has not obtained any other regular and
28 substantially equivalent employment, but shall not in-
29 clude any individual employed in the production of agri-

30 cultural products or the processing or marketing of agri-
31 cultural products by the producer thereof, or in the do-
32 mestic service of any family or person at his home, or
33 any individual employed by his parent or spouse, or any
34 individual having the status of an independent con-
35 tractor, or any individual employed as a supervisor, or
36 any individual employed by any person who is not an
37 employer as herein defined.

38 (4) "Representative" includes any individual or labor
39 organization.

40 (5) "Labor organization" means any organization of
41 any kind, or any agency or employee representation com-
42 mittee or plan, in which employees participate and which
43 exists for the purpose, in whole or in part, of dealing
44 with employers concerning grievances, labor disputes,
45 wages, rates of pay, hours of employment, or conditions
46 of work.

47 (6) "Unfair labor practice" means any unfair labor
48 practice specified in section four of this article.

49 (7) "Labor dispute" or "dispute" includes any contro-
50 versy concerning terms, tenure or conditions of employ-

51 ment or concerning the association or representation of
52 persons in negotiating, fixing, maintaining, changing, or
53 seeking to arrange terms or conditions of employment,
54 regardless of whether the disputants stand in the proximate
55 relation of employer and employee.

56 (8) "Supervisor" means any individual having authority,
57 in the interest of the employer, to hire, transfer, suspend,
58 lay-off, recall, promote, discharge, assign, reward or discipline
59 other employees, or responsibly to direct them, or to adjust their
60 grievances, or effectively to recommend such action, if in connection
61 with the foregoing the exercise of such authority is not of a merely
62 routine or clerical nature, but requires the use of independent
63 judgment.

65 (9) "Professional employee" means (a) any employee
66 engaged in work (i) predominantly intellectual and varied in
67 character as opposed to routine mental, manual, mechanical or
68 physical work; (ii) involving the consistent exercise of discretion
69 and judgment in its performance; (iii) of such a character that
70 the output produced or the result accomplished cannot be standardized
71 in relation to

72 a given period of time; (iv) requiring knowledge of an
73 advanced type in a field of science or learning custom-
74 arily acquired by a prolonged course of specialized in-
75 tellectual instruction and study in an institution of higher
76 learning or a hospital, as distinguished from a general
77 academic education or from an apprenticeship or from
78 training in the performance of routine mental, manual, or
79 physical processes; or (b) any employee, who (i) has
80 completed the courses of specialized intellectual instruc-
81 tion and study described in (iv) of (a) of this subdivision
82 (9), and (ii) is performing related work under the
83 supervision of a professional person to qualify himself
84 to become a professional employees as defined in (a)
85 of this subdivision (9).

86 (b) In determining whether any person is acting as
87 an "agent" of another person so as to make such other
88 person responsible for his acts, for any purpose under this
89 article including suits by or against labor organizations,
90 the question of whether the specific acts performed were
91 actually authorized or subsequently ratified shall not
92 be controlling.

§21-1A-3. Rights of employees.

1 Employees shall have the right to self-organization, to
2 form, join or assist labor organizations, to bargain collec-
3 tively through representatives of their own choosing, and
4 to engage in other concerted activities for the purpose of
5 collective bargaining or other mutual aid or protection,
6 and shall also have the right to refrain from any or all
7 of such activities except to the extent that such right may
8 be affected by an agreement requiring membership in a
9 labor organization as a condition of employment as au-
10 thorized in subdivision (3), subsection (a), section four
11 of this article.

§21-1A-4. Unfair labor practices.

1 (a) It shall be an unfair labor practice for an em-
2 ployer:

3 (1) To interfere with, restrain or coerce employees in
4 the exercise of the rights guaranteed in section three of
5 this article;

6 (2) To dominate or interfere with the formation or
7 administration of any labor organization or contribute
8 financial or other support to it: *Provided*, That an em-

9 ployer shall not be prohibited from permitting employees
10 to confer with him during working hours without loss
11 of time or pay;

12 (3) By discrimination in regard to hire or tenure of
13 employment or any term or condition of employment,
14 to encourage or discourage membership in any labor or-
15 ganization: *Provided, however,* That nothing contained
16 in this article, or in any other statute of this state,
17 shall preclude an employer from making an agreement
18 with a labor organization (not established, maintained
19 or assisted by any action defined in this section as an
20 unfair labor practice) to require as a condition of em-
21 ployment membership therein on or after the thirtieth
22 day following the beginning of such employment or the
23 effective date of such agreement, whichever is the later,
24 (i) if such labor organization is the representative of
25 the employees as provided in section five of this article,
26 in the appropriate collective-bargaining unit covered by
27 such agreement when made, and (ii) unless following an
28 election held as provided in subsection (e), section five
29 of this article, within one year preceding the effective

30 date of such agreement, the board shall have certified
31 that at least a majority of the employees eligible to vote
32 in such election have voted to rescind the authority of
33 such labor organization to make such an agreement:
34 *Provided further*, That no employer shall justify any
35 discrimination against an employee for nonmembership
36 in a labor organization (A) if he has reasonable grounds
37 for believing that such membership was not available to
38 the employee on the same terms and conditions gener-
39 ally applicable to other members, or (B) if he has
40 reasonable grounds for believing that membership was
41 denied or terminated for reasons other than the failure
42 of the employee to tender the periodic dues and the initi-
43 ation fees uniformly required as a condition of acquir-
44 ing or retaining membership;

45 (4) To discharge or otherwise discriminate against
46 an employee because he has filed charges or given testi-
47 mony under this article; and

48 (5) To refuse to bargain collectively with the repre-
49 sentatives of his employees, subject to the provisions of
50 subsection (a), section five of this article.

51 (b) It shall be an unfair labor practice for a labor
52 organization or its agents:

53 (1) To restrain or coerce (A) employees in the exer-
54 cise of the rights guaranteed in section three of this
55 article: *Provided*, That this subdivision shall not impair
56 the right of a labor organization to prescribe its own
57 rules with respect to the acquisition or retention of
58 membership therein; or (B) an employer in the selec-
59 tion of his representatives for the purposes of collective
60 bargaining or the adjustment of grievances;

61 (2) To cause or attempt to cause an employer to dis-
62 criminate against an employee in violation of subdivi-
63 sion (3), subsection (a) of this section or to discriminate
64 against an employee with respect to whom membership
65 in such organization has been denied or terminated on
66 some ground other than his failure to tender the peri-
67 odic dues and the initiation fees uniformly required as
68 a condition of acquiring or retaining membership;

69 (3) To refuse to bargain collectively with an em-
70 ployer, provided it is the representative of his em-

71 ployees subject to the provisions of subsection (a), sec-
72 tion five of this article;

73 (4) (i) To engage in or induce or encourage any
74 individual employed by any person to engage in, a
75 strike or a refusal in the course of employment to use,
76 manufacture, process, transport, or otherwise handle or
77 work on any goods, articles, materials or commodities
78 or to perform any services; or (ii) to threaten, coerce,
79 or restrain any person, where in either case an object
80 thereof is:

81 (A) Forcing or requiring any employer or self-
82 employed person to join any labor or employer organi-
83 zation or to enter into any agreement which is pro-
84 hibited by subsection (e) of this section;

85 (B) Forcing or requiring any person to cease using,
86 selling, handling, transporting or otherwise dealing in
87 the products of any other producer, processor or manu-
88 facturer, or to cease doing business with any other
89 person, or forcing or requiring any other employer to
90 recognize or bargain with a labor organization as the
91 representative of his employees unless such labor or-

92 ganization has been certified as the representative of
93 such employees under the provisions of section five of
94 this article: *Provided*, That nothing contained in this
95 clause (B) shall be construed to make unlawful, where
96 not otherwise unlawful, any primary strike or primary
97 picketing;

98 (C) Forcing or requiring any employer to recognize
99 or bargain with a particular labor organization as the
100 representative of his employees if another labor organi-
101 zation has been certified as the representative of such
102 employees under the provisions of section five of this
103 article;

104 (D) Forcing or requiring any employer to assign
105 particular work to employees in a particular labor or-
106 ganization or in a particular trade, craft or class rather
107 than to employees in another labor organization or in
108 another trade, craft or class, unless such employer is
109 failing to conform to an order of certification of the
110 board determining the bargaining representative for
111 employees performing such work: *Provided*, That noth-
112 ing contained in this subsection (b) shall be construed

113 to make unlawful a refusal by any person to enter upon
114 the premises of any employer (other than his own em-
115 ployer), if the employees of such employer are engaged
116 in a strike ratified or approved by a representative of
117 such employees whom such employer is required by law
118 to recognize;

119 (5) To require of employees covered by an agree-
120 ment authorized under subdivision (3), subsection (a)
121 of this section, the payment, as a condition precedent
122 to becoming a member of such organization, of a fee in
123 an amount which the board finds excessive or discrimi-
124 natory under all the circumstances. In making such a
125 finding, the board shall consider, among other relevant
126 factors, the practices and customs of labor organizations
127 in the particular industry, and the wages currently paid
128 to the employees affected;

129 (6) To cause or attempt to cause an employer to pay
130 or deliver or agree to pay or deliver any money or other
131 thing of value, in the nature of an exaction, for services
132 which are not performed or not to be performed; and

133 (7) To picket or cause to be picketed, or threaten

134 to picket or cause to be picketed, any employer where
135 an object thereof is forcing or requiring an employer
136 to recognize or bargain with a labor organization as the
137 representative of his employees, or forcing or requiring
138 the employees of an employer to accept or select such
139 labor organization as their collective bargaining repre-
140 sentative, unless such labor organization is currently
141 certified as the representative of such employees:

142 (A) Where the employer has lawfully recognized in
143 accordance with this article any other labor organization
144 and a question concerning representation may not ap-
145 propriately be raised under subsection (c), section five
146 of this article;

147 (B) Where within the preceding twelve months a
148 valid election under subsection (c), section five of this
149 article has been conducted; or

150 (C) Where such picketing has been conducted without
151 a petition under subsection (c), section five of this article
152 being filed within a reasonable period of time not to
153 exceed fifteen days from the commencement of such
154 picketing: *Provided*, That when such a petition has been

155 filed the board shall forthwith, without regard to the
156 provisions of said subsection (c), section five or the ab-
157 sence of a showing of a substantial interest on the part
158 of the labor organization, direct an election in such unit
159 as the board finds to be appropriate and shall certify the
160 results thereof. Nothing in this subdivision (7) shall
161 be construed to permit any act which would otherwise
162 be an unfair labor practice under this subsection (b).

163 (c) The expressing of any views, argument or opinion,
164 or the dissemination thereof, whether in written, printed,
165 graphic or visual form, shall not constitute or be evidence
166 of an unfair labor practice, or be prohibited under this
167 article, if such expression contains no threat of reprisal
168 or force or promise of benefit.

169 (d) For the purposes of this section, to bargain col-
170 lectively is the performance of the mutual obligation of
171 the employer and the representative of the employees to
172 meet at reasonable times and confer in good faith with
173 respect to wages, hours and other terms and conditions
174 of employment, or the negotiation of an agreement, or
175 any question arising thereunder, and the execution of a

176 written contract incorporating any agreement reached if
177 requested by either party, but such obligation does not
178 compel either party to agree to a proposal or require-
179 the making a concession: *Provided*, That where there is
180 in effect a collective-bargaining contract covering em-
181 ployees, the duty to bargain collectively shall also mean
182 that no party to such contract shall terminate or modify
183 such contract, unless the party desiring such termination
184 or modification:

185 (1) Gives a written notice to the other party of the
186 proposed termination or modification sixty days prior
187 to the expiration date thereof, or in the event such con-
188 tract contains no expiration date, sixty days prior to the
189 time it is proposed to make such termination or modifica-
190 tion;

191 (2) Offers to meet and confer with the other party
192 for the purpose of negotiating a new contract or a con-
193 tract containing the proposed modifications;

194 (3) Notifies the commissioner of labor of the exis-
195 tence of a dispute;

196 (4) Continues in full force and effect, without resort-
197 ing to strike or lockout, all the terms and conditions of
198 the existing contract for a period of sixty days after such
199 notice is given or until the expiration date of such con-
200 tract, which ever occurs later. The duties imposed upon
201 employers, employees, and labor organizations by sub-
202 divisions (2), (3) and (4) of this subsection (d) shall
203 become inapplicable upon an intervening certification
204 of the board, under which the labor organization or in-
205 dividual, which is a party to the contract, has been super-
206 ^aceded as or ceased to be the representative of the em-
207 ployees subject to the provisions of subsection (a), section
208 five of this article, and the duties so imposed shall not be
209 construed as requiring either party to discuss or agree
210 to any modification of the terms and conditions contained
211 in a contract for a fixed period, if such modification is to
212 become effective before such terms and conditions can
213 be reopened under the provisions of the contract. Any
214 employee who engages in a strike within the sixty-day
215 period specified in this subsection shall lose his status
216 as an employee of the employer engaged in the particular

217 labor dispute, for the purposes of sections three, four
218 and five of this article, but such loss of status for such
219 employee shall terminate if and when he is reemployed by
220 such employer.

221 (e) It shall be an unfair labor practice for any labor
222 organization and any employer to enter into any contract
223 or agreement, express or implied, whereby such em-
224 ployer ceases or refrains or agrees to cease or refrain
225 from handling, using, selling, transporting, or otherwise
226 dealing in any of the products of any other employer, or to
227 cease doing business with any other person and any such
228 contract or agreement entered into heretofore or here-
229 after shall be to such extent unenforceable and void.

§21-1A-5. Representatives and elections.

1 (a) Representatives designated or selected for the
2 purposes of collective bargaining by the majority of the
3 employees in a unit appropriate for such purposes, shall
4 be the exclusive representatives of all the employees in
5 such unit for the purposes of collective bargaining with
6 respect to rates of pay, wages, hours of employment or
7 other conditions of employment.

8 (b) The board shall decide in each case whether, in
9 order to assure to employees the fullest freedom in exer-
10 cising the rights guaranteed by this article, the unit ap-
11 propriate for the purposes of collective bargaining shall
12 be the employer unit, craft unit, plant unit, or subdivision
13 thereof: *Provided*, That the board shall not (1) decide
14 that any unit is appropriate for such purposes if such
15 unit includes both professional employees and employees
16 who are not professional employees unless a majority of
17 such professional employees vote for inclusion in such
18 unit; or (2) decide that any craft unit is inappropriate for
19 such purposes on the ground that a different unit has
20 been established by a prior board determination, unless
21 a majority of the employees in the proposed craft unit
22 vote against separate representation; or (3) decide that
23 any unit is appropriate for such purposes if it includes,
24 together with other employees, any individual employed
25 as a guard to enforce against employees and other persons
26 rules to protect property of the employer or to protect
27 the safety of persons on the employer's premises; but no
28 labor organization shall be certified as the representative
29 of employees in a bargaining unit of guards if such organi-

30 zation admits to membership, or is affiliated directly or in-
31 directly with an organization which admits to member-
32 ship, employees other than guards.

33 (c) (1) Whenever a petition shall have been filed, in
34 accordance with such regulations as may be prescribed
35 by the board:

36 (A) By an employee or group of employees or any
37 individual or labor organization acting in their behalf
38 alleging that employees (i) wish to be represented for
39 collective bargaining and that their employer declines to
40 recognize their representative as the representative de-
41 fined in subsection (a) of this section, or (ii) assert that
42 the individual or labor organization, which has been cer-
43 tified or is being currently recognized by their employer
44 as the bargaining representative, is no longer a represen-
45 tative as defined in subsection (a) of this section; or

46 (B) By an employer, alleging that one or more in-
47 dividuals or labor organizations have presented to him a
48 claim to be recognized as the representative defined in
49 subsection (a) of this section; the board shall investigate
50 such petition and if it has reasonable cause to believe

51 that a question of representation exists shall provide for
52 an appropriate hearing upon due notice. If the board
53 finds upon the record of such hearing that such a ques-
54 tion of representation exists, it shall direct an election
55 by secret ballot and shall certify the results thereof.

56 (2) Any labor organization may intervene in the pro-
57 cedures provided for in this subsection upon the filing
58 with the board of a petition alleging that it represents
59 one or more employees in the unit with respect to which
60 a question of representation exists. If the board finds the
61 allegation to be valid and the unit to be appropriate, it
62 shall order an election and shall order that the name of
63 such intervening labor organization be included among
64 the choices on the secret ballot to be used in such elec-
65 tion. If the board finds that the petition is invalid, the
66 board may dismiss the petition or permit such petition to
67 be amended in accordance with the procedures estab-
68 lished by such board.

69 (3) No election shall be directed in any bargaining
70 unit or any subdivision within which, in the preceding
71 twelve-month period, a valid election shall have been

72 held. Employees engaged in an economic strike who are
73 not entitled to reinstatement shall be ^{eligible} eligible to vote
74 under such regulations as the board shall find consistent
75 with the purposes and provisions of this article in any
76 election conducted within twelve months after the com-
77 mencement of the strike. In any election where none of
78 the choices on the ballot receives a majority, a run-off
79 shall be conducted, the ballot providing for a selection
80 between the two choices receiving the largest and second
81 largest number of valid votes cast in the election.

82 (4) Nothing contained in this section shall be con-
83 strued as prohibiting the waiving of hearings by stipula-
84 tion for the purpose of a consent election in conformity
85 with regulations of the board.

86 (5) In determining whether a unit is appropriate for
87 the purposes specified in subsection (b) of this section
88 the extent to which the employees have organized shall
89 not be controlling.

90 (d) Upon the filing with the board, by thirty per
91 centum or more of the employees in a bargaining unit
92 covered by an agreement between their employer and a

93 labor organization made pursuant to subdivision (3),
94 subsection (a), section four of this article, of a petition
95 alleging that they desire that such authority be rescinded,
96 the board shall take a secret ballot of the employees in
97 such unit and certify the results thereof. No election
98 shall be conducted pursuant to this subsection in any
99 bargaining unit or any subdivision within which, in the
100 preceding twelve-month period, a valid election shall
101 have been held.

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

1 (a) The board is empowered, as hereinafter provided,
2 to prevent any person from engaging in any unfair labor
3 practice specified in section four of this article. The
4 authority and power to prevent unfair labor practices
5 prescribed in this article is exclusively vested in the
6 board, and shall be limited to the procedures provided in
7 this section, except for the rights of action explicitly
8 granted to and against employers and labor organiza-
9 tions by section seven of this article: *Provided*, That
10 nothing contained in this article shall be deemed to pre-
11 empt, limit or restrict any person in the enforcement or

12 prosecution of any action now or at any time in the future
13 in any court of this state to enforce any legal right or
14 cause of action heretofore or otherwise existing under
15 law, including, but not limited to, any right to injunctive
16 relief against violence threats of violence, mass picket-
17 ing, obstruction, or injury or threatened injury to prop-
18 erty or person, in connection with labor disputes.

19 (b) Whenever it is charged by a charge filed with
20 the board that any person has engaged in or is engag-
21 ing in any such unfair labor practice, the board's exec-
22 utive secretary, provided for in article one-b of this
23 chapter, shall have power to investigate such charge
24 and if he concludes that there is probable cause to be-
25 lieve that such person has engaged in or is engaging in
26 such unfair labor practice, to issue and cause to be
27 served upon such person a complaint stating the charges
28 in that respect, and containing a notice of hearing be-
29 fore the board, at a place therein fixed, not less than ten
30 days after the serving of said complaint: *Provided*, That
31 no complaint shall issue based upon any unfair labor
32 practice occurring more than six months prior to the

33 filing of the charge with the board and the service of a
34 copy thereof upon the person against whom the charge
35 is made, unless the person aggrieved thereby was pre-
36 vented from filing such charge by reason of service in
37 the armed forces, in which event the six months' period
38 shall be computed from the day of his discharge. Any
39 such complaint may be amended by the board in its dis-
40 cretion at any time prior to the issuance of an order
41 based thereon. The person so complained of shall have
42 the right to file an answer to the original or amended
43 complaint and to appear in person or otherwise at a
44 hearing scheduled thereon and give testimony. Any such
45 hearing may be conducted by the board, any member
46 thereof or any agent of the board designated by the board
47 for such purpose. In the discretion of the board, member
48 or agent conducting the hearing, any other person may
49 be allowed to intervene in the said proceeding and
50 present testimony. Any scheduled hearing may be con-
51 tinued by the board, member or agent conducting the
52 hearing upon its or his own motion or for good cause
53 shown by any person thereto.

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

61 (1) Any such proceeding shall, so far as is practicable,
62 be conducted in accordance with the rules of evidence
63 as applied in civil cases in the circuit courts of this
64 state; and

65 (2) The testimony taken by the board, member or
66 agent conducting the hearing shall in every case be re-
67 duced to writing and filed with the board.

68 (d) For the purpose of conducting any such hearing
69 any member of the board or agent designated to con-
70 duct such hearing shall have the power and authority
71 to issue subpoenas and subpoenas duces tecum which
72 shall be issued and served within the time, for the fees
73 and shall be enforced, as specified in section one, article
74 five of said chapter twenty-nine-a, and all of the said

75 section one provisions dealing with subpoenas and sub-
76 poenas duces tecum shall apply to subpoenas and sub-
77 poenas duces tecum issued for the purpose of a hearing
78 hereunder.

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

82 (f) If upon consideration of the record by the board,
83 and upon a preponderance of the evidence, the board
84 shall be of the opinion that any person named in the
85 complaint has engaged in or is engaging in any such
86 unfair labor practice, then the board shall state its find-
87 ings of fact and conclusions of law and shall issue and
88 cause to be served upon such person, by certified mail,
89 return receipt requested, an order requiring such per-
90 son to cease and desist from such unfair labor practice,
91 and to take such affirmative action including reinstate-
92 ment of employees, with or without back pay, as will
93 effectuate the purposes of this article. Such order may
94 further require such person to make reports from time
95 to time showing the extent to which such person has

96 complied with the order. If upon the preponderance of
97 the evidence the board shall not be of opinion that the
98 person named in the complaint has engaged in or is
99 engaging in any such unfair labor practice, then the
100 board shall state its findings of fact and conclusions of
101 law and shall issue an order dismissing the said com-
102 plaint. No order of the board shall require the rein-
103 statement of any individual as an employee who has been
104 suspended or discharged, or the payment to him of any
105 back pay, if such individual was suspended or discharged
106 for cause.

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

111 (h) The board shall have power to petition the cir-
112 cuit court of any county wherein the unfair labor prac-
113 tice in question occurred, for the enforcement of such
114 order and for appropriate temporary relief or a restrain-
115 ing order. Any person aggrieved by a final order of the
116 board granting or denying in whole or in part the relief

117 sought may obtain a review of such order in the circuit
118 court of any county wherein the unfair labor practice in
119 question was alleged to have occurred, and such review
120 may be had only in such court notwithstanding the pro-
121 visions of section four, article five, chapter twenty-nine-a
122 of this code. Upon the filing of any such petition for en-
123 forcement or review, the court shall have jurisdiction
124 and power to grant such temporary relief or restraining
125 order as it deems just and to make and enter a decree
126 enforcing, modifying, and enforcing as so modified, or
127 setting aside in whole or in part, the order of the board.
128 Except as provided above in this subsection any petition
129 for review shall be governed by the provisions of section
130 four, article five, chapter twenty-nine-a of this code with
131 like effect as if the provisions of said section four were
132 set forth in this subsection (h).

133 (i) The board shall have the power, upon issuance of
134 a complaint as provided in subsection (b) of this sec-
135 tion charging that any person has engaged in or is en-
136 gaging in an unfair labor practice, to petition the cir-
137 cuit court of the county wherein the unfair labor prac-

138 tice in question is alleged to have occurred or to be
139 occurring for appropriate temporary injunction or a re-
140 straining order. Upon the filing of any such petition, the
141 court shall cause notice thereof to be served upon such
142 person, and thereupon shall have jurisdiction to grant to
143 the board such temporary injunction or restraining order
144 as it deems just and proper.

145 (j) Whenever it is charged that any person has en-
146 gaged in an unfair labor practice within the meaning
147 of subparagraphs (A), (B) or (C), subdivision (4), sub-
148 section (b), section four of this article, or subsection (e)
149 of said section four or subdivision (7), subsection (b)
150 of said section four, the preliminary investigation of
151 such charge shall be made forthwith and given priority
152 over all cases except cases of like character. If, after
153 such investigation, the executive secretary of the board
154 has reasonable cause to believe such charge is true and
155 that a complaint should issue, he shall, on behalf of the
156 board, petition the circuit court of any county wherein
157 the unfair labor practice in question has occurred or is
158 occurring, for appropriate temporary injunctive relief

159 pending the final adjudication of the board with respect
160 to such matter. Upon the filing of any such petition the
161 circuit court shall have jurisdiction to grant such tem-
162 porary injunctive relief or temporary restraining order
163 as it deems just and proper.

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

§21-1A-7. Suits by or against labor organizations.

1 (a) Suits for violation of contracts between an em-
2 ployer and a labor organization, or between labor organi-
3 zations, may be brought in any circuit court of this state
4 having jurisdiction of the parties.

5 (b) It shall be unlawful for any labor organization
6 to engage in any activity or conduct defined as an unfair
7 labor practice in subdivisions (4), subsection (b), sec-
8 tion four of this article; and whoever shall be injured in

9 his business or property by reason of any such viola-
10 tion may sue therefor in the circuit court of any county
11 wherein such unfair labor practice occurred, and shall
12 recover the damages by him sustained and the cost of
13 the suit.

14 (c) Any labor organization and any employer shall
15 be bound by the acts of its agents. Notwithstanding any
16 other provision of law or rule to the contrary, any such
17 labor organization may sue or be sued as an entity and
18 in behalf of the employees whom it represents. Any
19 money judgment against a labor organization in a suit
20 under this section shall be enforceable only against the
21 organization as an entity and against its assets, and shall
22 not be enforceable against any individual member or
23 his assets.

24 (d) For the purposes of actions and proceedings by
25 or against labor organizations, the circuit courts of
26 this state shall be deemed to have jurisdiction of a labor
27 organization in the county in which such organization
28 maintains its principal offices, or in any county in which
29 its duly authorized officers or agents are engaged in
30 representing or acting for employee members.

31 (e) The service of summons, subpoena, or other legal
32 process of any circuit court of this state upon an officer or
33 agent of a labor organization, in his capacity as such,
34 shall constitute service upon the labor organization.

§21-1A-8. Severability.

1 If any provision of this article, or the application of
2 any provisions to any person or circumstance, shall be
3 held invalid, the remainder of this article, or the applica-
4 tion of any such provision to persons or circumstances
5 other than those as to which it is held invalid, shall not
6 be affected thereby.

**ARTICLE 1B. WEST VIRGINIA LABOR-MANAGEMENT RE-
LATIONS BOARD.**

**§21-1B-1. West Virginia labor-management relations board
created; members; appointment and vacancies;
quorum; executive secretary; oath, compensation
and expenses; meeting places and times.**

1 (a) There is hereby created the "West Virginia Labor-
2 Management Relations Board" (hereinafter called the
3 "board") which shall consist of three members, appointed
4 by the governor by and with the advice and consent of
5 the Senate, for terms of five years and until their suc-
6 cessors have been appointed and have qualified, except

7 that the terms of the members first appointed shall be
8 for three, four and five years, respectively, as designated
9 by the governor at the time of their appointment, and
10 until their successors have been appointed and have
11 qualified. The governor shall designate one member to
12 serve as chairman of the board. Not more than two of
13 the members shall be members of the same political
14 party. Vacancies shall be filled by appointment by the
15 governor for the unexpired term of the member whose
16 office shall be vacant and such appointment shall be made
17 within sixty days of the occurrence of such vacancy.
18 Notwithstanding the provisions of section four, article
19 six, chapter six of this code, any member of the board
20 may be removed by the governor for neglect of duty,
21 gross immorality or malfeasance in office, but for no
22 other cause.

23 (b) A vacancy on the board shall not impair the
24 right of the remaining members to exercise all of the
25 powers of the board, and two members of the board
26 shall, at all times, constitute a quorum of the board,
27 provided such two members be in agreement as to any

28 action to be taken. Any member may be appointed any
29 number of times.

30 (c) There shall be an executive secretary of the board
31 who shall be an attorney licensed to practice law in this
32 state, and who shall be appointed by the governor, by
33 and with the advice and consent of the Senate, for a term
34 of four years and until his successor has been appointed
35 and has qualified. Any person may be appointed execu-
36 tive secretary any number of times. The executive sec-
37 retary of the board shall have final authority, on behalf
38 of the board, with respect to the investigation of charges
39 and the issuance of complaints under section six, article
40 one-a of this chapter and with respect to the prosecution
41 of such complaints before the board, and shall have such
42 other duties as the board may prescribe or as may here-
43 after be provided by law.

44 (d) Before entering upon the performance of his
45 duties, each member of the board and the executive sec-
46 retary shall take and subscribe to the oath prescribed
47 by section five, article four of the constitution.

48 (e) Each member of the board shall be paid one
49 hundred dollars per diem for actual time spent in the
50 performances of his duties under article one-a of this
51 chapter, under this article and under any other article
52 of this chapter in which the board is expressly assigned
53 responsibility, jurisdiction and duties to be exercised
54 and performed. The executive secretary of the board
55 shall receive an annual salary of twenty thousand dollars.
56 The members of the board and the executive secretary
57 shall be reimbursed for all reasonable and necessary
58 expenses actually incurred in the discharge of their duties
59 under said article one-a, this article and under any other
60 article of this chapter in which such board and executive
61 secretary are expressly assigned responsibility, jurisdic-
62 tion and duties to be exercised and performed.

63 (f) The principal office of the board shall be in
64 Charleston, Kanawha county, West Virginia, but it may
65 meet and exercise any or all of its powers at any other
66 place within this state. The board may meet as often as
67 necessary to exercise and perform its responsibilities,
68 jurisdiction and duties.

§21-1B-2. Employees.

1 The board shall have the authority to hire such at-
2 torneys admitted to practice law in this state and other
3 employees as it may from time to time find necessary for
4 the proper exercise and performance of its responsibil-
5 ities, jurisdiction and duties. Any such attorneys so hired
6 may, at the direction of the board, appear for and rep-
7 resent the board in any case in any court in which ad-
8 mitted to practice.

§21-1B-3. Rules and regulations.

1 The board shall have the authority from time to time
2 to make, amend and rescind such rules and regulations as
3 may be necessary to implement and carry out the pro-
4 visions of article one-a of this chapter, this article and
5 any other article of this chapter in which the board is
6 expressly assigned responsibility, jurisdiction and duties
7 to be exercised and performed, all such rules and regula-
8 tions to be promulgated pursuant to chapter twenty-
9 nine-a of this code.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Russell D. Beall

Chairman Senate Committee

Phyllis J. Rutledge

Chairman House Committee

Originated in the House.

Takes effect July 1, 1971.

Howard Meyer

Clerk of the Senate

C. L. Blankenship

Clerk of the House of Delegates

E. Hans McLean

President of the Senate

Lewis D. McManus

Speaker House of Delegates

The within *approved* this the *1st*
day of *April*, 1971.

Arch A. Shivers, Jr.

Governor



PRESENTED TO THE
GOVERNOR

Date 3/22/71

Time 3:10 p.m.

RECEIVED

APR 2 11 54 PM '71

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA