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PUTTING THE WISCONSIN EMPLOYMENT PEACE ACT INTO EFFECT: THE FIRST TEN YEARS

JUSTIN C. SMITH*

Periodic and persistent attempts to amend rather than to repeal the Wisconsin Employment Peace Act in the decade immediately following its passage suggest a dichotomy which has never been satisfactorily resolved. Some have suggested that these attempts were the belated efforts of organized labor to close ranks during a period of extreme political conservatism. Others have indicated that they were the efforts of individual legislators to demonstrate to their constituents their sympathy with a rapidly growing labor movement. Still others have viewed them as attempts to check the apparent harshness of an act heralded as "eight years ahead of its time." In view of the divergency of opinion, this article will review the ten year period immediately following the passage of the act and to reach some conclusion as to why certain amendments were introduced and possible reasons for their acceptance or rejection.

As noted before, the WEPA, or the Peace Act as it is popularly known, was the product of forces aligned with the state's agriculture interests. The fact that the legislation was enacted substantially as it had been written by its sponsor's draftsman suggests the purpose with which the Wisconsin Council on Agriculture Co-operative moved in the

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2 For a brief description of the legislative history surrounding the Act's passage see Smith, Background and Events Leading up to the Passage of the Wisconsin Employment Peace Act, 12 LAB. L. J. 23 (1961).
5 Ibid note 2. See also Swanton, Review of the Role of the Wisconsin Council on Agriculture Co-Operative, about labor relations in Wisconsin, (A statement prepared by the Council's executive secretary on file with the Wisconsin Council on Agriculture Co-Operative, Madison, Wisconsin).
6 Ibid, note 2. See also Memorandum by Walter Bender, Answers to Specific Objections to Bill No. 154A, presented at a hearing before Joint Finance Committee on April 12, 1939, on file with the Wisconsin Council on Agriculture Co-Operative, Madison, Wisconsin.
spring of 1939. It is also worth noting in connection with the latter ob-
servation that the act as passed was the product of but two years dis-
satisfaction with the state's "Little Wagner Act."*

LABOR'S REACTION TO BILL 154A

Both the American Federation of Labor and the then emerging Con-
gress of Industrial Organizations saw Bill 154A (later to be enacted as
the Peace Act) as a potential threat to their organizational activities. At
a meeting called by the Agriculture Council to lay the foundation for
their proposed legislation, both organizations expressed dismay over the
apparent breakdown in communications between agriculture and labor.10
In fact, a senior spokesman for the CIO noted that "the farmer and
organized labor had in the past joined forces in the fight against the
packing companies and the buying industries."11 However, labor's posi-
tion was weakened as late as February, 1939, when the AFL refused to
join forces with the CIO in opposition to Bill 154A. Some attributed this
schism to the fact that the AFL had already called a two-day legislative
conference to convene in Madison to coincide with final hearings on the
bill.12 Although the hearings proved to be the most turbulent the state
had seen, the Assembly passed the Peace Act by a vote of 53 to 43 on
March 9, 1939. Eleven days thereafter the Senate voted its final approval
of the act by a vote of 22 to 11. In the last days of April, organized la-
bor, still outwardly confident of its position, predicted that the bill would
fail at the hands of the governor. However, on May 2 Governor Heil
signed the Peace Act. For all practical purposes the old Board had ceased
to function with the announcement that its General Counsel had ten-
dered his resignation April 1. The governor was then faced with the
immediate problem of selecting a new Board.

Those named to the new Board were: Henry C. Fuldner of Mil-
waukee, Floyd Green of La Crosse, and Lawrence E. Gooding of Fond
du Lac. Prior to his appointment as the industrial representative to the
Board, Mr. Fuldner has been associated with the building industry in
Milwaukee County. Mr. Green, the labor representative to the Board,
had served for some time prior to his appointment as the legislative rep-
resentative of the Independent Brotherhood of Locomotive Enginemen
and Firemen. At the time of his appointment Green was a LaFollette
appointee to the state Public Service Commission. Lawrence Gooding,
the public member of the Board and also its chairman, came to the
Board directly from the private practice of law.

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7 Ibid, note 2 at p. 30.
8 Wis. Laws 1937, Ch. 51; Wis. Stat. Ch. 111 (1937), repealed by Wis. Laws
1939, Ch. 57.
9 January 19, 1939.
10 The Capitol Times (Madison), January 19, 1939.
11 Ibid.
12 The Capitol Times (Madison), February 17, 1939.
From the outset the Board, in lieu of defining its jurisdiction through administrative orders, relied on case by case findings for deciding when it would take jurisdiction. The first test of the Board's jurisdiction came when the Allen-Bradley Company filed a complaint with the Board regarding violence arising out of a dispute on a picket line. During this period both the CIO and AFL advised their members to "ignore the present state labor law." As a result of Board intervention in the Allen-Bradley matter, Local 1111 of the United Electrical, Radio, and Machinists Union petitioned the circuit court for Milwaukee County for an injunction restraining the state Board from hearing the Allen-Bradley complaint on the grounds that the matter came under the jurisdiction of the NLRB. However, the Board (WERB), pending final judicial determination of its jurisdiction, heard the matter and ordered the union to cease and desist from five specific acts: (1) mass picketing, (2) threatening employees, (3) obstructing and interfering with the public's use of the streets surrounding the plant, and (5) picketing the homes of the company's employees. The Board further limited the number of pickets on a given picket line to not more than fifteen.

Subsequently the case reached the United States Supreme Court, which affirmed the decision of the Wisconsin Supreme Court upholding the Board's jurisdiction:

In sum, we cannot say that the mere enactment of the National Labor Relations Act, without more, excluded state regulation of the type which Wisconsin has exercised in this case. It has not been shown that any employee was deprived of rights protected or granted by the Federal Act or that the status of any of them under this Act was impaired.\(^1\)

The first break in organized labor's boycott of the newly created Board came in mid-August. The case resulted from the discharge of three charwomen, allegedly for union activities, and was brought by the Building Service Employees Union, AFL. After a widely publicized hearing the Board found the employer, the Century Building Company, guilty of an unfair labor practice and ordered the women reinstated with back pay.\(^1\)

However, the real turning point in labor's attitude toward the act came in January of 1940 when Joseph A. Padway, then general counsel for the AFL, stated:

In the proper kinds of cases we should now go before the state board, for if we don't the employers will. So that we do not always appear as the defendants, we must now go before the board, although we shall not relax our opposition to the law.\(^1\)

\(^1\) Allen-Bradley Local 1111 v. WERB, 315 U.S. 740 (1942), affirming 237 Wis. 164, 295 N.W. 791 (1941).
\(^1\) Century Building Co. v. WERB, 235 Wis. 376, 291 N.W. 305 (1940).
\(^1\) Capitol Times (Madison), Jan. 6, 1940.
Padway further cautioned:

The state labor act must be attacked.... Labor must make its record before the board and in the courts with respect to the state labor law. It can not make a good record if it continues to permit employers to go before the board all the time with cases which are definitely to the employer's liking.\textsuperscript{16}

At the same meeting Henry Ohl, president of the Wisconsin State Federation of Labor, stated:

Our policy toward the state board has not been altered.... We have nothing against the personnel of the board, and the time may come when we will find it wise to submit to the board some cases. But let us do as we did before, handling each case upon its own merits, and it may develop so that we frequently go to the state labor board.\textsuperscript{17}

In concluding their remarks both Padway and Ohl urged union affiliates to submit all cases to the State Federation for consideration before going to the State Board, a practice which the former State Federation of Labor has encouraged over the years.

Complicating Milwaukee County labor matters was the then popular idea that Milwaukee labor problems were different from those in the rest of the state. The idea received widespread attention when Mayor-elect Carl F. Zeidler early in April of 1940 announced that what Milwaukee needed was a separate nine-man board to settle disputes in a "neighborly fashion." According to Zeidler a board with "hometown understanding" was all that was necessary. The idea met with a cool reception from labor and in June, under pressure from organized labor, the mayor announced that he was abandoning his plans for a city labor board.

Early in its existence the Board announced that it did not consider the union security provisions of the state and national acts to be in conflict.\textsuperscript{18} Shortly thereafter the Board initiated the first contempt proceedings brought under the Peace Act.\textsuperscript{19}

The first annual report of the WERB, for the period from July 1, 1939, to June 30, 1940,\textsuperscript{20} indicated that the Board during the subject period had processed 178 labor controversies involving 31,983 workers. The Board also stated that it had participated in the settlement of 24 strikes involving 9,784 workers. Unfair labor practice charges disposed of by the Board during this period numbered 47. The Board conducted

\textsuperscript{16} Ibid.
\textsuperscript{17} Ibid.
\textsuperscript{18} Island Woolen Co., WERB Dec. No. 54 (1940).
\textsuperscript{19} WERB v. Milk and Ice Cream Drivers and Dairy Employees Union Local 225, 233 Wis. 379, 299 N.W. 31 (1941).
\textsuperscript{20} W.E.R.B. ANN. REP. (1939).
37 elections involving 5,362 employees, with organized labor winning 22 of those elections.

With the United States declaration of war against Japan and an influx of defense spending in Wisconsin, labor was faced with an upswing in employment and issued less militant statements against the WERB. Thus labor's half-hearted effort to repeal the WEPA during the 1941 legislature met with little success. A repeal bill\(^{21}\) was introduced by two Milwaukee assemblymen, Robert Tehan and Andrew J. Biemiller, the Democratic and Progressive floor leaders. One interesting statement recorded during the course of the committee hearings on the bill was that of Commissioner Gooding, to the effect that the seventy-five per cent voting requirement for the all-union shop might well be eased.

The Board's second annual report casts little light on the state of labor-management relations during fiscal 1942. The only significant development was a marked decline in the number of unfair labor practice cases which it handled during this period, 36 as compared to 47 the previous year.

A step in delineating the boundaries of the Peace Act came when the state supreme court held that the act applied to eleemosynary institutions.\(^{22}\) In this instance the court supported the Board in its finding that a church group operating a hospital in Milwaukee was guilty of an unfair labor practice in not recognizing a particular union certified by the Board. Speaking for the court, Justice Edward T. Fairchild stated, "We conclude that there is no evidence of any intention on the part of the legislature to exempt charitable institutions...."\(^{23}\)

Perhaps the most interesting point raised by the decision is the court's reliance on the official title of the act and the declaration of policy contained in section 111.01. The court noted:

The name which the legislature chose for the act indicates what its purpose is, the promotion of peace in employment relations. The declaration of policy... [recognizes] that the employer, the employee and the public have an interest in the solution of the problem, and the statute is aimed at safeguarding the interest of all three groups.\(^{24}\)

**Legislative Action During 1943**

On March 4, 1943, Senators Robert Tehan, Democrat, Milton T. Murray, Republican, and Louis Fellenz, Republican, introduced a bill sponsored by the Wisconsin State Federation of Labor to "cure objec-

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\(^{21}\) Bill No. 113A., 1941 Wis. legislature.

\(^{22}\) WERB v. Evangelical Deaconess Soc'y, 242 Wis. 78, 7 N.W.2d 590 (1943).

\(^{23}\) Id. at 82, 7 N.W.2d at 592.

\(^{24}\) Id. at 80, N.W.2d at 592.
The bill proposed the following changes:

1. a revision of the definition of the collective bargaining unit to eliminate the requirement that it be a majority of the employees of an employer in a given unit;
2. a revision of the requirement that a "labor dispute" could only be between an employer and a labor organization representing the employees;
3. a revision to provide that an employer could enter into an all-union shop agreement with a simple majority of his employees.

At the hearings on the proposed amendment, spokesmen for organized labor concentrated their attack on the union security provisions of the act. J. F. Friedrick, representing the Milwaukee Federated Trades Council, stated that thousands of workers in the state were operating under closed shop agreements that were illegal under the act, but which the Labor Board could do nothing about. He observed in conclusion that it was the feeling of the Trades Council that the law which the Labor Board was forced to administer was harsh and unjust.

On May 27, 1943, the state senate passed a substitute amendment offered by Senator Laird which reduced the Act's referendum requirement from seventy-five per cent of all the employees in the collective bargaining unit to seventy-five per cent of the employees voting in the referendum, with the added requirement that the seventy-five per cent also constitute at least a majority of the affected employees. The closing debate leading up to the Senate's passage of the amendment (by a vote of 17 to 14 was enlivened by at least one attack on labor. Senator John E. Cashman, a Progressive, is reported to have stated:

Labor is getting exactly what you brought upon yourselves. . . . Labor deserves nothing from the farmers except to be taught a lesson. . . . Your power is passing. The farmers are the power in Wisconsin. They elect the governors and the legislature.

On July 7, 1943, the governor signed into law the amended bill which represented labor's first inroad on the controversial Peace Act. One of the most interesting comments coming out of the debate leading up to the amendment's passage came from Robert Tehan, who admitted that labor had "been over-zealous in 1937" but that "the pendulum had swung the other direction during the Heil regime."

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25 Bill No. 229, S., 1943 Wis. legislature. Substitute amendment No. 1, S. to Bill No. 229, S. was adopted; see note 14 infra.
26 Capitol Times (Madison), Mar. 18, 1943.
27 Substitute amendment No. 1, S. to Bill No. 229, S., 1943 legislature, was enacted as Wis. Laws 1943, c. 111.
28 Wisconsin State Journal (Madison), May 28, 1943.
29 Ibid.
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THE WISCONSIN GAS AND ELECTRIC COMPANY WALKOUT

On May 20, 1943, the Board handed down one of its most controversial decisions.30 The decision, which among other things ordered the suspension of Theodore G. Rietz, president of the Public Service Employees' of Wisconsin, was imposed as a result of Rietz's calling a five-day "work holiday" on the part of some 300 employees of the Wisconsin Gas and Electric Company and the Wisconsin Electric Power Company. The order required the union to notify its members in writing that it was required to cease and desist from acting as the bargaining agent for its members until either a successor to its president had been named or six months had elapsed. Rietz, however, was barred by the Board summarily from acting as a representative in any capacity for the employees, as president, as a member of the grievance or bargaining committee, or in any other manner, for one year.

The reason behind the Board's drastic action has been obscured by time and little is known of the actual walkout. The Chicago Daily Tribune stated that "... the union leaders had claimed the companies were planning to consolidate their Racine office and eliminate employees."31

Undoubtedly the Board was acting within its statutory authority as set forth in section 111.04(4) of the act:

Final orders may . . . require the person complained of to cease and desist from the unfair labor practice found to have been committed, suspend his rights, immunities, privileges or remedies, granted or afforded by this subchapter for not more than one year, . . . as the board may deem proper.32

But the propriety of this order, which in effect denied Rietz his normal means of employment, has been questioned, particularly in view of the fact that this decision has had a disrupting effect on labor-management relations in the state. This order subsequently has been cited by spokesmen for organized labor as an example of the harshness with which the Board treats erring union leaders.

In subsequent years organized labor has asked why this penalty has not been used on employers and members of management's family when they transgressed either the terms of a collective bargaining agreement or the law.

THE CREATION OF AN ADVISORY COMMITTEE

As a result of the passage of Bill No. 430, S. as amended in the 1943 session,33 there was created in November of that year a permanent advisory committee to the Board. The formation of the committee was

30 WERB v. Public Serv. Employees Union, Inc., 246 Wis. 190, 16 N.W.2d 823 (1944).
31 Chicago Daily Tribune, May 21, 1943.
32 Wis. Stat. §111.07(4) (1943).
33 Wis. Stat. §111.13 (1943).
from the outset greeted with limited enthusiasm by organized labor. However, Commissioner Gooding in acknowledging the formation of the committee is reported to have stated:

As far as I know, this is the first time such an attempt has been made, starting with the legislative approval and backed by all the parties concerned. . . . We do not expect miracles overnight. However, a definite program for the committee will be formed so that regular discussion meetings will be held whereby all may place their cards on the table. Much good is bound to come from such an organization of diverse opinions.34

Gooding further expressed the belief that the committee's recommendations would serve to save "the legislature much of the time now being devoted to hearings" [on proposed labor bills].35

Unfortunately the committee was beset with internal problems from the outset, largely arising out of the appointment by the Board of management representatives associated with the enactment of the Peace Act.

It is difficult to evaluate the Peace Act's effectiveness in the mid-forties, particularly in view of the fact that the NLRB during this period was under fire from the press. An example of the criticism which the NLRB was undergoing is to be found in the following comments of a syndicated columnist enjoying considerable popularity during this period:

It remains to be learned whether the federal or state labor laws will prevail within the states in points of conflict. But the adoption of these laws, some good and fair, notably the Wisconsin act, represents a re-assertion of state authority in state affairs and a rejection of the cynicism of the national labor policy which encourages violent insurrection and other atrocities within the states, to the peril of the people and the stability of government, and even rewarding the guilty.36

While some praised, others criticized. Some indication of this may be found in a feature story appearing in the Capital Times, under the heading "Wisconsin Labor Board, Boycotted by Labor, is the Capitol's Lonely Spot." The article stated that the

Quietest office in the state capitol, regularly passed up by reporters who can't remember a piece of news coming out of its activities in many months, is the Wisconsin Employment Relations Board. . . .

The Board's lack of work has been reflected in its declining annual budgets. The 1939 legislature started the board out with a $50,000.00 annual allowance, but has been able to use only $34,571.00 and turned the rest back to the treasury. During the fiscal year ending June 30, 1941, its annual expenditures were

34 Milwaukee Journal, November 14, 1943.
35 Ibid.
36 Westbrook Pegler in Wisconsin State Journal (Madison), Feb. 16, 1944.
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$42,136.00, but the 1942 legislature thought $40,000.00 a year would be enough to finance its activities, and the 1943 session pared its allowance still further to $30,000.00.\(^{37}\)

The same article also referred to "Heil's Milwaukee Office." Early in the forties the WERB broke into headlines when it was discovered that Governor Heil had planned to move the Board's Milwaukee office to a new location. Heil was at first reluctant to discuss the Board's proposed new location. Later it was learned that the governor intended to maintain a desk in the Board's Milwaukee office. Although the Board shortly thereafter announced that it had cancelled plans for its new office,\(^{38}\) the incident unfortunately tended to alienate organized labor in Milwaukee County, and materially handicapped the Board's prestige in Milwaukee during the forties.

LEGISLATIVE ACTION AND BOARD ACTIVITIES—1945

When the legislature convened in 1945 it was apparent that certain revisions to the Peace Act would be forthcoming during the session. Organized labor had announced that it would again focus its efforts on a revision of the union security provisions. Management on the other hand had announced in advance of the session that it intended to "hold the line," particularly with regard to union security provisions. The state's farm interests, however, indicated a qualified willingness to re-evaluate the act, particularly in the light of the statistics which the Board had accumulated on its experience in holding referenda on the all-union shop. Numerous bills were proposed in both the Senate and Assembly which would have provided for a reduction of the voting requirement to a simple majority of the votes cast, with the added proviso that the employees voting constitute at least a majority of the employees in the collective bargaining unit.\(^{39}\) The Assembly bill, No. 489,A., which did pass amended the act in the following respects:

First, it amended section 111.02(6) to permit more efficient administration:

[In] appropriate cases . . . the board may find, where agreeable to all parties affected in any way thereby, an industry, trade or business comprising more than one employer in an association in any geographical area to be 'a collective bargaining unit.'

Second, it amended section 111.06(1)(c) to reduce the voting requirements for the all-union shop to two-thirds of the employees voting, with the added requirements that the two-thirds also constitute a majority of the employees in the collective bargaining unit.

Although somewhat short of labor's demand that the act be amended to reduce the referendum requirements to a simple majority of the

\(^{37}\) Capital Times (Madison), April 20, 1944.

\(^{38}\) Milwaukee Journal, Dec. 5, 1940.

\(^{39}\) Wis. Stat. §111.06(1) (a) (1957).
employees voting, the passage of Bill No. 489, A. was heralded by unionists throughout the state as a major advance for organized labor.

The seventh annual report of the Board, for the fiscal year ending June 30, 1945, announced the closing of 171 cases involving 20,449 employees. Of these 32 were unfair labor practice complaints, 55 were election petitions, 81 were referendum petitions and 3 were arbitration cases. The Board noted that in the 47 elections which it conducted, 87 per cent of the eligible employees cast ballots, and of this group 90 per cent cast ballots in favor of representation by labor organizations. Unions affiliated with the AFL won 88 per cent of the elections involving them, unions affiliated with CIO 64 per cent, and independents 66\% per cent. Of the 78 referenda conducted by the Board, involving some 13,346 employees, all-union agreements were approved in 86 per cent.

**BOARD ACTIVITIES DURING 1946**

Some indication of the Board's postwar plans for stepping up its activities came early in 1946, when it was announced that the Board planned to increase its mediation and conciliation activities. Chairman Gooding was quoted at that time as saying:

> I feel the state board is closer to many of the local situations and can do a better job. The national service is not always well received by the disputants. . . . They [the NLRB] have been wasting their energy on the small stuff.\(^4^1\)

Later that year the Board announced a policy change designed to minimize a conflict between the state and national acts. On August 30, 1946, the Board stated that from that time on it would not allow newly elected bargaining representatives to assume immediate "jurisdiction" when a contract with another union was still in force. The WERB stated in support of this change in policy that the step was taken to harmonize the procedure of the state Board with that of the national Board. While many regarded this as a significant step in the right direction, others expressed the belief that what the Board was attempting was too little, too late. In support of the latter position it was to be noted that during the preceding seven years little or no effort had been made by the WERB to co-operate with the NLRB or to promote better understanding between the two agencies.

A review of the Eighth Annual Report of the WERB, for the year ending June 30, 1946, reveals a sharp upswing in the Board's activities. The Board reported 264 cases closed, involving 72,821 employees. Of these cases 19 were unfair labor practice complaints, 83 were election petitions, 145 referendum petitions, 12 were mediation matters, and 5  

\(^4^0\) 7 W.E.R.B. ANN. REP. (1945).
\(^4^1\) Milwaukee Journal, Jan. 7, 1946.
were arbitration matters. The significant increases in the Board's workload came from an increase in the number of referendum petitions received during this period.

**Legislative Action in 1947**

The 1947 legislature was again faced with a number of bills to modify the Peace Act. Unlike the bills facing the 1945 legislature, the majority of measures up for consideration sought to curb labor's activities, rather than to liberalize the provisions of the act. For instance, one legislator expressed the belief that if Congress has the courage to enact legislation to put reasonable controls on labor, the state may follow suit. Labor, well aware of indications that Congress would probably act on labor legislation in 1947 sought to close ranks in Wisconsin. Some indication of the battle which they were to face came early in 1947 when the Assembly voted unanimously to investigate four long strikes: those involving Allis-Chalmers, J. I. Case, and the Grede Foundry and Equipment Companies.

The press did not favor the formation of a special board and commented on the Assembly's action:

> It is hard to see how it [the investigation] could have any value. The labor committee is not qualified to try to settle these strikes, nor should it intervene in specific labor disputes to seek a settlement. There are agencies, far better qualified, already at work—both federal and state.

> The labor committee should confine its studies to gathering information to help it decide what changes in state labor law might be helpful. . . . The legislature can favorably broaden and strengthen our state labor laws, but neither it nor its committees should try to deal directly with individual labor disputes.43

A short time thereafter the legislature, over minor opposition, passed an amendment to section 111.04(3). This amendment provided:

> (3m) whenever an election has been conducted pursuant to subsection (3) in which the name of more than one proposed representative appears on the ballot and results in no conclusion, the board may, in its discretion, if requested by any party to the proceeding . . . conduct a runoff election. In such run-off election, the board may drop from the ballot the name of the representative that received the least number of votes cast at the first election was against representation by any named representative.44

On March 6, 1947, Senator Gawronski introduced Bill No. 312, S., which would have amended the act to afford recognition of membership agreements through certain changes in sections 111.02 and 111.06(1)(c). The bill received little support and subsequently failed to pass.


44 Wis. Stat. §111.05(3m) (1957).
A short time thereafter the Senate Committee on Labor and Management introduced Bill No. 435, S., designed to relax certain restrictions on employers in discussing "any matters relating to any labor dispute or to collective bargaining" with his employees, provided that he refrained from making any coercive statements. This measure also failed to pass.

March 26, 1947, saw the introduction of a measure designed to create a Department of Conciliation and Arbitration under the state's Industrial Commission. The measure, Bill No. 416, S., provided for the appointment of a Director of Conciliation and Arbitration by the Industrial Commission. The Department would have been charged with furnishing conciliation and arbitration to parties requesting these services, with no provision for department action on its own initiative. Although the bill was introduced by the Senate's Committee on State and Local Government, the measure failed to obtain substantial support in its original form. A substitute amendment No. 1, S. to the bill also failed to gain the necessary support.

However, Bill No. 416, S. and substitute amendment No. 1, S. set the stage for what was to come. On May 14 substitute amendment No. 2, S. was offered by Senator Felenz. The measure was far more extensive than its predecessors and provided for the creation of a Department of Conciliation and Arbitration under the Industrial Commission with a director appointed by the Commission and a staff not to exceed three in number. The proposal charged the Department with certain responsibilities in the field of conciliation, including conciliation activities initiated by the Department. Arbitration would have been dependent upon the parties' voluntarily submitting the dispute to the Department although the bill did provide that once the Department assumed jurisdiction of an arbitration matter, the state arbitrator would possess the power to subpoena witnesses and compel the production of papers and documents.

One of the more interesting aspects of the proposal was the manner in which it handled the problems arising out of the production of perishable farm commodities. On this subject the bill provided:

Where a strike would tend to cause the destruction or serious deterioration of any food product being handled or worked upon, the employees shall give to the department of conciliation and arbitration and to the employer at least 10 days notice of their intention to strike. Upon receipt of such notice, the department shall take immediate steps to effect conciliation or arbitration, if possible.

Popular support for the measure at once became evident. Assemblyman Genzmer, chairman of the Assembly's Labor Committee, commented:
Maybe a plan like this would get to the bottom of all our labor troubles and we might be able to throw out all these other bills which concern labor and management.45

Walter Cappel, state CIO legislative representative, speaking in favor of the bill stated:

This measure would get down to the causes of labor disputes rather than try to pour oil on rough waters after trouble has started.46

Support also came from the state Federation of Labor, whose president commented:

We believe that such a department, staffed . . . with people living in the state would be more acceptable than relying on outsiders affiliated with federal conciliation.47

Faced with the possible loss of its mediation and arbitration function, the WERB spoke out in opposition to the bill, stating that it would lead to a duplication of effort. Sponsors of the bill quickly answered that for "conciliation and arbitration to be effective, it must be administratively divorced from labor enforcement."48

A short time thereafter a split developed among supporters of substitute amendment No. 2, S., and substitute amendment No. 1, A. to Bill No. 416, S. was offered in the Assembly. This measure would have placed the Department under the Board and allowed the Board to appoint the director of the Department from a panel of candidates recommended by the members of the Board's advisory committee. Although the bill would have retained certain "voluntary arbitration, mediation and conciliation" functions within the Industrial Commission, the authority of the Commission to so act would have been severely limited by the proposed bill.

Just what considerations moved the supporters of the Senate measure to abandon their attempt to establish a department under the Industrial Commission are not clear. A number of individuals conversant with the introduction of the proposed legislation have suggested that certain segments of both labor and management were at odds with tentative suggestions of the Industrial Commission concerning who should head the department.

A split then developed among the supporters of the substitute amendment No. 1, A., and although the measure passed the legislature it was subsequently vetoed by the governor. When the governor's veto message was opened in the fall much of the enthusiasm for a separate

45 Milwaukee Sentinel, April 17, 1947.
46 Ibid.
47 Ibid.
state mediation and conciliation service had subsided, and no attempt was made to over-ride the veto.

The split among supporters of the original Senate bill and the substitute Assembly measure is not easily understood; certainly there is every indication that both labor and management were sincere in their initial efforts to obtain legislative support for increased state activity in the area of mediation and arbitration. Although it has been charged that organized labor attempted to forestall restrictive state legislation by supporting, for a time, proposals designed to effectuate these goals, this study has developed nothing which would substantiate these charges. The passage of the Labor Management Relations Act of June 23, 1947 and the establishment of a federal mediation and conciliation service apart from the NLRB certainly was a factor in decreasing interest in such a measure when the legislature reconvened in the fall of 1947.

ADDITIONAL PROBLEMS WHICH FACED THE BOARD DURING 1947

The Board's activities were further clouded when in July 1947 the firm of Griffenhagen & Associates, public administration analysts, reported to the legislature that the state might profitably abolish the WERB and transfer its functions to the Industrial Commission. The firm, which had been retained by the legislature to study the state's government, found a "substantial overlapping" in the functions of the Industrial Commission and the WERB. While the report was never made public, that portion of it concerning the evaluation of the WERB was "leaked" to the press and as a consequence the Board again found itself under attack.

Later in the year the Board suffered a much publicized reversal when the Wisconsin Supreme Court held the Board to be in error in refusing to reveal to the then striking UAW-CIO the names of those individuals who had petitioned the Board to hold a new representation election at the struck J. I. Case plant in Milwaukee. While the decision has subsequently had little effect on labor-management relations in the state, the disproportionate amount of publicity which it received served to cast a cloud over labor management relations in Milwaukee County.

One further incident added to the Board's already eventful year. This occurred when the WERB handed down its decision in Wisconsin Axle Division, announcing that it would enforce an arbitrator's award with which the Board was in unanimous disagreement. To the surprise of all concerned, both labor and management quickly questioned the propriety of the Board's comment.

51 Wisconsin Axle Division, WERB Dec. No. 1467 (1947).
EMPLOYMENT PEACE ACT

BOARD ACTIVITIES DURING 1948

The following year, 1948, started off no less eventfully, with a split in the Board’s advisory committee over the appointment of a new representative to the advisory committee. While the name of the individual and the facts surrounding the opposition to his appointment to the committee are not important, the hard feelings which this incident caused have materially affected the function of the committee. Subsequently, after several Board attempts to settle the differences of the parties, the appointee voluntarily resigned from the committee with many of the issues involved in the dispute still unresolved.

Looking backward, a number of spokesmen for both labor and management have observed that the 1948 dispute among the members of the committee marked the high point in that body’s interest in the functions of the Board.

That fall saw the acceptance by the United States Supreme Court of three appeals from labor decisions of the Wisconsin Supreme Court. The first of these three cases involved the legality of the WERB’s ban on intermittent work stoppages at the Milwaukee plant of the Briggs Stratton Corporation. Hailed by labor as the “perfect weapon,” the work stoppages resulted from the union’s calling unscheduled meetings during working hours for the purpose of coercing the employer into a settlement of differences on terms favorable to the union.

The second labor case certified to the Supreme Court was the La Crosse Telephone Corporation case. This case involved an alleged invasion by the WERB of the NLRB jurisdiction to conduct representation elections among employees engaged in interstate commerce.

The third case to go up to the United States Supreme Court on appeal during this period was Algoma Plywood & Veneer. This case turned on reinstatement by the Board of an employee discharged by the company for failure to pay union dues to the collective bargaining representative which had previously been certified by the NLRB. Prior to the discharge the company and the certified union had entered into a maintenance of membership agreement in violation of the provisions of the WEPA. The Board in reinstating the employee, and making the employee whole for loss of pay resulting from the discharge, found that the referendum requirements of the act had not been met.

While the above cases were being considered by the high court, speculation as to the Board’s future was at an all time high. An article in a Madison newspaper stated that the Board was seriously considering requesting the legislature to “strip the Board of its powers and turn it...

54 WERB v. Algoma Plywood & Veneer Co., 252 Wis. 549, 32 N.W.2d 417 (1948), aff’d, 336 U.S. 301 (1949).
into a mediation and conciliation agency."55 While the Board quickly answered, indicating that it was confident of the outcome of the three cases, the general consensus was that a reversal of the Board in all three cases would in effect end the Board's authority in the unfair labor practice area.

**THE SUPREME COURT'S DECISIONS—1949**

When in January 1949 the United States Supreme Court announced its decision in the *La Crosse Telephone case*,56 overruling the Board and holding that the Board was without jurisdiction in representation proceedings affecting an employer in interstate commerce, the Board's prestige was at a new low. Ironically enough, in the Board-held election, the plant's employees voted 91 to 14 in favor of the union which the Board subsequently certified, as opposed to the union which the NLRB had previously certified.

Shortly thereafter on February 28, 1949, the Supreme Court's opinion in the *Briggs & Stratton* case was announced. In supporting the Board's action by a five to four decision the court stated,

> [There is] no basis for denying to Wisconsin the power to govern her internal affairs and to regulate a course of conduct neither made a right under federal law nor a violation of it. . . .57

With the United States Supreme Court's seven to two decision in the *Algoma Plywood* case58 supporting the act's voting requirement as a condition precedent to execution of certain union security provisions, the Board's prestige rose slightly.

**LEGISLATIVE ACTION IN 1949**

On March 30, 1949, the legislative committee on labor introduced in the Assembly Bill No. 591,A.,59 at the request of the advisory committee to the Wisconsin Employment Relations Board. The bill was intended to repeal section 101.10(8) and 111.11; to amend 111.07(4) and 111.08 and repeal and recreate 111.10 of the statutes.

By repealing sections 101.10(8) and 111.11 the proposed legislation would have removed from the Industrial Commission its statutory direction "to do all in its power to promote the voluntary arbitration, mediation and conciliation of disputes between employers and employees," and would have terminated the Board's power to handle mediation work under the direction of section 111.11 of the Peace Act.

In addition the bill would have made minor changes to section 111.07(4) of the act dealing with Board orders and section 111.08 dealing with certain reports which organized labor makes under the act.

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55 John Hoving, Capital Times (Madison), Nov. 28, 1948.
The thrust of the bill lay in the repeal and recreation of section 111.10, which would have created a division of the WERB to be known as the Labor Disputes Settlement Division. In establishing this division the bill acknowledged the responsibility of the state to furnish to the parties a service agency which would supply personnel to act as fact finders and arbitrators, and serve in any other capacity which the parties might desire in facilitating voluntary settlement of labor disputes.

The division would have been staffed by a Board member as director, who in turn would have appointed a chief mediator and such assistants as the Board deemed necessary. In addition the Board would have been charged with the appointment of a panel of individuals to serve as mediators and conciliators on an ad hoc basis.

The bill would have retained the strike notice provision of the Peace Act with respect to the producers of perishable farm commodities, with the division attempting mediation in this industry whenever it received notice of an intention to strike.

Perhaps one of the more interesting aspects of the proposed legislation was its acknowledgement that in addition to providing certain voluntary services to the parties:

[The] public has an interest in the maintenance of industrial peace in all cases, and the board should intervene on its own motion . . . whenever the peace is threatened. . . . The risks inherent in going beyond mediation without the parties consent, at least outside the area of public utilities, are not justified by the history of labor-management relations generally in Wisconsin.

[Emphasis added]

Presumably the bill was introduced to cure a lag in the Board's mediation work which, according to the bill's sponsor, was from six months to a year behind. Although the bill enjoyed widespread support, particularly from the Wisconsin State Federation of Labor, and the state's agricultural interests, it failed to pass, presumably as a result of certain alignments which had developed over legislation introduced during the 1947 legislative session.

The Eleventh Annual Report of the WERB,61 for fiscal year ending June 30, 1949, indicated that during this period 712 cases, involving 100,425 workers, had been closed by the Board. Of this number 82 were unfair labor practice complaints involving 11,282 workers, 96 were election petitions involving 48,038 workers, 189 were mediation matters involving 19,877 workers, and 15 were arbitration matters covering 789 workers.

60 Ibid.
CONCLUSION

As has been observed, the first ten years of the act’s existence were far from uneventful. The period from 1939 to 1949 was a decade fraught with frustration for organized labor. The demands of the war years, federal controls, and finally a period of post-war adjustment produced many problems for the state’s labor movement. The split in labor’s ranks which allowed the act’s passage served to prevent its early repeal or modification. Further, by the time labor determined which features were particularly objectionable, public sentiment did not support a wartime revision of the act. As the years passed it became apparent to many locals that certain favorable provisions of the act outweighed in part the limits placed on their organizational activities.\(^6^2\) In addition, the public, which had never really seen the act as one-sided, saw the Peace Act as stemming industrial strife, a condition alien to a predominantly agricultural state. Organized labor, failing to sense the tenor of the time, dissipated their efforts in offering many minor amendments which failed passage rather than concentrating on those sections of the act which limited labor’s organizational activities. Those amendments which did pass, for example, Assembly Bill 489-A,\(^6^3\) allowing industry-wide bargaining and relaxing restrictions on union security provisions, proved to have little impact on labor-management relations. Had the United States Supreme Court dealt more harshly with the act, during the period under consideration, perhaps a different record would have been made for the act’s first ten years. However, this was a period in which there was general acceptance of the proposition that labor-management relations should remain a joint concern of the states and the federal government. In sum, despite the inability of the Board to define the boundaries of the act by the selection of appropriate cases, the act made a remarkable record for itself in the first decade of its existence.

\(^{62}\) Wis. Stat. §111.06(2) (b), (f) and (g), (1939).
\(^{63}\) Wis. Stat. §111.02(6) and §111.06(1) (c), (1939).