1941 Supplement

To

Mason's Minnesota Statutes, 1927

and

Mason's 1940 Supplement

Containing the text of the acts of the 1941 and 1943 Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

Edited by
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penditures for general fire protection. Op. Atty. Gen. (916B), Oct. 21, 1940.

Limitation of $500 applies only to funds expended for prevention of forest or prairie fires, and does not apply to expenditures by a town for general fire prevention. Id.

4031-16. Fire patrolmen—Summoning aid, etc.

A person summoned by a "fire warden" and refusing to render assistance does not violate this section. Op. Atty. Gen. (202a), Nov. 9, 1943.

4031-22. Starting fires—Where unlawful without permission; etc.

"Fires for domestic purposes" means those directly associated with uses essential or desirable for enjoyment of the home or house as a dwelling, and might include a cook fire in the yard, a fire for heating water for laundry purposes, or in a bath house, but would not include fires for purpose of burning grass, hay meadows, brush or slash, even though in connection with operation of a farm. Op. Atty. Gen. (203L-2), May 13, 1942.

4031-24. Fire wardens—Appointment—Duties.

Persons summoned by a fire warden appointed under this section and refusing to render assistance are not guilty of a misdemeanor. Op. Atty. Gen. (202a), Nov. 9, 1943.

FISHING RESTRICTIONS

4031-35½ j. Fishing for brook trout in certain seasons.

Term "brook trout" was intended to cover the species of trout usually found in or frequenting the brooks and streams of the timbered areas of the state, and though occasionally restricted in popular usage to designate a specie of char, it includes eastern brook trout, speckled trout, eastern speckled, native brook trout, square tailed trout, German brown trout, rainbow trout, Loch Leven, cut throat and other species found customarily in streams referred to, and order may prohibit taking of such trout from any or all waters within counties covered, whether they be spring ponds, beaver flowages or inland lakes. Op. Atty. Gen. (211c-13), Apr. 29, 1942.

AFFORESTATION AND REFORESTATION

4031-74. Stock to be used on state lands.—Said commissioner may purchase or collect coniferous forest planting stock indigenous to Minnesota or grow the same; and may supply the same for use on lands owned by the state and dedicated to forestry or conservation purposes or to any political subdivision of the state for use upon lands set aside and dedicated to forestry or conservation purposes for a period of not less than 25 years; or upon lands dedicated to state trunk highway purposes, provided, however, plantings on such lands shall be confined to standard forest plantings; but no such plantings may be sold or given away for replanting upon any lands not qualified for planting under this act. (As amended Mar. 28, 1941, c. 84, §1.)

Soil conservation districts are included in term "any political subdivision". Op. Atty. Gen. (203H-9), Mar. 7, 1942.

4031-75. State reforestation projects established.

Act Apr. 10, 1941, c. 185, provides for purchase of Civilian Conservation Corps site at Orr.

Act Apr. 16, 1941, c. 250, provides for purchase and rental of Civilian Conservation Corps site in Becker County.

Repair of drainage ditches. Laws 1943, c. 626, §3.

CHAPTER 23

Department of Labor and Industries

INDUSTRIAL COMMISSION

4033. Industrial commission.

Barlau v. Minneapolis-Moline Power Implement Co., 214M564, 9NW(2d)6; note under §4315, 176.56.

4037. Office in St. Paul.

An action against members of state industrial commission to compel reinstatement of a dismissed employe is triable in Ramsey county where commission maintains its office. State v. District Court of St. Louis County, 206M54, 287NW601. See Dun. Dig. 10113a.

4038. Organization—Quorum.

Where the members of the industrial commission are equally divided in opinion on an appeal from a referee's decision awarding compensation to an injured employee, an affirmance of the referee's decision occurs by operation of law. Barlau v. Minneapolis-Moline Power Implement Co., 214M564, 9NW(2d)6. See Dun. Dig. 10423.

4042. May appoint division heads, assistants, etc.

Barlau v. Minneapolis-Moline Power Implement Co., 214 M564, 9NW(2d)6; note under §4315.

4046. Powers and duties.

Following Frederickson v. Burns Lumber Co., 175 Minn. 539, 221NW910, commission may apply equitable principles in determining questions committed by legislature to its determination. Steidel v. Metcalf, 210M101, 297NW324. See Dun. Dig. 10421.

(5).

Commission has power to adopt and enforce rules and regulations relating to licensing of engineers and boiler inspection, and approval of governor is unnecessary. Op. Atty. Gen., (34f), January 22, 1940.

4050. Enforcement of labor laws by labor department.

Industrial commission has authority to determine necessity of automatic windshield wipers on one-man streetcar, but any requirement that two men operate streetcar is a matter for city to determine. Op. Atty. Gen. (270c-4), Dec. 29, 1942.

HOURS OF, AND RESTRICTIONS ON, LABOR

4087. Ten hours to constitute one day's work, etc.

The Federal Fair Labor Standards Act does not extend federal control to businesses or transactions "affecting commerce" as does the National Labor Relations Act, but is more narrowly confined. Kirschbaum Co. v. Walling, 316US517, 62SCR1116, 86LEd1638; Walling v. Jacksonville Paper Co., 317US564, 63SCR332, aff'g as modified (CCA5), 128F(2d)395; Higgins v. Carr Bros. Co., 317 US572, 63SCR337. See Dun. Dig. 5812b.

The federal Fair Labor Standards Act applies to employees engaged in maintenance of a loft building, the tenants of which are principally engaged in the production of goods for interestate commerce. Kirschbaum v. Walling, 316US517, 62SCR1116, aff'g (CCA3), 124F(2d) 567, which aff'd (DC-NJ), 38FSupp204; Arsenal Bldg. Corp. v. Walling, 62SCR1116, aff'g (CCA2), 125F(2d)278, which rev'd (DC-NY), 38FSupp207. See Dun. Dig. 5812b.

Where a wholesaler buys from local producers and from dealers in other states goods, which are unloaded into its warehouse from which they are sold to the retail trade, the interstate movement is ended, so that the wholesaler and its employees are not within the Fair Labor Standards Act, but where the interstate journey of the goods is merely interrupted by a temporary pause and not ended by placing them in a warehouse, there is a practical continuity of movement until the goods reach the customers for whom they are intended and the act applies. Walling v. Jacksonville Paper, 317US564, 63SCR 332, aff'g as modified (CCA5), 128F(2d)395; Higgins v. Carr Bros., 317US572, 63SCR337. See Dun. Dig. 5812b.

Employees engaged in maintaining or operating a toll road and bridge over a navigable waterway which together constitute a medium for interestate movement of goods and persons are "engaged in commerce" within the Fair Labor Standards Act. Overstreet v. North Shore Corp., 318US125, 63SCR494, rev'g (CCA5), 128F(2d)450, which aff'd (DC-Fla), 43FSupp445. See Dun. Dig. 5812b.

Where corporation claims that one of its branches is exempt from labor standards act on ground that it is not engaged in interestate commerce, the administrator may require, through a subpoena duces tecum, the production of all relevant books and records of the corporation including such branch, in order to determine whether or not it is engaged in interstate commerce. Cudahy Packing Co. v. Fleming, (C.C.A.8), 122 F. (2d) 1005. See Dun. Dig. 5812b. Rev'd 315US785, 62SCR803.

Nothing in Federal Labor Standards Act makes it necessary for the Administrator of Wage and Hour Division rather than a regional director of division to sign a subpoena duces tecum issued pursuant to section 9 of the act. Id.

Power conferred upon Attorney General of the United States to direct and control all litigation in which administrator is involved is permissive and not mandatory, and the manner and extent of this participation are wholly a matter of his official option. Id.

Administrator of Wage and Hour division may institute a proceeding to enforce a subpoena duces tecum through his own legal staff. Id.

Consent judgment requiring employer to pay to each of its employees a sum equal to difference between amounts of wages actually paid and amounts which should have been paid under Federal Fair Labor Stand-

ards act held not void or unenforcible because of uncertainty. Such judgment was enforcible by contempt proceedings. Fleming v. Warshawsky & Co., (CCA7), 123F(2d)622, rev'g (DC-Ill), 36FSupp138. See Dun. Dig. 5812b.

Members of a rotary drilling crew employed by a drilling contractor engaged in drilling oil wells for others were engaged in processes and occupations necessary to the production of oil and hence were engaged in the production of goods for commerce within Federal Fair Labor Standards Act (29 Mason's U. S. Code Ann. §203 (j)). Warren-Bradshaw Drilling Co. v. Hall, (CCA5), 124F(2d)42, aff'g (DC-Tex) 40FSupp272. See Dun. Dig. 5812b. Aff'd 317US88, 63SCR125.

That employees as a whole received more than statutory minimum straight and overtime pay was no defense in suit for overtime by employees who were not compensated for overtime at rate of one and one-half times the regular pay at which they were employed. Id.

Employee is entitled to receive overtime payments based on the regular rate at which he is employed regardless of the fact that his regular pay is substantially in excess of the minimum wages set by the act and he is entitled to recover such overtime compensation for every week of his employment subsequent to October 24, 1938 except the weeks in which he worked a number of hours less than the statutory maximum, and where he was paid for overtime in excess of his regular pay but less than the time and one-half rate he is entitled to recover the difference between time and one-half and the amount paid him, deductions of the amount already paid to be made before any calculation of the statutory "additional amount as liquidated damages" be made. Bumpus v. Continental Baking Co., (CCA6)124F(2d)549. Cert. den. 316US704, 62SCR1305. See Dun. Dig. 5812b.

The requirement as to 150% pay for overtime is for 150% of the regular, not the minimum wage. Id.

Section 7 of the Federal Fair Labor Standards Act (Mason's U. S. Code Ann. §207), while not absolutely prohibiting employing workers longer than the stipulated minimum hours, requires extra pay for overtime regardless of what the rate of compensation may be, thus making overtime more costly to the employer than regular time though the regular pay of the employees exceeds the minimum compensation fixed by the act. Carleton Screw Products Co. v. Fleming, (CCA8), 126 F(2d)537, aff'g 37FSupp754. Cert. den. 317US634, 63SCR 54. See Dun. Dig. 5812b.

The Federal Fair Labor Standards Act is remedial and must be liberally construed to effect its purpose. Id.

Where, for the purpose of relieving employer from paying employees for overtime at the rate of one and one-half time their regular pay an agreement was made whereby employees were to receive an agreed pay of less than they received before but at the end of each week should receive in addition a bonus bringing their pay up to what it was before, the basis for determining the overtime compensation was the agreed pay plus the bonus thereby nullifying the result sought to be obtained by the agreement, and such determination did not impair the obligation of the contract between employer and employees, such contract being in violation of law and injurious to the public interest. Id.

Federal Fair Labor Standards Act was valid against contention that its regulation of hours constituted an unconstitutional usurpation of power by Congress not sustainable under the Commerce Clause of the Federal Constitution. Id.

The propriety of the method of regulating hours of work provided for in the Federal Fair Labor Standards Act has the sanction of the Supreme Court of the United States. Carleton Screw Products Co. v. Fleming, (CCA8), 126F(2d)537. See U. S. v. Darby, 312US100, 657, 61SCR451, 84LEd609, 132ALR1430; Olsen v. Nebraska, 313US236, 51 SCR862, 85LEd1305, 133ALR1500. See Dun. Dig. 5812b.

Where employees of a motor carrier are engaged in transporting merchandise, finally destined for interstate commerce, from one point in a state to another point in the state the Interstate Commerce Act and not the Fair Labor Standards Act applies to the wages and hours of such employees. Dallum v. Farmers Co-Operative Trucking Ass'n., (DC-Minn), 46FSupp785. See Dun. Dig. 5812b.

Where employees of a motor carrier which is engaged in interstate commerce are engaged in transporting goods, which have no interstate destination, from one point within the state to another point within the state the Fair Labor Standards Act and not the Interstate Commerce Act applies to the wages and hours of such employees. Id.

The business of a related wholesale grocery concern, chain retail store concern, a warehouse company, a field warehousing concern, and a food merchandising operator did not constitute an uninterrupted flow of interstate commerce so as to make all employees of all the concerns subject to the Fair Labor Standards Act. Walling v. Mutual Wholesale Food & Supply Co., (DC-Minn), 46F Supp939. See Dun. Dig. 5812b.

Truck drivers of wholesale grocery concern which sometimes carries goods directly from the shipper to the warehouse of the grocery concern, and distributed goods from the warehouse to various members of the chain retail store within the state, were subject to the Interstate Commerce Act as applied to maximum hours, but within the Fair Labor Standards Act in the matter of minimum wages and the keeping of books and records. Id.

A decree of injunction against violation of Fair Labor Standards Act [29:201 et seq] would not be invalid because it violated the form prescribed by Civil Procedure Rule 65 (d). Fleming v. Miller, (DC-Minn), 47FSupp1004. See Dun. Dig. 5812b.

Upon issuing a consent decree in an action to enjoin corporation from violating Fair Labor Standards Act [29: 201]. Court had no power to order restitution of back pay. Id.

Fact that Railway Labor Act (45:228a et seq) would probably apply to corporation did not deprive court of jurisdiction to enforce Fair Labor Standards Act (29:201 et seq) against it. Id.

A violation of §7 of the Federal Fair Labor Standards Act of 1938, authorizing an action for liquidated damages under §16(b), is made out by a showing that employer had employed his employees for longer than maximum hours without additional compensation for overtime, and there is no requirement of demand and refusal of overtime compensation. Abroe v. Lindsay Bros. Co., 211M136, 300NW457. See Dun. Dig. 5817.

Purpose of federal Fair Labor Standards Act is to prescribe maximum hours of labor per week, and to help effecuate that purpose, the additional burden was cast upon employers of labor to pay overtime if workman was engaged beyond statutory limit. McMillan v. Wilson & Co., 212M142, 2NW(2d)838. See Dun. Dig. 5812b.

Rights to liquidated damages arise automatically with a finding of unpaid overtime compensation, and courts are given no discretion in deciding whether they should form part of recovery in action by employee under federal Fair Labor Standards Act. Id.

Meat packer could not secure any reduction of his wage liability under the provisions of the federal Fair Labor Standards Act for a 14-week moratorium in each calendar year, to a watchman at one of his plants engaged in cattle purchasing for other plants, where his work was not seasonal and hours were same the year around. Id.

In action by employee under the federal Fair Labor Standards Act to recover overtime pay, defendant could not claim as a credit upon its wage liability amount it paid him for two weeks wages after his discharge, being a mere gratuity, especially since treated as a bonus or increased compensation it would increase hourly rates and overtime pay and penalty. Id.

A meat packer in operating a plant functioning as a cattle buying plant and employing several men was therein engaged in manufacture and distribution of goods in interstate commerce, and a watchman at the plant was an employee in "interstate commerce" and entitled to benefits of federal Fair Labor Standards Act. Id.

No state department may enter into arrangement with children's bureau and wage and hour division of United States Department of Labor under which state agencies will make investigations and inspections for purpose of enforcement of federal laws relating to child labor and to wages and hours, notwithstanding that federal government agrees to reimburse state for expenses from time to time. Op. Atty. Gen., (270a-2), Nov. 10, 1939.

There is no state law, and probably no federal law, regulating hours of labor which might be applicable to employment of a police officer by a village. Op. Atty. Gen., (785g), Feb. 18, 1941.

Section applies to employees of a sanatorium maintained by several counties, but only as to laborers and manual workers. Op. Atty. Gen., June 11, 1941.

A city is not subject to Wages and Hours Law of the United States, and whether city is under order of state industrial commission is not decided. Op. Atty. Gen. (270g-1), Aug. 27, 1943, Aug. 30, 1943.

4088. Eight-hour labor law not to apply to road work.

Section does not apply to employees of a sanatorium maintained by several counties. Op. Atty. Gen., June 11, 1941.

4089. Eight hours to constitute day's labor by employees of state.

Section does not apply to employees of a sanatorium maintained by several counties. Op. Atty. Gen., June 11, 1941.

4092. Certain railroad employees—Hours.

Question whether towermen (levermen) employed in interlocker towers, who are not telegraphers, are under the provisions of state or federal hours of labor law, discussed. Op. Atty. Gen. (270), Nov. 2, 1942.

4094. Employment of children under fourteen years.

No state department may enter into arrangement with children's bureau and wage and hour division of United States Department of Labor under which state agencies will make investigations and inspections for purpose of enforcement of federal laws relating to child labor and to wages and hours, notwithstanding that federal government agrees to reimburse state for expenses from time to time. Op. Atty. Gen., (270a-2), Nov. 10, 1939.

4099. Monthly report to commissioner of labor.

Children under 16 fighting forest fires. Op. Atty. Gen. (523g-3), May 24, 1943.

4100. Children under 16—Hours of employment—Posted notice.

A place licensed to sell intoxicating liquors may not permit amateur performances therein by minors, even without compensation, unless a permit has first been obtained from industrial commission, and it is probable that such performances would violate criminal law. Op. Atty. Gen. (270a-4), May 24, 1941.

4103. Children under specified ages, etc.

Op. Atty. Gen. (270a-4), May 24, 1941; note under §4100.

Minimum age for pin setters in bowling alleys is 16 years. Op. Atty. Gen. (270a-4), Oct. 8, 1942.

Children under 16 fighting forest fires. Op. Atty. Gen. (523g-3), May 24, 1943.

4111-1. Employment of minors prohibited.

This is the only statute bearing on employment of persons under 18 years of age in 3.2 beer establishments, and fact that a minor is a child of owner does not exempt him from it. Op. Atty. Gen., (218J-12), April 3, 1940.

Employment of minors in place where bowling alley, refreshment counter at which 3.2 beer is sold, and a restaurant are operated close together. Op. Atty. Gen. (270a-4), May 15, 1943.

If the place is not injurious to morals, there is no statute which prohibits employment of minors over the age of 18 years but under 21 years in a restaurant, the chief business of which is serving food, unless the restaurant has in connection therewith other activities as to which the presence of minors is prohibited, though non-intoxicating malt liquor is sold. Op. Atty. Gen. (217f-3), July 14, 1943.

Age of employee and not customer is regulated by this section. Op. Atty. Gen. (217f-3), July 21, 1943.

4126-2. Hours of female employees limited.

Act applies to chamber maids, janitresses, kitchen workers, elevator operators and telephone operators at a county sanatorium, but does not apply to nurses or other employees. Op. Atty. Gen., June 11, 1941.

WAGES

4127. Penalty for failure to pay wages promptly.

No state department may enter into arrangement with children's bureau and wage and hour division of United States Department of Labor under which state agencies will make investigations and inspections for purpose of enforcement of federal laws relating to child labor and to wages and hours, notwithstanding that federal government agrees to reimburse state for expenses from time to time. Op. Atty. Gen., (270a-2), Nov. 10, 1939.

4137. Assignment of wages in certain cases—Payroll deductions.

Assignment of portion of salary for benefit of specified creditors as a part of a contract of employment entitled creditors to puruse fund accumulated at time of adjudication in bankruptcy of the employee, notwithstanding intervening discharge, bankrupt making no claim to the fund, on theory of unjust enrichment and trust. Lucas v. M., 207M380, 291NW892. See Dun. Dig. 566.

Unearned compensation of state institutional employees cannot be assigned, and it is not possible to make deductions for insurance premiums from pay roll checks upon written request and authorization by employee. Op. Atty. Gen., (88a-19), Feb. 14, 1940.

City may not adopt and enforce a plan whereby it contracts for a group insurance policy covering all its employees and deduct from salary or wages sum required to pay premium, but this may be done for benefit of all employees consenting thereto. Op. Atty. Gen., (249B-9), Feb. 14, 1940.

Executive council has no authority to approve or put into operation a welfare group plan of accident, health, and surgical benefits sponsored by an insurance company, whereby deductions are to be made from salaries of state employees for payment of premiums. Op. Atty. Gen., (249B-9), Feb. 27, 1940.

City of Minneapolis may not enter into contract with members of police department for assignment of a part of their future wages to Minneapolis police officers group hospitalization service in payment for services in periods in excess of 60 days. Op. Atty. Gen. (249B-9[a]), June 14, 1940.

Board of Education may not contract for group insurance for its employees, but may consent to employees making such a contract and deduct premium from wages with their consent. Op. Atty. Gen. (249B-8), Aug. 27, 1940.

A city is without authority to compel its employees to enter into a group health and accident contract and deduct from their wages or salaries sum required to pay premiums, but may do so with consent of employees. Op. Atty. Gen., (249B-8), Jan. 31, 1941.

4138. Assignment of unearned wages as security.

Filing of a wage assignment with register of deeds is not compliance with this statute. Op. Atty. Gen. (373B-3), June 10, 1940.

4139. Semi-monthly payments.

County is not a public service corporation, and may pay its employees monthly. Op. Atty. Gen. (104a-9), Jan. 16, 1943.

4140-4. Industrial Commission—Co-operation with federal Department of Labor.—The Industrial Commission of Minnesota, so far as it is not inconsistent with its duties under the laws of this state, may assist and co-operate with the Wage and Hour Division, The Children's Bureau, and any other authorized agency of the United States Department of Labor in the administration within this state of the act of Congress known as the Fair Labor Standards Act of 1938, approved June 25, 1938, and amendments thereof. No additional expense shall be incurred by the commission in rendering such assistance and co-operation except upon condition that the state be reimbursed therefor in accordance with federal laws and regulations and subject to the applicable laws of this state. (Act Mar. 15, 1941, c. 68, §1.)
[175.37]

4140-5. Same—moneys received from federal government—Appropriation.—All moneys heretofore or hereafter received from the federal government for such reimbursement are hereby appropriated to the Industrial Commission to pay the cost of such assistance and co-operation. (Act Mar. 15, 1941, c. 68, §2.)
[175.37]

DANGEROUS MACHINERY, STRUCTURES AND PLACES

4149. Children under 16 not to be employed in certain occupations.

Minimum age for pin setters in bowling alleys is 16 years. Op. Atty. Gen. (270a-4), Oct. 8, 1942.

Children under 16 fighting forest fires. Op. Atty. Gen. (523g-3), May 24, 1943.

4150. Same.

Children under 16 fighting forest fires. Op. Atty. Gen. (523g-3), May 24, 1943.

4171. Definition.

An underground mine is a "place of employment". Applequist v. O., 209M230, 296NW13. See Dun. Dig. 5869.

Industrial commission has authority to determine necessity of automatic windshield wiper on one-man streetcar, but any requirement that two men operate streetcar is a matter for city to determine. Op. Atty. Gen. (270c-4), Dec. 29, 1942.

Industrial commission may issue orders to a railroad to furnish adequate toilet facilities and provide lockers for its employees and to enforce its orders by prosecution in court, using its own attorney if necessary as prosecuting attorney, and railroad and warehouse commission has the same jurisdiction to enforce obedience to laws affecting the general public. Op. Atty. Gen. (270k), Apr. 15, 1943.

4174. Ventilation.

An action in Michigan for injuries occurring in Minnesota resulting from defendant's violation of the Minnesota ventilation statute is controlled by the six-year Minnesota statute of limitation governing case of a liability created by statute rather than the three-year period of limitations prescribed by the Michigan statute, it being immaterial that the Minnesota limitation period is not prescribed in the ventilation statute, since the statutory limitation accompanies the new right created by the statute, and hence is substantive law which will be recognized by comity. Maki v. George R. Cooke Co., (CCA6), 124F(2d)663. Cert. den. 316US686, 62SCR 1274. See Dun. Dig. 1546.

The Minnesota ventilation statute being in consonance with Michigan law of like character enforcement in Michigan of the Minnesota statute would, therefore, conform to the public policy of the forum. Id. See Dun. Dig. 1545.

An underground miner who became afflicted with a disabling ailment not covered by Compensation Act through negligence of employer in failing properly to ventilate has an action at law for damages. Applequist v. O., 209M230, 296NW13. See Dun. Dig. 5883.

Evidence held to raise question for jury on question whether underground miner contracted Pneumoconiosis or silicosis in defendant's mines and thereby became afflicted with an aggravation of existing tuberculosis. Id. See Dun. Dig. 5869.

Fatal disease of employee slowly developing by reason of improper ventilation, such as silicosis and pneumoconiosis with super-imposed tuberculosis, is not sustained by reason of "accident" within coverage of employer's liability policies, and employer who paid judg-

ment and garnished insurers cannot recover indemnity, such judgment having been entered in tort action for negligence, though part of policy covered workmen's compensation liability. Golden v. Lerch Bros., 211M30, 300 NW207. See Dun. Dig. 4867.

4177. Toilet facilities.

Industrial commission may issue orders to a railroad to furnish adequate toilet facilities and provide lockers for its employees and to enforce its orders by prosecution in court, using its own attorney if necessary as prosecuting attorney, and railroad and warehouse commission has the same jurisdiction to enforce obedience to laws affecting the general public. Op. Atty. Gen. (270k), Apr. 15, 1943.

4184. Dressing rooms.

Industrial commission may issue orders to a railroad to furnish adequate toilet facilities and provide lockers for its employees and to enforce its orders by prosecution in court, using its own attorney if necessary as prosecuting attorney, and railroad and warehouse commission has the same jurisdiction to enforce obedience to laws affecting the general public. Op. Atty. Gen. (270k), Apr. 15, 1943.

4189. Commissioner of labor to enforce provisions.

Industrial commission may issue orders to a railroad to furnish adequate toilet facilities and provide lockers for its employees and to enforce its orders by prosecution in court, using its own attorney if necessary as prosecuting attorney, and railroad and warehouse commission has the same jurisdiction to enforce obedience to laws affecting the general public. Op. Atty. Gen. (270k), Apr. 15, 1943.

4194. Scope of report.

Industrial commission may issue orders to a railroad to furnish adequate toilet facilities and provide lockers for its employees and to enforce its orders by prosecution in court, using its own attorney if necessary as prosecuting attorney, and railroad and warehouse commission has the same jurisdiction to enforce obedience to laws affecting the general public. Op. Atty. Gen. (270k), Apr. 15, 1943.

MINIMUM WAGES

4214. To investigate wages of women and minors.

In determining a proper minimum wage schedule, industrial commission may properly investigate all occupations together and make one order apply to "each and every occupation". Tepel v. Sima, 213M526, 7NW (2d)532. See Dun. Dig. 5812a.

Act may be made applicable to bakeries by order of industrial commission. Id.

Minimum Wage Act is constitutional. Id.

In so far as there is conflict between this section and §4232 Mason's Minnesota Statutes, 1927 determining who is a minor, this section prevails. Op. Atty. Gen., July 2, 1941.

4218. Wages, how determined—Order of commission, etc.

Industrial commission may cooperate with United States Department of Labor in enforcement of Fair Labor Standards Act of 1938. Laws 1941, c. 68.

If order rests upon an erroneous rule, or is based upon findings made without evidence, or upon which evidence which clearly did not support it, order could be set aside in a direct attack thereon in a proceeding to which commission is made a party. Tepel v. Sima, 213M526, 7NW (2d)532. See Dun. Dig. 5812a.

Absent any statutory exception, benefits of minimum wage legislation extend to a married woman living with and partly supported by her husband. Id.

Minimum Wage Order No. 13 applies to employers having but one employee employed on a part-time but regular schedule. Id.

4226. Actions to recover full wages.

A violation of §7 of the Federal Fair Labor Standards Act of 1938, authorizing an action for liquidated damages under §16(b), is made out by a showing that employer had employed his employees for longer than maximum hours without additional compensation for overtime, and there is no requirement of demand and refusal of overtime compensation. Abroe v. Lindsay Bros. Co., 211M136, 300NW457. See Dun. Dig. 5817.

4232. Construction of terms.

In so far as this section and Mason's Minnesota Statutes, 1940 Supplement, §4214 are in conflict in defining who is a minor, §4214 prevails. Op. Atty. Gen., July 2, 1941.

(1).

Absent any statutory exception, benefits of minimum wage legislation extend to a married woman living with and partly supported by her husband. Tepel v. Sima, 213M526, 7NW(2d)532. See Dun. Dig. 5812a.

Absent any statutory exception, benefits of minimum wage legislation extend to a married woman living with and partly supported by her husband. Id.

(7).

A woman regularly employed from eight to ten hours daily three days of each week for a period of over a year cannot be excluded from protection of law on theory that her employment is intermittent. Tepel v. Sima, 213M 526, 7NW(2d)532. See Dun. Dig. 5812a.

(8).

Act may be made applicable to bakeries by order of industrial commission. Tepel v. Sima, 213M526, 7NW (2d)532. See Dun. Dig. 5812a.

Application of act to growing and raising of fruit, vegetable and flower plants is a question of fact. Op. Atty. Gen., (845), March 27, 1940.

Deputy registrars of motor vehicles do not come within term "occupation" in minimum wage law, nor are they entitled to benefits of social security laws of the state. Op. Atty. Gen. (385b-2), Dec. 3, 1942.

INSPECTOR OF MINES

4235. Duties.

An underground miner who became afflicted with a disabling ailment not covered by Compensation Act through negligence of employer in failing properly to ventilate has an action at law for damages. Applequist v. O., 209M230, 296NW13. See Dun. Dig. 5869.

EMPLOYMENT AGENCIES

4254-1. Definitions.

Act is constitutional, save as modified by court decision construing §4254-3. Op. Atty. Gen., (736g), April 25, 1940.

Act is constitutional as applied to teachers' agency. Id.

4254-3. Applicant to file written application.

Teachers' agency is an employment agency required to secure a license. Op. Atty. Gen., (270E), Dec. 28, 1939.

4254-4. Duration of and fees for license.

License fee of $150 does not render act unconstitutional. Op. Atty. Gen., (736g), April 25, 1940.

4254-11. Classification of licenses.

The holder of a class two license who desires to make placements coming under both class two and class one must obtain a separate license for the class one business before he can do so. Op. Atty. Gen. (736f), Apr. 9, 1943.

Class two agencies may not make placements prescribed for holders of class one licenses and charge a fee for the service. Id.

4254-15. Rules governing agencies.

The state legislatures and unionism. 38MichLawRev 987.

MINNESOTA LABOR RELATIONS ACT

4254-21. Definitions. When used in this act. * * * *.

(a) * * * * *.

(b) "Employer" includes all persons employing others and all persons acting in the interest of an employer, but does not include any person subject to the Federal Railway Labor Act, as amended from time to time nor the state or any political or governmental subdivision thereof except when used in Mason's Supplement 1940, Section 4254-33, as amended. (As amended Apr. 24, 1943, c. 624, §5.)

(c) to (k) * * * * *.

(l) "Agricultural products" includes, but is not restricted to, horticultural, vitacultural, dairy, livestock, poultry, bee, and any farm products.

(m) "Processor" means the person who first processes or prepares agricultural products, or manufactures products therefrom, for sale after receipt thereof from the producer.

(n) "Marketing organization" means any organization of producers or processors organized to engage in any activity in connection with the marketing or selling of agricultural products or with the harvesting, preserving, drying, processing, canning, packing, grading, storing, handling, shipping or utilization thereof, or the manufacture or marketing of the by-products thereof, or in connection with the manufacturing, selling or supply of machinery, equipment, or supplies for their members or patrons. (As amended Apr. 24, 1943, c. 624, §§1, 5.)

Resolution of county board prohibiting hiring of members of labor unions would be unconstitutional. Op. Atty. Gen. (270d), Nov. 9, 1943.

Validity of statutes restricting picketing and related activities. 1940WisLawRev272.

History and provisions of the Minnesota Labor Relations Act. 24MinnLawRev217.

A study of the conflict in jurisdiction between the National Labor Relations Act and the Minnesota Labor Relations Act. 26 Minn. Law Rev. 359.

(b).

A non-profit charitable corporation operating a hospital is an "employer". Northwestern Hospital v. P., 294 NW215.

Board of water, electric, gas and power commissioners of a city cannot enter into a closed shop contract. Op. Atty. Gen., (270), Feb. 28, 1940.

(c).

One employed as an elevator operator, as a janitor or in a similar occupation in a non-profit hospital is an "employee". Northwestern Hospital v. P., 208M389, 294 NW215.

(f).

Representatives of a labor union may not claim that a bona fide labor dispute is involved when the object they seek to accomplish is an unlawful labor objective. Lafayette Dramatic Productions v. Ferentz, 305 Mich. 193, 9NW(2d)57. See Dun. Dig. 5811a.

(g).

A union working under a closed shop contract and having only one employee working at a particular place of business cannot institute a strike under this act. Op. Atty. Gen., (270d-9), Oct. 18, 1939.

4254-26. Notice to employer—Notice by employer of change in conditions—Notice of intent to strike—Requisites of notices—Conference.—(a) Whenever any employee, employees, or representative of employees, or labor organization shall desire to negotiate a collective bargaining agreement, or make any change in any existing agreement, or shall desire any changes in the rates of pay, rules or working conditions in any place of employment, it shall give written notice to the employer of its demand which notice shall follow the employer if the place of employment is changed, and it shall thereupon be the duty of the employer and the representative of employee or labor organization to endeavor in good faith to reach an agreement respecting such demand. An employer shall give a like notice to his employees, representatives or labor organizations of any intended change in any existing agreement. If no agreement is reached at the expiration of ten (10) days after service of such notice, any employees, representative, labor organization, or employer may give notice of intention to strike or lockout, as the case may be, but it shall be unlawful for any labor organization or representative to institute or aid in the conduct of a strike or for an employer to institute a lockout, unless notice of intention to strike or lockout has been served by the party intending to institute a strike or lockout upon the labor conciliator and the other parties to the labor dispute at least ten (10) days before the strike or lockout is to become effective. Unless the strike or lockout is commenced within ninety days from the date of service of the notice upon the labor conciliator, it shall be unlawful for any of the parties to institute or aid in the conduct of a strike or lockout without serving a new notice in the manner prescribed for the service of the original notice, provided that the ninety day period may be extended by written agreement of the parties filed with the labor conciliator.

Notice by the employer shall be signed by him or his duly authorized officer or agent; and notice by the employees shall be signed by their representative or its officers, or by the committee selected to conduct the strike. In either case the notice shall be served by delivering it to the labor conciliator in person or by sending it by registered mail addressed to him at his office. The notice shall state briefly the nature of the dispute and the demands of the party who serves it. Upon receipt of a notice, the labor conciliator shall fix a time and place for a conference with the parties to the labor dispute upon the issues involved in the dispute, and he shall then take whatever steps he deems most expedient to bring about a settlement of the dispute, including assisting in negotiating and drafting a settlement agreement. It shall be the duty of all parties to a labor dispute to respond to the summons of the labor conciliator for joint or several conferences with him and to continue in such conference until excused by the labor conciliator, not beyond, however, the ten day period heretofore prescribed except by mutual consent of the parties.

(b) The labor conciliator may take jurisdiction of a labor dispute in which negotiations for settlement have failed if either party to said dispute before a notice to strike or lockout files a petition requesting said conciliator to act in the dispute, setting forth the issues of the dispute and the efforts to agree and the failure to reach an agreement. If the conciliator takes jurisdiction he shall then proceed as provided in paragraph (a) of this section. (As amended Act Apr. 26, 1941, c. 469, §1.)

Strike notice may be suspended only by mutual consent of all the parties. Op. Atty. Gen., (270d-9), Feb. 15, 1940.

Notice of strike or lock-out must be signed in writing of person giving or authorizing it, and not by stamp, typewriting, mimeographing, multigraphing, or printing. Op. Atty. Gen. (270d-9), May 26, 1941.

4254-27. Business affected with public interest—Notice to Governor—Appointment of commission—Delay of strike or lockout.—If the dispute is in any industry, business or institution affected with a public interest, which includes, but is not restricted to, any industry, business or institution engaged in supplying the necessities of life, safety, or health, so that a temporary suspension of its operation would endanger the life, safety, health or well being of a substantial number of people of any community, the provisions of section 6 shall apply and the labor conciliator shall also notify the Governor who may appoint a commission of three, to conduct a hearing and make a report on the issues involved and the merits of the respective contentions of the parties to the dispute. If the Governor decides to appoint a commission, he shall so advise the labor conciliator who shall immediately notify the parties to the labor dispute and shall also inform them of the date of the notification to the Governor. The members of such commission shall on account of vocations, employment, or affiliations be representatives of employees, employers and the public respectively. Such report shall be filed with the Governor not less than five days before the end of the thirty day period hereinafter provided and may be published as he may determine in one or more legal newspapers in the counties where the dispute exists. If and when the Governor shall notify the labor conciliator of his decision to appoint a commission, neither party to the dispute shall make any change in the situation affecting the dispute and no strike or lockout shall be instituted until thirty (30) days shall have elapsed after the notification to the Governor; provided, that in case the Governor shall fail to appoint a commission within five days after the notification to him, this limitation on the parties shall be suspended and inoperative; provided further, that if the Governor shall thereafter appoint a commission; no strike or lockout having been instituted in the meantime, the limitation shall again become operative, but in no case for more than said thirty day period. The thirty day period may be extended by stipulation upon the record of the hearing before the commission or by written stipulation signed by the parties to the labor dispute and filed with the labor conciliator. If so extended, the report of the commission shall be filed with the Governor not less than five days before the end of the extended period. (As amended Act Apr. 26, 1941, c. 469, §2.)

This section indicates a legislative intention to include a non-profit hospital as an employer under the Act. Northwestern Hospital v. P., 208M389, 294NW215.

4254-28. Commission to subpoena witnesses—Contempt—Conciliator may take jurisdiction on request.—(a) The commission appointed by the governor pursuant to the provisions of this act shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence which relates to any matter involved in any such hearing, and may by its chairman administer oaths and affirmations, and may examine witnesses. Such attendance of witnesses and the production of such evi-

dence may be required from any place in the state of Minnesota at any designated place of hearing, but hearings shall be held in a county where the labor dispute has arisen or exists.

(b) In case of contumacy or refusal to obey a subpoena issued under subsection (a) of this section, the district court of the state of Minnesota for the county where the proceeding is pending or in which the person guilty of such contumacy or refusal to obey is found, or resides, or transacts business, or application by the commission shall have jurisdiction to issue to such person an order requiring such person to appear before the commission, there to produce evidence as so ordered, or there to give testimony touching the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(c) Any party to or party affected by the dispute may appear before the commission in person or by attorney or by their representative, and shall have the right to offer competent evidence and to be heard on the issues before the report is made.

Any commissioners so appointed shall be paid a per diem of $15.00 per day and their necessary expenses while serving. (As amended Act Apr. 26, 1941, c. 469, §3.)

4254-29. Labor disputes may be submitted to arbitration.

Federal board's order must be limited in effect to the restraint of the unfair labor practices found to have been committed by petitioner, as the statute does not give the board authority to enjoin violations of all the provisions of the statute merely because the violation of one has been found. Wilson & Co. v. Nat'l. Lab. Rel. Bd., (CCA8), 123F(2d)411. See Dun. Dig. 9674b.

There is a distinct obligation on part of both hospital employers and employees to settle differences in absolute finality by submission to arbitration. Northwestern Hospital v. P., 208M389, 294NW215.

4254-30. Employees to have right to join labor organization—Lists or organizations.

Effect of collective contract upon right to change bargaining agents. 26 Minn. Law Rev. 640.

(a).

Board of water, electric, gas and power commissioners of a city cannot enter into a closed shop contract. Op. Atty. Gen., (270), Feb. 28, 1940.

(c). [Repealed.]

Repealed. Laws 1941, c. 469.

4254-31. What are unfair labor practices by employees.—What are unfair labor practices by employees. It shall be an unfair labor practice:

(a) For any employee or labor organization to institute a strike if such strike is a violation of any valid collective agreement between any employer and his employees or labor organization and the employer is, at the time, in good faith complying with the provisions of the agreement, or to violate the terms and conditions of such bargaining agreement.

(b) For any employee or labor organization to institute a strike if such strike is in violation of Sections 6 or 7 of this act. (As amended Apr. 26, 1941, c. 469, §5; Apr. 24, 1943, c. 624, §3.)

(c) For any person to seize or occupy property unlawfully during the existence of a labor dispute.

(d) For any person to picket or cause to be picketed a place of employment of which place said person is not an employe while a strike is in progress affecting said place of employment, unless the majority of persons engaged in picketing said place of employment at said times are employes of said place of employment.

(e) For more than one person to picket or cause to be picketed a single entrance to any place of employment where no strike is in progress at the time.

(f) For any person to interfere in any manner with the operation of a vehile or the operator thereof when neither the owner nor operator of said vehicle is at said time a party to a strike.

(g) For any employe, labor organization or officer, agent or member thereof to compel or attempt to compel any person to join or to refrain from joining any labor organization or any strike against his will by any threatened or actual unlawful interference with his person, immediate family or physical property, or to assault or unlawfully threaten any such person while in pursuit or lawful employment.

(h) Unless the strike has been approved by a majority vote of the voting employees in a collective bargaining unit of the employees of an employer or association of employers against whom such strike is primarily directed, for any person or labor organization to cooperate in engaging in, promoting or inducing a strike. Such vote shall be taken by secret ballot at an election called by the collective bargaining agent for the unit, and reasonable notice shall be given to all employees in the collective bargaining unit of the time and place of election. (As amended Apr. 24, 1943, c. 624, §2.)

(i) For any person or labor organization to hinder or prevent by intimidation, force, coercion or sabotage, or by threats thereof, the production, transportation, processing, or marketing by a producer, processor or marketing organization of agricultural products, or to combine or conspire to cause or threaten to cause injury to any processor, producer or marketing organization, whether by withholding labor or other beneficial intercourse, refusing to handle, use or work on particular agricultural products, or by other unlawful means, in order to bring such processor or marketing organization against his or its will into a concerted plan to coerce or inflict damage upon any producer; provided that nothing in this subsection shall prevent a strike which is called by the employees of such producer, processor or marketing organization for the bona fide purpose of improving their own working conditions or promoting or protecting their own rights of organization, selection of bargaining representative or collective bargaining. (As amended Apr. 24, 1943, c. 624, §2.)

(j) The violation of sub-sections (b), (c), (d), (e), (f), (g), (h) and (i) of this section are hereby declared to be unlawful acts. (As amended Apr. 26, 1941, c. 469, §7; Apr. 24, 1943, c. 624, §§2, 3.)

In the exercise of freedom of speech secured by the Fourteenth Amendment of the Constitution of the United States, a labor union may peacefully picket the premises, where a person is engaged in building a house for the purpose of sale, to induce him to let work in connection with the construction thereof, done by him with his own hands, to others, who would employ union labor to do the same. Glover v. Minneapolis Building Trades Council, 215M533, 10NW(2d)481, 147ALR1071. See Dun. Dig. 1701.

4254-31a. Jurisdictional controversies—Conciliator to certify facts to Governor—Procedure.—Whenever two or more labor organizations adversely claim for themselves or their members jurisdiction over certain classifications of work to be done for any employer or in any industry, or over the persons engaged in or performing such work and such jurisdictional interference or dispute is made the ground for picketing an employer or declaring a strike or boycott against him, the labor conciliator shall certify that fact to the governor. Upon receipt of such certification the governor, in his discretion, may appoint a labor referee to hear and determine the jurisdictional controversy. If the labor organizations involved in the controversy have an agreement between themselves defining their respective jurisdictions, or if they are affiliated with the same labor federation or organization which has by the charters granted to the contending organizations limited their jurisdiction, the labor referee shall determine the controversy in accordance with the proper construction of the agreement or of the provisions of the charters of the contending organizations. If there is no agreement or charter which governs the controversy, the labor referee shall make such decision as, in consideration of past history of the organization, harmonious operation of the industry, and most effective representation for collective bargaining, will best promote industrial peace. If the labor organizations involved in the controversy so desire, they may submit the controversy to a tribunal

of the federation or labor organization which has granted their charters or to arbitration before a tribunal selected by themselves, provided the controversy is so submitted prior to the appointment by the governor of a labor referee to act in the controversy. After the appointment of the labor referee by the governor, or the submission of the controversy to another tribunal as herein provided, it shall be unlawful for any person or labor organization to call or conduct a strike or boycott against the employer or industry or to picket any place of business of the employer or in the industry on account of such jurisdictional controversy. (Act Apr. 24, 1943, c. 624, §6.) [179.083]

4254-32.—What are unfair labor practices by employers.—What are unfair labor practices by employers. It shall be an unfair labor practice for an employer:

(a) To institute any lockout of his employes in violation of any valid collective bargaining agreement between the employer and his employes or labor organization if the employes at the time are in good faith complying with the provisions of the agreement, or to violate the terms and conditions of such bargaining agreement.

(b) To institute any lockout of his employes in violation of sections 6 or 7 of this act.

(c) To encourage or discourage membership in any labor organization by discrimination in regard to hire or tenure of employment or any terms or conditions of employment; provided, however, that this subsection shall not apply to the provisions of collective bargaining agreements entered into voluntarily by an employer and his employees or a labor organization representing said employees as a bargaining agent as provided by section 16 of this act.

(d) To institute any lockout of to discriminate against an employe because he has signed or filed any affidavit, petition or complaint or given any information or testimony under this act.

(e) To spy directly or through agents or any other persons upon any activities of employes or their representatives in the exercise of their legal rights.

(f) To distribute or circulate any blacklist of individuals exercising any legal right or of members of a labor organization for the purpose of preventing individuals so blacklisted from obtaining or retaining employment.

(g) The violation of sub-sections (b), (d), (e) and (f) of this section are hereby declared to be unlawful acts. (As amended Act Apr. 26, 1941, c. 469, §8.)

Section was not mentioned in title to Laws 1941, c. 469, amending this section.

Employer held shown to have interfered with and dominated formation of employees' club through the activities of certain employees whose employment was steady and whose pay was higher than that of their fellow employees, even though they may not have been invested with authority over such fellow employees. Wilson & Co. v. Nat'l Lab. Rel. Bd., (C.C.A.8), 123 F. (2d) 411. See Dun. Dig. 9674b.

Evidence held to sustain federal board's findings that certain employees were discriminated against because of union affiliations and insufficient to sustain like findings as to other employees. Id.

(c).

Evidence held not to sustain finding of labor relations board that employer created or interfered with formation and administration of independent union formed by employees. E. G. Shinner & Co. v. Wrabetz, 235Wis195, 292 NW902.

4254-33. Interferences which are unlawful.—Subdivision 1. It shall be unlawful for any person at any time to interfere with the free and uninterrupted use of public roads, streets, highways or methods of transportation or conveyance or to wrongfully obstruct ingress to and egress from any place of business or employment.

Subdivision 2. It is an unfair labor practice for any employee or labor organization to commit an unlawful act as defined in Subdivision 1 of this section. (As amended Apr. 24, 1943, c. 624, §4.)

4254-34. Injunctions—Temporary restraining orders.—Whenever any unfair labor practice is threatened or committed, a suit to enjoin such practice may be maintained in the district court of any county wherein such practice has occurred or is threatened. In any suit to enjoin any of the unfair labor practices set forth in Mason's Minnesota Supplement 1940, Section 4254-31 and 4254-32, the provisions of Mason's Supplement 1940, Section 4256, and Section 4260-1 to 4260-15, inclusive, shall not apply; provided, however, that no court of the state of Minnesota shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of the violation of said Sections 4254-31 and 4254-32 as herein defined, except after hearing the testimony of witnesses in open court, with opportunity for cross-examination, in support of the allegations made under oath, and testimony in opposition thereto if offered, and except after findings of fact by the court to the effect that the acts set forth in said Sections 4254-31 to 4254-32 have been threatened and will be committed unless restrained, or have been committed and will be continued unless restrained; provided further, that no temporary restraining order may be issued under the provisions of this act except upon the testimony of witnesses produced by the applicant in open court and upon a record being kept of such testimony nor unless the temporary restraining order is returnable within seven days from the time it is granted which shall be noted on the order of the court. It shall be the duty of the court to give the trial or hearing of any suits or proceedings arising under this section precedence over all other civil suits which are ready for trial. Failure of the trial court to decide a motion for a temporary injunction within seven days from the date the hearing thereon is concluded shall dissolve any restraining order issued therein without further order of the court. Failure of the trial court to decide any suit brought under this section within 45 days from the date the trial was ended shall dissolve any restraining order or temporary injunction issued therein without further order of the court. (As amended Apr. 26, 1941, c. 469, §5: Apr. 24, 1943, c. 658, §1.)

Order vacating a restraining order and denying application for a temporary injunction against picketing of a drug store was not an abuse of discretion as against contention that wholesale drug companies refused to deliver stock through picket lines. East Lake Drug Co. v. Pharmacists and Drug Clerks' Union, Local No. 1353, 210M433, 298NW722. See Dun. Dig. 4478b.

Director of voluntary apprenticeship in industrial commission in issuing certificate of completion of apprenticeship has no authority to qualify the apprentice for a trade at any time. Op. Atty. Gen. (188c), June 25, 1943.

The labor injunction in Minnesota. 24MinnLawRev757.

4254-36. Representatives for collective bargaining—Investigations—Contempt.—

(a) * * * * *.

(b) * * * * *.

(c) In the investigation of any controversy concerning the representative of employees for collective bargaining, the labor conciliator shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence which relates directly to any matter involved in any such hearing, and the labor conciliator or his representative may administer oaths and affirmations, and may examine witnesses. Such attendance of witnesses and the production of such evidence may be required from any place in the state of Minnesota at any designated place of hearing, but hearings shall be held in a county where the question has arisen or exists.

(d) In case of contumacy or refusal to obey a subpoena issued under this section, the district court of the county where the proceeding is pending or in which the person guilty of such contumacy or refusal to obey is found, or resides, shall have jurisdiction to issue to such person an order requiring such person to appear and testify or produce evidence, as the case may require, and any failure to obey such order of

the court may be punished by said court as a contempt thereof. (As amended Act Apr. 26, c. 469, §6.)

Fact that an employee is a supervisory one is not in itself sufficient to disqualify him from right to be represented for collective bargaining purposes or included in a bargaining unit, test being his duties. Op. Atty. Gen. (270d-12), Sept. 14, 1942.

Contract of apprenticeship must provide for 4000 hours of service after execution of the contract without the consideration of prior oral or informal service. Op. Atty. Gen. (270), July 14, 1943.

(b).

There having been a full and complete hearing by labor conciliator, participated in by employer without objection, before certification of a labor union as representative of employees, absence of notice of hearing is unimportant. State v. Haney, 208M105, 292NW748.

A union working under a closed shop contract and having only one employee working at a particular place of business cannot institute a strike under this act. Op. Atty. Gen., (270d-9), Oct. 18, 1939.

4254-41. Definitions.—Subdivision 1. "Persons" includes individuals, partnerships, associations, corporations, trustees, and receivers; the singular includes the plural, and the masculine includes the feminine.

Subdivision 2. "Labor organization" means any organization of employees or of persons seeking employment which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances or terms or conditions of employment, but shall not include any labor organization subject to the Federal Railway Labor Act as amended from time time.

Subd. 3. "Employer" includes all persons employing others and all persons acting in the interest of an employer, but does not include the state or any political or governmental subdivision thereof, nor any person subject to the Federal Railway Labor Act, as amended from time to time.

Subd. 4. "Employee" includes, in addition to the accepted definition of the word, any employee whose work has ceased because of any unfair labor practice as defined in Section 12 of the Minnesota Labor Relations Act (Mason's Supplement 1940, Section 4254-32) on the part of the employer or because of any current labor dispute and who has not obtained other regular and substantially equivalent employment, but does not include any individual employed in agricultural labor or by his parent or spouse or in domestic service of any person at his own home.

Subd. 5. "Representative of employees" means any person acting or asserting the right to act for employees or persons seeking employment in collective bargaining or dealing with employers concerning grievances or terms or conditions of employments.

Subd. 6. "Competent evidence" means evidence admissible in a court of equity and such other evidence other than hearsay as is relevant and material to the issue and is of such character that it would be accepted by reasonable men as worthy of belief. (Act Apr. 24, 1943, c. 625, §1.)
[179.18]

4254-42. Election of officers of labor organization.—The officers of every labor organization shall be elected for such terms, not exceeding four years, as the constitution or by-laws may provide. The election shall be by secret ballot. The constitution or by-laws may provide for multiple choice voting, nomination by primaries or run-off elections, or other method of election by which selection by a majority may be obtained. In the absence of such provision, the candidate for any office receiving the largest number of votes cast for that office shall be declared elected. It is the duty of every labor organization and the officers thereof to hold an election for the purpose of electing the successor of every such officer prior to the expiration of his term. (Act Apr. 24, 1943, c. 625, §2.)
[179.19]

4254-43. Notice must be given of elections.—Subdivision 1. No election required hereunder shall be valid unless reasonable notice thereof shall have been given to all persons eligible to vote thereat. Proof of publication of notice of an election in a trade union paper of general circulation among the membership of the union holding such election shall be conclusive proof of reasonable notice as required in this subdivision. (Act Apr. 24, 1943, c. 625, §3.)
[179.20]

4254-44. Reports of receipts and disbursements.—It is hereby made the duty of the officer of every labor organization who is charged with responsibility of money and property thereof to furnish to the members thereof in good standing a statement of the receipts and disbursements of the labor organization from the date of the next preceding statement and the assets and liabilities thereof to the date of the current statement. Such statement shall be furnished by such officer at the time prescribed by the constitution or laws of the labor organization, or it shall be furnished not later than the 1st day of July next following such calendar year.

Subd. 2. No result of an election required hereunder shall be valid unless a plurality of the eligible persons voting thereat shall have cast their votes by secret ballot in favor of such result. (Act Apr. 24, 1943, c. 625, §4.)
[179.21]

4254-45. Office of labor referee created.—There is hereby created an office, to be known as labor referee. The governor may from time to time appoint labor referees for particular disputes as hereinafter provided. Such appointment shall be for the duration only of the particular dispute. Such labor referees shall be paid a per diem of $15 per day while so engaged, and their necessary expenses. When approved by him, the labor conciliator shall cause to be paid, from the appropriation to him, the amount due to the labor referees for services and expenses. (Act Apr. 24, 1943, c. 625, §5.)
[179.22]

4254-46. Conciliator shall certify violations to Governor.—Subdivision 1. Whenever it reasonably appears to the labor conciliator that any labor organization has failed substantially to comply with any of the requirements of this act, he shall certify that fact to the governor and transmit to the governor all the information he has received with reference thereto.

Subd. 2. Upon receipt of such certification by the labor conciliator, the governor, within five days from the date of such certification, shall appoint, if he deems it advisable, a labor referee to act in the dispute. If the governor does not appoint a labor referee within five days, he shall so notify the labor conciliator and return the files to him, which shall close the dispute.

Subd. 3. Upon receipt of notice of appointment as labor referee, such officer shall qualify by taking his oath of office and filing the same in the office of the secretary of state. He shall also notify the labor conciliator in writing of the date of filing such oath.

Subd. 4. Within ten days from the date of his appointment, the labor referee shall fix the time and place of hearing upon the complaint and send notice thereof by registered mail to the labor organization and to the officer thereof who are charged in the complaint with dereliction of duties, the complainant and to such other persons as may be named as parties to the dispute.

Subd. 5. Any party to or party affected by the dispute may appear at the hearing before the labor referee in person or by attorney or by other representative, and shall have the right to offer competent evidence and to be heard on the issues before any order herein provided is made. When all evidence has been adduced and the arguments heard, the labor referee shall prepare and file with the labor conciliator within thirty days from the close of testimony, his findings of fact and his order sustaining or dismissing the

charges. If the charges are sustained, such labor organization is thereby disqualified from acting as the representative of employees until such disqualification has been removed as provided herein.

Subd. 6. Any labor organization which has been disqualified from acting as a representative of employees pursuant to subdivision 5 of this section for failure to perform any duty imposed upon it by this act may remove such disqualification by applying to the labor conciliator and submitting proof of performance of the duty for the non-performance of which the disqualification was imposed. Upon receipt of such application, the labor conciliator shall notify all parties who participated in the hearing before the referee as adversary parties by mail of the filing of such application. If within 20 days after the mailing of such notice, written objection to the removal of such disqualification is filed with the labor conciliator, he shall certify the dispute to the governor, and further proceedings shall thereupon be had in like manner hereinbefore provided for the determination of disputes. Thereupon the labor referee appointed for such proceedings shall make and file his order either confirming the prior order for disqualification or removing the disqualification, as the case may require. If no objection is so filed, the labor conciliator shall make an order removing such disqualification.

Subd. 7. (1) The labor referee appointed by the governor pursuant to the privisions of this act shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence which relates to any matter involved in any such hearing, and may administer oaths and affirmations, and may examine witnesses. Such attendance of witnesses and the production of such evidence may be required from any place in the State of Minnesota at any designated place of hearing, but hearings shall be held in a county where the dispute has arisen or exists.

(2) In case of contumacy or refusal to obey a subpoena issued under (1) of this subdivision, the district court of the State of Minnesota for the county where the proceeding is pending or in which the person guilty of such contumacy or refusal to obey is found, or resides, or transacts business, on application by the labor referee shall have jurisdiction to issue to such person an order requiring such person to appear before the labor referee, there to produce evidence as so ordered, or there to give testimony touching the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof. (Act Apr. 24, 1943, c. 625, §6.)
[179.23]

4254-47. Unlawful acts.—It is unlawful for any labor organization which has been disqualified under Section 6, Subdivision 5, hereof to act as a representative of employees. (Act Apr. 24, 1943, c. 625, §7.)
[179.24]

4254-48. Minnesota Labor Union Democracy act.—This act may be cited as the "Minnesota Labor Union Democracy Act." (Act Apr. 24, 1943, c. 625, §8.)
[179.25]

The following is the preamble to Laws 1943, c. 625: "Whereas it is well recognized that the majority of labor unions are organized and operated upon democratic principles so that their officers and representatives are responsible and responsive to their members, and

Whereas disregard of democratic principles in the case of some unions has resulted in a denial of the rights of their members and in labor disputes and controversies affecting the public interest, and

Whereas undemocratic organization or operation of labor unions is inimical to the best interests of the members thereof and is contrary to the public welfare: Now, Therefore:"

INJUNCTIONS AND RESTRAINING ORDERS

4256. When restraining order or injunction not to be issued.

Order vacating a restraining order and denying application for a temporary injunction against picketing of a drug store was not an abuse of discretion as against contention that wholesale drug companies refused to deliver stock through picket lines. East Lake Drug Co. v. Pharmacists and Drug Clerks' Union, Local No. 1353, 210M433, 298NW722. See Dun. Dig. 4478b.

The labor injunction in Minnesota. 24MinnLawRev757.

4260-1. Jurisdiction of court limited.

Order vacating a restraining order and denying application for a temporary injunction against picketing of a drug store was not an abuse of discretion as against contention that wholesale drug companies refused to deliver stock through picket lines. East Lake Drug Co. v. Pharmacists and Drug Clerks' Union, Local No. 1353, 210M433, 298NW722. See Dun. Dig. 4478b.

Representatives of the musician's union in compelling theater operators presenting dramas and comedies not requiring music to employ six musicians by threatening to picket and by inducing stage hands' union to join in a combination to force the employment of the musicians or to discontinue operation of theater were accomplishing an unlawful labor objective, and a court had jurisdiction of an action to set aside the contract for duress and coercion and to enjoin the unlawful activities of the unions. Lafayette Dramatic Productions v. Ferentz, 305 Mich 193, 9NW(2d)57. See Dun. Dig. 4478b, 5811a.

The labor injunction in Minnesota. 24MinnLawRev757.

The state legislatures and unionism. 38MichLawRev 987.

4260-4. Court may not issue restraining orders in certain cases.

A non-profit hospital corporation cannot restrain picketing by non-professional maintenance employees desiring to bargain collectively. Northwestern Hospital v. P., 208M389, 294NW215.

(e).

In the exercise of freedom of speech secured by the Fourteenth Amendment of the Constitution of the United States, a labor union may peacefully picket the premises, where a person is engaged in building a house for the purpose of sale, to induce him to let work in connection with the construction thereof, done by him with his own hands, to others, who would employ union labor to do the same. Glover v. Minneapolis Building Trades Council, 215M533, 10NW(2d)481, 147ALR1071. See Dun. Dig. 1701.

4260-7. Jurisdiction of court in certain cases.

Effect of illegal acts in course of picketing on right to injunction against all picketing. 24MinnLawRev131.

Picketing private residence. 24MinnLawRev132.

4260-12. Definitions.

(a).

Maintenance and non-professional employees of a non-profit hospital are within the statute. Northwestern Hospital v. P., 208M389, 294NW215.

APPRENTICES

4260-37. Apprentice agreements — Contents. — Every apprentice agreement entered into under this act shall contain:

(1) The names of the contracting parties.

(2) The date of birth of the apprentice.

(3) A statement of the trade, craft, or business which the apprentice is to be taught, and the time at which the apprenticeship will begin and end.

(4) A statement showing the number of hours to be spent by the apprentice in work and the number of hours to be spent in related and supplemental instruction, which instruction shall be not less than 144 hours per year. Provided, however, that the maximum number of hours of work per week not including time spent in related and supplemental instruction for any apprentice shall not exceed either the number prescribed by law or the customary regular number of hours per week for the employees of the company by which the apprentice is employed, such number to be determined by the local joint apprenticeship committee for the trade.

(5) A statement setting forth a schedule of the processes in the trade or industry divisions in which the apprentice is to be taught and the approximate time to be spent at each process.

(6) A statement of the graduated scale of wages to be paid the apprentice and whether the required school time shall be compensated.

(7) A statement providing for a period of probation of not more than 500 hours of employment and instruction extending over not more than four months, during which time the apprentice agreement shall be terminated by the director at the request in writing of either party, and providing that after such probationary period the apprentice agreement may be terminated by the director by mutual agreement of all parties thereto, or canceled by the director for good and sufficient reason.

(8) A provision that all controversies or differences concerning the apprentice agreement which cannot be adjusted locally shall be submitted to the director for determination as provided for in section nine.

(9) A provision that an employer who is unable to fulfill his obligation under the apprentice agreement may, with the approval of the director, transfer such contract to any other employer provided that the apprentice consents and that such other employer agrees to assume the obligations of said apprentice agreement.

(10) Such additional terms and conditions as may be prescribed or approved by the director not inconsistent with the provisions of this act. (As amended Mar. 28, 1941, c. 85, §1.)

COMMON LAW DECISIONS RELATING TO TRADE UNIONS IN GENERAL

2. Remedies of members.

An appeal under a parent union's laws by a local union from a decision of the parent union's general president to its general executive board will not be held futile and illusory in advance of the event, where provision is made for a full hearing on such appeal, but where the general executive board by its conduct renders such an appeal nugatory, the parent union will be held to have waived compliance with the provisions of its laws requiring that redress of grievances must be sought by exhaustion of intra-union remedies before there can be recourse to the courts. Mixed Local Etc. v. Hotel and R. Employees Etc., 212M587, 4NW(2d)771. See Dun. Dig. 9674.

Where a provision of a parent union authorizing its general president to appoint a trustee of a local union subject to its jurisdiction and discipline is silent with respect thereto, preferment of charges, notice, and hearing are implied as requirements of due process. Id.

An appeal to a parent union's general executive board from an order of its general president appointing a trustee of a local union, absent expression of a contrary meaning, removes the matter to the general executive board for trial de novo. Id.

Redress of grievances must be sought by exhaustion of intra-union remedies before there can be recourse to the court arising out of a controversy between a parent union and a local union. Id.

Where a voluntary association such as a lodge or trade union proceeds without complying with its laws, its action is a nullity for want of jurisdiction, and redress may be had by direct resort to the courts without exhaustion of remedies within the organization. Id.

Where the method of procedure in controversy is not regulated by law of an association or trade union, procedure should be analogous to ordinary parliamentary proceedings. Id.

Where a parent union expels or suspends a subordinate one without charges, notice, or hearing, the expulsion or suspension is a nullity. Id.

3. Public employees.

Resolution of county board prohibiting hiring of members of labor unions would be unconstitutional. Op. Atty. Gen. (270d), Nov. 9, 1943.

4. Picketing.

In the exercise of freedom of speech secured by the Fourteenth Amendment of the Constitution of the United States, a labor union may peacefully picket the premises, where a person is engaged in building a house for the purpose of sale, to induce him to let work in connection with the construction thereof, done by him with his own hands, to others, who would employ union labor to do the same. Glover v. Minneapolis Building Trades Council, 215M533, 10NW(2d)481, 147ALR1071. See Dun. Dig. 1701, 9674.

Picketing—freedom of speech—false bannering in connection with peaceful picketing. 27MinnLawRev187.

5. Constitution, and contracts.

Barbers' union providing sick and death benefits to members waived a compliance with provision of constitution concerning form and time for filing claims for death benefit by repudiating claim and delaying for an unreasonable length of time to furnish claimant information as to status of decedent's dues. Wait v. Journeymen Barbers' International Union, 210M180, 297 NW630. See Dun. Dig. 4844.

Constitution of barbers' union providing for maximum benefits to a contributing member for more than 15 years held not to require that member be a continuous contributing member for that number of years immediately prior to death, and it was immaterial that membership of deceased had been suspended for a period several years prior to his death. Id. See Dun. Dig. 4846.

Constitution of barbers' union must be construed most favorably to member as respects amount of death benefit payable to his widow. Id.

Under the constitution of the International Union of teamsters, chauffeurs, warehousemen and helpers, a local union could not be dissolved so long as seven members of it objected to such dissolution, being a matter of contract between the local and union to which the local assented when it accepted its charter. State v. Postal, 215M427, 10NW(2d)373. See Dun. Dig. 9674.

6. Property.

The property of unincorporated labor unions is just as sacred as that of any other organization or person, and the officers of those unions, like officers of other organizations, are bound to respect the title to that property. State v. Postal, 215M427, 10NW(2d)373. See Dun. Dig. 9674.

CHAPTER 23A

Workmen's Compensation Act

PART I

COMPENSATION BY ACTION AT LAW— MODIFICATION OF REMEDIES

4261. Injury or death of employee. [Repealed.]

Repealed. Laws 1937, c. 64, §10.

Severson v. H., (CCA8), 105F(2d)622. Cert. den., 60SCR 514. Reh. den., 60SCR607.

PART II

ELECTIVE COMPENSATION

4268. Not applicable to certain employments. [Repealed.]

3. Casual employment.

See notes under §4272-4.

Removing screens and putting on storm windows on two 3-story buildings was casual employment, but employer and employee were within the Act if the employment was in the usual course of business or occupation of employer. Fisher v. M., 208M410, 294NW477. See Dun. Dig. 10394.

4271. Presumption as to acceptance of provisions of part 2. [Repealed.]

Evidence sustains finding that employer neglected to post and keep posted in a conspicuous place in his place of business, notice of election not to be bound by Part II of compensation act, and his election was inoperative. Walerius v. F., 206M521, 289NW55. See Dun. Dig. 10389.

4272-1. Employer's right to elect abolished.

Rights and obligations created by compensation act are contractual, and rights granted and obligations imposed necessarily rest upon statute and are limited as granted or imposed by it. McGough v. M., 206M1, 287NW 857. See Dun. Dig. 10385.

A basic thought underlying compensation act is that business or industry shall in the first instance pay for accidental injury as a business expense or a part of cost of production. Id.

Compensation act should receive a broad and liberal construction in the interest of workmen, and court should studiously avoid a narrow or forced construction of third party statute. Id.

Employer's liability has for its foundation the existence of employer-employee relation. Id. See Dun. Dig. 10393.

Workmen's Compensation Act should be liberally construed in favor of employee. Corcoran v. Teamsters and Chauffeurs Joint Council No. 32, 209M289, 297NW4. See Dun. Dig. 10385.

Assault on and death of a traveling salesman after leaving plant arose "out of" his employment where plant was located in a district where crime was prevalent and night work there tended to subject him to