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SENATE FILE 412

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PALMER, MILLER, and
GAUDINEER

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the Iowa labor relations board and unfair
2 labor practices and providing penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. DEFINITIONS. As used in this Act, unless the
2 context requires otherwise:

3 1. "Board" means the Iowa labor relations board.

4 2. "Person" means an individual, partnership, association,
5 labor organization, corporation, trustee, trustee in bank-
6 ruptcy, or receiver.

7 3. "Employee" includes an individual whose employment
8 has ceased as a consequence of a labor dispute or unfair labor
9 practice and who has not obtained any other regular and sub-
10 stantially equivalent employment. An individual who is em-
11 ployed by his parent or spouse or in the domestic service
12 of any person in his home, who is employed only for the
13 duration of a labor dispute, who is an independent contractor,
14 or who is employed as a supervisor is not an employee for
15 the purpose of this Act.

16 4. "Representative" means a labor organization or its
17 representative.

18 5. "Labor organization" means an organization which exists
19 for the purpose, in whole or in part, of collective bargain-
20 ing on behalf of employees, or of dealing with employers con-
21 cerning grievances, wages, terms or conditions of employment.

22 6. "Labor dispute" means any controversy concerning terms,
23 tenure, or conditions of employment, or concerning representa-
24 tion of persons in negotiating, fixing, maintaining, changing,
25 or seeking to arrange terms or conditions of employment.

26 Sec. 2. IOWA LABOR RELATIONS BOARD. There is established
27 within the Iowa bureau of labor the Iowa labor relations
28 board, which shall be composed of three members who serve
29 staggered six-year terms. On January 1, 1972, the governor
30 shall appoint the members, subject to the approval of two-
31 thirds of the membership of the senate.

32 The governor shall designate one member of the board to
33 serve as chairman. The original board shall be composed of
34 one member appointed for a two-year term, one member appointed
35 for a four-year term, and one member appointed for a six-year

1 term. The governor shall indicate the length of term when
2 making the appointment of the original board. Each member
3 of the board shall have been a qualified elector in this state
4 for at least one year preceding his appointment.

5 A member may be removed by the governor for cause, after
6 a public hearing, if a hearing is requested by the member.
7 The member shall be given a copy of the charges made against
8 him, and shall have an opportunity to answer the charges.

9 The governor shall fill any interim vacancy by appointment
10 for the unexpired term.

11 Each member shall receive as compensation thirty-five dol-
12 lars per day for actual time spent in carrying out his duties,
13 plus his actual and necessary expenses.

14 Sec. 3. POWERS AND DUTIES OF THE BOARD. The board may
15 hold hearings at any place in this state. The board shall
16 appoint employees as necessary to carry out the provisions
17 of this Act.

18 The board may prevent a person from engaging in an unfair
19 labor practice. This power shall not be affected by any other
20 means of adjustment or prevention that has been or may be
21 established by agreement, law, or otherwise.

22 Complaints, decisions and other processes and papers of
23 the board or the general counsel may be served personally,
24 by registered mail, by telegraph or by leaving a copy at the
25 principal office or place of business of the person required
26 to be served. The verified return of service shall be proof
27 of such service.

28 The board may authorize a member or an employee to conduct
29 a hearing, to receive evidence, or to issue a subpoena.

30 All decisions of the board must state the findings of fact
31 and conclusions of the board and shall be filed with the com-
32 missioner. A copy of the decision must be delivered to each
33 party involved.

34 At the end of each fiscal year, and more frequently if
35 requested by the governor, the board shall make a written

1 report to the governor, and file a copy with the commissioner.

2 Prior to January first of each year, the board shall sub-
3 mit to the state comptroller for his approval an estimated
4 budget of the expenses for administering this Act for the
5 ensuing fiscal year.

6 Sec. 4. JURISDICTION. The board shall have jurisdiction
7 over labor disputes which are not subject to the provisions
8 of the federal railway labor Act and over which the national
9 labor relations board does not have or has declined to assert
10 jurisdiction. For purposes of determining whether the national
11 labor relations board has asserted jurisdiction, the board
12 shall ascertain the relevant rules and regulations, press
13 releases, and case rulings of the national labor relations
14 board.

15 The board shall not require, as a condition for taking
16 jurisdiction over an employer's unfair labor practice, that
17 employees engaged in a lawful strike or other lawful concerted
18 activity shall discontinue the activity.

19 Sec. 5. GENERAL COUNSEL. The board, on or before March
20 first, 1972, shall appoint a general counsel for a term of
21 four years at an annual salary established by the board.
22 The appointment must be approved by the executive council.
23 The general counsel may be removed by the board for cause,
24 after a public hearing, if the hearing is requested by the
25 counsel. The general counsel shall be given a copy of the
26 charges against him, and shall have an opportunity to answer
27 the charges. The board may fill any vacancy in this office
28 by appointment for the unexpired term.

29 The general counsel shall investigate petitions referred
30 to him by the board or other suspected violations of this
31 Act which come to his attention. He shall have final respon-
32 sibility on behalf of the board for the investigation of
33 petitions, issuance of complaints provided in section fifteen
34 (15) of this Act, and prosecution of complaints before the
35 board. He shall have other duties as prescribed by the board

1 or provided by law.

2 Sec. 6. PUBLIC POLICY. Employees shall have the right
3 to organization, to form, join, or assist labor organizations,
4 to bargain collectively through representatives of their own
5 choosing, to engage in other concerted activities for the
6 purpose of collective bargaining or other mutual aid or pro-
7 tection, and to refrain from any or all activities, except
8 to the extent that the right may be affected by a lawful
9 agreement requiring membership in a labor organization as
10 a condition of employment.

11 Sec. 7. UNFAIR LABOR PRACTICES FOR EMPLOYERS. It is an
12 unfair labor practice for an employer to:

13 1. Interfere with, restrain, or coerce employees in the
14 exercise of the rights guaranteed in section six (6) of this
15 Act.

16 2. Prepare, use, or circulate a blacklist for the purpose
17 of preventing the employment or reemployment of individuals
18 because of their exercise of the rights set forth in section
19 six (6) of this Act.

20 3. Dominate or interfere with the formation or administra-
21 tion of a labor organization, or contribute financial or other
22 support to it. However, an employer is not prohibited from
23 permitting employees to confere with him during working hours,
24 without loss of time or pay, when the purpose of the conference
25 is not in violation of subsection one (1) of this section.

26 4. Discriminate with respect to hiring or tenure of em-
27 ployment, benefits, or other terms or conditions of employ-
28 ment for the purpose of encouraging or discouraging member-
29 ship in a labor organization.

30 5. Refuse to bargain collectively or discuss grievances
31 with the representatives of his employees.

32 6. Discharge or otherwise discriminate against an employee
33 because he has filed a petition, or has given testimony under
34 the provisions of this Act.

35 7. Deduct, collect, or assist in collecting from the wages

1 of employees dues, fees, assessments, or other contributions
2 payable to a labor organization, except when authorized to
3 do so with respect to dues, after receiving a written autho-
4 rization from each employee whose wages are to be affected.
5 An authorization given by an employee may be revoked after
6 one year.

7 Sec. 8. UNFAIR LABOR PRACTICES FOR EMPLOYEES OR REPRE-
8 SENTATIVES. It is an unfair labor practice for a labor organ-
9 ization or its members or agents to:

10 1. Coerce or restrain an employee in the exercise of the
11 rights guaranteed in section six (6) of this Act.

12 2. Cause or attempt to cause an employer to discriminate
13 against an employee.

14 3. Engage in or induce an employee to engage in picketing,
15 a strike, a slowdown, or other refusal, in the course of his
16 employment, to use, process, transport, or handle goods or
17 materials or to perform services, or to threaten, coerce,
18 or restrain a person for the purpose of:

19 a. Forcing or requiring a person to cease using, selling,
20 handling, transporting, or otherwise dealing in the products
21 of another producer, processor, or manufacturer, or to cease
22 doing business with another person. However, any primary
23 strike or primary picketing of an employer whether or not
24 conducted at the premises of the primary employer is not un-
25 lawful.

26 b. Forcing or requiring an employer or union to enter
27 into an agreement which is prohibited by this Act.

28 c. Forcing or requiring another employer to recognize,
29 or bargain with, or refuse to recognize or bargain with a
30 labor organization.

31 d. Forcing or requiring an employer to assign particular
32 work to employees in a particular labor organization or in
33 a particular trade, craft, or class, rather than to employees
34 in another labor organization or in another trade, craft,
35 or class, unless the employer is failing to obey a decision

1 of the board.

2 4. Picket or cause to be picketed, or threaten to picket
3 or cause to be picketed, an employer, if:

4 a. Picketing is to force or require the employer to
5 recognize or bargain with a labor organization as the repre-
6 sentative of his employees, or to force or require the em-
7 ployees to accept or select a labor organization as their
8 collective bargaining representative, unless the labor orga-
9 nization is currently certified as the representative of such
10 employees.

11 b. The employer has recognized another labor organization
12 as the representative of his employees, and a question con-
13 cerning representation may not appropriately be raised under
14 section thirteen (13) of this Act.

15 c. Within the preceding twelve months, a valid election
16 under section thirteen (13) of this Act has been conducted
17 or a petition, which was filed by the picketing labor orga-
18 nization with respect to substantially the same group of em-
19 ployees, has been dismissed by the board due to a lack of
20 interest among the employees.

21 d. Picketing has been conducted without a petition being
22 filed within a reasonable time, not exceeding thirty days.

23 5. Refuse to bargain collectively with an employer, pro-
24 vided that the labor organization is the representative of
25 the employer's employees, subject to the provisions of sec-
26 tion thirteen (13) of this Act.

27 6. Use or threaten to use violence or sabotage against
28 a person or property to obtain a concession from an employer.

29 Sec. 9. FAIR LABOR PRACTICE.

30 1. Employees may disseminate publicity or engage in peace-
31 ful picketing for the purpose of truthfully advising the pub-
32 lic, including consumers and members of a labor organization,
33 that a product is produced by an employer with whom the labor
34 organization has a primary dispute and is handled or dis-
35 tributed by another employer, if the publicity does not have

1 the effect of inducing a person who is not employed by the
2 primary employer to refuse to pick up, deliver, or transport
3 any goods or perform any services.

4 2. An employer and a labor organization may enter into
5 any agreement, expressed or implied, if the purpose is to
6 preserve or obtain work fairly claimable for the bargaining
7 unit covered by the agreement. An agreement providing that
8 an employer cease, refrain from, or agree to cease or refrain
9 from doing business with another person is an unfair labor
10 practice and is void and not enforceable.

11 3. An employer, employee, or representative may express
12 or disseminate a view, argument, or opinion, if the expres-
13 sion contains no threat of reprisal or force or promise of
14 benefit.

15 Sec. 10. COLLECTIVE BARGAINING. Collective bargaining
16 is the performance of the mutual obligation of the employer
17 and the representative of the employees to meet at reasonable
18 times and confer in good faith with respect to wages, hours,
19 and other terms and conditions of employment, or the negotia-
20 tion of an agreement or any question arising from an agree-
21 ment and the execution of a written contract incorporating
22 any agreement reached, if requested by either party. The
23 obligation does not require either party to agree to a pro-
24 posal or to make a concession.

25 Sec. 11. REPRESENTATION. Representatives selected for
26 the purpose of collective bargaining by the majority of the
27 employees in an appropriate bargaining unit shall be the ex-
28 clusive representatives of all the employees in the unit for
29 the purpose of collective bargaining. However, an employer
30 may permit employees to personally present grievances.

31 Sec. 12. APPROPRIATE BARGAINING UNIT. With the objective
32 of securing the fullest benefit of this Act for employees,
33 the board shall decide in each case whether the appropriate
34 unit shall be an employer unit, craft unit, plant unit, or
35 other unit. The extent to which the employees have organized

1 is not by itself a sufficient factor to support the finding
2 of an appropriate unit. A unit shall not include both pro-
3 fessional employees and nonprofessional employees, unless
4 a majority in each group vote for inclusion in one unit.
5 A unit shall not include guards and other employees. If the
6 board has previously determined that a craft unit is inappro-
7 priate, the board shall not reverse the determination unless
8 a majority of the employees in the proposed craft unit vote
9 against separate representation.

10 Sec. 13. ELECTION OF REPRESENTATIVES. If the board has
11 reasonable cause to believe that a bona fide question concern-
12 ing representation exists, it shall provide for a hearing
13 upon due notice. If the board finds that the claim concern-
14 ing representation is supported by a substantial number of
15 employees or when the claim appears to be supported by thirty
16 percent of the employees in the appropriate bargaining unit,
17 the board shall conduct an election by secret ballot among
18 the employees and shall certify the results of the election.

19 No election shall be held in any bargaining unit or its
20 subdivision if a valid election has been held in the preceding
21 twelve-month period.

22 If, in an election no choice on the ballot receives a ma-
23 jority, a second election shall be held between the choices
24 receiving the largest and second largest number of valid votes
25 cast in the initial election.

26 When one of the questions to be decided in the election
27 is the inclusion or exclusion of one unit with respect to
28 another unit, successive elections shall be held by the unit
29 to be included or excluded, at which the choice on the ballot
30 receiving the fewest number of votes shall be dropped in each
31 succeeding election until one choice receives a majority.

32 A hearing may be waived by stipulation for the purpose
33 of a consent election in conformity with the regulations and
34 rules prescribed by the board.

35 Sec. 14. BOARD INVESTIGATION. The board shall investigate

1 whenever a petition is filed with the board by:

2 1. An employee, group of employees, or a representative
3 alleging that a substantial number of employees:

4 a. Wish to be represented for collective bargaining and
5 that their employer declines to recognize their representa-
6 tive.

7 b. Assert that the individual or labor organization which
8 has been certified or is being currently recognized by their
9 employer as the bargaining representative no longer represents
10 the wishes of a majority of the employees in the bargaining
11 unit.

12 2. An employer alleging that more than one person has
13 presented to him a claim to be recognized as the exclusive
14 representative.

15 The board, the general counsel, and any duly authorized
16 agents of the board, shall at all reasonable times have access
17 to, and the right to copy evidence relating to any person
18 or action under investigation by it in connection with any
19 labor dispute.

20 Sec. 15. COMPLAINTS. The board shall refer to the general
21 counsel all petitions that an employer or labor organization
22 has engaged in or is engaging in an unfair labor practice.
23 Upon referral by the board or the general counsel's own in-
24 vestigation, the general counsel shall issue and cause to
25 be served a complaint upon the person against whom the peti-
26 tion has been filed.

27 The complaint shall set forth the violations charged and
28 summon the named person to a hearing before the board at the
29 time and place fixed. The time and place of the hearing may
30 be changed by the general counsel, by the request of the board
31 on its own motion, or on motion of any other party for cause
32 shown. The hearing shall be held not less than seven days
33 after service of the complaint, unless the threat of immedi-
34 ate and irreparable harm requires a more prompt hearing.

35 No complaint shall be issued based on any unfair labor

1 practice occurring more than six months prior to the filing
2 of the petition with the board or, in the case of an investiga-
3 tion initiated by the general counsel, more than six months
4 prior to the commencement of the investigation.

5 Sec. 16. HEARINGS. A complaint may be amended by the
6 general counsel with the permission of the board at any time
7 prior to the board's decision. The person to whom the petition
8 was served shall have the right to appear in person or
9 otherwise at the hearing and give testimony. Any person may
10 be allowed to intervene to present testimony. Hearings shall
11 be conducted, insofar as practicable, in accordance with the
12 rules of evidence applicable in the courts of this state.

13 A written transcript of the testimony taken at any hearing
14 shall be maintained by the board. The board, upon notice
15 to all parties, may then take further testimony, hear argument,
16 or accept briefs.

17 The board is empowered to administer oaths and to issue
18 subpoenas requiring the attendance of witnesses or the pro-
19 duction of evidence.

20 In case of refusal to obey a subpoena, the district court,
21 upon application by the board, may order a person to appear
22 before the board to produce evidence or to give testimony
23 concerning the matter under investigation. Failure to obey
24 the court's order may be punished by the court as a contempt.

25 No person shall be excused from attending, testifying,
26 or producing books, records, correspondence, documents, or
27 other evidence in obedience to the subpoena of the board,
28 on the ground that the testimony or evidence required of him
29 may tend to incriminate him or subject him to a penalty or
30 forfeiture. No individual shall be prosecuted or subjected
31 to any penalty or forfeiture on account of any transaction,
32 matter or thing concerning which he is compelled to testify
33 or produce, if he has claimed his privilege against self-
34 incrimination. A person so testifying shall not be exempt
35 from prosecution and punishment for perjury committed in so

1 testifying.

2 Witnesses summoned before the board or the general counsel
3 shall be paid the same fees and mileage allowances that are
4 paid witnesses in the courts of this state. Witnesses whose
5 depositions are taken and the person taking the same shall
6 be entitled to the same fees that are paid in the courts of
7 this state.

8 Sec. 17. DECISIONS. If, upon all the evidence, the board
9 determines that the person complained of has engaged in or
10 is engaging in any unfair labor practice, it shall state in
11 its decision its findings of fact, and shall issue and cause
12 to be served on such person an order requiring him to cease
13 and desist from the unfair labor practice, and shall order
14 further affirmative action to effectuate the policies of this
15 Act including, but not limited to:

16 1. Payment of back pay by the responsible employer or
17 labor organization.

18 2. Reinstatement of employees, with or without back pay.

19 3. Hiring of persons who were not employed in violation
20 of section seven (7), subsections two (2) or four (4) of this
21 Act.

22 4. An offer of preferential future rehiring to employees
23 displaced or replaced in violation of section seven (7) of
24 this Act.

25 5. Initiation or resumption of collective bargaining.

26 6. Withdrawal of recognition of a labor organization es-
27 tablished or assisted by an employer in violation of section
28 seven (7), subsection three (3) of this Act, or a labor
29 organization attaining recognition in violation of section
30 eight (8) of this Act.

31 The board may require a person to make reports showing the
32 extent to which he has complied with the decision.

33 The board shall not order the reinstatement of or award-
34 ing of back pay to an employee who was suspended or discharged
35 for cause.

1 If, upon all the evidence, the board determines that the
2 person to whom the petition was served did not engage or is
3 not engaging in any unfair labor practice, it shall make its
4 findings of fact and issue in its decision an order dismissing
5 the complaint.

6 Whenever a petition charges or an investigation reveals
7 that a person is engaging in an unfair labor practice within
8 the terms of section eight (8), subsection three (3), para-
9 graph d of this Act, the board shall assign to the group of
10 employees properly entitled to the disputed work, unless the
11 parties satisfy the board within ten days of the issuance
12 of the complaint that the dispute is settled or the parties
13 have agreed upon a reasonably prompt means of settling the
14 dispute.

15 Until a petition has been filed in the district court,
16 as provided in section eighteen (18) of this Act, the board
17 may at any time, upon reasonable notice and in a manner es-
18 tablished by the board's rules or regulations as it deems
19 proper, modify or set aside, in whole or in part, any finding
20 or order made or issued by it. A decision of the board shall
21 not prevent jurisdiction of a court in a civil or criminal
22 action based upon the activity which is the subject of the
23 board's order.

24 Sec. 18. DISTRICT COURT. The board, upon issuance of
25 a complaint charging that a person has engaged in or is en-
26 gaging in an unfair labor practice, may petition the district
27 court for the county where the unfair labor practice is alleged
28 to have occurred or where any person charged with the unfair
29 labor practice resides or transacts business, for appropriate
30 temporary relief or a restraining order. The board may also
31 petition the court for enforcement of a decision. Where
32 enforcement of a decision is sought, the board shall certify
33 and file in the court a transcript of the entire record of
34 the proceedings.

35 Within five days after filing a petition in district court,

1 the board shall cause a copy of the petition to be sent by
2 registered mail to all parties or their representatives.

3 The court may grant such relief, as it deems appropriate,
4 and enter a decree enforcing, or modifying the decision of
5 the board.

6 Sec. 19. DISTRICT COURT REVIEW. Any person aggrieved
7 by a decision of the board may obtain a review of the deci-
8 sion in the district court for the county where the unfair
9 labor practice is alleged to have occurred or where the per-
10 son resides or transacts business, by filing in the district
11 court, within thirty days from the date of the decision, a
12 written petition in duplicate praying that the decision of
13 the board be modified or set aside. The clerk of the dis-
14 trict court shall mail the duplicate copy to the board. The
15 board shall then file in said court a transcript of the entire
16 record of the proceedings.

17 By stipulation of all parties to the review proceeding,
18 the record may be shortened. A party unreasonably refusing
19 to stipulate to limit the record may be taxed by the court
20 for the additional costs. The court may require or permit
21 subsequent corrections or additions to the record when desir-
22 able.

23 The court may grant relief, as it deems appropriate, and
24 may enter a decree enforcing or modifying the decision of
25 the board. Any decision of the board shall become final if
26 no appeal is made within thirty days.

27 The court shall only review the board proceedings and not
28 consider any additional information unless the failure to
29 include the information in the hearing is excused because
30 of extraordinary circumstances. If either party applies to
31 the court to adduce additional evidence and shows to the
32 satisfaction of the court that such additional evidence is
33 material and that there were reasonable grounds for the failure
34 to include the evidence in the hearing, the court may order
35 the additional evidence to be referred to the board and to

1 be made part of the transcript. The board may modify its
2 decision and shall file its revised decision with the district
3 court.

4 Sec. 20. SUPREME COURT REVIEW. The judgment and decree
5 of the district court shall be subject to review by the supreme
6 court, on appeal, by either party filing a petition within
7 thirty days from the date the judgment or decree was issued,
8 irrespective of the nature of the decree or judgment or the
9 amount involved. The record certified to the supreme court
10 shall be complete as to everything that was before the lower
11 court.

12 Sec. 21. COURT REVIEW. Commencement of proceedings pro-
13 vided in sections nineteen (19) and twenty (20) of this Act
14 shall not stay enforcement of the board's decision, but the
15 board or the reviewing court may order a stay upon terms as
16 it deems proper.

17 Petitions filed pursuant to sections nineteen (19) and
18 twenty (20) of this Act shall be heard expeditiously, and,
19 if possible, within ten days after they have been docketed.

20 The review shall be conducted by the court and shall be
21 confined to the record. The findings of the board, if
22 supported by substantial evidence in view of the entire record
23 as submitted, shall be conclusive. However, in cases of
24 alleged irregularities in procedure before the board, not
25 shown in the record, testimony of such proceedings may be
26 taken. The court, upon request, shall hear oral argument
27 and receive written briefs.

28 Sec. 22. RULES AND REGULATIONS. The board, in accordance
29 with chapter seventeen A (17A) of the Code, may issue and
30 cause to be published rules and regulations necessary to carry
31 out the purposes of this Act.

32 Sec. 23. PENALTY. A person convicted of willfully resist-
33 ing or interfering with an authorized agent of the board in
34 the performance of duties, shall be fined not more than five
35 hundred dollars, or imprisoned in the county jail not more

1 than six months, or both. A person convicted of willfully
2 disobeying a decision by the board shall be punished for
3 contempt and be fined not more than five hundred dollars or
4 imprisoned not more than six months in the county jail, or
5 both for each day of willful disobedience.

6 Sec. 24. Sections seven hundred thirty-six B point one
7 (736B.1) through seven hundred thirty-six B point five
8 (736B.5), inclusive, Code 1971, are repealed.

9 EXPLANATION

10 This bill establishes the Iowa Labor Relations Board within
11 the Bureau of Labor. The Board is composed of three members
12 appointed by the Governor and confirmed by two-thirds vote
13 of the Senate to serve staggered six-year terms.

14 The Board will hear all charges of unfair labor practices.
15 The Board appoints a general counsel with the approval of
16 the Executive Council. The general counsel investigates all
17 charges filed and may initiate investigation upon his own.

18 Decisions of the Board may be appealed to the district
19 court and to the Supreme Court.

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