

## **Private Sector Labor Relations**

Minnesota regulates labor relations between employers and employees that are not otherwise regulated by federal law. This information brief explains the relationship between federal and state labor relations laws; provides an overview of the Minnesota Labor Relations Act, which regulates private sector labor relations in Minnesota;<sup>1</sup> and identifies several potential avenues for resolving labor disputes in Minnesota.

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### **The Relationship Between Federal and State Labor Relations Law**

**The National Labor Relations Act gives federal rights to covered employers and employees.**

The National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.*, and amendments added in 1947 by the Labor Management Relations Act (also known as the Taft-Hartley Act) govern relations between labor unions and employers whose enterprises affect interstate commerce. The NLRA guarantees employees certain rights to organize as unions and to choose a representative to negotiate on their behalf, while simultaneously guaranteeing employees the right to not organize in this fashion. The NLRA also identifies certain practices of employers and unions as unfair labor practices. One main purpose of the NLRA is to encourage employers and employees to engage in negotiations about wages, hours, and working conditions.<sup>2</sup>

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<sup>1</sup> This information brief discusses only Minnesota's law of private sector labor relations; it does not address Minnesota's regulation of public sector labor relations. Labor relations in the context of public employment are regulated by the Public Employment Labor Relations Act. [Minn. Stat., ch. 179A.](#)

<sup>2</sup> For a more detailed overview of the National Labor Relations Act, see *Basic Guide to the National Labor Relations Act: General Principles of Law Under the Statute and Procedures of the National Labor Relations Board* (Rev. Ed. 1997), available at [http://www.nlr.gov/nlr/shared\\_files/brochures/basicguide.html](http://www.nlr.gov/nlr/shared_files/brochures/basicguide.html).

The NLRA is enforced by the National Labor Relations Board (NLRB), a federal agency created by Congress in 1935. The NLRB conducts and certifies the results of representation elections and reviews and decides cases in which claims of unfair labor practices have been made.<sup>3</sup>

The NLRB does not act on its own initiative; it only considers charges of unfair labor practices or petitions for employee representation that are formally filed with the board.

### **The NLRA applies only to employment relationships that fall within federal jurisdiction.**

Although the NLRA sets standards that govern the labor relations between many employers and employees, the federal government's ability to regulate labor-management relations is limited by the Commerce Clause of the U.S. Constitution.<sup>4</sup> This means that Congress can only declare the rights of employees and employers and regulate labor-management relations in situations when the employer's enterprise affects interstate commerce. The NLRB has established rules for deciding whether a given enterprise affects interstate commerce and, therefore, is subject to the NLRA. Generally, the board considers how much total business an enterprise does on an annual basis and then decides whether or not the enterprise affects interstate commerce.<sup>5</sup>

The NLRA specifically excludes certain categories of employees from its regulations, regardless of whether the employees work for enterprises engaged in interstate commerce.<sup>6</sup> For example, government employees, agricultural employees, certain independent contractors, supervisors, and domestic employees are not protected or regulated by the NLRA. Airline and railroad employees are covered by the Railway Labor Act (RLA)<sup>7</sup> instead of the NLRA.

### **Federal regulation preempts state and local regulation.**

State and local governments cannot regulate activities that are protected by or prohibited under the NLRA because these regulations are preempted by the federal regulation of the same activities.<sup>8</sup> Moreover, state and local governments cannot regulate certain areas of labor relations that are not regulated by the NLRA because Congress's decision not to regulate those

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<sup>3</sup> Employers and employees can seek the assistance of the NLRB by contacting the NLRB's local office for their region. Regional office directors make initial determinations in unfair labor practice and representation cases within the geographical area served by the region. The regional office for Minnesota can be reached at 612-348-1757.

<sup>4</sup> Congress has power "[t]o regulate Commerce ... among the several States." U.S. Const., art. 1, § 8, cl. 3.

<sup>5</sup> For a more detailed overview of the National Labor Relations Act, see *Basic Guide to the National Labor Relations Act: General Principles of Law Under the Statute and Procedures of the National Labor Relations Board* (Rev. Ed. 1997), available at [http://www.nlr.gov/nlr/shared\\_files/brochures/basicguide.html](http://www.nlr.gov/nlr/shared_files/brochures/basicguide.html).

<sup>6</sup> *Ibid.*

<sup>7</sup> 45 U.S.C. § 151 et seq.

<sup>8</sup> This principle is known as "Garmon preemption." See *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236 (1959). *Garmon* preemption is a doctrine that forbids state and local regulation of (1) activities that the National Labor Relations Act (NLRA) protects or prohibits, and (2) activities that the NLRA only arguably protects or prohibits. *Bldg. & Constr. Trades Council v. Associated Builders & Contractors*, 507 U.S. 218, 224-25 (1993).

areas is deemed to preempt other state and local regulation.<sup>9</sup> These “preemption rules,” which have been established by the courts, are intended to avoid conflicts between state and federal regulations.

In spite of the broad preemptive effect of federal labor laws, some state and local regulations of labor are permissible.<sup>10</sup> As explained above, the NLRA does not apply to enterprises that are not engaged in interstate commerce or to certain types of employment.<sup>11</sup> Therefore, some labor relations issues remain unregulated by federal law, leaving room for state and local regulation. Minnesota’s regulation of labor relations is discussed below.

## **The Minnesota Labor Relations Act and Other Minnesota Labor Relations Law**

The Minnesota Labor Relations Act (MLRA), [Minnesota Statutes, sections 179.01 to 179.17](#), regulates several aspects of labor relations between private sector employers and employees, including:

- organizational rights;
- the determination of bargaining units and election of exclusive representatives;
- the negotiation of collective bargaining agreements; and
- strikes and lockouts.

Furthermore, the MLRA prohibits employers and employees from engaging in certain “unfair labor practices,” the violation of which are grounds for legal action.<sup>12</sup> These unfair labor practices are discussed in the context of the four categories of labor regulations listed above.

The MLRA applies to all Minnesota employers and employees, unless they are specifically excluded from the law. The MLRA defines an employer as a person who employs others or any other person who is acting in the interest of an employer.<sup>13</sup> However, the state of Minnesota,

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<sup>9</sup> This principle is known as “*Machinists* preemption.” *Machinists v. Wis. Employment Relations Comm’n*, 427 U.S. 132, 147 (1976). This preemption doctrine prohibits state and local regulation of areas that have been left “to be controlled by the free play of economic forces.” *Id.* at 140 (internal quotation omitted).

<sup>10</sup> See *Willmar Poultry Co., Inc. v. Jones*, 430 F. Supp. 573, 576 (D.C. Minn. 1977). (“On the one hand, the broad powers conferred by Congress upon the NLRB to interpret and enforce federal labor law necessarily imply that potentially conflicting rules of law, of remedy, and of administration cannot be permitted to operate. On the other hand, because Congress has refrained from providing specific directions with respect to the scope of preempted state regulations, all local regulation that touches or concerns in any way the complex interrelationships between employees, employers, and unions is not to be declared preempted.” (internal citations omitted)).

<sup>11</sup> See, e.g., *ibid.* at 578 (noting that the state can regulate the labor relations activity of agricultural laborers because such activities are not preempted by the NLRA; the NLRA neither protects nor prohibits such activities and the area is not within the jurisdiction of the NLRB).

<sup>12</sup> See [Minn. Stat. §§ 179.11](#) (employee unfair labor practices); [179.12](#) (employer unfair labor practices).

<sup>13</sup> [Minn. Stat. § 179.01, subd. 3.](#)

subdivisions of the state, and persons subject to the Federal Railway Labor Act are not considered employers under the MLRA.<sup>14</sup> In addition to the employees of these excluded employers, the MLRA also does not apply to employees who are agricultural laborers, persons who are employed by their parent or spouse, or persons employed for domestic service at a person's own home.<sup>15</sup>

The MLRA is administered by the Bureau of Mediation Services (BMS), a state agency established in 1969.<sup>16</sup> The BMS provides neutral mediation of collective bargaining disputes, assists in the resolution of representation issues, provides arbitrator referrals, promotes cooperation between labor and management, offers labor relations training, and promotes the use of alternative dispute resolution.

### **Employees have the right of self-organization and the right to form, join, or assist labor organizations.<sup>17</sup>**

The MLRA gives employees the right to organize or join labor unions for the purpose of bargaining collectively with their employers.<sup>18</sup> Employees may engage in activities for the purpose of collective bargaining and assisting each other, as long as the activities are permitted under Minnesota law. Employees also have the right to refrain from organizing, joining, or assisting labor unions, and to refrain from engaging in collective bargaining. Any contract involving a promise to join or not join a labor organization or employer organization is unenforceable.<sup>19</sup>

Minnesota bolsters this right of self-organization by making unlawful certain acts that are intended to deter union membership. It is a misdemeanor for any employer to:

- influence any person to enter an agreement not to join a lawful labor organization or an agreement to leave the membership of a lawful labor organization as a condition of employment;
- combine with other employers to interfere with someone's ability to secure employment or to secure the discharge of an employee; and/or

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<sup>14</sup> *Ibid.*

<sup>15</sup> [Minn. Stat. § 179.01, subd. 4.](#)

<sup>16</sup> The BMS was preceded by the Division of Conciliation, the original body established by the legislature to administer the MLRA when it was enacted in 1939.

<sup>17</sup> [Minn. Stat. § 179.10, subd. 1.](#) Employers also have the right to associate together for the purpose of collective bargaining. [Minn. Stat. § 179.10, subd. 2.](#)

<sup>18</sup> [Minn. Stat. § 179.10, subd. 1](#); *see also* [Minn. Stat. § 185.01](#) ("It shall not be unlawful for workers to organize themselves into, or carry on, labor unions for the purpose of lessening the hours of labor or increasing the wages to bettering the conditions of the members of such organizations, or carrying out their legitimate purposes as freely as they could if acting singly.").

<sup>19</sup> [Minn. Stat. § 185.09.](#)

- blacklist any former employee.<sup>20</sup>

It is also an unfair labor practice for an employer to encourage or discourage membership in a labor organization through discrimination in employment.<sup>21</sup> Similarly, it is unlawful for an employee or labor organization to compel membership or nonmembership in a labor organization against a person's will by threatened or actual interference with the person, the person's family, or the person's property.

Minnesota also designates as unfair labor practices several employer practices that undermine employee rights and the effectiveness of labor organizations. It is unlawful for an employer to:

- spy on employees or their legal representatives in the exercise of their legal rights;
- discharge or discriminate against an employee because the employee voiced concerns about potential labor standards violations;
- blacklist members of a labor organization (or employees exercising their legal rights) in an attempt to make them lose employment or employment opportunities; and/or
- hire another employer's employee for less money than is currently due to the employee under a union contract for comparable work.<sup>22</sup>

### **Employees are grouped into units, which then decide whether to be represented by a union.**

**Determining bargaining units.** The BMS is charged with grouping employees into units that are appropriate for collective bargaining. If an employer and a union disagree about the composition of a unit, the BMS will conduct public hearings to resolve the dispute.

**Selecting representatives.** The BMS also determines whether employees within particular bargaining units want to be represented by a labor union, both in original certification proceedings and hearings.<sup>23</sup> Employees or employers may file written requests, in compliance with [Minnesota Rules, part 5505.0400](#), for the commissioner to investigate representation questions. The commissioner then conducts a public hearing and determines either who the representatives of the employees for collective bargaining are, or a method for determining representation.<sup>24</sup>

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<sup>20</sup> [Minn. Stat. § 179.60](#).

<sup>21</sup> It is not unlawful to discriminate based on union membership if union membership is required by a provision of a voluntarily entered collective bargaining agreement. [Minn. Stat. § 179.12, para. 3](#).

<sup>22</sup> [Minn. Stat. § 179.12, paras. 4-7](#).

<sup>23</sup> [Minnesota Rules, parts 5505.0100 to 5505.1500](#), govern the conduct of proceedings involving the investigation and certification of representatives for collective bargaining. The Commissioner of Mediation Services can waive any regulatory requirements, unless doing so will prejudice a party to the dispute. [Minn. Rules, part 5505.0200](#).

<sup>24</sup> [Minn. Rules, part 5505.0900](#).

When a majority of employees in a particular unit selects a representative, the representative becomes the *exclusive* representative of all employees in that unit for purposes of engaging in collective bargaining over the terms and conditions of employment.<sup>25</sup> The BMS certifies exclusive representatives.<sup>26</sup>

**Union elections.** Once a union is certified as the exclusive representative for a unit, the unit must elect union officers. The Minnesota Labor Union Democracy Act establishes requirements for the election of officers.<sup>27</sup> A labor organization must elect officers by secret ballot at least once every four years,<sup>28</sup> after giving reasonable notice to all eligible voters.<sup>29</sup> An employee must receive a plurality of the votes from participating voters to serve as a union officer.<sup>30</sup> Upon request, the BMS will assist in the supervision of union elections.<sup>31</sup>

### **Minnesota employers and employee representatives must make good faith efforts to enter collective bargaining agreements.**

**Negotiations.** Minnesota requires employers and exclusive representatives of employees to make good faith efforts to reach agreement about rates of pay, wages, hours of employment, and other terms and conditions of employment. Negotiations are initiated when an exclusive representative gives an employer a written notice of demand for negotiation or renegotiation of a collective bargaining agreement or when an employer gives notice of an intended change to an existing collective bargaining agreement. Employee representatives and employers both must

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<sup>25</sup> [Minn. Stat. § 179.16, subd. 1](#). Even after employees elect an exclusive representative for purposes of collective bargaining, employees have the right to present grievances to their employer either directly or through representatives of their own choosing at any time.

<sup>26</sup> [Minn. Stat. § 179.16, subd. 2](#) (requiring the Commissioner of Mediation Services to investigate controversies over representatives and to certify in writing the names of designated representatives).

<sup>27</sup> [Minn. Stat. §§ 179.18-179.257](#). The Minnesota Labor Union Democracy Act also establishes certain reporting requirements for labor organization officers who have responsibility for money and property. Officers must annually give union members a statement of receipts and disbursements and assets and liabilities by July 1. [Minn. Stat. § 179.21](#).

<sup>28</sup> [Minn. Stat. § 179.19](#).

<sup>29</sup> It is sufficient to publish notice in a trade union paper of general circulation among the membership of the union holding the election. [Minn. Stat. § 179.20](#).

<sup>30</sup> If an employee is elected to serve as an officer in a full-time capacity, the individual is entitled to a leave of absence for the term of the office. The employee cannot lose seniority or employment rights because of the leave of absence. [Minn. Stat. § 179.19](#).

<sup>31</sup> Whenever the Commissioner of Mediation Services believes that a labor organization has violated the Minnesota Labor Union Democracy Act, the commissioner may appoint labor referees to investigate and resolve the matter. [Minn. Stat. § 179.22](#). If the labor referee sustains charges against an organization, the commissioner *may* suspend the organization from acting as a representative until the offending behavior is corrected and *must* suspend the organization if it does not affirmatively act to remove the basis of the charges within 30 days after the referee's order is filed with the commissioner. If no parties file written objections, the commissioner will remove the basis for the original complaint and any suspension. If parties do file written objections, a referee will investigate further. [Minn. Stat. § 179.231](#).

engage in good faith efforts to negotiate any issue that is the subject of a written notice for negotiation or renegotiation of an existing agreement.<sup>32</sup>

**Mediation.** If the parties fail to reach agreement on an issue within ten days after written notice is served, either party may petition the Commissioner of Mediation Services to take jurisdiction of the dispute.<sup>33</sup> The commissioner will assist in negotiations and may even draft a settlement agreement between the parties. Employees or employers must wait at least ten days after petitioning the Commissioner of Mediation Services to take jurisdiction of a collective bargaining dispute before instituting a strike or lockout. However, if a party involved in the dispute chooses to institute a strike or lockout, they must do so within 90 days after serving a petition on the commissioner.<sup>34</sup>

**The effect of agreements.** Once a collective bargaining agreement is entered, it is unlawful for an employer, an employee, or a labor organization to violate the agreement.<sup>35</sup> As long as the agreement remains in effect, an employer is not obligated to negotiate with any other labor organization with regard to employees that are covered by the original agreement.<sup>36</sup>

### **To be lawful, strikes and lockouts must comply with the terms of the governing collective bargaining agreement and Minnesota law.**

**Definitions.** A strike occurs when, as a result of a labor dispute, two or more employees work together to temporarily stop work.<sup>37</sup> A lockout occurs when, as a result of a labor dispute, an employer refuses to furnish work to employees.<sup>38</sup> Under Minnesota law, a “labor dispute” is “any controversy concerning employment, tenure or conditions or terms of employment or concerning the association or right of representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms, tenure, or other conditions of employment, regardless of whether or not the relations of employer and employee exists as to the disputants.”<sup>39</sup>

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<sup>32</sup> [Minn. Stat. § 179.06, subd. 1.](#)

<sup>33</sup> *Ibid.* The commissioner can also assist in settling a dispute without receiving a formal petition, at the request of either party.

<sup>34</sup> *Ibid.* If the parties file an agreement to extend the 90-day period, they are entitled to the same rights during the extension as they have under the 90-day period. Op. Atty. Gen., 270-D-9, Mar. 9, 1949.

<sup>35</sup> [Minn. Stat. §§ 179.11, 179.12.](#) As long as the agreement is properly negotiated and ratified, and contains reasonable provisions about subjects appropriate for collective bargaining, it is deemed to be a voluntary act of each member of a union, including dissenters. *Bergseth v. Zinsmaster Baking Co.*, 252 Minn. 63 (1968).

<sup>36</sup> [Minn. Stat. § 179.135, subd. 1.](#) However, if a successor labor organization is certified as the representative of the employees covered by the agreement and is recognized by the employer, the employer is obligated to negotiate a new agreement. *Id.*, [subd. 2.](#)

<sup>37</sup> [Minn. Stat. § 179.01, subd. 8.](#)

<sup>38</sup> [Minn. Stat. § 179.01, subd. 9;](#) see *Sunstar Foods, Inc. v. Uhlendoft*, 310 N.W. 2d 80 (1981) (concluding that an employer’s unilateral imposition of employment terms so unreasonable that employees have no alternative but to leave constitutes a lockout).

<sup>39</sup> [Minn. Stat. § 179.01, subd. 7.](#)

**Lawful activities.** All strikes and lockouts must comply with the terms of the governing collective bargaining agreement and Minnesota law. Moreover, any strike must first be approved by a majority vote of the collective bargaining unit engaged in the strike. Any person or labor union that engages in a strike that has not been approved by majority vote or that violates the terms of a collective bargaining agreement or Minnesota law commits an unfair labor practice in violation of Minnesota law. However, if an employer is not in good faith compliance with a collective bargaining agreement, an employee or labor organization can lawfully institute a strike that does not comply with the collective bargaining agreement. By contrast, if employees are not in good faith compliance with a collective bargaining agreement, an employer can lawfully institute a lockout that does not comply with the collective bargaining agreement.<sup>40</sup>

**Unfair labor practices.** Employees and labor organizations unlawfully engage in an unfair labor practice if they institute a strike in violation of the terms and conditions of a collective bargaining agreement or without following procedures established under Minnesota law.<sup>41</sup> Employees and labor organizations cannot compel any person to join (or refrain from joining) any strike against the person's will, whether by threatened or actual interference with the person, the person's family, or the person's property.<sup>42</sup>

Once a strike or lockout is in progress, it is an unfair labor practice for an employer to willfully and knowingly use a professional strikebreaker to replace employees involved in a strike or lockout at a Minnesota business.<sup>43</sup> Similarly, an employer cannot offer a person permanent employment for performing bargaining unit work during a lockout or strike.

It is an unfair labor practice for any person to picket a place of employment where the person is not employed, unless a majority of picketers at the time are employed at the place of employment. It is an unfair labor practice for more than one person to picket a single entrance when a strike is not in progress. However, when a strike is in effect, then more than one picketer may picket at a single entrance to a place of employment.<sup>44</sup>

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<sup>40</sup> [Minn. Stat. §§ 179.11-179.12.](#)

<sup>41</sup> Under Minnesota law, associations and organizations are not responsible for the unlawful acts of their individual officers, members, or agents, unless there is clear proof that the association or organization ratified, participated in, or authorized the activity. [Minn. Stat. § 185.12.](#)

<sup>42</sup> These unfair labor practices are listed in [Minnesota Statutes, section 179.11.](#)

<sup>43</sup> [Minn. Stat. § 179.12, para. 8.](#) A professional strikebreaker is anyone who offers to work for an employer as a replacement for an employee involved in a current labor dispute at the employer's place of business, if that person has made more than one such offer during the previous five years. [Minn. Stat. § 179.01, subd. 16.](#)

The U.S. Court of Appeals for the Eighth Circuit has held that this provision is preempted by the NLRA because it impermissibly extended state regulation into areas deliberately left unregulated by Congress. *Employers Ass'n, Inc. v. United Steelworkers of Am., AFL-CIO-CLC*, 32 F.3d 1297 (8th Cir. 1994); see also *Midwest Motor Exp., Inc. v. Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen, & Helpers of Am., Local 120*, 512 N.W. 2d 881 (Minn. 1994).

<sup>44</sup> [Minn. Stat. § 179.11, para. 5.](#)



It is always an unfair labor practice for any person to unlawfully seize or occupy property.<sup>45</sup> However, when a strike is in effect, a person may interfere with the operation of a vehicle owned or operated by a party involved in the strike under certain circumstances.<sup>46</sup>

More generally, it is an unfair labor practice for any person or labor organization to hinder or prevent the production, transportation, processing, or marketing of agricultural products. It is also unlawful for any person or labor organization to injure any processor, producer, or marketing organization of agricultural products in order to bring a processor or marketing organization against its will into a concerted plan to coerce or inflict damage upon any producer.<sup>47</sup>

### **Certain strikes, lockouts, and boycotts are always prohibited under Minnesota law.**

**Charitable hospitals.** Minnesota's Hospital No Strike and Arbitration Act makes it unlawful for a charitable hospital to institute, cause, or declare a lockout or for an employee or representative to strike or stop work at a charitable hospital.<sup>48</sup>

**Secondary boycotts.** Secondary boycotts are illegal combinations in restraint of trade and are prohibited under Minnesota law.<sup>49</sup> A secondary boycott is an agreement to:

- refuse to handle goods or perform services for an employer because of a labor dispute between another employer and its employees;
- stop performing services for an employer or cause loss of injury to an employer for the purpose of inducing the employer to cease doing business with another employer because of a labor dispute between another employer and its employees; or

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<sup>45</sup> The unlawful seizure or occupation of property is prohibited not only in the context of strikes, but also in the context of all labor disputes. [Minn. Stat. § 179.11, para. 3.](#)

<sup>46</sup> [Minn. Stat. § 179.11, para. 6](#); *see* Op. Atty. Gen., 1940, No. 104, p. 143. It is a misdemeanor to fail to exercise caution when entering or leaving a place of business or employment, which includes bringing a vehicle to a complete stop at an entrance or exit, when there is clear notice of a labor dispute in progress. [Minn. Stat. § 179.121.](#) It is also unlawful and an unfair labor practice for any person to interfere with the free and uninterrupted use of public roads, streets, highways, or methods of transportation, or to wrongfully obstruct entrance and exit from any place of business or employment. [Minn. Stat. § 179.13, subs. 1 and 2.](#)

<sup>47</sup> [Minn. Stat. § 179.11, para. 9.](#) The unfair labor practices related to agricultural production are not intended to prevent a strike called by the employees of a producer, processor, or marketing organization for the purpose of improving the employees' own working conditions, protecting the employees' labor rights, selecting a bargaining representative, or collective bargaining. *Id.*

<sup>48</sup> [Minn. Stat. §§ 179.36, 179.37.](#) Pursuant to the state's police power, the state can regulate or prohibit strikes in enterprises that directly affect public health, safety, or welfare. *Fairview Hosp. Ass'n v. Pub. Bldg. Service & Hosp. & Inst. Emp. Union, Local 113, AFL*, 241 Minn. 523 (1954).

<sup>49</sup> [Minn. Stat. § 179.40.](#) This provision does not regulate employer-employee relations, but protects neutral employers and employees from third-party actions. *Johnson Bros. Wholesale Liquor Co. v. United Farm Workers Nat'l Union, AFL-CIO*, 308 Minn. 87 (1976).

- stop performing services for another employer for the purpose of inducing that employer to cease doing business with any other employer because of a labor dispute between that employer and its employees.<sup>50</sup>

**Actions to coerce membership or nonmembership.** It is an unfair labor practice for a person or organization to boycott for the purpose of inducing or coercing an employer's employees to join or refrain from joining a labor organization or to induce or coerce an employer to encourage or discourage its employees from joining or refraining from joining a labor organization.<sup>51</sup>

**Actions challenging representation.** It is unlawful for an employee or labor organization to conduct a strike or boycott against an employer or to picket at an employer's place of business in order to (1) deny the right of a properly-certified representative to act as a representative; (2) prevent a properly-certified representative from acting as authorized; or (3) interfere with the business of an employer for the purpose of denying the representative's right to act.<sup>52</sup>

## The Resolution of Labor Disputes

**The Bureau of Mediation Services assists in the resolution of labor disputes.**

According to its mission statement, the BMS promotes stable and constructive labor-management relations and the use of alternative dispute resolution by assisting parties in collective bargaining disputes, resolving questions of labor unit representation and bargaining unit structure, and maintaining a roster of labor arbitrators.<sup>53</sup>

**Mediation.** When mediation is appropriate, the Commissioner of Mediation Services may appoint special mediators to conduct informal, private mediation sessions.<sup>54</sup> A dispute submitted to mediation might turn on negotiations of the terms and conditions of a labor contract or involve grievances about alleged violations of an existing labor contract. If an agreement is reached through mediation, it will become final only after it is put in writing and agreed to by the parties.<sup>55</sup> If a grievance is not resolved by mediation, the dispute may be submitted to arbitration.

**Jurisdictional controversies; labor referees.** When more than one labor organization claims jurisdiction over certain classifications of work or persons engaged in such work and the jurisdictional dispute is the ground for picketing, a strike, or a boycott, the commissioner may

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<sup>50</sup> Minn. Stat. § 179.41.

<sup>51</sup> Minn. Stat. § 179.60.

<sup>52</sup> Minn. Stat. § 179.27.

<sup>53</sup> See the BMS mission statement, available at <http://www.bms.state.mn.us>.

<sup>54</sup> Minn. Stat. § 179.02, subd. 2. The conduct of mediation proceedings is governed by [Minnesota Rules, parts 5500.0100 to 5500.0500](#).

<sup>55</sup> Minn. Rules, part 5500.0500.

appoint a labor referee to hear and resolve the controversy.<sup>56</sup> The labor referee conducts public hearings and ultimately makes and files with the commissioner a detailed written determination of the jurisdictional controversy.<sup>57</sup> Once a referee or tribunal is selected, the jurisdictional controversy cannot be the basis for a strike, a boycott, or picketing.<sup>58</sup>

**Disputes affecting the public interest; fact-finding commissions.** If a labor dispute involves an industry affected with a public interest—meaning that it directly affects public health, safety, or welfare—the commissioner may appoint a three-person fact-finding commission to conduct a hearing and issue a report on the dispute.<sup>59</sup> The three members of the commission must represent employees, employers, and the public, respectively.

Upon receiving notice of the commissioner’s intent to appoint a commission, the parties to the dispute cannot institute a strike or lockout or make any change in the situation affecting the dispute for 30 days (or longer, if the parties agree). This restriction becomes ineffective if the commissioner fails to appoint a commission within five days of giving notice to the parties, but becomes effective once more (for no more than 30 days after the original notice) if the commissioner appoints a commission and no strike or lockout has begun in the meantime.<sup>60</sup>

Once a commission is appointed, it must meet within five days and conduct necessary public hearings. Any party to the dispute or party affected by the dispute may appear before the commission to offer evidence and be heard on the issues. The commission must file a report with the commissioner not less than five days before the expiration of the 30-day period (or any extension of that period).<sup>61</sup>

**Arbitration.** Subject to certain statutory requirements, parties may agree in writing to submit their dispute to arbitration, when mediation fails to resolve the dispute.<sup>62</sup> For disputes between charitable hospital employers and employees, arbitration is mandatory if a dispute is not settled within ten days after submission to mediation.<sup>63</sup> The BMS maintains a roster of neutral arbitrators, who meet Minnesota’s standards for labor relations experience, knowledge of

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<sup>56</sup> [Minn. Stat. § 179.083](#). The conduct of proceedings before labor referees is governed by [Minnesota Rules, parts 5500.1200 to 5500.2100](#). Under certain circumstances, the parties to a jurisdictional dispute can choose a tribunal to resolve their dispute.

<sup>57</sup> [Minn. Rules, part 5500.2000](#). Parties to the controversy may request reconsideration or clarification of the determination on several grounds. If the labor referee decides to consider the request, the referee shall conduct new proceedings and either affirm the initial determination or make an amended determination. [Minn. Rules, part 5500.2100](#).

<sup>58</sup> [Minn. Stat. § 179.083](#).

<sup>59</sup> [Minn. Stat. § 179.07](#). The commissioner’s powers are enumerated in [Minnesota Statutes, section 179.08](#). The conduct of proceedings before appointed commissions is governed by [Minnesota Rules, parts 5500.0600 to 5500.1100](#).

<sup>60</sup> [Minn. Stat. § 179.07](#).

<sup>61</sup> *Ibid.*

<sup>62</sup> [Minn. Stat. § 179.09](#).

<sup>63</sup> [Minn. Stat. § 179.38](#).

collective bargaining, and arbitration.<sup>64</sup> Upon written request, the BMS forwards names from the roster to labor and management representatives. The BMS makes referrals from the list for contract and grievance disputes.

The conduct of arbitration proceedings is governed by [Minnesota Rules, parts 5530.0100 to 5530.1300](#). Proceedings are confidential and depend primarily on the testimony of the parties to the dispute.<sup>65</sup> After an arbitration board has completed all hearings and investigations, the board must make and file with the commissioner a detailed written award.<sup>66</sup> The BMS keeps all arbitration awards on file and makes them available for public review.

**Labor-management cooperation.** The BMS also establishes and operates joint labor-management partnerships at worksites. This helps labor and management representatives collaboratively address problems and develop plans for improving relationships and operation of the organization. The BMS:

- helps worksite labor-management committees assess their readiness to form a partnership;
- assists in the coordination and formation of area and industry labor-management councils;
- awards matching grants to help labor management councils implement programs and services;<sup>67</sup> and
- assists employers with the organization and training of mandatory labor-management safety and health committees.

**Under certain circumstances, parties to labor disputes may seek redress in state court.**

Parties injured by an unfair labor practice (or who would be injured by a threatened unfair labor practice) may sue to stop the practice.<sup>68</sup> Employers can also seek civil damages if employees or labor organizations challenge the right of a properly certified representative to act as a representative by engaging in an unlawful strike, an unlawful boycott, or unlawful picketing.<sup>69</sup>

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<sup>64</sup> [Minn. Stat. § 179.02, subd. 4](#); [Minn. Rules, ch. 5530](#) (setting forth rules for the empanelment, referral, conduct, and removal of persons from the arbitration roster).

<sup>65</sup> [Minn. Rules, part 5500.2400](#).

<sup>66</sup> [Minn. Rules, part 5500.2700](#). Parties to the controversy may request reconsideration of the award on several grounds. If the arbitration board decides to consider the request, the board shall conduct new proceedings and either affirm the initial determination or make an amended determination. [Minn. Rules, part 5500.2800](#).

<sup>67</sup> Rules for the preparation, submission, and approval of labor-management committee grants are set forth in [Minnesota Rules, parts 5520.0100 to 5520.0800](#).

<sup>68</sup> [Minn. Stat. § 179.14](#); *see also* [Minn. Stat., ch. 185](#) (describing the conditions under which a court can issue a restraining order or an injunction).

<sup>69</sup> [Minn. Stat. § 179.28](#). The employer may bring action in any district court located in a county where the employer does business. [Minn. Stat. § 179.29](#).

However, employers, employees, and labor organizations that have violated provisions of the MLRA cannot avail themselves of its benefits, which includes bringing a state court action, until all means available under Minnesota law to attempt to peaceably settle a dispute have been used in good faith.<sup>70</sup>

*For more information about Minnesota labor relations, visit the employment and labor area of our web site, [www.house.mn/hrd/issinfo/emp\\_lab.htm](http://www.house.mn/hrd/issinfo/emp_lab.htm).*

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<sup>70</sup> Minn. Stat. § 179.15.