

Article 20 - NEW YORK STATE LABOR RELATIONS ACT

§ 700. Findings and policy. In the interpretation and application of this article, and otherwise, it is hereby declared to be the public policy of the state to encourage the practice and procedure of collective bargaining, and to protect employees in the exercise of full freedom of association, self-organization and designation of representatives of their own choosing for the purposes of collective bargaining, or other mutual aid and protection, free from the interference, restraint or coercion of their employers.

It is also hereby declared as the public policy of this state that the best interests of the people of the state are served by the prevention or prompt settlement of labor disputes and that the voluntary resolution of such disputes will tend to promote permanent industrial peace and the health, welfare, comfort and safety of the people of the state. Representatives of employers and employees engaged in such disputes are encouraged voluntarily to submit them to the agency created by this article prior to engaging in a strike, lock-out or other cessation of employment; and should participate fully and promptly in any meetings which may be arranged by the agency for the purpose of resolving the dispute.

To carry out such policy, the necessity for the enactment of the provisions of this article is hereby declared as a matter of legislative determination.

All the provisions of this article shall be liberally construed for the accomplishment of this purpose.

This article shall be deemed an exercise of the police power of the state for the protection of the public welfare, prosperity, health and peace of the people of the state.

§ 701. Definitions. When used in this article:

1. The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

2. The term "employer" includes any person acting on behalf of or in the interest of an employer, directly or indirectly, with or without his knowledge, and shall include any person who is the purchaser of services performed by a person described in paragraph (b) of subdivision three of this section, but a labor organization or any officer or agent thereof shall only be considered an employer with respect to individuals employed by such organization.

3. (a) The term "employees" includes but is not restricted to any individual employed by a labor organization; any individual whose employment has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment; and shall not be limited to the employees of a particular employer, unless the article explicitly states otherwise, but shall not include any individual employed by his parent or spouse or in the domestic service of and directly employed, controlled and paid by any person in his home, any individual whose primary responsibility is the care of a minor child or children and/or someone who lives in the home of a person for the purpose of serving as a companion to a sick, convalescing or elderly person or any individuals employed only for the duration of a labor dispute, or any individuals employed as farm laborers or, any individual who participates in and receives rehabilitative or therapeutic services in a charitable non-profit

rehabilitation facility or sheltered workshop or any individual employed in a charitable non-profit rehabilitation facility or sheltered workshop who has received rehabilitative or therapeutic services and whose capacity to perform the work for which he is engaged is substantially impaired by physical or mental deficiency or injury.

(b) The term "employee" shall also include a professional musician or a person otherwise engaged in the performing arts who performs services as such. "Engaged in the performing arts" shall mean performing services in connection with production of or performance in any artistic endeavor which requires artistic or technical skill or expertise.

4. The term "representatives" includes a labor organization or an individual whether or not employed by the employer of those whom he represents.

5. The term "labor organization" means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection and which is not a company union as defined herein.

6. The term "company union" means any committee, employee representation plan or association of employees which exists for the purpose, in whole or in part, of dealing with employers concerning grievances or terms and conditions of employment, which the employer has initiated or created or whose initiation or creation he has suggested, participated in or in the formulation of whose governing rules or policies or the conducting of whose management, operations or elections the employer participates in or supervises or which the employer maintains, finances, controls, dominates, or assists in maintaining or financing, whether by compensating anyone for services performed in its behalf or by donating free services, equipment, materials, office or meeting space or anything else of value, or by any other means.

7. The term "unfair labor practice" means only those unfair labor practices listed in section seven hundred four.

8. The term "labor dispute" includes, but is not restricted to, any controversy between employers and employees or their representatives as defined in this section concerning terms, tenure or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to negotiate, fix, maintain or change terms or conditions of employment, or concerning the violation of any of the rights granted or affirmed by this article, regardless of whether the disputants stand in the proximate relation of employer and employee.

9. The term "board" means the employment relations board created by section seven hundred two of this article.

10. The term "policies of this article" means the policies set forth in section seven hundred.

11. The term "non-profitmaking hospital or residential care center" means an organized residential facility for the medical diagnosis, treatment and care of illness, disease, injury, infirmity or deformity, or a residential facility providing nursing care or care of the aged or dependent children, or a facility for the prevention of cruelty to children or animals, which is located anywhere in the state and which is maintained and operated by an association or corporation, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

12. The term "employee of a non-profitmaking hospital or residential care center" means any person employed or permitted to work by or at a non-profitmaking hospital or residential care center but shall not include any person employed or permitted to work: (a) in or for such a non-profitmaking hospital or residential care center, which work is incidental to or in return for charitable aid conferred upon such individual and not under any express contract of hire; or (b) as a volunteer.

§ 702. Employment relations board. 1. There is hereby created in the department a board to be known as the "New York state employment relations board" which shall be composed of five members who shall be appointed by the governor with the advice and consent of the senate, one of whom shall be so appointed on recommendation of the temporary president of the senate, one of whom shall be so appointed on recommendation of the speaker of the assembly, and one of whom shall be so appointed on recommendation of the temporary president of the senate or the speaker of the assembly to alternate beginning with the first appointment subsequent to the effective date of the chapter of the laws of nineteen hundred ninety-two amending this subdivision being made by the temporary president of the senate. All subsequent alternate appointments shall be made only upon expiration of a three year term. No member appointed to a three year term shall hold over. No member of the board during his or her period of service as such shall hold any other public office. Members of the state employment relations board serving on the effective date of the chapter of the laws of nineteen hundred ninety-two amending this subdivision shall be continued as members of the board and shall be deemed appointed to the board as of the effective date of the chapter of the laws of nineteen hundred ninety-two amending this subdivision, and the member of the board who formerly served on the state mediation board shall be deemed to be the member appointed on recommendation of the speaker of the assembly. Four members shall be appointed for a term of six years, and one member appointed on recommendation of either the temporary president of the senate or the speaker of the assembly shall be appointed for a term of three years, commencing on January first, nineteen hundred ninety-three, except that the members serving on the effective date of the chapter of the laws of nineteen hundred ninety-two amending this subdivision shall be deemed to occupy terms which shall expire on December thirty-first, nineteen hundred ninety-eight. The governor shall designate one member to serve as chairperson of the board. A member chosen to fill a vacancy shall be appointed for the unexpired term of the member whom he or she is to succeed. Any member of the board may be removed by the governor for inefficiency, neglect of duty, misconduct or malfeasance in office, and for no other cause, after being given a copy of the charges and an opportunity to be publicly heard in person or by counsel.

2. A vacancy in the board shall not impair the right of the remaining members to exercise all the powers of the board, and three members of the board shall, at all times, constitute a quorum. The board may adopt an official seal and prescribe the purposes for which it shall be used. A vote of the chairperson and at least two members is required for the board to conduct its business, however, a vote of four members of the board shall be required to override a vote of the chairperson, except that when the board sits to exercise its powers

pursuant to sections seven hundred five and seven hundred six of this article, decisions shall be made by a majority vote of the members.

3. The board shall at the end of every year make a report in writing to the governor, stating in detail the work it has done in hearing and deciding cases and otherwise, and it shall sign and report in full an opinion in every case decided by it.

4. Each member of the board shall devote his entire time to the duties of his office and shall not engage in any other business, vocation or employment. The board shall appoint an executive secretary and such attorneys, trial examiners and directors for local areas and such other employees, and fix such salaries or other compensation therefor, as it may from time to time find necessary for the proper performance of its duties. The reasonable and necessary traveling and other expenses of the members of the board and other officers and employees of the board, while actually engaged in the performance of their duties shall be paid from the state treasury upon the audit and warrant of the comptroller, upon vouchers approved by the chairman. Attorneys appointed under this section may, at the direction of the board, appear for and represent the board in any case in court. The board may establish or utilize such regional, local, or other agencies and utilize such voluntary and uncompensated services as may from time to time be needed.

5. The chairperson shall be the administrative head of the board. All employees of the board shall be appointed by the chairperson in accordance with the provisions of civil service law and rules. The chairperson shall be responsible for the discharge of the duties and functions of the board and for the enforcement of the rules and regulations.

6. The principal office of the board shall be in the city of Albany, but it may meet and exercise any or all of its powers at any other place within the state. The board may, by one or more of its members or by such agents or agencies as it may designate, conduct in any part of this state any proceeding, hearing, investigation, inquiry, or election necessary to the performance of its functions. A member who participates in any such proceeding shall not be disqualified from subsequently participating in a decision of the board in the same case.

7. The board shall have authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of this article including the determination of the life of the selected representatives. Such rules and regulations shall be effective upon publication in the manner which the board shall prescribe.

8. Notwithstanding the provisions of any other law, neither the commissioner nor any board or other agency of the department shall in any way direct, review, modify or reverse any decision or finding of the board nor shall the commissioner or any board or other agency of the department supervise or control the board in the exercise of any powers or in the performance of any duties under this article.

9. The board may, when necessary, appoint or designate special mediators who shall have the authority and power of members of the board with regard to such matter, provided that their authority and power to act for the board shall cease upon the conclusion of the specific matter so assigned to them or by revocation by the board of their appointment or designation. Such special mediators shall, when performing the work of the board as aforesaid, be compensated at a rate to be determined by the board subject to the approval of the director

of the budget, together with an allowance for actual and necessary expenses incurred in the discharge of their duties hereunder.

§ 702-a. Settlement of labor disputes. 1. Upon its own motion, in an existing, imminent or threatened labor dispute, the board may and, upon the direction of the governor, the board shall take such steps as it may deem expedient to effect a voluntary, amicable and expeditious adjustment and settlement of the differences and issues between employer and employees which have precipitated or culminated in or threatened to precipitate or culminate in such labor dispute. In providing its services, the board shall take into consideration and make all parties aware of the availability of other mediation services, such as the federal mediation and conciliation service, and shall make every effort to give priority to those parties which do not have access to such other services. To this end, it shall be the duty of the board: (a) to arrange for, hold, adjourn, or reconvene a conference or conferences between the disputants and/or one or more of their representatives; (b) to invite the disputants and/or their representative to attend such conferences and submit, either orally or in writing, the grievances of and differences between the disputants; (c) to discuss such grievances and differences with the disputants and their representatives and in the course of such proceeding, upon the consent of all disputants and their representatives, to appoint fact-finding boards and to arbitrate such grievances and differences; and (d) to assist in negotiating and drafting agreements for the adjustment in settlement of such grievances and differences and for the termination or avoidance, as the case may be, of the existing or threatened labor dispute.

2. The board shall have the power at the request of the parties to a collective bargaining agreement between an employer and its employees to arbitrate such grievances and differences as may arise thereunder and to establish panels of qualified persons to be available to serve as arbitrators of such grievances and differences. The board shall promulgate regulations setting forth eligibility requirements for inclusion on such panels, in order to ensure the availability of qualified, accessible, affordable arbitrators.

3. In carrying out any of its work under this article, the board may designate one of its members or an officer or employee of the board to act in its behalf and may delegate to such designee one or more of its duties hereunder and, for such purpose, such designee shall have all of the powers hereby conferred upon the board in connection with the discharge of the duty or duties so delegated.

4. No member or officer of the board having any financial or other interest in a trade, business, industry or occupation in which a labor dispute exists or is threatened and of which the board has taken cognizance, shall be qualified to participate in any way in the acts or efforts of the board in connection with the settlement or avoidance thereof.

5. Members of the board and all other employees of the board, including any arbitrator serving on an arbitration panel established by the board, shall not be compelled to disclose to any administrative or judicial tribunal any information relating to, or acquired in, the course of their official activities under this article, nor shall any reports, minutes, written communications, or other documents of the board pertaining to such information be subject to subpoena; except

that where the information so required indicates that the person appearing or who has appeared before the board has been the victim or subject of a crime, said members of the board, the executive secretary and all other employees of the board, including any arbitrator serving on an arbitration panel established by the board, may be required to testify fully in relation thereto upon any examination, trial, or other proceeding in which the commission of a crime is the subject of inquiry.

§ 703. Rights of employees. Employees shall have the right of self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint, or coercion of employers, but nothing contained in this article shall be interpreted to prohibit employees from exercising the right to confer with their employer at any time, provided that during such conference there is no attempt by the employer, directly or indirectly, to interfere with, restrain or coerce employees in the exercise of the rights guaranteed by this section.

§ 704. Unfair labor practices. It shall be an unfair labor practice for an employer:

1. To spy upon or keep under surveillance, whether directly or through agents or any other person, any activities of employees or their representatives in the exercise of the rights guaranteed by section seven hundred three.

2. To prepare, maintain, distribute or circulate any blacklist of individuals for the purpose of preventing any of such individuals from obtaining or retaining employment because of the exercise by such individuals of any of the rights guaranteed by section seven hundred three.

3. To dominate or interfere with the formation, existence, or administration of any employee organization or association, agency or plan which exists in whole or in part for the purpose of dealing with employers concerning terms or conditions of employment, labor disputes or grievances, or to contribute financial or other support to any such organization, by any means, including but not limited to the following: (a) by participating or assisting in, supervising, controlling or dominating (1) the initiation or creation of any such employee organization or association, agency, or plan, or (2) the meetings, management, operation, elections, formulation or amendment of constitution, rules or policies, of any such employee organization or association, agency or plan; (b) by urging the employees to join any such employee organization or association, agency or plan for the purpose of encouraging membership in the same; (c) by compensating any employee or individual for services performed in behalf of any such employee organization or association, agency or plan, or by donating free services, equipment, materials, office or meeting space or anything else of value for the use of any such employee organization or association, agency or plan; provided that, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

4. To require an employee or one seeking employment, as a condition of employment, to join any company union or to refrain from forming, or joining or assisting a labor organization of his own choosing.

5. To encourage membership in any company union or discourage membership in any labor organization, by discrimination in regard to hire or tenure or in any term or condition of employment: Provided that nothing in this article shall preclude an employer from making an agreement with a labor organization requiring as a condition of employment membership therein, if such labor organization is the representative of employees as provided in section seven hundred five.

6. To refuse to bargain collectively with the representatives of employees, subject to the provisions of section seven hundred five.

7. To refuse to discuss grievances with representatives of employees, subject to the provisions of section seven hundred five.

8. To discharge or otherwise discriminate against an employee because he has signed or filed any affidavit, petition or complaint or given any information or testimony under this article.

9. To distribute or circulate any blacklist of individuals exercising any right created or confirmed by this article or of members of a labor organization, or to inform any person of the exercise by any individual of such right, or of the membership of any individual in a labor organization for the purpose of preventing individuals so blacklisted or so named from obtaining or retaining employment.

10. To do any acts, other than those already enumerated in this section, which interfere with, restrain or coerce employees in the exercise of the rights guaranteed by section seven hundred three.

11. To utilize any state funding appropriated for any purpose to train managers, supervisors or other administrative personnel regarding methods to discourage union organization, or to discourage an employee from participating in a union organizing drive.

§ 704-a. Unfair practices; performing arts. It shall not be an unfair labor practice for an employer engaged in the performing arts to make an agreement with a labor organization, of which performing artists are members, covering employees engaged in the performing arts, or who, upon their employment, will be so engaged, because the majority status of such labor organization has not been established under the provisions of this article or because such agreement requires, as a condition of employment, membership in such labor organization after the seventh day following the beginning of such employment or the effective date of such agreement, whichever is later. Nothing in this section shall be construed as to bar any proceeding brought pursuant to section seven hundred five of this article.

§ 705. Representatives and elections. 1. Representatives designated by the board after a showing of majority interest or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes or by the majority of the employees voting in an election conducted pursuant to this section shall be the exclusive representatives of all the employees in the appropriate unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, that employees, directly or through representatives, shall have the right at any time to present grievances to their employer. The board shall designate a

representative for purposes of collective bargaining when such representative demonstrates a showing of majority interest by employees in the unit. In cases where the parties to a dispute are without agreement on the means to ascertain the choice, if any, of employee organization as their representative, the board shall ascertain such employees' choice of employee organization, on the basis of dues deduction authorization and other evidence, or if necessary by conducting an election. In the event that either party provides to the board, prior to the designation of a representative, clear and convincing evidence that the dues deduction authorizations, and other evidence upon which the board would otherwise rely to ascertain the employees' choice of representative, are fraudulent or were obtained through coercion, the board shall promptly thereafter conduct an election. The board shall also investigate and consider a party's allegations that the dues deduction authorizations and other evidences submitted in support of a designation of representative without an election were subsequently changed, altered, withdrawn or withheld as a result of employer fraud, coercion or any other unfair employer labor practice as defined in section seven hundred four of this article. If the board determines that a representative would have had a majority interest but for the employer's fraud, coercion or unfair labor practice, it shall designate the representative without the conduct of an election.

2. The board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization, to collective bargaining and otherwise to effectuate the policies of this article, the unit appropriate for the purposes of collective bargaining shall be the employer unit, multiple employer unit, craft unit, plant unit, or any other unit; provided, however, that in any case where the majority of employees of a particular craft, or in the case of a non-profitmaking hospital or residential care center where the majority of employees of a particular profession or craft, shall so decide the board shall designate such profession or craft as a unit appropriate for the purpose of collective bargaining.

3. Whenever it is alleged by an employee or his representative, or by an employer or his representative, that there is a question or controversy concerning the representation of employees, the board shall investigate such question or controversy and certify in writing to all persons concerned the name or names of the representatives who have been designated or selected. In any such investigation the board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section seven hundred six or otherwise, and may conduct an election by secret ballot of employees, or use any other suitable method to ascertain such representatives (either before or after the aforesaid hearing), provided, however, that the board shall not have authority to investigate or determine any question or controversy between individuals or groups within the same labor organization nor between labor organizations affiliated with the same parent labor organization concerning the internal affairs of any labor organization but nothing contained in this proviso shall be deemed to preclude the board from investigating and determining which, if any, of affiliated groups or labor organizations have been designated or selected by employees as their representatives for the purposes of collective bargaining within the meaning of this article.

4. The board shall have power to determine who may participate in the election and to establish the rules governing any such election: Provided, that no election need be directed by the board solely because

of the request of an employer or of employees prompted thereto by their employer, nor shall any individuals employed only for the duration of a strike or lockout be eligible to vote in such election; and provided further, that no such election shall be conducted under the employer's supervision, or, except as may be required by the board, on the employer's property, during working hours, or with his participation or assistance.

5. If at an election conducted pursuant to this section three or more nominees for exclusive collective bargaining representatives appear on the ballot and no one of them receives a majority of the votes cast at the election, the two nominees who received the highest number of votes shall appear on the ballot of a second election to be conducted hereunder, and the one receiving a majority of the votes cast at the second election shall be the exclusive representative of all the employees in such unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

6. A labor organization nominated as the representative of employees shall be listed by name on the ballots authorized by subdivision three of this section. In any investigation conducted by the board pursuant to this section the board may make a finding as to whether any committee, employee representation plan, or association of employees involved is a company union, and if any such committee, employee representation plan, or association of employees be found to be a company union, it shall not be listed on the ballots, certified or otherwise recognized as eligible to be the representative of employees under this article.

§ 706. Prevention of unfair labor practices. 1. The board is empowered and directed, as hereinafter provided, to prevent any employer from engaging in any unfair labor practice. This power shall not be affected or impaired by any means of adjustment, mediation or conciliation in labor disputes that have been or may hereafter be established by law.

2. Whenever a charge has been made that any employer has engaged in or is engaging in any unfair labor practice, the board shall have power to issue and cause to be served upon such employer a complaint stating the charges in that respect and containing a notice of hearing before the board at a place therein fixed to be held not less than seven days after the serving of said complaint. Any such complaint may be amended by the board or its agent conducting the hearing at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint not less than five days after the service of such original or amended complaint and to appear in person or otherwise to give testimony at the place and time set in the complaint. In the discretion of a member or agent conducting the hearing, or of the board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the board or its agent shall not be bound by technical rules of evidence prevailing in the courts of law or equity.

3. The testimony taken at the hearing shall be reduced to writing and filed with the board. Thereafter, in its discretion, the board upon notice may take further testimony or hear argument. If upon all the testimony taken the board shall determine that the respondent has engaged in or is engaging in any unfair labor practice, the board shall

state its findings of fact and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unfair labor practice, and to take such further affirmative or other action as will effectuate the policies of this article, including, but not limited to (a) withdrawal of recognition from and refraining from bargaining collectively with any employee organization or association, agency or plan defined in this article as a company union or established, maintained or assisted by any action defined in this article as an unfair labor practice; (b) awarding of back pay; (c) reinstatement with or without back pay of any employee discriminated against in violation of section seven hundred four, or maintenance of a preferential list from which such employee shall be returned to work; (d) reinstatement with or without back pay of all employees whose work has ceased or whose return to work has been delayed or prevented as the result of the aforementioned or any other unfair labor practice in respect to any employee or employees or maintenance of a preferential list from which such employees shall be returned to work. Such order may further require such person to make reports from time to time showing the extent to which the order has been complied with. If upon all the testimony the board shall be of the opinion that the person or persons named in the complaint have not engaged in or are not engaging in any such unfair labor practice, then the board shall make its findings of fact and shall issue an order dismissing the complaint.

4. Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

5. The board shall not require as a condition of taking action or issuing any order under this article, that employees on strike or engaged in any other lawful, concerted activity shall discontinue such strike or such activity.

6. The board shall consider all complaints or petitions filed with it and conduct all proceedings under this article with all possible expedition.

§ 707. Judicial review. 1. The board shall have power to petition the supreme court of the state within the county wherein the unfair labor practice in question occurred or wherein any person charged with the unfair labor practice resides or transacts business, or if such court be on vacation or in recess, then to the supreme court of any county adjoining the county wherein the unfair labor practice in question occurred or wherein any person charged with the unfair labor practice resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was made and the findings and order of the board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the board.

2. No objection that has not been urged before the board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the board, its member, agent, or agency, the court may order such additional evidence to be taken before the board, its member, agent, or agency, and to be made a part of the transcript. The board may modify its finding as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order.

3. The jurisdiction of the supreme court shall be exclusive and its judgment and decree shall be final, except that appeals shall lie to the appellate division of said court and to the court of appeals, in the manner and subject to the limitations provided in the civil practice act irrespective of the nature of the decree or judgment or the amount involved.

4. Any person aggrieved by a final order of the board granting or denying in whole or in part the relief sought may obtain a review of such order in the supreme court of the county where the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business by filing in such court a written petition praying that the order of the board be modified or set aside, or if such court be on vacation or in recess, then to the supreme court of any county adjoining the county wherein the unfair labor practice in question occurred or wherein any such person resides or transacts business. A copy of such petition shall be forthwith served upon the board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the board, including the pleading and testimony and order of the board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the board under subdivision one of this section, and shall have the same exclusive jurisdiction to grant to the board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the board; and the findings of the board as to the facts shall in like manner be conclusive.

5. The commencement of proceedings under subdivisions one and four of this section shall not, unless specifically ordered by the court, operate as a stay of the board's order.

6. When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying and enforcing as so modified or setting aside in whole or in part an order of the board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by acts pertaining to equity jurisdiction of courts.

7. Petitions filed under this article shall be heard expeditiously and shall be considered and determined upon the transcript filed, without requirement of printing. Upon the filing of a record in the supreme court, the case shall be heard with greatest possible

expedition, and shall take precedence over all other matters except matters of the same character.

§ 708. Investigatory powers. For the purpose of all hearings and investigations, which, in the opinion of the board, are necessary and proper for the exercise of the powers vested in it by sections seven hundred five and seven hundred six,

1. The board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purposes of examination, and the right to examine, copy or photograph any evidence, including payrolls or lists of employees, of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the board shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the board, its member, agent, or agency, conducting the hearing or investigation. Any member of the board, or any agent or agency designated by the board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence.

2. If any witness resides outside of the state, or through illness or other cause is unable to testify before the board or its member, agent, or agency conducting the hearing or investigation, his or her testimony or deposition may be taken within or without this state, in such manner and in such form as the board or its member, agent or agency conducting the hearing may by special order or general rule, prescribe.

3. In case of contumacy or refusal to obey a subpoena issued to any person the supreme court of any county within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the board shall have jurisdiction to issue to such person an order requiring such person to appear before the board, its member, agent, or agency, there to produce evidence if 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.

4. Upon any such investigation or hearing, the board, a member thereof, or any officer duly designated by the board to conduct such investigation or hearing, may confer immunity in accordance with the provisions of section 50.20 of the criminal procedure law.

5. Complaints, orders, and other process and papers of the board, its member, agent, or agency, may be served either personally or by certified or registered mail or by telegraph or by leaving a copy thereof at the principle office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post-office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the board, its member, agent, or agency shall be paid the same fees and mileage that are paid witnesses in the courts of this state, and witnesses whose depositions are taken and the person taking the same shall severally be entitled to the same fees as are paid for like services in the courts of this state.

6. All process of any court to which application may be made under this article may be served in the county wherein the person or persons required to be served reside or may be found.

7. The several departments, commissions, divisions, authorities, boards, bureaus, agencies and officers of the state or any political subdivision or agency thereof, shall furnish the board, upon its request, all records, papers, and information in their possession relating to any matter before the board.

§ 709. Punitive provision. Any person who shall wilfully resist, prevent, impede, or interfere with any member of the board or any of its agents or agencies in the performance of duties pursuant to this article, or who shall in any manner interfere with the free exercise by employees of their right to select representatives in an election directed by the board pursuant to section seven hundred and five, shall be punished by a fine of not more than five thousand dollars or by imprisonment for not more than one year, or both.

§ 710. Public records and proceedings. Subject to rules and regulations to be made by the board, the complaints, orders and testimony relating to a proceeding instituted by the board under section seven hundred six may be made public records and be made available for inspection or copying. All proceedings pursuant to section seven hundred and six shall be open to the public.

§ 711. Cooperation. The department and the other departments of the state and the officers and employees thereof shall render such assistance to the board as it may request in connection with its work hereunder. The board shall at all times have the cooperation of and shall cooperate with the department and the several boards, divisions and officers thereof in carrying out the policy declared in section seven hundred of this article.

§ 712. Repeal of inconsistent provisions. Insofar as the provisions of this article are inconsistent with the provisions of any other general, special or local law, the provisions of this article shall be controlling.

§ 713. Limitations. Nothing in this article shall be construed so as to interfere with, impede or diminish in any way the right of employees to strike or engage in other lawful, concerted activities, except that it shall continue to be unlawful for the employees of a non-profitmaking hospital or residential care center, or their representatives, or any other persons to engage in or to induce or encourage, or to attempt to engage in or to induce or encourage any strike, work stoppage, slowdown or withholding of goods or services by such employees or other persons at such hospital or residential care center, provided, however, that nothing herein shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public that a grievance or dispute, as defined in section seven hundred sixteen of this article, exists at such hospital or residential care center, as long as such publicity does not have the

effect of inducing any persons to withhold goods or services at such hospital or residential care center.

It shall be unlawful for a non-profitmaking hospital or residential care center to institute, declare or cause, or to attempt to institute, declare or cause any lockout of the employees of such hospital or residential care center.

§ 714. Separability. If any clause, sentence, paragraph, or part of this article or the application thereof to any person or circumstances, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this article, and the application thereof to other person or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved. It is hereby declared to be the legislative intent that this article would have been adopted had such invalid provisions not been included.

§ 715. Application of article. The provisions of this article shall not apply to: (1) employees of any employer who concedes to and agrees with the board that such employees are subject to and protected by the provisions of the national labor relations act or the federal railway labor act; or (2) employees of the state or of any political or civil subdivision or other agency thereof.

§ 716. Grievances and disputes in non-profitmaking hospitals and residential care centers. 1. As used in this section "grievance" means any controversy or claim arising out of or relating to the interpretation, application or breach of the provisions of an existing collective bargaining contract. As used in this section "dispute" means all other controversies, claims or disputes between the employees of a non-profitmaking hospital or residential care center, or their representatives, and such hospital or residential care center concerning wages, hours, union security, seniority or other economic matters, including, but not limited to, controversies, claims or disputes arising in the course of negotiating, fixing, maintaining, changing or arranging such terms or conditions.

2. Every collective bargaining contract between the employees of a non-profitmaking hospital or residential care center, or their representatives, and such hospital or residential care center which does not contain provisions for the final and binding determination of grievances shall be deemed to include provision for the submission of such grievances, upon the request of either or both parties, to final and binding arbitration pursuant to such rules as may be established from time to time by the board.

3. Every collective bargaining contract between the employees of a non-profitmaking hospital or residential care center, or their representatives, and such hospital or residential care center which does not contain provisions for the final and binding determination of disputes shall be deemed to include provisions for:

(a) the appointment of a fact-finding commission by the board upon the request of both parties to the dispute, or by the commissioner upon his own motion and upon certification by such board that in its opinion

efforts to effect a voluntary settlement of the dispute have been unsuccessful. Such fact-finding commission shall have all of the powers and duties, including the power to make recommendations for the settlement of the dispute, as are vested in a board of inquiry by article twenty-two of this chapter; and

(b) the submission of the dispute to final and binding arbitration, pursuant to such rules as may be established from time to time by the board, by such board upon the request of both parties to the dispute, or by the commissioner upon his own motion and upon certification by such board that in its opinion efforts to effect a voluntary settlement of the dispute have been unsuccessful. The commissioner or the board may submit a dispute to final and binding arbitration pursuant to this paragraph without first submitting it to a fact-finding commission pursuant to the preceding paragraph of this subdivision.

4. In the absence of a collective bargaining contract between the employees of a non-profitmaking hospital or residential care center, or their representatives, and such hospital or residential care center, the board and the commissioner may, in the manner and upon the conditions provided in subdivision three of this section, exercise all of the powers vested in them by the provisions of such subdivision of such section.

5. Nothing in this section shall be deemed to affect, impair or alter any collective bargaining contract between the employees of a non-profitmaking hospital or residential care center, or their representatives, and such hospital or residential care center which was executed prior to July first, nineteen hundred sixty-three, during the term of such contract.

6. (a) A petition under section seven hundred seven of this article involving a non-profitmaking hospital or residential care center shall be filed directly with the appellate division of the supreme court in the department embracing the specified supreme court, and shall be heard upon the certified transcript of the record in the proceeding before the board, without requirement of printing. Such petition shall be heard in a summary manner and have precedence over all other cases in such court. An appeal may be taken to the court of appeals in the same manner and subject to the same limitations not inconsistent herewith as is now provided in the civil practice law and rules and a preference shall be granted in the hearing thereof on motion of any party thereto.

(b) An application to confirm, modify, correct or vacate an arbitration award made pursuant to the procedure established by this section shall be made in accordance with the provisions of article seventy-five of the civil practice law and rules, and the provisions of paragraph (a) of this subdivision pertaining to a petition filed thereunder shall apply to an application filed hereunder.

(c) The supreme court shall have jurisdiction, upon such notice as it deems appropriate, to restrain or enjoin any violation of the provisions of this section or section seven hundred thirteen and to grant such other and further equitable relief as may be appropriate. The provisions of section eight hundred seven of this chapter shall not apply to an action or proceeding instituted pursuant to this section or section seven hundred thirteen.

7. The fact-finders and arbitrators appointed pursuant to subdivision three of this section may consider the following standards in arriving at a final arbitration decision in disputes referred to them:

(a) the interest and welfare of the public;

(b) changes in the cost of living as they affect employees' purchasing power;

(c) comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceedings, and the wages, hours and conditions of employment of employees doing the same, similar or comparable work or work requiring the same, similar or comparable skills and expenditures of energy and effort, giving consideration to such factors as are peculiar to the industry involved;

(d) comparison of wages, hours and conditions of employment as reflected in non-profitmaking hospitals and residential care centers in other comparable areas;

(e) the security and tenure of employment with due regard for the effect of technological changes thereon as well as the effect of any unique skills, required training and other attributes developed in the industry and required for the job;

(f) economic factors of the respective parties which are relevant to the arbitration decision;

(g) such other factors not confined to the foregoing which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining arbitration or otherwise between the parties or in the industry.

8. Where the validity of a certification of representatives issued by the board has been questioned by a refusal to bargain by a non-profitmaking hospital or a residential care center, the provisions of subdivision three of this section pertaining to fact-finding and arbitration shall not apply unless and until an unfair labor practice charge for refusal to bargain has been filed with the board. If such unfair labor practice charge has been filed, (1) no application made pursuant to section seventy-five hundred three of the civil practice law and rules, or otherwise, shall be granted to stay fact-finding or arbitration under this section; (2) the court shall consolidate the petitions and applications filed pursuant to paragraphs (a) and (b) of subdivision six of this section; and (3) no arbitration award made pursuant to this subdivision shall become effective until there has been a final determination that the labor organization has the right to exclusive representation of the employees in the unit with respect to which such award was made, pursuant to sections seven hundred five and seven hundred seven of this article, provided that nothing herein shall be interpreted to limit the discretion of the arbitrators to make such award retroactive.

9. Notwithstanding the provisions of section eight hundred seven of the labor law, where it appears that there may have been a violation of section seven hundred thirteen of this article, the chief executive officer of the non-profitmaking hospital or residential care center involved, or, in the case of a lockout, any affected employee or his certified representative, shall forthwith apply to the supreme court for an injunction against such violation. If such chief executive officer, or employee or his representative, fails or refuses to act as aforesaid, and if the chief executive officer of the city or village in which such hospital or center is located, or the chief executive officer of a town with respect to such hospital or center located in the area of the town outside any village therein, shall, in his discretion, determine that the violation constitutes a threat to the public health, safety and welfare of such city, village or town, as the case may be, such chief executive officer shall so advise in writing the chief legal officer of such city, village or town who shall

forthwith apply to the supreme court for an injunction against such violation. If an order of the court enjoining or restraining such violation does not receive compliance, such chief executive officer, employee or his representative, or chief legal officer, as the case may be, shall forthwith apply to the supreme court to punish such violation under section seven hundred fifty of the judiciary law. As used in this paragraph, the term "chief executive officer" shall mean (i) in the case of cities, the mayor, except in those cities having a city manager, it shall mean such city manager;(ii) in the case of villages, the mayor, except in those villages having a president or manager, it shall mean such latter officer; and (iii) in the case of towns, the supervisor or presiding supervisor.

§ 717. State mediation board and state labor relations board abolished. The state mediation board created by chapter five hundred sixty-nine of the laws of nineteen hundred sixty-eight and the New York state labor relations board created by chapter four hundred forty-three of the laws of nineteen hundred thirty-seven are hereby abolished. All the functions, powers and duties of such boards are hereby assigned to and shall hereafter be exercised and performed by and through the board. Any controversy, proceeding or other matter pending before the New York state board of mediation or the state labor relations board at the time this section takes effect, may be conducted and completed by the board and for such purposes the board shall be deemed to be a continuation of the functions, powers and duties of the New York state board of mediation or the state labor relations board, respectively, and not a new entity. Upon the transfer of functions to the board pursuant to this section, all appropriations and reappropriations heretofore or hereafter made to the department of labor relating to the state board of mediation or the state labor relations board or segregated pursuant to law, to the extent of remaining unexpended or unencumbered balances thereof, whether allocated or unallocated and whether obligated or unobligated are hereby made available for use and expenditure by the board for the same purposes for which originally appropriated or reappropriated. Whenever the state board of mediation or the state labor relations board or the chairman of the state board of mediation or of the state labor relations board is referred to or designated in any general, special or local law or in any rule, regulation, contract other document, such reference or designation shall be deemed to refer to the board and the chairman thereof, respectively.

§ 718. Short title. This article shall be known and may be cited and referred to as the "New York state employment relations act."