

AGRICULTURAL EMPLOYMENT RELATIONS ACT

23-1381. Declaration of Policy

It is hereby declared to be the policy of this state that the uninterrupted production, packing, processing, transporting and marketing of agricultural products are vital to the public interest. It is also declared to be the policy of this state that agricultural employees are free to organize, to take concerted action and, through representatives of their own choosing, to enter into collective bargaining contracts establishing their wages and terms and conditions of employment or to refrain from engaging in any or all of these activities. It is further declared that there now exists an inequality of bargaining power between agricultural employers and labor unions, arising out of the seasonal character and perishable nature of such agricultural products, the mobility of agricultural labor and the fundamental differences between agriculture and industry. While the right to strike is a basic right of organized labor, such right must take into account the perishable character and the seasonal nature of agricultural products and must be limited and regulated accordingly. It is the intent of the legislature to provide a means to bargain collectively that is fair and equitable to agricultural employers, labor organizations and employees, to provide orderly election procedures to resolve questions concerning representation of agricultural employees and to declare that certain acts are unfair labor practices that are prohibited and that are subject to control by the police power of this state. The overriding special interest of this state with respect to certain secondary boycott activities originating in this state, but extending across state lines and directed at employers in other states, must be recognized, and such acts must be made unlawful and subject to control by the police power of this state.

23-1382. Definitions

In this article, unless the context otherwise requires:

1. "Agricultural employee, permanent" means any employee who is over sixteen years of age, who has been employed by a particular agricultural employer for at least six months during the preceding calendar year and who is engaged in the growing or harvesting of agricultural crops or the packing of agricultural crops if packing is accomplished in the field. "Agricultural employee, temporary" means any employee who is over sixteen years of age, who is employed by a particular agricultural employer, who has been so employed during the preceding calendar year and who is engaged in the growing or harvesting of agricultural crops or the packing of agricultural crops if packing is accomplished in the field. If otherwise qualified, a person shall be considered an agricultural employee if an agricultural employer pays the wages of the employee for work performed for the employer's benefit or on his behalf, even though the supervision of the employee, the bookkeeping and the issuance of payroll checks are by a person other than the employer. In calculating a workday of an agricultural employee, one hour or more of employment in any one day shall be considered a workday. "Agricultural employee" also includes any individual whose work 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. "Agricultural employee" does not include any individual who:

(a) Is employed by his parent or spouse or by an immediate relative.

- (b) Has the status of an independent contractor.
- (c) Is employed as a supervisor or in a confidential capacity or as a clerical employee or a guard.
- (d) Is employed as an executive, professional or technical employee.
- (e) Has quit or has been discharged for cause.
- (f) Is a tenant or sharecropper and reasonably directs or shares in the management of an enterprise engaged in agriculture.
- (g) Is engaged in hauling or stitching functions.

2. "Agricultural employer" means any employer who is engaged in agriculture and who employed six or more agricultural employees for a period of thirty days during the preceding six month period and includes any person who provides labor and services on one or more farms as an independent contractor if such person, for a period of thirty days during the preceding six month period, employed six or more employees in such work. In calculating the number of agricultural employees employed by an agricultural employer or provided by an independent contractor, one hour or more of employment in any one day shall be considered a day of work. Agricultural employer also includes any employer who is engaged in agriculture with less than six agricultural employees and who voluntarily elects to be subject to this article by filing a request in writing with the board.

3. "Agriculture" means all services performed on a farm as defined in section 23-603, including but not limited to the recruiting, housing and feeding of persons employed or to be employed as agricultural employees by agricultural employers.

4. "Board" means the agricultural employment relations board.

5. "Farm" means any enterprise that is engaged in agriculture, that is operated from one headquarters where the utilization of labor and equipment is directed and whose tracts of land, if consisting of separate tracts of land, are located within a fifty mile radius of such headquarters.

6. "Labor dispute" means any controversy between an agricultural employer and his agricultural employees or their representative concerning terms, tenure or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment.

7. "Labor organization" means any organization or any agency defined in sections 23-1301 and 23-1321.

8. "Person" means one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.

9. "Professional employee" means:

- (a) Any employee engaged in agricultural work that either:

(i) Is predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work.

(ii) Involves the consistent exercise of discretion and judgment in its performance.

(iii) Is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(iv) Requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning.

(b) Any employee who has completed the course or courses of specialized intellectual instruction and study described in subdivision (a), item (iv) and is performing such work, or is performing such work or related work under the supervision of a professional person while acquiring specialized instruction.

10. "Representative" means any individual or labor organization.

11. "Supervisor" means any individual who has authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if such authority requires the use of independent judgment.

12. "Ultimate consumer" means the person who purchases an agricultural product for consumption.

13. "Unfair labor practice" means any unfair labor practice listed in section 23-1385.

23-1383. Rights of Employees

A. Agricultural employees have the right to self-organization, to bargain directly for themselves, and to form and join or assist labor organizations to bargain collectively through representatives of their own free choosing, or to engage in lawful concerted activity for the purpose of collective bargaining or other mutual aid or protection, and each such employee has the right, without interference from any source, to refrain from any and all of these activities.

B. Agricultural employees also have those rights more particularly defined and described in articles 1 and 3 of this chapter and shall be protected from the practices described in article 4 of this chapter.

23-1384. Rights of Employer

An agricultural employer has the following management rights:

1. To manage, control and conduct his operations, including but not limited to the number of farms and their locations, methods of carrying on any operation or practices, kinds of crops, time of work, size and makeup of crews, assignment of work and places of work.

2. To hire, suspend, discharge or transfer employees in accordance with his judgment of their ability.
3. To determine the type of equipment or machinery to be used, the standards and quality of work, and the wages, hours and conditions of work. The terms of employment relating to wages, hours, conditions of work and matters of worker safety, sanitation, health and the establishment of grievance procedures directly relating to a job are subject to negotiation.
4. To work on his own farm in any capacity at any time.
5. To join or refuse to join any labor organization or employer organization.

23-1385. Unfair labor practices; definition

A. It is an unfair labor practice for an agricultural employer:

1. To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in section 23-1383 and articles 1 and 3 of this chapter or to violate the protection of employees from the practices described in article 4 of this chapter.
2. To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it. An agricultural employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.
3. To encourage or discourage membership in any labor organization by discrimination in regard to hiring or tenure of employment or any term or condition of employment.
4. To discharge or otherwise discriminate against an agricultural employee because he has filed charges or given testimony under this article.
5. To refuse to bargain collectively with the representatives of his employees, subject to section 23-1389. Nothing in this article shall be construed as requiring an agricultural employer to bargain collectively until a representative of his agricultural employees has been determined by means of a valid secret ballot election.
6. To discharge or otherwise discriminate against any person because he has filed charges or given testimony before the board or a court.
7. To threaten to have discharged any agricultural employee, or threaten to have wages of any agricultural employees reduced, solely because of any labor activity.

B. It is an unfair labor practice for a labor organization or its agents to:

1. Impose any economic sanction, to restrain or coerce agricultural employees in the exercise of their rights or to coerce or intimidate any employee in the enjoyment of his legal rights provided by this article, or to intimidate his family, picket his domicile or injure the person or property of any employee or his family. This paragraph does not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership.

2. Threaten or impose any economic sanction or reprisal against any person who is not a member of the labor organization in the exercise of rights under this article, including but not limited to the right to refrain from any or all concerted activity, or against any person, who is not a member of the labor organization, who refrains from compliance with a union rule, policy or practice that establishes or affects wages, hours or working conditions at such person's place of employment.

3. Restrain, coerce, or threaten or impose any fine or other economic sanction against any person who invokes the processes of the board, or the court, or against an agricultural employer or employee in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances.

4. Refuse to bargain collectively with an agricultural employer, provided it is the majority representative of his agricultural employees as determined pursuant to section 23-1389.

5. Cause or attempt to cause an agricultural employer to:

(a) Pay or deliver or agree to pay or deliver any money or other thing of value for services that are not performed or that are not to be performed.

(b) Establish or alter the number of employees to be employed or the assignment of the employees.

(c) Assign work to the employees of a particular employer.

(d) Discriminate in regard to hiring or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. Nothing in this subdivision prohibits agreements between labor organizations and agricultural employers that regulate hiring and tenure of employment on the basis of seniority, and the labor organization is not given power to determine seniority unilaterally.

6. Engage in a secondary boycott as defined in section 23-1321.

7. Induce or encourage or threaten, restrain or coerce any secondary employer or any executive or management employee of any secondary employer to make a management decision not to handle, transport, process, pack, sell or distribute any agricultural commodity of an agricultural employer with whom a labor dispute exists.

8. Induce or encourage the ultimate consumer of any agricultural product to refrain from purchasing, consuming or using such agricultural product by the use of dishonest, untruthful and deceptive publicity. Permissible inducement or encouragement within the meaning of this section means truthful, honest and nondeceptive publicity that identifies the agricultural product produced by an agricultural employer with whom the labor organization has a primary dispute. Permissible inducement or encouragement does not include publicity directed against any trademark, trade name or generic name that may include agricultural products of another producer or user of such trademark, trade name or generic name.

9. Restrain, coerce or threaten an ultimate consumer to prevent him from purchasing, consuming or using such agricultural product.

10. Threaten or engage in arson, libel, slander, injury to person or property or other violent conduct if the objective is to prevent the preparing for market, transporting, handling, displaying for sale, or selling of any agricultural product.

11. Intimidate, restrain or coerce agricultural employers in the exercise of the rights guaranteed by section 23-1384.

12. Picket or cause to be picketed, boycott or cause to be boycotted, or threaten to boycott or picket, or cause to be boycotted or picketed, any agricultural employer if the objective is to induce, encourage, force or require an agricultural employer to recognize or bargain with a labor organization as the representative of his agricultural employees, or the agricultural employees of an agricultural employer to accept or select such labor organization as their collective bargaining representative unless such labor organization is currently certified as the representative of such employees:

(a) If the agricultural employer has lawfully recognized in accordance with this article any other labor organization and a question concerning representation may not appropriately be raised under section 23-1389.

(b) If within the preceding twelve months a valid election under section 23-1389 has been conducted.

(c) If a petition has been filed under section 23-1389.

13. Call a strike unless a majority of the employees within the bargaining unit has first approved the calling of such a strike by secret ballot.

C. The expressing of any views, argument or opinion or the making of any statement, including expressions intended to influence the outcome of an organizing campaign, a bargaining controversy, a strike, lockout or other labor dispute, or the dissemination of such views whether in written, printed, graphic, visual or auditory form, if such expression contains no threat of reprisal or force or promise of benefit, does not constitute or is not evidence of an unfair labor practice or does not constitute grounds for, or evidence justifying, setting aside the results of any election conducted under any of the provisions of this article. A statement of fact by either a labor organization or an agricultural employer relating to existing or proposed operations of the employer or to existing or proposed terms, tenure or conditions of employment with the employer shall not be considered to constitute a threat of reprisal or force or promise of benefit. An employer shall not be required to furnish or make available to a labor organization, and no labor organization shall be required to furnish or make available to an employer, materials, information, time or facilities to enable such employer or labor organization, as the case may be, to communicate with employees of the employer, members of the labor organization, its supporters or its adherents.

D. For the purposes of this section, "bargain collectively" means the performance of the mutual obligation of the agricultural employer and the representative of the agricultural employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment that directly affect the work of employees, or the negotiation of an agreement, or to resolve any question arising thereunder. Bargain collectively includes the

furnishing of necessary and relevant information in connection with the negotiation of an agreement or any issue arising under such agreement, or requiring as a condition for entering into an agreement the execution of a written contract incorporating any agreement reached if requested by either party. The failure or refusal of either party to agree to a proposal, to the making, changing or withdrawing of a lawful proposal or to the making of a concession does not constitute, or is not evidence, direct or indirect, of, a breach of this obligation. The board in any remedial order shall not direct either party to make any concession, agree to any proposal or make any payment of money except to employees who are reinstated with back pay as provided in section 23-1390. This section does not require any agricultural employer to bargain collectively with respect to any management rights. "Management rights", as used in this subsection, includes but is not limited to the right to discontinue the entire farming operation or any part of the operation, to contract out any part of the work of the operation not covered by a labor contract, to sell or lease any of the real or personal property involved in the operation or to determine the methods, equipment and facilities to be used in producing agricultural products or the agricultural products to be produced.

E. If there is in effect a collective bargaining contract covering agricultural employees, the duty to bargain collectively also means that no party to the contract may terminate or modify the contract, unless the party desiring such termination or modification:

1. Serves a written notice on the other party to the contract of the proposed termination or modification not less than sixty days prior to the expiration date of the contract, or if such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification.
2. Offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications.
3. Continues the contract in full force and effect without resorting to a strike or lockout for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later.

F. The duties imposed on agricultural employers, agricultural employees and labor organizations become inapplicable on an intervening certification of the board, under which the labor organization or individual that is a party to the contract has been superseded as or ceased to be the representative of the employees subject to section 23-1389, and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any agricultural employee who engages in a strike within the sixty day period specified in this subsection loses his status as an agricultural employee of the agricultural employer engaged in the particular labor dispute for the purposes of this section and sections 23-1389 and 23-1390, but such loss of status for such employee terminates when he is reemployed by such employer.

23-1386. Agricultural employment relations board; members; terms; appointment

A. An agricultural employment relations board is established that consists of seven members.

B. The governor shall appoint the members of the board. Two of the members shall be appointed as representatives of agriculture employers, two of the members appointed shall be representatives of organized agricultural labor and the three additional members, one of whom shall be the chairman of the board, shall be appointed as representatives of the general public. The term of office of the members is five years. On the initial appointment, one of the labor representatives shall be appointed for a term of one year, one of the representatives of the general public shall be appointed for a term of one year, one of the agricultural representatives shall be appointed for a term of two years, one of the representatives of the general public shall be appointed for a term of two years, one of the agricultural representatives shall be appointed for a term of three years, one of the labor representatives shall be appointed for a term of four years, and one of the public members of the board shall be appointed for a term of five years. Any individual appointed to fill a vacancy of any member shall be appointed only for the unexpired portion of the term of the member he is succeeding. Members of the board may be removed from office by the governor on notice and a hearing for neglect of duty or malfeasance in office but for no other cause.

C. The governor shall appoint two alternate members. One of the alternates shall be appointed as a representative of organized agricultural labor and the other as a representative of agriculture. Alternates shall be appointed for terms of five years. Any individual appointed to fill a vacancy of any alternate shall be appointed only for the unexpired portion of the term of the alternate he is succeeding. Alternates may be removed from office by the governor on notice and a hearing for neglect of duty or malfeasance in office, but for no other cause. No alternate may participate in deliberations of the board except in the absence of a board member representing his area of interest.

D. The governor shall appoint a general counsel of the board. The general counsel is the exclusive legal representative of the board, has final authority, on behalf of the board, with respect to the investigation of charges and the issuance of complaints under section 23-1390 and with respect to the prosecution of such complaints by the board, and has such other duties as the board may prescribe or as may be provided by law. The general counsel shall appoint such assistants as needed to carry out the work of the office.

E. A vacancy on the board does not impair the right of the remaining members to exercise all of the powers of the board, and four members constitute a quorum of the board. The board shall have an official seal that is judicially recognized.

F. The principal office of the board shall be in the city of Phoenix, but it may meet and exercise any of its powers at any other place.

G. The board may meet in executive session on the decision of a majority of the members of the board.

H. Meetings of the board may be called by the chairman or by a majority of the members of the board by giving written notice to the chairman who shall notify all of the members of the board as to the time and place of the board meeting.

23-1387. Powers and duties

A. By one or more of its members or by such agents or agencies as it may designate, the board may prosecute any inquiry necessary to its functions in any part of this state. A member of the board who participates in any such inquiry shall not be disqualified from subsequently participating in a decision of the board in the same case.

B. The board shall adopt rules pursuant to title 41, chapter 6 as may be necessary to carry out this article.

C. The board may also establish offices in such other cities as it deems necessary and shall determine the region to be served by such offices. The board may delegate to the heads of these offices as it deems appropriate its powers under section 23-1389 to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, to determine whether a question of representation exists and to direct an election by a secret ballot and to certify, within a reasonable period of time, the results of such election. The board may review any action taken pursuant to the authority delegated under this subsection by any regional officer on a request for a review of such action filed with the board by any interested party. Any such review made by the board, unless specifically ordered by the board, does not operate as a stay of any action taken by the regional officer. The entire record considered by the board in considering or acting on any such request or review shall be made available to all parties before the consideration or action, and the board's findings and action thereon shall be published as a decision of the board.

23-1388. Officers and employees of the board

A. The board may appoint an executive secretary and such attorneys and other employees as it may from time to time find necessary for the proper performance of its duties. Compensation for all such personnel shall be as determined pursuant to section 38-611.

B. The board may not employ any attorney for the purpose of reviewing transcripts of hearings or preparing drafts of opinions, except that any attorney employed for assignment as a legal assistant to any board member may review such transcripts and prepare such drafts for the board member.

C. No administrative law judge's report may be reviewed, either before or after its publication, by any person other than a member of the board or his legal assistant, and no administrative law judge may advise or consult with the board with respect to exceptions taken to his findings, rulings or recommendations.

D. At the discretion of the board, attorneys appointed under this section may appear for and represent the board in any case in court.

23-1389. Representatives and elections

A. Representatives selected by a secret ballot for the purposes of collective bargaining by the majority of the agricultural employees in a unit appropriate for such purposes are the exclusive representatives of all of the agricultural 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. If ratification of any such contract is required, the right to vote in such ratification is limited to the employees in the bargaining unit. Any individual agricultural employee or a group of agricultural employees at any time may present grievances to their agricultural employer and have such grievances adjusted, without the intervention of the bargaining representative, if the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect. The bargaining representative may be present at such adjustment.

B. The board shall decide in each case whether in order to ensure to employees the fullest freedom in exercising their rights the unit appropriate for the purposes of collective bargaining shall consist of either all temporary agricultural employees or all permanent agricultural employees of an agricultural employer working at the farm where such employer grows or produces agricultural products, or both. In making unit determinations the extent of a union's extent of organization shall not be controlling. Principal factors should be the community of interest between employees, the same hours, duties and compensation, the administrative structure of the employer and the control of labor relations policies.

C. The board shall investigate any petition and, if it has reasonable cause to believe that a question of representation exists, shall provide for an appropriate hearing on due notice, if such petition has been filed in good faith in accordance with the rules that may be prescribed by the board:

1. By an agricultural employee or group of agricultural employees or any individual or labor organization acting in its behalf alleging that thirty per cent or more of the number of agricultural employees in the unit in question either wish to be represented for collective bargaining and that their employer declines to recognize their representative or assert that the individual or labor organization that has been certified or that is being currently recognized by their employer as the bargaining representative is no longer a representative.

2. By an agricultural employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative or that an individual or labor organization that has previously been certified as the bargaining representative is no longer a representative.

D. If the board finds on the record of such hearing that a question of representation exists, it shall direct an election by secret ballot and shall certify the results. If a second labor organization files a petition for an election alleging that thirty per cent or more of the employees in the unit in question desire to be represented by that labor organization, the board shall require that the names of both labor organizations appear on the ballot. In any election the voters shall be afforded the choice of "no union". If in a representational election more than one union is on the ballot, and none of the choices receives a majority vote, a second election shall be held. The

second election shall be between the union receiving the highest number of votes and "no union". In any election a labor organization shall obtain a majority of all votes cast in that election in order to be certified as the bargaining representative of all of the employees in that unit.

E. In determining whether or not a question of representation exists, the same rules of decision apply irrespective of the identity of the persons filing the petition or the kind of relief sought. In no case may the board deny a labor organization a place on the ballot by reason of an order with respect to such labor organization or its predecessor not issued in conformity with section 23-1390.

F. Within five days of receipt of such a petition, the agricultural employer may file a challenge to such petition on the ground that the authorization for the filing of such petition is not current or that such authorization has been obtained by fraud, misrepresentation or coercion. The petition shall not act to stay the election proceeding, but if it is thereafter determined that the authorizations are not current or are obtained by fraud, misrepresentation or coercion the petition will be dismissed.

G. No election may be directed or conducted in any bargaining unit or any subdivision of a bargaining unit within which, in the preceding twelve month period, a valid election has been held. Employees who are engaged in an economic strike and who are not entitled to reinstatement are eligible to vote under such rules as the board finds are consistent with the purposes and provisions of this article in any election conducted within three months after the commencement of the strike. Any agricultural employee who is found to have sought or accepted employment only for the purpose of affecting the outcome of an election is not eligible to vote in an election conducted pursuant to this article for a period of twelve months from the date of that election.

H. Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with rules or decisions of the board.

I. Within ten days after an election is directed by the board or a consent election agreement is approved by the board and on request of the board, the agricultural employer shall furnish to the board a list of agricultural employees in the bargaining unit who are qualified to vote, and this list shall be made available to the organizations or other interested employees involved in the election.

J. On the filing with the board, by thirty per cent or more of the agricultural employees in a bargaining unit covered by a certification or by an agreement between their employer and a labor organization made pursuant to section 23-1385, of a petition alleging the desire that such representation authority be rescinded, the board shall conduct an election by secret ballot of the employees in such unit and shall certify the results to the labor organization and the employer.

23-1390. Prevention of unfair labor practices

A. The board, as provided in this section, may prevent any person from engaging in any unfair labor practice.

B. If it is charged that any person has engaged in or is engaging in any such unfair labor practice, the board, or any agent or agency designated by the board for such purposes, may issue and cause to be served on the person a complaint stating the charges in that respect and containing a notice of hearing before the board or a member of the board or an administrative law judge at least five days after the serving of the complaint. Hearings shall be conducted pursuant to title 41, chapter 6, article 10. No complaint may issue based on any unfair labor practice occurring more than six months before the filing of the charge with the board and the service of a copy of the complaint on the person against whom the charge is made, unless the person so aggrieved was prevented from filing the charge by reason of service in the armed forces, in which event the six month period shall be computed from the day of the person's discharge. Any such complaint may be amended by the member or administrative law judge conducting the hearing or the board in its discretion at any time before the issuance of an order based on the complaint. The person so complained of may file an answer to the original or amended complaint, may appear in person or otherwise and may give testimony at the place and time fixed in the complaint. In the discretion of the board or the member, agent or agency conducting the hearing, any other person may be allowed to intervene in the proceeding and to present testimony.

C. The testimony taken by the board or such member or administrative law judge shall be reduced to writing and filed with the board. Thereafter, in its discretion, the board on notice may take further testimony or hear argument. If on the preponderance of the testimony taken the board determines that any person named in the complaint 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 the person an order requiring the person to cease and desist from the unfair labor practice and shall take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this article. If an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by the employee. The order may further require the person to make reports from time to time showing the extent to which the person has complied with the order. If on the preponderance of the testimony taken the board determines that the person named in the complaint has not engaged in or is not engaging in any unfair labor practice, the board shall state its findings of fact and shall issue an order dismissing the complaint. No order of the board may require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to the individual of any back pay, if the individual was suspended or discharged for cause. If the evidence is presented before a member of the board, or before an examiner or examiners of the board, the member, or the examiner or examiners, as the case may be, shall issue and cause to be served on the parties to the proceedings a proposed report, together with a recommended order, that shall be filed with the board, and if no exceptions are filed within ten days after service of the order on such parties, or within such further period as the board may authorize, such recommended order becomes the order of the board and is as prescribed in the order.

D. Until the record in a case is filed in a court, as provided in this section, the board at any time on reasonable notice and in a manner as it deems proper may modify or set aside, in whole or in part, any finding or order made or issued by it.

E. The board may petition the superior court in any county where the unfair labor practice in question occurred or where the person resides or transacts business for the enforcement of the

order and for appropriate temporary relief or a restraining order. On the filing of the petition the court shall cause notice to be served on the person, and thereupon has jurisdiction of the proceeding and of the question determined therein, and may grant such temporary relief or restraining order as it deems just and proper and may 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.

F. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

G. If an order of the board made pursuant to this section is based in whole or in part on facts certified following an investigation pursuant to section 23-1389 and there is a petition for the enforcement of the order, the certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsection E of this section, and the decree of the court enforcing the order of the board shall be made and entered based on the pleadings, testimony and proceedings set forth in the transcript. The court shall not enforce any order of the board that rests, in whole or in part, on evidence adduced from witnesses who have not testified under oath and who have not been subject to cross-examination by opposing parties.

H. Unless specifically ordered by the court, the commencement of proceedings under subsection E or F of this section does not operate as a stay of the board's order.

I. Petitions filed under this article shall be heard expeditiously, and if possible within ten days after they have been docketed.

J. On issuance of a complaint as provided in subsection B of this section charging that any person has engaged in or is engaging in an unfair labor practice, the board may petition the superior court in any county where the unfair labor practice in question is alleged to have occurred or where the person resides or transacts business for appropriate temporary relief or a restraining order. On the filing of any such petition the court shall cause notice to be served on the person and thereupon has jurisdiction to grant to the board such temporary relief or restraining order as it deems just and proper.

K. If it is charged that any person has engaged in an unfair labor practice, the preliminary investigation of the charge shall be made immediately and shall be given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer to whom the matter may be referred has reasonable cause to believe that the charge is true and that a complaint should issue, the officer shall petition, on behalf of the board, the superior court in the county where the unfair labor practice in question has occurred or is alleged to have occurred, or where the person alleged to have committed the unfair labor practice resides or transacts business, for appropriate injunctive relief pending the final adjudication of the board with respect to the matter. On the filing of any such petition the superior court has jurisdiction to grant any injunctive relief or temporary restraining order it deems just and proper, notwithstanding any other law, except that no temporary restraining order may be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and the temporary restraining order is effective for no longer than five days and will become void at the expiration of such period. On the filing of any

such petition the court shall cause notice to be served on any person complained against in the charge and the person, including the charging party, shall be given an opportunity to appear in person or by counsel and present any relevant testimony. For the purposes of this subsection, the superior court is deemed to have jurisdiction of a labor organization either in the county in which the organization maintains its principal office or in any county in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process on an officer or agent constitutes service on the labor organization and makes the organization a party to the suit.

23-1391. Investigatory powers

A. The board, or its duly authorized agent or agencies, shall have access to, at all reasonable times, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. The board or any member of the board on application of any party to such proceedings forthwith shall issue to such party subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in such proceeding or investigation requested in such application. Within five days after the service of a subpoena on any person requiring the production of any evidence in his possession or under his control, such person may petition the board to revoke, and the board shall revoke, the subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpoena does not describe with sufficient particularity the evidence whose production is required. 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. The attendance of witnesses and the production of the evidence may be required from any place in this state at any designated place of hearing.

B. In case of contumacy or refusal to obey a subpoena issued to any person, the superior court in the county within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business, on application by the board, has jurisdiction to issue to such person an order requiring the person to appear before the board, or a member, agent or agency of the board, to produce evidence if so ordered or to give testimony touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as contempt.

C. Complaints, orders and other process and papers of the board, or a member, agent or agency of the board, may be served either personally, by registered or certified mail, by telegraph or by leaving a copy at the principal office, place of business or residence of the person required to be served. The verified return by the individual personally serving or leaving the copy, setting forth the manner of the service, and the return post office receipt, if registered or certified, or telegraph receipt and mailed or telegraphed as provided in this subsection, are proof of service. Witnesses summoned before the board or its members, agent or agency shall be paid the same fees and mileage that are paid witnesses in the superior court and witnesses whose depositions are taken, and the persons taking the depositions are entitled to the same fees as are paid for like services in the superior court.

D. The departments and agencies of this state, if directed by the governor, shall furnish the board, on its request, with all unprivileged records, papers and information in their possession relating to any matter before the board.

23-1392. Violation; classification

Any person who knowingly resists, prevents, impedes or interferes with any member of the board or any of its agents or agencies in the performance of duties pursuant to this article or who violates any provision of this article is guilty of a class 1 misdemeanor. This section does not apply to any activities carried on outside this state.

23-1393. Court jurisdiction

A. Any person who is aggrieved or is injured in his business or property by reason of any violation of this article, or a violation of an injunction issued as provided in this section, may sue in the superior court in the county having jurisdiction of the parties for recovery of any damages resulting from the unlawful action, regardless of where such unlawful action occurred and regardless of where such damage occurred, including costs of the suit and reasonable attorney fees. On the filing of the suit the court also has jurisdiction to grant injunctive relief or a temporary restraining order as it deems just and proper. Petitions for injunctive relief or temporary restraining orders shall be heard expeditiously. Petitions for temporary restraining orders alleging a violation of section 23-1385 shall be heard forthwith and if the petition alleges that substantial and irreparable injury to the petitioner is unavoidable such temporary restraining orders may be issued pursuant to rule 65 of the Arizona rules of civil procedure.

B. In the case of a strike or boycott, or threat of a strike or boycott, against an agricultural employer, the court may grant, and on proper application shall grant as provided in this section, a ten day restraining order enjoining such a strike or boycott, provided that if an agricultural employer invokes the court's jurisdiction to issue the ten day restraining order to enjoin a strike as provided by this subsection, the employer as a condition must agree to submit the dispute to binding arbitration as the means of settling the unresolved issues. If the parties cannot agree on an arbitrator within two days after the court awards a restraining order, the court shall appoint one to decide the unresolved issues. Any agricultural employer is entitled to injunctive relief accorded by rule 65 of the Arizona rules of civil procedure on the filing of a verified petition showing that his agricultural employees are unlawfully on strike or are unlawfully conducting a boycott, or are unlawfully threatening to strike or boycott, and that the resulting cessation of work or conduct of a boycott will result in the prevention of production or the loss, spoilage, deterioration or reduction in grade, quality or marketability of an agricultural commodity or commodities for human consumption in commercial quantities. For the purpose of this subsection, an agricultural commodity or commodities for human consumption with a market value of five thousand dollars or more constitutes commercial quantities.

C. For the purpose of this article, the superior court has jurisdiction of a labor organization in this state if such organization maintains its principal office in this state, or if its duly authorized officers or agents are engaged in promoting or protecting the interests of agricultural employee members or in the solicitation of such prospective members in this state.

D. The service of any summons, subpoena or other legal process of the superior court on an officer or agent of a labor organization, in his capacity as such, constitutes service on the labor organization.

E. Any labor organization that represents employees as defined in this article, and any agricultural employer, are bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of this state.

F. For the purposes of this article, in determining whether any person is acting as an agent of another person in order to make the other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified is not controlling. Nothing in this section shall be deemed to preclude an agent being sued both in his capacity as an agent and as an individual.

23-1394. Scope of article

This article applies only to such persons, labor organizations or activities as are not within the jurisdiction of the national labor relations act or the jurisdictional guidelines established by the national labor relations board.

23-1395. Limitations

A. Nothing in this article, except as otherwise specifically provided, shall be construed as to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

B. Nothing in this article prohibits any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this article may be compelled to deem such supervisors as agricultural employees for the purpose of any law, either national or local, relating to collective bargaining.