# HOUSE . . . . No. 2659

## The Commonwealth of Massachusetts

EXECUTIVE DEPARTMENT,
STATE HOUSE, BOSTON, July 6, 1949.

*To the Honorable Senate and House of Representatives:*

In my Inaugural Address on January 6, 1949, I called attention to a serious defect in our laws relating to labor relations. At that time I said, "In 1935, the Legislature adopted an act to restrict the abuses of anti-labor injunctions. This law was closely modeled upon, but not identical with, the terms of the federal Norris-LaGuardia Act. There has developed a wide divergence between the federal practice and adjudications and those of our own state due, at least in part, to the fact that our state legislature confined itself to procedural changes only and made no effort to amend the settled substantive law which has been established in this commonwealth by a long line of judicial decisions.

"The 1935 act has proved to be a disappointment to those who sponsored it.

"A strike for union security and picketing in support of the same purpose remain unlawful and subject to injunctive prohibition in Massachusetts. I recommend that you enact a measure which will broaden the definition of the lawful objects of strikes and picketing so that union security and other desirable and legitimate ends of collective bargaining and its lawful economic sanctions may be pursued in freedom from the hampering judicial restraints to which we are bound by outmoded precedents."

Since my message you have had before you a peaceful persuasion bill which was approved by the Joint Committee on Labor and Industries and by the House of

Representatives. In the Senate the measure failed to pass by a tie vote. It appears that it was not even given full opportunity for suitable re-consideration or amendment.

Accordingly, I now feel it encumbent upon me to reactivate the matter by bringing the subject to your attention again in this special message.

It requires no profound scholarship of the law relating to injunctions in labor disputes to determine the wide divergence between our own law both by statute and the interstitial legislation of our courts on the one hand and the federal enactments and adjudications on the other hand. The Norris-LaGuardia Act on which our state law was modeled was an exemplary piece of non-partisan legislation. Although we adopted a measure which closely resembled the federal statute, it appears that peaceful picketing for union security still remains illegal in Massachusetts and subject to judicial restraining orders and injunctions. The Supreme Judicial Court of Massachusetts has stated, in a recent opinion, that it feels bound by the precedents which in the course of history have been adopted. The Court has virtually asked for legislative permission to disregard those same precedents which it implicitly indicates are long out-moded.

Under the existing practice, it is clear that even fair procedural safeguards are not granted to labor organizations in Massachusetts in view of the fact that restraining orders against peaceful picketing are often granted by the courts without notice or hearing. One of the Boston newspapers which is not noted for its liberalism stated recently, and I quote from its editorial page of Monday, June 27, 1949, the following: "However, it is difficult to be comfortable about a procedure that allows a judge to make a decision, regardless of how temporary it is, without hearing both sides. There are, of course, emergencies which require quick action, but it's hard to conceive of one that wouldn't wait until the union had a chance to get into court and tell its story. A company attorney needs time for preparation before he goes into court.

Would it not be appropriate to have him notify the union in advance that he plans to seek a restraining order instead of sneaking into court behind the union's back? The amount of delay that would result if the union had to be notified a specified number of hours in advance would be slight."

There is another defect in the present law which upon inspection becomes apparent. The United States Supreme Court has stated that the failure to use the aid of every available government agency deprived the lower federal courts of jurisdiction to grant any injunctive relief. This case has been approved by our own Supreme Court very recently. In spite of these decisions, restraining orders and in some cases even injunctions have been granted with no specific findings that the party who seeks the relief of the court has negotiated in good faith.

To meet the above and other problems associated with the abuse of the injunctive process in labor disputes I recommend that you enact legislation at this session to bring our own substantive and procedural law in line with federal law and the laws of other industrial states. This legislation should provide for fair procedural safeguards in cases involving labor disputes. No other action is consistent with the leadership of Massachusetts in the field of labor relations and the laws which pertain to them. The reputation of the Commonwealth is at stake. Any temporizing or partisan abuse of the legislative process appears to me unthinkable when the sacred reputation of Massachusetts is involved. I strongly recommend the legislation which I have suggested and hope that it will be speedily enacted to the end that we shall promote labor relations by peaceful collective bargaining rather than by injunction.

PAUL A. DEVER,
*Governor.*