

HOUSE No. 976

By Mr. Pratt of Saugus, petition of the Massachusetts State Federation of Labor for legislation to define and limit the jurisdiction of courts sitting in equity and for other purposes. Judiciary (Joint).

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-One.

An Act to define and limit the Jurisdiction of Courts sitting in Equity, and for Other Purposes.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. In the interpretation and application
2 of this act, the public policy of this state is declared
3 as follows:

4 Negotiation of terms and conditions of labor should
5 result from voluntary agreement between employer
6 and employees. Governmental authority has per-
7 mitted and encouraged employers to organize in the
8 corporate and other forms of capital control. In
9 dealing with such employers the individual unorgan-
10 ized worker is helpless to exercise actual liberty of
11 contract and to protect his freedom of labor, and
12 thereby to obtain acceptable terms and conditions of
13 employment. Therefore it is necessary that the in-
14 dividual workman have full freedom of association,
15 self-organization, and designation of representatives

16 of his own choosing, to negotiate the terms and con-
17 ditions of his employment, and that he shall be free
18 from the interference, restraint or coercion of em-
19 ployers of labor, or their agents, in the designation of
20 such representatives or in self-organization or in other
21 concerted activities for the purpose of collective
22 bargaining or other mutual aid or protection.

1 SECTION 2. Every undertaking or promise here-
2 after made, whether written or oral, express or im-
3 plied, between any employee or prospective employee
4 and his employer, prospective employer or any other
5 individual, firm, company, association, or corporation,
6 whereby

7 (a) Either party thereto undertakes or promises to
8 join or to remain a member of some specific labor
9 organization or organizations or to join or remain a
10 member of some specific employer organization or any
11 employer organization or organizations; and/or

12 (b) Either party thereto undertakes or promises
13 not to join or not to remain a member of some specific
14 labor organization or any labor organization or organ-
15 izations, or of some specific employer organization or
16 any employer organization or organizations; and/or

17 (c) Either party thereto undertakes or promises
18 that he will withdraw from an employment relation
19 in the event that he joins or remains a member of some
20 specific labor organization or any labor organization
21 or organizations, or of some specific employer organ-
22 ization or any employer organization or organizations,
23 is hereby declared to be contrary to public policy
24 and shall not afford any basis for the granting of legal
25 or equitable relief by any court against a party to
26 such undertaking or promise, or against any other

27 persons who may advise, urge or induce, without
28 fraud, violence, or threat thereof, either party thereto
29 to act in disregard of such undertaking or promise.

1 SECTION 3. No court, nor any judge or judges
2 thereof shall have jurisdiction to issue any restraining
3 order or temporary or permanent injunction which in
4 specific or general terms prohibits any person or per-
5 sons from doing, whether singly or in concert, any of
6 the following acts:

7 (a) Ceasing or refusing to perform any work or to
8 remain in any relation of employment regardless of any
9 promise, undertaking, contract or agreement to do
10 such work or to remain in such employment;

11 (b) Becoming or remaining a member of any labor
12 organization or of any employer organization, regard-
13 less of any such undertaking or promise as is described
14 in section two of this act;

15 (c) Paying or giving to, or withholding from, any
16 person any strike or unemployment benefits or insur-
17 ance or other moneys or things of value;

18 (d) By all lawful means aiding any person who is
19 being proceeded against in, or is prosecuting any
20 action or suit in any court of the United States or of
21 any state;

22 (e) Giving publicity to and obtaining or communi-
23 cating information regarding the existence of, or the
24 facts involved in, any dispute, whether by advertising,
25 speaking, patrolling any public street or any place
26 where any person or persons may lawfully be, without
27 intimidation or coercion, or by any other method not
28 involving fraud, violence, breach of the peace, or
29 threat thereof;

- 30 (f) Ceasing to patronize or to employ any person or
31 persons;
32 (g) Assembling peaceably to do or to organize to do
33 any of the acts heretofore specified or to promote law-
34 ful interests;
35 (h) Advising or notifying any person or persons of
36 an intention to do any of the acts heretofore specified;
37 (i) Agreeing with other persons to do or not to do
38 any of the acts heretofore specified;
39 (j) Advising, urging, or inducing without fraud,
40 violence, or threat thereof, others to do the acts here-
41 tofore specified, regardless of any such undertaking
42 or promise as is described in section two of this act;
43 and
44 (k) Doing in concert of any or all of the acts here-
45 tofore specified on the ground that the persons engaged
46 therein constitute an unlawful combination or con-
47 spiracy.

1 SECTION 4. No officer or member of any association
2 or organization, and no association or organization
3 participating or interested in a labor dispute (as these
4 terms are herein defined) shall be held responsible or
5 liable in any civil action at law or suit in equity, or in
6 any criminal prosecution, for the unlawful acts of in-
7 dividual officers, members, or agents, except upon proof
8 by the weight of evidence and without the aid of any
9 presumptions of law or fact, both of (a) the doing of
10 such acts by persons who are officers, members or
11 agents of any such association or organization, and
12 (b) actual participation in, or actual authorization of,
13 such acts, or ratification of such acts after actual
14 knowledge thereof by such association or organization.

1 SECTION 5. In the interpretation and application
2 of sections six to nine, inclusive, of this act, the public
3 policy of this state is declared as follows:

4 Equity procedure that permits a complaining party
5 to obtain sweeping injunctive relief that is not pre-
6 ceded by or conditioned upon notice to and hearing of
7 the responding party or parties, or that issues after
8 hearing based upon written affidavits alone and not
9 wholly or in part upon examination, confrontation and
10 cross-examination of witnesses in open court, is pecu-
11 liarily subject to abuse in labor litigation for the reasons
12 that

13 (1) The status quo cannot be maintained but is
14 necessarily altered by the injunction,

15 (2) Determination of issues of veracity and of
16 probability of fact from affidavits of the opposing
17 parties that are contradictory and, under the circum-
18 stances, untrustworthy rather than from oral examina-
19 tion in open court is subject to grave error,

20 (3) Error in issuing the injunctive relief is usually
21 irreparable to the opposing party, and

22 (4) Delay incident to the normal course of appellate
23 practice frequently makes ultimate correction of error
24 in law or in fact unavailing in the particular case.

1 SECTION 6. No court nor any judge or judges
2 thereof shall have jurisdiction to issue a temporary
3 or permanent injunction in any case involving or
4 growing out of a labor dispute, as herein defined,
5 except after hearing the testimony of witnesses in
6 open court (with opportunity for cross-examination)
7 in support of the allegations of a complaint made
8 under oath, and testimony in opposition thereto, if

9 offered, and except after findings of all the following
10 facts by the court or judge or judges thereof;

11 (a) That unlawful acts have been threatened or
12 committed and will be executed or continued unless
13 restrained;

14 (b) That substantial and irreparable injury to com-
15 plainant's property will follow unless the relief re-
16 quested is granted;

17 (c) That as to each item of relief granted greater
18 injury will be inflicted upon complainant by the denial
19 thereof than will be inflicted upon defendants by the
20 granting thereof;

21 (d) That no item of relief granted is relief that a
22 court or judge thereof has no jurisdiction to restrain
23 or enjoin under section three of this act;

24 (e) That complainant has no adequate remedy at
25 law; and

26 (f) That the public officers charged with the duty
27 to protect complainant's property have failed or are
28 unable to furnish adequate protection.

29 Such hearing shall be held after due and personal
30 notice thereof has been given, in such manner as the
31 court shall direct, to all known persons against whom
32 relief is sought, and also to those public officers
33 charged with the duty to protect complainant's
34 property; provided, however, that if a complainant
35 shall also allege that unless a temporary restraining
36 order shall be issued before such hearing may be had,
37 a substantial and irreparable injury to complainant's
38 property will be unavoidable, such a temporary re-
39 straining order may be granted upon the expiration
40 of such reasonable notice of application therefor as
41 the court may direct by order to show cause, but
42 in no case less than forty-eight hours.

43 Such order to show cause shall be served upon such
44 party or parties as are sought to be restrained and as
45 shall be specified in said order, and then only upon
46 testimony under oath, or in the discretion of the
47 court, upon affidavits, sufficient, if sustained, to
48 justify the court in issuing a temporary injunction
49 upon a hearing as herein provided for.

50 Such a temporary restraining order shall be ef-
51 fective for no longer than five days, and at the ex-
52 piration of said five days shall become void and not
53 subject to renewal or extension, provided however
54 that if the hearing for a temporary injunction shall
55 have been begun before the expiration of the said
56 five days the restraining order may in the court's
57 discretion be continued until a decision is reached
58 upon the issuance of the temporary injunction.

59 No temporary restraining order or temporary in-
60 junction shall be issued except on condition that
61 complainant shall first file an undertaking with
62 adequate security sufficient to recompense those
63 enjoined for any loss, expense, or damage caused by
64 the improvident or erroneous issuance of such order
65 or injunction, including all reasonable costs (together
66 with a reasonable attorney's fee) and expense against
67 the order or against the granting of any injunctive
68 relief sought in the same proceeding and subsequently
69 denied by the court.

70 The undertaking herein mentioned shall be under-
71 stood to signify an agreement entered into by the
72 complainant and the surety upon which a decree
73 may be rendered in the same suit or proceeding
74 against said complainant and surety, the said com-
75 plainant and surety submitting themselves to the
76 jurisdiction of the court for that purpose. But noth-

77 ing herein contained shall deprive any party having a
78 claim or cause of action under or upon such under-
79 taking from electing to pursue his ordinary remedy by
80 suit at law or in equity.

1 SECTION 7. No restraining order or injunctive
2 relief shall be granted to any complainant who has
3 failed to comply with any obligation imposed by law
4 which is involved in the labor dispute in question, or
5 who has failed to make every reasonable effort to settle
6 such dispute either by negotiation or with the aid of
7 any available machinery of governmental mediation
8 or voluntary arbitration, but nothing herein contained
9 shall be deemed to require the court to await the action
10 of any such tribunal if irreparable injury is threatened.

1 SECTION 8. No restraining order or temporary or
2 permanent injunction shall be granted in a case involv-
3 ing or growing out of a labor dispute, except on the
4 basis of findings of fact made and filed by the court
5 in the record of the case prior to the issuance of such
6 restraining order or injunction; and every restraining
7 order or injunction granted in a case involving or
8 growing out of a labor dispute shall include only a
9 prohibition of such specific act or acts as may be ex-
10 pressly complained of in the bill of complaint or petition
11 filed in such case and expressly included in said findings
12 of fact made and filed by the court as provided herein;
13 and shall be binding only upon the parties to the suit,
14 their agents, servants, employees and attorneys, or
15 those in active concert and participation with them,
16 and who shall by personal service or otherwise have
17 received actual notice of the same.

1 SECTION 9. Whenever any court or judge or
2 judges thereof shall issue or deny any temporary in-
3 junction in a case involving or growing out of a labor
4 dispute, the court shall, upon the request of any party
5 to the proceedings, and on his filing the usual bond for
6 costs, forthwith certify the entire record of the case,
7 including a transcript of the evidence taken, to the
8 appropriate appellate court for its review. Upon the
9 filing of such record in the appropriate appellate court
10 the appeal shall be heard with the greatest possible
11 expedition, giving the proceeding precedence over all
12 other matters except older matters of the same
13 character.

1 SECTION 10. In all cases where a person shall be
2 charged with indirect criminal contempt for violation
3 of a restraining order or injunction issued by a court
4 or judge or judges thereof, the accused shall enjoy,
5 (a) The rights as to admission to bail that are
6 accorded to persons accused of crime,
7 (b) The right to be notified of the accusation and a
8 reasonable time to make a defense, provided the
9 alleged contempt is not committed in the immediate
10 view or presence of the court,
11 (c) Upon demand, the right to a speedy and public
12 trial by an impartial jury of the judicial district
13 wherein the contempt shall have been committed,
14 provided that this requirement shall not be construed
15 to apply to contempts committed in the presence of
16 the court or so near thereto as to interfere directly
17 with the administration of justice or to apply to the
18 misbehavior, misconduct, or disobedience of any
19 officer of the court in respect to the writs, orders, or
20 process of the court, and

21 (d) The right to file with the court a demand for the
22 retirement of the judge sitting in the proceeding, if
23 the contempt arises from an attack upon the char-
24 acter or conduct of such judge and if the attack
25 occurred otherwise than in open court. Upon the
26 filing of any such demand the judge shall thereupon
27 proceed no further, but another judge shall be desig-
28 nated by the presiding judge of said court. The de-
29 mand shall be filed prior to the hearing in the con-
30 tempt proceeding.

1 SECTION 11. Punishment for a contempt, speci-
2 fied in section ten, may be by fine, not exceeding one
3 hundred dollars, or by imprisonment not exceeding
4 fifteen days, in the jail of the county where the court
5 is sitting, or both, in the discretion of the court.
6 Where a person is committed to jail, for the nonpay-
7 ment of such a fine, he must be discharged at the
8 expiration of fifteen days; but where he is also com-
9 mitted for a definite time, the fifteen days must be
10 computed from the expiration of the definite time.

1 SECTION 12. When used in this act, and for the
2 purposes of this act —

3 (a) A case shall be held to involve or to grow out of
4 a labor dispute when the case involves persons who are
5 engaged in a single industry, trade craft, or occupa-
6 tion; or who are employees of one employer; or who
7 are members of the same or an affiliated organization
8 of employers or employees; whether such dispute is
9 (1) between one or more employers or associations of
10 employers and one or more employees or associations
11 of employees; (2) between one or more employers or
12 associations of employers and one or more employers

13 or associations of employers; or (3) between one or
14 more employees or associations of employees and one
15 or more employees or associations of employees; or
16 when the case involves any conflicting or competing
17 interests in a "labor dispute" (as hereinafter defined)
18 of "persons participating or interested" therein (as
19 hereinafter defined).

20 (b) A person or association shall be held to be a
21 person participating or interested in a labor dispute if
22 relief is sought against him or it and if he or it is en-
23 gaged in the industry, trade, craft, or occupation in
24 which such dispute occurs, or is a member, officer, or
25 agent of any association of employers or employees
26 engaged in such industry, trade, craft, or occupation.

27 (c) The term "labor dispute" includes any con-
28 troversy concerning terms or conditions of employ-
29 ment, or concerning the association or representation
30 of persons in negotiating, fixing, maintaining, chang-
31 ing, or seeking to arrange terms or conditions of
32 employment, or concerning employment relations, or
33 any other controversy arising out of the respective
34 interests of employer and employee, regardless of
35 whether or not the disputants stand in the proximate
36 relation of employer and employee.

1 SECTION 13. If any provision of this act or the
2 application thereof to any person or circumstance is
3 held invalid, the remainder of the act and the applica-
4 tion of such provisions to other persons or circum-
5 stances shall not be affected thereby.

1 SECTION 14. All acts and parts of acts in conflict
2 with the provisions of this act are hereby repealed.

