

# MAINE STATE LEGISLATURE

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# E I G H T Y - N I N T H   L E G I S L A T U R E

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**Legislative Document**

**No. 52**

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S. P. 35

In Senate, January 17, 1939.

Referred to Committee on Legal Affairs. Sent down for concurrence and 500 copies ordered printed.

ROYDEN V. BROWN, Secretary.

Referred to Ninetieth Legislature from Eighty-ninth Legislature.

Presented by Mr. Sleeper of Rockland.

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## S T A T E   O F   M A I N E

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
THIRTY-NINE

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**AN ACT to Define and Limit the Jurisdiction of Courts Sitting in Equity,  
and for Other Purposes.**

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Be it enacted by the People of the State of Maine, as follows :

**Sec. 1. P. L., 1933, c. 261, repealed.** Chapter 261 of the public laws of 1933 is hereby repealed and in place thereof the following sections are enacted :

**'Sec. 1. Public policy in labor matters declared.** In the interpretation and application of this act, the public policy of this state is declared as follows:

'Negotiation of terms and conditions of labor should result from voluntary agreement between employer and employees. Governmental authority has permitted and encouraged employers to organize in the corporate and other forms of capital control. In dealing with such employers the individual unorganized worker is helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment. Therefore it is necessary that the individual workman have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the

interference, restraint or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.'

'Sec. 2. Certain agreements held to be against public policy. Every undertaking or promise hereafter made, whether written or oral, express or implied, between any employee or prospective employee and his employer, prospective employer or any other individual, firm, company, association, or corporation, whereby

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

(b) Either party thereto undertakes or promises not to join or not to remain a member of some specific labor organization or any labor organization or organizations, or of some specific employer organization or any employer organization or organizations; and/or

(c) Either party thereto undertakes or promises that he will withdraw from an employment relation in the event that he joins or remains a member of some specific labor organization or any labor organization or organizations, or of some specific employer organization or any employer organization or organizations, is hereby declared to be contrary to public policy and shall not afford any basis for the granting of legal or equitable relief by any court against a party to such undertaking or promise, or against any other persons who may advise, urge or induce, without fraud, violence, or threat thereof, either party thereto to act in disregard of such undertaking or promise.'

'Sec. 3. Limitation on scope of injunctions. No court, nor any judge or judges thereof shall have jurisdiction to issue any restraining order or temporary or permanent injunction which in specific or general terms prohibits any person or persons from doing, whether singly or in concert, any of the following acts:

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

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section two of this act;

(c) Paying or giving to, or withholding from, any person any strike or unemployment benefits or insurance or other moneys or things of value;

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

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

(f) Ceasing to patronize or to employ any person or persons;

(g) Assembling peaceably to do or to organize to do any of the acts heretofore specified or to promote lawful interests;

(h) Advising or notifying any person or persons of an intention to do any of the acts heretofore specified;

(i) Agreeing with other persons to do or not to do any of the acts heretofore specified;

(j) Advising, urging, or inducing without fraud, violence, or threat thereof, others to do the acts heretofore specified, regardless of any such undertaking or promise as is described in section 2 of this act; and

(k) Doing in concert of any or all of the acts heretofore specified on the ground that the persons engaged therein constitute an unlawful combination or conspiracy.'

'Sec. 4. Responsibility of labor organizations limited. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute (as these terms are herein defined) shall be held responsible or liable in any civil action at law or suit in equity, or in any criminal prosecution, for the unlawful acts of individual officers, members, or agents, except upon proof by the weight of evidence and without the aid of any presumptions of law or fact, both of (a) the doing of such acts by persons who are officers, members or agents of any such association or organization, and (b) actual participation in, or actual authorization of, such acts, or ratification of such acts after actual knowledge thereof by such association or organization.'

'Sec. 5. Interpretation of provisions of sections 6-9 herein. In the interpretation and application of sections 6-9, inclusive, of this act, the public policy of this state is declared as follows:

'Equity procedure that permits a complaining party to obtain sweeping injunctive relief that is not preceded by or conditioned upon notice to and hearing of the responding party or parties, or that issues after hearing based upon written affidavits alone and not wholly or in part upon examination, confrontation and cross-examination of witnesses in open court, is peculiarly subject to abuse in labor litigation for the reasons that

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

(2) Determination of issues of veracity and of probability of fact from affidavits of the opposing parties that are contradictory and, under the circumstances, untrustworthy rather than from oral examination in open court is subject to grave error,

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

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

'Sec. 6. No injunction shall issue without hearing and finding of certain facts. No court nor any judge or judges thereof shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of all the following facts by the court or judge or judges thereof;

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

(b) That substantial and irreparable injury to complainant's property will follow unless the relief requested is granted;

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

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

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

(f) That the public officers charged with the duty to protect com-

plainant's property have failed or are unable to furnish adequate protection.

'Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to those public officers charged with the duty to protect complainant's property; provided, however, that if a complainant shall also allege that unless a temporary restraining order shall be issued before such hearing may be had, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be granted upon the expiration of such reasonable notice of application therefor as the court may direct by order to show cause, but in no case less than 48 hours.

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

'Such a temporary restraining order shall be effective for no longer than 5 days, and at the expiration of said 5 days shall become void and not subject to renewal or extension, provided however that if the hearing for a temporary injunction shall have been begun before the expiration of the said 5 days the restraining order may in the court's discretion be continued until a decision is reached upon the issuance of the temporary injunction.

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

'The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.'

'Sec. 7. Complainant must show effort to settle controversy. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available machinery of governmental mediation or voluntary arbitration, but nothing herein contained shall be deemed to require the court to await the action of any such tribunal if irreparable injury is threatened.'

'Sec. 8. Further limitation on issue of injunctions. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and expressly included in said findings of fact made and filed by the court as provided herein; and shall be binding only upon the parties to the suit, their agents, servants, employees and attorneys, or those in active concert and participation with them, and who shall by personal service or otherwise have received actual notice of the same.'

'Sec. 9. Appeal from injunction. Whenever any court or judge or judges thereof shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings, and on his finding bond for costs, forthwith certify the entire record of the case, including a transcript of the evidence taken, to the appropriate appellate court for its review. Upon the filing of such record in the appropriate appellate court the appeal shall be heard with the greatest possible expedition, giving the proceeding precedence over all other matters except older matters of the same character.'

'Sec. 10. Right of those judged in contempt. In all cases where a person shall be charged with indirect criminal contempt for violation of a restraining order or injunction issued by a court of judge or judges thereof, the accused shall enjoy,

(a) The rights as to admission to bail that are accorded to persons accused of crime.

(b) The right to be notified of the accusation and a reasonable time

to make a defense, provided the alleged contempt is not committed in the immediate view of presence of the court.

(c) Upon demand, the right to a speedy and public trial by an impartial jury of the county wherein the contempt shall have been committed, provided that this requirement shall not be construed to apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court, and

(d) The right to file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred otherwise than in open court. Upon the filing of any such demand the judge shall thereupon proceed no further, but another judge shall be designated by the chief justice of said court. The demand shall be filed prior to the hearing in the contempt proceeding.'

'Sec. 11. Penalty. Punishment for a contempt, specified in section 10, may be by fine, not exceeding \$100, or by imprisonment not exceeding 15 days, in the jail of the county where the court is sitting, or both, in the discretion of the court. Where a person is committed to jail, for the non-payment of such a fine, he must be discharged at the expiration of 15 days; but where he is also committed for a definite time, the 15 days must be computed from the expiration of the definite time.'

'Sec. 12. Definition of "case growing out of labor dispute." When used in this act, and for the purposes of this act:

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in a single industry, trade, craft, or occupation; or who are employees of 1 employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between 1 or more employers or associations of employers and 1 or more employees or associations of employees; (2) between 1 or more employers or associations of employers and 1 or more employers or associations of employers; or (3) between 1 or more employees or associations of employees and 1 or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it and if



he or it is engaged in the industry, trade, craft or occupation in which such dispute occurs, or is a member, officer or agent of any association of employers or employees engaged in such industry, trade, craft or occupation.

(c) The term "labor dispute" includes any controversy concerning terms 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, or concerning employment relations, or any other controversy arising out of the respective interests of employer and employee, regardless of whether or not the disputants stand in the proximate relation of employer and employee.'

**Sec. 2. Constitutionality.** If any provision of this act or the application thereof to any person or circumstance is held invalid, the remainder of the act and application of such provisions to other persons or circumstances shall not be affected thereby.

**Sec. 3. Repealing clause.** All acts and parts of acts in conflict with the provisions of this act are hereby repealed.