

CHAPTER 34-08

LABOR DISPUTES AND COURT PROCEEDINGS THEREIN

34-08-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. A "case" must be held to involve or to grow out of a labor dispute when such case involves persons who are engaged in the same industry, trade, craft, or occupation, or who have a direct or indirect interest therein, or who are employees of the same employer or who are members of the same or of an affiliated organization of employers or employees, whether such dispute is:
 - a. Between one or more employers or associations of employers, and one or more employees or associations of employees.
 - b. Between one or more employers or associations of employers, and one or more employers or associations of employers.
 - c. Between one or more employees or associations of employees, and one or more employees or associations of employees; or when such case involves any conflicting or competing interests of persons participating or interested in a labor dispute.
2. "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 whether or not the disputants stand in the proximate relationship of employer and employee.
3. A "person" or "association" must be held to be a person or association participating or interested in a labor dispute if relief is sought against the person or association and if the person or association:
 - a. Is engaged in the same industry, trade, craft, or occupation in which such dispute occurs;
 - b. Has a direct or indirect interest in such dispute; or
 - c. Is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in the trade, industry, craft, or occupation in which such dispute occurs.
4. "Strike" means the temporary stoppage of work by the concerted action of two or more employees as a result of a labor dispute.

34-08-02. Declaration of public policy.

For the purpose of the interpretation of the provisions of this chapter, the public policy of this state is declared to be that a worker of this state must be free to decline to associate with the worker's fellow workers, but that the worker also has full freedom of association, self-organization, and designation of representatives of the worker's own choosing to negotiate the terms and conditions of the worker's employment, and that the worker is free in such matters, as well as in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, from interference, restraint, or coercion by employers of labor or their agents.

34-08-03. Restriction on granting of preventive relief by courts in labor disputes.

No court of this state may issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute except in strict conformity with the provisions of this chapter. No such restraining order or temporary or permanent injunction may be issued contrary to the public policy declared in this chapter.

34-08-04. Undertaking or promise to join or resign from labor organization not enforceable.

Any undertaking or promise, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm,

company, association, corporation, or limited liability company and any employee or prospective employee of the same, whereby:

1. Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or
2. Either party to such contract or agreement undertakes or promises that that party will withdraw from an employment relationship in the event that that party joins, becomes, or remains a member of any labor organization or of any employer organization, and any other undertaking or promise which is in conflict with the public policy of this state as declared in this chapter,

is not enforceable in any court of this state and does not afford any basis for the granting of legal or equitable relief in any such court.

34-08-05. Acts which may not be enjoined or restrained.

No court of this state may issue any restraining order or temporary or permanent injunction in any case involving or growing out of a labor dispute to prohibit any person or persons participating or interested in such dispute from doing, whether singly or in concert, any of the following acts:

1. Ceasing or refusing to perform any work or to remain in any employment relationship.
2. Becoming or remaining a member of any labor organization or of any employer organization.
3. Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance or other moneys or things of value.
4. By all lawful means, aiding any person participating or interested in any labor dispute who is being proceeded against in, or who is prosecuting, any action or suit in any court of the United States or of any state.
5. Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence.
6. Assembling peaceably to act or to organize to act, in promotion of their interests in a labor dispute.
7. Advising or notifying any person of an intention to do any of the acts specified in this section.
8. Agreeing with other persons to do, or not to do, any of the acts specified in this section.
9. Advising, urging, or otherwise causing or inducing, without fraud or violence, any of the acts specified in this section, regardless of the existence of any undertaking or promise of the kind described in section 34-08-04.

34-08-06. Labor dispute not an unlawful combination or conspiracy.

No court of this state may issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute, or are engaged in, an unlawful combination or conspiracy because of the doing in concert of any of the acts enumerated in section 34-08-05.

34-08-07. Basis upon which restraining order or injunction may be issued.

No court of this state may issue a restraining order or a temporary or permanent injunction in any case involving or growing out of a labor dispute except after hearing the testimony of witnesses in open court in support of the allegations of a complaint made under oath and the testimony offered in opposition thereto, and the granting to opposing parties of the right to cross-examine such witnesses, and except after the court has made and filed with the records in the case findings of fact to the effect that:

1. Unlawful acts have been threatened and will be committed, or have been committed and will be continued, unless restrained;

2. Substantial irreparable injury to complainant's property will follow;
3. As to each item of relief granted, greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief; and
4. Complainant has no adequate remedy at law.

No such restraining order or injunction may be issued on account of any threat or unlawful act except against a person, association, or organization making the threat or committing the unlawful act or authorizing or ratifying the same with actual knowledge thereof. Every restraining order or injunction granted in a case involving or growing out of a labor dispute must include only a prohibition of such specific act or acts as may be expressly complained of in the complaint filed in such case and as shall be expressly included in the findings of fact.

34-08-08. Hearing required - Notice - When temporary order without notice may issue.

The hearing required under the provisions of section 34-08-07 must be held only 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 the chief police officer of the county and city within which the unlawful acts have been threatened or committed. If a complainant alleges, however, that unless a temporary restraining order is issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order becomes void at the expiration of five days. No temporary restraining order or injunction may be issued except on condition that complainant first shall file an undertaking with adequate security in an amount to be fixed by the court 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, expenses, and a reasonable attorney's fee, incurred in the defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

34-08-09. Judgment may be entered on undertaking - Notice required.

The undertaking mentioned in section 34-08-08 constitutes an agreement entered into by the complainant and the complainant's surety upon which a judgment may be rendered against the complainant and the complainant's surety in the same proceeding in which such undertaking is filed, and such complainant and surety, by filing the undertaking, submit themselves to the jurisdiction of the court for such purpose. Such judgment shall be rendered only after a hearing to assess damages, and the complainant and the complainant's surety must have reasonable notice of such hearing. Nothing contained in this section precludes any party having a claim for relief upon such undertaking from pursuing the party's ordinary remedy by suit at law.

34-08-10. Review by supreme court of order granting or denying temporary injunction.

Whenever any court of this state issues or denies a temporary injunction in a case involving or growing out of a labor dispute, such court, upon the request of any party to the proceeding and the filing by that party of a statutory cost bond, shall certify the record of the case to the supreme court of this state as in other civil cases for review by such court. The appeal must be heard by the supreme court and the temporary injunctive order must be affirmed, modified, or set aside by such court with the greatest possible expedition, and such appeal must have precedence over all other matters except older matters of the same character.

34-08-11. Jury trial on contempt charge - Exceptions.

In all cases arising under this chapter in which a person is charged with contempt in a court of this state, the accused shall enjoy the right to a speedy and public trial by an impartial jury, except when the contempt is alleged to have been committed in the presence of the court or so near thereto as to interfere directly with the administration of justice, or when the alleged contempt is the misbehavior, misconduct, or disobedience of any officer of the court in respect to a writ, order, or process of the court.

34-08-12. Change of judge to hear contempt charge - Demand required.

The defendant in any proceeding for contempt of court arising out of matters covered by the provisions of this chapter may file with the court, prior to the hearing in such proceeding, a demand for the retirement of the judge sitting in the proceeding if:

1. The contempt is alleged to have arisen from an attack upon the character or conduct of such judge; and
2. The attack which is alleged to be the basis of such proceeding occurred elsewhere than in the presence of the court or so near thereto as to interfere directly with the administration of justice.

Upon the filing of such demand, the judge shall proceed no further in the matter and another judge must be designated by the supreme court to hear the same.

34-08-13. Member or officer of an organization or association not liable for agents' acts - Exception.

No officer or member of any association or organization, and no association or organization, participating or interested in a labor dispute, may be held responsible or liable in any court of this state for the unlawful acts of individual officers, members, or agents except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts, after actual knowledge thereof.

34-08-14. Mediators - Appointment - Functions - Compensation.

The state labor commissioner has power to act as mediator, or to appoint any competent, impartial, disinterested person to act as mediator, in any labor dispute either upon the commissioner's own initiative or upon the request of one of the parties to the dispute. It is the function of such mediator to bring the parties together voluntarily under such favorable auspices as will tend to effectuate settlement of the dispute, but neither the mediator nor the commissioner has any power of compulsion in mediation proceedings. The commissioner shall provide necessary expenses for such mediators, other than for the commissioner or the commissioner's deputy, as the commissioner may appoint, under reasonable compensation plus per diem expenses for each such mediator, and prescribe reasonable rules of procedure for such mediators.