

SECTION 3. This act shall take effect upon passage and publication.

Approved June 27, 1931.

No. 119, S.]

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### CHAPTER 376.

AN ACT to create section 268.18 to 268.30 of the statutes, relating to litigation growing out of labor disputes and limiting the jurisdiction of courts sitting in equity.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. Thirteen new sections are added to the statutes to read: 268.18 PUBLIC POLICY AS TO COLLECTIVE BARGAINING. In the interpretation and application of sections 268.18 to 268.30 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 employes. 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.

268.19 "YELLOW-DOG" CONTRACTS. Every undertaking or promise made after the taking effect of this section, whether written or oral, express or implied, between any employe or prospective employe and his employer, prospective employer or any other individual, firm, company, association, or corporation, whereby.

(1) Either party thereto undertakes or promises to join or to remain a member of some specific labor organization or organiza-

tions or to join or remain a member of some specific employer organization or any employer organization or organizations; or

(2) 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; or

(3) 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. This section in its entirety is supplemental to and of subsection (1) of section 103.46 of the statutes.

268.20 **LAWFUL CONDUCT IN LABOR DISPUTES.** (1) The following acts, whether performed singly or in concert, shall be legal:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment regardless of any promise, undertaking, contract or agreement in violation of the public policy declared in section 268.19;

(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 268.19;

(c) Paying or giving to, 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, but nothing herein shall be construed to legalize a secondary boycott;

(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 268.19; and

(k) Doing in concert any or all of the acts heretofore specified shall not constitute an unlawful combination or conspiracy.

(1) Peaceful picketing or patrolling, whether engaged in singly or in numbers, shall be legal.

(2) 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 foregoing acts.

**268.21 RESPONSIBILITY FOR UNLAWFUL ACTS.** 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 defined in section 268.29) 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 a preponderance of the 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.

**268.22 PUBLIC POLICY AS TO LABOR LITIGATION.** In the interpretation and application of sections 268.23 to 268.26, the public policy of this state is declared to be:

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.

268.23 INJUNCTIONS: CONDITIONS OF ISSUANCE; RESTRAINING ORDERS. (1) 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 defined in section 268.29, 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 the relief to be granted does not violate the provisions of section 268.20;

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

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

(2) 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 forty-eight hours.

(3) 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.

(4) Such a temporary restraining order shall be effective for no longer than five days, and at the expiration of said five 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 five days the restraining order may in the court's discretion be continued until a decision is reached upon the issuance of the temporary injunction.

(5) 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.

(6) 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.

268.24 CLEAN HANDS DOCTRINE. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any legal obligation 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.

268.25 INJUNCTIONS: CONTENTS. Except as provided in section 268.23, 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, employes 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.

268.26 INJUNCTIONS: APPEALS. 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 filing the usual 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.

268.27 CONTEMPT CASES. In all cases where a person shall be charged with civil or criminal contempt for violation of a restrain-

ing order or injunction issued by a court or judge or judges thereof, the accused shall enjoy:

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

(2) 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 or presence of the court.

(3) 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. All contempt proceedings, whether civil or criminal, brought for the alleged violation of any such restraining order or injunction, are, and hereby are declared to be independent, original, special proceedings, and shall require a unanimous finding of the jury.

(4) The right to file with the court a demand for the retirement of the judge sitting in the proceeding, upon an affidavit of prejudice being filed as is now provided by law in other cases. Upon the filing of any such affidavit, the judge shall thereupon proceed no further, but another judge shall be designated as is now provided for in other cases. The affidavit shall be filed prior to the hearing in the contempt proceeding.

**268.28 PUNISHMENT FOR CONTEMPT.** Punishment for a contempt, specified in section 268.27, may be by fine, not exceeding twenty-five dollars, or by imprisonment not exceeding ten 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 nonpayment of such a fine, he must be discharged at the expiration of fifteen days; but where he is also committed for a definite time, the fifteen days must be computed from the expiration of the definite time.

**268.29 DEFINITIONS.** When used in sections 268.18 to 268.30, and for the purposes of these sections:

(1) 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 employes of one

employer; or who are members of the same or an affiliated organization of employers or employes; whether such disputes is (1) between one or more employers or associations of employers and one or more employes or associations of employes; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employes or associations of employes and one or more employes or associations of employes; or when the case involves any conflicting or competing interests in a "labor dispute" (as defined in subsection (3)) of "persons participating or interested" therein (as defined in subsection (2)).

(2) 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 employes engaged in such industry, trade, craft, or occupation.

(3) 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 employe, regardless of whether or not the disputants stand in the proximate relation of employer and employe.

268.30 SEVERABILITY OF PROVISIONS. If any provision of sections 268.18 to 268.30 or the application thereof to any person or circumstance is held invalid, the remainder of these sections and the application of such provisions to other persons or circumstances shall not be affected thereby.

SECTION 2. This act shall take effect upon passage and publication.

Approved June 27, 1931.