

Assembly Bill No. 1268

CHAPTER 616

An act to add Chapter 10 (commencing with Section 1138) to Part 3 of Division 2 of the Labor Code, relating to labor disputes.

[Approved by Governor October 5, 1999. Filed
with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1268, Kuehl. Labor disputes.

Existing federal law, the Norris-LaGuardia Act, among other things, limits the liability of labor unions, or officers or members thereof, for the unlawful acts of individual members except upon clear proof of actual participation in, or actual authorization or ratification of, those unlawful acts. That law also limits the authority of a court to issue a temporary or permanent injunction in a labor dispute except upon a hearing establishing specified facts and upon the filing of an undertaking, the amount thereof to be set by the court, with the undertaking to have a specified legal effect; and restricts the right to a restraining order or injunctive relief in a labor dispute, as specified.

This bill would enact similar provisions under state law.

The people of the State of California do enact as follows:

SECTION 1. Chapter 10 (commencing with Section 1138) is added to Part 3 of Division 2 of the Labor Code, to read:

CHAPTER 10. UNLAWFUL ACTS DURING LABOR DISPUTES

1138. No officer or member of any association or organization, and no association or organization, participating or interested in a labor dispute, shall 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 those acts.

1138.1. (a) No court of this state shall have authority to issue 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, 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 fact by the court, of all of the following:



(1) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorized those acts.

(2) That substantial and irreparable injury to complainant's property will follow.

(3) That 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.

(4) That complainant has no adequate remedy at law.

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

(b) The hearing shall be held after due and personal notice thereof has been given, in the manner that the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property. However, if a complainant also alleges 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 shall be effective for no longer than five days and shall become void at the expiration of those five days. No temporary restraining order shall be issued unless the judicial officer issuing the temporary restraining order first hears oral argument from the opposing party or opposing party's attorney, except in the instances specified in subparagraphs (B) and (C) of paragraph (2) of subdivision (c) of Section 527 of the Code of Civil Procedure. No temporary restraining order or temporary injunction shall be issued except on the condition that the complainant first files 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 the order or injunction, including all reasonable costs, together with a reasonable attorney's fee, and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

(c) The undertaking shall be an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against the complainant and surety, upon a hearing to assess damages of which hearing the complainant



and surety shall have reasonable notice, the complainant and surety submitting themselves to the jurisdiction of the court for that purpose. Nothing contained in this section shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his or her ordinary remedy by suit at law or in equity.

1138.2. No restraining order or injunctive relief shall be granted to any complainant involved in the labor dispute in question who has failed to comply with any obligation imposed by law, or who has failed to make every reasonable effort to settle that dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

1138.3. 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 the 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 the specific act or acts as may be expressly complained of in the complaint or petition filed in such case and as shall be expressly included in findings of fact made and filed by the court.

1138.4. The term “labor dispute” as used in this chapter has the same meaning as set forth in clauses (i), (ii), and (iii) of paragraph (4) of subdivision (b) of Section 527.3 of the Code of Civil Procedure.

1138.5. Sections 1138.1, 1138.2, and 1138.3 shall not apply to any peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

