

Regular Session, 2014

SENATE BILL NO. 551

BY SENATOR PEACOCK

LABOR DISPUTES. Provides relative to labor organizations and labor disputes. (8/1/14)

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AN ACT

To amend and reenact R.S. 23:844, 845, 846, and 849 and to enact R.S. 23:821(4) and 841.1, relative to labor disputes; to provide for peaceful protest; to restrict certain mass picketing activities; to provide for definitions; to provide for labor organizations; to provide for requirements for injunctive relief; to provide for contempt of court; to provide for fines; to provide for the payment of damages; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 23:844, 845, 846, and 849 are hereby amended and reenacted and R.S. 23:821(4) and 841.1 are hereby enacted to read as follows:

§821. Definitions

When used in Parts I and II of this Chapter, and for the purposes thereof:

* * *

(4) The term "mass picketing" shall mean the patrolling in close formation by two or more persons who are employees or members of a labor organization in order to prevent access to a business premise or to interrupt the normal operations of a business.

* * *

§841.1. Mass picketing; prohibited conduct

A. Notwithstanding the provisions in R.S. 23:841, no person or persons shall engage in mass picketing in any of the following circumstances:

(1) Hindering or preventing a person from pursuing lawful employment by means of coercion or the threat of bodily injury.

(2) Obstructing or interfering with the ingress or egress of any business premises.

(3) Obstructing or interfering with the free and uninterrupted use of public roads, streets, highways, railways, airports, waterways, or other rights-of-way by mass picketing in order to interrupt the normal business activities of a business.

(4) Engaging in the picketing on the immovable property of the private residence of the employer without permission of the owner of the residence.

B.(1) An employer or business that is subjected to prohibited activity pursuant to Subsection A of this Section, may bring an action in a court of competent jurisdiction to enjoin the prohibited activity, without regard to the existence of other remedies, demonstration of irreparable harm, or other factors.

(2) Upon a finding of a violation of the provisions of this Section, the court shall award court costs and reasonable attorney fees to a plaintiff who prevails in an action brought pursuant to this Section. Failure to comply with an order of the Court issued under this Section shall be punishable as contempt of court.

C. Nothing in this Section shall prohibit lawful picketing or serve to encroach on the right of free speech that is subject to the protections guaranteed in the Constitution of the United States or the Constitution of the State of Louisiana.

* * *

1 §844. Injunctions and restraining orders, grounds for issuance; proof required

2 A. No court shall issue a temporary or permanent injunction in any case
3 involving or growing out of a labor dispute, as herein defined, except after hearing
4 the testimony of witnesses in open court, with opportunity for cross-examination, in
5 support of the allegations of a complaint made under oath, and testimony in
6 opposition thereto, if offered, and except after findings of fact by the court to the
7 effect:

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

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

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

15 (4) That no item of relief granted is relief that a court has no authority to
16 restrain or enjoin under R.S. 23:841;

17 (5) That complainant has no adequate remedy by ordinary legal procedure;
18 and

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

21 **B. The provisions of Paragraphs (2), (3), (5), and (6) of Subsection A of**
22 **this Section shall not apply to any temporary or permanent injunction sought**
23 **in the case of any activities prohibited pursuant to R.S. 23:841.1.**

24 C. Such hearing shall be held after due and personal notice thereof has been
25 given, in such manner as the court shall direct, to all known persons against whom
26 relief is sought, and also to those public officers charged with the duty to protect
27 complainant's property.

28 **D.(1)** If a complainant shall also allege that unless a temporary restraining
29 order is issued before such hearing can be had a substantial and irreparable injury to

1 complainant's property will be unavoidable, such a temporary restraining order may
2 be granted upon the expiration of such reasonable notice of application therefor as
3 the court may direct by order to show cause, but in no case less than forty-eight
4 hours.

5 (2) Such order to show cause shall be served upon such party or parties as are
6 sought to be restrained and as shall be specified in said order, and the restraining
7 order shall issue only upon testimony, or in the discretion of the court, upon
8 affidavits, sufficient, if sustained, to justify the court in issuing a temporary
9 injunction upon a hearing as herein provided for.

10 (3) Such a temporary restraining order shall be effective for no longer than
11 five days, at the expiration of which time it shall become void and not subject to
12 renewal or extension; provided, that if the hearing for a temporary injunction shall
13 have been begun before the expiration of the said five days the restraining order may,
14 in the court's discretion, be continued until a decision is reached upon the issuance
15 of the temporary injunction.

16 (4) ~~No~~ **Except in cases where any temporary or permanent injunction**
17 **filed pursuant to R.S. 23:841.1, no** temporary restraining order or temporary
18 injunction shall be issued except on condition that complainant shall first file an
19 undertaking with adequate security sufficient to recompense those enjoined for any
20 loss, expense, or damage caused by the improvident or erroneous issuance of such
21 order or injunction, including all reasonable costs, together with a reasonable
22 attorney's fee, and expense against the order or against the granting of any injunctive
23 relief sought in the same proceeding and subsequently denied by the court.

24 (5) **No bond shall be required to be posted in any suit to enjoin the**
25 **activities which are prohibited pursuant to R.S. 23:841.1.**

26 E. The undertaking herein mentioned shall be understood to signify an
27 agreement entered into by the complainant and the surety upon which a decree may
28 be rendered in the same suit or proceeding against the said complainant and surety,
29 the said complainant and surety submitting themselves to the jurisdiction of the court

1 for that purpose. But nothing herein contained shall deprive any party having a
2 claim or cause of action under or upon such undertaking from electing to pursue his
3 ordinary remedy by suit at law.

4 §845. Failure of complainant to attempt settlement of disputes; effect on right to
5 injunctive relief

6 **A. Except as provided in Subsection B of this Section, No no** restraining
7 order or injunctive relief shall be granted to any complainant who has failed to
8 comply with any obligation imposed by law which is involved in the labor dispute
9 in question, or who has failed to make every reasonable effort to settle such dispute
10 either by negotiation or with the aid of any available machinery of governmental
11 mediation or voluntary arbitration, but nothing herein contained shall be deemed to
12 require the court to await the action of any such tribunal if irreparable injury is
13 threatened.

14 **B. The provisions of this Section shall not apply to any activities which**
15 **are prohibited pursuant to R.S. 23:841.1.**

16 §846. Findings of fact as basis for injunctive relief; persons affected
17 No restraining order or temporary or permanent injunction shall be granted
18 in a case involving or growing out of a labor dispute **or on the basis of R.S.**
19 **23:841.1**, except on the basis of findings of fact made and filed by the court in the
20 record of the case prior to the issuance of such restraining order or injunction; and
21 every restraining order or injunction granted in a case involving or growing out of
22 a labor dispute shall include only a prohibition of such specific act or acts as may be
23 expressly complained of in the petition filed in such case and expressly included in
24 the findings of fact made and filed by the court as provided herein. The restraining
25 order, or temporary or permanent injunction shall be binding only upon the parties
26 to the suit, their agents, servants, employees and attorneys, or those in active concert
27 and participation with them, and who shall by personal service or otherwise have
28 received actual notice of the same.

29 * * *

1 §849. Punishment for contempt

2 A. The Except for injunctions issued pursuant to R.S. 23:841.1,
3 punishment for contempt under R.S. 23:848, may be by fine, not exceeding one
4 hundred dollars, or by imprisonment not exceeding fifteen days, or both. Where a
5 person is committed to jail, for the nonpayment of the fine he must be discharged at
6 the expiration of fifteen days; but where he is also committed for a definite time, the
7 fifteen days must be computed from the expiration of the definite time.

8 B.(1) The court shall punish any person for contempt of a court order
9 granted pursuant to R.S. 23:841.1 and that person shall be subject to a fine of
10 up to one thousand dollars for each day of the violation, and the fine shall be
11 paid into the registry of the court.

12 (2) If a labor organization assists in the prohibited activity in violation
13 of the injunction granted pursuant to R.S. 23:841.1, the labor organization shall
14 be subject to a fine of up to ten thousand dollars for each day of the violation,
15 and the fine shall be paid into the registry of the court.

16 C. Upon a showing of damages, any person adversely affected by a
17 violation pursuant to R.S. 23:841.1 may be compensated from the payment of
18 finances paid into the registry of the court pursuant to Subsection B of this Section.

19 D.(1) If no claims are filed pursuant to Subsection C of this Section
20 within one year of the date of the damages, then the funds which have been
21 deposited in the registry of the court shall be deposited in the general fund of
22 the court for use in the administration of the court.

23 (2) If claims are filed within one year of the date of the damages claimed
24 pursuant to Subsection C of this Section, then any funds which are left over
25 after damages are paid shall be deposited in the general fund of the court for
26 use in the administration of the court.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Carla S. Roberts.

DIGEST

Peacock (SB 551)

Present law provides that no court shall issue any restraining order or temporary or permanent injunction which prohibits any person from doing any of the following acts:

- (1) Refusing to perform any employment duties regardless of any contract or agreement to do such work or to remain in such employment.
- (2) Becoming or remaining a member of any labor organization regardless of any such undertaking or promise.
- (3) Paying or giving to, or withholding from, any person any strike or unemployment benefits.
- (4) Aiding any other person by any lawful means who is being proceeded against or is prosecuting any action or suit in any court of the United States or of any state.
- (5) 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 persons may lawfully be, without intimidation or coercion, or by any other method not involving fraud, violence, breach of the peace, or threat thereof.
- (6) Ceasing to patronize or to employ any person or persons.
- (7) Assembling peaceably to do or to organize to do any of the acts heretofore specified or to promote lawful interests.
- (8) Advising or notifying any person or persons of an intention to do any of the acts heretofore specified.
- (9) Agreeing with other persons to do or not to do any of the acts heretofore specified.
- (10) Advising, urging, or inducing without fraud, violence, or threat thereof, others to do the acts heretofore specified, regardless of any such undertaking or promise related to labor organizations.
- (11) Doing in concert of any or all the acts heretofore specified on the ground that the persons engaged therein constitute an unlawful combination or conspiracy.

Proposed law retains present law but provides that no person or persons shall engage in mass picketing in any of the following circumstances:

- (1) Hindering or preventing a person from pursuing lawful employment by means of coercion or the threat of bodily injury.
- (2) Obstructing or interfering with the ingress or egress of any place of business.
- (3) Obstructing or interfering with free and uninterrupted use of public roads, streets, highways, railways, airports, waterways, or other ways of travel or conveyance by mass picketing when such activities would interrupt the normal business activities of a business.

- (4) Engaging in the picketing on the land of a private residence of the employer without permission of the owner of the residence.

Proposed law provides that "mass picketing" shall mean the patrolling in close formation by two or more persons who are employees or members of a labor organization in order to prevent access to a business premise or to interrupt the normal operations of a business.

Proposed law provides that an employer or business that is subjected to prohibited activity pursuant to proposed law may bring an action in a court of competent jurisdiction to enjoin the prohibited activity, without regard to the existence of other remedies, demonstration of irreparable harm, or other factors.

Proposed law provides that upon a finding of a violation of the provisions in proposed law, the court shall award court costs and reasonable attorney fees to a plaintiff who prevails in an action brought pursuant to proposed law. Failure to comply with an order of the Court issued under proposed law shall be punishable as contempt of court.

Proposed law provides that nothing in proposed law shall prohibit lawful picketing or free speech that is guaranteed by the U.S. Constitution or the La. Constitution.

Present law provides that no court shall 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 by the court that include the following evidences: (a) That substantial and irreparable injury to complainant's property will follow unless the relief requested is granted, (b) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial thereof than will be inflicted upon the defendants by the granting thereof, (c) that complainant has no adequate remedy by ordinary legal procedure, or (d) That the public officers charged with the duty to protect complainant's property have failed or are unable to furnish adequate protection.

Proposed law retains present law but provides that those finds are not necessary for the court to order a temporary or permanent injunction pursuant to proposed law.

Proposed law provides that no bond shall be required to be posted in any suit to enjoin the prohibited acts set forth in proposed law.

Present law provides that 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.

Proposed law retains present law but provides that the provisions of proposed law shall not apply to any prohibited activities pursuant to proposed law.

Present law provides that punishment for contempt of court orders, regarding unlawful labor activities, shall be a fine, not exceeding \$100, or by imprisonment not exceeding 15 days, or both.

Proposed law retains present law but provides that in cases involving a violation of prohibited activities in violation of proposed law, the court shall subject the violator to a fine of up to \$1,000 for each day of the violation and the fine shall be paid into the registry of the court.

Proposed law provides that, if a labor organization assist in the prohibited activity in violation of the injunction granted pursuant to proposed law, the labor organization shall be subject to a fine of up to \$10,000 for each day of the violation and the fine shall be paid to the registry of the court.

Proposed law provides that upon a showing of damages, any person adversely affected by a violation of proposed law may be compensated from the payment of fines made to the registry of the court.

Proposed law provides that, if no claims are filed for damages within one year of the date of the damages, then the funds which have been deposited in the registry of the court shall be deposited in the general fund of the court for use in the administration of the court.

Proposed law provides that, if claims are filed within one year of the date of the damages claimed, then any funds which are left over after damages are paid, shall be deposited in the general fund of the court for use in the administration of the court.

Effective August 1, 2014.

(Amends R.S. 23:844, 845, 846, and 849; adds R.S. 23:821(4) and 841.1)