Chapter 662

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Labor Disputes

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LIMITATIONS ON JUDICIAL AUTHORITY IN LABOR DISPUTES

662.010 Definitions for ORS 662.010 to 662.130. As used in ORS 662.010 to 662.130 and for the purposes of those sections:

(1) "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, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(2) A case involves or grows out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft or occupation, or who have direct or indirect interests therein, or who are employees of the same employer, or who are members of the same or 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; or (c) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a labor dispute of persons participating or interested therein.

(3) A person or association is a person 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 therein.

(c) Is a member, officer or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft or occupation. [Amended by 1987 c.158 §130]

662.020 Declaration of policy as to labor organizations. In the interpretation of ORS 662.010 to 662.130, and in determining the jurisdiction and authority of the courts of this state, as such jurisdiction and authority are defined and limited in those statutes, the public policy of Oregon is declared as follows: Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in a corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect the individual unorganized worker's freedom of labor and thereby to obtain acceptable terms and conditions of employment, wherefore, though the worker should be free to decline to associate with the worker's fellows, it is necessary that the worker have full freedom of association, self-organization and designation of representatives of the worker's own choosing to negotiate the terms and conditions of employment and that the worker 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; therefore, the definitions of and limitations contained in ORS 662.010 to 662.130 upon the jurisdiction and authority of the courts of this state hereby are enacted.

662.030 Restrictions in employment contracts on affiliation with labor or employer organization unenforceable. Any undertaking or promise described in this section or any other undertaking or promise in conflict with the public policy declared in ORS 662.020 is declared to be contrary to the public policy of Oregon and is not enforceable in any court of this state and does not afford any basis for the granting of legal or equitable relief by any such court, including specifically, every undertaking or promise made after June 6, 1931, 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 or corporation, 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.

(2) Either party to such contract or agreement undertakes or promises that the party will withdraw from an employment relation in the event that the party joins, becomes or remains a member of any labor organization or of any employer organization.

662.040 Injunctions in labor disputes generally restricted. No court, nor any judge thereof, shall have jurisdiction to 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 ORS 662.010 to 662.130, nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in ORS 662.020.

662.050 Specific acts that are not enjoinable. No court, nor any judge thereof, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any 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 relation of employment.

(2) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any undertaking or promise, as is described in ORS 662.030.

(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 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 facts involved in, any labor dispute, whether by advertising, speaking, patrolling or by any other method not involving fraud or violence or intimidation.

(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 any intention to do any of the acts specified in subsections (1) to (6) of this section.

(8) Agreeing with other persons to do or not to do any of the acts specified in subsections (1) to (7) of this section.

(9) Advising, urging or otherwise causing or inducing without fraud or violence or intimidation, the acts specified in subsections (1) to (8) of this section, regardless of any undertaking or promise, as is described in ORS 662.030.

662.060 Restrictions on injunctions to prohibit doing in concert acts enumerated in ORS 662.050. No court, nor any judge thereof, shall have jurisdiction to 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 the acts enumerated in ORS 662.050.

662.070 Liability of associations and officers and members of associations for unlawful acts of individuals. 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, such acts, or of ratification of such acts after actual knowledge thereof.

662.080 Hearing and findings of certain facts are prerequisites to injunction. No court, nor any judge thereof, shall have jurisdiction 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, to the effect:

(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 persons, association or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof.

(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.

662.090 Notice of hearing; issuance of temporary injunction without notice; attorney fees. (1) The 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 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 re-

straining 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 the five days.

(2) No temporary restraining order or temporary injunction shall be issued except on condition that 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 such order or injunction, including all reasonable costs, together with a reasonable attorney fee at trial and on appeal 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.

(3) The undertaking mentioned in subsection (2) of this section shall be understood to signify an agreement entered into by the complainant and the surety upon which a judgment may be rendered in the same action or proceeding against the complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the complainant and surety submitting themselves to the jurisdiction of the court for that purpose. This section does not deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue the ordinary remedy of the party by action for legal or equitable remedies. [Amended by 1979 c.284 §188; 1981 c.897 §98]

662.100 Compliance with obligations involved in dispute and making reasonable effort to settle as prerequisites to injunctive relief. 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 governmental machinery of mediation or voluntary arbitration.

662.110 Findings of fact prerequisite to injunction; scope of injunction. (1) 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.

(2) 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 acts as may expressly be complained of in the bill of complaint or petition filed in such case and as shall expressly be included in the findings of fact made and filed by the court.

662.120 Appeal to Supreme Court. Whenever any court or judge thereof issues or denies 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 filing the usual bond for costs, forthwith certify, as in ordinary cases, the record of the case to the Supreme Court for its review. Upon the filing of such record in the Supreme Court, the appeal shall be heard and the temporary injunctive order affirmed, modified or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters, except older matters of the same character.

662.130 Contempt proceedings; jury trial; change of judge. (1) In all cases arising under ORS 662.010 to 662.130 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 wherein the contempt has been committed; provided, this right shall not 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 the misbehavior, misconduct or disobedience of any officer of the court in respect to the writs, orders or process of the court.

(2) The defendant in any proceeding for contempt of court may 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 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 any such demand the judge shall thereupon proceed no further, but another judge shall be designated as provided by law. The demand shall be filed prior to the hearing in the contempt proceeding.

(3) Except as provided in subsections (1) and (2) of this section, proceedings for imposition of sanctions for contempt shall be conducted as provided under ORS 33.015 to 33.155. [Amended by 1991 c.724 §29]

STRIKEBREAKERS

662.205 Definitions for ORS 662.205 to 662.225. As used in ORS 662.205 to 662.225:

(1) "Employee" means any individual who performs services for wages or salary.

(2) "Employer" means any person, partnership, firm, corporation, association or

other entity, or any agent thereof, that employs an individual to perform services for a wage or salary.

(3) "For the duration of a strike or lockout" includes that period of time beginning one month before initiation of a strike or lockout and ending one month after termination of the strike or lockout.

(4) "Lockout" means any refusal by an employer to permit employees to work as a result of a dispute with such employees affecting wages, hours or other terms or conditions of their employment.

(5) "Professional strikebreaker" means a person who currently offers to replace an employee involved in a strike or lockout, for the duration of that strike or lockout; and who, within the preceding five-year period, has on two or more previous occasions offered to replace an employee involved in a strike or lockout, for the duration of that strike or lockout. However, professional strikebreaker does not include any person who is the owner of a partnership, firm, corporation, association or other entity or the family of the owner or any person designated as supervisory personnel. As used in this section, owner includes a producer of agricultural commodities or a member of a cooperative association.

(6) "Strike" means any concerted act of employees in a lawful refusal under applicable state or federal law to perform work or services for an employer. [1975 c.645 §1; 1987 c.158 §131]

662.210 [Repealed by 1971 c.729 §47]

662.215 Prohibitions on use of professional strikebreakers; restrictions on recruiting employees during strike. No employer shall:

(1) Knowingly utilize any professional strikebreaker to replace an employee involved in a strike or lockout, for the duration of that strike or lockout.

(2) Recruit, solicit or advertise for individuals to replace employees involved in a strike or lockout, for the duration of the strike or lockout, unless the employer gives notice to such individual that there is a strike or lockout at the place at which employment is offered and that the employment offered is for the purpose of replacing an employee involved in the strike or lockout, for the duration of such strike or lockout. [1975 c.645 §2]

662.220 [Repealed by 1971 c.729 §47]

662.225 Prohibited conduct by professional strikebreaker. No professional strikebreaker shall knowingly become employed or offer to become employed for the purpose of replacing an employee involved in a strike or lockout, for the duration of that strike or lockout. [1975 c.645 §3]

662.230 [Repealed by 1971 c.729 §47]

662.240 [Repealed by 1971 c.729 §47]

662.310 [Repealed by 1953 c.723 §22]

662.320 [Repealed by 1953 c.723 §22]

662.330 [Repealed by 1953 c.723 §22]

662.340 [Repealed by 1953 c.723 §22]

STATE CONCILIATION SERVICE

662.405 Declaration of policy. It hereby is declared to be the public policy of the State of Oregon that the best interests of the people of this state are served by fostering collective bargaining and by the prevention of or the prompt settlement of labor controversies, strikes and lockouts; that sound and stable industrial peace and the advancement of the general welfare of the state and of the best interests of employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the processes of conference and collective bargaining between employers and employees; that the settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate government facilities for conciliation, mediation and voluntary arbitration to aid and encourage employers and employees to reach and maintain agreements concerning rates of pay, hours and working conditions and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining. [1957 c.122 §1]

662.410 [Repealed by 1957 c.122 §5]

662.415 State Conciliation Service established; purpose. A State Conciliation Service hereby is established within the Employment Relations Board with the primary responsibility for fostering collective bargaining by rendering voluntary assistance to employers and employees in resolving their differences without resort to strikes, lockouts or other forms of conflict. [1957 c.122 §2(1); 1969 c.671 §13]

662.420 [Repealed by 1957 c.122 §5]

662.425 Mediation services. (1) When any party to a labor controversy notifies the State Conciliation Service that a labor controversy exists or is imminent, the conciliator, if the conciliator determines that a labor controversy exists or is imminent, shall immediately set a time and place for a mediation conference and invite the parties to attend to participate in mediation of their differences.

(2) When it comes to the attention of the conciliator that a labor controversy exists or is imminent, the conciliator may offer medi-

ation services if the conciliator deems it to be in the public interest.

(3) At the request of the Governor, the Employment Relations Board shall instruct the conciliator to investigate any existing or imminent labor dispute, or controversy in the public sector and report the facts of the dispute and the matters in issue to the Governor. [1957 c.122 §3; 1969 c.671 §14]

662.430 [Repealed by 1957 c.122 §5]

662.435 Services for state agencies and political subdivisions. The services and facilities of the State Conciliation Service and the conciliator shall be made available to the State of Oregon or any of its agencies, boards, commissions or other branches or any of the political subdivisions of the state and to the public employees of the State of Oregon in all its agencies, boards, commissions or other branches or its political subdivisions in the same manner as such facilities are available to private employers and their employees. [1957 c.122 §4; 1959 c.184 §1; 1969 c.671 §15]

662.440 [Repealed by 1957 c.122 §5]

662.445 List of qualified arbitrators; fees. (1) The State Conciliation Service shall maintain a list of qualified arbitrators who may be available to the parties to a labor controversy if the parties so request.

(2) An individual who applies to be included on the list of qualified arbitrators shall pay the State Conciliation Service an application fee of $50. A qualified arbitrator who is included on the list shall pay the State Conciliation Service an annual fee of $100 to remain on the list.

(3) Fees received by the State Conciliation Service under this section shall be deposited to the credit of the Employment Relations Board Administrative Account. [1957 c.122 §2(3); 2007 c.477 §§1,3]

662.450 [Repealed by 1957 c.122 §5]

662.455 Conciliator and other employees. The head of the State Conciliation Service shall be the conciliator who shall be appointed by the Executive Secretary of the Employment Relations Board, with the approval of the board. The conciliator and all other employees of the State Conciliation Service shall be subject to the State Personnel Relations Law. [1957 c.122 §2(2); 1969 c.671 §16]

662.460 [Repealed by 1957 c.122 §5]

662.470 [Repealed by 1957 c.122 §5]

662.480 [Repealed by 1957 c.122 §5]

662.490 [Repealed by 1957 c.122 §5]

662.500 [Repealed by 1957 c.122 §5]

662.505 [1961 c.690 §1; 1969 c.671 §17; 1971 c.729 §1; renumbered 663.005]

662.510 [Repealed by 1957 c.122 §5]

662.515 [1961 c.690 §2; renumbered 663.010]

662.520 [Repealed by 1957 c.122 §5]

662.525 [1961 c.690 §3; renumbered 663.015]

662.530 [Repealed by 1957 c.122 §5]

662.535 [1961 c.690 §20; repealed by 1971 c.729 §47]

662.540 [Repealed by 1957 c.122 §5]

662.545 [1961 c.690 §4; renumbered 663.020]

662.550 [Repealed by 1957 c.122 §5]

662.555 [1961 c.690 §5; renumbered 663.025]

662.565 [1961 c.690 §6; renumbered 663.030]

662.575 [1961 c.690 §7; renumbered 663.035]

662.585 [1961 c.690 §8(1); 1971 c.729 §44; renumbered 663.040]

662.595 [1961 c.690 §8(2), (3); renumbered 663.045]

662.605 [1961 c.690 §9; 1969 c.695 §14; renumbered 663.300]

662.610 [1953 c.723 §1; repealed by 1959 c.55 §1]

662.615 [1961 c.690 §§11, 13, 15; 1965 c.195 §2; 1969 c.314 §72; renumbered 663.305]

662.620 [1953 c.723 §2; repealed by 1959 c.55 §1]

662.625 [1961 c.690 §14; renumbered 663.310]

662.630 [1953 c.723 §3; repealed by 1959 c.55 §1]

662.635 [1961 c.690 §12; renumbered 663.315]

662.640 [1953 c.723 §4; repealed by 1959 c.55 §1]

662.645 [1961 c.690 §19; 1971 c.729 §45; renumbered 663.320]

662.650 [1953 c.723 §5; repealed by 1959 c.55 §1]

662.655 [1961 c.690 §16; 1971 c.729 §46; renumbered 663.325]

662.660 [1953 c.723 §6; repealed by 1959 c.55 §1]

662.670 [1953 c.723 §7; repealed by 1959 c.55 §1]

662.680 [1953 c.723 §8; repealed by 1959 c.55 §1]

662.690 [1953 c.723 §9; repealed by 1959 c.55 §1]

662.700 [1953 c.723 §10; repealed by 1959 c.55 §1]

662.705 [1961 c.720 §54; 1973 c.536 §35; 1987 c.158 §132; repealed by 1997 c.33 §1]

662.710 [1953 c.723 §12; repealed by 1959 c.55 §1]

662.715 [1961 c.720 §53; 1973 c.536 §36; repealed by 1997 c.33 §1]

662.720 [1953 c.723 §13; repealed by 1959 c.55 §1]

662.725 [1961 c.720 §55; repealed by 1997 c.33 §1]

662.730 [1953 c.723 §14; repealed by 1959 c.55 §1]

662.735 [1961 c.720 §56; repealed by 1997 c.33 §1]

662.740 [1953 c.723 §15; repealed by 1959 c.55 §1]

662.745 [1961 c.720 §57; repealed by 1997 c.33 §1]

662.750 [1953 c.723 §16; repealed by 1959 c.55 §1]

662.755 [1961 c.720 §58; repealed by 1997 c.33 §1]

662.760 [1953 c.723 §19; repealed by 1959 c.55 §1]

662.765 [1961 c.720 §59; repealed by 1997 c.33 §1]

662.770 [1953 c.723 §17; repealed by 1959 c.55 §1]

662.775 [1961 c.720 §60; repealed by 1997 c.33 §1]

662.780 [1953 c.723 §18; repealed by 1959 c.55 §1]

662.785 [1961 c.720 §61; 1969 c.671 §18; 1973 c.536 §37; repealed by 1997 c.33 §1]

662.790 [1953 c.723 §20; repealed by 1959 c.55 §1]

662.795 [1961 c.720 §62; repealed by 1997 c.33 §1]

PICKETING OF AGRICULTURAL PRODUCTION SITES

662.805 Definitions for ORS 662.805 to 662.825. As used in ORS 662.805 to 662.825, unless the context requires otherwise:

(1) "Labor dispute" includes any controversy between an employer and a regular employee of that employer 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.

(2) "Perishable agricultural crops" means those products of agriculture that, because of their inherent qualities or dependence upon conditions of soil or weather, mature, decompose, decay or deteriorate and in so doing undergo material changes of form and quality that render them unsuitable for the use for which they were produced.

(3) "Regular employee" means a person who has been employed by the employer for at least six calendar work days. [1963 c.543 §2; 2007 c.71 §217]

662.810 Declaration of policy; right to organize and bargain collectively. (1) The Legislative Assembly recognizes and declares that agriculture is of great importance to the economy of the state and to the well-being of its citizens. Because of the perishable nature of agricultural crops, they must be harvested at the proper stage of maturity, and if this harvest is interfered with the crop may become a total loss with a resulting waste or loss of food, adverse effect upon consumer prices, loss of employment to agricultural laborers and severe dislocation of the entire economy of the state. The picketing of farms, ranches or orchards at such times as would prevent the planting or harvesting of such crops directly affects the public welfare and requires regulation by the state in the exercise of its police power.

(2) Nothing in ORS 662.805 to 662.825 shall be construed to prohibit any right of employees to organize and bargain collectively with their employers. [1963 c.543 §§1,6]

662.815 Picketing sites where perishable agricultural crops are being harvested restricted. It shall be unlawful for any person to picket or cause to be picketed any farm, ranch or orchard where perishable agricultural crops are produced while such crops are being harvested unless such picket has been a regular employee on such farm, ranch or orchard immediately prior to the commencement of the picketing. [1963 c.543 §3]

662.820 Employer to display bilingual notices of picketing restriction. An employer of persons employed to harvest perishable agricultural crops shall display, in a conspicuous manner about the farm, ranch or orchard where perishable agricultural crops are being harvested, notices, written in the English and Spanish languages, of sufficient size and number to reasonably inform the employees and stating that ORS 662.815 prohibits any person other than a regular employee, as defined in ORS 662.805, from picketing a farm, ranch or orchard where perishable agricultural crops are produced while such crops are being harvested. [1963 c.543 §5]

662.825 Jurisdiction to enjoin violations. Notwithstanding any other provision of law, the circuit court for the county in which such unlawful picketing is conducted has jurisdiction to enjoin any violation of ORS 662.805 to 662.825 by appropriate order or judgment. The proceedings shall be conducted as in the case of an action not triable by right to a jury but shall be given precedence over all other civil actions. [1963 c.543 §4; 1979 c.284 §189]

PENALTIES

662.990 [1961 c.690 §21; repealed by 1971 c.743 §432]

662.992 Penalties. (1) Violation of ORS 662.225 is a misdemeanor.

(2) Violation of ORS 662.215 is a Class A violation. [1975 c.645 §4; 1999 c.1051 §217]