

"CHAPTER 380
LABOR DISPUTES; JURISDICTION OF COURTS

Section

- 380-1 Court jurisdiction restricted
- 380-2 Statement of public policy
- 380-3 Labor or employer organizations; agreement against
- 380-4 Acts not subject to restraint
- 380-5 Concert of acts; effect on jurisdiction
- 380-6 Liability of association, officers, members
- 380-7 Hearing
- 380-8 Complainant; compliance with legal obligation; effort to settle
- 380-9 Necessity for prior findings of fact; limitation of prohibitions
- 380-10 Appeal
- 380-11 Contempt; speedy and public trial
- 380-12 Contempt; demand for retirement of judge
- 380-13 When chapter applicable; definitions
- 380-14 Proceedings arising under employment relations act; court jurisdiction over

Rules of Court

Applicability of Hawaii Rules of Civil Procedure, see HRCPC rule 81(b)(12).

Case Notes

This chapter [sic] provides employees with a cause of action for the withholding of wages, including tip income. 810 F. Supp. 2d 1145 (2011).

" **§380-1 Court jurisdiction restricted.** No court of the State 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 this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared herein. [L 1963, c 200, §1; Supp, §90B-1; HRS §380-1]

Rules of Court

Injunctions, see HRCPC rule 65.

Case Notes

Applicability of this chapter to proceedings under chapter 89, collective bargaining in public employment, discussed. 54 H. 531, 511 P.2d 1080 (1973).

" **§380-2 Statement of public policy.** In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the State, as such jurisdiction and authority are defined and limited in this chapter, the public policy of the State is declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect the 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 the worker's 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 following definitions of and limitations upon the jurisdiction and authority of the courts of the State are enacted. [L 1963, c 200, §2; Supp, §90B-2; HRS §380-2; gen ch 1985]

" **§380-3 Labor or employer organizations; agreement against.**

Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in section 380-2, is declared to be contrary to the public policy of the State, shall not be enforceable in any court of the State and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

Every undertaking or promise hereafter made, 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 the 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 the contract or agreement undertakes or promises that the party will withdraw from an employment relation if the party joins, becomes, or remains a member of any labor organization or of any employer organization. [L 1963, c 200, §3; Supp, §90B-3; HRS §380-3; gen ch 1985]

" **§380-4 Acts not subject to restraint.** No court of the State 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 the dispute (as these terms are herein defined) 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, regardless of any such undertaking or promise as is described in section 380-3;
- (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 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 heretofore specified;
 - (8) Agreeing with other persons to do or not to do any of the acts heretofore specified; and
 - (9) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 380-3. [L 1963, c 200, §4; Supp, §90B-4; HRS §380-4]

" **§380-5 Concert of acts; effect on jurisdiction.** No court of the State 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 section 380-4. [L 1963, c 200, §5; Supp, §90B-5; HRS §380-5]

" **§380-6 Liability of association, officers, members.** 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 the 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. [L 1963, c 200, §6; Supp, §90B-6; HRS §380-6]

" **§380-7 Hearing.** No court of the State shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in this chapter, 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 person or 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; and
- (5) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

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; provided that 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, 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. A temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of the five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompensate 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.

The undertaking mentioned in this section 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 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. But nothing in this section shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue the party's ordinary remedy by suit at law or in equity. [L 1963, c 200, §7; Supp, §90B-7; HRS §380-7; gen ch 1985]

Rules of Court

Injunctions, see HRCP rule 65.

" **§380-8 Complainant; compliance with legal obligation; effort to settle.** 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 the dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration. [L 1963, c 200, §8; Supp, §90B-8; HRS §380-8]

Cross References

Conciliator, see §377-3.

Mediation, see §371-10.

" **§380-9 Necessity for prior findings of fact; limitation of prohibitions.** 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 such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in the case and as shall be expressly included in the findings of fact made and filed by the court as provided in this chapter. [L 1963, c 200, §9; Supp, §90B-9; HRS §380-9]

Rules of Court

Injunctions, see HRCP rule 65.

" **§380-10 Appeal.** Whenever any court of the State issues or denies any temporary injunction in a case involving or growing out of a labor dispute, an appeal shall lie as of right, subject to chapter 602, in the manner provided for civil appeals from the circuit courts, notwithstanding any provision of section 641-1. 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 of the same character. [L 1963, c 200, §10; Supp, §90B-10; HRS §380-10; am L 1973, c 31, §8; am L 1979, c 111, §17; am L 2004, c 202, §38; am L 2006, c 94, §1; am L 2010, c 109, §1]

Rules of Court

Appeal, see Hawaii Rules of Appellate Procedure.

" **§380-11 Contempt; speedy and public trial.** In all cases arising under this chapter in which a person is charged with contempt in a court of the State, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the circuit wherein the contempt has been committed; provided that 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 apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court. [L 1963, c 200, §11; Supp, §90B-11; HRS §380-11]

Case Notes

Union not entitled to jury trial in contempt proceedings brought for violating injunction issued at HPERB's behest. 66 H. 461, 667 P.2d 783 (1983).

" **§380-12 Contempt; demand for retirement of judge.** 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 the 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 in the same manner as is provided by law. The demand shall be filed

prior to the hearing in the contempt proceeding. [L 1963, c 200, §12; Supp, §90B-12; HRS §380-12]

" **§380-13 When chapter applicable; definitions.** When used in this chapter, and for the purposes of this chapter:

- (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 the same industry, trade, craft, or occupation; or 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 the 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 employees or associations of employees; 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" (as defined in this section) of "persons participating or interested" therein (as defined in this section).
- (2) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against the person or it, and if the person or it is engaged in the same industry, trade, craft, or occupation in which the dispute occurs, or has a direct or indirect interest therein, or 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.
- (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, regardless of whether or not the disputants stand in the proximate relation of employer and employee. [L 1963, c 200, §13; Supp, §90B-13; HRS §380-13; gen ch 1985]

" **§380-14 Proceedings arising under employment relations act; court jurisdiction over.** (a) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order of the Hawaii labor

relations board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by this chapter.

(b) The board shall have power, upon the filing of a complaint as provided in section 377-9 to petition any circuit court of the State within any circuit wherein the unfair labor practice in question is alleged to have occurred or wherein the person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction to grant to the board such temporary relief or restraining order as it deems just and proper.

(c) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of section 377-7(5), (6), (7), (8), and (9), the preliminary investigation of that charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after the investigation, the board has reasonable cause to believe the charge is true, it shall petition any circuit court of the State within any circuit where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein the person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the board with respect to that matter. Upon the filing of any such petition, the circuit court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law or rule of court; provided that no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and the temporary restraining order shall be effective for no longer than five days and will become void at the expiration of that period; provided further that the board shall not apply for any restraining order under section 377-7(5), (6), (7), (8), and (9) if a charge against the employer under section 377-6(2) has been filed and after the preliminary investigation, the board has reasonable cause to believe that the charge is true and that a complaint should be issued. Upon the filing of any such petition, the courts shall cause notice thereof to be served upon any person involved in the charge and the person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony; provided that for the purposes of this subsection, circuit courts shall be deemed to have jurisdiction of a labor organization in:

- (1) The circuit in which the organization maintains its principal office; or
- (2) Any circuit in which the organization's duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon an officer or agent shall constitute service upon the labor organization and make the organization a party to the suit. [L 1963, c 200, §14; Supp, §90B-14; HRS §380-14; am L 1973, c 31, §9; am L 1985, c 251, §26; am L 2016, c 55, §7]

Rules of Court

Injunctions, see HRCF rule 65.