

LABOR AND EMPLOYMENT

CHAPTER 233

H. B. No. 837
(Lowe, Aamoth)

TERMINATION OF EMPLOYMENT, COMPENSATION

AN ACT

To provide for a right of payment to employees who terminate employment for cause and employees who are discharged for cause, and to repeal sections 34-03-07 and 34-03-08 of the North Dakota Century Code.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Compensation of Employees Upon Termination of Employment.) An employee who quits the service of his employer for good cause and an employee who is dismissed by his employer for good cause shall be entitled to such proportion of the compensation which would have become due upon full performance of the contract of employment as the services already rendered by such employee bear to the services he was obligated to render had the contract of employment been fully performed.

§ 2. Repeal.) Sections 34-03-07 and 34-03-08 of the North Dakota Century Code are hereby repealed.

Approved March 16, 1961.

CHAPTER 234

H. B. No. 835
(Lowe, Aamoth)

MASTER AND SERVANT, REPEAL

AN ACT

To repeal chapter 34-04 of the North Dakota Century Code, relating to the principles of the law of master and servant.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Repeal.) Chapter 34-04 of the North Dakota Century Code is hereby repealed.

Approved March 8, 1961.

CHAPTER 235

H. B. No. 838
(Lowe, Aamoth)

RESTRAINING ORDERS OR INJUNCTIONS

AN ACT

To amend and reenact section 34-08-07 of the North Dakota Century Code, relating to the basis upon which restraining orders or injunctions may be issued in labor disputes.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Section 34-08-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

34-08-07. Basis Upon Which Restraining Order or Injunction May Be Issued.) No court of this state shall issue a restraining order or 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 in support of the allegations of a complaint made under oath and the testimony offered in opposition thereto, and the granting to opposing parties of the right to cross-examine such witnesses, and except after the court has made and filed with the records in the case findings of fact to the effect that:

1. Unlawful acts have been threatened and will be committed, or have been committed and will be continued, unless restrained;
2. Substantial irreparable injury to complainant's property will follow;
3. 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; and
4. Complainant has no adequate remedy at law.

No such restraining order or injunction shall be issued on account of any threat or unlawful act except against a person, association, or organization making the threat or committing the unlawful act or authorizing or ratifying the same with actual knowledge thereof. 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 complaint filed in such case and as shall be expressly included in the findings of fact.

Approved March 16, 1961.

CHAPTER 236

H. B. No. 831
(Lowe, Aamoth)

LABOR, MANAGEMENT RELATIONS

AN ACT

To regulate relationships between management and labor in North Dakota, and to repeal section 34-10-05 of the North Dakota Century Code as in conflict therewith.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Definitions.) In this Act, unless the context or subject matter otherwise requires:

1. "Person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers;
2. "Employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly-owned government corporation, or any federal reserve bank, or any state or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization, or any farmer;
3. "Employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor or guard, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined;

4. "Representatives" includes any individual or labor organization;
5. "Labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work;
6. "Unfair labor practice" means any unfair labor practice as provided in section 3;
7. "Commissioner" shall mean the North Dakota commissioner of agriculture and labor, his successor or his duly authorized deputy.

§ 2. Right of Employees as to Organization, Collective Bargaining.) Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other lawful concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities and shall be free to decline to associate with their fellows and shall be free to obtain employment wherever possible without interference or being hindered in any way.

§ 3. Unfair Labor Practices.) 1. It shall be an unfair labor practice for any employer:

- a. To interfere with, restrain, or coerce employees in the exercise of the right guaranteed in section 2 of this Act;
- b. To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it. This shall not be construed to prohibit an employer from conferring with employees or their bona fide representatives and including, but not by way of limitation, explaining the position of management in connection with the problems of the employer during working hours without the loss of pay;
- c. By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization;
- d. To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act; or
- e. To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 2 of this Act.

2. It shall be an unfair labor practice for a labor organization or its agents:

- a. To restrain or coerce employees in the exercise of rights guaranteed in section 2 of this Act, provided that a labor organization may prescribe its own rules for the acquisition and maintenance of membership in said labor organization;
- b. To cause or attempt to cause an employer to discriminate or restrain or coerce employees in the exercise of rights set forth in section 2 of this Act;
- c. To restrain or coerce an employer in the selection of his representatives or to refuse to bargain with an employer if labor organization or its agent is the representative of his employees;
- d. To force or attempt to force an employer or self-employed person to join any organization;
- e. To engage in, or to induce or encourage any employee to engage in, a strike or a refusal in the course of his employment to use or work on any goods, articles, materials or commodities, or to perform any services, or to threaten, coerce or restrain any person for the purpose of forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of his employees under the provisions of section 5 of this Act; but nothing in this subsection shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing, and nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer, other than his own employer, if the employees of such other employer are engaged in a lawful strike;
- f. To require of employees as a condition for membership the payment of fees found by the commissioner to be excessive or discriminatory;
- g. To cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed;
- h. To make, circulate, or cause to be circulated, a blacklist;
- i. To coerce or intimidate an employee in the enjoyment of his legal rights, or to intimidate his family or any

member thereof, picket his domicile, or injure the person or property of such employee or his family or of any member thereof;

- j. To hinder or prevent by unlawful picketing, threats, intimidation, force or coercion of any kind, the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports or other ways of travel or conveyance.

3. The expression of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

§ 4. Collective Bargaining.) 1. For the purposes of this Act, to bargain collectively means the performance of the mutual obligations of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation or renegotiation of an agreement, or any question thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession;

2. Where there is in effect a collective bargaining contract, the duty to bargain also shall mean that no party to such contract shall terminate or modify such contract at the conclusion of its term until sixty days after either of them mails notice of a desire to terminate or to modify. A strike or lockout for economic purposes shall be unlawful until the end of the sixty-day period. The duty to bargain collectively shall continue despite termination of a collective bargaining contract unless the employee bargaining representative has lost its majority status.

§ 5. Exclusive Representation—Employees' Adjustment of Grievances Directly With Employer.) 1. Representatives designated or selected for the purpose of collective bargaining of the employees in a unit appropriate for such purposes shall be exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment.

2. Any individual employee or group of employees shall have the right at any time to present grievances to their em-

ployer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect. The bargaining representative shall be given an opportunity to be present at such adjustment.

§ 6. Determination of Bargaining Unit by Commissioner.)

The commissioner shall decide in each case whether in order to assure to employees the fullest freedom in exercising rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof. The commissioner shall not:

1. Decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or
2. Decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior commissioner determination, unless a majority of the employees in the proposed craft unit vote against separate representation; or
3. Decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

In determining whether a unit is appropriate, the extent to which the employees have organized shall not be controlling.

§ 7. Hearing on Representation Questions — Rules and Regulations.)

1. Whenever a petition shall have been filed, in accordance with this Act:
 - a. By an employee or group of employees or any individual or labor organization acting in their behalf alleging that at least thirty percent of employees wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 5, or assert that the individual or labor organization, which has been certi-

- fied or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 5; or
- b. By an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 5;
2. The commissioner shall promptly fix a date for an informal conference upon due notice to all parties:
 - a. If, upon the informal conference, all parties agree that a question of representation exists and consent to an election, the commissioner shall conduct an election upon secret ballot forthwith.
 - b. If upon such informal conference the parties cannot agree that a question of representation exists, the commissioner shall hold a hearing and if upon such hearing the commissioner finds a question of representation exists, he shall conduct an election by secret ballot and shall certify the results thereof.
 - c. No election shall be directed in any bargaining unit or any subdivision within which in the preceding twelve-month period a valid election shall have been held. Employees on strike who are not entitled to reinstatement shall not be eligible to vote. In any election where none of the choices on the ballot receives a majority, a run-off shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.
 3. When a petition is filed as above provided, or the bargaining representative has been questioned, or a strike is to be called by the bargaining representative certified to represent employees, and the issue cannot be determined informally, the commissioner shall notify the employees, the employer and such other persons as he deems necessary, requiring employees and the employer to each appoint a representative to act with the commissioner in the conduct of an impartial and secret ballot election to determine a bargaining agent, or whether a strike shall be had, or determine whether the present bargaining agent is no longer the representative bargaining agent. If any party shall decline or neglect to appoint a representative, the commissioner shall appoint some fair and impartial person to act as such party's representative. Such election board, consisting of a representative of the employees, a representative of the employer and the commissioner shall thereupon designate a reasonable time within ten days after such board is constituted when such vote shall be held, which election shall be upon the premises of the employer during working hours. The board shall conduct an impartial secret

ballot in which all employees of the appropriate bargaining unit involved shall have the right to cast a vote. Within twenty-four hours immediately after the completion of the election, such election board shall make an accurate and complete tabulation of the votes cast in such election and shall prepare a written certificate, which shall bear the signature of the commissioner, and a copy of such certificate shall be delivered to the employer and to the employees or their bargaining agent.

4. No election shall be valid unless at least fifty-one percent of the employees in the appropriate bargaining unit shall cast valid ballots. If fifty-one percent of the employees in the appropriate bargaining unit shall fail to cast valid ballots at such election a second election shall be held forthwith. If on such second election fifty-one percent participation shall not be obtained no further elections shall be held for a period of one year.

§ 8. Authority of Commissioner.) Whenever it is charged that any person is engaging in or has engaged in any unfair labor practice, the commissioner shall investigate the charges informally and if it appears that an unfair labor practice is occurring or has occurred, the commissioner shall have power to issue and cause to be served upon such person a written specification of the issues which are to be considered and determined. If, upon the evidence, the commissioner shall be of the opinion that any person named in the written specifications has engaged in or is engaging in any such unfair labor practice, he shall issue and cause to be served upon such person an order requiring such person to cease and desist from such unfair labor practice. If the order is not obeyed, the commissioner shall have the authority to apply to the appropriate district court for an injunction under the provisions of chapter 32-06. The commissioner may act as a conciliator in any labor dispute.

§ 9. Power to Promulgate Regulations.) The commissioner shall have the authority to promulgate reasonable regulations to effectuate the purposes of this Act.

§ 10. Applicability of Administrative Agencies Practice Act.) All proceedings hereunder and all appeals to the courts shall be governed by the provisions of chapter 28-32, except that the findings of the commissioner on appeal shall not be entitled to affirmative weight.

§ 11. Right of Suit for Damages Preserved.) Any person injured in his person or property by reason of the commission of an unfair labor practice as defined in this Act may sue therefor in the district court and shall recover the damages by him sustained and the cost of the suit.

§ 12. Reporting by Labor Organization.) The commissioner is hereby designated as the official of the state of North Dakota authorized to receive copies of reports made to the secretary of labor of the United States by virtue of the Labor-Management Reporting and Disclosure Act of 1959, 73 Statutes at Large 525, as amended from time to time. In the event such reports have not been made to the secretary of labor of the United States by a labor organization, such labor organization shall file with the North Dakota commissioner, within ninety days after the close of its fiscal year, a report giving the name of the labor organization, its mailing address, and the name, title and address of each of its officers. The governor shall request copies of all reports filed by labor organizations subject to the jurisdiction of the state of North Dakota from the United States secretary of labor.

§ 13. Severability Clause.) If any section, subsection, subdivision, paragraph, sentence or clause of this Act is held invalid or unconstitutional, such decision shall not affect the remaining portions of this Act.

§ 14. Name of Act.) This Act may be cited as the "North Dakota Labor-Management Relations Act".

§ 15. Repeal.) Section 34-10-05 of the North Dakota Century Code is hereby repealed.

Approved March 17, 1961.