

Superseded 5/10/2016

34-19-5 Injunctive relief -- When available -- Necessary findings -- Procedure.

- (1) No court, nor any judge or judges of a court, shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in Section 34-19-11, 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 to it, if offered, and except after findings of all of the facts described in Subsection (2) by the court, or a judge or judges.
- (2) The findings required by Subsection (1) are all of the following:
 - (a) that unlawful acts have been threatened or committed and will be executed or continued unless restrained;
 - (b) that substantial and irreparable injury to property or property rights of the complainant will follow unless the relief requested is granted;
 - (c) that as to each item of relief granted greater injury will be inflicted upon complainant by the denial of it than will be inflicted upon defendants by the granting of it;
 - (d) that no item of relief granted is relief that a court or judge of it has no jurisdiction to restrain or enjoin under Section 34-19-2;
 - (e) that the complainant has no adequate remedy at law; and
 - (f) that the public officers charged with the duty to protect complainant's property have failed or are unable to furnish adequate protection.
- (3) Subject to Subsection (4), the hearing required by Subsection (1) shall be held after due and personal notice of it has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to those public officers charged with the duty to protect complainant's property.
- (4)
 - (a) If a complainant shall also allege that unless a temporary restraining order shall be issued before a hearing may be had, a substantial and irreparable injury to complainant's property will be unavoidable, a temporary restraining order may be granted upon the expiration of such reasonable notice of application for the restraining order as the court may direct by order to show cause, but in no less than 48 hours. This order to show cause shall be served upon such party or parties as are sought to be restrained and as shall be specified in the order, and the restraining order shall issue only upon testimony, or in the discretion of the court, upon affidavits, sufficient, if sustained to justify the court in issuing a temporary injunction upon a hearing as provided for in this section.
 - (b) Such a temporary restraining order shall be effective for no longer than five days, and at the expiration of said five days shall become void and not subject to renewal or extension, except that if the hearing for a temporary injunction shall have been begun before the expiration of the five days, the restraining order may in the court's discretion be continued until a decision is reached upon the issuance of the temporary injunction.
- (5) No temporary restraining order or temporary injunction shall be issued except on condition that the complainant shall first file an undertaking with adequate security 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 reasonable attorney fees, and expense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court. This undertaking 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 such complainant and surety, the complainant and the surety submitting themselves to the jurisdiction of the court for

that purpose, except that nothing in this Subsection (5) 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.