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# Labor Law

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Like the two previous surveys,[1] this article connects directly with its predecessor.[2] Florida Supreme Court decisions, federal decisions and N.L.R.B. action of local interest have been considered herein together with the activities of the 1957 Florida Legislature. The newly-established District Courts of Appeal[3] have handed down no decisions concerning labor law within the period covered by this survey. We will also again discuss cases concerning the individual employment contract where such appear to be of interest in the field of labor-management relations.

## Florida Decisions

The reader is referred to the previous survey for a brief summary[4] of the Florida Labor Organizations Act[5] upon which, together with constitutional provisions,[6] the decisions of the supreme court are, in part at least, based.

### a) *In general*

*Flaherty v. Metal Products Corporation*[7] is significant in that, by dicta, it summarized the views of the supreme court concerning various aspects of arbitration (before the recent statutory modifications)[8] as applied to labor law. The plaintiffs and the defendant (employees and employer, respectively) had entered into a labor-management contract the full terms of which do not appear in the court's opinion. However, it appears that the contract provided for arbitration[9] of any dispute arising thereunder.

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1. 8 Miami L.Q. 246 (1953); 10 Miami L.Q. 208 (1956).

2. 10 Miami L.Q. 208 (1956). The survey period covered by this article extends from August 1, 1955 to August 1, 1957 (82 So.2d through 92 So.2d, 6 Fla. Supp. through 9 Fla. Supp., 349 U.S. through 351 U.S., 208 F.2d through 246 F.2d, 131 F. Supp. through 153 F. Supp.).

3. These courts were created by amendment to Fla. Const., Art V, §§ 1, 5 by the 1957 Legislature. While the supreme court may, under the amended provisions, be called upon to decide constitutional questions, there seems little doubt that the great bulk of the appellate work in the field of labor law will be handled by the district courts of appeal.

4. 10 Miami L.Q. 208, 212.

5. Fla. Stat. §§ 447.09(1)-(13) (1957).

6. In particular, Fla. Const. D.R. § 12 (the controversial "right to work" provision) and Fla. Const. D.R. § 13, (guaranteeing freedom of speech and, consequently, the "free speech" aspects of picketing).

7. 83 So.2d 9 (Fla. 1955).

8. Fla. Stat. § 857.11-31 (1957).

9. Section 3, Article 9 of the contract provided as follows:

> . . . should any complaint, dispute or grievance not be adjusted or settled the services of the United States Conciliation Service should be requested by both the Employer and the Union.

Such a dispute did arise, was duly submitted for arbitration, and an award evidently unsatisfactory to the employees[10] was entered. The employees thereupon filed a petition for a declaratory decree in the local circuit court, seeking court interpretation of certain portions of the contract. The employer pleaded arbitration and award and, at the same time, filed a motion for "Summary Decree on the Pleadings,"[11] which motion was granted by the trial court.

On appeal, the error specifically assigned was the entry of summary judgment, where it appeared that several questions of both law and fact were raised by the pleadings but there were no affidavits or depositions to support the position taken by the employer. The court held that the trial court erred in entering summary judgment under such circumstances and, therefore, reversed and remanded the case for further proceedings.

Thus, it will be seen that the court disposed of the controversy on purely procedural grounds. However, by dicta, the opinion pointed out[12] the previously well-established rule of Florida law[13] that an agreement to submit a dispute to arbitration, whether arising under the terms of a collective bargaining agreement or otherwise, would not be enforced in the courts of Florida because such an agreement, if enforced, would oust the courts of their fundamental jurisdiction to entertain and to settle controversies.

The legislature has, we hasten to point out, in its 1957 Session, taken steps to change this rule of law by enacting a new Florida Arbitration Code; this is briefly discussed under "Legislative Enactments" at page 369 of this article.

The court was confronted with an interpretation of Section 449.01, Florida Statutes, relating to the licensing and regulation of private employment agencies, in *Florida Industrial Commission v. Manpower, Inc. of Miami*.[14] Suit to enforce compliance with the provisions of the act was brought against Manpower, Inc. by the Florida Industrial Commission, which alleged that Manpower's activities fell within the purview of the act and that its requirements were not being met. From an adverse circuit court decision on the grounds that the act was not applicable to the defendant, the commission appealed.

Manpower, it seems, is a rather unusual organization in that it maintains a large staff of typists, bookkeepers, truck helpers, warehousemen,

10. To quote the court (83 So.2d at 10):
. . . Thereafter, on November 17, 1953, the said arbiter entered his award, deciding among other things that the Defendant acted properly . . .
11. 83 So.2d at 10.
12. *Ibid.*
13. See Fenster v. Makovsky, 67 So.2d 427 (Fla. 1953); Duval County v. Charleston Engineering and Contracting Co., 101 Fla. 341, 134 So. 509 (1931); Steinhardt v. Consolidated Grocery Co., 80 Fla. 531, 86 So. 431 (1920).
14. 91 So.2d 197 (Fla. 1956).

comptometer operators, and persons skilled in a variety of other occupations, whose sole function is to be "rented out" to other firms who occasionally happen to need the services of such workers. Manpower pays the workers' salaries directly from its own payroll. The customer for whom the work is to be performed enters into what might be called a "rental" contract with Manpower for the workers' services, but there is no contract between the customer and the worker. The pertinent sections of the act sought to be invoked, as quoted by the court, are as follows:[15]

> Any person, firm or corporation, who for hire or for profit, shall undertake to secure employment *or help*, or . . . offers to secure employment *or help*, shall be deemed a private employment agent, and be subject to the provisions of this chapter . . . (emphasis added)

The supreme court affirmed the decree rendered below, holding that while Manpower did furnish "help," its activities were unrelated to those usually performed by an employment agency and, consequently, were beyond the scope of the regulatory statute. It was pointed out in the opinion that the purpose of the act was to prevent certain abuses which employment agencies had been known to commit from time to time, but that the very nature of Manpower's operation precluded such abuses and hence the desirability of this type of regulation. The court concluded:[16]

> It is a legitimate business, performing a new type of service to individuals and firms. In effect, it provides various types of services, on a part-time basis, to customers who would not find it practical to maintain a full-time service of that type in their own concern. Reluctant as we are to interfere with an administrative interpretation of an act, we have the view that to uphold that interpretation would be to extend the act by judicial fiat; and this, we are not authorized to do.

b) *Communication Workers Activity*

Almost exactly two years ago, the Communication Workers of America had concluded their strike against several telephone companies in the south which extended over eight states, including Florida. The accompanying legal activities were discussed at some length in the previous survey.[17] This year, fortunately, the union-management contract was renegotiated without difficulty and, consequently, there has been no legal activity within this survey period.

However, during the month of September, 1957, there occurred a nation-wide four-day[18] walkout of a different branch of the Communication Workers, namely, the Western Electric installation crews. The affected

15. FLA. STAT. § 449.01 (1955), quoted at page 198 of the Court's opinion.
16. 91 So.2d at 200.
17. 10 MIAMI LQ. 222 - 28.
18. The actual dates were September 16 through September 19.

locals immediately placed picket lines wherever installation work was in progress, and, as a matter of policy, other units of the Communication Workers (which includes virtually all crafts and non-supervisory occupations in the telephone industry) refused to cross these lines. In spite of its brevity, the strike was of major proportions in that, nation-wide, approximately 200,000 workers were off their jobs.

This strike was marked, locally, by only one example of legal action.[19] On the morning of September 16, picket lines were placed outside the site of the nearly-completed *Miami Daily News* building because its telephone equipment was being installed at that time. Despite its lack of completion, the building nevertheless housed a substantial portion of the paper's production facilities. The picketing had a rather explosive effect as far as the *News* was concerned in that a large number of its employees unrelated to the telephone industry or to the Communication Workers Union refused to cross the lines. The production of the newspaper which had been commenced in the new building was resumed in the old building where presses were still operable. Counsel filed suit on behalf of the *News* and the general building contractor within a few hours asking for an injunction against the picketing, and secured an emergency hearing for 4:00 o'clock that afternoon. Upon notice of the suit and emergency hearing, the union immediately offered to move its picket lines if the *News* would suspend telephone installation work. This was agreed to, making further action in the injunction suit unnecessary.

c) *The Miami Beach Hotel Dispute*

*Litigation in the Florida Courts.* Probably the most important developments in the field of Florida labor law have arisen from the determined efforts of the Hotel Employees Union, Local 255 (A.F. of L.) to organize the employees of the Miami Beach hotels, and the equally determined efforts of certain hotels to resist such organization. Presently there is, of course, no *exercise* of federal jurisdiction over hotel labor disputes,[20] even though the hotel industry engages in interstate commerce to a degree ironically lacking in businesses thus held in landmark decisions of the Supreme Court of the United States.[21] Needless to say, vigorous efforts are being made by the Hotel Employees Union to end this continued denial of federal jurisdiction.[22]

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19. Miami Daily News, Inc. v. Local 3290, Communication Workers, CIO, W. L. Edge, Jr., and Irwin K. Butts; Circuit Court (Dade County) case #205400.

20. See note 61, *infra* and the related text for further explanation.

21. *E.g.*, (listed in order importance) Schechter Poultry Corporation v. United States, 295 U.S. 495 (1935); Sunshine Anthracite Co. v. Adkins, 310 U.S. 381 (1940); United States v. Darby Lumber Co., 312 U.S. 100 (1941); United States v. South-Eastern Underwriters Ass'n, 322 U.S. 533 (1944).

22. These activities are discussed in the section of this article dealing with N.L.R.B. jurisdiction at page 357.

There had been considerable activity, legal and otherwise, in the hotel dispute during the period covered by the previous survey,[23] and the reader may refer thereto for detailed information. However, in order to make this article coherent and to avoid repeated references to the preceding survey for background material, we will at this time set forth a brief history of the dispute and a condensed review of such legal proceedings as were instituted prior to the period of the present survey. For convenience, the parties will be referred to as "hotel" and "union" rather than plaintiff, defendant, petitioner, respondent, etc., except where such designation is desirable for the sake of clarity.

Shortly before April, 1955, the hotel employees' union embarked upon an extensive organizational campaign among the personnel of the leading Miami Beach hotels. The success of its efforts to recruit new members has been and continues to be one of the most vigorously disputed matters, in that much of the ensuing litigation has concerned whether or not a majority of the employees at any particular hotel wished to be represented by the union.[24]

Twenty-two hotels[25] were initially involved in litigation which, in each instance, was precipitated when efforts of the union to institute negotiations with these hotels remained fruitless, whereupon the union set up picket lines and displayed "unfair" signs. The affected hotels immediately brought suit to enjoin the picketing, contending that the union did not represent a majority of their employees and that the picketing was allegedly for an unlawful purpose, namely, to cause the management to enter into a contract with the union designating it as the employees' exclusive bargaining representative—so that the contract could be used to force individual employees to join the union.[26] The hotels sought temporary injunctions against the picketing pending a final determination of the issues, but in each case this relief was denied.

Counsel for eight of the hotels then petitioned the Supreme Court of Florida for writs of certiorari to review the denial of the temporary injunctions. The supreme court granted certiorari[27] and held that it was improper for the lower courts to have so denied the temporary injunctions. The temporary injunctions were then entered, as a matter of course,

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23. 10 MIAMI L.Q. 222-28.

24. As a matter of fact, this issue has been present, to some extent, in practically all of the hotel cases, and was decisive in Thomas Jefferson, Inc. v. Hotel Employees Union, AFL, which came before the supreme court on two occasions, 84 So.2d 583 (Fla. 1956); *prior opinion*, 81 So.2d 731 (Fla. 1955).

25. See note 31, *infra*.

26. So stated by the court in Boca Raton Club v. Hotel Employees Union, AFL, 83 So.2d 11, 16 (Fla. 1955).

27. Due to the manner in which the eight cases had been consolidated for appeal, the supreme court handed down two separate opinions; Boca Raton Club v. Hotel Employees Union, AFL, 80 So.2d 680 (Fla. 1955), with which five other cases were consolidated, *subsequent opinion*, 83 So.2d 11 (Fla. 1955); Sax Enterprises, Inc. v. Hotel Employees Union, AFL, 80 So.2d 602 (Fla. 1955).

pursuant to the supreme court's mandate. Counsel for both sides thereupon agreed to then proceed with but six of the twenty-two cases (hereafter referred to as the *Boca Raton* cases) to avoid unnecessary multiplication of trial work, the others to be held in abeyance. On final hearing before the chancellors, the injunctions were dissolved. The hotels promptly applied to the supreme court for supersedeas pending appeal of the final orders of dissolution. Supersedeas was granted, and the injunctions were reinstated pending disposition of the appeals. On appeal, the supreme court again ruled in favor of hotels,[28] holding that the picketing was unlawful in that it was:[29]

> . . . the unlawful use of economic pressure to coerce the petitioners into negotiations with an alleged agent who failed and refused as required by law and just dealing timely and appropriately to establish his authority. *Hence picketing is for an unlawful purpose* . . . . [Emphasis added]

The lower court orders dissolving the temporary injunctions were, therefore, quashed.

At this point we enter the period covered by the present survey.

Counsel for the union had by this time, apparently, given up hope of receiving approval of any favorable circuit court ruling by the Supreme Court of Florida and had decided that the best plan would be to lay the proper foundation, on the appropriate constitutional grounds,[30] for

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28. 83 So.2d at 16.

29. *Ibid.*

30. The free speech aspects of picketing continue to present close questions on the interpretation of the Fourteenth Amendment. A recent example is Youngdahl v. Rainfair, Inc. 355 U.S. — (1957), where the Supreme Court of the United States was called upon to review the constitutionality of a state court injunction against *all* picketing where it was accompanied by numerous and severe acts of violence, offensive language toward non-strikers, and similar conduct typical of certain labor unions. If there be any doubt as to the fairness of this last remark, *see* (cited in order of significance): Milkwagon Drivers Union of Chicago v. Meadowmoor Dairies, 312 U.S. 287 (1941); Steiner v. Longbeach Local 128 of Oil Workers International Union, 19 Cal.2d 676, 123 P.2d 20 (1942); Shiland v. Retail Clerks, Local 1657, 259 Ala. 277, 66 So.2d 146 (1953); Smith v. F. & C. Engineering Co., 225 Ark. 688, 285 S.W.2d 100 (1956); Safeway Stores v. Retail Clerks International Ass'n, 234 P.2d 678 (Cal. App. 1951), *aff'd*, 41 Cal.2d 567, 261 P.2d 721 (1953); Godchaux Sugars, Inc. v. Chisson, 227 La. 146, 78 So.2d 673 (1955); Wilkes Sportswear v. International Ladies' Garment Workers Union, 380 Pa. 164, 110 A.2d 418 (1955); General Electric Co. v. United Auto Workers' of America, AFL, 8 Ill. App.2d 154, 130 N.E.2d. 758 (1956).

The Court held that, unfortunately, while the state court acted within its powers in enjoining the acts of violence and intimidation, it was " . . . equally clear that such court entered the preëmpted domain of the National Labor Relations Board insofar as it enjoined peaceful picketing by petitioners."

In the *Youngdahl* case, it should be noted, the National Labor Relations Board admittedly had jurisdiction, and it is, therefore, sharply distinguishable from the Miami Beach hotel cases.

For a recent article concerning this highly controversial subject see Forkosch, *An Analysis and Re-evaluation of Picketing in Labor Relations*, 26 FORDHAM L. REV. 391 (1957). See also Forkosch, *Informational Representational and Organizational Picketing*, 6 LAB. L.J. 843 (1955); Forkosch, *Jurisdiction and Impact On State Powers*, 16 OHIO ST. L.J. 30 (1955).

review by the Supreme Court of the United States. Accordingly, final orders were entered in all twenty-two cases pursuant to stipulation, and all were consolidated for the purposes of appeal to the Supreme Court of Florida. On March 15, 1957, the orders were affirmed in twenty-two *per curiam* memorandum opinions.[31] Surprisingly, the *per curiam* opinions were *not* based upon the prior connected *Boca Raton* decisions[32] as to the affected hotels, but, in each case, the court recited that the affirmation was grounded on *Fontainbleau Hotel v. Hotel Employees Union, AFL*,[33] a suit concerning the Miami Beach hotel dispute, *which had been prosecuted independently of the original twenty-two cases and decided a mere six weeks prior to their final disposition.*

A discussion of the *Fountainbleau* decision is certainly necessary at this point. As in the *San Marino* hotel case,[34] it appeared that the union had placed pickets outside the entrances to the hotel following unsuccessful attempts to institute negotiations with the hotel. The hotel filed suit seeking a temporary restraining order against the picketing, pending a determination of its legality, which order was thereupon issued. After further proceedings before the chancellor, (the details of which were not reported), the temporary restraining order was dissolved. The hotel thereupon filed its petition for certiorari in the supreme court seeking to review and quash the order of dissolution.

The supreme court, speaking through Justice Terrell, granted the petition for certiorari and quashed the order of dissolution. The court discussed the applicable law quite fully before arriving at its decision and, as appears from the opinion, reviewed and reconsidered the evidence (not merely the findings of the chancellor). There was no mention, it

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31. Hotel Employees Union, AFL, v. Hotel Delmonico, 93 So.2d 600 (Fla. 1957); Hotel Employees Union, AFL, v. Boca Raton Corp., 93 So.2d 600 (Fla. 1957); Hotel Employees Union, AFL, v. Sea Isle Hotel, 93 So.2d 600 (Fla. 1957); Hotel Employees Union, AFL, v. Martinique Hotel, 93 So.2d 599 (Fla. 1957); Hotel Employees Union, AFL, v. Casa Blanca Operating Company, 93 So.2d 599 (Fla. 1957); Hotel Employees Union, AFL, v. Allenberg, 93 So.2d 599 (Fla. 1957); Hotel Employees Union, AFL, v. Levy, 93 So.2d 598 (Fla. 1957); Hotel Employees Union, AFL, v. 2500 Collins Avenue Corporation, 93 So.2d 598 (Fla. 1957); Hotel Employees Union, AFL, v. Monte Carlo, 93 So.2d 597 (Fla. 1957); Hotel Employees Union, AFL, v. Biscayne Terrace Hotel, 93 So.2d 597 (Fla. 1957); Hotel Employees Union, AFL, v. Cohen, 93 So.2d 596 (Fla. 1957); Hotel Employees Union, AFL, v. Leevlans Corp., 93 So.2d 596 (Fla. 1957); Hotel Employees Union, AFL, v. A. H. S. Corporation, 93 So.2d 596 (Fla. 1957); Hotel Employees Union, AFL, v. Stuyvesant Corporation, 93 So.2d 595 (Fla. 1957); Hotel Employees Union, AFL, v. McAllister Hotel, 93 So.2d 595 (Fla. 1957); Hotel Employees Union, AFL, v. Di Lido Hotel, 93 So.2d 595 (Fla. 1957); Hotel Employees Union, AFL, v. Sax Enterprises, Inc., 93 So.2d 591 (Fla. 1957); Hotel Employees Union, AFL, v. Lansburgh, 93 So.2d 591 (Fla. 1957); Hotel Employees Union, AFL, v. Levy, 93 So.2d 583 (Fla. 1957); Hotel Employees Union, AFL, v. Sorrento Hotel, 93 So.2d 580 (Fla. 1957).

32. Boca Raton Club v. Hotel Employees Union, AFL, *supra* notes 27, 28.

33. 92 So.2d 415 (Fla. 1957).

34. Thomas Jefferson, Inc. v. Hotel Employees Union, AFL, 81 So.2d 731 (Fla. 1955). This case was discussed in the previous survey, 10 MIAMI L.Q. at 223, and an account of the subsequent proceedings may be found at page 354.

should be added, of the principle of law that an appellate court will not disturb the findings of fact of a lower court sitting without a jury unless they are clearly unsupported by the evidence.[35] In this connection, it is certainly not made clear whether, in the opinion of the supreme court, the lower court arrived at findings of fact inconsistent with the evidence or whether the court simply misconstrued the legal effect of such facts it had properly determined from the evidence. Stated as briefly as possible, the supreme court, after examining the record before it, found the following state of affairs to have existed:

1. The picket lines were thrown up without any pre-existing "honest"[36] attempt to bring about negotiations between an authorized bargaining agent of the employees and the employer to settle a bona-fide labor dispute.[37]

2. The pickets had displayed a placard alleging that the hotel was "unfair" but that there was ". . . little or no evidence to support the truth of the legend . . . ."[38]

3. There was evidence of intimidation on the part of the union representatives toward the hotel employees, made in an attempt to impede them in going to work.[39]

4. The pickets were "not shown to have refrained" from abuse of both employees and hotel patrons.[40]

5. Of the approximately 1,000 employees of the hotel only 200 had designated the union as their bargaining agent at the time picketing commenced.[41]

6. Both parties had exhibited bad faith, lack of mutual respect, tension and an eagerness to haggle.[42]

7. Only two of the pickets were employees of the hotel.[43]

8. The picketing was for the primary purpose of forcing both the hotel and the employees to recognize the union as the employees' authorized bargaining representative.[44]

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35. The Supreme Court of Florida has repeatedly and emphatically so held. *See*, Holland v. Gross, 89 So.2d 255 (Fla. 1956); *In re* Thompson's Estate, 84 So.2d 911 (Fla. 1955); First Atlantic National Bank v. Cobett, 83 So.2d 870 (Fla. 1955); *In re* Balkridge's Estate, 74 So.2d 648 (Fla. 1954); Foley Lumber Co. v. Koester, 61 So.2d 634 (Fla. 1953); Suttles v. Florida Real Estate Commission *ex rel.* O'Kelley, 139 Fla. 210, 197 So. 433 (1939); Parsons v. Federal Realty Corporation, 105 Fla. 105, 143 So. 912 (1932); Fisher v. Villamil, 65 Fla. 488, 62 So. 481 (1913).

36. 92 So.2d at 415.

37. *Ibid.*

38. 92 So.2d at 418.

39. *Id.* at 419.

40. *Id.* at 418.

41. *Id.*

42. *Ibid.*

43. *Id.* at 419.

44. *Ibid.*

9. The picketing was accompanied by acts of violence or near-violence.[45]

10. There was no bona-fide labor dispute.[46]

11. The hotel had never been informed by the union about any proposed subject for negotiation.[47]

12. The union did not, in fact, represent the employees of the hotel as their bargaining agent.[48]

It will be immediately seen that each of these twelve findings indicate an express violation, on the part of the union, of the Florida Labor Organizations Act, as previously construed by the supreme court.[49] Specifically, the union had been found by the supreme court to have violated section 447.09 (11) prohibiting coercion or intimidation of the employees in the enjoyment of their legal rights, and section 447.09 (13) prohibiting picketing by force, violence, or other than in a reasonable and peaceable manner. It was for these reasons, the court said, that the order of dissolution should be quashed.

The opinion is replete with language indicating that the court regarded the union's conduct as most reprehensible, and at one point the court stated:[50]

> We are convinced that so much that the law requires as a prerequisite to picketing was ignored in this case that respondents are entitled *to no relief at the hands of this or any court* . . . [Emphasis added]

The court goes on to point out in two places the specific errors committed below.

First, it appeared that the lower court misconstrued the language used by the supreme court in the second *Boca Raton*[51] opinion wherein it was stated that a union, before it could legally demand an employer to

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45. *Id.* at 418.
46. *Id.* at 419, 420.
47. *Ibid.*
48. *Id.*
49. International Typographical Union v. Ormerod, 59 So.2d 534 (Fla. 1952); Hotel & Restaurant Employees, AFL, v. Cothron, 59 So.2d 366 (Fla. 1952); Hetenbaugh v. Airline Pilots Ass'n, 52 So.2d 676 (Fla. 1951); Stonaris v. Certain Picketers, 46 So.2d 387 (Fla. 1950); Local 519, United Ass'n of Journeymen and Apprentices of Plumbing and Pipefitting Industry v. Robertson, 44 So.2d 899 (Fla. 1950); Johnson v. White Swan Laundry, 41 So.2d 874 (Fla. 1949); Moore v. City Dry Cleaners and Laundry, 41 So.2d 865 (Fla. 1949); Miami Laundry Co. v. Laundry Linen Union, 41 So.2d 305 (Fla. 1949); Whitehead v. Miami Laundry Co., 160 Fla. 667, 36 So.2d 382 (1948); Miami Water Works, Local 654 v. City of Miami, 157 Fla. 445, 26 So.2d 194 (1946); Hill v. State, 155 Fla. 245, 19 So.2d 857 *rev'd*, 325 U.S. 538 (1945), *rehearing denied*, 326 U. S. 804 (1945); Pittman v. Nix, 152 Fla. 378, 11 So.2d 791 (1943).
50. 92 So.2d at 420.
51. Boca Raton Club v. Hotel Employees Union, AFL, *supra* note 27.

bargain with it, must represent "at least some of the employees."[52] It seems that the lower court thereby reasoned that as long as the union *did* represent *some* of the employees, it had a legal right to engage in picketing. Justice Terrell remarked:[53]

> The reason for the expression "at least some of the employees" was that in that case it was not shown that the union represented any of the employees prior to the strike. The quoted expression was a mere expletive of the situation before the court and has no relevance to this case.

Second, the lower court "confused"[54] the law governing picketing and that governing the right to strike, and thereby erred when it dissolved the injunction in the face of the facts presented before it. The supreme court pointed out the distinction between the prerequisites to a legal strike and the prerequisites to legal picketing; that is, a *strike* may not be conducted unless approved by a majority of the employees, whereas no such requirement pertains to picketing.[55] However, the court stated.[56]

> It [picketing] cannot be initiated, however, for spite or for reasons other than to accomplish a lawful purpose and then the law, order and decency require that it be done in an atmosphere conducive to reaching a result that is fair to the employer, the employees and the public. If attempted in an atmosphere of violence, insinuation, bad faith, deception, farce or damned-if-I-don't-show-you-spirit, it should not be recognized as a means of adjusting labor disputes . . . Picketing conducted in such an environment, as we stated in *Sax Enterprises v. Hotel Employees Union* . . . is nothing more than a "species of coercion traveling under the guise of free speech for the purpose of enjoying constitutional immunity."

A new and important rule set forth in the case is that *individual* employees who may have a grievance against their employer are *not* required to comply with the prerequisites to legal picketing set forth in this and prior supreme court opinions, *provided that the total number of such employees does not exceed a majority.*[57]

The court concluded by summarizing its specific holding as follows:[58]

> . . . We hold merely that the union as such, and as distinguished from the individual employees, may not, under the circumstances presented here, engage in picketing by use of members of the union as pickets who are not employees of the subject employer . . .

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52. *Id.* at 16.
53. 92 So.2d at 418.
54. *Id.* at 417.
55. FLA. STAT. § 447.09(3) (1957).
56. 92 So.2d at 418.
57. *Id.* at 420.
58. *Ibid.*

Getting back to the twenty-two cases, it is difficult indeed to understand why the supreme court affirmed the circuit court proceedings on the basis of the *Fountainbleau* case, rather than on the two *Boca Raton* cases.[59] After all, it was the *Boca Raton* cases in which the previous circuit court action was held improper, and the final circuit court proceedings which inevitably terminated adversely to the union were likewise (and, indeed, necessarily) based directly upon the *Boca Raton* decisions.

In any event, counsel for the union have now filed petitions in the Supreme Court of the United States for writs of certiorari to review the orders and rulings of the Supreme Court of Florida. The legal "Questions Presented" which counsel for the union contend necessarily invoke federal jurisdiction are set forth in the petition as follows:[60]

1. Whether the Supreme Court of Florida may, consistently with the Fourteenth Amendment as it has been applied by the United States Supreme Court to the prohibition of peaceful picketing, embark upon a course of decision plainly designed to prevent any picketing under any circumstances by employees engaged in an attempt to achieve union recognition and collective bargaining in the hotel industry.

2. Whether a state court may, consistently with the Fourteenth Amendment, prohibit any publication whatsoever of the fact that a strike exists.

3. Whether Florida may, either by judicial action or by application of its statutory law, prohibit peaceful picketing, and thus regulate labor relations matters in an industry affecting commerce over which the National Labor Relations Board has refused to exercise jurisdiction.

4. Whether the Supreme Court of Florida, by repeatedly changing the rules governing peaceful picketing during the course of the litigation, deprived petitioners of due process of law in violation of the Fourteenth Amendment.

As this article goes to press, word has been just received that the Supreme Court of the United States *has granted* the petitions for certiorari.

Another hotel case (unconnected with the twenty-two key cases) is *Thomas Jefferson, Inc. v. Hotel Employees Union, AFL*,[61] which came before the Florida Supreme Court, on petition for certiorari, for the second time.

A brief review of the facts is appropriate at this point. As usual, the union had placed pickets around the hotel following an impasse in

59. See note 27, 28 *supra.*

60. The author gratefully acknowledges counsel for the Hotel Employees Union, J. Carrington Gramling, Esq., for making available copies of these petitions and for furnishing much additional helpful information.

61. 84 So.2d 583 (Fla. 1956).

attempted negotiations between the representatives of the union and the hotel.

The hotel thereupon filed suit in circuit court for injunction against the picketing, contending that such picketing was unlawful in that its purpose was to compel the hotel management to designate the union as the employees' sole bargaining representative and to thus force them to join the union as a prerequisite to representation, even though the union did not, allegedly, represent a majority of the employees.[62]

In order to determine whether or not the union did so represent a proper majority, the chancellor appointed a special "commissioner"[63] to conduct an election by secret ballot. Picketing was enjoined in the meantime. The hotel petitioned the supreme court for certiorari to review this order, whereupon the chancellor granted supersedeas (or, in effect, a vacation) both as to the order directing an election and the injunction against the picketing. The supreme court, in its first opinion, held that it was error for the chancellor to have superseded the injunction against picketing until its legality had been determined and, accordingly, reversed and remanded the case for further proceedings.

The second case arose when, during the ensuing circuit court proceedings, the hotel again petitioned the supreme court for certiorari, this time challenging the propriety of any court-supervised secret election.

The court again ruled in favor of the hotel, holding that such a court-supervised election was not a proper exercise of equity jurisdiction. More specifically, the court pointed out that it:[65]

> . . . obviously deprives both parties of the established right of cross-examination and the confronting of witnesses as well as the compelling of witnesses to testify under oath . . .

To go into more detail, it appeared that counsel for the hotel had introduced into evidence exhibits which indicated that twenty of its twenty-nine employees were within the job classifications sought to be unionized. Counsel for the union had, in turn, introduced into evidence a number of cards purportedly signed by certain employees designating the union as their bargaining representative. Other evidence introduced on behalf of the hotel indicated that only three of the affected employees had actually made such a designation. This, said the court:[66]

> . . . shifted to the respondent [union] the burden of going forward with the evidence to establish that it was in fact the authorized

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62. 81 So.2d at 732.
63. *Ibid.*
64. Thomas Jefferson, Inc. v. Hotel Employees Union, AFL, 81 So.2d 731 (Fla. 1955).
65. 84 So.2d at 585.
66. *Id.* at 584.

> representative of the employees . . . Each party doubts the other's records but on this appeal neither party has cited to this court any authority for the appointment of a commissioner to hold an extra-legal secret ballot in order to produce evidence for the consideration of the court in a matter pending in litigation before it. . . .

Thus, the court, in effect, held that the factual issue before the chancellor (*i.e.*, whether or not a majority of the employees wished the union to represent them) should have been resolved by ordinary legal procedure, such as the introduction of evidence, production or subpoena of documents, testimony of the employees and other "traditional equity procedures."[67]

The court disposed of the one remaining objection raised by the union, namely, that the inherent lack of secrecy in ordinary equity proceedings would expose the employees to discrimination, by pointing out that the union itself had already divulged the names of its supporters when it submitted the signed cards as exhibits to be examined by opposing counsel and placed in the court file as a public record.

The decision, however legally and technically unassailable, offers scant encouragement to those who seek an orderly settlement of labor disputes. While the need for secrecy perhaps appears to have been vitiated in the instant case, there is but little doubt that such secrecy is a well-established principle of labor law.[68] In this connection it is significant to note that the Florida Labor Organization Act itself provides for an employee vote[69] by secret ballot[70] before a *strike* (as distinguished from picketing) may be conducted. It is further apparent that the determination of the union's majority status by eliciting testimony of individual employees would be wholly unworkable where a large number of employees are within the group sought to be unionized. In the *Fountainbleau Hotel* case,[71] for example, it appears that approximately one thousand employees might very well be called upon to give testimony. According to one source,[72] the Miami Beach hotel industry, as a whole, employs approximately 12,000 people. The implication in the supreme court's decision that even a fraction of this number might be required to parade through circuit court hearings to be subjected to direct, cross, re-direct and re-cross-examination does violence to reason. It is to be hoped that the newly established mediation and

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67. *Ibid.*

68. Section 9(c) of the Labor-Management Relations Act, 61 STAT. 136 (1947), as amended, 29 U.S.C. 159 (1952) specifically provides for the certification of an authorized bargaining agent by secret ballot in industries within the jurisdiction of the N.L.R.B. A similar requirement appears in the labor legislation of several states. Eg., New York, Michigan and Wisconsin.

69. FLA. STAT. § 447-09(3) (1957).

70. FLA. STAT. § 447-09(4) (1957).

71. See note 33 *supra.*

72. Bureau of Economic Research, University of Miami.

conciliation service[73] will provide suitable machinery for the conduct of employee elections so that the frustrating effect of the *Thomas Jefferson* decision will thus be overcome.

*N.L.R.B. Jurisdiction.* From the very inception of the Miami Beach hotel dispute the union has been waging war on two fronts, so to speak. In addition to prosecuting such remedies as might have been afforded in the state courts, the union has been engaged in vigorous efforts to persuade the National Labor Relations Board to assume jurisdiction over the dispute. The major obstacle in the path of the union has been that its efforts, in order to be successful, necessarily require a complete reversal of the long-established policy of the National Labor Relations Board to decline jurisdiction over hotel disputes.[74] Certainly, this change in policy could not be casually made since the additional work thereby thrust on the Board and its regional offices nation-wide would undoubtedly have a stunning impact on the organization.

At the conclusion of the period covered by the preceding Survey, the union had exhausted its efforts both at the regional level and before the full Board which, on August 26, 1955, dismissed the union's petition seeking to invoke N.L.R.B. jurisdiction. These proceedings were documented and discussed in the previous survey and the reader is referred thereto[75] for further details.

During the period covered by the present survey, the union has been prosecuting its appeal to the United States Court of Appeals for the District of Columbia Circuit to review the adverse ruling of the Board.

As this article goes to press, we have received word that the court affirmed the Board's position in two-to-one split, Haywood, J. dissenting. Unfortunately, the court's opinion has not appeared in printed form so we are not able at this time to comment further upon the significance of this decision.

*Circuit Court Activity.* A circuit court decision also concerning the Miami Beach hotel strike appears in the Florida Supplement, namely, *International Company v. Hotel Employees Union, AFL.*[76] The facts are strikingly similar to those in the *Fountainbleau Hotel*[77] case. The court, Carroll, J., made specific findings of fact which, briefly summarized, are as follows. After the refusal of the hotel to recognize the union as a bargaining representative, pickets assembled around the entrance to the hotel, and, so the court found, engaged in a number of unwholesome activities, to-wit: name-calling, cursing, threats, psychological intimidation of various kinds

73. FLA. STAT. § 448.06 (1957).
74. Virgin Isles Hotel, Inc., 110 N.L.R.B. 558 (1954); Hotel Ass'n of St. Louis, 92 N.L.R.B. 1388 (1951); White Sulphur Springs Co., 85 N.L.R.B. 1487 (1949).
75. 10 MIAMI L.Q. 225 - 228.
76. 7 Fla. Supp. 164 (1955), *aff'd without opinion*, 93 So.2d 898 (Fla. 1956).
77. See note 33 *supra*.

together with actual violence.[78] Further, the court found that a majority of the employees had not, in fact, designated the union as their bargaining agent, and that the *purpose* of the picketing was to force the hotel to recognize the union as the exclusive bargaining agent of the employees,[79] irrespective of its true status.

In a well reasoned opinion, the court held,

1. That the pickets had indulged in force and violence to the point where their conduct could not be held privileged under the constitutional guarantees of free speech.

2. That the strike was illegal in that it was not authorized by a majority vote of the employees to be governed thereby, and thus clearly within the prohibition of well-settled Florida law.

Accordingly, the court entered its injunction against the picketing on the basis of the authorities cited.[80]

### FEDERAL DECISIONS

Because the federal decisions of local interest within this survey period do not fall into any particular pattern, each will be discussed individually.

*Sigfred v. Pan American World Airways*[81] concerns the interpretation of certain provisions of a collective bargaining agreement between the Air Line Pilots Association International and Pan American World Airways. It also deals with some interesting collateral issues concerning federal labor jurisdiction and the applicability of Florida law where federal jurisdiction is invoked. The provision in the agreement which gave rise to the controversy was as follows:[82]

> The company will provide or compensate the pilot for the cost of complete medical care for occupational sickness or injury. In

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78. 7 Fla. Supp. at 166:
> . . . the court is inclined to the view that defendants or pickets were responsible for the fights, in the main, for two reasons—(1) because there was a general practice among the pickets and those working with them to curse the employees and to call them names which usually bring on a fight, and (2) because defendants' contention against violence is inconsistent with the grouping of off-duty pickets and other persons in cars or on bus-stop corners nearby, occasional threats "to get" an employee within his hearing and following an employee's car after such a threat, the photographing of employees entering or leaving the premises, and picketing in a manner to hinder, if not actually obstruct, passage of persons and vehicles at times at entranceways or driveways, all of which I find to have been present to some substantial degree.

79. 7 Fla. Supp. at 168.

80. Treasure, Inc. v. Hotel and Restaurant Employees Union, AFL, 72 So.2d 670 (Fla. 1954); Miami Typographical Union v. Ormerod, 61 So.2d 753 (Fla. 1952); Local 519 United Association of Journeymen and Apprentices of Plumbing and Pipe Fitting Industry v. Robertson, 44 So.2d 899 (Fla. 1950).

81. 230 F.2d 13 (5th Cir. 1956), *cert. denied*, 351 U.S. 925 (1956).

82. *Id.* at 17.

> the event of non-occupational injury or illness occurring while on assignment at a point other than the pilot's base station, or outside the Continental United States, the company agrees to reimburse the pilot for such additional expenses occasioned by the pilot's location at the time of such injury or illness. During such period the pilot's salary will be continued and the pilot agrees that all workmen's compensation benefits due under applicable laws shall be paid by the pilot to the company.

The plaintiff pilot, Sigfred, had incurred an ear injury which caused him dizziness during flight and which, after unsuccessful treatment, rendered him totally unfit to continue his duties, according to his employer. There being no other suitable employment available at Pan American for which Sigfred would be nevertheless qualified, Pan American discharged him. Sigfred thereupon embarked upon a tortuous legal path to determine his rights.

Sigfred first brought suit for declaratory decree as to his rights under the collective bargaining agreement in the local circuit court. Pan American, asserting federal jurisdiction, removed the case to the appropriate United States District Court. It was Sigfred's contention that, under the terms of the agreement, he was entitled to receive full salary during the entire duration of his disability ailment, for life if necessary, since the last sentence of the above-quoted portion of the agreement should be applied to the first sentence as well as to the second sentence. Such an interpretation would indeed provide Sigfred with his full salary for the entire duration of his permanent disability.

The federal court dismissed Sigfred's complaint without prejudice, on the grounds that he had not exhausted his administrative remedies under the Railway Labor Act.[83]

Sigfred next applied for state workmen's compensation and was awarded a determination by the Florida Industrial Commission that his disability was, in fact, caused by an occupational injury. Armed with this determination Sigfred again approached Pan American and was thereupon denied liability in excess of that arising from workmen's compensation. In compliance with the terms of the collective bargaining agreement, the company's action was next reviewed before the Pilot's System Board of Adjustment, but again Sigfred was unsuccessful.

Obviously a man not to be easily defeated, Sigfred then brought another suit in the district court challenging the Board's interpretation of the collective bargaining agreement. Once more Sigfred lost, but undaunted by adversity, he appealed to the United States Court of Appeals for the Fifth Circuit, which was equally unsympathetic, although Sigfred did receive the consolation of a very elaborate dissenting opinion by Circuit Judge Brown.

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83. 44 STAT. 577 (1926), as amended, 45 U.S.C. §§ 151-188 (1952).

The court summed up the position taken by Sigfred in the following language:[84]

> . . . Sigfred contends that his election to pursue his remedy to the Pilots' System Board of Adjustment was not voluntary, but pursuant to Florida law; that Florida law governs the reviewability of the Board's award; that under the Florida rule of reviewability of arbitration awards, all pure questions of law may reexamined by the reviewing court, and that a consideration of the board's interpretation of the agreement will reveal it to be patently erroneous . . .

The court disposed of these contentions by holding:

1. That Florida law had no application:

> Congress having required the negotiation of collective bargaining agreements, and the establishment of boards of adjustment to interpret them, we deem it a reasonable corollary thereto that it intended that the scope of review in appeals from these boards should be determined by federal courts, applying federal law. . . .

2. Under federal law[85] Sigred's grievance had been properly adjudicated by the Board of Adjustment and that the decision of the board was final and binding.

3. That it was not within the province of the court to review a challenged ruling of the board:[86]

> . . . there being no question raised regarding the jurisdiction of the board or the regularity of its proceedings . . . .

4. That, in any event, the interpretation placed by the board upon the disputed section of the agreement was not only reasonable but "entirely correct,"[87] that Sigfred's interpretation would amount to an implausibly generous guaranteed salary for life in the event of permanent disability, and that had the parties desired such a provision it would have been easy to word the agreement accordingly rather than to force an interpretation to that effect in the manner suggested by Sigfred.[88]

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84. So-called from Moore v. Illinois Cent. R. R., 312 U.S. 630 (1941) (which allowed employee treating employment at an end to sue for wrongful discharge, the Railway Labor Act, as such, not requiring pursuit of remedy before Railway Adjustment Board); and Slocum v. Delaware L.&W. R. R., 339 U.S. 239 (1950) (Railway Adjustment Board is invested with exclusive jurisdiction to determine dispute or grievances concerning *interpretation* or application of contract in non-Moore situations). Any attempt to compress Judge Brown's legal analysis into a reasonably compact form would, we are quite sure, do violence to his reasoning. It is indeed unfortunate that a full discussion of his well-considered dissent is far beyond the scope of this article.

85. 49 STAT. 1189 (1936), 45 U.S.C. §§ 181-185 (1952).

86. 230 F.2d at 17. *Cf.*, Bower v. Eastern Airlines, 214 F.2d 623 (3rd Cir. 1954), *cert. denied*, 348 U.S. 871 (1954).

87. *Ibid.*

88. 230 F.2d at 18, *contra*, Brady v. Trans World Airlines, 156 F. Supp. 82 (D.Del. 1957).

Circuit Judge Brown, in a twelve-page dissent[89] supported by voluminous footnotes, took issue with his associates on a number of grounds, both legal and factual. He stated that, in his opinion, the problem before the court was highly complex. In the judge's own words:[90]

> In our task, as I view it, we cannot reach the merits, to approve or disapprove the holding unless there were a justiciable case before the district court. We are forced, and ought therefore, to examine into the complex field of the availabilty, use, exhaustion and finality of any existing administrative remedies . . . This involves this further process: Was Sigfred's claim a *Moore* or *Slocum* case?[84] If *Moore*: (a) Did Florida law require him to exhaust the administrative remedies under collective bargaining contract and System Board of Adjustment, if so, was the adverse award by Board binding at all, and by what standards, State or Federal, is this to be determined? (b) If exhaustion of remedies was not required, was his pursuit of them voluntary; and, if so, is he bound; if not, what is the extent of the review and by what standards, State or Federal, is it to be determined? If *Slocum*: (a) Is the award reviewable by the terms of the Statute Railway Labor Act? (b) If not, must a right of review be implied, and if so, what is the extent of the review?

In his dissent, Judge Brown resolved these questions in favor of the position taken by Sigfred,[91] and concluded that the Adjustment Board's decision should have been judicially reviewed.[92] Judge Brown rounded off his dissent with an analysis of the disputed contract provision and concluded that Sigfred's interpretation was correct.[93]

In the previous survey, *Budd v. Mitchell*[94] was briefly discussed[95] as a case of local interest arising under the Fair Labor Standards Act. It has since taken on somewhat greater significance in that, on petition for certiorari to the Supreme Court of the United States, the high court granted certiorari, reversed[96] the court of appeals, and affirmed the judgment of the district court. It will be recalled that the case concerned coverage by the Fair Labor Standards Act[97] of employees of tobacco packing houses. The court of appeals had held[98] the employees to be exempt from the provisions of the act by virtue of section 13(a)(6)[99] which provides that

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89. 230 F.2d at 19.
90. *Id.* at 22.
91. *Id.* at 28.
92. *Id.* at 30.
93. *Id.* at 29.
94. 221 F.2d 406 (5th Cir. 1955) *reversing* Durkin v. Budd, 114 F. Supp. 865 (N.D. Fla. 1953).
95. 10 MIAMI L.Q. at 232.
96. Mitchell v. Budd, 350 U.S. 473 (1956).
97. 52 STAT. 1060 (1938), 29 U.S.C. § 201 (1952).
98. Budd v. Mitchell, *supra* note 94.
99. 63 STAT. 918 (1952), 29 U.S.C. § 213(a)(6) 1952, which reads as follows: [exempt from the act is] any employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or

agricultural[100] employees do not fall within its coverage, and that employees engaged in the preparation of agricultural goods for market (such as the tobacco house workers) are deemed to be agricultural employees. The work performed in the packing house, the court of appeals reasoned, constituted "preparation for market."

The Supreme Court of the United States, pursuant to its dedicated if questionable task of relentlessly extending federal jurisdiction, reversed the court of appeals on typically spurious and illogical grounds. The Court held that employees *were not* agricultural employees because:

> 1) . . . tobacco farmers do not ordinarily perform the bulking operation . . .[101]
>
> 2) . . . the bulking operation is a process which changes the natural state of the freshly cured tobacco as significantly as milling changes sugar cane . . .[102]

The fallacy in this decision is that it should make no difference whether or not tobacco farmers "ordinarily" perform such work if the workers were *actually engaged* in agriculture. Admittedly, the nature of the work[103] performed by the tobacco house workers (*i.e.*, "bulking") poses a question of fact as to whether or not such work constitutes "agriculture" as defined by the act, but it appears that the reasoning of the court of appeals in determining this issue reveals a wisdom and accuracy unfortunately, but typically, lacking in that of the Supreme Court of the United States.

*Amalgamated Association of Street Electric Ry. Employees, Division 1326 v. Greyhound Corporation*[104] is another interesting case wherein a

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> waterways, not owned or operated for profit, or operated on a share-crop basis, and which are used exclusively for supply and storing of water for agricultural purposes . . .

100. "Agriculture" is defined by Section 3(f) as follows:

> . . . farming in all its branches and among other things includes the cultivation and tillage of the soil . . . and any practices . . . performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

101. 350 U.S. at 481.

102. *Ibid.*

103. Details of the actual work performed are set forth in the opinion of the court of appeals, where it is stated (221 F.2d at 409):

> It [the tobacco] is then taken from the barns in the field, placed in appropriate containers and carried to the packing house where it is placed in piles known as "bulks" for curing. Each bulk consists of more than 3,000 lbs. of tobacco. The packing houses are equipped with machinery for the appropriate humidification and curing of the tobacco. During the curing period the temperature within each bulk is closely watched from day to day and at regular intervals, when the appropriate time has arrived, the bulk is broken up, the tobacco leaves shaken out and those on the outside placed on the inside of the new bulk, and those on the inside placed on the outside for further curing. This process is continued until the tobacco is ready for market when it is bailed [sic] for shipment.

104. 231 F.2d 585 (5th Cir. 1956).

federal court interpreted the provisions of a collective bargaining agreement, and, in doing so, applied Florida law. The suit arose when the employer discharged its janitorial staff at the Jacksonville Bus Depot and arranged for its services to be performed by an independent contractor known as Floors, Inc. The union protested, taking the position that the discharge was a breach of their collective bargaining agreement, that it was thereby released from its no-strike clause, and that it was justified in threatening the company with a strike. The company thereupon brought an action for declaratory decree in the United States District Court to determine its rights under the collective bargaining agreement, postponed the proposed layoff and the commencement of the proposed services of Floors, Inc., pending the outcome of the suit.

The collective bargaining agreement itself was silent as to the actual question before the court. It provided for seniority rights in case of a reduction in personnel but did not specify one way or the other the rights of the union or the company in reducing or disposing of personnel in any particular job classification. After a number of hearings, the lower court entered summary judgment in favor of the company, and the union appealed.

On appeal, the union contended that the contract reference to a reduction in personnel should not imply justification for a total elimination of a class of personnel since such an interpretation would contemplate a complete destruction of the subject matter of the contract.

They argued further, that when two parties enter into an agreement setting forth certain rights and duties, there is an implied collateral agreement that neither will do anything to interfere with the exercise of such rights.

The company, on the other hand, argued that its right to sub-contract work is inherent in that it concerns the management policy of the company and that, in any event, the company is entitled to determine how it will run its business.

The court of appeals affirmed the judgment rendered below stating:[105]

> In prior rulings on the question, the cases are heavily on management's side. It is settled Florida law that if an employer discontinues a part of his business he is under no duty to pay wages to those workers left jobless by the change . . . However, other cases more directly in point with the instant situation hold that the type of limitation on management's freedom of operation urged here will not be implied merely from the fact that the parties agreed on terms and conditions covering the jobs in question . . .

The court specifically declined to rule on the "inherent rights" theory propounded by the employer because, the court said, the matter can be disposed of by simply considering the legal effect of the contract's silence

105. *Id.* at 586.

as to the matters in question, and that "in the absence of such a term, we must regard the company's contract with Floors, Inc. as no breach of its collective bargaining agreement with the union . . . ."[106]

Two cases of interest are *National Labor Relations Board v. DuVal Jewelry Co.*[107] and the companion case (reversing it) bearing the same name. The matter came before the district judge when the National Labor Relations Board sought to enforce compliance with subpoenas issued by the board in connection with a representation dispute. By statute[108] the board is empowered to issue subpoenas "upon application of any party" and the United States District Courts are given jurisdiction to enforce compliance with such subpoenas by contempt procedure. Pursuant to this statute, the board had issued subpoenas requiring the production of certain books and records.

This statute, however, must be read in conjunction with the N.L.R.B. Rules and Regulations[109] which provide that the Regional Director is to be considered as a party to all proceedings in which it becomes involved.

The district court, Choate, J., quashed the subpoenas on two grounds. First, the court ruled that the subpoenas were unreasonable, burdensome and oppressive, in that they called for the production of voluminous records on ten days notice at a point some 350 miles from their usual location. The court said:[110]

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106. *Id.* at 587. The court relied on Division 1344 of Amalgamated Ass'n of Street Elec. Ry. and Motor Coach Employees v. Tampa Elec. Co., 47 So.2d 13 (Fla. 1950). The authorities cited by the court in support of this holding were International Longshoremen's and Warehousemen's Union v. Inland Waterways Corporation, 213 La. 670, 35 So.2d 425 (1948) (collective bargaining agreement prohibiting the discontinuance of established positions and the creation of new ones under a different title for the purpose of reducing pay rate and evading seniority rules, *held* not to restrict the employer's right to discontinue employment of any particular worker and to have such work performed by an independent contractor); Local 600, United Automobile Workers, CIO, v. Ford Motor Co., 113 F. Supp. 834 (E.D. Mich. 1953) (collective bargaining agreement which purported to comprise entirety of agreement and contained express provision for unequivocally vesting in the employer the right to manage its business, gave employees no cause of action against employer who decentralized its operations necessitating discharge of certain employees).

107. 141 F. Supp. 860 (S.D. Fla. 1956), *rev'd*, 243 F.2d 427 (5th Cir.1957).

108. 49 STAT. 455 (1935), as amended, 29 U.S.C. § 161 (1952) the pertinent portion of which reads as follows:

> The Board or any member thereof, shall upon application of any party to such proceedings, forthwith issue to such party subpenas requiring the attendance and testimony of witnesses or the production of any evidence in such proceeding or investigation requested in such application . . . any district court . . . . shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

109. 29 C.F.R. § 102.58(c).

110. 141 F. Supp. at 861.

> The term "party" as used in this part shall mean the regional director in whose region the proceeding is pending, and any person named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any board proceedings . . .

> . . . subpoenas duces tecum requiring the production of books and records essential in the operation of a business should provide ample time for the business to prepare for the absence of those books and records . . .

Second, the court was of the opinion that the board had exceeded its authority by issuing[111] the regulation which designated its Regional Directors as "parties" in labor-management disputes. The court remarked:[112]

> . . . Inasmuch as the subpoenas in question were not issued upon application of a party to the representation proceedings before the National Labor Relations Board hearing officer, those subpoenas were not, in my opinion, issued according to law and should be quashed.

On appeal, the Court of Appeals for the Fifth Circuit reversed the ruling of the district court, but for somewhat different reasons than those set forth in the lower court's opinion. Additional facts appear in the court of appeals opinion, namely, that one of the subpoenas was a subpoena ad testificandum while the others were all subpoenas duces tecum. The court also called attention to the fact that all of the respondents had filed with the board petitions to revoke the subpoenas, accompanied by requests for permission to file briefs and to present supporting oral argument, in accordance with other statutory provisions,[113] but that the board had refused to consider these petitions, contending that it was not required to do so under board regulations.[114] The hearing officer had denied the

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111. To quote from the opinion, 141 F. Supp. at 861:
> The National Labor Relations Board . . . attempts to originate a new concept in Anglo-American jurisprudence by attempting to make its Regional Directors a "party" in all proceedings in their respective regions. Congress nowhere has given the Board the power to enlarge by rule-making the clear-meaning terms employed in the statute in question, nor does the statute contemplate any "Board" actions except to enforce the Boards findings. Nowhere in the Common Law is there any basis for a construction of the word "party" to include persons directly associated with the "disinterested" tribunal before which tribunal both sides (here union and management) in an adversary proceeding are submitting, or are about to submit, their causes.

112. 141 F. Supp. at 862.

113. 49 STAT. 455 (1935), as amended, 29 U.S.C. § 161 (1) (1952):
> Within five days after the service of a subpoena on any person requiring the production of any evidence in his possession or under his control, such person may petition the Board to revoke, and the Board shall revoke, such subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpoena does not describe with sufficient particularity the evidence whose production is required . . . .

114. 29 C.F.R. § 102.58(c), Applications for Subpenas, provides:
> . . . applications for subpoenas may be filed in writing by any party with the regional director if made prior to hearing, or with the hearing officer, if made at the hearing. Applications for subpoenas may be made ex parte. The regional director or the hearing officer, as the case may be, shall forthwith grant the subpoenas requested. Any person subpoenaed, if he does not intend to comply with the subpoena, shall, within 5 days after the date of the service of the subpoena, petition in writing to revoke the subpoena . . . the regional director or the hearing officer as the case may be, shall revoke the

petitions but the respondents had not sought appeal from his ruling to the board as provided in other sections of the board's regulations.[115]

Since the act specifically provides a procedure to revoke such subpoenas upon application to the board, rather than to the hearing officer, his action in denying the petitions was held to be a nullity. Based on the foregoing, the court held that reversible error had been committed as to the subpoenas duces tecum in that the respondents had not exhausted their administrative remedies prior to bringing their action in the district court.

The court, however, arrived at a different conclusion regarding the subpoena ad testificandum since there is no provision, either in the act or in the board's regulations, for revocation of such a subpoena. The court further had to decide whether or not the subpoenas were effective in that they were not sought by a "party" within the meaning of the act, as the lower court had ruled. While the court did not specifically decide whether or not the director was, technically speaking, a "party," it held that there was no reason why the regional director should not, of his own motion, issue such subpoenas:[116]

> . . . we can see no objection to the board member furnishing the subpoenas under his signature to the Regional Director in such investigations as required. We think that the district court erred in declining to enforce the subpoena ad testificandum directed to Oliver Jenkins, and in not declining to rule upon the enforcement of the subpoenas duces tecum . . .

## LEGISLATIVE ENACTMENTS

The 1957 Legislature enacted four measures of interest to Florida labor lawyers.

### *Mediation and Conciliation Service.*

The most significant legislative enactment is the addition of Section 448.06 to the Florida Labor Organization Act. It establishes a voluntary mediation and conciliation service for the settlement of labor-management disputes, under the jurisdiction of the governor. The governor has wide powers indeed with respect to operation of the new service:[117]

> . . . Such service shall be under the jurisdiction of the governor who is authorized to appoint, prescribe the duties, title, and fix

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subpoena if, in his opinion, the evidence whose the production is required does not relate to any matter under investigation in the proceedings or the subpoena does not describe with sufficient particularly the evidence whose production is required . . .

115. 29 C.F.R. § 102.57(c):

> Unless expressly authorized by these rules and regulations in this part, rulings by the regional director and by the hearing officer shall not be appealed directly to the Board except by special permission of the Board, but shall be considered by the Board when it reviews the entire record.

116. 243 F.2d at 431.

117. FLA. STAT. § 448.06(1) (1957).

> the salary of one full-time mediator or conciliator and such additional personnel as, in the discretion of the governor, may be required.

However, it will be seen that the powers of the governor, while broad, are lacking in coercive force as to the parties themselves:[118]

> The governor, by and through the mediation and conciliation service, is hereby authorized and directed to promote, assist, and encourage maintenance of mutually satisfactory employer-employee relationships within the state, and, upon requests of any bona fide party to a labor dispute or in the event of an existing or imminent work stoppage, to proffer services and assistance to both parties in an effort to effect a voluntary, amicable, and expeditious adjustment and settlement of the differences and issues which precipitated or culminated in or which threaten to precipitate or culminate in such labor dispute.

To facilitate efficiency and impartiality of the mediation service, the act provides that all proceedings before and communications with the Service are privileged and immune from disclosure to any administrative or judicial tribunal.

The act is so new (effective as of July 1, 1957) that, as this article goes to press, it is, of course, not possible to attempt to evaluate its effectiveness.

*Child Labor Law.*

The legislature passed a number of amendments to Chapter 450, Florida Statutes relating to Child Labor.

The changes may be briefly summarized as follows:

(a) Domestic or home work is no longer exempted from the act if it is hazardous.[119]

(b) The age below which a minor may not engage in any kind of gainful employment has been raised from 10 to 12 years.[120]

(c) The age below which a minor may not work during school hours (subject to certain exceptions) has been raised from 14 to 16.[121]

(d) The age below which a boy may not engage in a street trade (shining shoes, selling newspapers, etc.) has been raised from 10 to 12

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118. FLA. STAT. § 448.06(3) (1957). The reader is referred to the report prepared by James Etheridge, Jr., Esq., of the Florida Industrial Commission entitled "A Study of the Advisability of Establishing a Voluntary State Conciliation & Mediation Service in Florida to Promote the Continuation of Harmonious Labor-Management Relations."
119. FLA. STAT. § 450.011 (1957).
120. FLA. STAT. § 450.021 (1957).
121. *Ibid.*

and the age below which a girl may not engage in such trade has been lowered from 18 to 16.[122]

(e) The age below which a girl may not be employed as a messenger who delivers goods or messages has been lowered from 18 to 16. In its previous form, the act prohibited work as ". . . a messenger for telegraph, telephone, and the messenger companies in the distribution, transmission, or delivery of goods or messages . . ." As amended, the act does not in any way describe or limit the type of business in which such work is prohibited.[123]

(f) Minors under 16 years are prohibited from employment in alligator wrestling, snake pit work, or "similar hazardous activities."[124]

(g) An entirely different formula for the determination of the maximum hours of employment of minors under 16 has been promulgated. Among other things, the act now relates the permissible hours of night-time employment to the necessity for attendance of school on the following day.[125]

(h) The phrase "restrooms and toilet facilities" has been substituted for "washrooms and water closets" in the section relating to such facilities.[126]

(i) The requirement that copies of employment certificates be sent to the Industrial Commission through the State Superintendent has been eliminated.[127]

(j) The provision that the Industrial Commission may waive certain provisions of the Child Labor Law has been amended to specifically authorize such waiver upon the recommendation of a juvenile court having jurisdiction of the minor.[128]

(k) Section 450.131 has been, understandably, repealed.[129]

*Public Works Wages Law.*

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122. FLA. STAT. § 450.031 (1957).
123. FLA. STAT. § 450.041 (1957).
124. FLA. STAT. § 450.061 (1957).
125. FLA. STAT. § 450.081 (1957).
126. FLA. STAT. § 450.091(1) (1957).
127. FLA. STAT. § 450.111(3) (1957).
128. FLA. STAT. § 450.111(4) (1957).
129. Laws of Fla. c. 57-224(10) (1957), effective July 1, 1957. The repealed section provided:

> Whoever hires or employs or causes to be hired or employed any minor, knowing such minor to be under the age of fifteen years, and under the legal control of another, without the consent of those having such legal control, for more than sixty days, shall be punished by imprisonment not exceeding sixty days or by fine not exceeding $20.00.

Sections 215.19(3)(a) and (b), Florida Statutes,[130] relating to minimum legal wages and basic labor conditions on public works projects been extensively supplemented and amended. As previously worded, these sections merely provided for "investigation" by the commission in the event of an alleged violation, to be followed by a "decision based thereon." As amended, there is now provided a detailed procedure whereby an aggrieved employee may notify the public authority by affidavit, and upon receipt of such affidavit, the authority must withhold the disputed amount from the contractor until the merits of the dispute are determined.

*Arbitration.*

The 1957 Florida Legislature has made a complete reform of the Florida arbitration act, (or "Florida Arbitration Code," as it is now called.)[131] The new sections provide first (and most important) of all, that parties to a contract may incorporate into their agreement a compulsory arbitration provision and that such provision ". . . shall be valid, enforceable and irrevocable without regard to the justiciable character of the controversy . . ."[132] The act, as amended, further sets forth an arbitration procedure in considerable detail, with specific provisions for compulsion[133] and stay[134] of arbitration, appointment of arbitrators by court order,[135] rendition of award,[136] change of award,[137] confirmation,[138] modification,[139] or vacation[140] of an award, entry of judgment or decree on an award,[141] and for appeals therefrom.[142]

The code is entitled "An Act Relating to *Commercial* Arbitration" though the word "Commercial" does not appear in the text of the statute itself. It seems quite probable that a question will be raised, sooner or

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130. The 1955 version was relatively short and provided:
> In case of a dispute regarding payment of the prevailing rate of wages of employees in any of the several classifications which the contracting authority is unable to settle, the matter shall be referred to the Florida Industrial Commission for determination. In all cases the Commission may make such investigation as it may deem necessary. The decision of the Commission shall be conclusive upon all parties, subject to judicial review.

131. FLA. STAT. §§ 57.10-57.31 (1957). The reader is referred to the Contracts Survey for a comprehensive discussion of the new Arbitration Code. See also: Stern and Troetschel, *The Role of Modern Arbitration in the Progressive Development of Florida Law*, 7 MIAMI L.Q. 205 (1953); Yonge, *Arbitration of an Ordinary Civil Claim*, 6 FLA. L. REV. 157 (1953); Middleton, *Judicial Review of Findings of Fact*, 3 FLA. L. REV. 281 (1950); Comment, *Validity of Arbitration Provisions in Federal Procurement Contracts*, 9 MIAMI L.Q. 451 (1955); *Annotation*, 55 A.L.R.2d 432 (1957).

132. FLA. STAT. § 57.11 (1957).
133. FLA. STAT. § 57.12(1) (1957).
134. FLA. STAT. § 57.12(4) (1957).
135. FLA. STAT. § 57.13 (1957).
136. FLA. STAT. § 57.18 (1957).
137. FLA. STAT. § 57.19 (1957).
138. FLA. STAT. § 57.21 (1957).
139. FLA. STAT. § 57.23 (1957).
140. FLA. STAT. § 57.22 (1957).
141. FLA. STAT. § 57.24 (1957).
142. FLA. STAT. § 57.29 (1957).

later, as to whether or not a labor-management contract is a "commercial" contract, so as to fall within the coverage of the code.

## CONCLUSION

The two year period covered by this survey has, with the exception of the Miami Beach hotel dispute, been relatively quiet. The Supreme Court of Florida, in its decisions concerning the hotel strike, has been commendably conservative in its interpretation of the Florida Labor Organizations Act and has effectively restrained the activities of those who would disregard the prerequisites of lawful picketing and to a lawful strike. The court has furthermore exerted a fearless and successful hand in maintaining law and order—a characteristic sometimes lacking in other courts.[143]

We cannot help but view the activities of the Florida Legislature with gratification. There seems little doubt that the introduction of a workable Arbitration Code will be highly conducive to the orderly disposition of many labor-management disputes without court action. The establishment of the Florida Mediation and Conciliation Service, even though it is not armed with the coercive powers of similar services in other states,[144] is an encouraging step and should provide the framework for a stronger and more comprehensive service as the need becomes apparent.

It is to be hoped that Florida will continue to improve the services it can so provide to prevent labor disputes and to cope with them when they do arise. Only by improved state services will unwelcome federal infiltration into this partial vacuum of governmental authority be forestalled.

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143. *E.g.*, H. O. Canfield Co. v. United Construction Workers, 136 Conn. 293, 70 A.2d 547 (1949).

144. As might be expected, state intervention in labor disputes is backed by strong legislation in states where large sections of the nation's manufacturing facilities are located. *E.g.*, New York, Pennsylvania, Wisconsin, Michigan, Connecticut, Massachusetts, and Rhode Island. Surprisingly, such legislation also has been enacted in the lesser industrialized states of Colorado, Minnesota, Oregon, and Utah, and in the Territory of Hawaii.