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Labor Law

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LABOR LAW

JOHN C. WHITEHOUSE*

This survey of Florida labor law connects with the preceding survey,¹ and covers Florida Supreme Court decisions, significant Florida Circuit Court decisions, federal decisions and N.L.R.B. rulings of local interest, and changes made in the statutory law by the 1955 legislature.

In addition to the cases concerning organized labor, we have covered those where an individual employment contract was in issue.

FLORIDA LAW

a) Unlawful employer conduct

Unlike the federal (Taft-Hartley) act, the corresponding Florida Labor Organizations Act does not use the word "unfair" in condemning specific employer activities, rather, the somewhat stronger term "unlawful" is applied.² Employers are forbidden to blacklist employees or former employees,³ or to interfere⁴ with their guaranteed right of self-organization.⁵ Unfortunately, there is no state Labor Board or similar governmental agency to administer the provisions of the Florida Act.⁶ Thus, those functions usually performed in other states by administrative machinery, such as the investigation of complaints, supervision of representation elections, issuance of cease-and-desist orders, and so on, are, in Florida, either thrust upon the courts or are not performed at all.

Prior to the period covered by this survey, the Florida Supreme Court had, strangely enough, never decided a case in which the unlawfulness of an employer's conduct (as defined by the Act) was squarely in issue. Only a few cases may be found in which the court, by dicta only, indicated its views as to the legality of certain employer activities.⁷

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1. 8 MIAAMI L.Q. 246 (1953). The survey period covered by this article extends from August 1, 1953 to August 1, 1955 (66 So.2d through 81 So.2d, 207 F.2d through 221 F.2d and 346 U.S. through 348 U.S.).

2. FLA. STAT. § 447.09(1) through (13)(1953).

3. FLA. STAT. § 833.02 (1953).

4. FLA. STAT. § 447.09(11)(1953).

5. FLA. STAT. § 447.03 (1953).

6. This shortcoming in the Florida law has been commented upon by both legal scholars and labor leaders. See Gramling, *The Development of Florida Labor Law*, 7 MIAAMI L. Q. 188 (1953); Snowden, *Labor Law*, 8 MIAAMI L. Q. 246 (1954); plus the bitter commentary by George Meany, President of the American Federation of Labor, in his July 18 (1955) address to the convention of the New York State Federation of Labor. Mr. Meany's speech was introduced into the Congressional Record by Senator Lehman of New York, speaking on the Senate floor on July 20, 1955. See 101 CONG. REC. 9474 (daily ed. July 20, 1955), also notes 101, 102 *infra*.

7. Local Union No. 519 of United Ass'n of Journeymen etc., v Robertson, 44 So. 2d 899 (Fla. 1950); Miami Laundry Co. v. Laundry Linen etc., Union, 41 So.2d 305 (Fla. 1949).

Thus, the Supreme Court started off with a relatively clean slate when confronted with *Hotel and Restaurant Employees Union v. Boca Raton Club*,⁸ the only case decided during this survey period where an employer was charged with unlawful conduct. Though the events which brought about the dispute were quite complicated, and extended over a period of several weeks, they may be summarized briefly as follows. The Boca Raton Club is a resort hotel in a relatively isolated location, which, while in operation during the tourist season, furnishes living accommodations to its employees. Failure of the hotel and the union to settle certain grievances⁹ was, according to the union, followed by a strike. The hotel thereupon allegedly posted an eviction notice¹⁰ ordering the "not working" employees to leave their quarters, arranged for police to prevent access to their rooms, and caused several of the workers to be arrested and fined for criminal trespass.

The case is almost as interesting a puzzle in civil procedure as it is a study in labor law. The suit was initiated by the union, which sued in equity on its own behalf, and on behalf of its members as such and as individual employees. Judging from the frequent criticism expressed by the court¹¹ the complaint was evidently not well drawn; after setting forth the foregoing allegations, the complaint concluded with what might be called a "hypothetical" prayer for relief, as follows:

... [T]hat if unfair practices are being committed by said employer, a decree to that effect be entered and the rights of the parties set forth in said decree; that said acts of said employer which are unfair practices . . . be enjoined and injunction without notice be entered [Italics supplied.]

The Circuit Court for Palm Beach County, White, J., denied all temporary relief, and, on the defendant's motion, dismissed the bill for

8. 73 So.2d 867 (1954).

9. The grievances were, as usual, over wages and hours, plus the alleged failure of the hotel to promptly remit tips paid to the management.

10. A copy of the notice was introduced into evidence, which read, in part: Important Notice—All Dining Room and Bar Employees Not Working Are Hereby Notified to Vacate the Boca Raton Hotel and Club Premises as of Today, March 5, 1953. . . .

In addition, the notice contained an offer by the management to discuss grievances with any employee, and an offer of guaranteed employment for the remainder of the season to those employees who wished to resume work.

11. We quote from the opinion:

The allegations of the original bill were indeed "vague and indefinite" as the Chancellor observed. . . .

The Chancellor was understandably perplexed at the nature of the relief requested

In effect the Chancellor was asked to analyze the case and rule upon anything he considered appropriate. . . .

In such a case, it is sometimes difficult to recall and apply the distinction between inexpert pleading and insufficient pleading. . . .

Indeed, both the original and amended complaint herein are of such a character that we can understand the considerations which must have occurred to the Chancellor in granting defendant's motion to dismiss. . . .

. . . counsel will find that time spent in setting out a case briefly and in readily comprehensible form will pay dividends

failure to state an actionable claim. However, the plaintiff was given leave to amend.

The amended complaint was supplemented by new allegations, based on events which had occurred since the first hearing, and which, in the words of the Supreme Court, "represented a complete change in the picture before the court." By this time, the employer had met with the union representatives, and had, according to the amended bill, concluded some sort of an agreement with them.¹² Injunction against the "continuous retraction" of this agreement was sought, and another hypothetical prayer for relief made:¹³

[That the court] . . . *construe* the sworn allegations herein, the exhibits attached, and the testimony presented, and *ascertain* to what extent the defendant has committed unfair labor practices That if *unfair labor practices have been committed*, and are being committed . . . a permanent injunction be entered ordering the defendant to cease and desist further unfair practices . . . and that plaintiffs have damages . . . and that the court allow such other relief as in equity *may be just*. [Italics supplied.]

Again, the Circuit Court denied relief, and dismissed the bill.

On appeal, the Florida Supreme Court, Hobson, J., affirmed the lower court decision, specifically on the grounds that the plaintiff's bill was insufficient in law to support the relief sought.

While the case was thus decided on matters of pleading,¹⁴ the Supreme Court discussed the labor law problems at considerable length, and, by very strong dicta, revealed its views on those issues which were, unfortunately, otherwise kept in the background.

The court first of all considered the events which had occurred prior to the execution of the agreement between the hotel and the union, and reviewed the action of the Circuit Court in dismissing the union's complaint. Such action was proper, said the court, as far as the union was

12. Unfortunately, the court did not discuss the agreement in detail, nor gave any indication as to its nature or contents. The outcome of a suit of this kind might, according to established principles of labor law, very well depend on the establishment of the agreement as a valid collective bargaining contract, with its resultant quasi-legislative effect. See *Ass'n of Westinghouse Salaried Employees v. Westinghouse Elec. Corp.*, 210 F.2d 623 (1954), *aff'd*, 348 U.S. 437 (1955). The opinions of both the Court of Appeals and the United States Supreme Court in this case are highlighted by a penetrating analysis of the legal theory of collective bargaining agreements. See also Wams. *The Nature of the Collective Bargaining Agreement*, 3 MIAMI L.Q. 235 (1948).

13. 73 So.2d at 869.

14. Again, we quote the court (73 So.2d at 870):

To entitle the plaintiff to relief, it was necessary that a case for such relief be not only sufficiently proved, but sufficiently pleaded as well As the case is pleaded, moreover, it is indeed multifarious, as the Chancellor observed, both as to parties and to claims for relief . . . we do hold that the allegations of the amended complaint are insufficient to support such relief here

concerned, but was error as to the employees.¹⁵ That is to say, the rights sought to be enforced were partly *personal* to the employees.¹⁶ The court went on to make the square holding that it was error for the chancellor *not* to grant a temporary injunction against the eviction proceedings.¹⁷ The defendant hotel had contended that the employees were, in effect, engaged in a sit-down strike, in violation of Section 447.09(9) of the Florida Statutes,¹⁸ but the court would not accept this view. While it was true that the striking employees were occupying their employer's property, the court pointed out that they were not occupying their actual work area and, for the time being at least, had no other place to go. The court conceded, of course, that the employer would be entitled to evict the employees if the strike continued for any appreciable length of time.¹⁹

The court then considered the amended complaint, in which the "continuous retraction" of the strike-settlement agreement was alleged, and sought to be enjoined. Also sought, it will be recalled, were damages, and an injunction against whatever unfair labor practices the court might find had been committed. The prayer for an injunction against a "continuous retraction" amounted, said the court, to a suit for specific performance of the contract, and held that insufficient facts had been alleged to support such a suit.²⁰ Damages, the court continued, would be impossible to award because all the employees were not similarly situated, and each should have sued in his own name, or at least in separate classes. An injunction against "unfair labor practices" would be too broad, said the court, and rather acidly pointed out that the Florida Statutes are themselves a "continuing injunction" against these practices.

Thus was the appeal disposed of. It is, of course, unfortunate that the issues were not more skilfully framed by opposing counsel so that the court could have squarely decided the case on its merits rather than on the insurmountable flaws in the pleadings. It does appear, however, that the court went considerably out of its way to be fair to the litigants themselves, both in analyzing the facts and in indicating its view of such legal questions as might have been properly raised.

15. 73 So.2d at 870.

16. *Miami Laundry Co. v. Laundry, Linen, etc., Union*, 41 So.2d 305 (Fla. 1949), and *Miami Water Works Local 654 v. City of Miami*, 157 Fla. 445, 26 So.2d 194 (1946) were cited by the court to support this view.

17. 73 So.2d at 871. The court viewed the eviction proceedings as a coercive measure in direct violation of FLA. STAT. § 447.09(11), which forbids an employer to ". . . coerce or intimidate any employee in the enjoyment of his legal rights . . ." The court cited, with approval, *L. J. Williams Lumber Co.*, 96 N.L.R.B. 635 (1951); *W. T. Carter Co.*, 90 N.L.R.B. 2020 (1950); *Great Western Mushroom Co.*, 27 N.L.R.B. 352 (1940); *Alaska Juneau Mining Co.*, 2 N.L.R.B. 125 (1936); all of which held that eviction or the threat of eviction may constitute unlawful coercion under either the Taft-Hartley or Wagner Act.

18. This section reads. "It shall be unlawful for any person . . . to seize or occupy property unlawfully during the existence of a labor dispute."

19. 73 So.2d at 872.

20. *Ibid.*

b) *Unlawful union conduct*

By way of introduction we shall summarize the Florida law concerning the legality of various union activities, up to the time of this survey. The Florida Labor Organizations Act²¹ prohibits certain employee activities, whether committed individually or collectively. Excessive union membership dues may not be charged;²² each labor organization must keep accurate financial records for the inspection of its members;²³ union members who join the United States armed forces may not be penalized for delinquent dues;²⁴ the employees' "right of franchise" may not be impaired;²⁵ interference with union elections is forbidden;²⁶ no strike may be conducted unless authorized by a majority vote of the employees,²⁷ to be conducted by secret ballot;²⁸ employees may not seize or occupy property unlawfully during a labor dispute;²⁹ jurisdictional strikes may not be conducted;³⁰ coercion of employees, intimidation of their families, or picketing of their homes is prohibited,³¹ as is picketing beyond the area of the industry within which the labor dispute arises;³² no picketing may be conducted with force or violence, or in such a way as to block ingress and egress to and from buildings.³³ Two statutory provisions³⁴ which attempted to impose strict qualifications on union business agents, and to extract a registration fee from labor unions, were held unconstitutional by the United States Supreme Court.³⁵ The Florida Constitution contains a "right to work" provision,³⁶ which in effect, prohibits the closed shop in Florida. As explained previously,³⁷ there is no state administrative machinery to put these laws into effect.

21. FLA. STAT. §§ 447.01 - 447.15 (1953).

22. FLA. STAT. § 447.05 (1953).

23. FLA. STAT. § 447.07 (1953).

24. FLA. STAT. § 447.08 (1953).

25. FLA. STAT. § 447.09(1) (1953); the "right of franchise" is further defined as:
 . . . the right of an employee to make complaint, file charges, give information or testimony concerning the violations of this chapter, or the petitioning to his union regarding any grievance or violations of law to any public officials, and his right of free petition, lawful assemblage and free speech.

26. FLA. STAT. § 447.09(2) (1953).

27. FLA. STAT. § 447.09(3) (1953).

28. FLA. STAT. § 447.09(4) (1953).

29. FLA. STAT. § 447.09(9) (1953).

30. FLA. STAT. § 447.09(10) (1953).

31. FLA. STAT. § 447.09(11) (1953).

32. FLA. STAT. § 447.09(12) (1953).

33. FLA. STAT. § 447.09(13) (1953).

34. FLA. STAT. §§ 447.04, 447.06 (1953).

35. *Hill v. Florida*, 325 U.S. 538 (1945), *rehearing denied*, 326 U.S. 804 (1945).

36. FLA. CONST. D.R. § 12, ". . . The right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union, or labor organization; provided that this clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer."

37. See note 6 *supra*.

The foregoing constitutional and statutory provisions have been interpreted on twelve³⁸ occasions by the Florida Supreme Court, and in general, the court has substantially supported their literal construction. An exception appeared in three cases³⁹ where the court refused to declare picketing illegal when the "majority vote" rule⁴⁰ was not complied with, reasoning that picketing in itself does not constitute a strike. Violent picketing,⁴¹ or peaceful picketing for an unlawful purpose⁴² may properly be enjoined.

With this background of established Florida law in mind, let us now consider the cases which arose during this survey period in which the Florida Supreme Court passed upon the allegedly unlawful acts of labor unions or their members.

*Miami Federation of Musicians v. Wompearce*⁴³ presented two problems for the Supreme Court's consideration: first, where to draw the line between a primary and a secondary boycott;⁴⁴ second, how much may a

38. Int'l Typographical Union v. Ormerod, 59 So.2d 534 (Fla. 1952); Hotel & Restaurant Employees etc., Union 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 Union No. 519 of United Ass'n of Journeymen etc., 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 etc., 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, reversed, 325 U.S. 538 (1945) rehearing denied, 326 U.S. 804 (1945); Pittman v. Nix, 152 Fla. 378, 11 So.2d 791 (1943).

39. Johnson v. White Swan Laundry, *supra* note 38; Moore v. City Dry Cleaners and Laundry, *supra* note 38; Whitehead v. Miami Laundry Co., *supra* note 38. See the discussion of these cases by Gramling, *The Development of Florida Labor Law* 7 MIAMI L.Q. 188 (1953).

40. FLA. STAT. § 447.09(3)(1953).

41. Moore v. City Dry Cleaners, *supra* note 38.

42. Local Union No. 519 of United Ass'n of Journeymen etc., v Robertson, 44 So.2d 899 (Fla. 1950).

43. 76 So.2d 298 (Fla. 1954).

44. The Florida Supreme Court, in its previous decisions, has indicated its views on secondary action by dicta only. See, *Paramount Enterprises v. Mitchell*, 104 Fla. 407, 140 So. 328 (1932) where the court said (104 Fla. at 408, 140 So. at 330):

When the coercion extends to customers of the person or persons boycotted and attempts to coerce them on pain of being boycotted themselves unless they refrain from dealing with the persons boycotted it is called a "secondary boycott."

The federal (Taft-Hartley) law is, of course, much more explicit:

Sec. 8(b) It shall be an unfair labor practice for a labor organization [to engage in concerted activities for the purpose of] (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other 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

A typical interpretation of this section by the National Labor Relations Board may be found in *United Brotherhood of Carpenters and Joiners of America*, 81 N.L.R.B. 802 (1949), order enforced 184 F.2d 60 (10th Cir. 1950) where the Board said:

. . . two factors must combine — (1) the alleged activities must have as an object the forcing or requiring any employer, *inter alia*, to cease using the products of any manufacturer or to cease doing business with any person; and (2) the activities must constitute inducement and en-

court of equity interfere with a labor union's internal affairs. In this case, the plaintiff owned a theatre in Miami Beach and had leased it, from time to time, to various show promoters. The shows, apparently, did not turn out too well, for over a period of time the establishment earned itself such a reputation with the members of the local musicians union (many of whom complained that their seasonal contracts had been broken upon default of the promoters) that it was placed on the union's "defaulter's list," a sort of private credit-rating prepared by the union to apprise its members of poor credit risks. It is the union's policy not to approve contracts between its members and employers placed on the list.

The present suit arose when Wompearce subleased the theatre to a new promoter. The sublessee found that, although he personally owed no money to the local union, he had been placed on the defaulter's list along with his ill-fated predecessors. Thus, he was unable to hire union musicians, and was hamstrung in his operation of the theatre. The promoter's efforts to reach a settlement with the union were unsuccessful; the union declined to remove his name from the list until all previous claims had been paid. The plaintiff thereupon brought suit in the Circuit Court to enjoin the union from keeping the theatre on the defaulter's list.

In the Circuit Court, the plaintiff was successful and a decree was issued declaring that:

... [T]he defendants are attempting to blacklist a valuable building because the owners and lessees thereof refuse to pay a claim which is not owned by them . . . the aforementioned conduct of the defendant union amounts, in effect, to an unlawful secondary boycott and to an unlawful coercion, unlawful intimidation, unlawful interference with the free use of property, and an unlawful attempted extraction of money for no consideration

The decree enjoined the union from keeping the theatre on its defaulter's list, and from refusing to permit union musicians to work there.

On appeal, the Supreme Court reversed this decree on two grounds. First, it held that the union action was not a secondary boycott,⁴⁵ but merely a "withholding of services" to extract concessions from the owner and lessee, and was, thus, really "primary." Two cases were cited to support

couragement of employees in the course of their employment within the meaning of Section 8(b)(4)(a). The absence of either factor will defeat the charges thereunder.

The accumulated body of federal law regarding secondary action is quite substantial, as might be expected, and it seems unfortunate that the Florida Supreme Court did not draw more extensively from this body of well-seasoned law. See also, FORKOSCH, A TREATISE ON LABOR LAW (1953), § 277.

45. 76 So.2d at 302. ;

this view.⁴⁶ Second, the court held that use of a defaulter's list was part of the union's internal affairs, and, on the basis of prior authority,⁴⁷ not subject to court interference. Let us analyze each of these points.

Although the Florida Supreme Court had not previously decided any case in which secondary action was a square issue,⁴⁸ it was certainly able to draw upon a wealth of authority from other jurisdictions⁴⁹ (especially federal).⁵⁰ A succinct definition of secondary action was chosen by the Florida court,⁵¹

. . . pressure . . . brought to bear against a third party with whom there is no dispute in order to coerce his support in obtaining favorable settlement of a dispute with another.

When this definition is applied to the facts of the *Wompearce* case it is indeed difficult to understand the court's conclusion. The sublessee was a third party to the dispute between the union and the prior lessees. Although the prior lessees had presumably disappeared from the picture and were not *themselves* likely to make a settlement with the union as a result of the boycott, the desired result (i.e., payment of their bills by the new sublessee) was a perfectly "favorable settlement" as far as the union was concerned. The court appears to have overlooked the implications of this decision. It has given judicial approval to a process whereby a union (or anyone ?) may force an innocent party to make good the debts of another "or else!"

Consider next the second basis for the court's holding, namely, that the Circuit Court should not have interfered with the "internal affairs" of the union by ordering it to remove the sublessee's name from the defaulter's list. Again we are faced with a meager body of established Florida law (two cases)⁵² for the purpose of comparison and analysis. In

46. *Paramount Enterprises v. Mitchell*, 104 Fla. 407, 140 So. 328 (1932) (at-tempt by picketers to intimidate customers of a theatre held not to be a secondary boycott); *Opera on Tour v. Weber*, 285 N.Y. 348, 34 N.E.2d 349 (1941) (a strike called solely because the employer used recorded rather than "live" music held unlawful). The analogy between these two cases and the *Wompearce* case seems remote indeed.

47. *Jelton-Delke Lumber Co. v. Mather*, 53 Fla. 969, 43 So. 590 (1907); *Harper v. Hoercherl*, 153 Fla. 29, 14 So.2d 179 (1943), from which the court quoted with approval:

Membership in such organizations being non-compulsory . . . courts have generally left the settlement of their internal affairs to the organization, to be conformed by its members so long as they chose to retain their affiliation with the organization.

48. See note 44 *supra*.

49. In addition to Florida, thirteen states have enacted laws governing secondary action (Alabama, California, Colorado, Georgia, Idaho, Iowa, Kansas, Minnesota, Missouri, North Dakota, Oregon, Texas, and Utah).

50. See note 44 *supra*.

51. The court relied on *Traux v. Corrigan*, 257 U.S. 312 (1921) and on the treatise, 1 TELLER, *LABOR DISPUTES* 455 (1940).

52. *Paramount Enterprises v. Mitchell*, (*supra*) Note 46; plus the strong dicta in *Stanton v. Harris*, 152 Fla. 736, 13 So.2d 17 (1943)(dicta).

general, Florida has adhered to the rule adopted in other jurisdictions,⁵³ that, ordinarily, a court will not exert its power to settle disputes occurring when a union attempts to put its own rules into effect. The rationale is that a union is a voluntary association, a sort of "country club," whose internal affairs should be governed solely by its own members.⁵⁴ This view, however, does not take into account that, for the workers in many trades, union membership is not only not voluntary, but is a prerequisite to working at all, or that the constitutions of such unions often disenfranchise the substantial majority of their members.⁵⁵ This point should not, perhaps, be belabored, because the "internal affairs" argument seems inapplicable to the *Wompearce* case. The effect of the defaulter's list was decidedly *external*, both as to the plaintiff and his sublessee, and, indirectly, to the public as a whole.

The vice in this decision is that the court failed to recognize the musician's union in Miami, with its affiliates throughout the country, as a monopoly of the most cohesive and absolute kind,⁵⁶ and that its internal affairs should not be governed by the same judicial standards as those applied to a country club. The situation is not analogous to the usual business dispute, where, if one party does not like the way the other runs his affairs, he can freely "take his business elsewhere." Rather, it is as though a utility were to refuse to provide service to a tenant because the previous tenant had not paid his bill.

True, the issue of monopoly was not raised in this case, though Florida has, by statute,⁵⁷ placed restrictions upon monopolistic practices, similar to those enacted by the federal government.⁵⁸ If the time-honored immunity

53. E.g., *Mayo v. Great Lakes Greyhound Lines*, 333 Mich. 205, 52 N. W. 665 (1952); *Hickman v. Cline*,—Nev.—, 279 P.2d 662 (1955); *Dakchovolous v. Ernst*, 282 App. Div. 1101, 126 N.Y.S.2d 534, (3d Dep't 1953); *Bires v. Barney*,—Ore.—, 277 P.2d 751 (1954).

54. 76 So.2d at 302.

55. For an excellent (though rather strongly worded) discussion of this problem see Valie, *A Bill of Rights for the Union Man*, Readers Digest, Jan. 1955, p. 33. This article quotes extensively from the constitutions of certain unions and shows that, by the use of "joker" clauses, the rank-and-file union members are given little, if anything to say about the running of their organization. The author hastened to point out, of course, that the constitutions of conservative unions usually provide for a representative internal administration.

56. It will be recalled that in 1942 the musician's union was able to stop *all* production of phonograph records in the United States. An antitrust action was brought against the union, but the United States Supreme Court held that the union's action was protected by the Clayton Act (see note 59 *infra*) and by the Norris-LaGuardia Anti-Injunction Act 47 STAT. 70 (1932), 29 U.S.C. §§ 101 - 115 (1952); *United States v. American Federation of Musicians*, 318 U.S. 741 (1943). The union received unsympathetic Congressional attention when, in 1946, the Lea (or "Anti-Petrillo") Act was passed, making it unlawful to coerce radio stations into hiring unneeded musicians or to exact payment for the manufacture or use of recorded material; 60 STAT. 89 (1946), 47 U.S.C. § 506 (1952). See Van de Water, *The Secondary Boycott Provisions of Taft-Hartley: Their Potential Influence on Make-Work Activities*, 28 So. CALIF. L. REV. 33 (1954).

57. FLA. STAT. §§ 542.01 - 542.12 (1953).

58. E.g., the Sherman Anti-Trust Act, 26 STAT. 209 (1937), 15 U.S.C. §§ 1-37 (1952).

of labor unions from anti-trust laws⁵⁹ could be overcome in Florida, situations similar to the *Wompearce* case would seldom arise. The language⁶⁰ of the Florida Act would seem applicable to the activities of the union in this case, particularly because there is no indication that unions are exempted from its provisions.

Three closely related cases are *Treasure Inc. v. Hotel and Restaurant Employees Union, Local 133 AFL*,⁶¹ *Sax Enterprises v. Hotel Employees Union, Local 255, AFL*,⁶² and *Boca Raton Club v. Hotel Employees Union, Local 255, AFL*.⁶³ They arose from the recent efforts of the Hotel Employees Union to organize the workers in the leading Miami and Miami Beach hotels, — a situation we will discuss in detail later.

The *Treasure* case was heard in the Circuit Court (Dade County) before Judge Cannon, who first granted a temporary injunction against the picketing of the plaintiff's hotel, based on the following allegation:

. . . [T]hat the picketing was for the purpose of coercing [the plaintiff] . . . to sign a contract with the Union as its authorized bargaining representative . . . so that the Union would be able to use such contract to compel his employees to become members of the Union [Italics added].

After further proceedings, the judge dissolved the temporary injunction, stating that, even though the allegations had been established to his satisfaction,

. . . [S]o long as said picketing is conducted in a peaceful fashion, and is for a legal purpose . . . the purpose of said picketing, or the reason why the defendants are engaged in said picketing is wholly immaterial

On certiorari, the Supreme Court reversed, holding that the lower court's decree must be based upon specific findings as to the legality of the *purpose* for the picketing.⁶⁴ The court would not go as far as to

59. The Clayton Act, 38 STAT. 731 (1914), 15 U.S.C. § 17 (1952) specifically exempts labor organizations from federal antitrust laws.

60. FLA. STAT. § 542.05 reads thus:

. . . Any person who shall or may become engaged in any combination of capital, skill or acts by two or more firms, corporations or associations of persons or of either two or more of them, for either, any or all of the following purposes:

(1) To create or carry out restrictions in trade or commerce or aids to commerce, or to create or carry out restrictions in the full and free pursuit of any business . . . shall be punished by a fine of not less than fifty dollars nor more than five thousand dollars, and by imprisonment in the penitentiary for not less than one nor more than ten years

61. 72 So.2d 670 (Fla. 1954).

62. 80 So.2d 602 (Fla. 1955).

63. 80 So.2d 680 (Fla. 1955).

64. 80 So.2d at 681. It will be recalled that peaceful picketing for an unlawful purpose was held properly enjoined in *Local Union No. 519 of United Ass'n of Journeymen etc., v. Robertson*, 44 So.2d 899 (Fla. 1950). Under Federal law, the same principle was applied in *International Union v. Gazzam*, 339 U.S. 533 (1950); *International Brotherhood of Teamsters v. Hanke*, 339 U.S. 470 (1950); *Hughes v. Superior Court*,

hold that the purpose had, in effect, been "found" by the Chancellor when he expressed his belief that the purpose was as alleged by the plaintiff. However, the Supreme Court dropped a fairly broad hint as to the expected final outcome by mentioning *Miami Typographical Union v. Ormerod*,⁶⁵ where picketing for the same purpose (*i.e.*, to coerce the employer into signing a contract in which the union is made the exclusive bargaining representative, so that the union can use the contract to compel the employees to join) was held unlawful and properly enjoined.

Sax Enterprises arose from a similar action, brought by the hotel to enjoin picketing allegedly for the same purpose as in the *Treasure* case. The Circuit Court, on application for a temporary injunction, declined to issue one because, it held, it could not determine whether the picketing was for an unlawful purpose (admittedly the key issue) until the union had filed its answer. The employer brought certiorari and the Supreme Court, Hobson, J., reversed the Circuit Court order, stating, "With no other evidence to the contrary, the Chancellor had no alternative other than to accept as true the sworn allegations of the complaint"

As in the *Treasure* case, these allegations, when accepted as true, would bring the union's conduct squarely within the interdiction of *Miami Typographical Union v. Ormerod*.⁶⁶

The last case in this group, *Boca Raton Club v. Hotel Employees Union, Local 255, AFL*,⁶⁷ was consolidated in the Circuit Court with similar actions brought against the union by several other hotels. Precisely the same sequence of events occurred in the Circuit Court as in the *Sax Enterprise* case, above, with no temporary injunction issued. The Supreme Court, in a very brief opinion, reversed and remanded to the Circuit Court with directions to issue a temporary injunction, and specifically cited the *Sax Enterprise* case as authority.

A case of some significance was *International Brotherhood of Teamsters, etc. v. Miami Retail Grocers*.⁶⁸ The Florida Supreme Court held that an injunction could properly be issued by the Circuit Court (Dade County) to prevent picketing where the controversy was within federal jurisdiction, but where the union had not been properly certified by an election among the employees.⁶⁹

339 U.S. 460 (1950); *Giboney v. Empire Storage and Ice Company*, 336 U.S. 490 (1949); *Carpenters and Joiner's Union v. Ritter's Cafe*, 315 U.S. 722 (1942); See also Gregory, *Constitutional Limitations on the Regulation of Union and Employer Conduct*, 49 MICH. L. REV. (1950), and FORKOSCH, A TREATISE ON LABOR LAW (1953) § 199.

65. 61 So.2d 763 (Fla. 1952), noted in 7 MIAMI L.Q. 434 (1953).

66. *Ibid.*

67. 80 So.2d 681 (Fla. 1955).

68. 76 So.2d 491 (Fla. 1954).

69. The Florida Supreme Court decision does not reveal the facts as fully as we have them stated above, but the reader may find the details in the Circuit Court file,

Finally, *International Brotherhood of Electrical Workers v. Oikle*⁷⁰ raised no question of substantive labor law, but merely concerned the sufficiency of the evidence in a suit, brought by a union member against the union, for alleged violation of the union by-laws.

c) *The telephone strike*

On March 14, 1955, upon the expiration of the contract between the Southern Bell Telephone Company and the Communication Workers of America, a strike extending over several states⁷¹ followed. The workers in Florida were represented by Local 3107, whose head office is in Miami.

In Florida, as in other states, the strike was accompanied by numerous acts of violence, some severe and others trivial,⁷² and, as usual, each side accused the other as the perpetrator.

Four incidents (not all of which involved violence) were followed by significant legal action and are of interest here.

The "812" injunction suit. After the strike had been in progress for a month or so, members of the union discovered that, by dialing the number "812" from Miami-area telephones, the caller would hear a recorded message about the strike, apparently prepared by telephone company officials. The message began with the words "Message to all supervisors . . ." and commented upon various acts of vandalism committed against company property

Miami Retail Grocers v. Int'l Union of Teamsters, etc., case no. 173669-E (Circuit Court, Dade County, Oct. 26, 1954).

70. 77 So.2d 762 (Fla. 1955).

71. Alabama, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.

72. The Southern Bell Telephone Company reported that in the Dade County area, some 20,000 telephones were put out of order, at one time or another, by cable-cutting (the company sought to enjoin the union from allegedly committing these and other acts of vandalism in its unsuccessful Circuit Court suit. No individuals were prosecuted).

There was a mysterious fire and a dynamiting incident at two isolated switchboard installations, but these were not followed by legal proceedings of any sort. Two complaints were filed against telephone company supervisors, in Coral Gables, for allegedly driving company trucks into picket lines in a violent manner. Judge Sutton (of the City of Coral Gables) dismissed both cases.

In Miami Springs pickets were "buzzed" by a mysterious automobile, driven, it appears, by a dwarf who was later found to have no connection with either the union or the telephone company, but who had injected himself into the dispute purely on his own initiative. The police apprehended him and he was found guilty of reckless driving.

A "fire hose" incident took place on the evening of April 23, outside the telephone company main office building in downtown Miami, following a meeting of the union members. It is not clear from the conflicting accounts as to the exact sequence of events leading up to the incident, but it is universally agreed that a first-class fracas ensued, involving some forty policemen, a contingent from the fire department (with five hoses), seventy non-strikers, and an unknown number of strikers and bystanders.

There was also the "name-calling" case in Coral Gables (see text), and six disorderly conduct charges brought against individual pickets (only one picket was convicted).

in the Miami area.⁷³ The union promptly brought suit⁷⁴ to enjoin the company from using the language in the message, on the grounds that it was: “. . . intimidating to the workers, false, insulting, and calculated to cause violence” The suit was successful to the extent that the Circuit Court in Dade County, Holt, J., enjoined⁷⁵ the company from using the language in the last sentence of the message, referring to the strikers as “terrorist, vandals and jailbirds.”

Thereafter, the company prepared other recordings, which were changed from time to time during the course of the strike, but which, of course, avoided the offending words.

The injunction suit against alleged violent picketing and vandalism. The telephone company, in its answer to the so-called “812” injunction suit, asked, by way of counterclaim, for injunctive relief against the union. The counterclaim set forth in great detail the activities allegedly committed by the union, including mass picketing, the blocking of entrances to telephone company buildings, the use of abusive and threatening language against non-strikers and bystanders, assaults of various kinds, and vandalism.

73. The recorded message said:

Message to all supervisors. A wave of vandalism swept over the Southwest section when at least forty-two cables were cut interrupting service to 9000 subscribers. We cannot help but wonder what is going through the minds of those striking employees who are not responsible for these crimes—not against the telephone company but against the public, your friends, and neighbors. Now is the time for striking employees to make a decision whether or not they will join other right-thinking people, or remain on the same team with terrorist vandals and jailbirds.

74. Communication Workers of America, CIO v. Southern Bell Telephone and Telegraph Company, case no. 178497-A (Circuit Court, Dade County, April 14, 1955).

75. Judge Holt issued his temporary restraining order on April 15, 1955. His order did not indicate its legal basis, and it is difficult to conceive a valid one under the established principles of constitutional law as to freedom of speech. Probably the best summation of these principles is to be found in Justice Holmes' opinion, *Schenck v. United States*, 249 U.S. 47 (1919), where the “clear and present danger” rule was first enunciated. See 10 MIAMI L.Q. 37 (1955).

A closely analogous situation to that before Judge Holt was presented to the United States Supreme Court in *Cafeteria Employees Union v. Angelos*, 320 U.S. 293 (1943), where it appeared that pickets told prospective customers that the cafeteria served “bad food” and that by patronizing it “they were aiding the cause of Fascism.” The Supreme Court held that “. . . to use loose language and undefined slogans that are part of the conventional give-and-take in our economic and political controversies—like ‘unfair’ and ‘fascist’—is not to falsify facts” and was therefore not subject to state injunction.

In *Moore v. City Dry Cleaners*, 41 So.2d 865 (FLA. 1944), the court said (at page 873):

. . . we know of no lawful authority under which a court of equity may proceed to enjoin a free discussion of the facts surrounding such labor difficulty, even though the things said may prove to be unfavorable to the industrial or business establishment toward which the statements are directed. . . . In the absence of an express situation plainly requiring reasonable public regulation in the interest of human life and safety, the right [§ 13 FLA. CONST. D.R.] may not be denied or abridged.

An appropriate court order was sought, based in part, on the provisions of the Florida Labor Organizations Act.⁷⁶

The Circuit Court denied the relief sought,⁷⁷ holding that there was insufficient proof of the activities complained of, and that the court did not wish to take over the ordinary law-enforcement duties of the Miami police.

The Coral Gables name-calling case. During the picketing of the Coral Gables telephone company office, a picket was arrested and charged with the violation of Ordinance 666, Chapter 2, Sections 2 and 3 of the City of Coral Gables⁷⁸ in that he called a non-striking telephone company employee a "scab." The arrest was concededly made as a "test case"⁷⁹ following similar name-calling incidents brought to the attention of the Coral Gables police. Before trial, the city dropped the charge of violating Section 3, and proceeded on the theory that the word "scab" was ". . . offensive language calculated to provoke a breach of the peace . . ." The opposing sides⁸⁰ introduced various legal and dictionary definitions of

76. FLA. STAT. 447.09(13)(1953):

It shall be unlawful for any person . . . to engage in picketing by force and violence, or to picket in any such manner as to prevent ingress and egress to and from any premises, or to picket other than in a reasonable and peaceful manner.

77. *Communication Workers of America, CIO v. Southern Bell Telephone and Telegraph Company*, case no. 178497-A (Circuit Court, Dade County, opinion and order dated April 27, 1955). The opinion reads, in part, as follows:

This court is ever reluctant to intrude itself into matters of controversy which are purely economic, unless the public peace is imminently and seriously threatened, and injury and damage may result to persons and property unless court action be had. I do not find such to be the case here. . . . The law enforcement agencies are in my opinion sufficient to properly police this strike. . . . the burden [is] on the defendant company to prove that the union and its members are not picketing peacefully, but are indulging in violence contrary to the law of the state. The defendant company has not carried this burden. . . .

78. Section 2 reads as follows:

It shall be unlawful in the City to wilfully disturb the peace of other persons by violence, tumultuous or offensive conduct or carriage or by profane, obscene, or offensive language, calculated to provoke a breach of the peace or by assaulting, striking, or fighting any person or for any reason to permit such conduct on or upon any premises owned or possessed by him and which is under such person's management or control so that other person's are disturbed thereby. Any person violating any of the provisions of this Section upon conviction thereof shall be guilty of disturbing the peace.

Section 3 reads (in part):

It shall be unlawful in the City for any person to make, aid, countenance or assist in making any improper noise, riot, disturbance or breach of the peace; or to collect in a group or crowd for any unlawful purpose to the annoyance or disturbance of other persons . . . or to aid or abet in any fight, quarrel, or other disturbance . . .

79. *Coral Gables v. Walton*, case no. 15691 (Municipal Court, Coral Gables, April 8, 1955).

80. The defendant was, of course, represented by counsel, but the City Attorney was absent at the trial. His function was taken over by the judge himself, a procedure which, according to the judge's remarks, is customary in that court. The judge had also prepared the charge and warrant. The defendant's motion for change of venue and disqualification of the court was denied.

the word, and cited cases⁸¹ in which courts of other jurisdictions have interpreted it. The court, Brown, J., found the defendant guilty, and remarked that:

The use of the word "scab" as a designation of a human being, in the opinion of this Court, is one of the most opprobrious and insulting statements in the English language when used in a time of strike. . . . [T]he use of such a word at such a time, as a strike in our area, could tend to a total break-down, possibly, of law enforcement.

The defendant was fined \$50.00 or 25 days in jail, which sentence the court immediately suspended.

Appellate history. The Florida Supreme Court did not review any of the legal proceedings brought about by the telephone strike, although appellate review was sought up to the time of the strike settlement. This may be regretted by legal scholars, but was doubtless welcomed by the parties themselves, who filed stipulations of dismissal of all pending actions as part of their settlement agreement.

d) *The hotel strike*

Litigation in the Florida courts. The Miami and Miami Beach hotel strike began officially on April 13, 1955, a date which will probably become a "Bastille Day" in the annals of Florida labor litigation. According to union officials, the strike was called following the refusal of twenty-two hotels to bargain collectively with the union. The hotel representatives, in reply, claim that the union does not represent a majority of the employees, that according to Section 447.09(3) of the Florida Statutes⁸² the strike was unlawful unless authorized by a majority vote of the employees, and that without such a majority vote the hotels are under no duty to bargain.

When the strike began, the hotels promptly sought to enjoin picketing in a series of twenty-two separate Circuit Court suits, alleging further that the picketing was for an unlawful *purpose*, namely, to coerce the management of each hotel to sign a contract designating the union as the exclusive bargaining representative, so that the contract could be used to force individual employees to join the union.⁸³

81. *United States v. Taliafero*, 290 Fed. 214 (W.D. Va. 1922); *Guerin v. State*, 209 Ark. 1082, 193 S.W.2d 997 (1946); *Walter A. Wood Mowing & Reaping Machine Co., v. Toohey*, 114 Misc. 185, 185 N.Y.S. 95 (Sup. Ct. 1921).

82. This section reads:

It shall be unlawful for any person . . . To participate in any strike, walkout, or cessation of work or continuation thereof without the same being authorized by a majority vote of the employees to be governed thereby; provided, that this shall not prohibit any person from terminating his employment of his own volition.

See *Kanner and Corcoran, Florida Employment Peace Statute—Compelling Union Recognition*, 4 *MIAMI L. Q.* 161 (1950).

83. See notes 61, 62, 63 *supra* and the related text for further explanation of this issue.

At this point, unfortunately, the dispute ran into procedural detours. Before the union's attorneys had filed an answer, preliminary hearings were held to determine whether or not the court should issue a temporary injunction against the picketing. Denial of the temporary injunction was followed by the plaintiff's bringing certiorari to the Florida Supreme Court in eight of the suits,⁸⁴ urging that such denial was error. The Supreme Court granted certiorari, and remanded the cases with directions to enter the temporary injunctions sought.⁸⁵

To avoid unnecessary litigation, counsel for both sides then agreed to proceed with six⁸⁶ of the twenty-two cases, the others to be held in abeyance pending final outcome of the six.⁸⁷ After further hearings, the Circuit Court dissolved all the temporary injunctions against picketing, whereupon counsel for the hotels sought supersedeas from the Supreme Court. The Supreme Court granted supersedeas⁸⁸ and directed that its ruling was to have the effect of restoring the temporary injunction against picketing. Thus, with one exception,⁸⁹ all picketing of the affected Miami Beach hotels was enjoined, pending a final decision by the Florida Supreme Court.

A sideline skirmish to the main battle developed in the San Marino hotel case.⁹⁰ Here the Circuit Judge, in an attempt to settle the issue as to whether or not the union actually represented a majority of the employees, had ordered an election to be conducted under court supervision. Picketing was enjoined in the meantime. To test the legality of

84. The eight suits were: Boca Raton Club v. Hotel Employees Union, Local 255, AFL, 80 So.2d 681 (Fla. 1955) (with which five of the Circuit Court suits were consolidated on appeal); Sax Enterprises v. Hotel Employees Union, Local 255, AFL, 80 So.2d 602 (Fla. 1955); and Treasure Inc., v. Hotel and Restaurant Employees Union, Local 255, AFL, 80 So.2d 681 (Fla. 1955).

85. See notes 61, 62, 63 *supra*, and the related text for further details.

86. The six plaintiffs were Boca Raton Club, Inc., Sorrento Hotel Corp., Harry Levy *et al* (Sherry Frontenac Hotel), Leevlands Corporation, Monte Carlo Inc., and the 2500 Collins Avenue Corporation. The defendant in each case was the Hotel Employees Union, Local 255, AFL.

87. Following the final decision by the Florida Supreme Court as to these six cases, the defeated party will probably proceed in the Circuit Court with the remaining suits, accepting, almost as a matter of course, an adverse judgment on each. Then, following similarly unsuccessful appeals to the Supreme Court of Florida, the defeated party will be in a position to seek review of all suits by the Supreme Court of the United States. Considering the importance of the strike, both nationally and locally, it seems likely that this course will be followed. If the United States Supreme Court *does* review the hotel cases, it seems almost inevitable that it will be confronted with a new problem in the "free speech" aspects of picketing, *i.e.*, to what extent does the Florida Supreme Court decision conflict with those decisions of the United States Supreme Court which have held picketing to be protected (with certain qualifications) by the Fourteenth Amendment. A restatement of the United States Supreme Court's position on this vexed question would be indeed welcome.

88. This ruling had not appeared, at press time, in either the official or unofficial reporters.

89. The exception was the Versailles Hotel, which, for some reason, had not taken legal proceedings to enjoin the picketing.

90. Thomas Jefferson, Inc., v. Hotel Employees Union, Local 255, AFL, 81 So.2d 731 (Fla. 1955).

this procedure, the hotel filed a notice of appeal in the Circuit Court, and applied to that court for a stay of the portion of the decree ordering the election. The Circuit Court granted a stay as to the *entire* decree, which, of course, meant that picketing could be resumed. On certiorari, the Supreme Court held that the Chancellor should have granted the partial stay requested by the hotel, and, undoubtedly to the chagrin of the union, so ordered.

It is interesting to observe at this point that, due to the procedure followed by counsel for the hotels (*i.e.*, petitioning for certiorari and super-seedeas from the Circuit Court interlocutory orders), no final Circuit Court decree was entered in *any* of the suits. Final review of the hotel cases by the Supreme Court of Florida was secured when counsel for the hotels petitioned for certiorari directed to the Circuit Court's dissolution of the temporary injunction against picketing.

The long awaited Supreme Court decision⁹¹ came on October 19 when the high court granted certiorari and quashed the latest Circuit Court orders. In spite of the many issues raised by each side, only two were considered by the court, namely, ". . . whether (1) the respondent union complied with the prerequisites to lawful picketing outlined in the *Sax* case, . . . and (2) whether the picketing was for a lawful or unlawful purpose"

To understand the court's holding as to issue (1) it is necessary to reexamine the "prerequisites" to lawful picketing referred to in the *Sax* case (see note 62 *supra* and the related text). There it was said, by dicta only,⁹²

. . . In order for such picketing to be lawful, the union must establish that the employees have chosen it as their representative . . . and the labor organization must also inform the employer of the object to be accomplished by the picketing and afford to the employer a fair opportunity to engage in negotiations.

Here, the court held that, since the Circuit Court proceedings did not establish that the union was properly chosen by the workers as their representative, the union was not able to provide a fair opportunity for the employer to engage in negotiations with them as an authorized bargaining agent. Hence, the picketing was held to be:^{92a}

91. *Boca Raton Club, Inc., v. Hotel Employees Union, Local 255, AFL*, 83 So.2d 11 (Fla. 1955) (case no's 26,197, 26,198, 26,199, 26,200, 26,201, 26,202, Supreme Court of Florida, October 19, 1955). The suits filed by the six plaintiffs listed in note 86 *supra* were consolidated in this appeal.

92. The court was, at this point, faced with an "apparent conflict" between the dicta in the *Sax* case, "In order for such picketing to be lawful, the union must establish that the employees have chosen it as their representative . . . and must also inform the employer of the object to be accomplished . . ." and that in *Hotel and Restaurant Employees etc. Union v. Cothron*, 59 So.2d 366 (Fla. 1952), "There is no rule . . . which requires a notice to the employer of the reasons for an impending strike as a prerequisite to picketing . . ." The court reconciled the contradiction by holding that, although no rule demanded such prerequisites to lawful picketing, "fair dealing and sound public policy demand them. . . ."

92a. 83 So.2d. at 16.

. . . 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 the picketing is for an unlawful purpose . . . [Italics added]

This last sentence, italicized above, indicates that the Supreme Court did not in fact consider issues (1) and (2) to be severable, as the early portion of its opinion would lead one to believe. The court, in effect, settled issue (2) (i.e. illegality of the purpose of the picketing) in its deliberation of issue (1). For good measure, however, the court further held that the picketing was “. . . for the obvious purpose of forcing the employers to cause their employees to designate the union as their bargaining agent and perhaps to join the union . . .”^{92b} and thus unlawful under the doctrine of *Miami Typographical Union v. Ormerod*, (see note 65 *supra* and the related text.

N.L.R.B. jurisdiction. While both parties to the hotel dispute were busily seeking such remedies as might be afforded by the Florida courts, the Hotel Employees Union filed a petition⁹³ with the Regional Director of the N.L.R.B., at Atlanta, Georgia, for certification as the bargaining representative of the hotel employees. The Board dismissed the petition on July 1, 1955, relying on the precedent established by *Hotel Association of St. Louis*,⁹⁴ and reaffirmed in *Virgin Isles Hotel*,⁹⁵ where the Board held that Congress evidently did not intend federal labor laws to control hotels.

The union promptly filed a request for review of this ruling, on July 12, 1955, before the N.L.R.B. in Washington. Opposing briefs were filed by the American Hotel Association, all hotel members of the Miami Beach Hotel Association, and by the Hotel Employees Union.⁹⁶ The union, as petitioner, contended that the hotel industry (nation-wide) grosses seven and one half billion dollars per year, and employs one-half a million persons, “all in the chain or flow of commerce,” thus justifying federal intervention. Further, the union contended, the N.L.R.B. had previously refused to consider hotel disputes on the grounds of “policy” rather than on an actual lack of jurisdiction. Facts and figures⁹⁷ were introduced by the union to support its theory that the Miami Beach hotels were engaged in interstate commerce. In addition, evil results had followed the Board’s

92b. *Ibid.*

93. N.L.R.B. Docket No. 10-RC-3135 (Aug. 9, 1955).

94. 92 N.L.R.B. 1388 (1951).

95. 110 N.L.R.B. 558 (1954).

96. See note 93 *supra*.

97. The brief presented by the union, among other things, stated:

During the year ending September, 1954, the four county area including Miami and southeast Florida had 2,500,000 visitors, (the greatest number of whom were accommodated by the hotel industry) who spent 47,600,000 visitor days and \$513,000,000. Of this amount, \$376,000,000 was spent in Dade County (Miami-Miami Beach) alone. This represents one-third of all spending in this county. \$235,000,000 was spent in the

failure to assert jurisdiction over hotels, the union alleged, such as blacklisting of employees, the use of "labor spies," and stalemate strikes. The union, in its brief, also vigorously attacked the Florida labor laws for their alleged ineffectiveness, and commented bitterly upon the decisions handed down by the Florida Circuit Courts, and by the Florida Supreme Court. It should be noted, parenthetically, that, up to this time, the Florida Supreme Court had merely decided such relatively minor issues as had been raised on petition for certiorari or supersedeas,⁹⁸ and that the court had not decided any hotel case on its merits.

The brief of the American Hotel Association, in its answer, pointed out that the Association is in no sense an employer of the hotel workers, but is merely a trade association composed of the individual hotels and was thus not a proper party to the suit. For good measure, however, the Association set forth several reasons why the Board should not reverse its established policy of refusing to enter the field of hotel disputes. Historically, the Association asserted, the N.L.R.B. had never entertained such disputes, even in the pro-labor Wagner Act days. Moreover, Senate debates, indicative of similar Congressional intent at the time of the enactment of the Taft-Hartley Act, were cited for persuasion.⁹⁹ The Fair Labor Standards

Miami Beach area alone. This is equivalent to two and one-half times the spending of the residents of Miami Beach.

The hotel industry in Miami Beach has more than 30,000 units, employs approximately 12,000 people in all categories, and received for the year ending September, 1954, in excess of \$74,000,000 for hotel lodging from visitors from outside the state of Florida. These hotels also received in excess of \$27,000,000 for food from these visitors. Thus the hotel industry of Miami Beach received over \$100,000,000 in revenue from tourists moving in the chain of commerce. *Bureau of Economic Research, University of Miami.*

The tourist industry of Miami and Miami Beach represents the leading industry of the area and produces more than the income of the next two leading industries (Miami Daily News, 3/16/1955 . . .). In 1949, when the tourist trade in the Greater Miami area was only \$243,000,000 as compared with \$376,000,000 in 1954, the income of the next leading industry (airline operations and repairs) was only \$105,000,000 and income from all manufacturing was only \$45,000,000; fruit and vegetable growing produced only \$13,700,000 in total income.

In addition, the hotel industry of Miami Beach is closely allied to all types of interstate transportation systems. During the year ending September, 1954, the airlines alone transported over 1,200,000 tourists to the Greater Miami area, the greatest number of these people being destined for accommodations in the hotels of the employer association herein.

. . . Eastern Airlines . . . transported over 25,000 persons and received revenue in excess of \$28,000,000, National Airlines transported in excess of 23,000 persons with revenue in excess of \$25,000,000. Delta Airlines [received] . . . in excess of a \$5,700,000 revenue. . . .

98. See notes 61, 62, 63 *supra*, and the related text.

99. In particular, the following statement by Senator Taft, made during the debate of August 30, 1949, 95 Cong. Rec. 12465, 12515 (1949):

A hotel performs its service within four walls. It ships nothing into commerce. It produces no goods for commerce. In my opinion the Act was never intended to cover the hotel industry. . . .

Act,¹⁰⁰ the Association further argued, exempts hotels, and thus furnishes collateral evidence of the intent of Congress not to regulate the activities of hotels.

Finally, the Miami Beach Hotel Association, in its brief, alleged that the union was conducting its activities for an illegal purpose (*i.e.*, to force the hotels to sign "union contracts" and then use these contracts to compel the employees to join the union) and thus should not be entitled to "equitable treatment" by the N.L.R.B. The status of the Miami Beach Hotel Association was shown to be similar to that of the American Hotel Association (*i.e.*, not that of an employer). Also, the brief contained a review of the existing Florida labor law, plus the assertion that under this law, workers are guaranteed the same rights and privileges as under federal law. The brief concluded with a history of N.L.R.B. policy toward hotels, and argued that, because of their predominantly local economic significance, hotels should not be subject to federal jurisdiction.

The refusal of the Regional Board in Atlanta to entertain the Miami Beach Hotel strike was quickly followed by a blistering speech by George Meany, President of the American Federation of Labor, before the convention of the New York State Federation of Labor in Buffalo, New York, on July 18.¹⁰¹ Subsequently Mr. Meany's speech was introduced into the Congressional Record¹⁰² by Senator Lehman of New York. Mr. Lehman also introduced a letter¹⁰³ he had written to the chairman of the N.L.R.B., urging that the Board assert jurisdiction. Mr. Lehman finally read into

100. 52 STAT. 1060 (1938) as amended, 29 U.S.C. § 201 (1952).

101. Mr. Meany stated, among other things:

. . . for those who work for a living in the hotels in Miami and Miami Beach, there is plenty of misery in this "paradise" where the law of the jungle still prevails. . . . Injunctions [against peaceful picketing] were based on a provision in the misnamed Florida State "Right-to-Work" law, whose real purpose is to wreck unions. . . . The joker in the law is that it provides no machinery for conducting employee elections to determine collective bargaining representatives. . . . The union was forced to turn for relief to the National Labor Relations Board, which administers what was left of the original Wagner Act by the Taft-Hartley Act . . . Rights have already been denied to them by a one-sided and repressive State law. Is the Federal Government also going to slam its doors in the face of these exploited workers?

102. 101 CONG. REC. 9774 (daily ed. July 20, 1955).

103. The letter was written on July 20, 1955, and reads, in part, as follows:

'There is no question in my mind that the employees of the Miami Beach hotels are, in the broad construction, engaged in an industry involved in interstate commerce. . . . Should it prove necessary to enact legislation requiring the Board to take jurisdiction in such cases, I shall be inclined to introduce such legislation. It seems to me, however, that whatever the glaring faults in the National Labor Relations Act—and there are many—it certainly gives the Board adequate authority to take jurisdiction in this matter.

the Record a proposed bill¹⁰⁴ which would compel the National Relations Board to take jurisdiction over such hotel disputes.¹⁰⁵

However, on August 26 the National Labor Relations Board, in a three-to-two split dismissed the union's petition ". . . on the ground that it would not effectuate the policies of the Act to assert jurisdiction over hotels. . . ."¹⁰⁶ The Board's decision is even more significant in view of the settled weight of authority,¹⁰⁷ that the Board has virtually unlimited discretion as to whether or not it will intervene in a particular dispute, *regardless of its jurisdiction under the Commerce Clause*.¹⁰⁸

Counsel for the union, nevertheless, have announced plans to file a mandamus suit to compel the National Labor Relations Board to enter the dispute.¹⁰⁹

c) *Miscellaneous cases*

Federal preemption. A case which plunged the Florida Supreme Court into the controversial problems which have arisen from federal preemption of state power was *Perez v. Triffiletti*.¹¹⁰ The suit was brought by a majority of the employees to enjoin a minority union from picketing the employer's premises, allegedly with violence. The Circuit Court (Dade County) issued a final injunction against the picketing, and the defendants appealed on the ground that, due to federal jurisdiction over their controversy under the Taft-Hartley Act, the Circuit Court was without power to grant relief.

The Supreme Court affirmed the decree, and, in its opinion, set forth a concise review and analysis of the existing law, as pronounced by the

104. The Bill (S. 2651) was ordered to be printed into the *Congressional Record*, as follows:

Be it enacted, etc., That section 14 of the National Labor Relations Act, as amended, is amended by adding at the end thereof a new subsection as follows:

"(c) Nothing in this act shall be construed to authorize the Board to decline to exercise jurisdiction over any labor dispute solely by reason of the fact that the employer in such dispute is the operator, of one or more hotels."

105. *Ibid.*

106. At press time, the Board's ruling has not yet appeared in the N.L.R.B. advance sheets, but has been reported in the CCH Labor Law Reporter, at ¶53,170. Member Murdock dissented in accordance with his dissent in the *St. Louis Hotel* case (note 94 *supra*). Chairman Farmer felt that the Board should consider taking "limited" jurisdiction over hotels.

107. This doctrine was established in *J. E. Stone Lumber Co.*, 78 N.L.R.B. 627 (1948); *Cousins Tractor Co.*, 72 N.L.R.B. 857 (1947); *S & R Baking Co.*, 65 N.L.R.B. 351 (1946); *Lacey Milling Co.*, 48 N.L.R.B. 914 (1943) and has never been squarely challenged in the courts. Cf. *N.L.R.B. v. Denver Building and Construction Trade Council*, 341 U.S. 675, 684 (1951) (dicta). See also *The N.L.R.B. under Republican Administration*, 55 *COL. L. REV.* 852, 853 (1955).

108. For a recent discussion see Sullivan, "Affecting Interstate Commerce": *Coverage of National Labor Relations Act*, 1955 *LAW FORUM* 191 (1955).

109. *Miami Herald*, Oct. 21, 1955, Sec. B, p.1, col. 7-8.

110. 74 So.2d 100 (Fla. 1954).

United States Supreme Court.¹¹¹ Actually, it was not at all clear that this particular controversy so affected interstate commerce as to merit federal intervention, and, had the court so chosen, it could have probably thus disposed of the case. However, the court assumed, for the purposes of argument, that federal jurisdiction might have been invoked, and proceeded. When picketing is accompanied by violence, the court pointed out, state courts have not been precluded from acting to maintain law and order—in spite of concurrent federal jurisdiction. The court quoted with approval from *Garner v. Teamster's Local 776*,¹¹² in which it was said:¹¹³

We have held that the state may still exercise 'its historic powers over such traditional local matters as public safety and order. . . .'

Thus, since violence was the basis for the Circuit Court injunction, its decree was upheld.

Individual employment contracts. Two cases arose in which the Florida Supreme Court decided questions of law arising from an individual employment contract. *United Loan Corporation v. Weddle*¹¹⁴ concerned the validity of an agreement made by a loan company manager not to compete, directly or indirectly, with the company for a period of two years after the termination of his employment.¹¹⁵ The manager resigned, and promptly went to work for a nearby competitor. Suit was brought in the Circuit Court (Hillsborough County) to enjoin the breach of the contract, but the injunction was denied on the authority of *Love v. Miami*

111. Federal preemption of state power by the Taft-Hartley Act (and by its predecessor, the Wagner Act) has been a subject of much discussion by legal scholars. See FORKOSCH, A TREATISE ON LABOR LAW § 205 (1953); Smith, *Taft-Hartley Act and State Jurisdiction*, 46 MICH. L. REV. 593 (1948); Ratner, *Problems of Federal-State Jurisdiction in Labor Relations*, 3 LABOR L. J. 750 (1952) (cited by the court in this case). The court explained the development of the federal law in recent years as highlighted by the following leading cases: *Garner v. Teamsters Local 776*, 346 U.S. 485 (1953) (state court could not enjoin peaceful picketing where the dispute was under the jurisdiction of the National Labor Relations Board); *United Construction Workers v. Laburnum Construction Corp.*, 347 U.S. 656 (1954) (employer may recover tort damages from a union in a state court for unfair practices under the Taft-Hartley Act); *International Union AFL v. Wisconsin Employment Relations Board*, 336 U.S. 245 (1949) (state labor board may enjoin frequent unannounced work stoppages, despite concurrent federal jurisdiction). The Florida Supreme Court's conclusion that the state may properly intervene to preserve law and order is amply supported by the cases cited. A recent re-affirmation of these principles may be found in the recent case, *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468 (1955), and by dicta in *Amalgamated Clothing Workers v. Richman Brothers*, 348 U.S. 511 (1955).

112. 346 U.S. 485 (1953).

113. *Id.* at 488.

114. 77 So.2d 629 (Fla. 1955).

115. The significant portion of the contract read:

[the defendant] further agrees that for a period of two years after the termination of his employment for any reason that he will not engage in any way directly or indirectly in any business competitive with the company's nor solicit in any other way or manner work for and assist any competitive business in the city of Tampa, Florida, or within fifteen miles of the city limits of said city as these limits exist on the date of this agreement.

Laundry,¹¹⁶ a case in which the Florida Supreme Court denied specific performance of a similar contract between several truck drivers and their employer.

In a four-to-three split, the Supreme Court affirmed the *United Loan* decision, *without opinion*. Justice Drew, however, filed a dissenting opinion in which he set forth, at some length, the facts of the case and the reasons for his dissent. He believed, in essence, that there is a basic distinction to be made between the *Love* and the *United Loan* cases, namely, that while it may be against public policy to enforce such a contract against truck drivers, no such policy conflict would prevent its enforcement against a branch manager.¹¹⁷ To illustrate that such contracts are not offensive to the public policy of Florida, Justice Drew cited Section 542.12¹¹⁸ of the Florida Statutes (admittedly not applicable at the date the *United Loan* contract was consummated).

The second case, *Wynne v. Ludman Corp.*,¹¹⁹ merely reaffirmed the well-established principle that an employee cannot maintain an action for breach of his employment contract, where the contract is terminable by the employer at will.

Unlawful employment of minors. The court decided two cases in which the laws governing the employment of minors¹²⁰ were in issue. In *Winn-Lovett Tampa v. Murphree*¹²¹ an unlawfully employed minor attempted to sue his employer, in an ordinary tort action, for injuries received while on the job. The court held that, in spite of the rule holding Workmen's Compensation optional, that the minor's exclusive remedy was under the Workmen's Compensation Act. The court reasoned

116. 118 Fla. 137, 130 So. 32 (1934).

117. Justice Drew quoted at length from *Thompson v. Shell Petroleum Corp.*, 130 Fla. 652, 178 So. 413 (1938), in which the court indicated that the enforceability of an agreement not to compete would depend on the *equality of bargaining power* of the contracting parties. If this test had been applied in the *United Loan* case, a different result might readily be justified. However, on closer examination, the *Thompson* case does not seem to afford a strong precedent since it concerned a lease contract for a gasoline station, and the issue before the court on appeal was confined to the theory of mutuality of obligation, in the law of contracts.

The court, apparently, did not consider the voluminous and well-settled case law of other jurisdictions, from which it appears that an agreement not to compete will be enforced, by injunction if necessary, where the contract terms are reasonable as to duration, geographic limits, and as to the type of prohibited activity. *E.g.*, *Electrical Products v. Howell*, 108 Colo. 370, 117 P.2d 1010 (1941); *Friedenthal v. Epsey*, 45 Colo. 488, 102 Pac. 280 (1909); *May v. Young*, 125 Conn. 1, 2 A.2d 385 (1938); *Kinney v. Scarborough Co.*, 138 Ga. 77, 74 S.E. 772 (1912); *Ray v. Bolduc*, 140 Me. 103, 34 A.2d 479 (1943); *Deuerling v. City Baking Co.*, 155 Md. 280, 141 Atl. 542 (1928).

118. This section reads, in part:

... one who is employed as an agent or employee may agree with his employer, to refrain from carrying on or engaging in a similar business and from soliciting old customers of such employer within a reasonably limited time and area . . . Said agreement may, in the discretion of a court of competent jurisdiction be enforced by injunction.

119. 79 So.2d 690 (Fla. 1955).

120. FLA. STAT. §§ 450.011 - 450.171 (1953).

121. 73 So.2d 287 (Fla. 1954), noted in 9 MIAMI L. Q. 111 (1954).

that the “. . . act is implicit in every employer-employee relationship, irrespective of the employment or age of the parties”¹²²

A not-too-difficult problem in statutory interpretation was presented by *Hunter v. Bullington*.¹²³ Section 743.03 of the Florida Statutes¹²⁴ removes the common law disabilities of married female minors. On the other hand, Section 450.071 prohibits the employment of minors (with certain exceptions) where alcoholic beverages are sold, “. . . whether such person's disabilities of nonage have been removed by marriage or otherwise. . . .” The case arose when a married female minor brought suit for a declaratory decree that she could legally serve alcoholic beverages. In spite of the seemingly unambiguous language of Section 450.071, the Circuit Court entered a decree favorable to the plaintiff. On appeal, the court hold that “The prohibition [of Section 450.071] could hardly be clearer or more specific. . . .”¹²⁵ and reversed the Circuit Court.

FEDERAL CASES

In this section we have included cases decided by the United States Court of Appeals for the Fifth Circuit, and by the United States District Courts in Florida, where the issue appears to be of local interest. Three subdivisions have been made: (a) cases arising under the Fair Labor Standards Act of 1938; (b) cases arising under the Federal Employers Liability Act and the Federal Safety Appliance Act; (3) miscellaneous federal cases.

a) *Under the Fair Labor Standards Act*

The United States Court of Appeals for the Fifth Circuit was called upon to decide four cases, originating in Florida, under the Fair Labor Standards Act of 1938,¹²⁶ providing minimum wages, maximum hours, and regulating other conditions of employment in industries engaged in interstate commerce.

Chapman v. Durkin,¹²⁷ and *Fort Mason Fruit Co. v. Durkin*¹²⁸ were suits brought by the Secretary of Labor to enjoin two fruit companies from allegedly violating certain provisions¹²⁹ of the Act, relating to minimum wages. The companies claimed the general exemption which the Act extends to farmers and agricultural workers, and in particular relied on the following language:

122. *Id.* at 291.

123. 74 So.2d 673 (Fla. 1954).

124. The significant portion of this statute reads:

. . . The disabilities of nonage of all female minors who are married, who have been married . . . are removed.

125. 74 So.2d 673 (Fla. 1954) at 673.

126. 52 STAT. 1060 (1938) as amended, 29 U.S.C. § 201 (1952).

127. 214 F.2d 360 (5th Cir. 1954), *cert. denied*, 348 U.S. 897 (1954).

128. 214 F.2d 363 (5th Cir. 1954).

129. In particular, Sec. 3(f) of the Act.

. . . [exempted from the Act is:] . . . farming in all its branches . . . 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.¹³⁰ (Italics supplied)

The companies pointed out that the workers in question were engaged in hauling fruit from various farms to the fruit company depot, and would seem to fall squarely within the above exemption. However, the court ruled against the fruit companies, reasoning that, even though the type of work was exempt, the companies were not themselves "farmers."¹³¹

A similar situation was presented in *Budd v. Mitchell*,¹³² where the Secretary of Labor sought an injunction against the alleged violation of the Act by three tobacco processors.¹³³ Here the workers were employed in a tobacco "packing house" where the cured leaf was brought after the individual farmers primed it and dried it in their own barns. The packing houses were either owned by the farmers jointly, or by a large producer (such as the King Edward Tobacco Company) who owned the farms, packing houses, barns, and manufacturing plants. The lower court held that "the farming exemption ends when the tobacco reaches the receiving platform of the packing house. . . ."¹³⁴ and that the packing house employees were not exempt from the Act.¹³⁵ The Court of Appeals reversed the decision, reasoning that ". . . the work of the packing house employees, in the preparation for market of the leaf grown exclusively on their own farms, constitutes 'practices performed by a farmer as an incident to or in conjunction with such farming operations, including preparation for market'"

Unlike the last two cases, *Mitchell v. Royal Baking Company*¹³⁶ turned on a jurisdictional question, namely, whether or not the defendant was engaged in the "production of goods for commerce" within the meaning of the Act. As before, the suit was brought by the Secretary of Labor to enjoin violations of the Act. The defendant was shown to have an annual business exceeding one million dollars, and furnished \$57,500 of baked goods annually to two cafeterias which, in turn, sold one third of this amount to airlines for consumption on flights leaving the state. As might

130. 52 STAT. 1060 (1938), 29 U.S.C. § 203(f) (1952).

131. 214 F.2d at 361.

132. 221 F.2d 406 (5th Cir. 1955), *reversing* *Durkin v. Budd*, 114 F.Supp. 865 (N.D. Fla. 1953).

133. The defendants were J. T. Budd Jr. and Company, the King Edward Tobacco Company of Florida, and the May Tobacco Company, Intervenor.

134. 114 F. Supp. 865, 868 (N.D. Fla. 1953).

135. Clauses (6) and (10) of § 213(a) of the Act exempt employees engaged in the handling, storing, etc., of agricultural products for market.

136. 219 F.2d 532 (5th Cir. 1955).

be expected, the court had little difficulty in justifying¹³⁷ its holding that the defendant's activities brought it within the coverage of the Act.

b) *Under the Federal Employer's Liability Act*

Four cases¹³⁸ arose during this survey period involving the Federal Employer's Liability Act,¹³⁹ or the Federal Safety Appliance Act.¹⁴⁰ Since these cases concern general tort liability rather than local labor law, we do not believe they merit detailed discussion here.

c) *Miscellaneous federal cases*

A decision of some interest was *Matter of Florida East Coast Railway Co.*,¹⁴¹ in which the District Court was faced with a conflict between the Railway Labor Act¹⁴² (which permits "union shop" contracts to be enforced against all employees) and the Florida Constitution (which prohibits union- and closed-shop agreements). The court followed the prevailing view,¹⁴³ that such a conflict between state and federal law must be resolved against the state.

A rather unusual case was *Pelicer v. Brotherhood of Railway and Steamship Clerks*.¹⁴⁴ Here, a group of railway employees brought suit against the union to enjoin execution of a recent amendment to their collective bargaining agreement. The amendment "integrated" white and colored employees for the purpose of determining seniority rights, and, when put into effect, would reduce the seniority of the plaintiffs by commingling them with the colored old-timers. It was their contention that the amendment was illegal since it was contrived for the "sole benefit of colored employees."

The Court of Appeals affirmed the District Court decision¹⁴⁵ (which had dismissed the suit) holding that the amendment "did not amount to a discrimination against white employees, but merely rectified an existing discrimination against the colored employees, the effect of which as to

137. The court relied specifically on *Boiseau v. Mitchell*, 218 F.2d 734 (5th Cir. 1954); *Steward-Jordan Distributing Co. v. Tobin*, 210 F.2d 427 (5th Cir. 1954); *Rolland v. United States*, 200 F.2d 678 (5th Cir. 1953).

138. *Martin v. Black*, 221 F.2d 567 (5th Cir. 1955); *Atlantic Coast Line R. R. v. Anderson*, 221 F.2d 548 (5th Cir. 1955); *Seaboard Air Line R. R. v. Strickland*, 80 So.2d 914 (Fla. 1955); *Martin v. Johnson*, 79 So.2d 419 (Fla. 1955).

139. 35 STAT 65 (1908), 45 U.S.C. §§ 51 - 60 (1952).

140. 36 STAT. 298 (1910), 45 U.S.C. §§ 11 - 24 (1952).

141. CCH Lab cas. ¶ 67,806 (S.D. Fla. June 25, 1953).

142. 44 STAT. 577 (1926) as amended, 45 U.S.C. §§ 151-163, 181-188 (1952).

143. The authority relied on by the court was: *Int'l Union UAW v. O'Brien*, 339 U.S. 454 (1950); *Bethlehem Steel Co. v. New York Labor Rel. Bd.*, 330 U.S. 767 (1947); *Hill v. Florida*, 325 U.S. 538 (1945), *rehearing denied*, 326 U.S. 804 (1945); *Florida v. Mellon*, 273 U.S. 12 (1927).

144. 217 F.2d 205 (5th Cir. 1954), *affirming Pelicer v. Brotherhood of Railway and Steamship Clerks*, 118 F.Supp. 254 (S.D. Fla. 1953).

145. *Id.*

the former was *damnum absque injuria*.¹⁴⁶ The court also quoted with approval the following remarks of the District judge:

. . . it would indeed "turn the blade inward" were this court to hold invalid and unlawful that which appears to be a good faith effort . . . to comply with pronouncements of the Supreme Court in racial discrimination cases.

An appeal from an NLRB ruling,¹⁴⁷ arising from a Florida labor dispute, may be found in *NLRB v. Miami Coca-Cola Bottling Co.*,¹⁴⁸ but the case merely turns on the weight of the evidence and presents no significant question of substantive law.

LEGISLATIVE ENACTMENTS

In its 1955 session, the Florida Legislature made only one change in the statutes dealing specifically with labor organizations, namely the correction of a word in Section 447.13. This section used to read:

Right to strike preserved.—All as specifically provided in this chapter, nothing shall be construed so as to interfere with or diminish in any way the right to strike

Chapter 29615 of the 1955 Session Laws changed the word "all" to "except." The effect of this change can, of course, but be surmised, until "before-and-after" decisions are available for comparison. However, from the standpoint of English grammar, the word "except" seems more appropriate, assuming that the intent of the Legislature is to be more accurately shown by its most recent utterances.

The legislature acted in three other places to govern the activities of employers and employees, but the changes do not directly affect the law of labor-management relations.

Chapter 29731 requires employers, labor unions, or associations, which hold group insurance policies to apply any dividends, premium refunds, rate reductions, or service fees they may receive for the sole benefit of their members or employees, without individual selection or discrimination.

Florida Statutes Section 215.19 (1953), which governed the wage rates of employees on public works contracts, was extensively amended by Chapter 29783 of the new Sessions Laws. The major changes were: 1) a new provision requiring that any solicitation for a bid on a public works contract must draw the attention of the bidder to the provisions of this section; 2) the addition of a section requiring each contractor to include with each request for payment a statement that the requirements of this

146. 217 F.2d at 207.

147. See note 148 *infra*.

148. 222 F.2d 341 (5th Cir. 1955) *reversing* Miami Coca-Cola Bottling Co., 108 N.L.R.B. 456 (1954).

Act had been complied with; 3) a clause requiring the Florida Industrial Commission to make a continuing study of prevailing wages in various parts of the state, and to make wage-rate schedules publicly available; 4) a provision for judicial review of the Florida Industrial Commission's decision on any dispute.

Chapter 29948 is a brand-new act which provides that trust funds held for the benefit of employees or self-employed persons shall not be subject to the Rule against Perpetuities, or be held invalid as violating the laws against suspension of the power of alienation of property.

CONCLUSION

The Florida courts and the Florida legislature have affirmatively shown their continued inability to cope adequately with modern labor problems. The lack of a state Labor Board was again made distressingly evident by the hotel strike litigation. For example, the "majority vote" clause¹⁴⁹ in the Florida Labor Organizations Act (requiring that a lawful strike be authorized by a majority vote of the employees) may be sound law, but it has been utterly emasculated by (a) the failure of the legislature to provide administrative machinery for its enforcement; (b) the failure of the Florida Supreme Court to recognize mastership proceedings for its enforcement;¹⁵⁰ (c) by the holding of the Supreme Court that its provisions apply only to *strikes* as distinguished from *picketing*.¹⁵¹

Intervention by the federal government in the hotel strike seems quite likely to occur, and possibly will be followed by federal intervention in other Florida labor litigation. Those who dislike this possibility should recall that most instances of federal intervention or preëmption have been preceded by affirmative examples of the inadequacy of local government.

149. FLA. STAT. § 447.09(3)(1953).

150. *Thomas Jefferson Inc., v. Hotel Employees Union, Local 255, AFL*, 81 So.2d 731 (Fla. 1955).

151. See note 39 *supra*, and the related text.