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J. Carrington Gramling Jr.

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# THE DEVELOPMENT OF FLORIDA LABOR LAW

J. CARRINGTON GRAMLING, JR.\*

This article will deal primarily with the relationship of management and organized labor. It will not include such co-relative subjects as workmen's compensation, child labor laws, unemployment compensation and craft legislation, *i.e.*, Barber's Code, Elevator and Boiler Inspection Bills, and the like. It will have for its emphasis the field of labor law commonly referred to as injunctions and unfair labor practices.

## I. PEACEFUL STRIKES AND PICKETING

The first act of the Legislature of the State of Florida that can properly be defined as a true labor law is Chapter 4144, Laws of 1893, which was entitled "An Act to Prohibit Wrongful Combinations Against Workmen and to Punish the Same." This statute has been retained unchanged in Florida law until today it is F.S.A. 833.02. The statute prohibits the practice known as "black-listing" by employers, or for that matter, anyone else. The pertinent part reads, "If two or more persons shall agree, conspire, combine or confederate together for the purpose of preventing any person from procuring work in any firm or corporation, or to cause the discharge of any person from work in such firm or corporation . . . shall be punished by a fine not exceeding \$500.00 each, or by imprisonment not exceeding one year." It should be noted that this does not forbid procuring discharge from an individual.

Thus, the earliest statutory unfair labor practice in Florida is black-listing. Wurt's Digest, 1904, under the heading of "Master and Servant", rather than the modern heading "Labor", cites one lone Florida case, *Chipley v. Atkinson*,<sup>1</sup> a case arising before the above quoted statute. The *Chipley* case was a suit for damages for wrongful discharge by an employee. The employee brought suit because an officer of the Pensacola & Atlantic Railroad Company refused to extend gratuitously a spur line of the railroad company to the plant of Kehoe & Walker if Kehoe & Walker retained plaintiff (Atkinson) in their employ. The court held in essence that a malicious causing of a discharge was a cause of action under the common law of the State of Florida. There was no proof as to the tenure of employment, no employment contract and no adequate measure of damages suffered by the employee on a contractual basis. It appears that damages were more in connection with malicious libel and slander which brought about the wrongful discharge. Thus, the action constituted a special libel or slander, although

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\*Member of Florida Bar.

1. 23 Fla. 260, 1 So. 934 (1887).

such libel or slander was not actionable per se. This case was apparently the precursor of the 1893 Act of the Legislature.

In 1899 the Legislature of the State passed another law which was mandatory in its nature.<sup>2</sup> It provided that employers of assistants in mercantile or other business pursuits, requiring such employees to stand or walk during active duties, should furnish at their own cost suitable chairs or seats for the use of these employees when not engaged in their active work. The law further provided that employees required to be on their feet in connection with their duties should be given a humane opportunity to sit down and rest. Obviously the employer who failed to provide seats for his employees and provide a humane opportunity for them to sit down and rest would be guilty of an unfair labor practice. This law was put in the form of a misdemeanor, punishable by a fine of not more than \$100.00 or imprisonment not exceeding 60 days. This law has not been repealed.<sup>3</sup>

The first genuine labor case to come before the Supreme Court of Florida was *Jetton-Dekle Lumber Company v. Mather*.<sup>4</sup> In this case a large contractor sought to enjoin a general strike as an unlawful conspiracy. The strike had been called because the plaintiff's subcontractors had employed non-union labor. The case was founded upon the former common law that had declared any combination of workmen and any concerted action on the part of workmen was an unlawful conspiracy. The supreme court stated:

Fortunately there have been few differences in this section of the country between labor and capital and this is the first case that has reached this Court.<sup>5</sup>

The court then weighed the old common law and made the following finding of policy of the State of Florida:

Unquestionably an individual can stop work at any time without cause, being liable only for breach of contract; and no element of contract as between the complainant and these defendants is alleged. Does the fact that more than one individual has quit work make a difference, under the circumstances above stated? We may assume that it is not universally true that many may do what one may lawfully do, though this must be said with reservation, and that a 'conspiracy' may cause a wrong which one man, acting by himself, could not commit. *But before the Courts can punish or prevent a conspiracy, either the act conspired or the manner of its doing must be unlawful.* (Emphasis ours). Are not both alternatives absent in the case of a simple strike? It is certainly lawful to attempt by negotiation, or other peaceable ways, to get higher pay for one's labor, and, if the demand is not met, to go elsewhere with one's labor or to sit idle, if needs be, unless satisfactory arrangements are made. Labor Unions in and of themselves cannot be said to be unlawful, and yet one of the prime objectives of their existence is by combinations of the supply to regulate the demand.

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2. Fla. Spec. Laws 1899, c. 4762.

3. FLA. STAT. § 448.05 (1951).

4. 53 Fla. 969, 43 So. 590 (1907).

5. *Id.* at 973, 43 So. at 592.

Some of the cases, particularly the English cases, stress the motive underlying the strike and apparently hold that if the strike is to better the condition of the workmen, it is lawful, but if it be to punish the employer, it is unlawful. If this be the correct delimitation, this case comes up to the rule. There is nothing personal to the complainant in the strike, it is simply and entirely an endeavor to obtain an advantage of the defendants.<sup>6</sup>

Thus, we see that the Supreme Court of Florida as long ago as 1907 held that what is lawful for one person to do is not made unlawful by the fact that there is similar action taken by a large number of people. In other words, participation by numbers cannot make unlawful that which is lawful for one person to do.

Another point of interest in the *Jetton-Dekle* decision is that management pleaded the ancient statute making it a misdemeanor to conspire for the purpose of causing the discharge of any employee.<sup>7</sup> *Jetton-Delke* claimed that the union's activities were for the purpose of requiring the discharge of the non-union employees. The supreme court held that this section will not be applied to the case of union laborers who strike for the purpose of securing all the labor for themselves. This will become more significant as we discuss later cases under our "Anti-Closed Shop Constitutional Amendment."<sup>8</sup>

There were no further significant developments in the labor law of the state until 1932. In the interim there were many cases filed throughout the state, which were dealt with by Chancellors on an individual basis; but for several reasons, mainly financial, the cases were not appealed. In 1932, however, the supreme court handed down its decision in *Paramount Enterprises, Inc. v. Mitchell*.<sup>9</sup> This case involved the question of picketing and is the first significant case in Florida dealing with this particular subject. It will be recalled that the gravamen of the *Jetton-Dekle* case,<sup>10</sup> was the question of a strike. The bill of complaint in the *Paramount Enterprises* case alleged that the defendants conspired to injure the plaintiff's business by threatening the theatre-going public. The union posted pickets at the entrance to the theatres bearing signs stating that the complainant refused to employ union motion picture operators. The union alleged that no force or intimidation was used. The supreme court held:

It is well settled that employees have a right to combine and fix the amount of their daily wage and to whom they will sell it. It is also true that when under no contract they may quit the service of another at any time they desire. It is alike true that employers have a right to determine the daily wage they are willing to pay and whom they employ. Members of a labor organization may presume and confederate not to work except upon payment of an established

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6. *Id.* at 974, 43 So. at 592.

7. FLA. STAT. § 833.02 (1951).

8. FLA. CONST. Decl. of Rights, § 12, as amended 1944.

9. 104 Fla. 407, 140 So. 328 (1932).

10. *Jetton-Dekle Lumber Co. v. Mather*, 53 Fla. 969, 43 So. 590 (1907).

wage; they may without coercion bring their cause to the note of public opinion in a peaceful manner.<sup>11</sup>

Thus, the court settled the law of Florida to the effect that peaceful picketing is lawful. The fact that the picketing in this instance was retaliatory was not developed by the supreme court. Therefore, at this time the law of Florida recognized labor unions, the right to strike and the right to picket peacefully.

The next case of importance arose in 1938, with *Weissman v. Jureit*.<sup>12</sup> The union had presented a contract which the court studied in detail and generally found quite acceptable. The supreme court noted that the purpose of the contract was to reduce the working hours per day to ten, but to otherwise leave the salary the same.<sup>13</sup> From the sympathetic recitation of the facts, it is obvious that the supreme court based its decision, favorable to labor, on the fact that the picketing was for a purpose which the court considered lawful. However, the language of the decision indicated its basis was that the plaintiff employer failed to show violence and intimidation in union activities. In other words, the supreme court in 1938 made it appear that because it was peaceful picketing it was lawful. Nevertheless, it is obvious that it was lawful not only because it was peaceful but because it was for a purpose approved by the supreme court. Thus, in this decision, we find the root of subsequent doctrines to the effect that picketing must be for lawful purposes. Mere peaceful picketing as indicated in later cases is not sufficient.

The next development in Florida labor law arose in *Retail Clerks Union, Local 779 of Miami v. Lerner Shops of Florida, Inc.*<sup>14</sup> In this case the union picketed the Lerner Stores to obtain a union contract. None of the employees of Lerner's were members of the union and there was no dispute between Lerner's and their employees as to wages and working conditions. Lerner's even had no objection to their employees becoming members of the union and no strike was pending with their employees. The court found that the sole purpose of the defendant was to secure an agreement to bring the employees into the union. The supreme court affirmed *Paramount Enterprises v. Mitchell*,<sup>15</sup> but held that where there is no dispute between

11. *Paramount Enterprise, Inc. v. Mitchell*, 104 Fla. 407, 413, 140 So. 328, 331 (1932).

12. 132 Fla. 661, 181 So. 898 (1938).

13. One of the witnesses testified that he had worked with plaintiff for five weeks. He was required to work six days a week and averaged daily eleven or eleven and one-half hours and on each Friday he would put in about fifteen hours. White and colored labor worked at the plant and shared toilet and bath facilities. Another witness testified that he was a member of the union and had worked at the bakery for some time and was joining in the strike; the men worked for twelve and one-half hours to fifteen hours per day and that this witness received \$27.00 per week; he received no pay for extra time; the toilet and bath facilities were shared by white and colored employees; his time averaged daily twelve hours. Another witness testified that he worked at the plant seven months. His salary was \$18.00 per week and he worked more than ten hours per day, with at least seventy-five hours per week.

14. 140 Fla. 865, 193 So. 529 (1939).

15. 104 Fla. 407, 140 So. 328 (1932).

management and its immediate employees the union picketing is not justified. An immediate relationship of employer and employee is necessary. It held:

Peaceful picketing will not be permitted for the purpose of dictating the policy of an owner's business, to determine whom he will employ or to intimidate him in the management of his business.<sup>16</sup>

The Florida Supreme Court again brings out the fact that it will sit in judgment on the purpose of picketing. If it approves of that purpose of the picketing, as in the *Jureit Bakery* case,<sup>17</sup> it will permit picketing, otherwise not.

It was at this point that the Supreme Court of the United States decided *American Federation of Labor v. Swing*.<sup>18</sup> The *Swing* case was very similar in its facts to the *Florida Retail Clerk* case.<sup>19</sup> The Supreme Court of the United States stated:

The scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, whether those limits be defined by statute or by the judicial organ of the state. A state cannot exclude working men from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him. The interdependence of economic interest also engaged in the same industry has become a commonplace.<sup>20</sup>

Fundamentally, the Florida law remained unchanged during the years of World War II, and it was not until 1948 that the Supreme Court of Florida decided *Whitehead v. Miami Laundry Co.*,<sup>21</sup> in which the court stated that the effect of the *Lerner* case had been abrogated.<sup>22</sup> The *Whitehead* case was filed for the primary purpose of testing the validity of the statute requiring a majority of the employees of any plant to take a secret strike ballot before a lawful strike could be declared. The court ruled that the pickets in this case were former employees of Miami Laundry and were acting in retaliation for abuses. The union assisted the pickets and undertook an organizational drive among the employees of the Miami Laundry and induced a strike. Unfortunately (for the academics of this case) the strike never took place. The Supreme Court of Florida held that since the employees of the plant were not on strike it was not necessary that a strike ballot be held. It further held that picketing had no bearing on the strike and that the right to picket is part of the constitutional freedom of speech.

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16. *Retail Clerks' Union, Local 779, v. Lerner Shops, Inc.*, 140 Fla. 865, 868, 193 So. 529, 530 (1939).

17. *Weissman v. Jureit*, 132 Fla. 661, 181 So. 898 (1938).

18. 312 U.S. 321 (1941).

19. 140 Fla. 865, 193 So. 529 (1939), *rehearing denied* (1940).

20. 312 U.S. 321, 325 (1941).

21. 160 Fla. 667, 36 So.2d 382 (1948).

22. *Id.* at 673, 36 So.2d at 385. (Emphasis supplied by author).

This meant that the union and the former employees had a right to announce their dispute to the world.<sup>23</sup>

In deciding the *Whitehead* case, the court cited *Thornhill v. Alabama*<sup>24</sup> which involved a conviction under an Alabama statute<sup>25</sup> forbidding 'loitering and picketing'. The picketing was peaceful. The Supreme Court of the United States held that freedom of speech and of press is guaranteed by the Constitution and that a statute of a state which abridges these rights is unconstitutional. Thus, in the *Whitehead* case, the Florida court avoided the question whether the purpose of the picketing was approved, and related the case solely to the theory that picketing is freedom of speech and, so long as peaceful, cannot be abridged.

In 1949 the Supreme Court of Florida rendered its decision in *Moore v. City Dry Cleaners & Laundry*.<sup>26</sup> Here also the union did not represent a majority of the employees and a majority vote had not been taken to authorize any strike. The problem, therefore, was the legality of picketing and striking without union representation of a majority.

The supreme court stated that the statute, even if constitutional, was not applicable because it required a vote prior to an actual strike, not prior to picketing.<sup>27</sup>

Further in the decision, the supreme court stated:

A decree that attempts to condition the right of any person to express his views fully with respect to a labor difficulty or dispute by any form of publication unattended by violence, force, coercion or other unlawful or oppressive conduct, or to make the right of the expression dependent upon the existence of "a labor dispute" or "strike" in which such person may have a direct interest runs counter to the Constitution. The fact that statements made under such circumstances may prove, after publication, to be in fact untruthful will not create an exception to the rule stated. . . . A court of equity will not enjoin the commission of a threatened libel or slander; for the imposition of judicial restraints in such an order would clearly amount to prior censorship, a basic evil denounced by both the Federal and State Constitution.<sup>28</sup>

The validity of the same statute<sup>29</sup> was again raised in *Johnson v. White Swan Laundry*.<sup>30</sup> In this case there had been a strike in three different laundries and in no laundry did the union represent a majority of the employees. The record shows that the union admitted that no majority vote had ever been taken ratifying a strike, but, nevertheless, a strike was called and picketing commenced. All parties agreed that the statute controlled and that the only question was the constitutionality of the statute. The lower court

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23. *Whitehead v. Miami Laundry Co.*, 160 Fla. 667, 36 So.2d 382 (1948).

24. 310 U.S. 88 (1940).

25. Section 3448 of the Code of Alabama (1923).

26. 41 So.2d 865 (Fla. 1949).

27. *Id.* at 872.

28. *Id.* at 873.

29. 41 So.2d 874 (Fla. 1949).

30. FLA. STAT. § 447.09(3) (1951).

ruled that the statute was a constitutional exercise of the police power, was controlling in the light of the facts and issued an injunction. The lower court order added, however, "That nothing in this Order shall be construed to prohibit peaceful picketing by non-strikers under circumstances where Section 481.09(3) of the Florida statutes is inapplicable."<sup>31</sup> The supreme court affirmed its decision in the *Moore* case, holding that the vote was not a condition precedent to the ordering of a strike, but only to the act of striking.<sup>32</sup> It was indeed difficult to reconcile this finding in view of the fact that many of the employees of the plaintiff laundries had indeed remained on strike.

It is apparent from these three laundry cases that the Supreme Court of Florida avoided deciding the constitutionality of the statute requiring a majority vote of the employees as a condition precedent to a strike. Similar statutes had been declared unconstitutional in other states. It would seem that the statute was unavoidably involved in *Johnson v. White Swan Laundry*,<sup>33</sup> but the constitutional question was evaded by the interpretation placed by the supreme court upon the facts in the case.

It is obvious, therefore, that picketing is disassociated from striking and that picketing when peaceful and for the purpose of inviting a strike is lawful. It is equally clear, that if a number of employees refrain from going to work while the picketing is in progress, nevertheless such a situation will not be construed as coming under the statute requiring a majority vote. Thus it appears that Section 481.09(3) has been nullified by the reluctance of the court to apply it to any set of circumstances. Hence Florida has, by circuitous method, followed the decisions of other states<sup>34</sup> that have declared such a statute unconstitutional as being a restraint upon the actions of individual workmen who might act singly or in concert. The number involved does not make the act lawful or unlawful.

## II. VIOLENCE

The first factor, qualifying the principle that picketing is an exercise of freedom of speech and as such will not be the proper subject of injunctive relief, is violence. In the case of *Moore v. City Dry Cleaners & Laundry*,<sup>35</sup> the court found that the union had been guilty of violence. On the strength of these findings, the supreme court affirmed the lower court's injunction against the picketing. It was clear that the picketing was so enmeshed with violence as not to be severable and that the only effective method of eliminating the violence would be to eliminate the picketing, which had created the overall situation of tension. The supreme court, how-

31. *Johnson v. White Swan Laundry*, 41 So.2d 874, 875 (1949).

32. *Id.* at 876.

33. 41 So.2d 874 (1949).

34. *Stapleton v. Mitchell*, 60 F. Supp. 51 (D. Kan. 1945); *Alabama Federation of Labor v. McAdory*, 246 Ala. 52, 18 So.2d 810 (1944); *American Federation of Labor v. Reilly*, 13 Colo. 90, 155 P.2d 145 (1944).

35. 41 So.2d 865 (Fla. 1949).



ever, modified the chancellor's sweeping decree, to invalidate only the illegal activities.

The supreme court further cited Section 13 of the Declaration of Rights, Constitution of Florida that, "Every person may fully speak and write his sentiments on all subjects being responsible for the abuse of that right. . . ." "In the absence of an express situation plainly requiring reasonable public regulation in the interest of human life and safety, the right may not be denied or abridged."<sup>36</sup>

Thus, where violence is involved, an injunction will be granted against picketing if the picketing and violence are so enmeshed as to render further picketing unsafe. In other words, if the mere presence of a picket line is such as will result in attendant violences, then picketing will be enjoined. But even if violence is present, the right of free discussion other than in the picket line will not be enjoined.

### III. LAWFUL PURPOSE

Another restriction upon the right to picket has developed in Florida. The picketing must be for a lawful purpose. The decisions, when read in the light of decisions of the United States Supreme Court, would seem to hold that picketing will not be enjoined if its purpose is not unlawful.

The first case in which the purpose of a union was determined to be unlawful (as distinguished from undesirable as in the *Lerner* case)<sup>37</sup> is the case of *Local Union No. 519 v. Robertson*,<sup>38</sup> decided in 1950. In this suit the plaintiff contractor refused to enter into a closed shop contract with the union. Picketing resulted and the union took the position that a closed shop contract was not unlawful under the wording of Section 12 of the Declaration of Rights of the Constitution of Florida ("Anti-Closed Shop Amendment"). The chancellor held that a closed shop contract was unlawful under the constitution, and granted an injunction. The supreme court affirmed the order, citing statutory authority<sup>39</sup> declaring that activities of labor unions are a matter of public interest. The statute also stated the policy of the state that employees shall have the right to self-organization to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid. It was further provided that it shall be unlawful for any person to coerce or intimidate any employee in the enjoyment of these legal rights. The statute further provided for criminal sanctions. The Supreme Court of Florida stated that the situation was repugnant to the public policy of the state. Under the facts, the employer *had* to suffer injury. If he refused to execute the contract with the union, his business would be injured by the ordinary union pressures.

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36. *Id.* at 873.

37. *Retail Clerks Union, Local 779 of Miami v. Lerner Shops, Inc.*, 140 Fla. 865, 193 So. 529 (1939).

38. 44 So.2d 899 (Fla. 1950).

39. FLA. STAT. § 447.01 (1951).

The employer's execution of the contract would subject him to general criminal penalties, and the possibility of civil suits by discharged employees, for his abridgement of their constitutional right to work.

It therefore appears that picketing to require the commission of a misdemeanor or to require the perpetration of an unlawful act by an employer is not a lawful objective and is therefore subject to injunction. This is in keeping with several of the latest decisions of the Supreme Court of the United States<sup>40</sup> where injunctions have been upheld in cases in which the purpose of the union was to require the employer to violate various state laws or to require an employer to recognize a union as the bargaining agent of all its employees when the employees did not belong to the union. Thus, it may be said that Florida is in rapport with the Federal law so far as granting injunctions where picketing is for an unlawful purpose.

The Robertson decision has been limited by the subsequent case of *Stonaris v. Certain Picketers*.<sup>41</sup> The plaintiff was the proprietor of a moving picture theatre in Tampa. One or two men picketed the theatre for the purpose of coercing the discharge of a non-union operator. It was contended that the picketing was unlawful because it was in contravention of Section 12 of the Declaration of Rights of the Constitution. The supreme court refused to apply the rule of the *Robertson* case<sup>42</sup> since the bill of complaint did not state that the picketing was to require the unlawful closed shop contract. Apparently the court decided the dispute was over the presence of a non-union workman at the theatre. Thus we see that the Supreme Court of Florida applied the *Robertson* case<sup>43</sup> with caution and adhered to the fundamental rule that if picketing is not for an unlawful purpose, it will not be enjoined.

In a recent opinion filed June 3, 1952, in the case of *Hotel & Restaurant Employees and Bartenders Union Local 156 v. Cothron*,<sup>44</sup> the supreme court again narrowed the application of the *Robertson* decision.<sup>45</sup> The court stated that the union had presented to the employer a form of closed shop agreement, illegal in its provisions, but that it was obvious from the findings of the chancellor that the picketing was not for the purpose of requiring the signing of the contract, but rather was in retaliation for the discharge of three union employees because of their union affiliations. The supreme court found that on the day of the picketing, the employer was actually advised as to the reason for the picketing, and that six days later, when the bill of complaint was filed, the employer knew that he was not being picketed for a closed shop contract, but rather for his unfair labor practices in discharging the three union employees. The court held that the *Robertson*

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40. *Building Service Employees I.U. v. Gazzam*, 339 U.S. 532 (1950); *Giboney v. Empire Storage and Ice Co.*, 336 U.S. 490 (1949).

41. 46 So.2d 387 (Fla. 1950).

42. *Local Union No. 519 v. Robertson*, 44 So.2d 899 (Fla. 1950).

43. *Ibid.*

44. 59 So.2d 366 (Fla. 1952).

45. 44 So.2d 899 (Fla. 1950).

decision<sup>46</sup> would not apply. The restraining order entered by the court below was dissolved and the case ordered dismissed. Another very interesting development in Florida labor law arose in this same case where the court below had held that the employer should have been advised prior to the commencement of the picketing as to the true cause thereof in order to give him an opportunity to rectify the unfair labor practice should he be so inclined. The supreme court pointed out that this was no reason for granting an injunction.<sup>47</sup>

To recapitulate, we find that the right of picketing is surrounded with limited constitutional protection. Picketing does not carry the unlimited right of expression that is usually associated with other constitutional guarantees and the right can be forfeited or abridged under proper circumstances. Thus, the courts will no longer go into the reasons for the picketing in order to determine whether they approve or disapprove the motives of the union as the Florida court did in the *Jureit Bakery*<sup>48</sup> case, but will only ascertain whether the objective of the union is to require the employer to do an unlawful act. If the answer to this inquiry is in the negative, then peaceful picketing will be permitted. On the other hand, if attended by violence as in the *Moore* case,<sup>49</sup> the picketing will be enjoined, but other and disassociated rights of freedom of speech, such as the full rights of communication, radio appeal and other methods of communication, will still be protected as a fundamental constitutional right.

#### IV. REGULATION OF UNFAIR LABOR PRACTICES

We now consider the matter of unfair labor practices which give light to the foregoing discussion of the right to picket. We have already seen that the first activities that could be declared as unfair labor practices were: 1. "black-listing." 2. Not supplying clerks with adequate stools to sit upon. These unfair labor practices were, of course, directed to management. The criterion of other unfair labor practices was for many years the personal opinions of the chancellors involved or of the supreme court justices, during those years when the *Jureit Bakery*<sup>50</sup> case and the *Lerner* case<sup>51</sup> were the prevailing philosophy.

Because of the few appeals taken, the decision law was very sparse in this particular area. In the 1943 session of the Legislature, Chapter 21968 was passed which stated the public policy of the State in the following words:

Because of the activities of labor unions affecting the economic conditions of the country and the state, entering as they do into practically every business and industrial enterprise, it is the sense

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46. *Ibid.*

47. *Hotel & Restaurant Employees and Bartenders Union Local 156 v. Cothron*, 59 So.2d 366, 369 (Fla. 1952).

48. 132 Fla. 661, 181 So. 898 (1938).

49. 41 So.2d 865 (Fla. 1949).

50. 132 Fla. 661, 181 So. 898 (1938).

51. 140 Fla. 865, 193 So. 529 (1939).

of the legislature that such organizations affect the public interest and are charged with a public use. The working man, unionist or nonunionist, must be protected. The right to work is the right to live.

It is here now declared to be the policy of the state, in the exercise of its sovereign constitutional police power, to regulate the activities and affairs of labor unions, their officers, agents, organizers and other representatives. . . .<sup>52</sup>

The Legislature went further and actually defined certain terminology used within the Act.<sup>53</sup>

The same act then guaranteed the right of collective bargaining by laborers through representatives of their own choosing. This was the first time that the right of collective bargaining had been granted in the State of Florida. Florida had never seen anything similar to the Federal Norris-La-Guardia Anti-Injunction Act<sup>54</sup> or the Wagner Labor Relations Act<sup>55</sup> or even the Taft-Hartley Act.<sup>56</sup> However, the same act did contain the following important language:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively, through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.<sup>57</sup>

This guarantee of the right to self-organization or to form, join or assist labor organizations would appear to make it an unfair labor practice on the part of the employer to interfere with the right of self-organization or the forming, joining or assisting of a labor organization. By the same token it would appear to make an unfair labor practice out of the refusal of the employer to bargain collectively through representatives of his employees own choosing. These are two new unfair labor practices added to the law of the State of Florida.

As a matter of fact, chancellors in cases that have not been appealed have consistently denied injunctions against picketing where it is shown that picketing is for the purpose of requiring the employer to bargain with representatives of his employees, even though the union is the representative of only a few employees. In other words, it would appear that if a union represented only one employee, the union would have the right to represent that one employee in dealing with the employer. So also it has been generally held in equity courts, without appeals involving more than memorandum decisions, that injunctions against picketing will be denied where members of the union have been discharged for obvious union activities, even though the employer attempts to explain the discharge by giving some other ground.

52. FLA. STAT. § 447.01 (1951).

53. FLA. STAT. § 447.02 (1951).

54. 47 STAT. 70 (1932), 29 U.S.C. §§ 101-115 (1946).

55. 49 STAT. 449 (1935), 29 U.S.C. §§ 151-166 (1946).

56. 61 STAT. 136 (1947), 29 U.S.C. § 141 (Supp. 1952).

57. FLA. STAT. § 447.03 (1951).

This last, however, is a question of fact. If an employee is discharged right at the time of union activity which is the basis of the dispute or the litigation, courts of equity have always scrutinized the circumstances of the discharge and if they found that the discharge was a retaliation for the union interests of the employee, then picketing resulting therefrom would not be enjoined. This was on the theory that picketing is a legitimate exercise of the freedom of speech to protest the existence of an unfair labor practice.

Chapter 21968<sup>58</sup> provides also for the policing of various activities of labor unions and their officials and makes certain conduct unlawful. Due to the way this portion of the chapter is drawn it cannot be said that there is set forth any unfair labor practice of which organized labor might be guilty. Rather the restrictive provisions of the statute pertain to the operation, management and activities of the union in a general fashion. For instance, it is made unlawful to interfere with or prevent the right of franchise of any member of a labor organization. This might be restrictive against the employer as well as against the union. The right of franchise preserved to individuals includes the right of an employee to make complaint and file charges concerning the violation of the chapter, and the petitioning to his union regarding any grievance he may have concerning his membership or employment. (This would appear as a two-edged sword to be wielded equally against employer and union).

The right is also reserved to members of a union to make known facts concerning grievances or violations of law to any public officials, and there is reserved to the employee or union member his right of free petition, lawful assemblage and free speech. The act further makes it unlawful to prohibit or prevent any election of any officers of any labor organization. This might apply, conceivably, to the imposition of a stewardship by an international union upon a local. It also would certainly apply to any employer or other individual who might attempt to circumvent an election within a labor organization.

We now come to the restrictive provisions which the Supreme Court of the State of Florida has three times refused to apply to circumstances that otherwise would indicate its application, viz., the provision making it unlawful 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.<sup>59</sup> This particular section would appear to be inoperative in Florida at least under the weight of these decisions.

The statute further provides that any election for a strike shall be held by a secret ballot.<sup>60</sup> It is made unlawful to charge, receive or retain any dues, assessments or other charges in excess of, or not authorized by, the consti-

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58. FLA. STAT. C. 447 (1951).

59. FLA. STAT. § 447.09(3) (1951).

60. FLA. STAT. § 447.09(4) (1951).

tution and by-laws of any labor organization.<sup>61</sup> This would appear only to forbid fraud on the part of a union or union official.

It is made unlawful to act as a business agent without having obtained a license or permit.<sup>62</sup> Licenses and permits are provided in Section 4 of Chapter 21968 which section is also now listed as F.S.A. 447.04. The failure of a business agent to have a card would appear to be on very much the same footing as any other citizen doing business without an occupational license.<sup>62a</sup> The Act of 1943 also makes it unlawful to solicit members for or to act as a representative of an existing organization without authority of such labor organization to do so.<sup>63</sup> The necessity for this clause or its importance to our code of laws is obscure. The act further makes it unlawful to make any false statements in an application for a (business agent's) license.<sup>64</sup>

It is further made unlawful for any person to seize or occupy property unlawfully during the existence of a labor dispute.<sup>65</sup> This was obviously for the purpose of outlawing the sit-down strike, so prevalent in the 1930's.

It is further made unlawful to cause any cessation of work or interfere with the progress of work by reason of any jurisdictional dispute, grievance or disagreement between or within a labor organization.<sup>66</sup> This provision has been the basis of several chancery suits, none of which have been appealed. The chancellors below have generally concurred in the theory that in order to present a jurisdictional dispute, the two contesting unions must both be bona fide. In three chancery suits in the Eleventh Judicial Circuit of Florida, it was shown that one of the contesting unions was a hastily formed "company union." The chancellors refused to look on the situation as a bona fide jurisdictional dispute and refused to enjoin a continuation of the picketing by the bona fide labor union having dispute with the employer.

In other sections, the Act further made it unlawful to coerce or intimidate any employee in the enjoyment of his legal rights, including the employees' right of self-organization,<sup>67</sup> or to intimidate his family, picket his domicile or injure the person or property of such employee or his family.<sup>68</sup> It is obvious that this provision was written as a result of experiences in other parts of the United States. Florida history reveals no cases on record at the time of the writing of this legislation that would suggest the necessity therefor. This provision leads into the next provision of the Act making it unlawful to picket beyond the area of the industry within which a labor dispute arises.<sup>69</sup>

This question has been contested vigorously and finally settled adversely

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61. FLA. STAT. § 447.09(5) (1951).

62. FLA. STAT. § 447.09(6) (1951).

62a. *But cf.*, Hill v. Florida, 325 U.S. 538 (1945).

63. FLA. STAT. § 447.09(7) (1951).

64. FLA. STAT. § 447.09(8) (1951).

65. FLA. STAT. § 447.09(9) (1951).

66. FLA. STAT. § 447.09(10) (1951).

67. FLA. STAT. § 447.03 (1951).

68. FLA. STAT. § 447.09(11) (1951).

69. FLA. STAT. § 447.09(12) (1951).

to the contentions of organized labor. *International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers Local Union No. 390 v. Watson*<sup>70</sup> is the definitive case. J. Tom Watson, Attorney General of the State of Florida, and Maule Industries, Inc. sought an injunction against the Miami local teamsters for the reason that the teamsters were picketing Maule Industries at its plant on an outlying road of Dade County and at its plant on Miami Beach. There was also picketing at several locations where trucks of Maule Industries were delivering cement. The union contended that picketing on a lone road in the far reaches of Dade County was of no avail and, in effect, of little interest even to the passing alligators and Seminole Indians. Picketing at the plant of the employer on Miami Beach also appeared to be of little effect. However, picketing at the point of delivery of concrete was quite effective inasmuch as other workmen receiving the concrete necessary to further building activities cooperated with the teamsters union and showed a disposition to refrain from working behind the picket lines of the teamsters union. This caused grave injury and damage to the owner of the premises, to the contractor and to the subcontractor. The union insisted on its right to picket at the point of delivery of the cement and further argued that the trucks delivering the cement actually mixed the cement along the highways of the county. They therefore argued that the place of business or area of the industry was the original plant where the truck took on the sand, water and cement; the highways where the mixture was churned together, and the point of delivery where it was poured into the forms or moulds. The chancellor permitted the continued picketing at the principal places of business of Maule Industries, but granted an injunction against picketing at the point of delivery. The chancellor disagreed with the union's contention that the statute was so worded as to necessarily imply that picketing should be limited to the economic area of the industry, not necessarily the geographical area. The Florida Supreme Court affirmed the chancellor by memorandum decision. The United States Supreme Court denied certiorari.<sup>71</sup> Thus it appears that certain businesses are practically exempt from being picketed. A firm with principal offices in some downtown building could not effectively be picketed at their principal place of business. Their business might be dependent upon deliveries from remote points even outside the county, as a result of which picketing would be completely frustrated. In the light of such cases it is obvious that much remains to be done in the Florida statutory scheme for labor.

#### V. UNIONS BEFORE THE COURTS

There is an anomaly in Florida Labor Law in connection with F.S.A. 447.11, which provides that any labor organization may maintain an action in its commonly used name and shall be subject to suit in its commonly used

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70. 41 So.2d 341 (Fla. 1949).

71. *International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers Local Union No. 390 v. Watson*, 338 U.S. 942 (1950).

name in the same manner as any corporation authorized to do business in the state.

In *Miami Laundry Co. v. Laundry, Linen Drycleaning Drivers, etc.*,<sup>72</sup> the union sought to enjoin the Miami Laundry Co. from discharging any person from work because of membership in any labor organization. The union also sought reinstatement of several discharged union employees. The supreme court held for the defendant, stating:

Although we are cognizant of the fact that any labor organization may maintain an action or suit in its commonly used name by virtue of Florida Statutes Annotated 481.11 (now 447.11), we are of the opinion that the bill of complaint now before us does not present a proper case for the invocation of equitable jurisdiction on behalf of the respondent. We fail to find any rights, privileges or immunities which the bill of complaint discloses have been invaded or infringed which are rights, privileges or immunities granted or guaranteed to any labor organization as such. These rights and guarantees exist only in favor of the individual employee and do not inure to the benefit of the union in which he holds membership. They are purely personal to the employee and may be protected under the facts and circumstances alleged in the instant case only in an action brought by the employee.<sup>73</sup>

The supreme court recognized the fact that the several discharged employees had made the union their bargaining agent, but in effect held that the law of agency did not apply and that each employee would have to maintain suit in his own name. This would seem to throw the case of a wrongfully discharged employee back to the original *Chiple v. Atkinson* case,<sup>74</sup> in which the measure of damages is controlling. This is unique. It would be extremely difficult for an employee hired on a week-to-week basis, without a contract, to show any damage other than, perhaps, pay owed to him from the date of his discharge to his next payday. Assuming that he were discharged on a payday, it is doubtful that damages would be provable in any sum. It is also doubtful that punitive damages would apply. Thus the supreme court apparently destroyed the efficacy of the statutes which provide that employees have the rights of self-organization and collective bargaining, through representatives of their own choosing. Presently, it would appear that if employees are fired as a result of exercising these rights, their redress is very doubtful. On the other hand, it must be admitted that the statute authorizing labor unions to bring suit specifically refers to the fact that they may sue only to the extent of any corporation authorized to do business in this state. It is quite correct that in average cases a corporation cannot sue for the use and benefit of its stockholders (subject to certain exceptions) and, by this analogy, it may be academically correct to state that the Legislature did not authorize a union to sue on behalf of its members. The main business of a union is representing its members in dealings with employers

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72. 41 So.2d 305 (Fla. 1949).

73. *Id.* at 307.

74. 23 Fla. 206, 1 So. 934 (1887).



and, generally, unions are defendants in a representative capacity. Since the unions do defend in a representative capacity it is strange, indeed, that Section 447.11 is given such a narrow interpretation. It would appear that the Legislature should clarify its meaning and intent in this particular statute and should authorize labor organizations to maintain suit for and on behalf of their members. This is presently accomplished only where the employer files suit and the union becomes the defendant. Thus to all practical intents and purposes labor unions are relegated to the status of defendants only.

#### VI. CLOSED SHOP

The closed shop law has had serious repercussions upon the activities of organized labor but its ill effects are not felt in all crafts. There are certain crafts that do not make any reference to a closed shop by contract; because of the skilled nature of their work, an employer is required to appeal to the union involved in order to secure employees capable of performing the required work. These skilled crafts have no problem with the closed shop law. On the other hand there are unskilled crafts where an employer may find competent employees on an available labor market, union or non-union, and can employ a ready crew from any employment agency. In these areas the closed shop law has presented serious difficulties where organization activity is concerned. Many employees carry a union card and work union and non-union jobs alike. The unions representing these non-skilled or semi-skilled employees have approached the problem in practical fashion. They endeavor to obtain a contract representing such employees who may be members of the union. When a contract with an employer has been negotiated for the use and benefit of only those employees who are members of the union, assuming that the contract is of any advantage whatsoever to such employees, there is a natural movement by the non-union employees to join the union and avail themselves of the advantages of the contract in the particular establishment involved. Rarely does this technique result in a completely unionized establishment, and of course the contract does not amount to a closed shop contract. The employer is always at liberty to hire non-union workers. It is because of the contract that the non-union workers soon seek union membership. The right of a union to request a contract on behalf of such members as may be employed by the particular employer is well established. Thus, unionism has survived notwithstanding the anti-closed shop law.

#### CONCLUSION

It is obvious from a survey of legislation proposed by organized labor in Florida that Florida law does not embody the principal labor goals. Florida labor has emphasized a legislative program including: (1) repeal of the anti-closed shop amendment, (2) creation of a Department of Labor at Cabinet level, (3) a definition as to when a labor injunction will or will not be granted (a modified Norris-LaGuardia Anti-Injunction Act), (4) a state administrative agency to actually enforce the statutorily defined

unfair labor practices (a modified Wagner act, as amended). Labor has realized these objectives in other states more fully than in Florida. The state's union activities are diverse, and whether urban, rural, industrial or resort; they range from the citrus workers, phosphate miners, cattlemen and lumbermen to clerks, bartenders and musicians, and include all the vast range of human endeavor represented by American unionism. Florida's increasing industrialization will soon demonstrate the inadequacies of the present Florida Labor Law.