2-1-1950

Florida Employment Peace Statute -- Compelling Union Recognition

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FLORIDA EMPLOYMENT PEACE STATUTE—COMPELLING UNION RECOGNITION

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With the increasing growth of industry in the State of Florida and the resulting demand for labor, certain social and economic problems have arisen which heretofore were prevalent only in large industrial areas. The most significant of these problems is the growth of organized labor with the ever increasing need for improved labor-management relations. The manifestation of this is the increase in clashes between labor and management for the past few years, particularly in the Dade County area. We have seen several bitter strikes in the airlines, the newspapers, the building trades and the laundries, with rumblings in various other fields. Labor-management problems are becoming ever more important in the operation of industrial establishments, and in vital need of solution.

It will be the purpose of this article to discuss the Florida Employment Peace Statute and its limitations upon picketing and striking by a union to compel its recognition by an employer as collective bargaining agent for his employees.[1]

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1. FLA. STAT., Chap. 481 (1941). The important provisions of Chapter 481 involved in this article are:

"§ 481.03 Employees' right of self-organization.—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.

"§ 481.09 Right of franchise preserved; penalties.—It shall be unlawful for any person:

(1) To interfere with or prevent the right of franchise of any member of a labor organization. The right of franchise shall include 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 he may have concerning his membership or employment, or the making known facts concerning such grievance or violations of law to any public officials, and his right of free petition, lawful assemblage and free speech.

(2) To prohibit or prevent any election of the officers of any labor organization.

(3) 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.

(4) To conduct any election referred to in subsection (3) of this section without a secret ballot.

(5) To charge, receive, or retain any dues, assessments or other charges in excess, of, or not authorized by, the constitution or bylaws of any labor organization.

(6) To act as a business agent without having obtained and possessing a valid and subsisting license or permit.

(7) To solicit membership for or to act as a representative of an existing labor organization without authority of such labor organization to do so.

(8) To make any false statement in an application for a license.

(9) For any person to seize or occupy property unlawfully during the existence of a labor dispute.

The various branches of our state government, being cognizant of the welfare of Florida and the necessity for increase in the industry brought into this great state, have been concerned with these problems. The executive branch of our government, acting through a militant attorney general and with the aid of the public opinion of Florida, brought about an amendment to the Florida Constitution, the so-called Right-To-Work-Amendment. Subsequently, the legislative branch of our government, in answer to an ever increasing clamor of public opinion, brought about the passage of the Florida Employment Peace Statute. The effect of this constitutional amendment and the Florida Employment Peace Statute upon the labor problems existing in this state now hangs in the balance, depending upon its interpretation by our judicial branch, the Supreme Court of the State of Florida.

The principal causes of labor disturbances arise out of the refusal of management to recognize a particular union as a collective bargaining agent for employees, and a further refusal to sign a contract with the union as collective bargaining agent for the employees. The Florida Supreme Court in the past two years has had three instances of litigation arising out of the refusal of management to recognize the union as a collective bargaining agent for employees. These are *Whitehead v. Miami Laundry*,[2] *Moore v. City Dry Cleaners & Laundry*,[3] and *Johnson v. White Swan Laundry*.[4] These cases all involve the same industry, and for the first time the Florida Supreme Court had occasion to consider the application of the important provisions of the Florida Employment Peace Statute, enacted by the Legislature in 1943.[5]

This statute is designed to protect labor unions, employers and non-union workers. It laid down some rules for employers, employees and unions alike. Section 481.03 guaranteed the right of self-organization to the laboring man. He is insured of the right to bargain collectively through representatives of his own choosing. Section 12 of the Declaration of Rights of the Constitution of the State of Florida was amended by the Legislature in 1943 and subsequently

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(10) To cause any cessation of work or interference with the progress of work by reason of any jurisdictional dispute, grievance or disagreement between or within labor organizations.

(11) To coerce or intimidate any employee in the enjoyment of his legal rights, including those guaranteed in Sec. 481.03, or to intimidate his family, picket his domicile, or injure the person or property of such employee or his family.

(12) To picket beyond the area of the industry within which a labor dispute arises.

(13) To engage in picketing by force and violence, or to picket in such a manner as to prevent ingress and egress to and from any premises, or to picket other than in a reasonable and peaceable manner.

"§ 481.13 Right to strike preserved.—Except as specifically provided in this chapter, nothing therein shall be construed so as to interfere with or impede or diminish in any way the right to strike or the right of individuals to work; nor shall anything in this chapter be so construed as to invade unlawfully the right to freedom of speech."

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

3. 41 So.2d 865 (1949).

4. 41 So.2d 874 (1949).

5. *Supra*, note 1.

adopted by the people of the State of Florida.[6] This amendment provided that the right of persons to work should not be denied or abridged on account of membership or non-membership in any labor union or labor organization, and further that the same should not be construed to deny or abridge the right of employees by and through a labor organization or union to bargain collectively with their employers.

The most controversial part of Chapter 481 is focused on the provisions of Section 481.09, which section makes it unlawful to participate in any strike, walk-out or cessation of work without the strike or walk-out being authorized by a majority vote of the employees involved, with the limitation, however, that no person can be prohibited from terminating his employment as a result of his own volition. This section also provides that all elections with reference to a strike shall be by secret ballot. The same section permits picketing provided it is done in a reasonable and peaceable manner, but further provides that it is unlawful to coerce or intimidate any employee in the enjoyment of his legal rights, including those provided in Section 481.03, namely, the right of an employee to bargain through representatives of his own choosing.

The pattern of union organization in the laundry cases above quoted is as follows: The union calls upon the employer and demands that it sign a contract recognizing the union as a collective bargaining agent for its employees. The employer generally refuses to negotiate such a contract unless the union actually represents a majority of the employees. The union in the process of organizing the employees is not in a strategic position to insist upon an immediate strike vote to be held in the company plant by secret ballot, since it does not represent a majority of the employees. It therefore organizes a picket line around the company plant announcing that the plant is on strike, publishes information through radio and press that the company plant is closed down and attempts to pass out handbills instructing those workers desirous of entering the plant that a strike exists.

Some workers then fail to continue their employment during the duration of the picket line for one or two reasons, either because of the actual coercion of the picket line (and this coercion in the great number of instances is far short of the violence which would be recognizable as necessary to obtain injunctive relief),[7] or adherence to the policy of never crossing the picket line. There is no question about the legality of a strike if a majority of the employees involved join in the strike pursuant to a vote by secret ballot. The problem confronting the employer is what to do with his establishment in

6. FLA. CONST., DECLARATION OF RIGHTS, § 12. The amended portion reads, "The right of persons to work shall not be denied or abridged on account of membership or non-membership 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."

7. See Moore v. City Dry Cleaners and Laundry, 41 So.2d 865 (1949) and the cases cited at p. 870.

which the majority of the employees are still willing to work. His business is depressed and seriously affected by the false advertising and publicity to the effect that his plant has shut down. There is a general boycott of his establishment by the people who will not cross the picket line. This result is brought about by a union which requests recognition, but which does not represent a majority of the employees. By the abortive strike and coercion of the picket line and its conduct it seeks to force recognition upon the employer and the employer's coercion of the employees to join the union. Few, if any, of the employees may desire this union as their collective bargaining agent. If the employer signs the contract with the union recognizing it as the collective bargaining agent of the employees, he violates Section 481.03 giving his employees the right to bargain collectively with representatives of the employees' own choosing.

The employer seeks recourse from his dilemma in the courts. He petitions the Circuit Court for an injunction against the union enjoining it from calling the illegal strike on the ground that it has not been authorized by a majority of his employees, and asks for relief against the picketing of his plant for the purpose of advertising the illegal strike. Heretofore, the Circuit Courts have been granting the strike injunctions, including an injunction against picketing in connection with illegal strikes. In *Whitehead v. Miami Laundry,*[8] the Florida Supreme Court reversed a Circuit Court injunction granting the employer relief against picketing and reversing a former decision [9] made prior to the enactment of the Florida Labor Peace Statute.

The Law Prior to Enactment of the Florida Employment Peace Statute

In *Retail Clerks' Union v. Lerner Shops,*[10] the union had been enjoined from picketing the place of business of Lerner Shops. The evidence showed that there was no controversy between Lerner and its employees with reference to hours, working conditions or recognition of the union as a bargaining agent. The sole purpose of picketing was to compel the Lerner Shops to recognize the union as a bargaining agent for its employees and to compel the employees to become union members. The Florida Supreme Court in affirming the injunction emphasized that there was no conclusive showing that the employees desired to unite with the union or that an obstacle was interposed to their so doing. The Court further emphasized that "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

8. *Supra*, note 2.
9. Retail Clerks' Union v. Lerner Shops, 140 Fla. 865, 193 So. 529 (1939).
10. *Ibid.* See also Paramount Enterprises, Inc. v. Mitchell, 104 Fla. 407, 140 So. 328 (1932), in which the Florida Supreme Court stated that as a general rule peaceful picketing was permitted.

his business." The Court recognized that a labor organization might picket for certain purposes, but the coercion of recognition as bargaining agent was not one of those purposes.

The Industrial Peace Statute and Its Interpretations

With this background, the Legislature of the State of Florida enacted Chapter 481 to insure industrial peace against abortive strikes by small minorities in a collective bargaining unit. The act provides that it shall be illegal to participate in a strike without a majority of the employees involved authorizing such a strike by secret ballot. It further provides that the employees are entitled to bargain collectively through representatives of their own choosing.

In *Whitehead v. Miami Laundry, Inc.*,[11] the following factual situation existed: Whitehead was the business agent of the local International Laundry Workers Union. The company had 210 persons employed by it. The union had been attempting to organize its workers for a long time by holding meetings and by propagandizing the employees via mail and the distribution of handbills. The union had never represented a majority of the company employees nor had a majority of the employees ever designated the union as a collective bargaining agent. On May 12, 1947, former employees picketed the company's plant with placards stating the Miami Laundry was unfair to its employees. On the same date the Miami newspapers carried purported news releases that the union represented the workers and had called a strike to be effective May 16th at 6:30 a.m. However, all but a few of the company's employees appeared for work during the entire period of the so-called strike. The pickets were working with and had been paid by the union. The Circuit Court, after hearing the testimony, ruled that the defendant union was acting in a concerted effort to bring about a cessation of work at plaintiff's place of business and was therefore acting in contravention of the state law by inducing a strike in the absence of a majority vote of the employees involved authorizing the strike. The final decree enjoined the defendant from repeating acts of inducing, signalling or announcing a strike at the laundry's place of business.

The Florida Supreme Court reversed the lower court on the theory that there was no strike or cessation of work within the purview of the requirement of Section 481.09(3) requiring a majority vote of the employees for a legal strike. The Court further emphasized that Section 481.09 did permit picketing. However, the sole purpose of the picketing amid union activity in the instant case was to compel the employer laundry to negotiate with union representatives with respect to a collective bargaining agreement. The employer, Miami Laundry, could not lawfully negotiate a contract with the union as collective bargaining agent for its employees in view of Section 481.03, which gave the

11. *Supra*, note 2.

employees the right to bargain collectively through representatives of their own choosing. Section 481.09(11) states that it shall be unlawful to coerce or intimidate an employee in the enjoyment of his legal rights including those guaranteed in Section 481.03.[12] *In other words, the employees of the laundry would be disenfranchised and have no choice in the selection of their collective bargaining agent if the employer recognized the union.* Chapter 481 of the Florida Statutes establishes the public policy of the State of Florida to the effect that a majority of the employees are entitled to determine who their collective bargaining agent should be. The attempt of the union to foist itself upon a group of employees and compel the employer to recognize it as the bargaining agent is a type of coercion similar to that of the employer insisting that his employees join a company union of his own designation.

The principle upon which collective bargaining operates is that the rule of the majority within an appropriate collective bargaining unit shall bind the minority.

As is succinctly stated by the Wisconsin Supreme Court in *Hotel and Restaurant Employees v. Wisconsin Employment Relations Board,*[13] "If the majority of a collective bargaining unit can coerce the minority in the matter of bargaining, we see no reason why the Legislature may not vest in a majority of the unit power to determine whether such conditions obtain in the employment as warrant the calling of a strike in an effort to remedy them."

The Florida Legislature certainly did not intend to permit picketing for an illegal purpose. There is no doubt that the Legislature in enacting Chapter 481 F.S.A. recognized the right of peaceful picketing. This does not mean the right to picket exists for all purposes no matter how peaceful the picketing may be.

The picketing of the Miami Laundry and conduct of the union was for an illegal purpose (1) to induce the employees of the Miami Laundry to strike regardless of participation by a majority in the strike, and (2) to compel the employer to recognize the union as the collective bargaining agent of the employees, notwithstanding that the union did not represent a majority of the employees.

The Taft-Hartley Act specifically provides that it shall be an unfair labor practice for an employer by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization unless it is representative of the majority of the employees.[14] The Taft-Hartley Act states that the representatives

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12. *Supra,* note 1.

13. 236 Wis. 329, 294 N.W. 632 at p. 640 (1941); aff'd by U.S. Supreme Court at 315 U.S. 437 (1942).

14. The Labor Management Relations Act of 1947 (Taft-Hartley) 61 Stat. 136, c. 120, 29 U.S.C. § 141-197. Sec. 8(a) 3 provides:

"(a) It shall be an unfair labor practice for an employer—

selected by the majority of the employees shall be the exclusive representatives of all employees for the purpose of collective bargaining with respect to rates of pay, hours of employment or other conditions of employment.[15]

In other words, the whole legislative trend is toward self-government in industry and labor-management relations conducted by representatives of the majority of employees.

The United States Supreme Court has recognized that peaceful picketing for an unlawful purpose may be enjoined. These decisions were made after the decisions of the United States Supreme Court in *Thornhill v. Alabama,*[16] and *A.F. of L. v. Swing,*[17] relied upon by the Florida Supreme Court in *Whitehead v. Miami Laundry Company.* The celebrated *Swing* and *Thornhill* cases sustained picketing as a mode of free speech and the ban on picketing inconsistent with the guarantee of freedom of speech under the Fourteenth Amendment of the Federal Constitution. In the *Swing* case the sole issue was the validity of a decree asserting as the common law of a state that there can be no peaceful picketing or peaceful persuasion with reference to a dispute between an employer and a trade union unless the employer's own employees are in controversy with him. The Supreme Court conceded, however, that the states may still "set the limits of permissible contest open to industrial combatants."

In *Giboney v. Empire Storage and Ice Co.,*[18] decided April 4, 1949, the United States Supreme Court reiterated the statement that conduct otherwise unlawful is not immune to state regulation "because an integral part of that conduct is carried on by display of placards by peaceful picketers." In this case the facts were as follows: An ice peddlers' union sought to break down the resistance of non-member peddlers in their efforts to force them to join the union for so-called better wages and working conditions by inducing wholesale distributors to agree not to sell ice to non-union peddlers. Such an agreement was illegal under a state statute declaring combinations in restraint of trade

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in § 7 (§ 157 of this title);

(2) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing . . . shall preclude an employer from making an agreement with a labor organization . . . to require as a condition of employment membership therein . . . if such labor organization is the representative of the employees as provided in § 9(a), . . . in the appropriate collective-bargaining unit covered by such agreement when made. . . ."

15. *Ibid.* § 9(a) provides:

"(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment: . . . ."

16. 310 U.S. 88 (1940).

17. 312 U.S. 321 (1941).

18. 336 U.S. 490 (1949). This case represents the first instance Justices Reed, Black and Douglas have voted to uphold an injunction against picketing since 1940, when the Thornhill doctrine was expounded, 63 HARV. L. REV. 155.

to be unlawful. A distributor refused to agree and the union resorted to peaceful picketing. In a suit to enjoin the picketing the union asserted that they were merely exercising their constitutional right to publicize the existence of a labor dispute. The United States Supreme Court upheld the injunction against picketing. The picketing in violation of the statute and express public policy, was not within the immunity of the constitutional freedom of speech and press. No opinions relied upon by the petitioners give a right to picketers to take advantage of speech or press to violate valid state laws designed to protect important interests of society. In other words, the states still have an important legislative field in the regulation of picketing. The Florida Legislature has spoken in this field in the adoption of Florida Industrial Peace Statute, but the decision of the Florida Supreme Court in *Whitehead v. Miami Laundry* invalidated this. In striking down this legislative labor policy, the Supreme Court of Florida failed to consider the State Legislature's right to create limitations in the public interest. The facts in the *Whitehead* case show that the union was attempting to induce conduct in violation of (1) the right of employees involved to choose their own bargaining agents, and (2) the requirement that a strike vote be authorized by a majority of employees involved. Two strong legislative policies, and yet the Florida Supreme Court adhered to what they recognized as federal constitutional limitation, notwithstanding the clear position taken by the Supreme Court of the United States in the *Giboney* case and others,[19] decided subsequent to the *Thornhill* and *Swing* cases relied upon in the *Whitehead* case.

Decisions of the highest state courts of other states clearly indicate that picketing for an illegal purpose may be enjoined:

In *Wolferman v. Root*,[20] a substantially similar situation confronted the Missouri Supreme Court as confronted the Florida Supreme Court in *Whitehead v. Miami Laundry Company*. The union was attempting to obtain a contract from the company, contending that it was the collective bargaining agent and represented a majority of the employees. The plaintiff company refused to sign the contract because the union did not represent a majority of the employees. The union set up a picket line about the company's place of business. The plaintiff filed a petition for an injunction to restrain picketing on the ground that it was being carried on for an unlawful purpose; namely, to coerce the plaintiff into signing a contract with defendant union and to force plaintiff to coerce its employees into joining the defendant union. The final decree enjoined the union (1) from demanding the company to enter into an agreement with the union so long as the local union did not represent a majority of the meat-cutters and butchers in the employ of the plaintiff,

19. *Supra*, note 18. Other decisions indicating the weight given to legislative policy are Carpenters and J. Union of America v. Ritters Cafe, 315 U.S. 722 (1942); Bakery Drivers Local v. Wohl, 315 U.S. 769 (1942).

20. 356 Mo. 976, 204 S.W.2d 733 (1947).

and (2) from announcing, publishing or declaring that a strike was in effect at plaintiff's store when such was not the case. The Missouri Supreme Court ruled that picketing should also have been enjoined. The Court conceded that one of the lawful purposes of picketing was to inform the public that plaintiff's employees refused to join the union. This, however, was joined with a purpose to force the company to sign a contract with the union which was an unlawful purpose. Picketing for an unlawful purpose as well as a lawful purpose renders the picketing unlawful.[21] The United States Supreme Court denied certiorari in this case.[22]

Again in *R. H. White Co. v. Murphy*,[23] the Massachusetts Supreme Court ruled that the constitutional guaranty of freedom of speech does not protect picketing when the purpose of the picketing is to coerce employer or employee action which would be in violation of the State Labor Relations Act.

The Requirement of Authorization of a Majority Vote by Secret Ballot as the Condition Precedent to a Strike.

The Florida Supreme Court, subsequent to *Whitehead v. Miami Laundry*, has had two other occasions to pass on the question of picketing by a union which did not represent a majority of the employees, in order to compel recognition as the collective bargaining agent and a contract, *Moore v. City Dry Cleaners and Laundry*,[24] and *Johnson v. The White Swan Laundry*.[25]

In each of these cases, the conduct of the union was substantially identical with that in the *Whitehead v. Miami Laundry* case.[26] The union did not represent a majority of the employees. It did, however, in the *City Dry Cleaners* case attempt an abortive strike election but, as the Chancellor found, the majority of the employees had not participated in any secret ballot nor had there been compliance with the statute with reference to balloting by a majority involved. However, in each of the cases the union set up pickets around the plants and advertised that a strike was in progress and the plant

21. *Supra*, note 20, p. 736: "Both the answer and the evidence do disclose that one of the purposes for the picketing is for giving information to the public. While we assume that purpose is lawful still when it is coupled, as it is here, with unlawful purposes, the fact one of several purposes is lawful does not make the picketing lawful. Picketing for both lawful and unlawful purposes is unlawful. See Restatement Torts, 796 (1939), *Cf.* Bausch Machine Tool Co. v. Hill, 231 Mass. 30, 120 N.E. 188 (1918); Folsom Engraving Co. v. McNeil, 235 Mass. 269, 126 N.E. 479 (1920)."

22. *Ibid.* 333 U.S. 837 (1948).

23. 310 Mass. 510, 38 N.E.2d 685 (1942). The Court stated at page 691: "We are of the opinion that none of the cases relied upon by the defendants . . . . is authority for any principle that picketing in concert to persuade an employer to do an unlawful act, one condemned by statute as an unfair labor practice and contrary to the defined public policy of the commonwealth and of the nation, is permissible under the guarantee of freedom of speech or otherwise."

24. 41 So.2d 865 (1949).

25. 41 So.2d 874 (1949).

26. *Supra*, note 2.

was shut down. In the case of *Moore v. City Dry Cleaners and Laundry* violence accompanied the union picketing and the injunctive relief was obviously proper and in line with United States Supreme Court decision, *Milkwagon Drivers Union v. Meadowmoor Dairies*.[27] The Florida Supreme Court so ruled. However, in *Johnson v. White Swan Laundry* the primary grounds, and one of the grounds in the *City Dry Cleaners* case, for the injunction against picketing by the union and advertising the existence of a strike was the failure to comply with the requirement of authorization by a majority of the employees involved. The following questions were squarely presented to the Florida Supreme Court: (1) Is Section 481.09 (3-4)[28] constitutional as a proper exercise of the state police power in requiring a majority of the employees involved to authorize the strike? (2) Is picketing and announcing a strike in contravention of a state statute picketing for an illegal purpose and subject to injunctive relief? The Supreme Court did not decide either question in either case. It failed to decide both issues, and in interpreting Section 481.09 (3-4) stated that since there had been no actual walk-out, no question of a majority vote was involved. The majority vote is only a condition precedent to the act of striking itself and not applicable to picketing to induce employees to walk out or strike. It seems obvious that picketing for an illegal purpose in contravention of the state statute and state legislative policy is picketing which may be enjoined. It does not materially differ as a practical matter whether a minority of employees cease work as a result of a strike or whether they cease work because they do not care to cross a picket line or are otherwise coerced. The legislative policy is obvious. In any strike there are three groups involved, the employer, the employees and the public. The Legislature in the public interest has promulgated certain conditions with reference to a strike. *The dissent pointed out the effect of the holding in both cases as implying a right to announce an existing strike which could not then have lawfully occurred or to induce an act prohibited by Section 481.09 (3).*[29]

It is submitted that the clear cut holding in the *Giboney* case,[30] permitting states to enjoin picketing for a purpose in contravention of state legislative policy would justify a complete reversal of *Whitehead v. Miami Laundry Company*.

There is no question of the constitutionality of the requirement that

27. 312 U.S. 287 (1941).
28. *Supra*, note 1.
29. *Supra*, note 1. 41 So.2d 874 at page 877 (1949): "The effect of this holding is that under the circumstances of the case a strike might offend § 481.09(3) supra, yet the appellants 'may lawfully invite, induce, signal or announce a strike at any place of business' when it had not been voted 'by a majority of the employees to be governed thereby,' which implies a right to announce as existing a strike which could not then have lawfully occurred or to induce an act prohibited by § 481.09(3), supra, i.e., before a majority had voted in favor of a strike."
30. *Supra*, note 18.

a strike be authorized by a majority vote of the employees involved at a secret ballot. This is a valid statutory policy set forth by the Legislature of the State of Florida. It does not contravene any provision of the state or federal constitution. The Taft-Hartley Labor Management Relations Act specifically outlawed certain forms of strikes by unions. Strikes to obtain named objectives are made unfair labor practices [31] and the National Labor Relations Board is authorized to prevent them.[32] There is no absolute right to strike.

The recent United States Supreme Court case of *International Union v. Wisconsin Employment Relations Board*,[33] decided February, 1949, had occasion to discuss the authority of the states to regulate and control strikes. The U.A.W., for the purpose of putting pressure on the employer in negotiations for a new collective bargaining agreement, instigated intermittent and unannounced work stoppages without warning during working hours. The Wisconsin Board issued a cease and desist order predicated on the Wisconsin Statute, which made it an unfair labor practice (1) to engage in picketing, or other overt concomitants of a strike without the same being authorized by a majority of the collective bargaining unit by secret ballot calling for a strike, and (2) to engage in any concerted action to interfere with production except by leaving the premises to go on strike. The United States Supreme Court stated that the order to cease and desist was within the proper purview of state regulation of strikes. The Court reviewed the existing law and history of the right to strike: [34]

> This Court less than a decade earlier had stated that law to be that the state constitutionally could prohibit strikes and make a violation criminal. It has unanimously adopted the language of Mr. Justice Brandeis that "Neither the common law, nor the Fourteenth Amendment, confers the absolute right to strike." Dorchy v. Kansas, 272 U.S. 306, 311, 71 L. ed. 248, 269, 47 S. Ct. 86. . . . The right to strike, because of its more serious impact upon the public interest, is more vulnerable to regulation than the right to organize and select representatives for lawful purposes of collective bargaining which this Court has characterized as a "fundamental right" and which, as the Court has pointed out, was recognized as such in its decisions long before it was given protection by the Labor Relations Act.

The Court then summarized the respective spheres of the states and

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31. *Supra*, note 14. § 8(b) (4) provides: "to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is:" (stating named objectives).

32. *Id.* § 10(a) provides: "The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice listed in § 8, § 158 of this title affecting commerce."

33. 336 U.S. 245 (1949).

34. *Id.* at 259.

federal government under the Labor Management Relations Act[35] (Taft-Hartley):

> It never has been thought to prevent the state legislatures from limiting "individual and group rights of aggression and defense" or from substituting "processes of justice for the more primitive method of trial by combat." . . . The Labor Management Relations Act declared it to be an unfair labor practice for a union to induce or engage in a strike or concerted refusal to work where an object thereof is any of certain enumerated ones. . . . While the Federal Board is empowered to forbid a strike, when and because its purpose is one that the Federal Act made illegal, it has been given no power to forbid one because its method is illegal—even if the illegality were to consist of actual or threatened violence to persons or destruction of property. Policing of such conduct is left wholly to the states. In this case there was also evidence of considerable injury to property and intimidation of other employees by threats and no one questions the state's power to police coercion by those methods.

The decision would clearly indicate the law with reference to the right of the state legislature to place reasonable limitations on the right to strike. The Wisconsin Statute requiring a majority vote by secret ballot as a condition precedent to striking had been before the United States Supreme Court on a previous occasion and seemingly approved by that Court which quoted the statute in its decision. In this case, *Hotel and Restaurant Employees v. Wisconsin Employment Relations Board*,[36] the United States Supreme Court was confronted by an appeal from a decision of the Wisconsin Board, affirmed by the Wisconsin Supreme Court[37] on the ground that the Wisconsin Labor Peace Statute and the decisions of the Board forbade the union to engage in peaceful picketing insofar as it was deemed in exercise of free speech. There had admittedly been violence in the union picketing. However, the United States Supreme Court seemingly quoted the Wisconsin Labor Peace Statute with approval including the prohibition against picketing other concomitants of a strike without the authorization of a majority of the collective bargaining unit as within the proper scope of state legislative action.[38] The decision of the Wisconsin Supreme Court appealed

35. *Id.* at 252.
36. 315 U.S. 437 (1944).
37. *Supra*, note 13.
38. *Supra*, 315 U.S. 439 (1941): "The Wisconsin statute underlying this controversy was enacted as a comprehensive code governing the relations *(440) *between employers and employees in the state. Only a few of its many provisions are relevant here. § 111.06 provides that it shall be 'an unfair labor practice' to 'cooperate in engaging in, promoting or inducing picketing, boycotting or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employees of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike,' and to 'hinder or prevent, by mass picketing, threats, intimidation, force or coercion of any kind the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance.'"

from had emphasized that it is within the providence of the legislature to place it within the power of a majority of a collective bargaining unit to authorize a strike. The Court summarized the logical rules:[39]

> The petitioners complain that the characterization of the acts of employees as unfair labor practices cannot be made to depend on the action of a majority of a collective bargaining unit; that the legislature cannot place it within the power of a majority of a collective bargaining unit to authorize a strike. This argument is an attack upon a principle which is fundamental in the attempt of the legislature and of Congress to regulate labor relations. The principle upon which authorized collective bargaining depends is that the rule of the majority within an appropriate collective bargaining unit shall bind the minority. We see no way by which the principle of collective bargaining can be maintained unless this right of a majority of a collective bargaining unit to speak for the unit including the minority is maintained. A bargain on behalf of a collective bargaining unit amounts to nothing if, after it is made, the individuals or some of them comprising that unit are not affected thereby. This principle is explicit in the National Labor Relations Act, 29 U.S.C.A. 151, et seq., in the Railway Labor Peace Act, 45 U.S.C.A. 151, et seq., and in the act now under consideration. If the majority of a collective bargaining unit can thus coerce the minority in the matter of bargaining, we see no reason why the legislature may not vest in a majority of the unit power to determine whether such conditions obtain in the employment as warrant the calling of a strike in an effort to remedy them.

The cases primarily relied upon in support of the proposition that the state legislature cannot delegate to and confine to a majority of a collective bargaining unit the power to authorize a strike are *A.F. of L. v. Bain*[40] and *A.F. of L. v. McAdory*.[41]

The case of *A.F. of L. v. Bain* did not involve a statute such as the one in Florida limiting the right to strike except by a majority of the employees involved authorizing same at secret ballot. The statute[42] involved limited all picketing in the absence of a bona fide labor dispute between the employees and their employer, a statutory prohibition which is expressly within the decisions of the *Thornhill* and *Swing* cases. The Wisconsin Supreme Court in *Hotel and Restaurant Employees v. Wisconsin Employment Board*,[43] conclusively distinguished the case of *A.F. of L. v. Bain* in view of the fact the statute involved went so much farther than the mere statutory limitation of the right to strike without majority authorization.

The other case relied upon by those who urge the unconstitutionality of

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39. *Supra*, note 13, 294 N.W. 632 at 640 (1941).
40. 165 Ore. 183, 106 P.2d 544 (1940).
41. 246 Ala. 1, 18 So.2d 810 (1944).
42. OREGON LAWS 1939, Ch. 2. P. 7, § 3 provides, "It shall be unlawful for any person, persons, association or organizations to picket or patrol or post pickets or patrols in or near the premises or property owned, occupied, controlled or used by an employer or employers unless there is a bona fide labor dispute between said employer and/or employers and his or their employees."
43. *Supra*, note 13.

Section 489.09 (3-4) is the case of *A.F. of L. v. McAdory*.[44] This was an appeal to the Alabama Supreme Court in an action for a declaratory decree with reference to the constitutionality of the provisions of the Alabama Labor Peace Act known as the "Bradford Act." This case involved a statute making it unlawful to strike except when it is authorized by a vote of the majority of the regular employees working in the business or plant involved. The Alabama Supreme Court ruled the Act unconstitutional solely because it failed to limit the strike to a strike authorized by a majority of the collective bargaining unit. The Alabama Supreme Court quoted with approval the Wisconsin Supreme Court decision,[45] and implied that if the Alabama Statute followed the phraseology of the Wisconsin Labor Peace Statute, the Statute would be valid. The distinction drawn by the Alabama Supreme Court is fundamental in understanding union organization in this country. In a large industrial establishment, there may be several A.F. of L. craft unions all working side by side and all comprising independent collective bargaining units. There may also be a C.I.O. Industrial Union representing the unskilled workers. The collective bargaining unit of A.F. of L. craft unions does not need to rely upon the majority vote of the entire plant to strike. The majority vote of the craft union members or bargaining unit members is the important criterion of the Wisconsin Statute and of the Florida Statute. The Florida Statute[46] reads that the strike is illegal unless authorized by a majority vote of the *employees to be governed thereby*. This undoubtedly means a majority of the particular collective bargaining unit. A specific example of how this would operate may be made with reference to a large chain of super markets. The butchers belong to an independent union and to an independent bargaining unit. If a butchers' strike was authorized by a majority of the butchers, there is no hesitancy in calling it a legal strike. The majority of the other employees would not be called upon to vote in the strike vote unless, of course, they had become members of the particular union striking.

The most recent decision with reference to the legality of a state legislative provision making the calling of a strike conditioned upon a majority vote of the collective bargaining unit involved is *International U.A.W. v. McNally*.[47] The action involved an attempt by the U.A.W.-C.I.O. auto

44. *Supra*, note 41.

45. *Id.* at 22, 18 So.2d 827 (1944). "The Court there observed: 'The principle upon which authorized collective bargaining depends is that the rule of the majority within an appropriate collective bargaining unit shall bind the minority.' . . .

The Wisconsin Court recognized this principle and gave it effect in upholding the Wisconsin statute, but we have no such provision in the Act here under consideration. The denial of the right to strike is made to rest, not upon the rule of the majority of any bargaining unit or in any craft to which the workmen belong, but upon the whim or caprice of others who may be employed in the business, plant, or unit thereof, whoever they may be and whatever views they may entertain as to labor or labor unions."

46. *Supra*, note 1.

47. 325 Mich. 250, 38 N.W.2d 421 (1949).

workers to enjoin prosecution under a Michigan statute which provided that in the event of a labor controversy, before a strike may be called, an election shall be held and the strike shall not be instituted unless a majority of all employees in such bargaining unit vote in favor of such action. The U.A.W. contended that insofar as the statute made the calling of a strike conditioned on the affirmative vote of the majority of employees involved in the bargaining unit it violated the Michigan State Constitution, and was repugnant to the right of collective bargaining granted to unions under Taft-Hartley. The Michigan Supreme Court in a clear cut and well considered opinion held that this statute limiting the right to strike to authorization by a majority of a collective bargaining unit by a secret ballot was clearly within the purview of the legislature. The court easily distinguished *A.F. of L. v. Bain*,[48] and *A.F. of L. v. McAdory* [49] in much the same manner as they have been distinguished here.

The opinion followed the U. S. Supreme Court decision in *International U.A.W. v. Wisconsin Employment Relations Board*,[50] which clearly indicates that the state may limit the right to strike in the exercise of its police power. It emphasized that the public is a third party interested in strikes and can regulate same.

Three other cases decided by the United States Supreme Court in 1949 emphasize that reasonable state legislative policy not in conflict with the Federal Statutes does not conflict with the provisions of the Federal Constitution. These cases are: *Lincoln Federal Union v. Northwestern Iron and Metal Co.*,[51] *American Federation of Labor v. American Sash & Door Company*[52] and *Algoma Plywood Co. v. Wisconsin Employment Relations Board*.[53]

In the *Lincoln Federal Labor Union* case, the United States Supreme Court was confronted with a constitutional amendment of Nebraska and a North Carolina statute similar to the right to work amendment of the Florida Constitution, Section 12 of the Bill of Rights passed by the Legislature in 1943 and ratified by the electorate in 1944.[54] In substance the provisions which were the subject of the judicial inquiry provided that no one should be denied an opportunity to obtain employment because he is or is not a member of a labor organization. The legislation was declared to be constitutional. The Supreme Court emphasized:[55]

> Under the state policy adopted by these laws, employers must, other considerations being equal, give equal opportunities for remunerative work

48. *Supra*, note 40.
49. *Supra*, note 41.
50. *Supra*, note 33.
51. 335 U.S. 525 (1949).
52. 335 U.S. 538 (1949).
53. 336 U.S. 301 (1949).
54. *Supra*, note 6.
55. *Supra*, note 51, at 529.

> to union and non-union members without discrimination against either. In order to achieve this objective of equal opportunity for the two groups, employers are forbidden to make contracts which would obligate them to hire or keep none but union members.

These state laws also make it impossible for an employer to make contracts with company unions which obligated the employer to refuse jobs to union members. In this respect the state laws protect the employment opportunities of members of independent unions. The Court then emphasized the broad sphere of operation of the legislature both state and federal in the field of labor legislation under the present constitutional doctrine:[56]

> Under this constitutional doctrine the due process clause is no longer to be so broadly construed that the Congress and state legislatures are put in a strait jacket when they attempt to suppress business and industrial conditions which they regard as offensive to the public welfare.

In *A.F. of L. v. American Sash & Door Company*[57] involving a substantially similar "right to work" statute of the Arizona Constitution, the United States Supreme Court in affirming the validity of the constitutional amendment expressly stated:[58]

> . . . concerning state laws we have said that the existence of evils against which the law should afford protection and the relative need of different groups for that protection "is a matter for the legislative judgment."

The third case, *Algoma Plywood Co. v. Wisconsin Employment Relations Board*,[59] decided March 7, 1949, is even more interesting because it sheds some light on the Florida legislative policy making it illegal to strike or participate in a strike without the authorization of the majority taken by a secret ballot. The Wisconsin Statute provided that an employer could not encourage memberships in any union by discrimination as to hiring except that an all-union agreement was permissible if voted for by two-thirds of the employees at a secret ballot. In other words, the union closed shop agreement must have had the sanction of two-thirds of the employees voting by a secret ballot. The Wisconsin Employment Relations Board had ordered an employer to cease giving effect to a maintenance of membership clause in a collective bargaining agreement, and ordered reinstatement of an employee discharged for failure to pay union dues on the ground the employer had committed an unfair labor practice in making such an agreement without the sanction of two-thirds of the employees. The Supreme Court in affirming the action of the Wisconsin Employment Board stated:[60]

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56. *Id.* at 536.
57. *Supra*, note 52.
58. *Id.* at 542.
59. *Supra*, note 53.
60. *Id.* at 305.

> The States are free (apart from preemption by Congress) to characterize any wrong of any kind by an employer to an employee, whether statutorily created or known to the common law, as an "unfair labor practice."

The employer had argued that the Wisconsin statute contravened the National Labor Relations Act in effect at the time of the order of the Wisconsin Employment Board, which permitted the closed shop. The Court, however, held that the National Labor Relations Act, predecessor to Taft-Hartley, merely permitted the closed shop, merely "disclaimed a national policy hostile to the closed shop or other forms of union-security agreement." The United States Supreme Court reiterated that the state jurisdiction over labor controversies is unimpaired where State and Federal laws do not overlap: [61]

> Since the enumeration by the Wagner Act and the Taft-Hartley Act of unfair labor practices over which the National Board has exclusive jurisdiction does not prevent the States from enforcing their own policies in matters not governed by the federal law, such freedom of action by a State cannot be lost because the National Board has once held an election under the Wagner Act.

Conclusion

In view of the decisions of the Supreme Court of the United States qualifying their previous decisions in the *Thornhill* and *Swing* cases with reference to picketing, there can be little doubt that the power is reserved to the various state legislatures to establish their own public policy limiting the right to picket and strike. The State of Florida by the "Right-to-Work" constitutional amendment and by the Legislature enacting the Florida Employment Peace Statute availed itself of the prerogative of creating a public policy limiting the right to picket and strike. The limitations upon striking and picketing created by constitutional amendment and by the Florida Employment Peace Statute are consistent with the limitations set forth in the Taft-Hartley Act. In the light of the existing public policy of Florida and the acquiescence of the Supreme Court of the United States in recognizing the rights of the various states to create their own public policy, there seems ample grounds for reconsideration of the principles considered by the Supreme Court of Florida in the case of *Whitehead v. Miami Laundry*. It may well be that a further consideration by the Supreme Court of Florida of these same issues might result in a reversal of this all important case.

61. *Id.* at 314.