

January 1949

## Labor Law: Picketing and Free Speech

Roy T. Rhodes

Follow this and additional works at: <https://scholarship.law.ufl.edu/flr>



Part of the [Law Commons](#)

---

### Recommended Citation

Roy T. Rhodes, *Labor Law: Picketing and Free Speech*, 2 Fla. L. Rev. 153 (1949).

Available at: <https://scholarship.law.ufl.edu/flr/vol2/iss1/18>

This Case Comment is brought to you for free and open access by UF Law Scholarship Repository. It has been accepted for inclusion in Florida Law Review by an authorized editor of UF Law Scholarship Repository. For more information, please contact [kaleita@law.ufl.edu](mailto:kaleita@law.ufl.edu).

realizing his own incapacity with respect to tax matters, turned to a professional man publicly regarded as an expert on taxes. The accountant's opinion was fortified by the investigation of petitioner's books by an internal revenue agent, who made no mention of the tax in question and even secured a rebate for overpayment. Certainly Mr. Burman exercised reasonable care in accepting all this as authority that his taxes were properly paid, and to impose a fine for wilful neglect would shock not only one's sense of justice but one's common sense as well.

TOM WADDELL, JR.

### LABOR LAW: PICKETING AND FREE SPEECH

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

Defendants, four former employees of the plaintiff and a business agent for the International Laundry Workers Union, picketed plaintiff's laundry, carrying cards condemning the working conditions; handed out hand-bills; and through advertisement in the newspapers called upon plaintiff's employees to strike. The union agent had tried with little success to enlist plaintiff's employees as union members, unionization being the object of the picketing. Only a negligible number of workers failed to go to work during this time. An injunction, partially based on Florida Statutes 1941, §481.09(3), was granted against these activities. On appeal, HELD, peaceful picketing by discharged employees in cooperation with a union organizational drive to require employer to negotiate with union representatives is a lawful exercise of the constitutional guaranty of freedom of communication. Decree reversed and bill dismissed, Justices Terrell, Adams, and Barns dissenting.

The Court decided that Florida Statutes 1941, §481.09(3) was inapplicable, since as a matter of fact a strike was non-existent.<sup>1</sup> It then proceeded to consider the constitutional question involved.

Since the earliest days there has been constant confusion in American courts as to the exact status of picketing. Many early decisions

---

<sup>1</sup>36 So.2d 382, 385 (Fla. 1948).

held picketing illegal,<sup>2</sup> while others said that peaceful picketing was a contradiction of terms,<sup>3</sup> there being no such thing as peaceful picketing any more than chaste vulgarity.<sup>4</sup> Florida originally held peaceful picketing illegal, in the absence of a strike, as an infringement upon the employer's business interest.<sup>5</sup> In later cases, following the modern trend, picketing was allowed when there was no violence, force, or intimidation, either on the basis that picketing was incidental to the right to strike, or by indulging the fiction that picketing was not calculated to injure the respondent's business.<sup>6</sup> The true reason is that picketing has in recent years come to be regarded as a legitimate method of forcing the employer to meet the demands of labor by way of adjusting the interests of both and of the consumer.

Although it is generally conceded that the entire concept of picketing was revolutionized by the association thereof with free speech, beginning with the *Senn*<sup>7</sup> case and crystalized in the *Thornhill*<sup>8</sup> and *Carlson*<sup>9</sup> cases, there is some early authority justifying peaceful picketing on this basis.<sup>10</sup> This free-speech concept as applied to picketing is well founded in logic<sup>11</sup> and is thought by many to produce social benefits.<sup>12</sup>

<sup>2</sup>*Pierce v. Stablemen's Union*, 156 Cal. 70, 103 Pac. 324 (1909); *George Jonas Glass Co. v. Glass Bottle Blowers' Ass'n*, 72 N. J. Eq. 653, 66 Atl. 953 (1907).

<sup>3</sup>*Elkind & Sons v. Retail Clerks' Int'l Prot. Ass'n*, 114 N. J. Eq. 586, 169 Atl. 494 (1933).

<sup>4</sup>*Atchison, T. & S. F. Ry. v. Gee*, 139 Fed. 582 (S. D. Iowa 1905).

<sup>5</sup>*Retail Clerks' Union v. Lerner Shops, Inc.*, 140 Fla. 865, 193 So. 529 (1939).

<sup>6</sup>*Southern Calif. Iron & Steel Co. v. Amalgamated Ass'n*, 186 Cal. 604, 200 Pac. 1 (1921); *Karges Furn. Co. v. Amalgamated Woodworkers*, 165 Ind. 421, 75 N. E. 877 (1905); *Church Shoe Co. v. Turner*, 218 Mo. App. 516, 279 S. W. 232 (1926).

<sup>7</sup>*Senn v. Tile Layers Prot. Union*, 301 U. S. 468 (1937).

<sup>8</sup>*Thornhill v. Alabama*, 310 U. S. 88 (1940).

<sup>9</sup>*Carlson v. California*, 310 U. S. 106 (1940).

<sup>10</sup>*Local Union v. Stathakis*, 135 Ark. 86, 205 S. W. 450 (1918); *Wood v. Toohey*, 114 Misc. 185, 186 N. Y. Supp. 95 (1921).

<sup>11</sup>*Bakery Drivers Local v. Wohl*, 315 U. S. 769 (1942); *American Fed. Labor v. Swing*, 312 U. S. 321 (1941); *Milkwagon Drivers Union v. Meadowmoor Dairies*, 312 U. S. 287 (1941); see Jaffe, *In Defense of the Supreme Court's Picketing Doctrine*, 41 MICH. L. REV. 1037 (1943).

<sup>12</sup>*Glover v. Retail Clerks' Union*, 10 Alaska 274 (D. C. 1942); *People v. Saffell*, 74 Cal.2d 967, 168 P.2d 497 (1946); *Westinghouse Elec. Corp. v. United Elec. Radio & Mach. Workers*, 353 Pa. 446, 46 A.2d 16 (1946).

## CASE COMMENTS

There has been praise<sup>13</sup> on the one hand and harsh criticism<sup>14</sup> on the other of the so-called "picketing policy" instigated in the late thirties by the United States Supreme Court.

In cases following the *Thornhill* and *Carlson* cases the Supreme Court has attempted to clarify the application of this new concept. These later decisions show that an injunction against picketing with a background of violence is constitutional,<sup>15</sup> and that a state is not required in all places and all circumstances to tolerate even peaceful picketing.<sup>16</sup> Thus the states have the right of regulation as an exercise of police power for an infringement upon the public interest.<sup>17</sup> Since freedom of speech is not an absolute right,<sup>18</sup> picketing, a form of free speech, is not absolute.<sup>19</sup> Picketing involves more than the exercise of free speech and hence is subject to even greater restrictive regulation.<sup>20</sup> Picketing may be regulated as to numbers,<sup>21</sup> area,<sup>22</sup> and even purpose,<sup>23</sup> without encroaching upon the constitutional protection. Today the trend

<sup>13</sup>Dodd, *Picketing and Free Speech: A Dissent*, 56 HARV. L. REV. 513 (1943); Jaffe, *In Defense of the Supreme Court's Picketing Doctrine*, 41 MICH. L. REV. 1037 (1943); Schlüsselberg, *The Free Speech Safeguard for Labor Picketing*, 34 KY. L. J. 3 (1945); Note, *The Doctrine of Picketing as Free Speech—Six Years After*, 21 N. Y. U. L. Q. REV. 406 (1946).

<sup>14</sup>Teller, *Picketing and Free Speech*, 56 HARV. L. REV. 180 (1942); Teller, *Picketing and Free Speech: A Reply*, 56 HARV. L. REV. 532 (1943).

<sup>15</sup>*Milkwagon Drivers Union v. Meadowmoor Dairies*, 312 U. S. 287 (1941); *Retail Clerks' Union v. Wisconsin Empl'm't Rel. Board*, 242 Wis. 21, 6 N. W.2d 698 (1942).

<sup>16</sup>*Bakery Drivers Local v. Wohl*, 315 U. S. 769, 775 (1942).

<sup>17</sup>*Allen-Bradley Local v. Wisconsin Empl'm't Rel. Board*, 315 U. S. 740 (1942); *Hall v. Hawaiian Pineapple Co.*, 72 F. Supp. 533 (Hawaii 1947); *James v. Martinship Corp.*, 25 Cal.2d 721, 155 P.2d 329 (1944); *American Fed. Labor v. Reilly*, 113 Colo. 90, 155 P.2d 145 (1944).

<sup>18</sup>*Kiyoshi Okamoto v. United States*, 152 F.2d 905 (C. C. A. 10th 1945); *In re Hayes*, 72 Fla. 558, 73 So. 362 (1916); *People v. Schaffner*, 382 Ill. 266, 46 N. E.2d 984 (1943).

<sup>19</sup>*United Elec. Radio & Mach. Workers v. Baldwin*, 67 F. Supp. 235 (D. D. C. 1946); *Northwestern Pac. Ry. v. Lumber & Sawmill Workers*, 189 P.2d 277 (Cal. 1948).

<sup>20</sup>See Mr. Justice Douglas, concurring in *Bakery Drivers Local v. Wohl*, 315 U. S. 769 (1942); *Lebaron Printing Specialties v. Paper Converters Union*, 75 F. Supp. 678 (S. D. Cal. 1948).

<sup>21</sup>*Phelps Dodge Copper Prod. Corp. v. United Elec. Radio & Mach. Workers*, 138 N. J. Eq. 3, 46 A.2d 453 (1946).

<sup>22</sup>*Gomez v. United Office & Prof. Workers*, 73 F. Supp. 679 (D. D. C. 1947).

<sup>23</sup>*Peters v. Central Labor Council*, 179 Ore. 1, 169 P.2d 870 (1946).