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Standing to Sue: Common Law Developments Concerning State Labor Law

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port searches, but rather would judicially reenforce the narrow justification for permitting them, since potential hijackers could not benefit from it.

Conversely, the "societal cost" in not adopting the exclusionary rule with regard to evidence seized in airport security searches is potentially great. Used as precedent the holding in the instant case would permit the admission of any material seized in any exigent circumstances, on a showing that the elusive standard of "reasonableness" has been met. Hence the ultimate "societal cost" of the holding in the instant case is the generation of a trend that would permit the recognized exceptions to the fourth amendment to swallow the amendment itself.

The dissent in the instant case sets forth the better rule, which should be adopted. The exclusion at trial of contraband seized in airport searches would not disturb or deter the viable purpose of detection of potential hijackers; it would not prohibit confiscation of contraband unexpectedly discovered in airport searches. Nor would it prevent the government from subsequently monitoring the activities of a potential drug dealer to establish probable cause. Whether or not the exclusionary rule would deter pretextual airport searches, it would give the non-hijacker *a posteriori* vindication of the fourth amendment rights that, but for his being in the airport, would be his as a matter of course.

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STANDING TO SUE: COMMON LAW DEVELOPMENTS CONCERNING STATE LABOR LAW

Cannery, Citrus, Drivers, Warehousemen, and Allied Employees of Local 444 v. Winter Haven Hospital, Inc., 279 So. 2d 23 (Fla. 1973)

Local 444 brought suit against Winter Haven Hospital seeking injunctive relief on behalf of certain hospital employees allegedly coerced by the employer while engaged in union organizational activities. The suit was dismissed on the grounds the union did not have standing to seek relief on behalf of employees against an employer exempt from the National Labor Relations Act (NLRA),[1] but because of the significance of the issue the question of standing was certified to the Supreme Court of Florida.[2] The supreme court

1. The employer exemptions are stated in 29 U.S.C. §152(2) (1970). For example, the term "employer" does not include the United States or any government corporation or any Federal Reserve Bank or any state or political subdivision thereof, or any corporation or association operating a hospital not for profit.

2. FLA. CONST. art. V, §4(2) provides that the supreme court may review by certiorari any decision of a district court of appeal that passes upon a question certified by the district court of appeal to be of great public interest.

reversed and HELD, the labor organization had standing on behalf of the employees to seek relief against asserted employer coercion in violation of the Florida constitution, article 1, section 6.[3]

In dismissing the suit, the district court relied on *Miami Laundry Co. v. Laundry Linens, Dry Cleaning, Drivers, Salesmen & Helpers, Local Union No. 935*[4] where the union had sought injunctive relief and requested a declaratory judgment defining the rights of certain discharged employees. The union had alleged that the employer coerced union members and sympathizers while they were engaged in union organizational activities. Relief was there denied on the grounds the union did not have standing to sue on behalf of the employees because the rights allegedly infringed were uniquely personal and could not be assigned.[5]

The court in *Miami Laundry* in turn used as principal authority *Miami Water Works Local No. 654 v. City of Miami*[6] in which the union had asked the court for a declaration of the rights of public employees in dealing with a public employer. Relief had been refused by the court after a finding that the rights of the employees were personal and could not be raised by the union. *Miami Water Works* was expressly disaffirmed, however, by the supreme court in *Dade County Classroom Teachers' Association, Inc. v. Ryan*[7] because the decision did not involve the subsequent modification in article I, section 6 of the 1968 constitution, which guaranteed collective bargaining rights to both public and private employees.[8]

The instant court stated that *Miami Water Works* and *Miami Laundry* had lost their status as controlling authority not only because they were decided before the 1968 constitution, but also because "the cases represented an out-dated view of the representative and social institutional function of a labor organization."[9] Thus, with no judicial precedent on the issue of standing subsequent to the 1968 constitutional revision, only section 447.11 of the Florida Statutes,[10] granting labor unions the capacity to sue and be sued, and other Florida statutes granting employees rights and privileges concerning labor activities[11] were available to guide the supreme court in its decision.

Prior to the instant case courts had often held that a labor organization was subject to suit arising from actions of its members.[12] Unions were also allowed to bring suit and were excluded for lack of standing only where specific

3. 279 So. 2d 23, 27 (Fla. 1973).
4. 41 So. 2d 305 (Fla. 1949).
5. *Id.*
6. 157 Fla. 445, 26 So. 2d 194 (1946).
7. 225 So. 2d 903 (Fla. 1969).
8. *Id.* at 905, 906.
9. 279 So. 2d at 26.
10. FLA. STAT. §447.11 (1971).
11. FLA. STAT. §§447.03, .09(11) (1971).
12. *See, e.g.*, International Typographical Union v. Omered, 59 So. 2d 534 (Fla. 1952); Hettenbaugh v. Airline Pilots Ass'n Int'l, 52 So. 2d 676 (Fla. 1951); International Longshoremen's Ass'n Local 1416 v. Eastern S.S. Lines, Inc., 211 So. 2d 658 (3d D.C.A. Fla. 1968).

objection was made.[13] Relying on these precedents, the court expressed its duty to "secure a method of providing efficient and expeditious adjudication of the rights of persons possessing adverse interests in a controversy."[14] Finding that if a union were not given standing to sue on the employees' behalf the employees might not receive "an 'efficient and expeditious adjudication of their rights' under article I, section 6, and the controlling statutes,"[15] the instant court granted the union standing to sue on behalf of union members and sympathizers.[16]

Beyond the important grant of mutuality in a union's capacity to sue, the instant case portends a significant effect on other areas of labor law exempt from the NLRA. Since its ruling that article I, section 6 of the 1968 constitution entitled all private and public employees to the same collective bargaining rights (with the exception of the right to strike),[17] the Florida supreme court has called for legislative action to implement the provision.[18] Without standards and guidelines the complexities of labor relations and collective bargaining will hinder negotiation and settlement of labor disputes, and thus effectively preclude employees from receiving the benefit of their constitutionally guaranteed rights.

The supreme court has persistently called for legislative action in the area of public labor law, one of the major exceptions to the NLRA. In *Dade County Classroom Teachers'*[19] the court noted the need for standards and guidelines to regulate the sensitive area of labor relations between public employees and public employers.[20] With its urgings unheeded, a unanimous court in *Dade County Classroom Teachers' Association, Inc. v. The Legislature*[21] announced that if statutory guidelines for public sector bargaining were not set within a reasonable time the court would be forced to fashion its own standards to implement the constitutional provision granting Florida public employees the right to bargain.[22] The instant case thus appears as the first step by the court toward fashioning standards to meet the constitutional guarantee. Because the court appears to be following the guidelines of federal labor law, the significance of this first step can best be appreciated by comparing it with the grant of standing to unions on the federal level.

Labor organizations have standing on the federal level to represent both public and private rights of their members and sympathizers.[23] Although both

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13. 279 So. 2d at 26.
14. *Id.* at 27 (*quoting from* Shingleton v. Bussey, 223 So. 2d 713, 718 (1969)).
15. *Id.* at 27.
16. *Id.*
17. Dade County Classroom Teachers' Ass'n, Inc. v. Ryan, 225 So. 2d 903 (Fla. 1969).
18. *See* Dade County Classroom Teachers' Ass'n, Inc. v. The Legislature, 269 So. 2d 684 (Fla. 1972); Dade County Classroom Teachers' Ass'n, Inc. v. Ryan, 225 So. 2d 903, 905 (Fla. 1969).
19. 225 So. 2d 903 (Fla. 1969).
20. *Id.* at 906.
21. 269 So. 2d 684 (Fla. 1972).
22. *Id.* at 688.
23. *See* Christensen, *Arbitration, Section 301, and the National Labor Relations Act,* 37

types of rights are exercised by private citizens, the courts have considered rights given and protected by sections 7 and 8 of the Taft-Hartley Act to be public in nature,[24] while rights given and protected under individual collective bargaining agreements are considered to be private.[25] This distinction is significant because Congress has provided different methods of dealing with labor-management disputes according to the type of right involved. The National Labor Relations Board (NLRB) is responsible for enforcement of public rights,[26] while protection of private rights is left to the courts and arbitrators.[27]

If the employer in the instant case were not exempt from the NLRA, his alleged activity would constitute an unfair labor practice under section 8a of the Taft-Hartley Act;[28] therefore, the instant case involves public rights. It appears that the court, instead of requiring individual employees to bring separate suits to enjoin unfair labor practices, is now adopting a more modern approach by considering the individual's rights as being assignable. This approach is similar to the one taken on the federal level under the Taft-Hartley Act,[29] except that the court is substituting itself for a labor board.[30]

Having taken the first step toward effectuating constitutional guarantees by allowing unions standing on behalf of employee-members' public rights, the question remains whether Florida courts will allow unions standing to assert employee-members' private rights. There are indications that the supreme court will take this step also. Dicta in *Miami Laundry* distinguished between public and private rights and indicated that unions might have standing to enforce employee-members' private rights under a collective bargaining agreement.[31] More importantly, the policies and reasoning used by Congress in allowing unions standing for employee-members' private rights are similar to the policies and reasoning used by the Supreme Court of Florida in the instant case.

At the federal level, section 301(A) and (B) of the Taft-Hartley Act[32] has been interpreted as establishing federal substantive law allowing unions to enforce rights created for their employee-members under collective bargaining

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N.Y.U.L. REV. 411, 412, 413 (1962).

24. 29 U.S.C. §§157-58 (1970). These are unfair labor practices such as restraining, coercing, or interfering with the employee's right to form, join, or assist labor organizations or to bargain collectively. *See* Kovarsky, *Unfair Labor Practices, Individual Rights, and Section 301*, 16 VAND. L. REV. 595 (1964).

25. Such rights include pension plans, seniority systems, wages, et cetera, and are granted in the individual agreements.

26. *E.g.*, Linn v. Plant Guard Workers, CIO, 383 U.S. 53 (1966); Amalgamated Util. Workers v. Consolidated Edison Co., 309 U.S. 261 (1940).

27. *See, e.g.*, United Steelworkers Local 114 v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960); Textile Workers Union v. Lincoln Mills, 353 U.S. 448 (1957).

28. 29 U.S.C. §158(a) (1970).

29. 29 U.S.C. §§141-87, *as amended*, 29 U.S.C. §§153, 158-60, 164, 186-87 (1970).

30. Also, employees' public rights are protected by FLA. CONST. art. I, §6 and FLA. STAT. §§447.03, .09(11), .11 (1971).

31. 41 So. 2d 305, 307-09 (Fla. 1949).

32. 29 U.S.C. §§185(A), (B) (1970).

agreements.[33] Congress recognized that collective bargaining was the logical means for achieving industrial peace[34] and that in order for collective bargaining to work and the individual's rights to be protected, the agreements must be enforceable by both the union and the employer.[35] Similarly, on the state level the Florida constitution establishes the right of collective bargaining as a method to benefit industrial relations.[36] The Florida supreme court has recognized the need for collective bargaining legislation and has attempted to pave the way for its adoption.[37] It has taken the realistic view that in a modern economic society labor unions are the most effective means of representing an individual employee's rights.[38] Accordingly, in light of these policies and the desire to make collective bargaining effective, it seems probable that the courts will allow unions standing to sue for employee-members' private rights also.

Section 301 of the Taft-Hartley Act[39] was a significant step in evolving a common law body of federal labor law.[40] The grant of standing assured by the instant case, when applied with section 447.11 of the Florida Statutes to employers exempt from the NLRA, can reach a similar end on the state level. But a common law development of significant constitutional employment rights is at best inadequate. The common law process is too slow and labor

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33. This interpretation is the result of a series of United States Supreme Court decisions. The first of these cases was Association of Westinghouse Salaried Employees v. Westinghouse Elec. Corp., 348 U.S. 437 (1955). This case proceeded from the premise that §301 did not create federal substantive rights, thus §301 could not be used to enforce terms of the collective agreement. Textile Workers Union v. Lincoln Mills, 353 U.S. 448 (1957), rejected this premise and abandoned any distinction between union rights and "uniquely personal rights." Later in United Steelworkers Local 114 v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960), the Court held that an arbitrator's award ordering reinstatement and back pay to an employee who was wrongfully discharged could be specifically enforced by the union under §301. Finally, in Charles Dowd Box Co. v. Courtney, 368 U.S. 502 (1962), it was established that the union could enforce directly or through arbitration the terms of the collective agreement that were peculiarly for the benefit of the individual employee. *See* Summers, *Individual Rights in Collective Agreements and Arbitration,* 37 N.Y.U.L. REV. 362 (1962).

34. Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 455 (1957).

35. *See* S. Rep. No. 105, 80th Cong., 1st Sess., 17-18 (1947).

36. FLA. CONST. art. I, §6.

37. *See* Dade County Classroom Teachers' Ass'n, Inc. v. The Legislature, 269 So. 2d 684 (Fla. 1972).

38. 279 So. 2d 23 (Fla. 1973).

39. Section 301(b) made it possible for a labor organization representing employees in an industry affecting commerce to sue and be sued as an entity in the federal courts. (FLA. STAT. §447.11 (1971) serves this function on the state level.) Section 301(a) gives the unions standing to sue and be sued on behalf of the employee-members' private rights. Thus, if the employees breach the collective bargaining agreement the union can be sued and if the employer breaches the agreement the union can sue. This section makes both the union and the employer responsible for the enforcement of the agreement and tends to stabilize industrial relations. Section 301(a) also allows the federal courts to fashion federal law where federal labor rights are concerned. *See* Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 454, 457 (1957); Summers, *supra* note 33.

40. *See* Jay, *Arbitration and the Federal Common Law of Collective Bargaining Agreements,* 37 N.Y.U.L. REV., 448, 449 (1962).