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pretations, leaving such tasks to the legislatures.[22] There is a need, as illustrated here, for the recognition of the conflict in this field and a concerted effort toward the fulfillment of a uniform solution.

WALTER M. DINGWALL

LABOR LAW — PICKETING BY UNION MEMBERS WHO ARE NOT EMPLOYEES OF SUBJECT EMPLOYER

The Fontainebleau Hotel was picketed by members of a Hotel Employees Union, a minority of whom were employees of the hotel. The union sought recognition as the bargaining agent of the employees of the hotel. The Florida Supreme Court indicated that the union had ignored the prerequisites of picketing established by law, because it had intimidated the employees and the patrons. *Held*, ". . . that the union as such, and as distinguished from the individual employees, *may not* (italics supplied) under the circumstances . . . engage in picketing by use of members of the union as pickets *who are not the employees of the subject employer.*" (italics supplied) *Fontainebleau Hotel Corp. v. Hotel Employees Union, Local No. 255*, 92 So.2d 415 (Fla. 1957).[1]

In American Federation of Labor v. Swing, the Supreme Court of the United States held that the constitutional guarantee of freedom of speech was infringed upon by the judicial policy of a state forbidding peaceful picketing that was based on the grounds that the picketing had been conducted by strangers to the employers; thus, no proximate relationship existed between the employers and the pickets.[2] In the *Swing* decision the Court pointed out that a state can not exclude workingmen from peacefully exercising the right of free speech by drawing the circle of economic competition so small around the employer and the employees as to contain only himself and those employees *directly* employed by them.

Following this decision, many courts reversed earlier holdings concerning the unacceptability of "stranger" picketing and established precedents indicating the existence of labor disputes even though the employees

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22. Hunt v. General Ins. Co. of America, 217 S.C. 453, 60 S.E.2d 891 (1955). "Courts should not annul contracts on doubtful grounds of public policy, in such matters it is better that the legislatures should first speak." Bright v. Hanover Ins. Co., 48 Wash. 60, 92 Pac. 779 (1907). "To a certain extent the law undoubtedly gives legal sanction to the wagering contract, but the policy of such a law is for the Legislature, and not for the courts."

1. For a *thorough* examination of the background of Federal and Florida law in the field of labor relations, the reader is referred to: 8 MIAMI L.Q. 246 (1953) and 10 MIAMI L.Q. 208 (1956).

2. American Federation of Labor v. Swing, 312 U.S. 321 (1941).

involved were not the employees of the subject employer.[3] Such picketing employees often acted as members of a union which had a dispute with a particular employer.[4] Thus, statutes and ordinances forbidding "stranger" picketing have fallen by the wayside following judicial scrutinization.[5] The present attitude toward "stranger" picketing is that it is impractical to confine picketing to employees or former employees of the subject employer.[6]

In Florida, it has been well established that picketing must be peaceful and meet "lawful prerequisites," if it is to be considered a reasonable exercise of the right of free speech.[7] In the instant case, the Florida Supreme Court draws a further distinction between picketing by individuals who are not members of a union and picketing by the members of a union. The employees both as individuals *and* as union members were seeking recognition of the union as bargaining agent for the employees of the hotel. There may be labor disputes between employers and members of a union or between employers and employees who are not union members. In the former, the union members certainly cannot lose their identity as individuals. The weight of authority indicates that union members, as well as non-union members, have the right to exercise free speech by picketing.[8]

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3. The Kentucky Court of Appeals overruled its prior decisions against "stranger" picketing in Blanford v. Press Pub. Co., 286 Ky. 657, 151 S.W.2d 440 (1941) because of the *Swing* decision, pointing out that the United States Supreme Court is the final interpreter of the Federal Constitution, and therefore no distinction may hereafter be drawn by a state court between the acts of employees in furtherance of their interests and those which may be committed by nonemployee members of a labor union in furtherance of its interests.

4. Dummermuth v. Hykes, 95 N.E.2d 32 (Ohio 1950). The court indicated that the absence of employer-employee relationship between the persons picketing and the party being picketed does not constitute a basis for granting an injunction against peaceful picketing. The constitutional guarantee of free speech protects peaceful picketing in a dispute between a *union*, even though the employer's employees are not in controversy with him. Shiland v. Retail Clerks, Local No. 1657, 66 So.2d 146 (Ala. 1953). The court pointed out that in some instances former employees and some employees who had never been employed by the employer were on the picket line, but this made no difference in the exercise of the right to picket. *Accord*, The Fair, Inc. v. Retail Clerks Int'l. Protective Ass'n., 157 S.W.2d 716 (Tex. Civ. App. 1941). Twin Grill Co. v. Local Joint Executive Bd., 60 Pa. D. & C. 379 (Pa. 1947).

5. A provision of the Pennsylvania Labor Relations Act that made it an unfair labor practice for a union to picket with individuals who were not employees of the employer being picketed, held to be a violation of the right of free speech in Pennsylvania Labor Relations Bd. v. Chester & Del. Counties Bartenders Union, 361 Pa. 246, 64 A.2d 835 (1949). In California, a city ordinance prohibiting picketing by persons not employed and by employees not employed for at least thirty days was held invalid as unreasonable under the Federal and California Constitutions. People v. Gidaly, 35 Cal. App. 2d Supp. 758, 93 P.2d 660 (1939). *Accord*, Yakima v. Gorham, 200 Wash. 564, 94 P.2d 180 (1939).

6. Outdoor Sports Corp. v. American Federation of Labor, 6 N.J. 217, 78 A.2d 69 (1951); Wortex Mills Inc. v. Textile Union of America, 369 Pa. 359, 85 A.2d 851 (1952); Texas Int'l. Brotherhood of Teamsters v. Cain, 272 S.W.2d 543 (Tex. Civ. App. 1954); Edwards v. Commonwealth, 191 Va. 272, 60 S.E.2d 916 (1950).

7. FLA. STATS. § 447.09 (3), (13) (1955); Sax Enterprises v. Hotel Employees Union, Local No. 255, 80 So.2d 602 (Fla. 1955).

8. American Federation of Labor v. Swing, 312 U.S. 321 (1941).

The Florida Supreme Court, in the instant case, does *not* articulate on the question of whether peaceful picketing that meets the "lawful prerequisites" will be permitted if (1) it is conducted by employees who are members of a union (2) who are not the employees of the picketed employer and (3) when the picketing has not been previously authorized by a majority of the employees who would be governed by the picketing. Instead, the court *implies* that such action would be unacceptable.[9] Such an implication, if utilized, would give rise to a legal policy inconsistent with the weight of legal precedents and the logical, imperative interpretation of the constitutional guarantees of free speech.

The prerequisites to peaceful, lawful picketing established by statute and by the court are reasonable and can be adhered to by individuals and unions desiring to inform the public and their fellow employees of disputes between themselves and employers, whether the employers employ union members or not. It is hoped that when the Florida Supreme Court is squarely faced with a situation involving peaceful, lawful picketing by members of a union, as such, who are not the employees of the subject employer, it will act to eliminate this undesirable implication.

LAWRENCE C. PORTER

TORTS — CONTRIBUTORY NEGLIGENCE

The defendant ice company delivered a block of ice to the defendant purchaser, depositing it on a public sidewalk adjacent to the defendant's store. Plaintiff, an employee of the purchaser, brought an action for injuries sustained when she slipped and fell in the water resulting from the melting ice. *Held*, that as a matter of law, plaintiff's contributory negligence was a complete bar to recovery. *Chambers v. Southern Wholesale, Inc.*, 92 So.2d 188 (Fla. 1956).

The common law rule that contributory negligence is a defense and will bar recovery developed at a comparatively late date in the law of negligence.[1] It has been widely accepted and prevails in all but a few

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9. Fontainebleau Hotel Corp. v. Hotel Employees Union, Local No. 255, 92 So.2d 415 (Fla. 1957). ". . . Nothing contained herein shall be construed as prohibiting any number of employees less than a majority from engaging as individuals (as distinguished from representatives of a labor union) in lawful picketing . . . ." In this decision, and in others, the Florida Supreme Court has pointed out that a majority approval of the employees to be governed by the activity is not necessary prior to the undertaking of picketing. Whitehead v. Miami Laundry Co., 36 So.2d 382 (Fla. 1948); Johnson v. White Swan Laundry Co., 41 So.2d 874 (Fla. 1949).

1. The earliest reported case involving contributory negligence is Butterfield v. Forrester, 103 Eng. Rep. 926 (1809).