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# LABOR LAW*

HERBERT B. MINTZ**

Although state authority in the field of labor relations has been continually restricted by judicial interpretation and legislative pronouncement, certain areas of state jurisdiction still remain. The material presented herein represents a selection of those cases which appear to be the most noteworthy and significant. Emphasis is placed on factual patterns, procedural problems and judicial holdings, rather than an analytical comparison of the cases, except where obvious contradictions appeared. Where practical, the general form and outline developed in the two previous articles on this subject have been followed.[1]

Of continuing interest in the field of Florida labor law are the questions dealing with enforcement of the Florida right-to-work law, the place of Florida courts in the enforcement and interpretation of collective bargaining agreements, and the exercise by state courts of jurisdiction over certain activities of unions, their officers and members.

The following basic outline has been used to present the development in these areas:

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* The instant survey article covers volumes 155 through 177 of the Southern Reporter, Second Series.

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## I. LABOR RELATIONS ACT

### A. *National Labor Relations Act, Section 14(b) and Enforcement of Florida Right-to-Work Law*

Although the main activity during the survey period centered on the federal level (and in the halls of Congress concerning the possible repeal of section 14(b) of the National Labor Relations Act)[2] the Florida courts continued to try to develop a workable formula, within the permitted realm of the second *Schermerhorn* decision.[3]

Two cases of particular note were decided by the courts during the past two-year period. Interestingly enough, both cases evolved from the same factual situation.

In the first, *Kitchens v. Doe*,[4] the Third District Court of Appeal affirmed a decision of a circuit court, and held that a union's attempt to *induce* an employer to execute a union security agreement was within the exclusive jurisdiction of the National Labor Relations Board. The court held that the state court lacked jurisdiction of an employee's action against union officials for violation of state right-to-work law, *since no union security agreement had been executed or negotiated.* The plaintiffs in the case were employees of Scherer & Sons, Inc., a manufacturer of belts, buttons and accessories in the garment industry in Miami. The defendants were officials of Local 415 of the International Ladies Garment Workers Union. The salient paragraphs of the complaint charged the union with picketing the employees for the purposes of coercing them to join the union, in violation of the employee's rights under the Declaration of Rights to the Constitution of the State of Florida.[5] Basically, the complaint alleged that the activity of the labor union was directed towards establishing a union security agreement whereby the union would represent the employee-plaintiffs, although they alleged that they had no desire to join the union.

At the time of the filing of the complaint, a temporary injunction was granted prohibiting the union from picketing. Both parties moved for summary judgment and the trial court granted the defendant union's motion, and dissolved the temporary injunction. The plaintiffs appealed.

In reaching its decision, the district court of appeal stated that the

1. Mintz, *Labor Law*, 16 U. MIAMI L. REV. 275 (1961); Mintz, *Labor Law*, 18 U. MIAMI L. REV. 734 (1964).
2. 29 U.S.C. § 164(b) (1965).
3. Retail Clerks Ass'n v. Schermerhorn, 373 U.S. 746 (1963). State power, recognized by § 14(b), begins only with actual negotiation and execution of the type of agreement described by § 14(b). For complete discussion of both *Schermerhorn* cases and earlier judicial application, see Mintz, *Labor Law*, 18 U. MIAMI L. REV. 734-737 (1964).
4. 172 So.2d 896 (Fla. 3d Dist. 1965).
5. FLA. CONST., DECL. OF RIGHTS, § 12, popularly known as the Florida "right-to-work" provision, as implemented by FLA. STAT. ch. 447 (1963).

circuit court had correctly applied the law as set forth in the second *Schermerhorn* case.[6] The circuit court had indicated that in the second *Schermerhorn* case, the United States Supreme Court had affirmed the Florida Supreme Court's ruling[7] that the state court had authority *only* where the agreement had *already been executed or negotiated.*

Only four days before the decision by the Third Circuit in the *Kitchens* case, the Florida Circuit Court, Dade County, in *Scherer & Sons, Inc. v. ILGWU, Local 415,*[8] held that the Federal Labor Management Relations Act does not deprive a Florida circuit court of jurisdiction of an action by an employer to restrain a union from picketing in violation of the Florida right-to-work law,[9] even though there is no union security agreement between the picketed employer and the union. In the *Scherer* case, the court found that there was, already in existence, an agreement between the union and an employer association which provided that, if the union was successful in its objective, the employees of an employer, picketed by the union, would be precluded from choosing whether or not to join a union. The agreement involved was between the union and the apparel manufacturers association in the Miami area, who constituted a source of work done by Scherer. The agreement provided that employees of employer-members of the association might do work on goods only if the goods conformed to the requirements of the agreement between the association and the union to the effect that such goods, ". . . shall be made only by workers covered by collective bargaining agreements with the union."

Although the *Scherer* case grew out of the same factual situation as *Kitchens v. Doe,*[10] the court held, on rehearing after the *Kitchens* case, that the paramount issue in the *Scherer* case, when compared with the *Kitchens* case, was the existence of a contract, between the union and other manufacturers in the area, which constituted both primary and secondary economic pressures on the plaintiff to compel him to execute a contract with the defendant union, and to require his employees to join the union even though none of the plaintiff's employees were or evidenced a desire to become members of the union.[11] The court found that such agreements expressly affect the employees of Scherer and, in effect, require that unless they belong to a union, no work would be received by the shop. The court commented:

> Thus, it is seen that in the present case there is such an agreement referred to in the *Nellie Kitchens* case which distinguishes

6. *Supra* note 3.
7. Schermerhorn v. Local 1625, Retail Clerks Ass'n, 141 So.2d 269 (Fla. 1962).
8. Case No. 61-1417, Eleventh Judicial Circuit, Mar. 12, 1965, reported in 59 L.R.R.M. 2331.
9. *Supra* note 5.
10. *Supra* note 8.
11. *Id.* at 2333.

it and supports state action under the "right-to-work" law, consistent with the language of Mr. Justice Douglas in the *Retail Clerks v. Schermerhorn* . . . .

Since both cases are now on appeal, ultimately either the Supreme Court of Florida or the Supreme Court of the United States will be called upon to clarify the *Schermerhorn* decisions as to the type or types of agreements referred to and the metes and bounds of Justice Douglas' language, "*state power . . . begins only with actual negotiations and execution* of the type of agreement described by Section 14(b)."[12]

## II. Collective Bargaining Agreements[13]

### A. *Breach of Contracts of Employment*

#### 1. Election of Remedies

An employee, in the event of discharge, may ordinarily elect to sue for wrongful discharge without pursuing remedies available to him under an employment contract which provides a grievance procedure. However, if he challenges the validity of his discharge by evoking the procedures for hearing and determination under an existing employment contract, he thereby "elects his remedy" and cannot thereafter maintain an action at law for damages arising out of the wrongful discharge.[14]

Determining whether an employee must exhaust his "administrative remedies" before bringing a common law action, the Florida Supreme Court, in *Florida E. Coast Ry. v. Smith*,[15] discharged a writ of certiorari to the Third District Court of Appeal. The third district has held that the right of an injured employee to maintain a common law action for breach of employment contract, where the contract arose out of a collective bargaining agreement, would not be defeated by his failure to first exhaust such administrative remedies as may have been available under other federal labor statutes.[16]

While involved in a "field test," the employee in question fell in exhaustion and so injured himself that he was not able to return to work.

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12. *Supra* note 3. (Emphasis added.)

13. Section 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a) (1965), which confers jurisdiction upon federal district courts in suits for violation of collective bargaining contracts does not "divest" state courts of jurisdiction either at law or equity. Charles Dowd Box Co. v. Courtney, 368 U.S. 502 (1962). However, state courts must apply federal labor law in exercising "concurrent" jurisdiction with federal courts over suits for violation of collective bargaining contracts, Local 174, Teamsters Union v. Lucas Flour Co., 369 U.S. 95 (1962).

14. Scott v. National Airlines, Inc., 150 So.2d 237 (Fla. 1963). In the *Scott* case, the Supreme Court was faced with a suit for wrongful discharge *after* the employee had exercised his "right" of filing a grievance under the contract and had lost. *But see* Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965).

15. 162 So.2d 663 (Fla. 1964).

16. Smith v. Florida E. Coast Ry., 151 So.2d 70 (Fla. 3d Dist. 1963).

The employee first brought a negligence action under the Federal Employers Liability Act,[17] alleging *inter alia,* that he was negligently and unlawfully required to take the field test. The cause of action was ultimately dismissed on appeal,[18] with the court indicating that were the employee aggrieved, his remedy for such grievance lay under the Railway Labor Act.[19]

Thereafter, the employee brought suit for breach of the employment contract which had arisen out of the existing collective bargaining agreement. The trial court granted a summary judgment for the defendant, holding that the principle of res judicata operated to bar the employee's action, and that jurisdiction of the cause was vested *solely* in the National Railway Adjustment Board under the terms of the Railway Labor Act. The district court, in reversing the circuit court, commented:

> Instead of pursuing such administrative remedies as might have been available to him under the terms of the collective bargaining agreement and the Railway Labor Act, Title 45, U.S.C.A. § 151, et seq., the appellant elected to bring a common law action in the state court for breach of contract, a remedy different from any which the National Railway Adjustment Board has the power to provide, and one which does not involve questions of future relations between the railroad and its other employees. This was his prerogative.[20]

In another action involving the Florida East Coast Railway Company, two employees sought to convert an alleged breach of contract into a tort action by alleging malice.[21] The plaintiffs instituted an action in the Circuit Court of Dade County seeking damages for what they alleged to be a malicious conspiracy by the railroad and its director of personnel to deprive the plaintiffs of their rights under an agreement between the company and a labor organization. The trial judge initially denied a motion by the railroad to dismiss the complaint for failure to state a cause of action; however, he thereafter granted defendant's motion for a summary judgment. The plaintiffs appealed.

The Third District Court of Appeal concluded that no cause of action had been stated by the complaint, and therefore did not reach the question of summary judgment. Concerning the alleged "tort," the court commented:

> If the defendant, railroad, breached its contract to employ the

17. 45 U.S.C.A. § 51 (1965).
18. Butler v. Smith, 104 So.2d 868 (Fla. 3d Dist. 1958).
19. 45 U.S.C.A. § 151 (1965).
20. This holding of the Third Circuit Court of Appeals in Smith v. Florida E. Coast Ry., *supra* note 16, at 73 is in keeping with the decision of the Supreme Court of the United States in Smith v. Evening News Ass'n, 371 U.S. 195 (1962).
21. Days v. Florida E. Coast Ry., 165 So.2d 434 (Fla. 3d Dist. 1964).

plaintiffs, this breach of contract may not be converted into a tort by an allegation that it was maliciously done.[22]

### 2. APPLICABILITY OF "FOREIGN" LABOR LAWS

The Venezuelan Labor Code was held to be applicable to determine the right of a Florida-based employee of a Venezuelan corporation to certain benefits upon termination of employment. In *Rutas Aereas Nacionales, S.A. v. Robinson*,[23] Robinson, a United States citizen and resident of Miami, Florida, had been employed as a pilot for the defendant, a Venezuelan Airline, RANSA. In July of 1960, a receiver was appointed to control RANSA's Florida property and practically all of the Miami-based personnel were released. Robinson, one of five Miami-based American pilots, intervened in the district court action, seeking various terminal benefits provided for under the Venezuelan Labor Code. The airlines defended on the contention that Florida and federal public policy disfavors the enforcement of foreign labor laws; that, under the standard conflict of laws rules prevailing in Florida, the place of making and place of performance of Robinson's employment contract would require the application of Florida labor law.

The Fifth Circuit Court of Appeals, in finding for the plaintiffs, reviewed Florida conflict of law rules relating to benefits accruing under foreign employment contracts and determined that under the Florida conflict rule, the Venezuelan Labor Code would apply.

### B. *Deference of State Courts to the Exercise and Use of the Arbitration Procedure of a Collective Bargaining Contract*

In *Jacksonville Roofing Ass'n v. Local 365, Sheet Metal Workers*[24] the First District Court of Appeal affirmed a decision of a circuit court judge who exercised his discretion by declining jurisdiction in an action brought for a declaratory decree involving the intepretation of an existing collective bargaining agreement. The chancellor gave the following as his reason for declining jurisdiction and rendering a declaratory decree:

> This court could properly assume jurisdiction in this case, but, under those circumstances, conceives that it should exercise its judicial discretion to leave the contending parties to the procedure they agreed upon for the interpretation of their contract, unless that procedure is not expeditiously pursued.[25]

In affirming the decision, the district court commented:

> In our opinion, not only has no abuse of discretion been demon-

22. *Id.* at 436.
23. 339 F.2d 265 (5th Cir. 1964).
24. 156 So.2d 416 (Fla. 1st Dist. 1963).
25. *Id.* at 418.

> strated in this appeal, but we think that the chancellor in his order exercised a very sound judicial discretion in ruling as he did.[26]

In an action for recovery of certain vacation benefits, the Small Claims Court of Dade County[27] deferred to the arbitration procedure of a collective bargaining contract in entering a judgment for the defendant. The action was one brought by an employee against his former employer for vacation pay allegedly due under a collective bargaining contract. The court reviewed the claim on its merits and decided that the employee was not entitled to any vacation under the existing agreement. He also found, however, that an arbitration procedure was available to all employees who had a grievance, but inasmuch as the plaintiff had not pursued this procedure, the action should be dismissed. The judge commented:

> . . . there was an obligation and a binding contract between the employee and the company, and that before a suit may be filed the employee must exhaust certain procedures. These rules are there because if they were not, five thousand people could all walk out on the job and file five thousand different law suits. He was a union member, and was bound by the terms and conditions of the contract.[28]

### C. *Breach of a No-Strike Provision of a Collective Bargaining Contract*

Florida courts have jurisdiction to entertain a suit by an employer to enforce no-strike and no-picketing clauses of a collective bargaining agreement.[29] Following the *Dowd* and *Lucas Flour* cases,[30] injunctive relief was sought in federal court for breach or violation of no-strike and no-picketing clauses of collective bargaining agreements. However, in *Sinclair Ref. Co. v. Atkinson*,[31] the United States Supreme Court held that federal courts did not have jurisdiction to enjoin violations of a

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26. *Id.* at 419. Although the basic issue involved in the *Jacksonville Roofing Ass'n* case is the use of discretion by a Circuit Court judge in an action for declaratory decree [under FLA. STAT. § 87.01 (1965); North Shore Bank v. Surfside, 72 So.2d 659 (Fla. 1954)], the decision of the Florida courts to defer to a grievance-arbitration procedure when the issue was the interpretation of an existing collective bargaining agreement fully accords with the majority view as expressed by the Supreme Court in Drake Bakeries, Inc. v. Local 50, Am. Bakery Workers, 370 U.S. 254 (1962). In the *Drake* case, an employer brought a damage action in the federal court for breach of a no-strike provision, under § 301 of the National Labor Relations Act. Upon the filing of the suit the union filed for arbitration under the existing contract. The Supreme Court held that the action for damage should be stayed, pending arbitration of the damage claim under the existing arbitration clause.

27. Warford v. Lehigh Portland Cement Co., 22 Fla. Supp. 50 (Small Cl. Ct. 1963).

28. *Id.* at 53.

29. Radio Corp. of Am. v. Local 780, Int'l Alliance of Theatrical Stage Employees, AFL-CIO, 160 So.2d 150 (Fla. 2d Dist. 1964).

30. *Supra* note 13.

31. 370 U.S. 195 (1962).

no-strike clause in a collective bargaining agreement because of the prohibition of the Norris-LaGuardia Act.[32]

In a Florida case, the employer, Radio Corporation of America, brought an action in the state court to enforce a no-strike, no-picketing provision of a collective bargaining agreement. Initially, the chancellor issued a temporary restraining order; however, pursuant to a motion by the defendant-union, the circuit court dissolved the order. The matter came before the Second District Court of Appeal on an interlocutory appeal from the order of dissolution. The issue was whether or not the state court had authority to grant an injunction against the violation of a no-strike, no-picketing provision of a collective bargaining contract. In reversing and remanding, the second district aligned Florida with New York and California[33] which allow their state courts to enjoin violations or breaches of no-strike provisions of collective bargaining agreements.

Commenting on the union's contention that jurisdiction in labor matters of this type had been pre-empted by the federal law, the court said:

> Insofar as Florida is concerned, there is no indication, either by statute or through any decisions of our Supreme Court which curtails jurisdictional powers of the state court to enjoin a proceeding such as this; nor, as to the subject matter here involved, does any act of Congress which may be restrictive as to federal court jurisdiction, express such a limitation upon jurisdiction of the state court. Absent a congressional or state enactment or a judicial pronouncement by the United States Supreme Court, or the Florida Supreme Court to the contrary, jurisdiction of the state court is not divested. From our study and research, the precise question presented before this court has not been adjudicated by the Supreme Court of the United States. We do not find as persuasive the particular decisions of that tribunal urged by the appellees. Rather, of the United States Supreme Court cases which we have cited along with decisions emanating from various states, leave us persuaded that jurisdiction of Florida courts under circumstances such as these is not pre-empted.[34]

## III. LABOR ORGANIZATIONS, THEIR OFFICERS, AGENTS AND MEMBERS

Ordinarily, courts will not interfere to settle differences between a labor union or other voluntary association and its members.[35] However,

32. 29 U.S.C. § 104 (1965).
33. Perry v. Robilotto, 240 N.Y.S.2d 331 (Sup. Ct. 1963); A. I. Gage Plumbing Supply Co., Inc. v. Local 300, Int'l Hod Carriers Union, 202 Cal. App. 2d 197, 20 Cal. Rptr. 860 (Dist. Ct. 1962).
34. Radio Corp. of Am. v. Local 780, Int'l Alliance of Theatrical Stage Employees, AFL-CIO, 160 So.2d 150, 159 (Fla. 2d Dist. 1964).
35. Taite v. Bradley, Fla., 151 So.2d 474 (Fla. 1st Dist. 1963).

in two minor decisions during the past two years, the courts of the state indicated that labor organizations as such, and their officers and agents, were far from "immune" from the legal processes of the state.

Both cases arose in the Palm Beach area. The first, an American Federation of Musicians Case,[36] involved an attempted use of an injunction by a labor organization to restrain the city of West Palm Beach from levying and collecting an occupational license tax against the union. The union sought the injunction on the theory that the ordinance conflicted with both the Federal Labor Management Relations Act and the union's constitutional right of freedom of speech and assembly. The Second District Court of Appeal, affirming the decision of the lower court, found the labor organization in question to be essentially a business organization and subject to the license tax. The court quoted from the Florida Supreme Court's decision in *Hill v. State*:

> Labor unions, like other trade, professional and business organizations are concerned with the business of making a living. They do not bother themselves with the things that concern religious bodies, chambers of commerce and like institutions.[37]

In the second case, *Town of Palm Beach v. Loew*,[38] the Municipal Court of Palm Beach found a labor union representative guilty on a charge of disturbing the peace. The labor union representative was arrested while standing outside a restaurant in Palm Beach, talking with its operators in an effort to secure a labor contract. Witnesses variously described the conduct of the labor union representative as "boisterous," typified by "wild gesturing of the arms," a "very loud, angry tone" and a "very belligerent manner," that he employed language such as, "don't think that any scabs are going to enter this place. They are going to get their heads broken in if they do." The incident attracted the attention of passers-by and patrons of the restaurant, and, as stated by one of the witnesses, "caused the crowd to stop and gather." The labor union representative, in his testimony, denied being guilty of conduct tending to disturb the peace. The Circuit Court, Palm Beach County, Criminal Appeal, affirmed the decision of the lower court which had found the labor union representative guilty on a charge of disturbing the peace. In commenting on the trial court's observation that the same behavior might be offensive in some places and not in others, the Judge said:

> It is a matter of common knowledge that Palm Beach is a unique and exclusive resort frequented by many persons of wealth and fame. Conduct which would hardly raise an eyebrow in a slum area might well be considered a breach of the peace in

36. American Fed'n of Musicians, Local 806 v. City of West Palm Beach, 179 So.2d 134 (Fla. 3d Dist. 1965).

37. 155 Fla. 245, 253, 19 So.2d 857, 860 (1944) *rev'd on other grounds* in Hill v. Florida, 325 U.S. 538 (1945).

38. 21 Fla. Supp. 145 (Cir. Ct. 1963).

such a community. In the light of these facts, this court fails to find error in the judgment of the trial court.[39]

## IV. BOYCOTTS, STRIKES AND PICKETING

Federal pre-emption in the field of labor management relations can hardly be questioned.[40] The general principle which has evolved is that states must yield to the exclusive jurisdiction of the National Labor Relations Act when the activity complained of is "arguably" within the jurisdiction of the National Labor Relations Board.

This general principle was recently affirmed by the Second District Court of Appeal in *Local 675, Int'l Union of Operating Eng'rs v. Meekins, Inc.*[41] In *Meekins*, the Second District Court of Appeals affirmed a decision of the lower court which had enjoined certain picketing of the employer by the labor organization in question. After discussing, at length, the general principle of federal pre-emption and its effect of barring states from enjoining peaceful picketing that "affects" interstate commerce, the court discussed the question of whether or not the employer, Meekins, Inc., was an enterprise that met the jurisdictional standards of the National Labor Relations Board.[42] The parties originally stipulated that the employer had purchased, during the last year, more than $50,000 worth of goods that originated outside the state of Florida. The appellant-union conceded that the record did not show *conclusively* that the appellee's purchases were directly from outside of Florida or from sellers, within the state, who themselves received the goods directly from outside of the state. However, it argued that the totality of the evidence presented clearly indicated that Meekins was involved in commerce within the meaning of the National Labor Relations Act. The court agreed with the appellant that there was *every indication* that Meekins was engaged in interstate commerce within the meaning of the National Labor Re-

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39. *Id.* at 146.

40. For extended discussion of "pre-emption" question, see previous survey article, *supra* note 1.

41. 175 So.2d 59 (Fla. 2d Dist.), *cert. denied*, 179 So.2d 213 (Fla. 1965).

42. § 164(c)(1), 29 U.S.C. (1965) vests in the National Labor Relations Board discretionary authority to decline to assert jurisdiction over "any labor dispute involving any class or category of employers where in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction." Pursuant to this authority, the Board has adopted certain jurisdictional yardsticks to guide it in the exercise of its jurisdiction. In non-retail businesses, jurisdiction will be asserted if the yearly outflow or inflow across state lines, whether "direct" or "indirect," is $50,000. Siemons Mailing Serv., 122 NLRB 81, 85 (1958). In the *Siemons* case, the Board stated:

> . . . For the purposes of applying this standard, direct outflow refers to goods shipped or services furnished by the employer outside the state. Indirect outflow refers to sales of goods or services to users meeting any of the Board's jurisdictional standards except the indirect outflow or indirect inflow standard. Direct inflow refers to goods or services furnished directly to the employer from outside the state in which the employer is located. Indirect inflow refers to the purchase of goods or services which originated outside the employer's state, but which he purchased from a seller within the state who received such goods or services from outside the state.

lations Act, but asserted that since the record itself was inadequate for such a determination on their part, the lower court's enjoining of the picketing must be upheld. In addition to the stipulation, the court had before it: (1) a complaint filed by Meekins in 1962 which alleged an annual purchase of goods outside of Florida in excess of $50,000, and (2) evidence of purchases made by general contractors at the construction site in question of materials allegedly not manufactured in Florida, totalling $100,000. The court commented, with respect to the 1962 complaint, that such complaint obviously failed to establish the nature of Meekins' business activities in the year immediately preceding the institution of the action in question, and that the evidence, with regard to the purchases of the general contractors, failed to show that the in-state suppliers did, in effect, receive the goods from outside of the state.

In an earlier case, *Local 675, Int'l Union of Operating Eng'rs v. Acme Concrete Corp.*,[43] the Third District Court of Appeal, in reversing and remanding a case to the Circuit Court for Dade County, held that where it was stipulated that employer's business "affected" interstate commerce, the only question was whether the picketing by the local union was "arguably" within the jurisdiction of the National Labor Relations Act, and therefore, the state court lacked jurisdiction. Citing the holding in *Wood, Wire & Metal Lathers Union v. Babcock Co.*,[44] the Third District Court held that the activities of the labor organizations complained of were such that they were arguably within the provisions of the National Labor Relations Act, and consequently the jurisdiction of the state court had been pre-empted to the extent that the exclusive jurisdiction to consider and determine such matter was with the National Labor Relations Board.

In analyzing the two decisions, the conclusion to be drawn is that although the question of pre-emption[45] and the question of whether the subject matter is a labor dispute[46] appears to be fairly well-settled, the issue of jurisdiction in state court injunction proceedings[47] is far from resolved.[48]

43. 168 So.2d 697 (Fla. 3d Dist. 1964).

44. 132 So.2d 16 (Fla. 3d Dist. 1961).

45. San Diego Bldg. Trades Council v. Garmon, 359 U.S. 236 (1959).

46. Liner v. Jafco, Inc., 375 U.S. 301 (1964).

47. Injunction being an equitable relief, the Florida Constitution confers exclusive original jurisdiction on the circuit courts, FLA. CONST., art. V, § 11.

48. For a further discussion of this issue of jurisdiction by a district court of appeals, see International Bhd. of Elec. Workers, Local 349 v. White, 143 So.2d 348 (Fla. 3d Dist. 1962), where the Third District Court of Appeals of Florida was faced with an issue involving jurisdiction in a suit to enjoin peaceful picketing, in which the complaint alleged that the employer *was not* engaged in interstate commerce within the meaning of the National Labor Relations Act. The union filed a motion to quash and dismiss for lack of jurisdiction. On appeal, the Union claimed that the chancellor should have investigated, on the basis of its motion to quash and dismiss for lack of jurisdiction, the issue of interstate commerce, to determine if the subject matter of the litigation was pre-empted by the

## V. LEGISLATIVE DEVELOPMENTS

The only significant legislative developments in the labor relations field during the survey period are related to redefining "labor organizations" and to the registration requirements placed upon their representatives. The existing definition of a labor organization was amended so as to add the phrase "and recognized by one or more employers as a unit of bargaining."[49] The business agents, licenses, permits, *etc.*, section of the Florida Statutes was amended to require the submission of a full set of fingerprints by each business agent seeking to be licensed under the statutes.[50] The section was further amended to provide for an annual renewal of license granted business agents on July 1, 1965.[51] Section 447.09 of the Florida Statutes (concerning the right of franchise of any member of a labor organization) was amended to add two new subsections. One provides a penalty for soliciting advertising in the name of a labor organization without the authority of the organization.[52] The other provides a penalty for advertising through any medium as representing a labor organization without such authority in writing from the organization.[53]

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National Labor Relations Board. The third district held that where the record fails to *affirmatively* show that the business in which the employer was engaged affects interstate commerce, then it is "premature" to apply the doctrine of pre-emption.

49. FLA. STAT. § 447.02(1) (1965).
50. FLA. STAT. § 447.04(2) (1965).
51. FLA. STAT. § 447.16 (1965).
52. FLA. STAT. § 447.09(14) (1965).
53. FLA. STAT. § 447.09(15) (1965).