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Labor Law

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Unemployment compensation.—Unemployment compensation benefits were increased by the 1951 Legislative session from $15.00 per week, where the highest quarter of the base period shows earnings of $345.01 per week or over, to $20.00 per week, where the highest quarter of the base period shows earnings of $520.01.[1] A partially unemployed man may now earn up to $5.00 per week and still draw unemployment compensation benefits where prior to 1951 only $3.00 per week could be earned.[2]

Attorney fees for representation of claimants are now payable by the Florida Industrial Commission when the cause reaches a circuit court level and when the claimant's attorney is successful in increasing benefits for the claimant, or when the review to the circuit court was initiated by any party to the proceeding other than the claimant.[3]

By election, the state and political subdivisions thereof, may now bring themselves under the jurisdiction of the Unemployment Compensation Law.[4]

Prior to 1953, appeals from the decisions of referees, on claims, were made to a Board of Review composed of three members appointed by the governor.[5] The Board of Review is now composed of the chairman of the Florida Industrial Commission, the director of the Unemployment Compensation Division, and the appeals supervisor of the Florida Industrial Commission.[6]

Apprentices.—Chapter 446 of the Laws of 1947,[7] relating to the education and training of future skilled chaftsmen for industry, has been amended to provide for an apprenticeship department and a policy making council with a general shift of the control.[8]

Where formerly the secretary of the Apprenticeship Council, Florida Industrial Commission, administered the voluntary apprenticeship program, assisted by local apprenticeship committees,[9] the legislature has amended the law by establishing a Department of Apprenticeship within the Florida Industrial Commission to administer the apprenticeship laws in accord with the standards and policies of a State Apprenticeship Council.[10]

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1. FLA. STAT. § 443.04(2) (1951).
2. FLA. STAT. § 443.04(3)(b) (1951).
3. FLA. STAT. § 443.16(2)(b)(1) *et seq.* (1951).
4. FLA. STAT. § 443.09(3)(b) (1951).
5. FLA. STAT. § 443.11(2)(a) (1937).
6. FLA. STAT. § 443.11(2)(a) (1953).
7. FLA. STAT. § 446.06—.13 (1947)
8. FLA. STAT. § 446.06—.10, 446.13 (1953).
9. FLA. STAT. § 446.06 (1947 & 1949).
10. FLA. STAT. § 446.06—.09 (1953).

The newly-created State Apprenticeship Council is a policy and standard making agency composed of ten members, the chairman of which is the chairman of the Florida Industrial Commission. The supervisor of Trade and Industrial Education, of the Department of Public Instruction, must be appointed to the council, as a consultant, without a vote. In addition, the governor appoints eight others: four from industry and four from labor, to represent the building and construction industry, metal trades and shipyards, printing industry, and aircraft industry, with terms to run concurrently with that of the governor. The council has power to issue rules and regulations necessary to carry out the standards and policies established and must report its activities to the governor once a year.[11]

A director of the Department of Apprenticeship is to be appointed by the Florida Industrial Commission. The director becomes the executive secretary of the council and working in conjunction with local joint apprenticeship committees, he is empowered to administer the apprenticeship program; including, establishing conditions and standards for apprenticeship agreements, registering approved apprentice programs and agreements, terminating or cancelling apprentice agreements, keeping records and issuing certificates of completion of apprenticeship training.[12] The Trade and Industrial Education Division of the Department of Public Instruction still supervises the classroom work of apprentices in related and supplemental instruction, which is in addition to on-the-job training, but such supervision is subject to the approval of the council.[13]

Prevailing wages.—Wages to be paid to labor on public buildings or works are now protected by an amendment to Section 215.19, which requires that in every contract in excess of five thousand dollars ($5,000) to which the state, any county, city, political subdivision or public authority is a party, there shall be a provision that the rate of wages for such labor employed by the contractor or sub-contractor shall not be less than the prevailing rate of wages for similar classification of work in the city, town, village or other civil division of the state where the public work is located.[14]

Formerly, only laborers and mechanics were included under this section, but now, by amendment, apprentices are included to work under registered apprentice agreements approved by the apprenticeship council.[15]

Determination of the prevailing wages or the proper classification of skills of employees is first considered by the contracting officer, and, if the matter is not settled, it is then referred to the Secretary of State, who may call on the Florida Industrial Commission for technical assistance. Unless the parties to the dispute agree otherwise, the complete hearing on

11. FLA. STAT. § 446.08 (1953).
12. FLA. STAT. § 446.09 (1953).
13. FLA. STAT. § 446.10 (1953).
14. FLA. STAT. § 215.19(1)(a) (1953).
15. FLA. STAT. § 215.19(1)(b) (1953).

the dispute is to be held in the city or county where the work is located. The decision of the Secretary of State is conclusive on the parties.[16]

Public roads or highways are not included as public works or buildings; however, bridges on such public roads or highways are included if the contract amounts to fifty thousand dollars ($50,000) or more, or if the bridge is located in any county having a population of one hundred thousand (100,000) according to the last census.[17]

Before the 1953 amendment to the "prevailing wage" statute, contracts for the construction, alteration or repair of public buildings, amounting to more than five thousand dollars ($5,000), to which the State of Florida was a party, were required to contain a provision stating that the prevailing rate of wages of the area would be paid to laborers and mechanics. The Secretary of State was given the final power to determine the rate of wages in case of a dispute.[18]

In a test case taken to the Supreme Court of Florida in 1950, which affirmed the opinion of the lower court without opinion, a County Board of Public Instruction was held not to be included under the term "State of Florida" and within the purposes of the statute before the present amendment, so that a contract for the construction of a school must include within it a prevailing rate clause.[19] As an outgrowth of this determination, and the general interest of labor and contractors alike, the prevailing wage statute was amended to include subdivisions and municipalities of the State of Florida.

Public Utility Arbitration Act.—In *Henderson v. State* ex rel. *Lee* and *Henderson v. State* ex rel. *Frazier*,[20] companion cases, the Public Utility Arbitration Act,[21] which substitutes compulsory arbitration for collective bargaining whenever an impasse is reached in the bargaining process and which prohibits strikes against public utilities, was held invalid and unconstitutional in that it conflicted with the National Labor Relations Act, as amended by the Labor Management Relations Act of 1947.[22] The statute conflicts with the federal law to the same extent as the Wisconsin Public Utilities Act, which was ruled invalid by the United States Supreme Court in *Amalgamated Ass'n of Street, Electric Railway and Motor Coach Employees of America, Division 998 v. Wisconsin Employment Relations Board*.[23] The labor dispute in Florida, which involved a public utility, was affecting interstate commerce and was therefore within the scope of the National Labor Relations Act. On this basis it was held that it was unlawful to arrest officials of the union, for violation of the state act, who,

16. FLA. STAT. § 215.19(3) (1953).
17. FLA. STAT. § 215.19(3) (1953).
18. FLA. STAT. § 215.19 (1953).
19. Gwaltney v. Rutherford, 49 So.2d 105 (Fla. 1950).
20. 65 So.2d 22 (Fla. 1953).
21. FLA. STAT. c. 453 (1953).
22. 61 STAT. 136, 29 U.S.C. § 141 *et seq.* (1947).
23. 340 U.S. 383 (1951).

while continuing to bargain, refused to submit to compulsory arbitration and called a strike against the utility.

Labor agreements.—An agreement between various unions and contractors in the construction industry to form a construction industry council empowered to establish for the industry, working conditions, including wage rates, was held to be a collective bargaining agreement which is binding on the unions in *Carpenters' District Council v. Miami Chapter of Associated General Contractors.*[24] An attempt by one of the unions to compel contractors to pay wage rates higher than those established by the council is a breach of such an agreement. In the public interest and in protection of the contractual rights of the parties, the union may be enjoined for threatening to expel or otherwise coerce its members who do not insist upon being paid the higher rates of pay.

Local No. 234 v. Henley & Beckwith, Inc.,[25] holds an entire collective bargaining agreement containing a "closed shop" provision to be totally void and not merely voidable, and neither party may seek a declaration of rights and declaratory decree under such a contract.

A plumbing contractor sought a declaration of its rights under a bargaining agreement which the union had repudiated. The agreement contained a provision that no employer would employ any mechanic who was not a member in good standing of the union. Motion to dismiss was denied by the lower court, and on a petition for writ of certiorari, the Supreme Court considered two questions: (1) whether the contract was violative of the public policy of the state because it attempted to create a closed shop status between the union and the employer; and (2) assuming the contract did contain a provision for a closed shop, whether the entire contract was void. The court reaffirmed its holding in *Local Union No. 519 v. Robertson*,[26] that a "closed shop" purpose is illegal and against the declared public policy of the state. It further held that an agreement containing such a provision is void *in toto*, and not severable, and consequently the parties to the contract are left without a remedy or relief by a declaratory decree.

Right to picket.—Peaceful picketing to protest the discharge of union employees was held not enjoinable, in *Hotel and Restaurant Employees' and Bartenders' Union Local No. 156 v. Cothron*,[27] even though the union requested a closed shop contract. The lower court found that the picketing was not in protest of the refusal of the closed shop contract, but rather in protest of the discharge of employees solely because they belonged to the union, but, nevertheless, the chancellor enjoined the union because sufficient notice of the reason for the picket was not given to the employer.

24. 55 So.2d 794 (Fla. 1951).
25. 66 So.2d 818 (Fla. 1953).
26. 44 So.2d 899 (Fla. 1950).
27. 59 So.2d 366 (Fla. 1952).

The Supreme Court dissolved the injunction and upheld the right to picket on the grounds that the findings of the lower court showed a lawful purpose for the picket and Florida law requires no notice of a strike or a reason for a picket. In *Miami Typographical Union v. Ormerod*,[28] suit was brought by employees of the Miami Herald to enjoin picketing by striking employees and members of the defendant union. The Supreme Court reiterated the general rule that the right to engage in peaceful picketing in a labor dispute can be lost if there is violence in the background of the picketing, or if the purpose of the picketing is illegal.

The union contended that it was merely exercising its rights in a labor dispute by conveying information by pickets, under free speech. It was decided by the lower court, and affirmed, that the purpose of the picketing was to coerce the employer to force its employees to join the union, and to annoy the non-union employees so they would join the union. In reaching this conclusion, the court laid great emphasis on the wording of the placards carried by the picketers, which named working employees, gave their addresses, and called them "scabs," adding that the union was on strike. This the court considered intimidatory.

The chancellor's permanent injunction restraining all picketing was upheld in that the record revealed evidence of violence, which, though not directly linking the union to the long past acts, inferentially permitted the drawing of some casual relationship. Even if the acts of violence, in the background, were too remote in time to be the basis of the injunction order, the finding that the purpose of the picket was to coerce the employer to grant bargaining rights to the union when it did not represent working employees, and to coerce employees, through fear, to join the union, both being illegal purposes, were sufficient to substantiate the broad permanent injunction.

Injunctive relief in this case is allowed on the basis of illegal purpose and violence in the background of a picket, and is a mere repeat of prior reasons for injunctions against picketing, as in *Local Union No. 519 v. Robertson*,[29] and *Moore v. City Dry Cleaners & Laundry, Inc.*[30] This case is new law in Florida because it is the working employees asking relief by injunction, not the employer.

Right to sue or be sued.—Section 447.11[31] provides that any labor organization may maintain an action in its commonly used name and shall be subject to suit in its commonly used name in the same manner and to the same extent as any corporation authorized to do business in this state. Process in such action may be served on the president or other

28. 61 So.2d 753 (Fla. 1952); see Note, 7 MIAMI L.Q. 434 (1953).
29. 44 So.2d 899 (Fla. 1950).
30. 41 So.2d 865 (Fla. 1949).
31. FLA. STAT. (1953).

officer, business agent, manager or person in charge of the business of such labor organization.

In *International Typographical Union v. Ormerod*,[32] the defendant union appeared specially to contest service of process claimed to be defective under the statute relating to service on a foreign corporation.[33] It was held that since the defendant union operated within the state as an unincorporated labor organization, service of process may be made upon the president, or other officer or business agent, manager or person in charge of the business of the union, under the statute relating to labor.[34] Unlike the requirements for service on a foreign corporation, it is not necessary to show that other officers are absent from the state before service can be made on the business agent of a labor organization. Where the "return" of the sheriff shows service upon the business agent, it is sufficient to satisfy the statutory requirement, the conclusion being that unions cannot sue or cannot be sued to the exact same extent as "any corporation authorized to do business in this state."

In *Hettenbaugh v. Airline Pilots Ass'n International*,[35] one group of airline pilots brought suit for injunction against an association of airline pilots to enjoin the defendant association from acting as bargaining representatives of all pilot employees of a certain airline. It was argued that the circuit court lacked jurisdiction because the defendants were an unincorporated association and that service must be made, as by common law, on each member of the association. The lower court dismissed the complaint on the jurisdictional point. The Supreme Court reversed, saying that jurisdiction was acquired under the special statute on service of labor unions,[36] even though the said chapter states "all railway labor organizations and members thereof shall be exempt from all of the provisions of this chapter as long as they are regulated by any act or acts of the Congress of the United States."[37] Pilots admittedly come under the Railway Labor Act. The association was held to be the agent of the plaintiff pilots, as it bargained and acted for them, so that process and service on a regional vice president and a representative of the association was sufficient to give the circuit court jurisdiction over the association.

Miami Laundry Co. v. Laundry, Linen Drycleaning Drivers[38] held that a labor union could not ask injunctive relief against an employer for discharge of employee members because of union membership, or for reinstatement of discharged union employees, saying such rights were individual and that a labor organization has no agency standing in behalf of members.

32. 50 So.2d 534 (Fla. 1952).
33. FLA. STAT. § 41.17 (1953).
34. FLA. STAT. § 447.11 (1953).
35. 52 So.2d 676 (Fla. 1951).
36. FLA. STAT. § 447.11 (1953).
37. FLA. STAT. § 447.15 (1953).
38. 41 So.2d 305 (Fla. 1949).

It would appear from the cases, *supra*, that the theory of agency is applicable when a labor organization is the defendant but not when it is a plaintiff, though no actual distinguishing difference is discernible.

CONCLUSION

Unemployment benefits are paid because of earned credits made to the workers account. A maximum benefit of $20.00 per week is inadequate to meet the minimum requirements of any individual, or family, during a period of unemployment. Since contributions are made in the employee's behalf based on his earnings and he has a vested interest in a benefit for the emergency of unemployment, the weekly amount should be incrased by the legislature so that the purpose of the Act is not defeated. The low maximum payment merely takes the cost of unemployment out of industry and places the problem of indigent persons at the door of welfare agencies.

A December 14, 1953 decision of the Supreme Court of the United States has settled a conflict in labor law which has existed for many years.[39] By limiting state courts' jurisdiction to enjoin picketing, where interstate commerce is affected, to cases of violence, mass picketing, threatening of employees, obstructing streets and highways, or picketing homes, is involved. Where it can be shown interstate commerce is affected and the illegal purpose claimed as the basis for injunctive relief is also an unfair labor practice under the Taft-Hartley amendment of the Labor Management Relations Act, the injunctive relief will have to be secured by petition and complaint to the National Labor Relations Board and the state courts will have no jurisdiction.[39]

A complete revision of the statutory labor law of Florida, enacted in 1943, would be desirable for industry, the public and labor. This is a fast growing state and the present statutory law has little relation to realistic problems which arise.[40] The present law lacks a workable pattern for use in that any administration takes place in and through the courts. A progressive and workable labor law should incorporate a state agency as the administrative head to insure uniformity of its application. A labor law planned for present problems should provide a balanced negative and postive labor pattern. Subjects covered should include collective bargaining, the emergencies of strikes, picketing and boycotts, regulation of labor unions, jurisdiction for injunctions, unfair employment practices of employer and labor, minimum wages and hours, wage payment protection, and some form of mediation of disputes. Though as a legislative program the above may appear to be broad in scope the present law incorporating penalties without the counterbalance of enforceable rights has proved of little value in labor-management problems and has done little by way of contribution to the economic health of the state.

39. Garner and Garner v. Teamsters, Chauffeurs and Helpers Local Union No. 776, 74 Sup. Ct. 161 (1953).
40. FLA. STAT. c. 447 (1953).