Constitutional Right to Work

Number: INFORMAL

Date: July 01, 1997

The Honorable Bill Posey
Representative, District 32
1802 South Fiske Boulevard
Suite 103
Rockledge, Florida 32955

RE: FLORIDA CONSTITUTION--UNIONS--RIGHT TO WORK--application of right to work provision in Florida Constitution. Art. I, s. 6, Fla. Const.

Dear Representative Posey:

Thank you for contacting this office regarding the applicability of Article I, section 6, Florida Constitution, to certain actions of the Screen Actors Guild. According to your letter, you have been contacted by several talent agents, casting directors, independent producers and directors regarding a practice of the Screen Actors Guild to levy a fine if a production company employs a nonunion member. You ask on behalf of several of these businesses whether this and other union related actions violate Florida's constitutional guarantee of the right to work set forth in Article I, section 6, Florida Constitution.

Article I, section 6, Florida Constitution, provides:

"The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike."

The Florida Supreme Court has stated that "[t]his section clearly bestows on the workingman a right to join or not to join a labor union, as he sees fit, without jeopardizing his job."[1] Relying on this provision of the Constitution, the Court has rejected an "agency shop" clause requiring nonunion employees, as a condition of their continued employment, to pay to a labor union a sum equal to the initiation fees and monthly dues for union members.[2] The Florida Supreme Court has also interpreted Florida's right to work provision as prohibiting agreements between unions and employers that require that all employees be union members and that all union members shall work only for signatories to union agreements.[3]

A number of Florida and United States Supreme Court cases have considered and applied "right to work" provisions. I am enclosing copies of these opinions for your consideration.[4] The facts of each particular case will govern whether there may be a cause of action under Article I, section 6, of the Florida Constitution, or some other provision of Florida or federal law. No general statement would adequately address the complex issues which may be presented under individual circumstances.

I trust that this information will be helpful.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

Enclosures

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[1] *Schermerhorn v. Local 1625 of Retail Clerks International Association, AFL-CIO*, 141 So. 2d 269, 272 (Fla. 1962).

[2] *Id*.

[3] *Local No. 234, Etc. v. Henley & Beckwith, Inc*., 66 So. 2d 818 (Fla. 1953).

[4] *See Retail Clerks International Association, Local 1625, AFL-CIO v. Schermerhorn,* 83 S. Ct. 1461, 373 U.S. 746, 10 L. Ed. 2d 678 (1963); *Trowel Trades Employees Health and Welfare Trust Fund of Dade County v. Edward L. Nezelek, Inc.,* 482 F. Supp. 846 (D.C. Fla. 1979); and cases cited above.