

073-102—April 2, 1973

RIGHT TO WORK

APPLICABILITY OF CRIMINAL SANCTIONS TO DENIAL
OF CONSTITUTIONAL RIGHT TO WORK*To: Lew Earle, Representative, 43rd District, Tallahassee**Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General*

QUESTIONS:

1. Is a labor union, an employer, or any other person criminally liable for requiring, as a condition of employment, a workman or employee to join or remain a member of a labor union or labor organization against his will, or to pay any dues, fees, assessments, fines, or other charges to any labor union or labor organization?

2. If a labor union hiring hall, having a contract with an employer to provide employees, discriminates against nonunion employees in such job referrals, is either the union or the employer subject to statutory penalties for such abridgment of the constitutional right to work?

SUMMARY:

A labor union or an employer would be criminally liable for requiring, as a condition of employment, a workman or employee to join or remain a member of a labor union or labor organization against his will and for requiring a nonunion member to pay union dues, fees, assessments, fines, or other charges to a labor union or organization. A hiring-hall contract that has the effect of limiting the employment of workmen to union members would violate the right to work provision of the Florida Constitution; however, the question of whether such a contract would subject the union and employer, parties to the contract, to criminal penalties should be clarified by the legislature.

AS TO QUESTION 1:

I have recently ruled in AGO 073-86 that the provisions of §447.09(11), F. S., apply equally to union and nonunion members. As noted therein, §447.09(11) makes it unlawful to "coerce or intimidate any employee in the enjoyment of his legal rights" And Art. I, §6, State Const., creates a constitutionally guaranteed right to work without regard to whether a workman is a member or nonmember of a labor organization. Section 447.14, *id.*, imposes a criminal penalty for violation of any provision of Ch. 447, *id.* Thus, when any person attempts to coerce a workman either to remain in or to join a labor organization as a condition of employment, he has violated §447.09(11) and is subject to the criminal penalties imposed by §447.14. It was so stated by the court in *Local Union No. 519 v. Robertson*, 44 So.2d 899 (Fla. 1950), in holding that a union's picketing of buildings in which the plaintiff-employer was under contract to install plumbing equipment and fixtures for the sole purpose of compelling the plaintiff-employer to enter into a closed shop agreement with the union was for an improper purpose and could be enjoined. The court said that

. . . it is the declared public policy of the State that all *working men*, whether union or non-union, shall be considered on an equal footing with respect to labor opportunities. . . . They are not to be coerced or intimidated in the enjoyment of their legal rights, including the right of free decision as to whether or not they will join a union, and *any person or labor organization who so coerces or intimidates them is*

to be deemed guilty of a crime punishable by fine or imprisonment, or both. (Emphasis supplied.) [44 So.2d at 902.]

Accordingly, the first part of question 1 is answered in the affirmative.

As to the second part of question 1: A union (or an employer on behalf of a union) cannot constitutionally exact union dues from nonunion employees—either under Art. I, §6, *supra*, or basic principles of due process of law—as a condition of employment. See *Schermerhorn v. Local 1625 of Retail Clerks Int. Ass'n*, 141 So.2d 269 (Fla. 1962), holding that an “agency shop” provision of a collective bargaining agreement which required nonunion employees, as a condition of employment, to pay to a labor union a sum equal to the initiation fees and monthly dues for union members violated the “right to work” provision of the Constitution and should be enjoined. And I am of the opinion that this type of exaction would be held by the courts to be an unlawful coercion or intimidation of a nonunion employee in the “enjoyment of his legal rights” contrary to the prohibition of §447.09(11), *supra*, the violation of which would subject the union (and employer) to the sanctions of §447.14, *supra*. Accordingly, the second part of question 1 is also answered in the affirmative.

AS TO QUESTION 2:

As noted in *Kaiser v. Price-Fewell, Inc.*, 359 S.W. 2d 449 (Ark. 1962), hiring halls maintained by building and construction trades “serve as a beneficial purpose not only for their trades but for the entire industry, and, certainly they have a perfect right to offer this service” It was held, however, that a hiring-hall agreement that, in effect, gave the union the right to control employment in a particular trade to the exclusion of all others, including the employer, violated the Arkansas right-to-work constitutional and statutory provisions so that picketing to compel the adoption of such an agreement could be enjoined. But in *Williams v. Arthur J. Arney Company*, 398 S.W. 2d 515 (Ark. 1966), the same court upheld a hiring-hall agreement under which the union agreed merely to “furnish at the request of the contractor duly qualified workmen in the various classifications covered by this Agreement” and which did not require the workmen to be or become union members. The court noted that the agreement required the union to supply workmen “at the request of the contractor, but nowhere does the agreement provide that the contractor *must* request workmen from the union.” These cases might be persuasive upon the Florida courts insofar as the validity of a hiring-hall contract is concerned, if and when such a question should be presented to them in an appropriate proceeding. However, no case has been found in which it was held that a hiring-hall contract that limited the employment of workmen to union members would subject an employer and the union to criminal penalties. I have some hesitancy in ruling that such a hiring-hall contract would subject them to the criminal penalty prescribed by §447.14, *supra*; and it is suggested that the legislature may wish to clarify its intent in this respect.

073-103—April 4, 1973

CONSTITUTIONAL AMENDMENT

VOTE REQUIRED FOR ADOPTION AND SUBMISSION FOR REFERENDUM AT PRIMARY ELECTION—RIGHTS OF NOMINEE TO AN OFFICE ABOLISHED BY SUCH AMENDMENT

To: Roger H. Wilson, Representative, 48th District, Tallahassee

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General