



# Foundation Action

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of the National Right to Work  
Legal Defense Foundation, Inc.

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## Right to Work Challenges Firings Ordered by Washington's Government Union

### *Union hit with federal class-action lawsuit for violating workers' rights*

OLYMPIA, WA – In a forceful move to assert the legal rights of thousands of Washington State workers, ten public employees filed a statewide class-action civil rights lawsuit in federal court in mid-March against the Washington Federation of State Employees (WFSE) union and several top state officials challenging the WFSE hierarchy's forced union dues seizures.

The employees, with free legal assistance from the National Right to Work Legal Defense Foundation, filed the lawsuit in the U.S. District Court for the Eastern District of Washington after the state legislature foisted unwanted unionization on thousands of state workers. In their lust for millions of forced-dues dollars, WFSE union officials denied the employees their constitutional due-process rights — ordering several workers fired for refusing to pay.

“For WFSE union officials, it's all about the money,” said Mark Mix, President of the National Right to Work Foundation. “WFSE officials' contempt



*Dozens of supporters and reporters braved wind and rain to attend a recent Foundation press conference that prompted media attention throughout the state.*

for employees' rights and eagerness to have employees fired demonstrates they are more interested in collecting forced union dues than supposedly 'representing' Washington State employees.”

### Union officials trample constitutional protections

In May 2005, WFSE officials issued an ultimatum to state employees that they would be fired if they refused to pay union dues. But union officials failed to provide certain constitutionally required safeguards of employees' rights to ensure they are not forced to pay for more than the cost of collective bargaining. These safeguards include an independent audit of union expenditures, as well as an explanation for the basis of the portions of the workers' forced dues that

go to the WFSE union's affiliated locals.

The state workers charge that the seizure of forced dues by WFSE union officials without due process violates their constitutional rights affirmed by the U.S. Supreme Court in the Foundation-won *Chicago Teachers Union v. Hudson* decision. *Hudson* requires union officials to provide an independently audited disclosure and justification of their books before seizing any forced union dues from employees who are not

formal union members.

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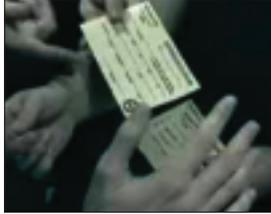
# NLRB Opens Lead Foundation Case to Public Comments

*Long-awaited decision may be forthcoming on “neutrality agreement” abuses*

WASHINGTON, DC – Acknowledging the significance and breadth of a leading unfair labor practice case against the United Auto Workers (UAW) union and Dana Corporation, the National Labor Relations Board (NLRB) in late March issued a notice inviting interested parties from throughout the labor policy community to file *amicus curiae* (“friend of the court”) briefs in the critical case.

The move indicates that the NLRB recognizes the sweeping implications that the Dana employees’ charges—filed with free legal aid from the National Right to Work Foundation—may have on future union organizing drives. The case, known as *Dana Corp.*, will determine whether it is still illegal for union officials to sell out the interests of employees in order to obtain company assistance in corraling new union members.

The case is closely tied to the emerging phenomenon of so-called “neutrality agreements,” in which an employer often faces vicious, multi-pronged union attacks called “corporate campaigns” until



*The NLRB opened a leading Foundation case to comments from the legal and policy community—signaling that long-awaited rulings on “card check” abuses may soon be forthcoming.*

it agrees to support a union’s attempt to organize its workforce. Corporate campaigns take advantage of publicity stunts, frivolous lawsuits, boycotts, stockholder actions, and even blackmail to pressure companies to sign backroom sweetheart deals.

In the Dana pact, the UAW hierarchy made explicit concessions on workers’ future benefits and other terms of employment in exchange for active company assistance in coercing employees to unionize — all the while keeping the deal secret from the employees those concessions would hurt.

“In their rush to corral Dana employees into compulsory unionism, UAW and Dana officials trampled upon fundamental employee rights,” said Ray LaJeunesse, vice president and legal director of the National Right to Work Foundation.

As part of the backroom deal, company officials handed over employees’ personal information to union organizers and granted union operatives wide access to employees in the plant. The *Dana Corp.* case will determine whether it will continue to be unlawful for union officials to negotiate with employers over substantive terms before the union has actually been selected by a majority of employees.

“The NLRB decision to open this case to public comment underscores the cutting-edge nature of the Foundation’s legal aid program in confronting abuses of workers’ rights under these increasingly aggressive organizing tactics,” said LaJeunesse.

## Union bosses sell out workers to recruit new members

In addition to numerous other parties from throughout the labor policy community, which included members of Congress and former NLRB members, 40 Freightliner employees submitted an *amicus* brief to the NLRB supporting the workers at Dana. The Freightliner employees have a vested interest in *Dana Corp.* because their Gaffney, South Carolina facility was also targeted by UAW officials leading to another high-profile case—also brought with free legal assistance from the Foundation—that successfully challenged union bosses’ unlawful blocking of Freightliner employees’ promised wage increases until the employees signed union authorization cards.

“We are writing to you because what occurred here at Freightliner, and at Dana, is wrong,” wrote the employees. “We urge [the NLRB] to put an end to such practices, which harm our rights to choose or refrain from unionization in a free and uncoerced manner.” 

## Foundation Action

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# Workers Halt UAW Assault on Employee Free Choice

*Union officials' last-ditch attempt to block employee election at Saint-Gobain thrown out*

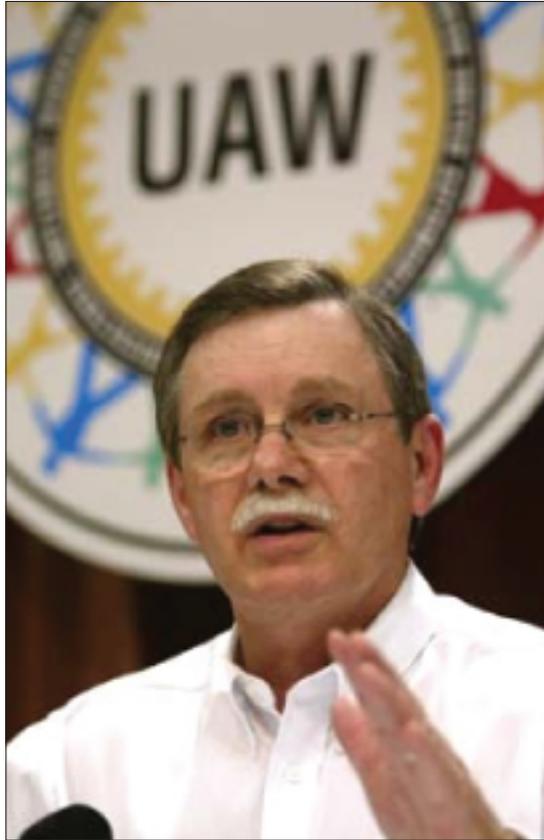
WORCESTER, MA – With the assistance of National Right to Work Foundation attorneys, hundreds of employees at Saint-Gobain Abrasives have finally been able to exercise their right to remove the United Auto Workers (UAW) union as their monopoly bargaining agent, after a long-running battle by union officials to thwart employee wishes.

In a ruling issued by a National Labor Relations Board (NLRB) administrative law judge, a decertification vote tossing out the UAW became final. The judge deemed that the UAW union officials' argument for overturning the election was unpersuasive and thereby freed more than 600 employees from monopoly control of UAW officials at the large Worcester manufacturing facility.

"Union officials attempted to cling to power using trumped-up charges and delay tactics," said Foundation President Mark Mix. "While ultimately the employees' wishes are being respected, this drawn-out legal battle vividly demonstrates how the NLRB's bureaucratic procedures are used by compulsory unionism advocates to thwart employee free choice."

## Employees' multi-year effort against monopoly bargaining pays off

UAW officials gained monopoly representation over the workers in December 2001 in a disputed NLRB election. In that highly contested election, the UAW turned to Big Labor-friendly politicians to pressure workers into voting for the union—casting the results into doubt. But challenges to the tainted results were rejected by the notoriously pro-compulsory unionism NLRB Regional Director



*Ron Gettelfinger's UAW union ultimately lost its bid to force unionization down the throats of Saint-Gobain employees.*

voted by a solid margin to throw out the union, UAW officials and their lawyers re-filed their "blocking" charges as post-election objections. In effect, the union's lawyers sought a second bite at the apple.

## Union lawyers' claims "vague and incomprehensible"

This final desperate round of post-election objections specifically targeted the Foundation and the group of Saint-Gobain workers that had spearheaded the long battle to exercise their freedom of choice. Foundation attorneys quickly responded to the frivolous allegations.

In arguments filed at the NLRB regional office, Foundation attorneys pointed out that union officials provided no evidence supporting their objections concerning the Foundation and workers, making those claims too "vague and incomprehensible" to answer. In his opinion, the NLRB administrative law judge ruled that union officials should not be permitted to obtain a rerun election simply because they do not like the outcome.

With the decertification vote finally official, over 600 Saint-Gobain employees are free to negotiate their own terms and conditions of employment and to be rewarded on their individual merit. Traditionally union officials must wait at least one year after a decertification vote before embarking on any new

Rosemary Pye and the Clinton-appointed NLRB. Within days of these rulings a group of workers began laying the groundwork for a grassroots effort to throw out the union.

This led to the filing of a decertification petition on the first day allowed under the law—one year after certification. However, instead of permitting the employees to vote, union lawyers exploited NLRB procedures to block the election for over two years. During that period, employees filed two additional decertification petitions with the NLRB's regional office, but bureaucrats held them up.

Finally in January 2005—only because they believed they had the votes to win the election—UAW union officials waived their so-called "blocking" charges and allowed the vote to proceed. But when Saint-Gobain employees

# WA Supreme Court “Turns the First Amendment On Its Head”

*Court uses “paycheck protection” law to cause collateral damage to employees’ rights*

SEATTLE, WA – Responding to an outrageous Washington State Supreme Court ruling that “discovered” a constitutional right for union officials to seize political funds from nonunion employees, the National Right to Work Foundation announced that its legal team is preparing an appeal to the U.S. Supreme Court.

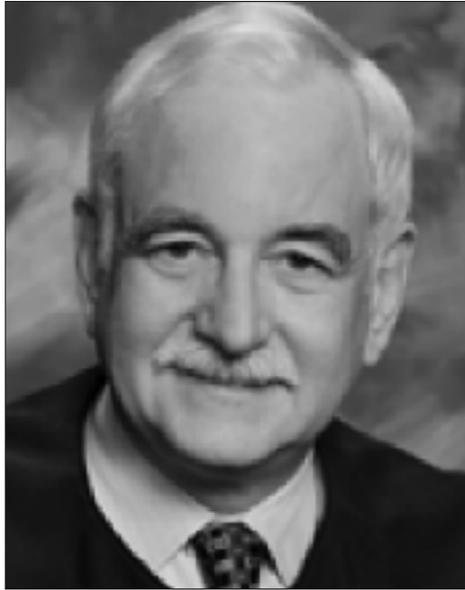
Using tortured reasoning and, as the powerful dissent pointed out, “turn[ing] the First Amendment on its head,” the 6-3 ruling struck down the last remnants of Washington State’s so-called “paycheck protection” law which sought to require union officials to obtain permission from public employees before spending their mandatory dues on certain political activities.

Although wrongheaded, the ruling has helped to bring into focus just how difficult the paycheck protection regulatory approach is—and how ineffective it has been in protecting employees laboring under forced unionism.

As more and more Americans have recognized the corrupt misuse of forced union dues in the political process, the Right to Work movement has been fortunate to gain an increasing number of allies. And these allies have stepped forward and expressed the desire to help by offering an array of well-meaning proposals.

The flaws of the paycheck protection approach are rooted in the fact that these laws seek to address a far more fundamental problem through campaign finance regulations. Attacking union political activity through these narrowly tailored laws has tremendous potential to confuse the courts (and create new opportunities for mischief by union partisans on the bench) by diverting attention away from Big Labor’s unique special privilege to seize forced union dues in the first place.

“The real solution is to attack forced



**Washington State Supreme Court Justice Richard B. Sanders warned in his three-member dissent that the ruling entitling union bosses to teachers’ forced dues for politics “turns the First Amendment on its head.”**

unionism at its root, rather than try to regulate its ill effects,” said Stefan Gleason, vice president of the National Right to Work Foundation. “The Foundation has no choice but to mop up the damage to the First Amendment being caused by courts responding to these paycheck protection laws.”

## Paycheck protection fails to deter forced dues for politics

Immediately after the passage of Washington State’s campaign finance reform measure, also known as Initiative 134, which included paycheck protection language, union officials actually managed to raise *even more* political funds than raised before the statute took effect. Later, the Washington courts struck down the law as it applied to full union members.

Seeking the law’s application to those who were not formal union members, Foundation attorneys subsequently filed a lawsuit in 2001 in a county superior court against the Washington Education Association (WEA) union for more than 4,000 non-member teachers who are nonetheless forced to pay union dues.

That court ruled favorably that the teachers had an implied right of action under the state statute to recover the fees the WEA union had taken, without their authorization, for political purposes. The trial court also certified the case as a class-action for the thousands of non-member teachers.

But the long-awaited Washington high court ruling in mid-March upheld an appellate court’s decision—thereby overturning the trial court and declaring the last remaining union dues provisions in I-134 unconstitutional.

## Ending forced unionism is most effective approach

Legislating from the bench, the ruling from the state’s highest court throws First Amendment rights out the window and also undercuts federal court precedents.

In his three-member dissent, Justice Richard B. Sanders pointed out that the activist decision wrongfully undermines an earlier decision of the U.S. Court of Appeals for the Sixth Circuit. “The majority turns the First Amendment on its head,” wrote Sanders. “There is no indication that any state has been held to have violated union members’ rights by foreclosing mandatory collection of fees from nonmembers.”

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# Evergreen State Workers Face Union Thuggery and Job Loss

continued from cover

## State workers brave rain and wind to announce lawsuit

In a widely publicized news conference announcing the lawsuit outside WFSE union headquarters in the state capital, scores of state employees braved both rain and wind to show their support for the Foundation lawsuit and the courageous workers leading the charge.

Enveloped by throngs of cameras and reporters, Washington State Department of Labor and Industries employee and plaintiff Kimberly Johnson spoke confidently to the media. "I've given up on expecting the union to do what is morally or ethically right, but I should at least be able to expect them to abide by the law," she said.

Patricia Woodward, who was fired from the Washington State Department of Licensing for refusing to pay forced union dues, echoed Johnson's disdain for WFSE union bosses' tactics. "I was terminated simply for not giving my money to a union that I disagree with and that I don't believe represents me," she said.

Justin Hakes, director of legal information for the Foundation, was on hand to support the employees and send a message to the WFSE union's hierarchy: "Washington's state employees are not your personal ATMs, and you will not be allowed to violate employees' basic constitutional rights with impunity."

The news conference achieved wide publicity throughout the state, including all major newspapers and numerous television and radio news broadcasts.

Following the massive round of media coverage generated by the press conference, the WFSE union hierarchy made several clumsy attempts to try to



*WFSE union official Tim Welch said, "You can choose to be a member of the union...but, ultimately, if you do not like that, you can choose to be unemployed."*

publicly defend their unlawful actions. In a statement made to the media, WFSE union boss Tim Welch said, "You can choose to be a member of the union, you can choose to pay a fee. But ultimately, if you do not like that, you can choose to be unemployed."

## Union hierarchy forced to publicly admit wrongdoing

Facing the lawsuit and an embarrassing Foundation-waged public relations campaign, WFSE union officials later admitted publicly that their forced dues demands violated state employees' due process rights, and claimed they would ask the state to reinstate temporarily those employees and cease additional firings.

Right to Work attorneys forced the union bosses begrudgingly to take the action after notifying them one day earlier that they would file papers in federal court seeking an injunction to block any more firings.

While the state has apparently halted additional firings, some state government agencies may have already

hired replacements for employees displaced at the union's behest. Foundation attorneys are monitoring the situation to ensure the employees regain their former positions with their seniority, full wages, and other benefits intact.

## Union bosses refuse to refund \$10 million in illegal dues seizures

Meanwhile, despite admitting wrongdoing, WFSE union officials refuse to refund all forced union dues seized under their unlawful demands. More than 20,000 additional state government employees are now paying dues to the WFSE union — an amount estimated to be more than \$10 million — under the union hierarchy's unlawful threats.

In letters sent in late March and early April, Foundation President Mark Mix wrote to the WFSE union's head lawyer demanding that his client immediately

stop seizing dues and return all dues taken from workers who were not voluntary members at the time the forced-dues clause went into effect. "Any action that sincerely respected workers' rights would include returning all prospective dues seizures and all forced union dues seized pursuant to the union hierarchy's unlawful



*Terminated Washington state employees Maxine Dunkelman (right) and fellow plaintiff Kimberly Johnson (left) told their stories at a press conference in the state capital.*

ultimatum," wrote Mix.

Foundation attorneys are pressing forward in court to assert the state employees' rights. 

## Get Lifetime Income and Help Fight Union Abuse

**Did you know that there are ways to possibly increase your current income stream and simultaneously help curb compulsory unionism, take forced-dues money out of politics, and roll back union special privileges?**

One of the most popular methods is the charitable gift annuity. This planned-giving vehicle provides a lifetime income stream, a current charitable income tax deduction, and a personal legacy for the future of the Right to Work movement.



At age 82, Anne S. from Ohio had money saved that was not earning her any income. Wanting to supplement her current income stream, Anne spoke to her advisors. As they were discussing her financial goals, she mentioned that she was a dedicated supporter of the National Right to Work Foundation and that she would eventually like to make a sizable donation to the cause.

Her advisor suggested a charitable gift annuity with the Foundation.

### Charitable gift annuities offer many benefits

An irrevocable gift is made to the Foundation, in this case a gift of appreciated securities (minimum donation of \$10,000). The assets are then invested in the Foundation's annuity fund. In return for the gift, the Foundation now provides Anne with quarterly income payments which will continue as long as she lives.

The actual rate of return is determined at the time of the gift and is based partly on age. In Anne's case, the rate was 8.5 percent. Since the annuity payment rate is fixed, Anne is guaranteed to receive the same amount of income every quarter.

A portion of her payments are tax free, and she also received a substantial income tax deduction in the year of the gift.

When Anne dies, the remainder of her gift will be placed in the Foundation's general fund, which is used to shape public policy through the courts to provide assistance to future workers who have been abused by self-serving union bosses.

This particular vehicle fit Anne's needs as well as her philanthropic goals. In addition to looking for a way to supplement her income, Anne had been planning to make a large gift to the Foundation's strategic litigation program. A Foundation Charitable Gift Annuity allowed her to do both.

A Foundation Charitable Gift Annuity allowed her to do both.

### Pooled income funds harness market performance

John R. had similar financial and charitable goals and also considered a Foundation annuity before learning that he lived in a state where Right to Work is unable to offer that specific vehicle because of onerous, money-squandering regulations.

However, John found another option that he actually liked better, called a pooled income fund (available to Foundation contributors in all states).

With a pooled income fund, John was able to make an irrevocable gift which was "pooled" into a fund with gifts from many other donors (minimum gift of \$20,000). He receives monthly distributions from the fund based on the income it has produced. Unlike a fixed-rate annuity, however, the amount of these payments varies with the performance of the fund.

John used highly appreciated securities, and so he was particularly pleased to find out that a pooled income fund allowed him to completely avoid all capital gains taxes. He also received a large income tax deduction.

### Planned giving helps secure the future

Both annuities and pooled income funds are great options for donors looking to possibly increase current income and make a special gift to the Right to Work movement. They offer similar benefits, although some of the details may make one or the other more appealing or appropriate to your unique circumstances.

#### Single Life Annuity Payout Rates

Age	Rate
65	6.0%
70	6.5%
75	7.1%
80	8.0%
85	9.5%
90+	11.3%

If you would like more information on Charitable Gift Annuities or Pooled Income Funds, or would like to discuss other giving options that might better fit your own personal situation, please contact Ginny Smith at 800-336-3600, or [plannedgiving@nrtw.org](mailto:plannedgiving@nrtw.org), or check the appropriate box on the reply note included in this newsletter.

## Workers Freed from Wearing Union Propaganda as a Job Condition

*BellSouth, CWA union ordered to stop violating workers' right to refrain from union activity*

WASHINGTON, DC – In a long-awaited victory, a group of BellSouth workers finally had their rights vindicated when the National Labor Relations Board (NLRB) accepted a unanimous appellate court decision and blocked a policy of forcing workers to wear union propaganda on their work uniform as a condition of employment.

The NLRB decision marks the culmination of a difficult legal battle between a group of BellSouth employees, receiving free legal assistance from the National Right to Work Foundation, and Communications Workers of America (CWA) union officials who forced workers to wear the union's insignia as a job condition. In January 2005, the U.S. Court of Appeals slapped down a controversial Clinton-era NLRB decision whitewashing the illegal policy, but the union and company officials refused to comply fully.

While the wheels of justice turned slowly for the telecommunications workers, eventually their rights were upheld with the help of the Foundation.



***BellSouth workers no longer have to wear union propaganda as a condition of employment, thanks to the determination of employees aided by the Foundation.***

“Employees should not be forced to be walking billboards for a union that they do not support,” said Stefan Gleason, Vice President of the National Right to Work Foundation. “This long and difficult battle shows that the CWA

union hierarchy has little regard for the rule of law or the rights of the employees they supposedly represent.”

### Court of Appeals issued strong rebuke of anti-worker NLRB decision

The appellate court decision agreed with Foundation attorneys' arguments. The court noted that there was no evidence that the union patch projected a positive image to customers as claimed by the Clinton-era labor board, and such a display could in reality signal a *negative* image to customers who would “associate [the logo] with service interruptions and labor disputes.”

In addition to changing its policy, BellSouth and the CWA must also post notices throughout BellSouth facilities informing workers of their right not to wear the CWA union logo on their uniforms if they so choose, thus alerting employees of their protected right to refrain from union activities. 

## Saint-Gobain Workers Freed From Job-Killing UAW Union Brass

*continued from page 3*

attempt to corral Saint-Gobain workers into union ranks. However, current NLRB rules mean that the employees could find themselves the target of another disruptive organizing drive in the near future because UAW union lawyers successfully stalled the election's certification for over a year with their legal tactics.

Saint-Gobain worker Wayne Gregoire expressed his gratitude for the Foundation's support in removing the unpopular union: “It's nice to know

there are people like staff attorney Glenn Taubman and the National Right to Work Foundation that know the labor laws and are willing to stick up for individual workers when they are being pushed around by a multi-million dollar union and a biased labor relations board.

“With the Foundation's help, my coworkers and I were able to beat the odds, have a decertification election, and win our independence from the unwanted union.”

The Saint-Gobain case is a major blow to Big Labor. Foundation attorneys established two important precedents in this case that can be broadly applied to help free workers from union collectives everywhere. First, union officials cannot block a decertification election by filing unfair labor practice charges unless those charges withstand scrutiny in a formal judicial hearing. And second, union bosses cannot object to an election result using the same allegations that they had waived previously for strategic reasons. 

## Supreme Court

continued from page 4

Sanders continued that “there is no constitutional right to have the government deduct union dues (and, by logical extension, agency fees) from paychecks.”

“Despite the good intentions of those who advocated so-called paycheck protection, WEA bosses have taken the necessary steps to render Washington’s law a dead letter,” said Gleason. “The lesson is clear: As long as union officials have the power to seize union dues involuntarily, attempting simply to regulate union coercion will invariably fail.”

## Foundation attorneys prepare High Court appeal

But the ruling by the state’s supreme court establishing a First Amendment right for union officials to seize dues from nonunion employees simply cannot be allowed to stand. Unless overturned by the U.S. Supreme Court, this dangerous concept could spread to other states, and even threaten the very existence of Right to Work laws — which ban forced union dues altogether.

That’s why Foundation attorneys immediately announced they will seek review by the U.S. Supreme Court. Foundation President Mark Mix wrote Washington State Attorney General Rob McKenna to do the same, and McKenna has agreed to do so.

“Unfortunately, despite the valiant efforts and generously given resources of many concerned Americans, it is now clearer than ever that the paycheck protection regulatory approach is a false trail,” said Gleason. “Ultimately, employees’ rights cannot be fully realized until union officials are stripped of their government-granted power to seize any forced union dues whatsoever.”



## Message from Mark Mix

President  
National Right to Work  
Legal Defense Foundation

Dear Foundation Supporter:

Union bosses usually make a big show of respecting the rights of workers, even (they piously insist) the rights of workers opposed to compulsory unionism.

Of course, this is just for public consumption. In reality, they run roughshod over workers’ rights whenever it helps them increase their coercive power and gain a steady stream of revenue from forced dues.

Recently, however, a Washington Federation of State Employees (WFSE) union official named Tim Welch let the mask slip.

In an interview with the *Associated Press*, Welch expressed his view that most Washington State employees had “chosen” to pay forced union dues. Why? Because dissenters faced losing their jobs at the behest of his union.

“You can choose to be a member of the union, you can choose to pay a fee. But ultimately, if you do not like that, you can choose to be unemployed,” Welch quipped.

What Welch and his cronies did not count on was that several employees from across the state would choose exactly that: to sacrifice their jobs on principle rather than knuckle under to this bullying — and it backfired on the union brass in the press.

As detailed in the cover story in this issue of *Foundation Action*, many of these employees banded together, and with the help of the Foundation, they are fighting back.

With your support, the Foundation is standing by these otherwise unprotected workers as they make great sacrifices to resist this unconstitutional assault on our freedoms.

Sincerely,

Mark Mix