PRESS KIT

National Right to Work Legal Defense Foundation, Inc.

Defending America's working men and women against the injustices of forced unionism since 1968.

"To compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical." – Thomas Jefferson

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NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC.

An overview of the only national organization protecting America's working men and women from the injustices of forced unionism

The National Right to Work Legal Defense Foundation, established in 1968, is a nonprofit, charitable organization providing free legal aid to employees whose human or civil rights have been violated by compulsory unionism abuses. The Foundation is assisting over 200,000 employees in over 200 cases nationwide. It is the only organization in the country carrying out this vital mission.

The Right to Work principle – the guiding concept of the Foundation – affirms the right of every American to work for a living without being coerced into forced unionization. Compulsory unionism in any form – "union," "closed," or "agency shop" – is a contradiction of the Right to Work principle and the fundamental human right that the principle represents. The National Right to Work Legal Defense Foundation assists employees who are victimized because of their assertion of that principle.

The Foundation's legal aid program is designed to fulfill two objectives: to enforce employees' existing legal rights against forced unionism abuses and to win new legal precedents expanding these rights and protections.

The Problem. Since the 1930s, federal labor laws have permitted and encouraged the growth of compulsory unionism arrangements between union officials and employers, forcing millions of employees to pay dues to unions as a condition of employment. The power to compel employees to financially support a labor union is still granted to union officials by federal law in 28 states. In these states that have not yet passed a Right to Work law, this power has led to abuses of workers' human rights and civil liberties. Even in the 22 states that have such a law, enforcement is very difficult. Many employees are never told by union representatives that they cannot be required to join the union – a practice that is illegal – and most do not know that there is a law protecting their rights.

The Need. Prior to 1968, victims of compulsory unionism abuses were in a lonely, exposed position if they tried to fight back. Government agencies tended to turn their backs to the problem. And even if workers could afford them, most labor law specialists worked either for unions or for management – not for the employee. So the time had come for an organization that could provide free legal aid to these victimized employees. Rather than working in the legislative arena, such an organization could fight through the court system, to protect employees from violations of their rights resulting from compulsory unionism.

The Program. The Foundation's caseload is growing every day with new complaints of coercion and denial of individual rights by union officials. Abuses arising from compulsory unionism take many forms. Foundation cases are generally divided into one of five categories:

(1) misuse of forced union dues for political purposes;

(2) union coercion violating employees' constitutional and civil rights; injustices of compulsory union "hiring halls";

(3) union violations of the merit principle in public employment and academic freedom in education;
(4) union violence against workers;
(5) violations of other existing legal protections against union coercion.

The Result. Since 1968, the Foundation has received charitable contributions from more than 350,000 Americans dedicated to the protection of individual freedom. The Foundation's staff of expert, innovative attorneys has fought for the rights of hundreds of thousands of employees in more than 2,200 cases – all the way from arbitration hearings to the U.S. Supreme Court. Millions have felt the impact. Through a coordinated system of legal actions, the Foundation steadily is shaping the law to protect the basic constitutional rights of the nation's workers.

Landmark Foundation victories include – but are by no means limited to – the following U.S. Supreme Court cases:

(1) ***Abood v. Detroit Board of Education*** (1977): The Court ruled that the use of compulsory dues for politics violates the First Amendment and that it is illegal to withhold forced dues from dissenters beyond the cost of collective bargaining.
(2) ***Patternmakers v. National Labor Relations Board*** (1985): The court affirmed private-sector workers' unqualified right to resign their union membership immediately.
(3) ***Chicago Teachers Union v. Hudson*** (1986): The Court found far-reaching rights in challenging compulsory dues withheld from teachers who refrain from union membership.
(4) ***Communications Workers of America v. Beck*** (1988): The Court ruled that workers covered by the National Labor Relations Act can withhold forced dues from the union for everything but the documented cost of collective bargaining.

A more detailed list of Foundation-won cases can be found at http://www.nrtw.org/foundation-won.htm.

Foundation supporters are men and women of all walks of life – union members, former union members, independent employees, business owners, and others – who, through their voluntary contributions, enable the Foundation to provide legal aid to victimized employees. The National Foundation receives no tax money. The Foundation is a private organization, financed entirely by the voluntary generosity of its contributors.

For more information or to schedule an interview, visit the National Right to Work Legal Defense Foundation on the web at www.nrtw.org or call Legal Information Director Justin Hakes at 703-770-3317.

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The Oregonian
The Oregonian

Union dissolves small unit at Kaiser

Labor-In response to a complaint about authorization cards, Service Employees International agrees to hold a vote

Joe Rojas-Burke
July 19, 2006

http://www.oregonlive.com/business/oregonian/index.ssf?/base/business/1153283344144560.xml&coll=7

In a setback for union organizers, the Service Employees International Union agreed to dissolve a recently organized bargaining unit at Kaiser Permanente to settle a complaint by a Portland worker who had accused the union of violating labor laws.

The settlement involves only 65 of the nearly 4,000 Kaiser Permanente employees in the Northwest represented by the union. But it marks an escalation in the fight over a common labor organizing tactic that's fiercely opposed by anti-union groups.

Kaiser Permanente executives recognized the union last October after SEIU Local 49 presented signed authorization cards from a majority of the 65 workers in its patient business services department in Portland. This so-called card-check recognition has become a favored organizing method of unions because it sidesteps the more arduous process of holding a secret-ballot election overseen by the National Labor Relations Board.

But the success of card-check recognition has made it a target of anti-union groups, who say it allows labor organizers to coerce workers into supporting unions.

Republican lawmakers from Georgia and South Carolina have introduced legislation in Congress to outlaw card-check recognition of unions. The National Right to Work Legal Defense and Education Foundation, an anti-union nonprofit group based in Virginia, has made a point of challenging the legality of card-check agreements across the nation, including Kaiser Permanente's with SEIU Local 49.

"The organizers can hound employees, and once they get more than 50 percent of them to sign the cards, they have a union," said Patrick Semmens, a spokesman for the foundation.

Karen Mayhew, the Kaiser employee who filed a complaint with the National Labor Relations Board, said the company and the union violated a prior agreement to hold an election. She contends union organizers misled at least one of her co-workers by saying that signing the card "merely expressed her interest for a formal vote."

"I held fast to the position all along that the true majority was not being represented in this department," Mayhew said.
SEIU spokeswoman Shauna Ballo said the claims against the union are false. She said the union decided that settling the case would allow workers to gain representation faster than fighting the complaint.

"It's easier just to hold an election by secret ballot this time and just prove that this is what workers want," Ballo said.

Richard Ahearn, regional director of the NLRB in Seattle, said the agency reached a preliminary conclusion that Kaiser and the union failed to establish majority support for the union. He said that in the delay between the time the union began seeking cards from workers and the time the cards were checked, a significant number of the 65-member unit who had signed the cards left Kaiser to work elsewhere, leaving the union without a majority.

"What appeared to be a majority was in fact not a majority," Ahearn said. He added that the settlement agreement is limited to the 65-person unit. Nothing in the agreement prohibits other Kaiser workers from organizing under a card check, he said.

Kaiser Permanente spokesman Brad Brokaw said managers will encourage the department's employees to decide for themselves whether they should be represented. He said the settlement will not affect managers' relations with any other employees represented by SEIU or other unions.

"Here in this region, over 6,000 of our employees are in unions," Brokaw said. "We are actively engaged in a labor-management partnership and absolutely support our workers' right to be represented by a union."

Ballo said the union intends to hold an election 60 days after the settlement becomes final. The NLRB has yet to receive a petition from SEIU requesting a board-conducted election, Ahearn said.

Mayhew, the Kaiser employee who initiated the complaint, said she intends to challenge the union's right to hold an election, asserting that the first attempt counts as a failure to win a majority of workers' support.

"It has yet to be determined," she said, "what rights the union has to come back in here and organize."

THE ARIZONA REPUBLIC
azcentral.com

The Arizona Republic

‘Fair share’ appeal rejected

Mary Jo Pitzl
August 20, 2006

http://www.azcentral.com/arizonarepublic/business/articles/0820biz-ruling0820.html

Employers cannot deduct union wages from non-union members' paychecks, the Arizona Court of Appeals ruled in a case that tested provisions of Arizona's Right to Work law.

The three-judge court last week unanimously rejected an appeal by a Phoenix city employees' union in its "fair share" case.

The union, Local 2384 of the American Federation of State, County and Municipal Employees, AFL-CIO, argued that the city should deduct a percentage of union dues, perhaps up to 80 percent, from the paychecks of non-union members since the union was working for all employees' benefit, regardless of membership.

The city disagreed and rejected the union's effort to insert the "fair share" provisions into its contract.

The case landed in court, and in October 2004, a Maricopa County Superior Court judge ruled in the city's favor.

The union appealed it to the state Court of Appeals, and last week, the court concluded "that the 'fair share' proposals are impermissible under Arizona's constitution and 'right to work' statutes."

Union officials did not return calls seeking comment.

The city's position was supported by the National Right to Work Foundation.

The Washington Times

Clinton's labor legacy

Stephan Gleason
September 4, 2006

http://www.washtimes.com/op-ed/20060903-095538-4676r.htm

As Big Labor bosses scream bloody murder about decisions by Bush administration appointees on labor law issues, they are actually breathing a collective sigh of relief this Labor Day. Despite a few minor rulings reining in union abuse, union officials are still winning their war against employee free choice.

By way of background, the National Labor Relations Board (NLRB) is the federal agency charged with administering the National Labor Relations Act, a law that grants union officials sweeping privileges to organize workers into union collectives.

But the Bush NLRB has been AWOL since the beginning. Despite more than five years of Republican rule, dozens of precedent-setting Clinton NLRB rulings remain unchanged. These activist decisions strengthened union coercive power over employees and employers alike, entrenched unions in workplaces where they do not enjoy the support of a majority of employees, and allowed for the rampant misuse of forced union dues for politics.

In short, although a Democratic majority on the NLRB is naturally expected to favor the interests of union officials over rank-and-file employees, the Clinton board turned American labor law on its head. According to an analysis by Jones Day attorney G. Roger King prepared for the American Bar Association, from 1994 to 2001 the Clinton NLRB overturned 60 long-standing cases -- throwing a jaw-dropping 1,181 years of combined precedent out the window.

In spite of this, President Bush's appointees have yet to right the ship, reversing fewer than eight Clinton NLRB precedents.

And the Bush board's dereliction of duty has reached ridiculous levels. In one long-pending case, employees are pleading for the board's protection from union coercion 17 years after initiating their charges.

Raising questions of gross negligence and bureaucratic deadlock, the NLRB has failed to issue a final ruling in the case of David and Sherry Pirlott -- initiated in 1989 -- with free legal assistance from the National Right to Work Foundation against the Teamsters Local 75 union in Green Bay, Wisc. The Pirlotts' complaint is the oldest of scores of cases in which foundation-assisted employees are trying to reclaim their forced union dues illegally spent on non-bargaining activities like union political efforts.

Since the Pirlotts filed their original charge, the Berlin Wall fell, the American public voted in four presidential elections, and six new justices have been appointed to the U.S. Supreme Court. Justice delayed is justice denied.

The NLRB, which has long been plagued by political in-fighting and institutional bias favoring forced unionism, is also drawing similar scrutiny for failing to rule on other foundation-assisted cases that challenge Big Labor's most abusive new organizing tactics.

Because employees increasingly vote down unionization, Big Labor has turned to imposing unions on employees from the top down. The goal is to sabotage employers until businesses agree to waive the secret ballot election process for unionization.

In the leading cases at issue, officials at Dana and Metaldyne -- automotive suppliers to the Big Three -- promised to grant sweeping access to employees' personal information so union operatives could make menacing home visits to browbeat workers into signing cards which are later counted as "votes" in favor of unionization. In exchange, United Auto Workers (UAW) bosses said they would not lobby for new employee health benefits in future negotiations for Dana employees. Essentially, everybody won -- everybody except the rank-and-file workers, that is.

Despite the ongoing suffering workers endure under these coercive unionization drives, the NLRB has let cutting-edge employee legal challenges to this abuse sit on its docket for over two years.

Meanwhile, the president continues to stumble on his nomination strategy. In August, Mr. Bush re-nominated Democrat Wilma B. Liebman for a third term at the NLRB and cut a deal to confirm her through the Senate. The deal pointedly hung one of Mr. Bush's own Republican NLRB nominees, Peter Kirsanow, out to dry.

Ms. Liebman's bias in favor of union bosses is notorious. Before joining the agency where she has accumulated an outrageous record of defending the most abusive of union actions, she was counsel for the International Union of Bricklayers and Allied Craftworkers and the infamous Teamsters union.

As the NLRB fails to tackle the most pressing and long-languishing cases of employee rights violations, workers face further erosion of their freedom to choose whether to unionize.

So the public shouldn't be fooled by union officials' woe-is-me complaints about actions by the Bush NLRB on this Labor Day. Instead, they should be wondering why the board is ignoring American workers' struggle to free themselves from forced unionism.

Stefan Gleason is vice president of the National Right to Work Legal Defense Foundation.

LEXINGTON HERALD-LEADER
The Herald-Leader

Non-union firefighters win settlement

Dues 7 had paid since June 2005 refunded

Beth Musgrave
October 6, 2006

http://www.kentucky.com/mld/kentucky/news/local/15691698.htm

Seven Lexington firefighters received about $150 each in refunded dues as part of a settlement agreement with the local firefighters union.

A lawsuit filed in U.S. District Court in Lexington in June against the International Association of Fire Fighters Local 526 alleged that the union unfairly collected dues from the seven non-union men.

The firefighters said they were forced to pay a "fair share" fee without receiving a breakdown of how those fees were to be spent. Non-union members pay the union a fee -- currently about $24 a month -- to represent them in collective bargaining negotiations.

The money returned to the seven firefighters included interest on dues that the firefighters had paid to the union since June 2005, when the collective bargaining agreement between firefighters and the city took effect.

The settlement, announced yesterday, guarantees that the union will not require the non-union firefighters to pay the "fair share fee" without the union providing an audit of the union's expenses. A 1986 Supreme Court decision required unions to provide that financial information to non-union members before a fair-share fee can be collected.

Mark Blankenship, president of the IAFF Local 256, said the union thought it had provided appropriate financial information to the non-union members, but it decided it was more cost-effective to settle the case than to fight it.

The National Right to Work Legal Defense Foundation, a Virginia non-profit organization, has sued hundreds of unions, companies, and local and state governments across the country.

"This same group came after the Bridgeport, Conn., and Cincinnati firefighters union and nearly bankrupted them in legal fees," Blankenship said. Cincinnati's legal fees ran upwards of $100,000.

Patrick Semmens, spokesman for the foundation, said its goal isn't to bankrupt unions but to "protect the rights of individual employees and ensure that they get justice when union officials trample those rights."

Ultimately, the union decided it was easier to pay the back fees than fight the group in court, Blankenship said.

Seattle Post-Intelligencer

Court needs lesson on 1st amendment

Mark Mix
November 21, 2006

http://seattlepi.nwsource.com/opinion/293051_uniondues21.html

Attorneys for 4,000 Washington teachers filed arguments at the U.S. Supreme Court last week seeking a ruling that could give unionized employees nationwide new tools to reclaim their mandatory union dues. But the case didn't start out with such high aspirations.

At the outset, the Davenport v. Washington Education Association appeal was a legal rescue mission that should never have been necessary. Davenport, which The New York Times called the "most prominent" of the cases the High Court agreed to hear this term, arose from a controversial Washington Supreme Court ruling last March that somehow found a constitutional "right" for union bosses to spend non-union members' forced union dues on politics.

National Right to Work Foundation staff attorneys originally brought the suit to help teachers assert their rights under the remaining operative provision of a state campaign finance law, often called "paycheck protection." This well-intentioned I-134 provision required union officials to gain consent from non-union public employees before spending their dues on certain, narrowly defined, state and local electioneering activities.

But WEA union officials easily evaded the law's intent by modifying accounting methods and the nature of their expenditures. Moreover, because union officials in Washington enjoy the government-granted privilege to collect forced union dues in the first place, the union hierarchy had no difficulty in raising even more funds.

Because the law's definition of "politics" was so narrow, even the Olympia-based Evergreen Freedom Foundation pointed out in its third party brief last week that the funds covered by the statute were "miniscule ... less than one-quarter of 1 percent of the WEA's total expenditures."

Concerns about the law's effectiveness aside, it is absolutely imperative that the U.S. Supreme Court overturn the state court ruling, which used the law as a springboard to create a much larger problem -- a perversion of the long-standing interpretation of the First Amendment.

Using the Washington court's twisted logic, union lawyers might even argue that America's 22 state right-to-work laws, which ban forced union dues, are also unconstitutional.

But fortunately, Davenport is more than just a defensive battle. Right to work attorneys have found an opening to go on the offensive by asking the high court to clarify a statement that has plagued non-union workers for 45 years.

By misapplying the phrase "dissent is not to be presumed" in a 1961 U.S. Supreme Court ruling, union officials maintain burdensome procedures requiring employees who resign formal membership to take the additional affirmative step of objecting annually to stop union officials from seizing their forced union dues for non-collective bargaining activities.

If the high court clarifies that employees register sufficient "dissent" through the act of becoming and remaining non-members, the roughly 1 million non-members forced to pay dues in America will automatically be entitled to a rebate of $200 or more, which covers unions' non-bargaining expenses, including all costs attributable to politics, lobbying and public relations.

Failing to overturn the Washington Supreme Court would be a travesty. But a ruling that dissent can and should be presumed when it comes to non-union members would be a major breakthrough.

Let's hope the high court gives the Washington court a remedial lesson on the First Amendment and agrees that it's ridiculous to presume when an employee resigns from a union -- he still supports its politics.

Mark Mix is president of the National Right to Work Foundation, a non-profit organization.

National Review Online

Laboring Against Free Speech

Unions want to force workers to pay for political speech the workers object to

Mark Mix
January 10, 2007

http://article.nationalreview.com/?q=YjRiZjc3NzYyZTJmNzRiZDc1NjQ2M2VjNDVhZWExOTg=

America's labor law is already a deck stacked against individual workers. Today the U.S. Supreme Court will hear arguments over whether to allow further expansion of union officials' privilege to compel employees to pay union dues.

In *Davenport* v. *Washington Education Association (WEA)* and *Washington* v. *WEA*, both considered to be among the most prominent cases argued this term, the Supreme Court is reviewing a controversial ruling handed down by the Washington State supreme court early last year that struck down a statute regulating government unions.

The ruling broke new ground, declaring that union officials have a First Amendment right to spend on politics the mandatory union dues of employees who are not actually union members.

Up to this point, the U.S. Supreme Court has recognized that, when nonunion members are compelled to pay dues, if the union spends money on political speech, this involves the employees' First Amendment rights as well, not only the union's. That's why a stinging dissent by three Washington State justices blasted the activist majority for "turn[ing] the First Amendment on its head."

If the U.S. Supreme Court allows the Washington decision to stand, union lawyers could even argue that America's state "Right to Work" laws are unconstitutional, because such laws ban the collection of any compulsory dues whatsoever from workers who are not union members.

Not an Ideal Defense

The law that was overturned by the Washington court was by no means a stellar example of protection for nonunion workers. Buried in a campaign-finance regulatory package approved by Washington's voters in 1992, the state's "paycheck protection" provision required government union officials to obtain prior consent from nonunion employees before spending their compulsory union dues on certain types of political activities. The law left totally intact the special privileges of union officials to seize union dues as a condition of employment, attempting only to regulate the way in which the dues could be spent.

The authors of the state's campaign-finance law included a narrow definition of politics with the hope of avoiding constitutional and federal preemption challenges. The result was a law that only covered union expenditures made to advocate expressly for the election or defeat of state or local candidates or initiatives. Of course, the vast majority of union political spending is not "express advocacy." Accordingly, Washington's "paycheck protection" law only covered a tiny fraction of union political expenditures. Also, in response to the law, the WEA union hierarchy shuffled their accounting methods and raised up teachers' forced union dues even higher. The result was a 60 percent increase in the funds available for politics.

Nevertheless, somewhere between $10 and $25 of the dues taken from each worker were taken in violation of the new Washington law. So a group of nonunion teachers sought free legal aid from the National Right to Work Legal Defense Foundation to reclaim those funds through a class-action lawsuit its attorneys filed in 2001. Meanwhile, the attorney general's office brought its own suit against the union for violating the state statute.

This whole controversy is a prime example of the problems that flow from tinkering with public policy through regulation rather than addressing the fundamental issues. In striking down this well-intentioned but ineffective "paycheck protection" regulation, the Washington court has managed to hand union officials new special privileges. Concerns about the effectiveness of "paycheck protection" aside, the ruling cannot be allowed to stand because the precedent will be exploited to attack employee protections in other states.

Searching for the Pony

There may be a silver lining, for this case is not purely defensive in nature. In their briefs for Gary Davenport and other petitioning teachers, National Right to Work Foundation attorneys have asked the U.S. Supreme Court to clarify a statement it made 45 years ago that has plagued independent-minded workers ever since.

By exploiting language from the 1961 U.S. Supreme Court ruling in *Machinists* v. *Street*, union officials have established procedures to obstruct nonunion employees from obtaining a refund of their forced union dues spent on politics, largely by requiring them to file petitions to this effect in a very narrow timeframe.

The *Street* court ruled that employees have a constitutional right not to pay for union ideological activity, but "[employee] dissent is not to be presumed." Briefs filed in recent weeks by Right to Work attorneys and Washington's attorney general point out that this opt-out requirement applied only to union members, not to nonmembers. They argue that the Washington State court misapplied *Street* in striking down the state law, which the court claimed reversed the burden that had been placed on employees to make their objections known. Reversing the state court's bizarre new finding of "constitutional rights" for unions to spend the compulsory dues of nonmembers should be a no-brainer. But the U.S. Supreme Court should go a step further and clarify that an employee who refuses to join a union has registered sufficient "dissent" and should therefore not be compelled to pay any more dues or fees than the existing law requires.

This simple clarification would mean automatic refunds totaling several hundred dollars annually to each of the approximately one million nonunion American workers laboring in unionized

workplaces lacking the protection of a state Right to Work law.

Such a ruling would be common sense. It's ridiculous to presume that an employee still wants to fund a union's politics after he has quit or refused to join. A decision to refrain from union membership is rarely taken lightly, since it often results in union harassment and discrimination.

Victory on this point would knock down the labyrinthine procedural hurdles union officials have erected to ensure a steady flow of forced union dues for politics. Today, only a fraction of nonunion members successfully overcome those obstacles.

The U.S. Supreme Court has an opportunity to teach union officials and the Washington State supreme court an important — and, to Big Labor, expensive — lesson: When it comes to compelling political speech, No really means No.

— *Mark Mix is president of the National Right to Work Foundation*

THE WALL STREET JOURNAL.
The Wall Street Journal

The Right to Dissent From Union Policies

Stephan Gleason
January 10, 2007

http://online.wsj.com/article/SB116840084059672270.html?mod=googlenews_wsj

Putting aside the hype of its promoters, the underlying "paycheck protection" law in Washington state has been totally ineffective in returning forced union dues to the teachers it intended to protect ("Unions' Policy Test -- Justices Will Hear Case Challenging Spending of Dues," Politics & Economics, Jan. 8). Now it has been used by the Washington State Supreme Court as a platform to misinterpret the First Amendment in a way that has far broader ramifications.

While the Washington Education Association teachers union and its affiliates admit they spend more than $200 per teacher on politics and other non-collective bargaining activity, the campaign finance regulation at issue doesn't touch the lion's share of this money because of its extremely narrow definition of "political expenditure."

Attorneys for the National Right to Work Legal Defense Foundation, which brought the case to the Supreme Court, are also asking the justices to rule that any employee who goes through the hassle of resigning (or never joining) a union is implicitly a "dissenter" to the union. A victory on this argument would be a major breakthrough for employee rights. If the Supreme Court agrees that it's illogical to presume that an employee who resigns from a union actually still supports it, then these union opt-out procedures would be illegal and the one million non-union members forced to pay dues in America would be entitled to an automatic refund of all funds spent on politics, lobbying and all other non-bargaining activity.

The New York Times
The New York Times

Rights of Unions and Nonmembers Vie at Court

Linda Greenhouse
January 11, 2007

http://www.nytimes.com/2007/01/11/washington/11scotus.html?_r=1&adxnnl=1&oref=slogin&adxnnlx=1168524213-uwmefsvzzIgobiJ9n+7fRg

WASHINGTON, Jan. 10 — A case argued before the Supreme Court on Wednesday about how labor unions must handle the fees paid by nonmembers could turn out to be little more than a footnote to a long line of decisions about the respective rights of labor unions and dissident employees.

Or the case might turn out to be a good deal more consequential, the first step toward a recalibration by the court of the constitutional balance between the two.

Each of these contrasting outcomes appeared plausible during an argument that had a bit of something for everyone: First Amendment law, labor law, election law and an animated performance by the court's newest justice, Samuel A. Alito Jr.

Justice Alito appeared particularly energized by the case, a defense by the state of Washington of a provision of its campaign law that bars unions from spending nonmembers' fees on political activity without first receiving permission.

This "opt-in" provision of the Washington law, adopted by referendum in 1992 as part of a broad campaign finance measure, goes a step beyond the protection for nonmembers that the Supreme Court has found to be constitutionally required. The court has required unions to permit nonmembers to "opt out" of having their fees used for any purpose that is not "germane" to the union's collective bargaining responsibilities.

Under federal labor law, states may authorize "union shop" provisions under which employees who choose not to join the union must pay fees to support the union's collective bargaining.

The Washington Supreme Court held in this case that requiring the union to receive affirmative permission before spending nonmembers' money on election-related activity imposed an unconstitutional burden on a union's right of free speech and association.

The state teachers' union is defending that judgment, while the state and a group of teachers, represented by the National Right to Work Legal Defense Foundation, challenged it in separate appeals. The justices consolidated the cases, Davenport v. Washington Education Association, No. 05-1589, and Washington v. Washington Education Association, No. 05-1657, for a single argument.

The Bush administration entered the case on the state's side. Solicitor General Paul D. Clement said the Washington Supreme Court had "rigidly constitutionalized an area of labor law" that should be left to the "substantial discretion" of the states and the federal government.

Mr. Clement said that just because "as a minimum constitutional matter, the workers have to have an opt-out right" did not mean that a state could not go further and provide that the union could not spend nonmembers' money on politics unless those workers affirmatively agreed.

That argument seemed to appeal to Justice Alito. "Why should the First Amendment permit anything other than an opt-in scheme?" he asked.

That was a "fair question," the solicitor general replied, while at the same time carefully avoiding a full embrace of Justice Alito's suggestion. The opt-in right should be an option but was not constitutionally required, he said.

Later in the argument, addressing the union's lawyer, John M. West, Justice Alito suggested that it seemed only common sense to presume that employees who had chosen not to join the union were likely not to support the union's political activities.

The presumption built into the court's precedents is that nonmembers do support the union's outside activities unless they declare otherwise. "Dissent is not to be presumed" is the phrase the precedents use. So it would be a substantial change in labor law if the presumption were reversed.

"Isn't it overwhelmingly likely," Justice Alito asked Mr. West, that if nonmembers were asked whether they wanted to "give money to the union to spend on elections, they would say no?"

Mr. West said he "absolutely" disagreed, explaining that the union used its political money to campaign for higher taxes to support local school districts and other purposes "that it has every reason to believe is in the interest of the vast majority of teachers."

Chief Justice John G. Roberts Jr. sounded unpersuaded. "Well, surely," he said, "you don't get to say, well, this is in your interest, whether you want to spend the money or not."

Justice Anthony M. Kennedy was also critical of the union's position. "You want us to consider this case as if the First Amendment rights of non-union members were not involved," he told Mr. West on two occasions.

Washington is the only state with a campaign finance law that singles out labor unions for special treatment. Mr. West's basic argument was that the law violated the First Amendment by discriminating against speech based on its content. The union is permitted to engage in legislative lobbying, for example, without first getting the nonmembers' permission to use their money, but is barred from campaigning for or against ballot measures.

About 5 percent of Washington's 80,000 teachers have declined to join the union.

The Washington Times

An ‘indefensible’ labor ruling

January 31, 2007

http://washingtontimes.com/op-ed/20070130-085828-9655r.htm

A worker's right to not contribute to a union's political activities took another hit yesterday following a ruling from the National Labor Relations Board. In a scathing dissent, NLRB member Peter Schaumber correctly called the ruling a "patch-job," comparing it to waiting two decades to get your car back from the shop only to find that one tire had been fixed.

Exaggeration? Hardly. Seventeen years ago David and Sherry Pirlott, employees at Schreiber Foods in Green Bay, Wis., asked the NLRB to determine whether an employee can be forced to subsidize union organizing activities. A year earlier, in 1988, the Supreme Court ruled in Communications Workers v. Beck that workers could not lawfully be forced to pay for any union activities unrelated to collective bargaining. Yet the NLRB sat on the case. It wasn't until 2000 that the NLRB made any sort of determination on the issue when they ruled in a separate case that to force employees to pay for non-bargaining activities unions had to demonstrate that organizing activities somehow strengthened workers' collective bargaining hand. Needless to say, this was not what the Supreme Court had held in Beck.

The ruling was appealed by the National Right to Work Legal Defense Foundation and would have made it to a Supreme Court review had not the NLRB stepped in and promised the court that it would re-evaluate the ruling in the Schreiber Foods case. But again, the NLRB sat on the case. It wasn't until the U.S. Court of Appeals for the D.C. Circuit ordered the NLRB to issue a ruling on Schreiber Foods -- only the third time in the NLRB's history it has been forced to do so -- that anything at all was done.

The ruling that came down is ostensibly in favor of the Pirlotts, as the NLRB did not find that the union's organizing activities strengthened employees' collective bargaining position. What the ruling didn't do, however, was overturn or revise its unconstitutional edict from 2000, which is a blatant dereliction of the NLRB's promise to the Supreme Court that it would revise its earlier decision.

In the words of Mr. Schaumber, who labeled the majority's decision "indefensible," "what the Board fails to do ... is to address the broader and recurring question, one specifically raised and briefed by the parties, namely, whether such expenses are ever properly chargeable" to employees who object. Further, he wrote, the majority's decision is "utterly inconsistent with Supreme Court precedent."

The right-to-work lawyers tell us that they have grounds to appeal to the Supreme Court. They should do this, as should the court uphold its previous ruling on the issue.

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The Toledo Blade

Complaint against UAW at St. V's to have hearing

Anti-union nurse alleges coercion, intimidation

Gary T. Pakulski
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http://toledoblade.com/apps/pbcs.dll/article?AID=/20070207/BUSINESS07/702070383

Seven years after much of the workforce at St. Vincent Mercy Medical Center was unionized, anti-union nurses have won a round in their effort to oust the United Auto Workers.

The National Labor Relations Board in Cleveland has said evidence is sufficient to hold a hearing on contentions by nurse Amy Anderson that participants in an anti-UAW campaign were coerced and intimidated by union representatives.

NLRB regional director Frederick Calatrello, in a complaint against the union late last month, set the hearing for April 24 in Cleveland before an administrative law judge. Agency attorneys will serve as prosecutors. Whatever the outcome, it will affect 1,200 nurses but not 1,300 other unionized employees at St. Vincent.

Neither Sandy Lawson, who represents unionized nurses at the nonprofit hospital, nor Catherine Booher, a member of the UAW's international staff, returned calls for comment yesterday.

But Bruce Baumhower, president of UAW Local 12 in Toledo, said the nurses deny that they acted improperly toward anti-union campaign participants, who call themselves Nurses For a Union Free St. V's.

"We'll let the hearing officer sort it out," Mr. Baumhower said.

The UAW has until Feb. 14 to respond to the agency's complaint.

The anti-union National Right to Work Legal Defense Foundation Inc., which is assisting nurses trying to get rid of the UAW, said the nurses have collected sufficient signatures to force a new election on whether the union should stay or go.

Labor board officials will schedule and supervise an election once attorneys there resolve a UAW complaint accusing hospital officials of improperly aiding the anti-union campaign, said Justin Hakes, a Right to Work Foundation spokesman.

A St. Vincent spokesman said the hospital has resolved the matter without admitting wrongdoing, and an NLRB official said a final settlement in the matter is near.

In his complaint accusing UAW representatives of intimidation, the agency's regional director cited several incidents in June and July involving circulation of anti-union petitions.

On one occasion, a union representative "struck" a clip board being held by a UAW opponent, the NLRB alleged.

In several instances, union representatives allegedly stood too close to petition distributors and interrupted them as they tried to talk to colleagues.

Another time, a union representative is accused of following a campaign participant to her car and writing down, or pretending to write down, her car license number.

It is unclear how widespread opposition is to the UAW among St. Vincent nurses, although anti-union forces would have to collect signatures from 30 percent of the bargaining unit to trigger a vote, known as a decertification election.

Randy Malloy, assistant to the NLRB regional director, confirmed that the anti-union group has submitted petitions but said lawyers haven't determined whether the petitions contain sufficient signatures.

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elpasotimes.com
El Paso Times

Labor Lawsuit

Man fights suspension for shunning union

Vic Kolenc
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http://toledoblade.com/apps/pbcs.dll/article?AID=/20070207/BUSINESS07/702070383

An El Paso security guard removed from his job because he refused to join a union or pay union fees is claiming the action is illegal and has succeeded in getting the National Labor Relations Board to file a complaint against the union and his employer.

A hearing on the case has been tentatively set for March.

Juan Vielma, 58, has not been working since late June when his employer, a joint venture of Minnesota-based Deco Security Services and New Mexico-based Akal Security, suspended him without pay for not joining a union or paying union fees as stipulated in a union contract with the joint venture.

"For me, I don't think we need a union," said Vielma, who said he has been a security guard for about 17 years, including more than 10 years at an Immigration and Customs Enforcement center at 8915 Montana.

Union membership had never been an issue, Vielma said.

But in late 2005, the International Union Security, Police and Fire Professionals of America sent him a letter advising him he had to pay union dues or face discharge from his job, according to the labor board complaint.

"I can't collect unemployment (because) I'm suspended until I pay the union fees," Vielma said.

He's now being treated for depression, which, he said, has made it difficult to look for another job. "I've got all my bills. I'm two payments behind on my house (mortgage)."

Texas is a "right-to-work state" with laws prohibiting an employer or union from forcing a person to join a union or pay money to a union, said Patrick Semmens, a spokes man for the National Right to Work Legal Defense Foundation in Virginia, which is handling Vielma's case.

It's against federal law to enforce a "compulsory dues clause (in a contract) since that part is illegal" under Texas law, Semmens said.

The union, in an answer filed Wednesday to the complaint, denied the alleged unfair labor practices. It also said it had asked for Vielma to be removed from the federal work site by his employer, "not that it discharge Vielma."

The union asked that the complaint be dismissed because some of the alleged violations were too old to fall within a six-month statute of limitations, and because Vielma's work site has "exclusive federal law jurisdiction."

That means state law wouldn't apply in this case, said Mark Heinen, a Detroit lawyer representing the union.

Semmens at the foundation said the only time state law doesn't apply is if the federal facility is designated as a "federal enclave" with exclusive federal jurisdiction, which, he said, is not the case here. The security companies also are arguing that Vielma isn't protected by Texas law because he worked on federal property, Semmens said.

An official for Akal Security said the company couldn't comment on the case while it's pending before the labor board. No one at Deco's headquarters in Baxter, Minn., or at the Security, Police and Fire Professionals union headquarters in Roseville, Mich., could be reached for comment.

Victor Aguirre, El Paso business agent for the International Union of Operating Engineers Local 351, which is not involved in the case, but represents workers at Fort Bliss and other federal facilities, said unions count on dues to cover expenses for representing workers covered under collective bargaining agreements.

"The law forces a union to represent everyone under a collective bargaining agreement, so why, if (a person) is getting a benefit, shouldn't they pay for it?" Aguirre asked.

However, a federal facility must be recognized as a federal enclave to be exempt from state laws, Aguirre said. For example, Fort Bliss is classified as a federal enclave and labor agreements at Fort Bliss can contain clauses requiring workers to pay union dues, he said.

Aguirre's union tangled with the National Right to Work Foundation several years ago because a Fort Bliss worker covered by a union contract objected to paying dues, Aguirre said. That case was settled when the union agreed to keep track of what dues are used for worker representation and what dues are used for political causes and other purposes, he said.

A worker who objects to paying dues is then refunded dues not used for representation expenses, Aguirre said. The separation of dues resulted from some Supreme Court cases, he said.

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For more information: National Labor Relations Board, www.nlrb.gov; National Right to Work Legal Defense Foundation, www.nrtw.org; Security, Police and Fire Professionals of America, www.spfpa.org.

Los Angeles Times

Union mislead farmworkers, state panel says

A labor board rules that the UFW didn't fully disclose that some dues could be withheld.

Molly Selvin
February 23, 2007

http://www.latimes.com/business/la-fi-ufw23feb23,1,6652384.story?coll=la-headlines-business

In a rare rebuke, a state labor board ruled that the United Farm Workers of America deliberately misled workers about their rights not to join the union or fund its political activities.

The ruling comes amid a continuing national effort by anti-union activists to weaken organized labor's political clout, and as the farmworker group continues to lose membership and influence among California's immigrant farm laborers.

The California Agricultural Labor Relations Board, which referees labor practices in the state's fertile fields, found that the union failed to adequately inform mushroom pickers at a Ventura farm that they could withhold the portion of their dues that fund political lobbying, as allowed by state law. The board also found that the union threatened workers who did hold back those funds, telling them that all workers had to pay or the grower would be obligated under the contract to fire them.

In its order last week, the agency directed the union to better inform workers of their rights and to refund fees that members paid under protest. Those fees are 7% to 10% of dues, said Michael Lee, general counsel for the state board.

The ruling resulted from complaints to the agency lodged by two employees on behalf of 400 workers at California Mushroom Farm Inc., formerly Pictsweet Mushroom Farms. The two employees were represented by the Springfield, Va.-based National Right to Work Legal Defense Foundation Inc., an anti-union activist group that has launched similar challenges elsewhere in the country.

Union dues are about 2% of the mushroom workers' pay rate of $8.40 to $12 an hour, UFW spokeswoman Alisha Rosas said.

The order by the five-member board is unusual, Lee said, because most disputes are resolved at the regional level or by mediation.

The union downplayed the decision's significance.

"We make every effort to let workers know of their rights and we've learned from this how to do

that better," Rosas said.

She called the Right to Work foundation's complaint part of a national anti-union strategy.

But Stefan Gleason, the foundation's vice president, labeled the union's actions "standard operating procedures" and said he hoped that the group "will start respecting the legal rights of workers, especially those who don't want much to do with them."

The United Farm Workers' clout has dwindled significantly from the 1970s, when Cesar Chavez called for a grape boycott that produced national headlines and landmark protections for migrant laborers.

Inroads from other labor groups, as well as the transitory nature of migrant workers, have caused the UFW's membership rolls to shrink.

Efforts to undermine union political clout by focusing on dues collection have multiplied in recent years, buttressed by state and federal court rulings.

Although California voters defeated a 2005 measure backed by Gov. Arnold Schwarzenegger that would have required public employee unions to obtain annual written permission from members to spend their dues on politics, the Right to Work foundation and other groups have mounted legal challenges, often successfully, to the activities of individual unions.