



# Foundation Action

The bi-monthly newsletter  
of the National Right to Work  
Legal Defense Foundation, Inc.

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## Union Lawyers Decry Foundation Presence at Nat'l ABA Conclave

### AFL-CIO urged to make attacks on Foundation a "core mission"

SAN JUAN, PUERTO RICO — A group of top union lawyers flirted with plans to move for the ejection of a representative of the National Right to Work Foundation from an American Bar Association (ABA) labor law conclave where several of the Foundation's high-profile cases were being discussed in detail.

However, to avoid a public relations debacle, union lawyers beat a tactical retreat.

At the same time, a major international union called upon the AFL-CIO to make a renewed wave of attacks on the Foundation's employee rights program a "core mission."

### ABA program focused on Foundation's employee cases

In early March, Foundation President Mark Mix dispatched Vice President, Stefan Gleason, to Puerto Rico for the ABA's mid-winter conference on labor law to discuss with other members of the legal community the



AP Photo

*UAW Chief Ron Gettelfinger and his henchmen called upon the AFL-CIO to make attacks on the Foundation "a core mission" of union officials going forward.*

Foundation's cutting-edge cases.

Three major precedent-setting cases in which Foundation attorneys directly represent the employees who sought secret ballot decertification elections, *Dana*, *Metaldyne*, and *Saint Gobain Abrasives* (see page 4), were at the center of the ABA's published program, yet Foundation attorneys were never asked to make a presentation.

The Foundation's unfair labor practice litigation involving the coercive "card check" process was also at issue during the week, and the *Brown University* case involving graduate student unionization in which the Foundation participated as *amicus curiae*.

However, the mere presence of an advocate for employees was so alarming to union lawyers that, according to multiple sources, they held a special union caucus prior to the Practice and Procedure Committee meeting to discuss possible strategies to bar the Foundation's representative from attending—presumably because the Foundation helps independent-minded employees

fighting the battle to exercise their legal rights to choose freely whether to unionize or not.

Cooler heads prevailed, at least for the moment, as there was apparently a realization of the potential for a significant public relations black eye in the national media if word leaked out of a formal attempt to expel the Foundation's officer.

### UAW and UNITE-HERE lawyers lead attack

Nevertheless, immediately before the official off-the-record Practice and Procedure Committee presentations and discussions began, Dave Prouty, General Counsel of UNITE-HERE union, and Leonard Page, former Clinton Acting General Counsel and a top United Auto Workers (UAW) union lawyer, launched an attack on the

*see BIG LABOR ATTACKS , page 6*

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# Agency to Prosecute Unlawful Retaliation Against Workers

**Union officials threatened workers with fines up to \$4,000 each**

MOUNT CLEMENS, MI – Foundation attorneys have successfully convinced the National Labor Relations Board (NLRB) in Detroit to prosecute a local union for unlawfully threatening to fine a group of nonunion hospital employees up to \$4,000 each for refusing to abandon their jobs.

In August of 2004, four Mt. Clemens General Hospital employees, Deborah Mounger, Cherie Jones, Kimberly Grifka, and Jennifer Pacyga sent letters to the Office and Professional Employees International Union (OPEIU) revoking their formal union memberships. After workers resign from formal union membership, union officials cannot lawfully subject them to union rules and internal union discipline.

After having officially resigned from membership in OPEIU, the four women continued going to work during a union-called strike.

Each woman then received a letter stating that OPEIU union officials were filing internal “charges” against them, and that they faced fines of \$500 per charge, for totals of up to \$4,000 per



www.mcgih.org

**Union officials unlawfully fined four non-union Mt. Clemens General Hospital employees for doing their jobs during a union-ordered strike.**

AP Photo

person simply for reporting to work during the strike. With assistance from Foundation attorneys, the four workers then filed unfair labor practice charges against the union last November.

“OPEIU officials tried to make examples of these individuals just for going to work and doing their jobs,” said Stefan Gleason, Vice President of the National Right to Work Foundation.

The increasing militancy of union officials in the health care industry is an ominous trend, particularly in light of

the life-saving nature of their work.

## Union officials defy U.S. Supreme Court Rulings

In their charges, Foundation attorneys noted that the fines were an illegal form of retaliation on the part of OPEIU officials. Under the U.S. Supreme Court ruling in *Pattern Makers v. NLRB*, union members have the right to resign union membership at any time, including during a lawful strike. Once a worker has resigned, he is no longer subject to the union’s dictatorial rules and punishments.

Furthermore, the union hierarchy’s actions clearly violate *NLRB v. Textile Workers*, a Supreme Court holding that it is an unfair labor practice for a union to fine employees who had been union members in good standing but who resigned during a lawful strike and thereafter returned to work.

“It’s an outrage that these vindictive union officials tried to send workers to the poorhouse simply because they chose to do their jobs,” said Gleason. “This union hierarchy’s disdain for workers’ freedom and economic security shows they do not have employees’ best interests at heart.”

## Foundation Action

Rev. Fred Fowler  
Reed Larson  
Mark Mix  
Stefan Gleason  
Ray LaJeunesse, Jr.  
Virginia Smith

*Chairman, Board of Trustees  
Executive Committee Chairman  
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The Foundation is a nonprofit, charitable organization providing free legal aid to employees whose human or civil rights have been violated by abuses of compulsory unionism. All contributions to the Foundation are tax deductible under Section 501(c)(3) of the Internal Revenue Code.

# Steelworkers Union Drops “Card Check” Drive at Goodyear

## *Union backs down after facing resistance from Foundation-assisted workers*

ASHEBORO, NC — The United Steel Workers of America (USWA) union has decided to cut its losses and abandon the results of a controversial “card check” scheme, after facing federal prosecution for unlawful tactics at a 340-worker Goodyear Tires facility in North Carolina.

With the help of National Right to Work Foundation attorneys, Scott Shaw and two coworkers filed a challenge to the USWA union’s coercive organizing drive in July 2004, after their employer signed a so-called “neutrality agreement” with USWA in September 2003. This forced-unionization agreement resulted in illegal collaboration between the employer and union bosses to coerce workers into accepting USWA union representation over many objections.

### **USWA union officials bullied workers instead of allowing a secret ballot vote**

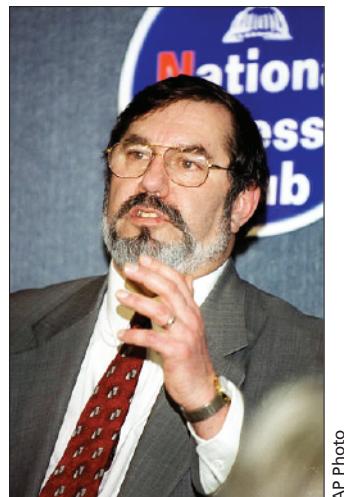
USWA and Goodyear officials under their so-called “neutrality agreement” subjected workers to the highly controversial and coercive “card check” scheme to install union officials as monopoly bargaining agents. Such a scheme often results in union organizers browbeating and misleading workers into signing “cards” that are counted as “votes” in support of unionization.

Shaw was concerned about his

employer sharing employees’ private information with union organizers, especially after they started showing up on his doorstep to have him sign a union “authorization” card.

Goodyear and the union hierarchy also unlawfully ignored a substantial number of letters sent by employees revoking their previously signed cards.

A count was conducted, and the employees were told the union obtained a majority and that bargaining would begin.



AP Photo

*Employees forced operatives for Steel Workers union president Leo Gerard to seek a secret ballot after the wheels came off their coercive card check scheme at Goodyear.*

The challenge to the USWA union’s coercive organizing drive, filed by Shaw and his coworkers last July, simply asked that the “votes” be recounted to properly not count all of the employees who submitted revocations.

When the NLRB Regional Director agreed, issued a complaint, and scheduled a hearing for late January, union officials decided that they’d rather drop their “card check” drive than face further prosecution. In a settlement agreed to by USWA lawyers, the union officials “disclaimed interest” in continuing their forced representation of Goodyear employees.

Steel Workers union officials will not be able to use the highly coercive “card check” scheme in any future attempts to organize at the facility.

### **Foundation vows vigilance**

Both the union and Goodyear are required to post 60-day notices explaining to employees the actions taken to settle the dispute.

In response to the settlement agreements, Foundation Vice President and Legal Director Ray LaJeunesse said, “This victory is a step toward holding union officials across the country accountable for trampling workers’ rights under abusive ‘card check’ schemes. While encouraging, it’s an outrage that Goodyear struck a backroom deal with USWA officials in the first place.”

“The Foundation will continue to ensure the rights of Asheboro workers to determine their own future in an atmosphere free of coercion,” concluded LaJeunesse. ♣

### **Foundation helps workers fight back and win**

### **Free Newsletter**

If you know others  
who would  
appreciate receiving  
**Foundation Action**,  
please provide us  
with their names  
and addresses.

They’ll begin receiving  
issues within weeks.

# St. Gobain Workers Throw Out Unwanted UAW Union

**Foundation attorneys successfully aid workers in high-profile decertification battle**

WORCESTER, MA – Landing a potentially decisive blow in a 3-year battle involving scores of Big Labor legal maneuvers, and even picketing by Senator John Kerry (D-MA), employees at Saint Gobain Abrasives finally obtained their right to a decertification election and voted to toss the union out.

In a devastating public relations defeat to the union, the employees voted to remove United Auto Workers (UAW) officials as the “exclusive bargaining representative” at the massive manufacturing facility.

## Union officials smear Foundation in last ditch attempt

Shortly after the stinging election results rolled in, UAW Region 9A officials filed a series of desperate and frivolous objections to the results—two of which specifically target the Foundation. In a public relations maneuver designed to deflect attention from the workers’ decision, union officials then sent a potentially libelous, indeed ludicrous, unsubstantiated letter to all Saint Gobain workers accusing the Foundation of “illegal behavior” and “intimidating workers” by threatening to “shut down the plant.”

In the response filed at the NLRB regional office, Foundation attorneys pointed out that union officials provided no evidence supporting their claim as required by law, making the objections too “vague and incomprehensible” even to answer. Foundation President Mark Mix also formally called on UAW union chief Ron Gettelfinger to put an end to the smear campaign against rank-and-file workers. “On behalf of the Saint Gobain workers

who obtained free legal assistance from Foundation attorneys, I ask the UAW union to walk away and respect the workers’ decision,” wrote Mix.

Even though union officials’ objections are unsubstantiated, the filing of objections could possibly re-open the case to years more of litigation. If, however, the frivolous objections are dismissed and the decertification becomes official, employees will be free from union monopoly control over terms and conditions of employment. Workers can now be rewarded on their individual merit. Under the law, UAW union officials would have to wait at least a year before embarking on any new attempt to corral Saint Gobain workers into union ranks.

“Although union officials are using baseless charges and objections in an attempt to cling to power, Saint Gobain employees have expressed their desire to determine their own future,” said Mix.

Responding to union officials’ frivolous objections, a group of employees wrote an open letter to UAW chief Ron Gettelfinger calling on him to “respect the democratic wishes of the majority of Saint Gobain Abrasives employees” who voted to decertify the UAW union as their monopoly bargaining representative.

## St. Gobain a case study of Big Labor obstructionism

The struggle began when St. Gobain employees became dissatisfied with UAW union officials’ performance as their monopoly bargaining agent. Employees then circulated a decertification petition to trigger an election to remove the union.

Despite workers’ wishes, union officials short-circuited the petition by



AP Photo

**Lawyers for UAW union chief Ron Gettelfinger named the Foundation in a legal challenge after employees voted the union out in Worcester.**

filing an unfair labor practice charge, claiming that St. Gobain unilaterally implemented a new health care plan in a deliberate attempt to sour relations. National Labor Relations Board (NLRB) Region One Director Rosemary Pye then dismissed the decertification petition, holding that workers were coerced and unable to freely express their views about the UAW union.

The workers then appealed to the NLRB in Washington, which reversed  
*see ST. GOBAIN, page 7*

## Newsclips Requested

The Foundation asks supporters to keep their eyes peeled for news items exposing the role union officials play in disruptive strikes, outrageous lobbying and political campaigning. Please clip any stories that appear in your local paper and mail them to:

NRTWLD  
 Attention: Newsclip Appeal  
 8001 Braddock Road  
 Springfield, VA 22160

# Workers No Longer Forced to Wear Union Propaganda

## *Appellate court overturns Clinton NLRB ruling involving BellSouth workers*

RICHMOND, VA – Foundation attorneys persuaded the United States Court of Appeals for the Fourth Circuit to unanimously overturn a controversial National Labor Relations Board (NLRB) ruling that handed union officials the power to force non-union employees across America to wear union insignia on their work uniforms or be fired.

The NLRB made its controversial ruling during the first year of President George W. Bush's term while the federal labor agency was still run by appointees from President Clinton's second term.

The case originated in 1996 when National Right to Work Foundation attorneys assisted BellSouth Communications technicians Gary Lee and James Amburn of Charlotte, North Carolina, in filing charges at the NLRB against

the major telecommunications company and the Communications Workers of America (CWA) union. The employees had been ordered—regardless of their union member-

ship—to wear prominent union logo patches or risk being fired from their jobs.

In 1997, the NLRB's General Counsel issued a complaint against the CWA union and BellSouth for unfair labor practices. The complaint accepted Foundation attorneys' arguments that forcing nonmembers to wear the CWA union logo violates their right to refrain from union activity, and that the logo gave the false appearance that non-members belonged to or supported the union. (The employees exercised their right not to join or pay dues to the union under North Carolina's highly-popular Right to Work law.)



### **Union officials forced workers to be “walking billboards”**

However, in a decision filled with tortured legal reasoning—cited by the U.S. Court of Appeals as based on “no evidence”—the NLRB in Washington, DC, ruled that BellSouth's uniform policy requiring the patch was a “special circumstance,” which trumped the statutory right of workers to refrain from supporting the union.

The appellate court's 3–0 decision agreed with Foundation attorneys' arguments that provisions of the National Labor Relations Act embody a “right to refrain from wearing union insignia.” The Court rejected union and company officials' claims that the display of the patch alongside the company logo on the uniform was so integral to the “public image” of BellSouth that the mandate superceded the individual rights of workers.

### **Court rejects argument that union logo conveys a “positive image”**

The Court ruled that, although there is precedent for company officials to prohibit the display of a union logo on company uniforms where the logo would “unreasonably interfere” with the company's public relations image, there is no precedent for forcing non-member employees to wear union insignias to promote a positive public relations image.

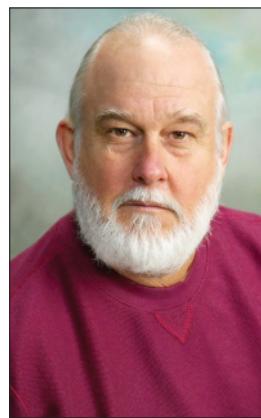
The court further rejected the Clinton NLRB's reasoning by questioning company and union officials' assertion that the display of a union logo necessarily conveys a positive image of a professional, stable work environment. “The public may view the union logo with suspicion and associate

it with service disruptions and labor disputes,” the justices wrote in the court's opinion, which also pointed out that North Carolina is a Right to Work State.

The unanimous ruling also noted that nonunion members exercising their right to refrain from unionism “cannot unreasonably interfere with BellSouth's public image because there is no evidence that particular image is conveyed by the display of the union logo in the first instance.”

The workers' victory—which immediately grabbed headlines in dozens of newspapers across the country—sets a precedent for similarly situated nonunion workers across America.

“No worker should be forced to be a walking billboard for a union seeking to trample their own freedoms,” said Stefan Gleason, Vice President of the National Right to Work Foundation. “This ruling is a small step in reversing the institutional bias of the NLRB in favor of union coercion and against employee free speech.” ♣



**BellSouth employee**  
**Gary Lee filed charges against CWA union officials for forcing him to wear their insignia on his work uniform.**

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# Big Labor Attacks on Foundation Increasingly Shrill

*continued from cover*

Foundation and questioned the presence of its representative in the room.

In an apparent attempt to chill the free discussion of important labor law issues, especially the views of those who represent rights of independent-minded employees, Page further suggested that he may be moving at an upcoming meeting to bar the Foundation from participation in the future.

"These increasingly harsh attacks on the National Right to Work Foundation demonstrate how worried union lawyers are about the Foundation's cases for employees, but the intemperate actions by a few union lawyers no doubt embarrassed the many professionals in the room," said Mark Mix, President of the Foundation.

"It's one thing to advocate for your client, no matter how indefensible your client's actions might be; it's quite another to use these tactics in an attempt to shut down an open and free discussion of such important issues. These union lawyers should have learned long ago that Right to Work proponents will not be intimidated."

The ABA holds the labor law practice group meetings twice annually, and they typically involve discussions by government, union, and management representatives regarding substantive issues of law under the NLRA. As a general tradition, the formal presentations by the panelists themselves and the subsequent questions and answers following those presentations are conducted "off the record."

## Union lawyers threatened by new dynamic

"Union lawyers cannot tolerate the presence of a National Right to Work representative because it undermines their false claim that they represent the interests of rank-and-file workers,"



*Union lawyers plotted to eject Foundation Vice President Stefan Gleason from ABA discussions on coercive union "neutrality agreement" organizing tactics.*

continued Mix. "Instead they rely on the debate being framed as simply between management and unions."

"But there is a third party involved—the employee. And all too often, the Foundation is the only organization standing in the breach to defend employee rights, particularly in the context of 'card check' and 'neutrality agreements.'"

## New attacks on Foundation to be "core mission"

Meanwhile, UAW officials at the AFL-CIO's national summit held in Las Vegas during the same week declared that "one of the core functions of the AFL-CIO should be to expose the National Right to Work Legal Defense Foundation and its financial backers."

This ominous announcement may signal a new wave of litigation against the Foundation in an attempt to drain its limited resources, which are raised exclusively through voluntary contributions.

An abortive 13-year multi-union lawsuit orchestrated by the AFL-CIO, UAW, and 12 other international unions established long ago that Foundation contributors—many of whom are union members and small business owners particularly vulnerable to union retaliation—have a First Amendment right to support the organization without having their names revealed. The Foundation never has, and never will, publicly disclose the names of its tens of thousands of dedicated financial supporters.

That costly legal battle sought to shut down the Foundation by exposing and intimidating its contributors, but the threat abated with two rulings in favor of the Foundation by the U.S. Court of Appeals for the District of Columbia Circuit. The first of those rulings was based, in part, on *NAACP v. Alabama*, a 1950s case in which segregationist state officials, widely thought to be acting at the behest of the violence-prone Ku Klux Klan, failed to force public disclosure of the NAACP's membership lists. ♦



## Support your Foundation through Planned Giving

Planned Giving is a great way to support your National Right to Work Foundation. Some of the ways you can help the Foundation are:

- ✓ Remembering the Foundation in your Will
- ✓ Charitable Trusts

- ✓ Gifts of Stocks/Bonds
- ✓ Gifts of Appreciated Real Estate

For more information on the many ways you can ensure that your support of the Foundation continues, call the Foundation at (800) 336-3600 or (703) 321-8510. Please ask to speak with Elisa Sumanski.

# Qwest and CWA Union Must Free 1,000 Telecom Workers

## *Foundation case reverses unionization without employees' consent*

DENVER, CO — Qwest Communications (Qwest) recently announced that it and the Communications Workers of America (CWA) union will drop their recent attempt to force mandatory union affiliation on approximately 1,000 Qwest employees nationwide.

The announcement comes after attorneys with the National Right to Work Legal Defense Foundation helped roughly a dozen Qwest employees file unfair labor practice charges with the National Labor Relations Board (NLRB) opposing their forced unionization.

### **Unlawful power grab corralled workers into union ranks**

In October 2004, Qwest unlawfully recognized the CWA union as the monopoly bargaining representative of Qwest's National Network Service employees simply by "accreting" them into a previously existing unionized bargaining unit. Foundation attorneys aided National Network Service workers from across the country in filing unfair labor practice charges in December

2004, citing that these workers had historically been outside of the bargaining unit, and that union officials had never proven that the union enjoyed a majority of support among those workers as required by law.

Despite these facts, Qwest ceded CWA union officials monopoly bargaining power over the terms and conditions of employment of National Network Service workers. Qwest also gave CWA authorization eventually to seize forced union dues from the paychecks of workers in the 28 states that do not have Right to Work laws.

### **Union agreement forced employee pay cuts**

The workers also charged their employer and the union with unlawfully imposing a wage cut on them as a result of the CWA union's unlawful recognition. The collective bargaining agreement foisted on the employees forced them to work at reduced wages and suffer the additional economic harm of paying mandatory dues in exchange for the union officials'



AP Photo

***Qwest Chief Richard Notebaert presided over the unlawful granting of union monopoly bargaining power over 1,000 telecommunications workers.***

monopoly "representation."

"While this is an encouraging victory for Qwest workers, it's an outrage that their employer conspired with CWA officials to deny them the freedom to decide their own representation in the first place," stated Mark Mix, President of the National Right to Work Foundation.

Although Qwest's National Network Service workers are spread throughout the country, most of the workers that filed charges hail from the Northeast and Northwest regions. ♦

# **St. Gobain Workers Finally Obtain Decertification Election**

*continued from page 4*

the dismissal and established a new rule that a decertification petition shall not be dismissed without a hearing before an administrative law judge to determine whether alleged unfair labor practices by an employer actually warrant setting aside an election.

Pye then scheduled a hearing, but suddenly canceled it, apparently under pressure from UAW officials.

Because refusal by an NLRB official to follow a direct Board order is an extraordinary action, Foundation staff attorneys helped St. Gobain employees file an emergency petition with the Washington, DC-based NLRB to force the Boston office to honor the order that it hold a hearing on the employees' petition for the election.

Under the National Labor Relations Act, if 30 percent or more of the employ-

ees in a bargaining unit sign a decertification petition, the NLRB should conduct a secret ballot election to determine if a majority of the employees wish to throw the union out—unless a monopoly bargaining agreement is already in effect or if the union is still bargaining after having won a certification election within the previous 12 months.

*see ST. GOBAIN, page 8*

# St. Gobain

*continued from page 7*

## Foundation forced NLRB Region to respect workers' rights

Meanwhile, evidence of union officials collaborating with the Region One director in her decision-making began to gurgle to the surface. The record indicates that Pye's office had leaked pre-decisional information to UAW union officials. In response to Pye's inaction, Foundation President Mark Mix called for a formal investigation and Inspector General's review of the NLRB Region, expressing concern that Board procedures had been disregarded. Following a period of increased scrutiny, Pye reversed her initial decision to ignore the Board's direct order, held a hearing in September 2004, and ultimately scheduled the decertification election for January 2005.

## Workers' plight drew national attention

The plight of St. Gobain workers gained coverage in high-profile national outlets such as the *Wall Street Journal*, underscoring how the union hierarchy's demands hamstrung the multi-national company's efforts to invest in American workers and create jobs.

Many politicians, including Senator John Kerry (D-MA) and Congressman Jim McGovern (D-MA), were quick to kowtow to the UAW union hierarchy, sending letters to employees urging them to unionize and even picketing the company. However, the demands union officials were seeking would have driven up the company's operating costs for the Worcester plant and could have forced St. Gobain to outsource up to 1,700 American jobs to facilities in other countries. ♦



## Message from Mark Mix

President  
National Right to Work  
Legal Defense Foundation

Dear Foundation Supporter:

Do you want the government to decide who gets your money?

If your answer is "No," then I hope you'll look at the four-page insert on planned giving enclosed with this mailing. You may be amazed to see how many different ways there are to support the vital work of the National Right to Work Foundation while enjoying significant tax advantages.

And we're expanding the list of possibilities with innovative new options that provide major benefits to contributors as well as to the Foundation.

As a supporter of the Right to Work movement, you know that the Foundation's strategic legal program attacking coercive union power plays an essential role in our battle to protect individual rights for the next generation.

There is a sense of peace that comes from knowing that the people and causes we care about will be provided for after we are gone. That's why I'm especially grateful when Right to Work supporters remember the Foundation through planned giving.

If you have recognized the advantages of planned giving and have decided to include the Foundation in your plans, please consider letting us know now so we can thank you.

We can also advise you on various ways you can structure your planned giving to achieve the maximum tax advantage for your estate. For more information, I urge you to call my assistant Elisa Sumanski at 1-800-336-3600 or e-mail [plannedgiving@nrtw.org](mailto:plannedgiving@nrtw.org).

All of us here at the Foundation are humbled that so many of our supporters have made provisions to advance the cause of freedom and the Right to Work movement, not only today, but also into the future.

Thanks for your partnership.

Sincerely,

Mark Mix