



Foundation Action

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

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Foundation Sparks Unprecedented DOJ Suit Against Buckeye State

*Union and State of Ohio
prosecuted for ongoing
religious discrimination*

COLUMBUS, OH – Recognizing a pattern and practice of civil rights infringement, the U.S. Department of Justice (DOJ) has filed an unprecedented lawsuit in federal court against the State of Ohio and two state agencies for their systematic discrimination against public employees who object to compulsory union affiliation on religious grounds.

DOJ filed the suit after the National Right to Work Foundation brought religious objector violations to the attention of federal prosecutors. Ohio state authorities and union officials routinely refused to respect employees' objections unless they were members of a short list of state-approved churches.

In a rare move underscoring the severity of the abuse, the DOJ intervened to file charges in U.S. District Court for the Southern District of Ohio. Recognizing statewide violations, the suit names the State of Ohio, the Ohio Environmental Protection Agency (OEPA), the Ohio Department of Administrative Services, the Ohio State Employment Relations Board, and the Ohio Civil Service Employees



Alberto Gonzales' Department of Justice filed an unprecedented lawsuit against the State of Ohio for religious discrimination against workers who object to union dues on religious grounds.

Association (OCSEA) union, a subsidiary of the American Federation of State, County, and Municipal Employees union.

An earlier charge, filed by OEPA employee Glen Greenwood in March 2004 following advice on the Foundation's website, had already led to a finding by the Equal Employment Opportunity Commission (EEOC) that the State Employee Relations Board and the OCSEA union were guilty of religious discrimination against Greenwood. The EEOC subsequently filed suit against the union.

"The unprecedented involvement by the United States Department of Justice in a case of this nature demonstrates the seriousness of the abuse that Ohio employees face when they make conscientious objections to union membership," stated Foundation President Mark Mix.

Due to legal pressure from the Foundation and the DOJ, however, the state has already tried to avoid the wrath of the court by sending religious objector claims to an arbitrator that analyzes them in accordance with Title VII of federal civil rights law.

Union agenda offensive to many forced dues payers

As a devout Presbyterian, Greenwood believes that supporting the OCSEA union violates his sincerely held religious beliefs. OCSEA union officials spend large percentages of their forced dues collections on political purposes that Greenwood objects to on moral grounds.

However, in March 2004 Greenwood received a letter from the General Counsel of the Department of Administrative Services denying his request on the basis that he did not belong to a "qualified" church that had a

see **FORCED UNIONISM**, page 4

IN THIS ISSUE

- 2** NLRB Faces Due Process Lawsuit from Disenfranchised Workers
- 3** Big Labor Uses States to Undercut Limited Protections
- 5** Union Officials Jump Ship, Facing Movement to Vote Them Out
- 6** Foundation Helps Strike Down Illegal Teamsters Retaliation

NLRB Faces Due Process Lawsuit from Disenfranchised Workers

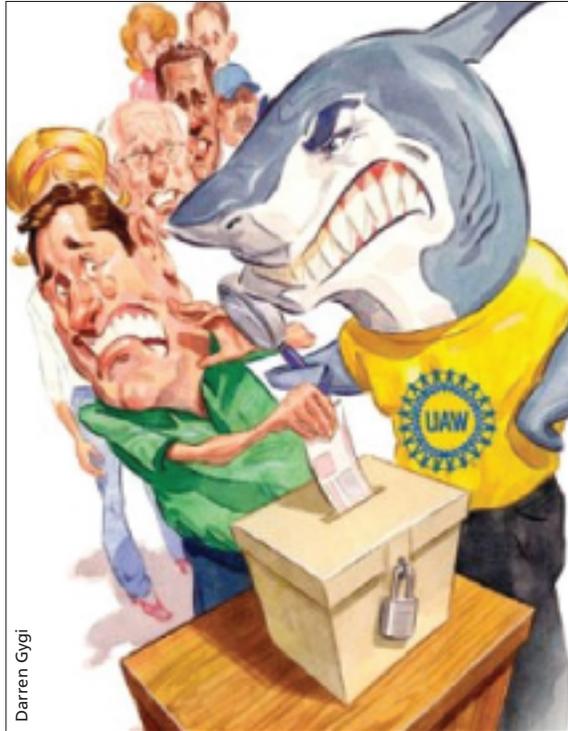
Bureaucrats reveal bias in statute by refusing to hear employees' objections

HIGH POINT, NC – When union officials are successful in pressuring an employer to roll over during union organizing drives, shouldn't employees have an independent right to object to misconduct?

Because the National Labor Relations Act (NLRA) only enumerates "rights of employees," one would naturally assume that the answer is yes. But, by their actions in a bellwether Right to Work Foundation case, entrenched bureaucrats at the National Labor Relations Board (NLRB) disagree.

In a case that is already raising some eyebrows, agency bureaucrats have decreed that employees may not intervene in union certification proceedings to assert their legal rights.

This stunning theory is another clear indication that federal labor statutes are designed to benefit union bosses, not independent-minded workers. And the NLRB bureaucracy's mishandling of a case brought by Foundation attorneys is energizing the debate about the corrupt underpinnings of the entire NLRA, a controversial law that has been on the books since the New Deal.



Darren Gygi

The disturbing developments have prompted Foundation attorneys to file a federal lawsuit against the NLRB for refusing to allow coerced employees to bring some extraordinary election misconduct to the agency's attention.

The workers' complaint, filed in U.S.

Thomas Built Buses workers had a union rammed down their throats, yet NLRB bureaucrats would not even grant them the right to present evidence of misconduct.

District Court in North Carolina, details how the NLRB improperly denied Fred Ashley, Randy Fowler, Henry Juarez, and Andrew Turner the right to challenge the results of a tainted union election that granted United Auto Workers (UAW) union officials monopoly bargaining power over roughly 1,200 Thomas Built Buses employees.

Unless overturned, the NLRB's actions create a dangerous precedent for American workers that only union officials and employers — not employees —

can assert certain rights under the NLRA. Foundation attorneys assert that the ruling clearly violates workers' due process rights under the U.S. Constitution.

Thomas Built, UAW union have history of violating workers' rights

Bowing to pressure brought by UAW union operatives, Thomas Built Buses, a subsidiary of Freightliner and Daimler Chrysler, signed a so-called "neutrality agreement" in 2002 that included a prohibition of the less abusive, secret ballot election process in favor of a coercive "card check" campaign. Under the agreement, union organizers were given sweeping access to company facilities to browbeat workers into signing union authorization cards that were counted as "votes" for unionization.

see DERELICT NLRB, page 7

Foundation Action

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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.

Big Labor Uses States to Undercut Limited Protections

Courts increasingly agree that states cannot bestow additional organizing privileges

MILWAUKEE, WI – In a brazen attempt to force more employees into forced unionism ranks, union officials and their political allies have turned to state and local laws to circumvent limited protections available under federal labor law by imposing “card check” and “neutrality agreements” on contractors or other recipients of state or local funds.

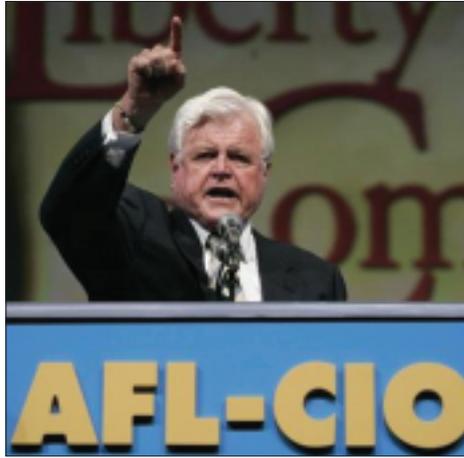
These increasingly common state laws and local ordinances, targeted by National Right to Work Foundation’s legal team in recent years, force private contractors to assist union officials in expanding compulsory unionism over employees as a condition of receiving contracts to perform work for a government entity.

State and local governments in California, Wisconsin, New Jersey, and New York, among others, have granted sweeping privileges to union organizers at private firms. These special privileges include gag orders which prevent employers from exercising their free speech rights and requirements granting union operatives broad access to nonunion workplaces and employees’ personal information.

Big Labor has declared war against even the minimal protections available through the NLRB election process.



Union officials’ Top Down organizing tactics often allow them to browbeat employees until they sign union “authorization cards” that are counted as “votes” in favor of unionization.



Because employees are increasingly rejecting unionization when actually given the choice, union bosses have turned to their #1 supporter, Ted Kennedy (D-MA), to inject even more coercive privileges into federal law.

Foundation beats back union attack in Badger State

In early December, the U.S. Court of Appeals for the Seventh Circuit unanimously struck down a Milwaukee County ordinance that required private employers providing health care services to the county to aid union officials in pressuring employees into union ranks. Foundation attorneys filed an *amicus curiae* (“friend of the court”) brief in support of the Metropolitan Milwaukee Association of Commerce, arguing that the ordinance is pre-empted by federal labor law.

Foundation attorneys argued that, under the Supremacy Clause of the United States Constitution, provisions of the National Labor Relations Act (NLRA) preempt these contrary state laws, as they force employers to waive their rights.

“The federal law establishes certain — albeit severely limited — safeguards to protect individual employees,” said Ray

LaJeunesse, Foundation Vice President and Legal Director. “Union officials cannot simply pass state and local laws to undermine these limited protections in efforts to increase their membership.”

The court found that spurious claims made by Milwaukee County attorneys — that forcing employers to hand over employees to union organizers would somehow reduce work stoppages — were unpersuasive. In fact, the court pointed out that the county-imposed neutrality agreements could actually increase the number of disruptive strikes which, of course, are precipitated by union monopoly power.

“Because workers are increasingly voting down unionization when actually given a choice, union officials are attempting to use the heavy hand of government to corral workers into union ranks,” said LaJeunesse. “We are pleased that the U.S. Court of Appeals has put a stop to Milwaukee County’s actions, which are part of an ominous growing national trend.”

Foundation defends New York workers from similar power grab

Earlier in 2005, these principles were recognized when the U.S. District Court for the Northern District of New York overturned a similar New York law that hamstrung recipients of state funding from exercising their right to speak in opposition to unionization and to refuse to assist union organizers.

In an *amicus* brief filed with the U.S. Court of Appeals for the Second Circuit in support of the lower court’s decision, Foundation attorneys argued that the law — approved by forced-unionism

Forced Unionism Causes Moral Dilemma

continued from cover

specific doctrine against union affiliation by church members.

But under Title VII, no employee may be forced to financially support a union if doing so violates the employee's sincerely held religious beliefs — regardless of church membership. To avoid the conflict between an employee's faith and a requirement to pay fees to a union he or she believes to be immoral, the law requires union officials to accommodate the employee — most often by designating a mutually acceptable charity to accept the funds.

Greenwood was recently allowed to enter both the DOJ and the EEOC lawsuits and is continuing to receive free legal assistance from Foundation attorneys.

"Greenwood's case shows that Big Labor believes paying tribute to a union is more important than paying tribute to your faith," said Mix.

Many state statutes violate First Amendment

Until recent legal pressure from the Foundation and the DOJ, Ohio state agencies and OCSEA union officials were thumbing their noses at the EEOC and federal civil rights law by maintaining their practice of denying religious objections from employees who are not members of certain state-approved churches.

Under Ohio state law, only employees who are "members in good standing" of a church with a specific doctrine prohibiting labor union affiliation can



Ohio rejected Glen Greenwood's religious objections because his church is not on the state's approved list.

re-direct their forced dues to charitable organizations. Very few churches have explicit doctrines, even though the teachings of many faiths run counter to the positions and practices of unions. Accordingly, Foundation attorneys contend that this statute is unconstitutional under the Establishment Clause of the First Amendment.

The laws of nearly a dozen states contain similarly unconstitutional language, so DOJ's action in Ohio will give more momentum to the Foundation's efforts to stamp out such discrimination elsewhere. In recent months, for example, Foundation attorneys drafted legal action that persuaded the Attorney General of Washington State to issue a decree that its similar state law cannot be enforced as written.

The Foundation has also been successful in persuading federal courts to strike down such laws. In *Wilson v. NLRB*, a 1990 lawsuit in the U.S. Court of Appeals for the Sixth Circuit, Foundation attorneys established that Section 19 of the National Labor Relations Act, which contains similar language to the unconstitutional Ohio state statute, violated the Establishment Clause of the First Amendment. 

Top Down Organizing

continued from page 3

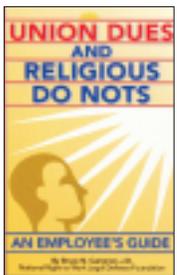
apologist Governor George Pataki, a Republican — "places a gag on one of the many debating parties and thereby harms employees' right to choose or reject unionization in a free, fair, knowing, and intelligent manner."

Attempts to flout federal law signal an ominous new trend

These Top Down organizing tactics are the latest in an increasingly aggressive campaign by union officials to force more private sector employees across the country into union ranks. Union officials are pursuing more coercive schemes to increase their membership and stuff their political coffers.

As a result, union officials' attempts to enact these statutes at state and local levels have increased exponentially over the past decade. In fact, the AFL-CIO General Counsel urged union officials to pursue state neutrality legislation and "use strategic campaigns to secure recognition...outside the traditional representation process."

"The Foundation stands ready, willing, and able to defend workers from union officials' brazen attempts to supersede federal labor law," said LaJeunesse. "However, there is much work to be done to shut down these illegal laws — even after the courts' initial rebukes of this practice." 



This employee guide may be obtained free at www.nrtw.org/ROGuide or by calling Jean Griffith at 800-336-3600.

Visit the Foundation's Special Project

**Top Down Organizing:
Big Labor's War Against
Employee Free Choice**

www.nrtw.org/TopDown

Union Officials Jump Ship, Facing Movement to Vote Them Out

Fearing humiliating loss in pending decertification election, union bosses cut and run

ASHTABULA, OH – Facing intense employee opposition to their privileged monopoly bargaining status, Service Employees International Union (SEIU) District 1199 officials have abandoned the Ashtabula County Community Head Start facility.

After battling for more than a year to deny employees access to an election to throw out the union, union bosses informed the National Labor Relations Board (NLRB) two days before the scheduled election that they wished to abandon their monopoly bargaining status over the child development workers.

Foundation attorneys helped Peggy Swartzfager file the decertification petition, signed by over 75 percent of her coworkers, in early 2005 after SEIU officials had failed for more than a year to obtain a monopoly bargaining agreement with Head Start.

“SEIU bosses tucked tail and ran fearing the humiliation of Head Start workers voting them out,” said Mark Mix, president of the National Right to Work Foundation. “That is why union officials pull out all the stops to prevent workers from getting an election — workers are just not that interested in signing up for the featherbedding, plant closures, and political activism that unions increasingly have to offer these days.”

Workers wary of union's bad reputation

Immediately after the employees filed for their decertification election, the union scrambled to negotiate a contract with Head Start with the hope that it would block the election. But that move only added fuel to the fire because the contract included a requirement that all employees pay compulsory union dues or be fired from their jobs.



SEIU District 1199 chief Dave Regan exploited the NLRB's procedures to delay Ashtabula County Community Head Start employees from obtaining an election to throw the union out.

Moreover, many of the approximately 40 Head Start employees were also wary of SEIU's infamous reputation.

According to the U.S. Department of Labor, over 3,800 unfair labor practices have been filed against SEIU unions since 2000. Additionally, SEIU Local 1199 alone faced 117 decertification petitions from workers to throw out unwanted union affiliates during that same time period.

“We saw how the union took advantage of other employees in our area,” said Swartzfager. “We were aware of their reputation and that's why we took action to have them removed.”

SEIU officials stonewalled employee election

But even with an overwhelming majority of the child development workers in favor of throwing out the unwanted union, scheduling a decertification election through the NLRB was still an uphill battle. Aside from

scrambling to reach a final bargaining agreement, union officials filed two unfair labor practice charges against the employer.

SEIU's charges against Head Start were part of an effort to exploit NLRB procedures to postpone indefinitely the decertification election. But with legal pressure from Foundation attorneys, the NLRB settled the charges and scheduled a decertification election. Much to the pleasure of Head Start employees, SEIU bosses walked away in the eleventh hour.

Saks Fifth Avenue employees win similar victory

With a deauthorization petition pending to remove the compulsory dues clause from their collective bargaining contract with Saks Fifth Avenue's flagship store in Manhattan, Retail Wholesale Department Store Union Local 1102 officials similarly walked away from “representing” about 160 cosmetic and fragrance employees.

The union's abandonment in February comes on the heels of a three-year legal battle between union bosses and Saks employees, led by Robert Jones with free legal aid from the Foundation. While union operatives won monopoly bargaining power over the department in 2002, Jones, a cosmetics retail sales associate, collected signatures from more than half of the 150 cosmetic department employees, who stated that

see DECERTIFICATION, page 8

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Foundation Helps Strike Down Illegal Teamsters Retaliation

New NLRB precedent bans union discipline against workers when not given notice of rights

ALBUQUERQUE, NM – In a small but important breakthrough, National Right to Work Foundation attorneys persuaded the National Labor Relations Board (NLRB) to rule that union officials may not enforce union discipline against workers unless they are truly voluntary union members.

The case arose when a large number of workers chose to continue to do their jobs during a violent and unpopular national strike ordered by Teamsters union officials against the United Parcel Service (UPS) in 1997.

The ruling itself directly covers UPS workers in New Mexico who may now be compensated for any unlawfully collected strike fines. Meanwhile, all employees may now resign retroactively from formal union membership and receive significant retroactive rebates of forced union dues.

Eight UPS workers in the Land of Enchantment sought Foundation assistance after Teamsters officials brought internal union disciplinary action against the employees, including the threat of fines of up to \$7,400 for working during a strike.

At the same time, union officials threatened to get workers fired from their jobs in retaliation for their refusal to pay duplicative “initiation fees” and for exercising

their right to withdraw from formal membership so as not to pay for non-collective bargaining expenses. (Because New Mexico is not yet a Right to Work state, employees cannot withhold all dues from a union they do not support.)



The Teamsters slogan “Whatever It Takes” may also suggest that intimidation, retaliation, and even violence are acceptable tools to use against workers.

Union bosses’ deception blows up in their faces

The long-awaited NLRB decision held that Teamsters Union Local 492 violated federal labor law because Teamsters officials never informed workers of their right to resign their formal union membership and withhold forced dues spent on activities unrelated to collective bargaining, such as politics. Because the employees did not receive

the requisite notices, they could not be considered voluntary members of the union and, therefore, could not be subjected to any internal union discipline.

“Teamsters militants employed typically thuggish tactics during the 1997 UPS strike — ranging from ‘run of the mill’ illegal retaliation to outright violence against non-striking workers,” said Stefan Gleason, vice president of the National Right to Work Foundation.

“Teamsters militants employed typically thuggish tactics... from ‘run of the mill’ illegal retaliation to outright violence against non-striking workers.”

“The Foundation has been mopping up worker abuses ever since.”

Foundation wins new pro-employee precedent

The NLRB ruling is a precedent that ensures that workers cannot be legally subjected to vindictive internal union discipline unless union officials have previously properly notified workers of their legal right to refrain or resign from formal union membership under *General Motors v. NLRB*. In addition, workers must be given notice of the right not to pay for non-collective bargaining expenses under the Foundation-won Supreme Court ruling in *Communications Workers v. Beck*.

The pro-worker decision indicates that the Board is also likely to rule in favor of employees in several similar pending cases brought by Foundation attorneys. In one such case growing out of the widely publicized 2003 California statewide grocery strike, Teamsters union bosses fined more than 70 workers for crossing picket lines, even though those workers never got notice of their rights. ⚡

Derelict NLRB Bureaucracy Hangs Workers Out to Dry

continued from page 2

In addition, all employees were forced to attend multiple “captive audience” meetings akin to union rallies — held on company time — where UAW officials had workers sign such cards while Thomas Built managers were present and made clear that they favored the union. Workers were later told by union officials that efforts to revoke any previously signed cards would be disregarded.

In return for this company assistance, union officials brazenly agreed to limit future wage demands and made other bargaining concessions to the company — selling out the employees’ economic interests for help in recruiting new dues-paying members.

Despite the new Bush appointees, the NLRB bureaucracy maintains its institutional bias against independent workers.



Consequently, a Foundation-assisted Thomas Built employee, Jeff Ward, filed unfair labor practice charges with the NLRB alleging that the company had illegally assisted the union and that the company and union had engaged in illegal bargaining before the union had the support of the employees. The charges resulted in an NLRB complaint and a settlement that forced UAW union and Thomas Built officials to cancel the company-wide sweetheart deal and withdraw recognition of the union.

Shameless intervention taints union election

After the union was forced out by the NLRB settlement, however, UAW union officials petitioned for another attempt to unionize the workforce. Workers in

the plant report that the momentum was cutting against the union in the final days before the vote.

But in an eleventh-hour intervention, the top Freightliner official responsible for negotiating the unlawful neutrality agreement issued a memo to all Thomas Built employees in High Point two days before the election announcing higher health insurance premiums. UAW union operatives immediately circulated copies of the memo around the facility with “DID YOU SEE THIS? THE COST OF BEING NON-UNION JUST WENT UP!” written at the top.

Employees opposing unionization report that this intervention by the company swung a large number of votes in favor of the union. Under long-standing law, employer intervention of this nature which influences an election is illegal, and the proper legal remedy is to set aside the tainted election. Not surprisingly, neither the company nor the union objected to the result.

When the employees filed a motion to intervene in the post-election procedure to object based on the last-minute misconduct, the NLRB’s Regional Director denied their motion — and then certified the election because “no objections are before the Board.”

“The NLRB bureaucracy holds an entrenched institutional bias against independent-minded workers,” said National Right to Work Foundation Vice President Stefan Gleason. “The agency and its employees seem to think there are only two parties in labor law — the union and the company.”

“But there are third parties involved: the employees; and they, of all people, should have the right to be heard.”

Apparently without focusing on the real issues involved in the case, the NLRB in Washington, DC, denied the employees’ appeal in a perfunctory two-line ruling. The agency never really considered the merits of the employees’ objections.

Employees’ freedom at stake

Because there is no statutory appeal process to challenge this kind of NLRB ruling, Foundation attorneys filed the federal lawsuit in U.S. District Court against the agency for denying the workers their due process rights.

“Thomas Built employees must be allowed to challenge this extraordinary last-minute intervention that clinched an illegal election victory for the UAW union — or worker rights under the law will be sharply undercut,” said Gleason. “Outrageous decisions like this seriously damage the credibility of the NLRB in the eyes of the legal and public policy community.”

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.

Decertification

continued from page 5

they preferred to negotiate directly with their employer.

In a ridiculous, sour-grapes letter to Saks cosmetic department employees, union chief Frank S. Bail scolded the workers for mounting a successful resistance: "I'm sure that when employees in the cosmetic department realize they have been cleverly duped, they will insist upon our return to represent them."

Jones also had federal unfair labor practice charges pending with the NLRB because union bosses illegally threatened to get employees fired if they asserted their right to refrain from formal union membership. The NLRB dismissed the charges as moot only after union officials decided to cut their losses and end their monopoly bargaining contract with Saks.

"While union officials cannot mask their seething disdain for employee free choice, these determined employees have resisted their heavy-handed tactics," stated Mix. "Foundation supporters should be very proud that their financial support is helping to create a freer workplace." 

Newsclips Requested

The Foundation asks supporters to keep their scissors sharp for clipping 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:

NRTWLDF

Attention: Newsclip Appeal

8001 Braddock Road

Springfield, VA 22160



Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter:

Glen Greenwood is like many Americans: He works hard to support his family, and he is a man of religious faith.

Ordinarily those qualities might complement each other, but in states without Right to Work laws these basic American values are often placed at odds.

The First Amendment of the Constitution, Supreme Court precedent, and the Civil Rights Act are supposed to protect people like Greenwood from having to pay tribute to a union when doing so violates their religious beliefs.

However, Ohio Civil Service Employees Association union bosses and Greenwood's employer, the Ohio Environmental Protection Agency, have refused to recognize Greenwood's right to be a religious objector to paying compulsory union dues.

Greenwood turned to the Foundation for help in challenging the Ohio law that states that only members of "qualified" state-sanctioned churches can object to paying union dues on religious grounds.

Foundation attorneys have even persuaded the U.S. Department of Justice to file a complaint in U.S. District Court against the State of Ohio, an unprecedented action.

Greenwood's case — detailed in this issue of *Foundation Action* — is not an isolated incident. Many workers in his situation have turned to the National Right to Work Foundation when their union tries to make them choose between their faith and their job.

Stories like Glen Greenwood's should encourage us, but they also serve as another reminder of why your continued support for the Foundation's mission is so vital.

Sincerely,

Mark Mix