1992

California teachers and the agency shop controversy : an analysis of interest group litigation

Claudean Ives McAlexander
San Jose State University

Follow this and additional works at: https://scholarworks.sjsu.edu/etd_theses

Recommended Citation

McAlexander, Claudean Ives, "California teachers and the agency shop controversy : an analysis of interest group litigation" (1992). *Master's Theses*. 340.

DOI: <https://doi.org/10.31979/etd.2yxy-x9k6>
https://scholarworks.sjsu.edu/etd_theses/340

This Thesis is brought to you for free and open access by the Master's Theses and Graduate Research at SJSU ScholarWorks. It has been accepted for inclusion in Master's Theses by an authorized administrator of SJSU ScholarWorks. For more information, please contact scholarworks@sjsu.edu.

INFORMATION TO USERS

This manuscript has been reproduced from the microfilm master. UMI films the text directly from the original or copy submitted. Thus, some thesis and dissertation copies are in typewriter face, while others may be from any type of computer printer.

The quality of this reproduction is dependent upon the quality of the copy submitted. Broken or indistinct print, colored or poor quality illustrations and photographs, print bleedthrough, substandard margins, and improper alignment can adversely affect reproduction.

In the unlikely event that the author did not send UMI a complete manuscript and there are missing pages, these will be noted. Also, if unauthorized copyright material had to be removed, a note will indicate the deletion.

Oversize materials (e.g., maps, drawings, charts) are reproduced by sectioning the original, beginning at the upper left-hand corner and continuing from left to right in equal sections with small overlaps. Each original is also photographed in one exposure and is included in reduced form at the back of the book.

Photographs included in the original manuscript have been reproduced xerographically in this copy. Higher quality 6" x 9" black and white photographic prints are available for any photographs or illustrations appearing in this copy for an additional charge. Contact UMI directly to order.

U·M·I

University Microfilms International
A Bell & Howell Information Company
300 North Zeeb Road, Ann Arbor, MI 48106-1346 USA
313/761-4700 800/521-0600

Order Number 1348701

**California teachers and the agency shop controversy: An
analysis of interest group litigation**

McAlexander, Claudean Ives, M.A.

San Jose State University, 1992

U·M·I

300 N. Zeeb Rd.
Ann Arbor, MI 48106

CALIFORNIA TEACHERS AND THE AGENCY
SHOP CONTROVERSY: AN ANALYSIS OF
INTEREST GROUP LITIGATION

A Thesis

Presented to

The Faculty of the Department of Political Science
San Jose State University

In Partial Fulfillment
of the Requirements for the Degree
Master of Arts

By

Claudean Ives McAlexander

May, 1992

APPROVED FOR THE DEPARTMENT OF
POLITICAL SCIENCE

Theodore M. Norton

Dr. Theodore Norton

Charles Kunsman

Dr. Charles Kunsman

Larry N. Gerston

Dr. Larry N. Gerston

APPROVED FOR THE UNIVERSITY

M. Lou Lewandowski

ABSTRACT

CALIFORNIA TEACHERS AND THE AGENCY SHOP CONTROVERSY: AN ANALYSIS OF INTEREST GROUP LITIGATION

by Claudean Ives McAlexander

Agency shop arguments between teachers/employees and unions often cause conflict for non-organized teachers/employees, as rules may be unclear or unacceptable.

Litigation in several Supreme Court cases: Abood (1977), Ellis (1984), Hudson (1986), Beck (1988), and Lehnert (1991), has established few acceptable procedures for those involved, making more lawsuits inevitable.

Avenues of influence recycle through various branches of government before needed resolutions receive societal acceptance and establish enforceable policies.

SJTA vs. Abernathy, et al, exemplifies "percolation up from the grassroots" litigation. PERB's interpretation of Hudson features the "filter down" processes of policy.

This thesis leads the reader down the interest group path of conflict, showing how litigation is dependent upon a political cycle for acceptance, implementation and enforcement. Citizens work to resolve conflict through interest groups which influence government policy. The courts are part of the checks and balances system, all working democratically toward an acceptable equilibrium.

PUBLICATION RIGHTS

No portion of this project may be reprinted or reproduced in any manner unacceptable to the usual copyright restrictions without the written permission of the author.

Signed

A handwritten signature in cursive script, appearing to read "Gaudin", written over a horizontal line.

ACKNOWLEDGMENTS

For happiness, it is said, one must fall in love, build a house, have children, and write a book. If this thesis could be considered my book, then, I have it all. Thanks to my family for being supportive.

Dr. Theodore Norton has, over the years, shown more patience and understanding than his duty required, and I am grateful.

With Louise Shannon's editing and typing, this experience has finalized successfully, and I appreciate her candid remarks!

The array of interviews, formal and informal, added to my knowledge and appreciation for the individuals and the organizations involved. I have great respect for this democratic participation; this is as it should be!

TABLE OF CONTENTS

	PAGE
Abstract	iii
Publication Rights	iv
Acknowledgements	v
List of Charts	ix
Glossary of Agency and Organization Abbreviations.	x
 CHAPTER	
I. Introduction	1
II. Organizing the Information	13
Observations Of the Process	14
The Search Is Not New	18
Bringing History Into Focus On This Issue	19
The Funding Process	26
Examining Strategies.	30
Membership Differences.	31
The Lobbying Forces	34
The Lobbying Process.	36
Grassroots Politics	38
Comparable Grassroots Issues.	43
III. An Open Society.	46
"Enough" Information.	47
Groups Provide a Voice.	49
Cross-Pressure of Influence	51
Power Base Differences.	52
Salience and Relevance.	56
Issues in Conflict.	58
Maximizing Strengths.	59
Pressuring the Courts	61
Co-Existing Systems	63

CHAPTER	PAGE
The People's Faith.	64
Interest Group Function	66
IV. Tip of an Iceberg.	71
Non-Union Litigation.	74
<u>Hudson</u> Simplified	75
CTA Defends Procedures.	77
Unanimous Decision Interpreted.	79
Agencies Interpret Policies	81
Favorable Legislation	82
Keynote: Voluntary Unionism	84
Competition for Policy Control.	85
Bargaining Agents	89
V. Conclusion	91
Works Cited.	98
Appendix	106
SJTA Letter Regarding Enforced Dues	A-I.a
Austin Letter to SJ Board of Education.	A-I.b
Cupertino Courier Clipping.	A-I.c
Both Sides See Gain in Court's Decision on Union Fees	A-I.d
NRTW, Regarding Jim Wright.	A-II.a
"Agency Shop"	A-II.b
PERB Memorandum on Agency Fees.	A-III.a
NRTWLDF, Inc. Letter on <u>Johnson vs. PERB</u>	A-III.b
Amici Briefs in <u>Bakke</u> Case.	A-III.c
Amicus Curiae Participation in Supreme Court Cases.	A-III.d
<u>World Research INK</u>	A-III.e
NRTW Questions and Answers.	A-IV.a
California RTW Conference Program 18 February 1989	A-IV.b
CTA <u>Action</u>	A-IV.c
Zumbrun Letter to Larson.	A-IV.d

CHAPTER	PAGE
Tice Letter to Zumbrun.	A-IV.e
Labor Secretary to Meet Larson.	A-IV.f
<u>Hudson vs. PERB</u>	A-IV.g
Heston Letter to Hayden	A-IV.h
McIntire Fax to Larson on AB-1100	A-IV.i
Deukmejian Vetoes AB 510.	A-IV.j
Supreme Court Case Could Define How Unions Use Professors' Dues.	A-IV.k

LIST OF CHARTS

	PAGE
Dimensions of State Politics	12

GLOSSARY OF AGENCY AND ORGANIZATION

ABBREVIATIONS

ACLU	American Civil Liberties Union
ACSA	Association of California School Administrators
AFT	American Federation of Teachers
CCC	Californians for the Community Colleges
CEAFU	Concerned Educators Against Forced Unions
CFT	California Federation of Teachers
CSBA	California School Board Association
CSEA	California School Employees Association
CSPTA	California Student Parent-Teachers Association
CTA	California Teachers' Association
NAACP	National Association for the Advancement of Colored People
NCPT	National Congress of Parents and Teachers (Usually referred to as the PTA)
NEA	National Education Association
NLRA	National Labor Relations Act
NLRB	National Labor Relations Board
NRA	National Recovery Act
NRTW	National Right To Work
NRTWLDF	National Right To Work Legal Defense Foundation, Inc.
PAC	Political Action Committee

PALA	Palo Alto Learners' Association
PERB	California Public Employees Relations Board
PFL	Pacific Legal Foundation
PTA	Parents and Teachers Association (also known as NCPT)
SJTA	San Jose Teachers' Association
SJUSD	San Jose Unified School District

CHAPTER I

INTRODUCTION

Interest group litigation proves to be dependent on a well-structured political cycle for acceptance, implementation, and enforcement of its goals. This analysis delineates the process for teacher's unions and for non-union teachers.

Litigation leaves a paper trail, which is only part of the story behind the American political process pertaining to issues instigated by interest groups or individuals seeking policy changes through the legal system. The courts can only authoritatively specify values which individuals and groups accept or reject. When there is a rejection, the cycle renews. Resolution comes only with social acceptance.

In the 1800s, labor-management conflict began to surface, with the acceptance of unions culminating as a political influence by the 1930s. Union activities became so popular that they endangered the employer's control and power over employees. To retaliate, "yellow dog contracts" became the employer's weapon. This was a promise not to join a union, which an employee signed, or he was fired.

This instrument was designed to keep employees from organizing, or even from being solicited by union agents.

The Norris-La Guardia Act, 1932, limited the use of court injunctions to ban strikes and picketing.

After 1937, the United States Constitution was interpreted as applying to, and protecting, labor relations: the law supported citizens organized for union activities. This clash set in motion a whole new style of events.

Article 1, Section 8 of the Constitution allows Congress to regulate commerce, while the First Amendment assures the rights of speech and assembly. This was, and is, interpreted to allow unions to picket.

The political climate at that time gave the unions a favorable edge. A new president, Franklin D. Roosevelt, backed labor unions, and the new Congress was receptive to labor legislation. In 1935, Senator Robert Wagner "steered through Congress a separate labor relations law." The Wagner Act, or National Labor Relations Act (NLRA), legally established collective bargaining, and ". . . with Supreme Court recognition of the Wagner Act and the improvement of economic conditions, unions experienced a tremendous growth and power."¹

¹William H. Holley, Jr. and Kenneth M. Jennings, The Labor Relations Process, 2d ed., Chicago: Dryden, 1984), 69-75.

Since labor could now bargain as a group, the National Labor Relations Board (NLRB) was set up to administer the law. This allowed for problem solving on a grand scale. A union, legally, could become the exclusive bargaining agent to represent employees, and the NLRB had authority to conduct an investigation on such questions as:

1. Whether enough employees (at least 30%) wanted union representation.

2. Whether a question of representation actually exists.

Legally, there were three types of membership sanctions: a closed shop, agency shop, and "maintenance membership." A closed shop, meaning that only union members could be hired, was illegal after the Taft-Hartley Act (1947), but was "fuzzy" in application. An agency shop was an agreement by prospective employees to join the union, if hired. With the "maintenance" agreement, there was no obligation to join the union, but dues and fees were to be paid to maintain employment.²

Under NLRA rulings and various state laws, the unions won basically the same pattern of rights for teachers as they did in other union contracts. These rights are

²Wayne N. Outten with Noah A. Kinigstein, The Rights of Employees: The Basic ACLU Guide to Employee's Rights. (New York: Bantam, 1983), 141-151.

published, and teachers are encouraged to exercise them. The American Civil Liberties Union (ACLU) warns that rights which are not exercised " . . . may be forgotten, and violations may become routine."³

Teachers' rights have metamorphosed through the century, and there are indications that more changes will evolve. The compilation of such rights takes up volumes. Only two, relevant to this thesis, are mentioned here:

1. No fee can be charged to a non-union teacher by the union which is used for an ideological cause, to which the teacher is opposed. A service charge is allowable for collective bargaining representation by the union negotiating on the non-union teacher's behalf.

2. Teachers have a right to strike, for without this right the union may be ineffective in negotiations with management.⁴ It must be noted, however, that some states still do not formally acknowledge the right of public employees, or some classes of public employees, to strike, even though strikes occur.

Agency shops became an issue of conflict for non-union employees in much the same fashion as the yellow dog contracts had conflicted with union membership earlier.

³David Rubin and Steven Greenhouse, The Rights of Teachers: The Basic Guide to Teachers' Constitutional Rights, rev. ed. (New York: Bantam, 1983), Preface-xi.

⁴Ibid, 77-89.

Numerous court cases are available for consideration on related subjects; however, a brief explanation of the relevant Supreme Court cases follows:

Louis Abood v. Detroit Board of Education⁵ presented the constitutionality of "agency shop." The Supreme Court ruled, granting the defendant a motion for summary judgment holding that agency shop did not violate the First and Fourteenth Amendments, but that compulsory funds could not be used for purposes unrelated to collective bargaining, or used for political purposes against the employee's political ideology. It was unclear in this case how these objections, by the employee, were to be made known.

Howard Ellis v. Brotherhood of Railways, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, et al⁶ held that the union's rebate system was inadequate, and that the union could not finance activities of their choice by collected dues of objecting employees. This gave an indication that the union needed a better system of rebate for objecting employees, but did not specify how this was to be done.

⁵431 U.S. 209, 52 L. Ed. 2d 261, S. Ct. 1782 (1977).

⁶466 U.S. 435, 80 L. Ed. 2d 428, 104 S. Ct. 1883 (1984).

Chicago Teachers Union, Local No. 1, AFT, AFT CIO, v. Hudson⁷ held that the union was not allowed to hold dues during arbitration of employees' objections, but that these dues would be held in escrow while the dispute was pending, and not used by the unions for activities objectionable to the employees. The burden of proof was designated to the unions, with less emphasis on employees' formal objections.

This next case explores the "grass-roots." It has little recognition outside the California community from which it originated, but did reach the U. S. Supreme Court for a brief ruling.

San Jose Teachers Association v. Sandra Abernathy, et al.⁸ was the first suit brought against 108 members of the San Jose Teachers Association (SJTA) bargaining unit, which had been certified by the California Public Employment Relations Board (PERB) to represent San Jose teachers exclusively as their bargaining unit. Abernathy, et al, had refused to pay service dues, objecting that the fees would be used for purposes other than collective bargaining. The summary judgment was reversed by California's Bird-dominated Supreme Court, with Justice Grodin writing and making reference to PERB as having exclusive jurisdiction. This

⁷475 U.S. 292, 89 L. Ed. 2d 232, 106 S. Ct. 1066 (1986).

⁸San Jose Teachers Association v. Abernathy, et al, (42 Cal. 3d 130, 1985).

case went on appeal to the U. S. Supreme Court, and was sent back to the California Supreme Court on June 26, 1986, to be "vacated with costs," since the California ruling was inconsistent with the Chicago v. Hudson case.

The information covered in this thesis notes that the Supreme Court's ruling to PERB was interpreted differently by both the PERB and the National Right to Work Legal Foundation (NRTWLF), which represented the non-union teachers. These differences resulted in more litigation.

In 1980, SJTA started suing non-union "members" for back dues in small claims courts, but since the San Jose Unified School District had not made union membership a requirement of employment, the cases were dropped.⁹

Harry E. Beck, Jr., et al., Petitioners v. Communications Workers of America, et al.¹⁰ was the last of several cases in the Supreme Court involving Beck and the Communication Workers. The other cases listed the Communication Workers of America suing Harry Beck.¹¹ Beck's case was denied certiorari, but the previous case stood. That decision, June 29, 1988, held that the union was not

⁹See Appendix pages A-I.a., SJTA letter, 23 October 1980; A-I.b.1-2, Austin letter to SJ School Board of Education: A-I.c, "Why This Teacher Fought and Beat Her Union in Court." Cupertino Courier 35, No. 12. (25 March 1981.)

¹⁰487 U. S. 1233, 101 L. Ed. 2d 931, 108 S. Ct. 2897 (1988)

¹¹101 L. E. 2d 634, 108 S. Ct. 2641, (1988).

empowered to exact dues from non-members for unrelated activities such as: lobbying, social and charitable events, or organizing more union activities, other than collective bargaining for the employees in question. The Supreme Court ruled that the fee charged to employees not electing to join the union cannot exceed the proven cost of collective bargaining. The Court did not spell out how these costs were to be determined.

Costs which were directly related to collective bargaining were not established by the courts; therefore, they were not set by the unions for implementation. The dispute over the "proven cost" of collective bargaining remains an issue.

Lehnert v. Ferris Faculty Association¹² held in a 5-4 decision that unions could use non-union fees for some activities not directly related to collective bargaining. This decision is a "mixed bag," since the union will be required to exclude a great many activities in the calculation of fees charged to collective bargaining for public employees on the state and national level.

Justice Harry A. Blackmun wrote for the Court, saying that unions could not use non-union fees to finance political lobbying, public relations efforts, or litigation that does not concern the individual's bargaining unit.

¹²114 L. Ed. 2d 572 (1991).

Issues of clarification still remain, and more litigation is inevitable.¹³

Litigation is usually the cleanest, quickest route to solving an immediate interest group issue or some segment of an issue. However, the long range complexities of these issues must eventually be implemented, accepted and resolved with a sense of gratification for the society as a whole. This has not yet happened with union and non-union litigants, both of whom appeal, sue, and re-appeal in a circular manner without resolution.

The following discussion ventures a partial analysis of one issue and the vast complexity of its related interactions and influences. Although only bits and pieces of information are available, this examination is an area of political concern, and is an example of the political process.

This issue analysis encompasses a large, multi-purpose, well-established teacher-union organization comprised of several unions, which was challenged by a group of non-union teachers who organized for the sole purpose of protesting for "non-union membership." Even though this appears as a single point in conflict, there are several related issues to be processed. It is to be remembered,

¹³See Appendix page A-I.d., Debra E. Blum, "Both Sides See Gain in Court's Decision on Union Fees." Chronicle of Higher Education. (5 June 1991.)

also, that these groups are still in a fluid political cycle.

Interest groups, standing on opposite sides of the same issue, appear to compete for the prize in a win-lose contest, and regard each other with hostility. Intellectually, they are accepted as legitimate in America, but emotionally they are separated by chasms of support or suspicion. Citizen involvement determines the resolution of such political maneuvering, since public support is the lifeblood of any movement. ". . . the outcome of conflict is determined by the extent to which the audience becomes involved in it," confirms Jeffrey Berry, as he quotes E. E. Schattschneider.¹⁴

This persuasion game manifests itself in the formulation of political issues, which find paths through the legislative, executive, or judicial branches of government, and often, through all three.

To illustrate this flow of influence, a chart adapted from David Easton's system analysis approach to political interaction has been presented at the end of chapter I, on page 12.¹⁵ The input "Environment" is

¹⁴Jeffrey M. Berry, The Interest Group Society, (Boston: Little Brown, 1984), 147, citing E. E. Schattschneider, The Semisovereign People (Hinsdale, IL: Dryden Press, 1975), 2.

¹⁵Alexander Heard, Ed., State Legislatures in American Politics, (Englewood Cliffs, NJ: Prentice-Hall, 1966), 6-9.

comprised of people with their physical, social and cultural aspects. This leads them to the way they perceive their surroundings and how these perceptions are communicated. The mechanisms of this flow chart do not work in the same manner in each state, but the chart gives a general idea of the process. The system flows back to the people in a cyclical fashion. It is not restrictive, being only a subsystem of an even larger one. Interest groups, political parties, and the media are all channels for internal communication.

With a close inspection of the following flow chart, one can envision the political process which brought a yellow dog contract to the political scene, as well as a follow-up cycle, through which agency shop issues became central in a similar political rotation. Collective bargaining is one part of this issue which needs clarification on all levels. Both interest groups who are party to this issue have sought litigation to gain satisfaction and public acceptance of their respective viewpoints. As the chart indicates, the courts are only one segment in the political progression.

This chart has been adapted from Herbert Jacob's chart, based on David Easton's system analysis approach to political interaction: in Heard, A., ed., State Legislatures in American Politics, 1966.

CHAPTER II

ORGANIZING THE INFORMATION

The interaction of two interest groups can be competition for legal, as well as social, supremacy. This type of political action is the subject for a system analysis approach to problem solving which follows a general pattern, and is a theoretical means to understanding causes and effects, or inputs and outputs. According to David Easton, in the political arena, system analysis brings the observer a better tool for searching through the process to gain understanding.¹

In the search for understanding, the present study does suggest some appropriate alternatives to alleviate "teachers' unions vs. non-union teachers" in conflict, but basically this is only an introduction to an examination and a road map for further investigation. The political scientist's task is to find direct cause and effect relationships, but in this case such information is not yet fully available. With so many incomplete elements, the process can be only partially examined. To set a basis for further

¹David Easton, The Political System: An Inquiry Into the State of Political Science, 2d ed. (New York: Knopf, 1953), 372-377.

research in this area, one can assume that teachers, either union or non-union, join organizations to gain political clout, and, by this, affect governmental policy. How and why becomes part of the conflict resolution, because their reasons are not always defined.

Observations of the Process

Teachers utilize specific interest group organizations to gain influence through the media, legislators, the executive branch, and the courts. Through technical skills, teachers can communicate more creatively. This is an avenue which is guarded with secrecy, for if any technique works well, other interest groups will try to copy it; if it fails, it is usually discarded or revamped. A confidential camouflage is one reason it is so difficult to analyze the process of cause and effect in any political enterprise.

To observe a macro- or micro-operation of an affiliation means that all possible strands must be analyzed together, for there is no separation. One weaves into another without distinct boundaries. To determine what is cause--or what might be effect--becomes an enigma: the chicken and egg question. A litigation path from grassroots to the Supreme Court becomes circular and interrelated; what affects, what is affected, becomes coexisting.

The Civil Rights movement can be observed as one example of a successful group process through litigation

which has taught other interest groups key strategies for obtaining results. The first direct appeal of the National Association for the Advancement of Colored People (NAACP) was to the president and the executive branch. Kennedy was " . . . in favor of civil rights, but (acted) too quietly and too late."²

The NAACP's next move was to turn to Congress, which has the reputation of being " . . . a vacuum in the power to govern."³

Then, for an immediate remedy, civil rights leaders chose to go around the legislature to the judiciary. Litigation can be a "quick fix," since the process through the court system is more direct and usually brings faster results for a particular question or conflict. This was the path of the civil rights movement, at least in the beginning. Blacks have since explored other avenues, since legal action only helped initiate principles. There is some evidence to suggest the movement's completion in its cycle through the political processing design. If the cycle

²Robert G. Gilbert, "John F. Kennedy and the Civil Rights for Black Americans," Presidential Studies Quarterly, (Vol. XII, No. 3, Summer, 1982), 386.

³John P. Roche and Murry S. Stedman, Jr., The Dynamics of Democratic Government, (New York: McGraw-Hill, 1954), 85-86.

renews, it will take a different form and present different issues.

Non-union teachers followed this example to gain recognition and legitimacy, since the teachers' unions were politically quite powerful, while non-union teachers themselves had no voice in the media or in governmental forums.

The judiciary can also be used as a referee. As long as the rule book (or the law) is clear and unclouded, the referee's word stands, but only "simple" judgment calls are acknowledged by the players (society). The hypothesis, again, is that the more difficult or controversial judgments must be settled through customary political channels. The complexities of this mode of action brings the teachers' unions and non-union teachers into several arenas of discord. There never seems to be one straightforward answer concerning what political procedures should be involved at any one stage, or what players will have influence and make decisions. Therefore, neither unions nor non-member teachers are on the field alone. Society as a whole gets involved, with a jumble of bystanders--parents, taxpayers, citizens, moralists and "school-watchers" participating as cheerleaders, coaches or waterboys for either side. All possible legal or illegal demonstrations of the game theory can be put into practice in such area-wide fracas.

The United States Supreme Court was intended, by purpose, not to be directly involved with the political process. Justices serve for life, and are not subject to the ballot after confirmation. This, in itself, may cause conflict. If change occurs in a community of ideas, but judges remain in a non-acceptance mode, the contemporary culture then conflicts with individual judges, or with the court as the author of a body of law. Citizens can then take these societal changes to the legislature and the executive branches. When enough pressure comes to the attention of the Court, it may change to follow current mores, which, of course, can trigger yet another cycle of events. This occurrence, in the civil rights movement, could be said to have come full circle in the Regents of California v. Bakke, (1978) case, where Allan Bakke charged that he was a " . . . victim of reverse discrimination."⁴

The cycle may be more of a spiral, since the civil rights movement will never again have to travel the exact same route. This democratic process has changed the playing field for blacks.

⁴Kenneth Janda, Jeffrey M. Berry, and Jerry Goldman, The Challenge of Democracy: Government in America, 2d ed., (Boston: Houghton Mifflin, 1989), 684-685.

The Search Is Not New

In setting forth the Constitution, its framers searched for ways to establish a body of laws which would allow the exchange of ideas and conflicting philosophies. This struggle to balance differences and check abuses remains. It can be asked: Why were the framers so determined to have a governmental system which would not be easy prey to one-sided tilts?

They recognized and debated the fact that people disagree, often strongly, on both major and minor issues. The United States government was designed to allow a system of negotiation and compromise without destructive power swings. No one branch or segment of government is allowed supremacy, and, in the course of time, there is a balancing of ideas.

In the investigation undertaken for this thesis, it seems that teachers approach their union/non-union controversy from two different philosophical dispositions. Differences of opinion are not new. James Madison warned that: " . . . causes of faction . . . " are " . . . sown in the nature of man. . . . There are two methods of curing the mischief of faction: The one, by removing its cause; the other, by controlling its effects."⁵

⁵ The Federalist Papers, No. 10. ed. Roy P. Fairfield (Garden City, New York: Doubleday, 1961), 17.

Widespread partisanship appeared "controllable," even with Madison's warning, until the explosion of information, modern communication systems, and the increase of Political Action Committees (PACs). This spiral of activity has sent politicians reeling with overload. The success of any operation is determined by "the quantity and quality of press coverage," so even small population segments with media attention can gain influence in the political arena. This is the "court of public opinion" explains Jeffrey Berry.⁶

Man's "nature" now gets amplified by the technology of the media and the polls.

Which "cause" will be removed, or which "effect" will be controlled is a question that must move through the process to mediate a compromised balance within society. Teacher factions are part of the democratic process.

Bringing History Into Focus On This Issue

History is many things to many people. Without a focus on one issue, it is difficult to analyze any particular series of events. Here, the process turns to the gleaning of a few specific events. The emphasis is on "few." There are almost countless others.

⁶Berry, 144-149.

In tracing union versus non-union politics, the unions, as interest groups, came first. They fought against the industrial, or managerial strongholds which engulfed the working man or wage earner. Unions had no responsibility for managerial decision-making. They developed because people felt entrapped, or held hostage, within the system.

Samuel Gompers collected sentiment by bringing the workers into a union " . . . for noble comradeship . . . " Trade unions became a community of fellow-workers with a unity of purpose. These organizations were conducted for the interests of the employed. Gompers explained in 1906 that: "The trade unions are the business organizations of the wage-earners . . . to attend to the business of the wage-earners."⁷

Labor unions have been active in the United States since 1865, but until recently the public educational sector has not been a major thrust for union activity, and there has been little attention or competition from the private educational sector. Therefore, educational services could not be easily substituted when costs increased in

⁷Carl Degler, Out of Our Past: The Forces That Shaped Modern America, rev. ed. (New York: Harper & Row, 1970), 282-287, abridged as "The Workers' Response," in Eugene Kuzirian and Larry Madaras, Taking Sides: Clashing Views on Controversial Issues in American History, 2d ed., (Guilford CT: Dushkin, 1987), 70-72.

negotiations, since the competitive market has never been an economic factor.

This aspect has helped public sector employee union organizations grow in the 20th century. This offsets the union's decline in industry, the private sector, and in business-related competitive forces.⁸

Unions have had a constant struggle until the early 1960s, when they gained permissive legislation and favorable judicial interpretations for their constitutional rights.⁹ In 1969, the court case AFSCME, AFT-CIO v. Woodward resulted in protection for employees who joined unions, citing the First and Fourteenth Amendments: " . . . public administrators who deny these rights are subject to court action for damage under the Civil Rights Act of 1871."¹⁰

Ironically, this is the same argument which non-union teachers are bringing into court, and the same Constitutional Amendments are being cited to uphold their arguments for the right not to join a union.

Union growth in the educational field makes the teacher union/non-union issue significant. By 1980, even with a big membership spurt, teachers found they had been

⁸Holley, 430.

⁹Ibid., 466.

¹⁰Ibid., 443-444.

fighting "just to keep what they had gained over the years."¹¹

To cite some statistics: Strikes became " . . . an unattractive option. While there were 242 strikes in 1979-1980, there were 191 in 1980-1981, and only 65 in fall, 1982." The period of 1977-1978 had shown 152 strikes, but this represented " . . . less than 1 percent of the total teacher bargaining relationships."¹²

The trend in the collective bargaining process may be just getting started, or may have run its course. As late as 1984, Benjamin Aaron of the University of California, Los Angeles, stated that: "Collective bargaining in the public sector is . . . still developing. It is, therefore, much too soon to pronounce it a success or a failure."¹³

Such negotiations differ in the public sector because the costs to citizens seldom change, no matter what is bargained or what the strategies include for settlement. Taxpayers are ultimately affected, but often do not participate in the negotiations. The question is often

¹¹Ibid., 459.

¹²Ibid, 459-461.

¹³Ibid., 430.

asked: Who is management in the public sector, and who is responsible to the taxpayer?¹⁴

Even today, it is easy to pass the buck. Management and the "market" cannot have a clear definition, because the market doesn't exist as a clearly delineated segment of the purchasing public.

Historically, unions have always filled a need for employees. Teachers, too, had a legitimate need to benefit from fair employment practices. Women, in the 1900s, were in the work force--half a million were teachers. In Massachusetts, school boards acting as employers issued rigid rules which teachers found distasteful, such as:

Do not get married

Do not leave town without permission of the school board

Do not keep company with men

Be home between 8 p.m. and 6 a.m.

Do not loiter in ice cream stores

Do not smoke (etc., etc., etc.)¹⁵

The objections which teachers felt over such authoritarianism became an issue. Generally speaking, such rules were not confined to Massachusetts. Early teachers in California, for example, were subject to rules not too

¹⁴Ibid., 431-434.

¹⁵Howard Zinn, "A People's History of the United States: Socialist Challenge," quoted in Taking Sides, 80-82.

different. Employee/employer relationships in the public schools became a widespread concern in all states, and it is not surprising that teachers were encouraged to organize by the unions.

One of the early attempts for union recognition and negotiation involved the Norwalk, Connecticut, teachers in 1946. The school board refused to recognize and negotiate with the teacher organization, which in turn appealed to the state supreme court.¹⁶

This paved the way for a major breakthrough in negotiations and collective bargaining in New York City in 1961. The American Federation of Teachers (AFT) won " . . . an overwhelming victory for its members, representing over 30,000 teachers," and this progression continued. It was the 1960s when teachers were turned on to collective bargaining, even though unionization originated in the late 19th century. The AFT became overwhelmingly militant. In contrast, the rivaling National Education Association (NEA) showed more interest in a milder reform. By 1977, both the AFT and the NEA had increased their membership significantly, with 441,000 and 1,679,689 members, respectively.¹⁷

Eventually, their numbers and recognized status gave teachers' unions the power to influence, persuade, and elect

¹⁶Holley, 455.

¹⁷Ibid, 456.

representatives. This legitimized teachers' unions, and gave them a political partnership in government.

When push came to shove, teachers often sought to use a union tactic by calling strikes. Since the public sector doesn't perform the same as the free-market structure, "The right to strike in the public sector has . . . debatable dimensions . . . because they would place too much power in the hands of the unions relative to taxpayers . . . It is ultimately the legislative and the political process which have to balance the interest of public employees with the rest of the community," states a labor relations text as it quotes George Taylor.¹⁸

This controversy was not only in the public sector and concerned with the bargaining process, for within the profession it caused strife which prevented teachers from having a united front. The differing characteristics of the striking and non-striking teachers caused internal factionalization. Furthermore, the legality of striking against public schools was not the only debate. Some educators just could not join "a walkout" for moral or political reasons, as well as financial ones. This even split the union membership rolls.¹⁹

¹⁸George W. Taylor, "Public Employment: Strikes or Procedures?" Industrial and Labor Relations Review 20 (July 1967): 636, quoted in Holley, 437.

¹⁹Ibid, 461.

One example of this reaction to, and by, striking teachers, hit the media when a former nun who crossed the unions' picket line related: "Now, I know how Hitler used mass hysteria. I don't believe in using children as pawns to negotiate my salary and fringe benefits."²⁰

Bitterness became the norm, as non-striking teachers were singled out publicly for abuse. Teachers made some difficult decisions, for it was not necessarily just a union issue when someone felt a real obligation to the students and taxpayers. Teachers in public schools do not always agree as a united front on union policies.

The Funding Process

Funding for schools comes from a differing source than does funding for corporate structures. Teachers may encounter a variety of "managers." They begin with principals, superintendents, school board members, and this could even be extended to parents, students, and ultimately to taxpayers and voters. Being accountable to the directors is more difficult. Passing the buck is typical, since the financial structure is both elusive and complex. Because management differs, public sector bargaining differs from those bargaining sessions of the private sector.²¹

²⁰Marsha Kay Seff, "Teacher is a Scab," California Today: San Jose Mercury News, 3 May 1981, 8-14.

²¹Holley, 434.

The public has shown displeasure with education, and has called for renovations and changes in the system. Money is an item which can be withheld if improvements are not forthcoming. One example of the pressure exerted on the educational system is California's Hart-Hughes Educational Reform Act of 1983 (SB 813), which set statewide graduation requirements.²²

Each day, another sector of society seems to hand the media yet a different idea for revision. The public pronounces this: today's popular issue. The pressure being applied is immense, and the outcome for education is still unknown. Such fault-finding affects teachers, their jobs, and in turn, their organizations. The California Teachers Association (CTA), the NEA and AFT, each have separate organizational policies to negotiate; therefore, reform is neither simple nor easy to draft.

These three organizations have coalesced and merged with other special interest groups for lobbying purposes in the state arena. Persuasion of elected officials is big business, with CTA being cited as one of the state's largest contributors to California's lawmakers between 1975 and 1982.²³

²²Michael J. Ross, California: Its Government and Politics, 3d ed. (Pacific Grove, CA: Brooks/Cole, 1988), 29-30.

²³*Ibid.*, 97-98.

Favorably inclined representatives are vital to the unions as well as to the educational community, since financing is an ever-increasing political football. About " . . . 33 percent of the state budget is spent on elementary and secondary education, and an additional 13 percent is spent on higher education."²⁴

The "taxpayer's revolt" in 1978, which culminated in the Jarvis-Gann Initiative, known as Proposition 13, reduced local property taxation, and " . . . forced school districts to rely heavily on state aid. The state pays approximately 80 percent of local school costs. About three-fourths of this is for salaries and benefits."²⁵

With every push by the teachers and their unions for an increase in funding, an added resistance comes from the public sector, since " . . . opinion polls indicate that however schools may be financed, taxpayers feel that they are not getting their money's worth."²⁶

To gain political clout, the teachers must bump heads with other pressure groups and lobbyists to influence the policy makers. If, or when, influencing the legislators, the governor, and various administrators doesn't bring results, teachers will seek to persuade judges. Even

²⁴Ibid., 28.

²⁵Ibid., 28-29.

²⁶Ibid., 29.

litigation might not be the final stage. Teachers could eventually march, demonstrate, and/or strike--often in that order, but not necessarily.²⁷

Assertiveness in the educational policy arena therefore becomes the union's goal. Since the public is a necessary factor, the initiative process is a popular political tool. In the 1988 California election, Proposition 98 was passed by the voters to stabilize educational funding, but after this ballot box victory, Governor Deukmejian and Bill Honig, California's Superintendent of Schools, became embroiled in budget disagreements. Peter Mehas, Deukmejian's education advisor, declared that " . . . the people . . . were misled . . . " by Honig's budgetary complaints. The sides formulated were predictable: The California School Board Association (CSBA) came forth in the governor's corner, while the CTA supported Honig.²⁸

Meanwhile, the public continues to argue the issue of Prop. 98, the California budget, and the proper mix for what it considers optimal funding for tax-paid-schooling.

²⁷Ibid., 100-101.

²⁸Richard Seigler, "Why Deukmejian Froze Out Bill Honig?" California Government and Politics Annual: 1988-1989, Thomas R. Hoeber and Charles M. Price, Editors. (Sacramento, CA: California Journal, Inc., 1988), 103-104.

Examining Strategies

When conflict arises between interest groups, actors vary, and whistle different tunes, and strategies shift according to the crisis. Ed Foglia, President of the CTA, thanked citizens for supporting Prop. 98. He deplored the condition of the schools since Prop. 13's cuts to education, and the "massive layoffs." Foglia purchased media space to advertise his position on the behalf of organized unions, a tactic which appears to use a conciliatory attitude to persuade the public sector and to ask for continued support:

We teachers are pledged to improve California public schools and community colleges. We ask the state's voters and taxpayers to support us, to join with us, and to recognize how very far we have to go--how much we have to do--to make California number one again in public education.²⁹

Another strategy (in a national context), demonstrated by Reed Larson, President of The NRTW Committee, promoted apprehension in the public sector regarding the danger of a union-controlled government official, former Speaker Jim Wright:

By daring to stand up to King Jim and insisting that the sun shine on his illicit transactions with union bosses, RTW supporters have made it clear there is a price to pay for trampling the rule of law that other Americans abide.³⁰

²⁹Ed Foglia, "Teacher Views," Sacramento Bee, Advertisement, 20 September 1988.

³⁰National Right To Work: Newsletter 35, No. 7, 3 July 1989. (See Appendix A-II.a.2, "Committee Led Charge That KO'd Wright.")

Such tactics range from positive explanations to fear and scare policies. Both methods can be quite successful, with their effectiveness often in the timing and placement. Persuasion and concern can be generated either through praise and explanation, or through stirring up the public's anger and the union membership's rebellion. These are both examples of "Policy maximizers . . . narrowly focused, with each group deciding which strategy . . . will yield the greatest influence at (the) lowest cost."³¹ Influencing the public is a paramount goal for any interest group in conflict, no matter how this influence might be gained.

Membership Differences

According to Jeffrey Berry, unions are the interest group most susceptible to conflict within the ranks. Membership is usually required, and becomes compulsory in agency shop contracts.³² Therefore, individuals are unable to drop their union affiliation if dissatisfied with the group's agenda. The agency shop scenario has brought the unions and non-union teachers into conflict and litigation.

Albert Shanker, president of the AFT, tells the story differently. He insists that collective-bargaining

³¹Berry, 56.

³²Ibid., 96-97.

elections do allow a vote for "no union," but this is a majoritarian rule, and doesn't permit a differing minority to keep themselves out of the union. He feels that the union, by law, represents all employees:

Under union law, employees themselves decide whether or not to be represented by a union An election is held and one of the ballot choices is 'No Union' When a union is selected . . . that union is required to represent all the employees . . . (Then he asks) How should all these services be supported (if the non-union doesn't pay a fair share)?³³

Union leaders do control membership through agency shops, while union funds (money collected from dues) are also controlled. Political influence can be bought or exerted, but one uncertainty holds for union leadership: the public vote. No union, or indeed, any other organization, can dictate a secret ballot outcome.

Compulsory union dues are usually small, and collected through payroll deductions. They can be a steady source of income, allowing the union to operate without fear of financial fluctuation. In contrast, voluntary organizations must appeal for donations. Thus, when such a group has dissatisfied members or dissenting elements, it can anticipate both diminished membership and finances. Voluntary associational resources oscillate undependably, with their members motivated largely by the issues.

³³Holley, 338-339.

The National Right to Work (NRTW) organization is one such voluntary group. Usually, prospective dues payers seek NRTW for rescue in a dispute, or the group might inquire into an interesting legal case, and offer services, which are usually free, since its non-profit status must be maintained.

Susan Staub, of Concerned Educators Against Forced Unionism (CEAFU), claims that non-union teachers are not against the union. They just want the "freedom of choice." She explains:

(U)nion officials claim that monopoly bargaining (exclusive representation) is a burden on dues-paying members. Therefore, they insist, teachers who refuse to pay up should be fired from their jobs . . . then the equitable solution is to let teachers who reject union membership fend for themselves. Require unions to bargain only for those persons who want their services.³⁴

To explain this conflict, Michael Ross insists that the CTA is powerful, and, through the compulsory collection of dues, dominates a "self-interest representation" in the government.³⁵

Money flows from local communities and feeds into the statewide CTA: that feeds into the NEA, which has strong ties to the Department of Education, a segment of the executive branch of government. This close association has

³⁴Ibid.

³⁵Ross, 94.

generated concern shared by some teachers and some elements of the public. Both the NRTW and CEAFU have publicized this "crisis" interconnection; therefore, their organizational newsletters have gained them support, and show results with a steady increase in memberships since 1955.³⁶

The Lobbying Forces

People within organizations create a force for utilizing lobbyists, who may be prominent citizens or persons hired for that special purpose. They usually give money to candidates, and this often buys clout, or, at least, an access for the opportunity to persuade.

McCool writes, " . . . interest group participation . . . is especially that which is readily accessible, politically useful, and dependably credible."³⁷ Legislators need information sources. Interest groups can and do provide this service through their lobbying techniques.

One organization influential in educational circles is the California School Board Association (CSBA), often a target of teachers (and their unions), parents, students, and taxpayers. The association lobbies both statewide and nationally. Mary Anne Houx, former CSBA President, interviewed by this author in November, 1988, proclaimed, "There

³⁶Holley, 335-337.

³⁷Daniel McCool, "Political Viability of Subgovernments," Political Science Quarterly, (Summer 1990): 289.

isn't any money. None." The CSBA lobbies by legislative networking, knowing everybody, talking to everybody, and knowing everything that is going on. Houx spoke of the success rate of their influence as "phenomenal." She uses the technique by " . . . personally monitoring every senator and every assemblyman. Telephoning is the most direct, and is used extensively. This one-to-one contact works. She also insists that the "advocacy for children" is strongly cohesive when approaching Republican Assemblymen Stan Statham and John Dolittle. "We have to form coalitions with teachers' unions, or whatever. Actually: it really is 'whatever' We have strength in numbers. The CSBA has a tight working list, but, no, it isn't for sale."³⁸

Houx gave the impression that she wheels and deals. She says that her emphasis is on the " . . . likenesses and not the differences . . . " when she talks with Albert Shanker of the AFT, Mary Futrell of the NEA, and Ed Foglia of the CTA. She feels that there should be a merging of their various efforts and cooperation for the "sake of the children."³⁹

³⁸Mary Anne Houx, interviewed by author, 9 November 1988, Chico, CA.

³⁹Ibid.

When asked if she thought that California would ever become a right-to-work state, Houx replied, "Never! California is a union state."⁴⁰

The Lobbying Process

As California's politicians grope for ideas on the restructuring of education, all sorts of sentiments are lobbied. When Assembly Ways and Means Committee Chairman John Vasconcellos was asked about the idea of state-appointed trustees, he replied, "I haven't seen much in my years in Sacramento that would lead me to conclude that when the state takes over something that it's better than it was in the hands of the local representatives." He argues that democracy and the grassroots involvement are mainstays of the philosophy of public education.⁴¹

If Houx proposes merging and Vasconcellos proposes local rule, can there be unanimity? When CSBA lobbyist Rebecca Bauman was asked about the proposed merger of organizations for stronger representation, which could be beneficial to education, she replied, "It's nice to have two different perspectives Multiple voices from a profession of 200,000 is healthy."⁴²

⁴⁰Ibid.

⁴¹Bill Blaylock, "Vasconcellos: Talking Tough," California School Board Journal, (Winter, 1988), 11.

⁴²Bruce Scheidt, "Teachers Unions: Marriage or Mayhem," California Journal, (July 1987): 329.

For unions and teachers to differ might very well be healthy in a democracy. Even with the teachers talking alliance, any proposed merger of union forces would not be a simple task. California Federated Teachers (CFT) President Miles Myers states, "If we can't bring it (the merger) off in the next year, then we'll part company in a friendly fashion."⁴³

A merger would give the unions a consolidation for lobbying that they do not possess now. But whether the idea becomes reality or not, pressure-group activities will continue. Ralph Flynn, CTA executive director, announces that large numbers of union-backed candidates are being elected to local school boards, but that the real influence for policy is in the legislature. He calls this "one-stop shopping."⁴⁴

The NRTW is not allowing this expansion of union influence to go through the system unnoticed. Reed Larson proclaimed at the NRTW conference in Sacramento, February 18, 1989, that there were at least " . . . four dozen cases pending in the California courts." He emphasized that litigation is definitely the most effective action, and that

⁴³Ibid.

⁴⁴Peter Schrag, "Declining School Boards," Sacramento Bee, 16 December 1987.

since lobbying is considered too slow, it is not the immediate strategy to be used at this time.⁴⁵

Grassroots Politics

Former House Speaker Tip O'Neill's favorite phrase was: "All politics is local."⁴⁶ This opens up the next examination, which is of grassroots politics. Local citizens feel the trickle down of the whole system, or, in a circular effect, the percolation up. Broad-based interest groups do more percolation up by nature. This is consistently the pressure direction of constituents, which O'Neill considered vital.

The Supreme Court case involving Abernathy, et al., and the San Jose Teachers' Association, is one such up-from-the-grassroots event. Three teachers from the San Jose Unified School District (SJUSD) were interviewed to gain a cross-section of information relative to union-non-union activities.

1. Gloria Meltzer, a teacher for the SJUSD for some 40 years, was transferred from her job as a music specialist to being a math teacher during budgetary cutbacks. She

⁴⁵Reed Larson, speaking at the NRTW conference, Hilton Inn, Sacramento, CA., 18 February 1989. (Author's notes.)

⁴⁶Christopher Matthews, Hardball: How Politics is Played--Told by One Who Knows the Game, (New York: Summit Books, 1988), 44.

spoke nostalgically about the SJTA's having monthly social gatherings with dramatizations and dinners when she was first a member. However, in the late '50s and '60s the schools became overcrowded, and there was a national search for teachers. The new, younger ones who joined the district were more militant and wanted stronger representation. Many brought with them an adversarial attitude about working conditions, which had not been present before.⁴⁷

Meltzer spoke of these changed attitudes as having "plusses and minuses." One plus was that the school board finally paid serious attention to teachers' needs. There was an increased "awareness of what was possible" and added emphasis on equal rights, "since so many teachers were women." A minus was that a split occurred, " . . . and we were no longer all cooperating for the common good." She recalled, " . . . the social aspects dwindled." The newer teachers appeared to have picked up these ideas either in their education or as " . . . the sign of the times in which they were growing up. It was very different from those of us who started teaching after World War II."⁴⁸

Meltzer continued, "In the late '60s and '70s, no other group was speaking up for the teachers and children,

⁴⁷Gloria Meltzer, interviewed by author, San Jose, CA., 11 September 1988.

⁴⁸Ibid.

so the Association gained in strength," by being an advocate. When collective bargaining legislation developed, the group became a great deal more aggressive. This caused the school board to become more " . . . defensive and treated the teachers in a less professional way; more as labor. It has been degrading, and from then on, teachers never did receive the respect from the general public." She added that the teachers had been terribly unhappy, and distrusted the school board and funding process. "We were all swept along with the times, and the new union tactics, which were unfamiliar to us. If we objected to the strike, we were called 'old-fashioned,' and 'stick-in-the-mud'."⁴⁹

The decision to strike was still a painful memory for her:

There was a pre-dawn meeting, and 90 percent voted to strike. The picket lines went up, and we didn't want to cross them. . . . I lasted a day and a half, but decided to go back into the classroom. . . . There was fear that personal relationships would be damaged and our retirement would be affected. . . . The people who did not strike, or give any cooperation to the group, caused wounds which will never heal. . . . Teachers who did strike were docked from their retirement by the state. [However, after the strike, she found that] . . . teacher-related complaints were handled in a more orderly manner. Before the strike a teacher would hesitate to go, alone, to voice a complaint, or collect other teachers to cooperate in a stated grievance, for fear of retaliation. . . . Working hours became more acceptable, restrooms were provided more equally. . . . The administration was more dictatorial before the

⁴⁹Ibid.

strike. . . . Through the organization, SJTA, the teachers gained a voice.⁵⁰

2. Donna Austin, another teacher with a different viewpoint, related events up to the present time:

I joined the SJTA in 1969, when it was a professional organization, and not affiliated with any other organization. . . . In 1975 and 1977, votes were taken to join the CTA and NEA, but these were defeated at the local level and passed at the state level. I didn't really want to be in a union, and joining with CTA and NEA was too union for me, so I left the SJTA. . . . In 1980, non-union members of the SJUSD were brought to the Small Claims Court for fees, and again each year until 1984. . . . SJTA v. Abernathy went to the U.S. Supreme Court. The Supreme Court case Aboud v. Detroit said that everybody pays a fee (for negotiations), but Ellis v. Railroads said a rebate was illegal. It wasn't until Chicago v. Hudson that the unions were asked to open their books to prove negotiation fees. . . . Now, King City, CA v. Cumero is in the State (court), and that should establish amounts for fees and negotiations in California.⁵¹

When asked about the strike, Austin, who had spoken out to the media, was very clear in her stand:

Oh, I don't believe in striking and using children to negotiate my salary. I want no part of . . . it It took three or four years before the strikers would speak to me, oh, and some still don't. . . . Some of those relationships have never been rebuilt. . . . Yes, 1989, and another strike vote has been taken. . . . No real gripe; just more money. . . . Hilda (superintendent) is resigning. She says she's had enough.⁵²

⁵⁰Ibid.

⁵¹Donna Austin, telephone interview by author, 5 March 1989. Plus: See Appendix page A-I.c. Cupertino Courier, Vol. 35, No. 12, Wednesday, 25 March 1981.

⁵²Ibid.

3. Bob Beck was president of the SJTA in 1960 and '61, and has remained interested in its actions and reactions for more than twenty years. He related that:

The SJTA was advisory. . . . It presented the membership (mass) ideas to the school board. The school board was paternal. . . . There was no legal procedure for negotiations. . . . There were other interest groups in the district, also, and these ideas were presented, too. . . . The SJTA was democratic in structure. . . . It is more of a management structure now, and CTA/NEA gets the money, for the dues are unified. The local organization does not have control. . . . I left the organization, because I didn't like the leadership and the unified dues structure, and the organization had lost its democratic structure.⁵³

When asked about the strike, he replied:

Brian McKenna, A NEA organizer, was brought in. . . . It really wasn't a fight over money. . . . It was a fight over the organizational loyalty. The 'Golden Foot' was worn by the loyalists [This was a pin worn by teachers in favor of the union action.], and the SJTA/CTA/NEA were getting exclusive right. . . . The district would never have agreed to 'agency fees' if there had not been a strike and bankruptcy. . . . The NRTW doesn't necessarily have a democratic structure, either. I don't really like the organization's hate campaign, but that's what all groups do. They organize people who have a big hurt, and want to hate. . . . At the NRTW Conference [Sacramento, Feb. 18, 1989], the people were mostly people who had been hurt by the union and they wanted help. This is an organizational tactic: emotional loyalty. Unions use the same tactics. . . . I do respect the NRTW Legal Foundation. . . . I think they have an analytical, inquiring intellect and they deal in principles. . . . Their legal arguments are impressive.⁵⁴

⁵³Bob Beck, telephone interview by author, 5 March 1989.

⁵⁴Ibid.

Comparable Grassroots Issues

Any community has issues which either bring people together or tear them apart. San Jose can be compared with other parts of the state or nation as it deals with the union/non-union debate. The NRTWLF is organized to use class action suits, and does gain recognition through the courts which individuals seek throughout the nation. Charlene Sciambi is an example of a teacher who felt hurt by forced unionism, and asked the NRTW for assistance. The CEAFU, a branch of NRTW, features her story in a pamphlet and quotes a letter she wrote to her students, explaining why she had resigned:

My employer is confiscating my wages without my permission. This is the status of a slave. How can I return to you in September and teach you to stand tall as a free man or woman if I cannot?⁵⁵

Sciambi, a 13-year veteran teacher, was honored in 1983 as the state's best foreign language teacher. She added:

I resigned from Fremont Unified School District in California, because I had to join FUDTA/CTA/NEA in order to hold my teaching position. I was demoralized. It was the biggest disappointment of my life.⁵⁶

On the brink of a strike, a small town newspaper, the Inyokern/Ridgecrest News-Review, published comments from

⁵⁵CEAFU Pamphlet. (See Appendix A-II.b.1. "Agency Shop.")

⁵⁶CEAFU Pamphlet. (See Appendix A-II.b.2. "Agency Shop.")

the chief negotiators for both sides: Suzie Basden, representing the union, and Bruce Auld, speaking for the school district.

Question from the News-Review: The two sides are not that far apart, at six percent and eight percent. Are you looking for something else, besides money?

Suzie Basden: We want agency fees.

News-Review: What do you mean?

Basden: It would mean that all teachers would have to join the union.⁵⁷

The Sierra Sands Unified School District's side:

News-Review: The teachers also want the school board to agree to agency fees. They say you refuse. Why?

Bruce Auld: I think it is a philosophical position. The board doesn't feel that they should have to speak for each individual member's rights to representation. . . . The board feels that by instituting agency fees they are taking a decision out of the hands of an individual.⁵⁸

To follow Tip O'Neill's lead: politics is local.

The same issues appear on the local scene as in the national arena: They just differ in complexity.

There are as many grassroots stories as there are people. These interviews and quotes capture the nature of the individuals and problems involved, and were selected to bring this analysis one step closer to an understanding of the political process, and why individuals join, resign, or avoid joining organizations. Interest group litigation is one avenue for conflict resolution; when there is no

⁵⁷Ed Colon, "School District and Teachers at Odds," News-Review, (Inyokern/Ridgecrest, CA) Vol. XII, No. 28, 15 January 1987, 1.

⁵⁸Ibid.

resolve, other avenues can then be explored. Ultimately, litigation is dependent on a political cycle for policy formation, implementation, and enforcement.

CHAPTER III

AN OPEN SOCIETY

The American political system allows interest groups to be open and free to the people, so that they may exchange views, petition their government " . . . and organize on behalf of causes . . . "1

This all sounds so simple, for people in an open society have the opportunity to gain whatever information is necessary for deciding which group represents their best possible choices from any argument. As was mentioned earlier, however, there is the problem of the Madison Dilemma: What is best for the general public versus what is best for an individual are often in conflict; therefore, difficult to resolve.

Not only is this potentially perplexing in a democracy, where interest groups are allowed and even encouraged, but the information factor causes added dimensions of uncertainty. To make wise and knowledgeable decisions, citizens need relevant and necessary data for the decision-making process. The flow of facts is never perfect, even in an open society. Gaining enough background

¹Berry, 1.

on any particular issue might, in itself, be a problem of great magnitude. One might ask: without "perfect" disclosure, how can a decision be suitable, or nearly so, or even adequate?

"Enough" Information

Within this society, there are opportunities to discover and debate differences, but no society is so completely open that everything is declared. Much which is unrevealed, or unexplainable, goes on in the minds of the citizenry at any given time. Many leaders wish to deflect messages, and interest groups, of course, gain power and influence by not disclosing all their facts at least, not to their opposition. Any analytical review of events of historical significance must be illusory and fragmented, since every author has a point to make, for no one can relate the whole political realm in one observation. This undoubtedly limits and confuses the research process. Anyone trying to understand an interest group cycle of events is much like a blind man looking at an elephant. He is able only to touch one area at a time as he probes what the element actually looks like, and decides how he can discern it.

Even information in its purest form, suggests Richard Wurman, is roughly divided into five "rings," which surround everyone in varying degrees or levels:

1. Cultural (philosophical/historical)

2. News information (current events)
3. Reference information (science/technology)
4. Conversation information (informal-formal exchange)
5. Internal information (cerebral: known only to the individual).²

News and references are generally acceptable in research study, but little of that is available concerning NRTW organizational activities; therefore, conversational accounts will be included in this thesis. The author takes full responsibility for what individual selections are presented here. NRTW and union litigation is easy to follow, but the process, background facts, and other pertinent details are more difficult to obtain. Several non-published communiques can be found in the attached Appendix, which gives some support to the author's specific argumentation. However, this documentation makes no attempt to penetrate the inner circles of the hierarchical structure of either the teachers' unions and NRTW organizations, nor to divulge any secrets. Generally, the information reviewed was chosen to illustrate some pattern of events which could apply to any or all interest groups, and specifically to reflect on litigants and the way courts react to interest group pressures. Courts do not act alone. There are complexly meshed

²Richard Saul Wurman, Information Anxiety (New York: Doubleday, 1989), 42-44.

interactions throughout all areas of government and society, which have a direct or indirect effect on the courts. Frequently, a populace movement will gain judicial attention.

Shared equity groups, of course, have people reciprocating. Even money-driven economics is entwined with self-interest, so that it resembles the chicken and egg puzzle: which comes first? When leadership is chosen or tolerated, there is a vital bearing on how the organization will interplay. Similar mechanisms and relationships operate in society as a whole. It is common practice to govern in a democratic process with incomplete data.

Groups Provide a Voice

Most authors agree that the system starts and ends with the individual who, however, as a political entity, is relegated to acting in concert only as a group member. Hitchner and Harbold define an interest group as " . . . any collection of persons with common objectives who seek the realization of those objectives through political action to influence public policy." They add, more simply, " . . . any particular group that wants something from government."³

Jack Walker relates that David Truman agrees, and adds: "Interest groups arise more spontaneously in response

³Dell Gillette Hitchner, and William Henry Harbold, Modern Government, 3d ed. (New York: Dodd Mead, 1975), 136.

to feelings of common interest among individuals who are experiencing some form of deprivation or frustration."⁴

Mancur Olson rebuts, calling their theories "anarchistic fallacy." Olson insists that members will not remain in an organization without "inducements," "benefits," or "coerced dues." Olson regards altruism as exceptional.⁵

Terry Moe's research, added to by the findings of David Forsythe and Susan Welch, shows that people do join organizations for satisfaction, and a great deal of altruistic reasoning is evident " . . . where individual attitudes are congruent to the group's goals and they join to support human rights."⁶

The evidence is not conclusive in this continuing debate, as to why someone might join an organization, but join they do, probably for a variety of reasons. This is a circular process: individuals seek the representation of associations, while such groups seek members to strengthen their power base and enhance their influence. Interest

⁴Jack L. Walker, "The Origins and Maintenance of Interest Groups in America," The American Political Review 77 (1983): 390.

⁵Mancur Olson, Jr., The Logic of Collective Action (Cambridge: Harvard, 1965), 130-134.

⁶David P. Forsythe, and Susan Welch, "Joining and Supporting Public Interest Groups: A Note on Some Empirical Findings," The Western Political Quarterly 36, No. 3, (Sept. 1983): 387-397.

groups are therefore formed by the very people who seek a voice in a democratic/republican form of government.

Cross-Pressure of Influence

There is some evidence that individual needs are often met through several classifications, not just one. This may cause a "cross-pressure" of influence brought on by a conflict of issues among various memberships. Alexis de Tocqueville, Lord Bryce and Howard Laski noted that Americans are "joiners." Roche and Stedman have also related that in democratic societies " . . . the same persons are likely to be members of different organizations which are in conflict on specific issues," at which times, they have the options of either subordinating their personal beliefs to the broader group goals, or doing nothing to resolve the disputes. They also incorporate E. E. Schattschneider's observation that cross-pressuring is the " . . . imperfect mobilization of political interests." This means that in a free society there is no 100 percent mobilization on any issue; all of labor, for instance, does not oppose the Taft-Hartley Act, while all Protestants will not oppose state aid to parochial schools.⁷

⁷John P. Roche, and Murray S. Stedman, Jr., The Dynamics of Democratic Government (New York: McGraw-Hill, 1954), 79-81.

It might be added: not all teachers join political organizations or strike during union protests.

Everyone exhibits acquired or inherited principles, which are often contradictory. Brian Barry, pointing out that difficult decisions are a part of life's orchestration, and quotes Oliver Wendell Holmes: " . . . we learn that for everything we have we give up something else." By this, one must discern that each citizen makes difficult choices, and decides on "relative importance" towards public policies, organizations and interest groups. People may not even be aware of cross-pressures or enmeshed value judgments while they participate as group members.⁸

It might be argued that the more associations that are available, the better individuals can fulfill their needs. However, problems may still arise because not all such groups show a clear-cut purpose. Many overlap or even exhibit contradictory goals.

Power Base Differences

Any politically influential power base increases with membership size and available resources. Olson states that while groups seek to maximize individual benefits, small ones do not gain power, but large ones tend to exploit. Olson " . . . draws the conclusion that some small

⁸Brian Barry, Political Argument (New York: Humanities, 1965), 1-13.

form of compulsory membership is, in most circumstances, indispensable to union survival."⁹ There are indications that unions, generally, do follow this summary rule.

Theorists could question the group size-power ratio, however, by watching Ralph Nader and his minute organization. Jeffrey Berry believes that any group can achieve influence now, because the " . . . success of a tactic depends mostly on press coverage."¹⁰

The media has become a strong force for publicizing issues, trivial or vital. Without its influence, issue backers could not capture public favor; in fact, they would be unable to gain any sweeping advantage.

The leadership factor probably, also, plays an essential part in any organization's success or failure. In studying the Oregon Education Association, Norman Luttbeg and Harmon Zeigler established concepts concerning group leadership.

1. The appearance of unity is essential.
2. A leader may:
 - (a) satisfy the membership's desires;
 - (b) respond entirely on his own, but reflect the membership's desires;
 - (c) seek to do what he thinks best.

⁹Olson, 1-3.

¹⁰Berry, 143-144.

3. A leader's success will be (determined by) how closely he can satisfy the membership's desires and hopes.

4. The most critical issues for the organization were:

(a) the endorsing of political candidates;

(b) taking sides on public issues, and taking part in elections involving school board members.

5. Leaders are more liberal than followers.

6. Group leaders behave in much the same way as political party leaders, are committed more emotionally than followers, and consider themselves more sophisticated and advanced than followers.¹¹

Because any decrease in membership will lessen group resources, which are essential for the organization's healthy survival, leaders must be cautious about driving off or alienating their rank and file members. Stephen Wasby indicates that the group must stick to supporting popular activities while avoiding certain litigation or causes which are unpopular with its followers. He uses as an example the ACLU's action when faced with representing the Nazi demonstrators in Skokie, Illinois, a community of Holocaust survivors. The loss of Jewish allegiance would be extremely detrimental for the ACLU. It was a delicate situation, and the ACLU had to make some hard choices.¹²

¹¹Norman R. Luttbeg, and Harmon Zeigler, "An Assessment of Cohesion," The American Political Science Review LX, No. 3 (Sept., 1966): 655-666.

¹²Stephen L. Wasby, "Interest Groups in Court: Race Relations Litigation," in Interest Group Politics, eds. Allan J. Cigler and Burdett A. Loomis. (Washington: CQ Press, 1983), 260.

A similar but slightly different choice was evident in June, 1988, when the PERB ruled that it would allow unions to continue their policy of collecting agency fees, despite the Supreme Court's decision otherwise in the Chicago Teachers Union Local 1 v. Hudson (1986). Dennis Batchelder, PERB Executive Director, explained, "Labor representatives maintained that adoption of the . . . agency fees regulations would result in considerable internal union disruption and expense." He continued, "The most commonly voiced complaint is that these regulations, if implemented, would cause severe hardship."¹³

With this logic, PERB decided on behalf of the union representatives who had lobbied the agency concerning this point. A contrasting sentiment by the NRTW proclaimed its opinion that the PERB ruling was against the Supreme Court's Hudson ruling, and therefore, not legal. As a result, PERB was taken to court by NRTW in Johnson v. PERB, 1989.¹⁴

Before that, the NRTW had lobbied PERB without getting a favorable ruling. It is conceivable that the size and influence of the CTA was a factor in the PERB's decision; however, Hitchner quotes Gabriel Almond's opinion that

¹³See Appendix page A. III. a. 1-2: State of California MEMORANDUM, PERB. (29 June 1988.)

¹⁴See Appendix page A. III. b.: David T. Bryant, NRTW Legal Defense Foundation, Inc., letter to clients. (March 22, 1989.)

size can be deceptive. The National Congress of Parents and Teachers (NCPT) (usually known as the Parents-Teachers Association or PTA) is one of the largest, but by no means the most powerful. They also noted that the funds, leadership, skill, persistence, and a host of other factors can determine the effectiveness and success of any group.¹⁵

Salience and Relevance

Any interest group develops its success on salient and relevant issues for members, and its cost-effective influence on others. Raymond Bauer and Kenneth Gergen explain the process:¹⁶

1. Limitations on resources;
2. Priorities at any given point in time;
3. Relevancy to other issues of importance;
4. Salience, or placing an issue first.

People have many options and causes to consider. When the individual and the issue fuse, there is relevancy. If many members of a group are "in tune with the times," or in favor of the same achievement, that group can advance to lead the media, influence public policy, and even push laws into enactment. When relevancy and salience toward issues

¹⁵Hitchner, 140-150.

¹⁶Raymond Bauer and Kenneth Gergen, eds., The Study of Policy Formation (New York: Free Press), 1968, 17.

are missing, any interest group tends to disintegrate, reform, or disband.¹⁷

In California, the NRTW forces show evidence of mobilization to use this relevancy/salience model by seizing the opportunity presented to them by the dipping trend in union rolls. Reportedly, San Francisco, once a union stronghold, has consistently lost union membership over the last five years.¹⁸

This information does not assure success for the NRTW movement, however. Unions read the same articles and are capable of developing their own, differing statistics. They can reform and regroup their organization by the same relevancy-salience model, so no predictions as to their future failure are forthcoming, and no bets wagered. Perhaps in this game of politics, results are never completely foreseeable, because the rules and models are ever-changing. Since each interest group tries to be more relevant and more salient than the other, outcomes oftentimes veer in unpredictable directions.

¹⁷Roger W. Cobb, and Charles D. Elder, Participation in American Politics: The Dynamics of Agenda-Building, (Boston: Allyn and Bacon, 1972), 103-105.

¹⁸Stephen G. Bloom, "S.F. Slowly Losing its Union Label," Sacramento Bee, (Aug, 5, 1990): 1.

Issues in Conflict

The issue of collective bargaining in the public school system has caused major changes over the past decade. Even now, a new format for administration is emerging; one characterized by conflict among various organized groups. The first changes came about with teachers' unions bargaining collectively with the school boards, as management, a step which left out principals and superintendents. Nolan Argyle insists that the persons most adversely affected by these new policies are school administrators themselves, who used to serve as a link between parents and the educational system. Now, with collective bargaining focused between unions and school boards, administrators no longer have the ability to hold instructors accountable in their own schools. Unfortunately, while teachers and school boards negotiate or bring in arbitrators, the parents, students, taxpayers and the community often have little say in matters dealing with local policy and/or contracts. To illustrate: the Palo Alto Learners Association (PALA), a group of California parents, asserted that there was no reason for them to be left out of negotiations, and that the process needed them. "Parents must organize to achieve at least parity with teachers' unions," it stated as it sought at least some equality in representation. However, Donald

Walker of the NEA warned that the conflict will grow
 " . . . if parents try to become involved in bargaining."¹⁹

Maximizing Strengths

As groups become more skillful, they try to cut their losses and win by lobbying, threats, disobedience, migration, or with any other tactic which promises to produce results. Organizations compete for political influence by spending time, energy and money to create political pressure and strengthen their power base. Historically, non-union status in the workplace has been defined as a "free ride." Unions tend to identify this as a negative factor, since such employees do not pay their considered fair share of any negotiating costs. Becker reexamines Olson's theory by explaining: " . . . free riding can be partially controlled by policing behavior, punishing deviant members with ostracism, intimidation and fines, and by implementing rules for sharing benefits and costs that reduce the incentive. . . . In essence, free riding raises the cost of producing pressure "²⁰

¹⁹Nolan J. Argyle, "The Impact of Collective Bargaining on Public-School Governance," Public Policy 28, No. 1 (Winter, 1980): 139-141.

²⁰Gary S. Becker, "A Theory of Competition Among Pressure Groups for Political Influence," The Quarterly Journal of Economics XCVIII, No. 3 (August, 1983): 371-379.

Understandably, unions have concluded that free riders cost them money, power and influence. To stay on top, in California they had rallied the citizenry to defeat a right-to-work initiative in 1958. Since then, the greatest growth in their rolls has been in the public sector, " . . . thanks in large to laws giving collective-bargaining rights to government workers during the past administration of Democratic Governor Jerry Brown," stated Bruce Scheidt. He also added that, "The AFL-CIO's Henning said Deukmejian is the first governor in almost 50 years who failed to seek advice from organized labor before appointing." Deukmejian's veto had also been a power felt by the unions, Scheidt recalled.²¹

As part of the governmental checks and balances system, the executive veto power can stop the legislative branch, unless it votes an override. The judicial branch can interact on both other branches, but this is not as straightforward, and is less understood as a political maneuver. All three branches feel the pressure of interest group lobbying. This flux of governmental and citizenry cross actions and influences is the grand cycle of political activity to maximize strength.

²¹Bruce Scheidt, "Union Power," California Journal (July, 1987): 326-330.

Pressuring the Courts

The judicial branch has the reputation of being more "purely" free from various external influences. Murphy and Pritchett refer to Arthur F. Bentley's observation that provided a theoretical foundation for group interest representation and implementation through judicial action. They interpret Bentley's theory to include the courts in his general thesis concerning the mechanisms for change by stating: "Interest groups exert pressure to get the support of the law, and courts respond to these pressures."²²

Karen O'Connor and Lee Epstein give David Truman credit for adding that interest groups "seek redress" in the courts when their political avenues do not bring the opportunities desired. If " . . . strength elsewhere has diminished," continue O'Connor and Epstein, the courts are available.²³

Any one person does not need to be burdened, for when an individual or a group finds litigation to be advisable, class action suits are available. This often

²²Arthur F. Bentley, The Process of Government, (Chicago: University of Chicago, 1908), 393, quoted in Walter F. Murphy, and C. Herman Pritchett, Courts, Judges and Politics: An Introduction to the Judicial Process, (New York: Random, 1979), 261.

²³Karen O'Connor, and Lee Epstein, "Amicus Curiae Participation in U.S. Supreme Court Litigation? An Appraisal of Hakman's 'Folklore'," Law and Society Review 16, No. 2 (1981-82): 311-312.

brings people to court for the benefit of themselves and "all others similarly situated," and, even if a litigant dies, someone else can be named to continue the suit, for such action is in behalf of a class of people, not merely for one person. When parties, or an organization not part of a lawsuit, want to gain the right to participate, they can secure status as amici curiae (friends of the court). Amici curiae briefs may be submitted to the court for a variety of reasons.²⁴

In the Bakke case, for instance, 57 briefs were submitted from interest groups and individuals to influence the Court's verdict. The AFT and NEA both submitted amici briefs. The AFT supported Bakke, while the NEA supported the University of California. This illustrates a principle: Different unions can support separate viewpoints, or even conflicting ones. ²⁵

O'Connor and Epstein have reviewed Nathan Hakman's study of amicus curiae participation before the Supreme Court. Between 1928 and 1980, amicus briefs have increased from 1.6 percent to 53.4 percent of all cases heard. From

²⁴Murphy, 265.

²⁵Ibid., 306-308. See also Appendix page A. III. c.: Interest Groups and Litigation--Amici Briefs in the Bakke Case.

1970 to 1980, union participation in such briefs rose 87.2 percent.²⁶

Lawsuits are a means to an end. Pressuring the courts can definitely be "an interest group strategy . . . the present options available to interest groups would seem limited only by the imagination and financial resources of the groups themselves."²⁷

Co-Existing Systems

The co-existence of the national, state and local political functions are shared throughout the federal system. Levels of power and influence are unequally distributed, however. Alliances are strong in some areas, weak in others; examples are labor unions or civil rights groups.

The filtering down of federal funding perpetuates vying for grants, programs, and exclusive rights to formulas for the expenditures.

The states deal out money to the schools. It is natural for teachers to be concerned about such matters as certification, curricula, text books and building standards. Each state's educational agencies and legislative policies

²⁶O'Connor, 313-317. See also Appendix page A. III. d.: Amicus Curiae Participation in Supreme Court Cases.

²⁷Karen Orren, "Standing to Sue: Interest Group Conflict in Federal Courts," The American Political Science Review LXX, No. 3 (Sept., 1976): 733.

determine programs in which teachers must participate. States collect taxes, run the educational system, and supervise local governments, and any organization seeking to influence the government must interact on all its levels. Each state determines what regulations its citizens will follow. Collective bargaining is one example.

NRTW concerns itself with the right-to-work issues, and the formulas vary from state to state. As any other body seeking power in the local, state and/or national arenas, the NRTW must influence on all levels. This is a necessary factor.²⁸

The People's Faith

The Constitution provides and consolidates a vocabulary necessary for political discourse and faith in the American society.²⁹

Both Republicans and Democrats, as well as broad-based conservatives and liberals, hail Thomas Jefferson's "We hold these truths to be self-evident: that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life,

²⁸Heard, 9-30.

²⁹Sanford Levinson, Constitutional Faith, (Princeton, NJ: Princeton UP, 1988), 168.

liberty, and the pursuit of happiness--that to secure these rights, governments are instituted among men."³⁰

These words were applauded in the eighteenth century, and are still applauded in the twentieth century. The American faith in government is alive and well; any discrepancies are merely in the weights placed on different words. To interpret "equal" and "rights" significantly brings conflict.

Sanford Levinson builds a case for differing versions, grounding it in the varied cultures and religions of this nation's peoples. He contends that while the Constitution is the law of the land, citizens seldom agree completely on what is the common good, or how this can best co-exist with individual rights. These two sentiments are equally strong, and coexist within the same Constitution. Levinson maintains " . . . it is arguable that the most important office within a republic is that of the citizen . . . The ability of a community to choose, as well as be chosen, itself generates profound tensions," and community discourse. Whether individuals act alone or in a group, they must take on this responsibility: "Civic virtue . . . includes . . . coming together as citizens in public discussion."³¹

³⁰Charles Murray, In Pursuit of Happiness and Good Government, (New York: Simon & Schuster, 1988), 24.

³¹Levinson, 61-62, 97.

Louis Fisher picks up this argument by quoting Spinoza, who advises that " . . . no one can willingly transfer his natural right of free reason and judgment." He continues by quoting Chief Justice Warren, who warned that " . . . the judiciary must play a limited role," and that the Constitution realistically rests " . . . on the shoulders of every citizen." Fisher concludes with an observation: "We reject supremacy in all three branches because of the value placed upon freedom, discourse, democracy, and limited government."³² Ultimately, it is the citizen who keeps the system in balance.

The faith of the people continues to rest on the democratic principle of self-determination, which allows for the open conflict of ideas in a public forum. The missing link in the union/non-union conflict is that of an open forum for full public review.

Interest Group Function

How can people best govern in a democracy? Interest groups perform a necessary function. They articulate demands and place them within a governmental decision-making context. The means by which this is done is debatable.³³

³²Louis Fisher, Constitutional Dialogues: Interpretation as Political Process, (Princeton, NJ: Princeton UP, 1988), 276-279.

³³W. Douglas Costain and Anne N. Costain, "Interest Groups as Policy Aggregators in the Legislative Process," Polity XIV, No 2, (Winter, 1981): 255.

Politically-motivated conflicts must be resolved or compromised within guidelines. Theodore Lowi and Robert Dahl have contemplated governmentally-focused controversies, as a complex system broad enough to engulf a life-time's study. In brief, their arguments run as follows:

Robert Grady explains Lowi's theory and how it is based on a reformed juridicial democracy, a democracy of law. Once that law is agreed upon, it is supreme. All argumentation is on the rule itself, not on how to apply it. There should be no argument about the needs of individuals or benefits to any winners or losers.³⁴

Dahl's theory, in contrast, contends that the democratic process consists of consensus, where " . . . leaders lead and are often led." According to Dahl, the needs of people involved in a controversy must be considered. Pluralists, such as he, point out that concerned influence is both the assurance and success of the system, for this is how people make their needs known to government.³⁵

³⁴Robert C. Grady, "Judicial Democracy and Democratic Values: an Evaluation of Lowi's Alternatives to Interest Group Liberalism," POLITY XVI, No. 3, (Spring, 1984): 404-415.

³⁵Robert Dahl, Who Governs? Democracy and Power in an American City, (New Haven: Yale UP, 1961), 5-6.

Examining Lowi, one can argue that any discussion pertinent to changing of the law would be more acceptable before it has been voted on, rather than searching for ways to get around codes already on the books, or make them more adaptable to litigants' needs.

Dahl perceived a more flexible system. To agree with that, David Easton also speaks of Bentley's Process of Government as leaning heavily on the idea of equilibrium, or a "balancing of groups."³⁶ He quotes Bentley:

There is no political process that is not a balancing of quantity against quality. . . . There is not a court decision or an executive act that is not the result of the same process.³⁷

The American governmental system has a good track record, and yet true equilibrium can never be reached as long as there are changes in any element of the system: technology, populations, resources, etc. Such conditions are always in a state of flux.³⁸

In summary: Lowi might be considered to want all deliberation to occur before law is enacted, while Dahl would probably submit that no discussion is ever finished.

³⁶David Easton, The Political System: an Inquiry Into the State of Political Science, 2d ed., (New York: Knopf, 1953), 270.

³⁷Arthur F. Bentley, The Process of Government, ed. Peter H. Odegard (Cambridge: Belknap Press of Harvard University Press, 1967), 202.

³⁸Easton, 276.

John Adams could be imagined to throw his weight to Lowi, for Adams defines a constitutional republic as " . . . a government of laws, and not men." However, Thomas Jefferson spoke of the " . . . will of the nation . . . " and " . . . the consent of the governed." To sum up this dissention, Levinson asks: Does the debate of an issue consider the policy--or the people who are affected by the policy? The question is not new.³⁹

Howard Tolley, Jr., refers to the NAACP's quest for legal representation as an example that "Political factors may ultimately matter more than legal doctrines,"⁴⁰ giving the impression that litigation can deteriorate in the political cycle of events.

Chief Justice William Rehnquist might partially agree with Tolly, but does give the courts credit for starting some trends. He relates that American institutional participation keeps a " . . . proper balance between liberty and authority, between the state and the individual." He uses a reference to the Marbury v. Madison case, and contends that the law and litigation may sometimes instigate a trend in political enterprise. He states that in such a

³⁹Levinson, 60-64.

⁴⁰Howard Tolly, Jr., "Interest Group Litigation to Enforce Human Rights," Political Science Quarterly 105, No. 4, (Winter, 1990-1991): 638.

case, "The Court was in the process of sowing a wind, with the whirlwind to be reaped years later."⁴¹

It isn't often that the Court leads, but it is possible. How history will explain Ellis, Hudson, and Beck remains to be seen, for these cases may be only the initial stirrings of breeze heralding some future storm involving labor unions. Susan Staub of CEAFU wants the public to understand that "There is a very big difference between the American Labor Movement and the American Union Movement."⁴²

⁴¹William H. Rehnquist, The Supreme Court: How It Was, How It Is, (New York: Quill/William Morrow, 1987), 214, 319.

⁴²See Appendix pages: A. III. e. 1-4., World Research INK, (May, 1979.)

CHAPTER IV

TIP OF AN ICEBERG

Although the paper trail of non-union litigation is easy to follow, it does not explain any behind-the-scenes political interactions, or, in fact, the whole story, since it is only the tip of the iceberg. Special interests which challenge established groups or policies often present a muddled picture when social critics attempt to reconstruct a chronological trail, because they are unique, not broad-based, and thus do not easily catch the media's attention. Their political maneuvers are often quite difficult to document, unless they luckily hit a popular note.

Since California is not a right-to-work state, there is little published concerning the NRTW as a possible policy-maker or contending influence for gaining a power structure. With other avenues blocked, the NRTW seeks litigation: The courts are available to all, however, one citizen, alone, can not provide enough influence to change laws, trends, or attitudes throughout society. Therefore, associations are sometimes formed for just this purpose. Grassroots non-union teachers, for an example, have turned

to the NRTW for assistance, since this provides them with an organizational voice.

The National Right to Work Legal Defense Foundation, Inc., headquartered in Springfield, Virginia, was established in 1968. Its litigation is on an increase, but this is only part of the NRTW's political action. Adequate data does not exist, since most transactions are 'off the record.' Some letters and documents are included in the Appendix to set the stage for a systematic analysis, but most of the information collected by this author has been in the form of notes and discussions with people involved on various levels of this political maze. This has provided the author with a qualitative acknowledgment of empathy and the will to attempt a coequal debate.

James Q. Wilson points out that challengers of established ideas are called "entrepreneurials" as they arouse interest in reform; however, the courts play an important part by providing an entrance into the system when there are political obstacles. Since the 1960s such entrepreneurialism has escalated as the legitimacy barriers of the two-party system and elitists have withered under unconventional influences. Bones of contention can create issues any time on anything imaginable, given media's help. Elitists can be from any segment of society which benefits by directing policy, Wilson observes: " . . . when a few

individuals--business people, union leaders, professors, state welfare directors (to name a few)--acquire substantial influence over a broad policy area from which they benefit, they are an elite."¹

The NEA certainly could fit the elitist description when it collaborates with the Department of Education utilizing Cabinet level influence. In contrast, an entrepreneurial group, NRTW, grew from non-union, unorganized people classically referred to as "free riders," and had no legitimacy sanction. Mancur Olson popularized the term, but did not consider that they could ever organize and become a danger to the labor system. He spoke of the "right to work laws as seldom enforced;" therefore, not a real threat to consider.²

Olson missed the mark slightly, for twenty-one states now have right-to-work laws. The NRTW Committee claims "over 1.7 million supporters nationwide."³

The danger to labor has not been established systematically. The NRTW does not regard itself as union busting, but has fought in the courts for individual rights to choose. The NRTW addresses forced unionism. Unions use

¹James Q. Wilson, American Government: Institutions and Policies, 4th ed (Lexington, MS: Heath, 1989), 594-601.

²Olson, 68-76.

³See Appendix page A-IV.a.1-2: "Questions and Answers."

the term "free riders:" Right-to-workers do not describe themselves as such.

The NRTW organizational activities are becoming broader in scope and influence to gain recognition. Wilson points out: "Interest-group politics does not end with the passage or defeat of the initial proposal. The struggle continues, but in other places--in the bureaucracy, before the courts, and in subsequent legislative sessions."⁴

Non-Union Litigation

According to Reed Larson, president of NRTW, the push for not having " . . . to join a union to earn a living" came into being about 30 years ago with the Allen (1963) and Street (1961) cases, though the Legal Defense Foundation wasn't established until later.⁵

Larson, speaking at a NRTW Convention in Sacramento, repeated the organization's historical beginnings, asking, "Why would California be such a fertile place for a NRTW Convention?" He answered himself with, "The reason is that . . . California is a trend-setting state, and there is a reservoir of leadership here." He further explained that California had a serious problem, implementation of the

⁴Wilson, 594.

⁵See Appendix page: A-IV.b NRTW Conference Program, Sacramento, CA., 18 February 1989: Author took notes and made personal contacts.

Hudson case, and introduced Dr. Edwin Vieira, who had argued Hudson before the Supreme Court.⁶

Hudson Simplified

Dr. Vieira explained, "This all started with Abood v. Detroit Board of Education and with key cases in 1976-77, dealing with fees, expenditures and injunctions. The only recourse was to bring action in the courts." He simplified a trail of events: The CIO/AFL blundered by bringing Hudson to the Supreme Court, where they lost unanimously. "It opened up a whole new front. It cleared out all of the deadwood. It cleared away the theory that rebates are not a satisfactory remedy. It struck down the residual theory. It set up the burden for the unions and the employers, instead of the employees, to prove the agency fee requirements. It also made clear that the union can not be a judge in its own cases: working arbitration within its own structure and rules without an outside evaluation or authority."⁷ As Dr. Vieira spoke, this note-taking author concluded that this would be analogous to the fox guarding the hen house.

"The collection of fees in escrow has been determined as an unsatisfactory remedy. The big problem which

⁶Ibid.

⁷Edwin Vieira Jr., "History and Outline of Chicago Teachers Union v. Annie Lee Hudson," Speech delivered at the NRTW Conference, Sacramento, CA, 18 February 1989, author's notes.

needs attention is a system for the auditors, which the courts requested," Vieira reminded his listeners. "The auditors have no idea what to exclude or include in an audit for political expenditures and collective bargaining expenditures. Up to this time the auditors have been using the union's guidelines and checked their arithmetic." Dr. Vieira emphasized that there is no legal definition for collective bargaining activities and, thus, no way of determining costs. Auditors know the definitions for tax cases and procurement cases, but not collective bargaining cases. "The NRTW is asking the courts to come up with definitions. The auditors are sticking their heads in the sand."⁸

He called attention to the fact that the unions have multiple level services, local, state and national, and the auditors don't know who gets what money. The union only gives the auditors percentages, and also, allocates a percentage to collective bargaining. Vieira says, "That isn't good enough. The costs must be sorted out." He set up these steps to be followed:

1. Define collective bargaining (There are as yet no standards.).
2. Provide cost allocations (Again, there are no standards. It's garbage in, garbage out.).
3. Set different levels of fees for members and non-members: Employees must have the right to information and be able to examine documents with disclosures (The burden lies with the employer and union.).

⁸Ibid.

4. Put the verification burden on the auditors.⁹

Dr. Vieira suggests strategy for future court actions. "Make sure all of the t's are crossed and all the i's are dotted. Push for class action suits, so each employee does not need to take on the burden. If the unions think that non-union members are too expensive, then, let them off the hook, or reorganize the union structure." Basically, he says, "Either reorganize or drop the whole fee idea for non-members."¹⁰

Vieira pointed out that the union argued for the courts not to apply the Hudson decision retroactively to the 1985-1986 rebate procedure claims which were to be paid back to the non-members. He underscored that this could be one reason the union feels so strongly about the Hudson decision: Retroactivity is costly! As Vieira concluded, he jokingly added, "This moistens my eye."¹¹

CTA Defends Procedures

Diane Ross, Legal Counsel for the CTA, defends the union's stand on the Hudson case as safeguarding fee collections, since unions are required to calculate the retainable portion of expenditures devoted to collective bargaining and

⁹Ibid.

¹⁰Ibid.

¹¹Ibid.

related activities, with rebatable expenditures for political and ideological activities. Unions must also provide fee-payers the annual opportunity to challenge the union's calculations before a "neutral decision-maker For the most part, PERB's proposed regulations would allow CTA to continue with its current agency fee procedures . . . under the current constitutional law, it is not to be assumed that a fee-payer objects to the use of his or her fee for political purposes unrelated to collective bargaining," Ross stated, and, "Obviously, this aspect of the regulations will be challenged by CTA when and if the regulations are finally enacted."¹²

The PERB gave a sympathetic ear to labor's arguments, which strongly opposed regulations that could cause "considerable internal union disruption and expense."¹³

This consideration opened up more discussion, and brought Ronald A. Zumbrun, President of the Pacific Legal Foundation (PLF) into a more conciliatory spirit with NRTW forces. "Dear Reed," Zumbrun writes to Reed Larson, NRTW Legal Defense Foundation, Inc.:

. . . We have tried to advance our position by urging PERB to initiate rulemaking procedures to implement the

¹²See Appendix page: A-IV. c.1-2, Diane Ross, Legal Issues, "Agency Fees--Where Do We Stand," California Teachers Association, Action, (10/88.)

¹³See Appendix page: A-III.a.1-2, Dennis R. Batchelder, PERB, California MEMORANDUM, (29 June 1988.)

Hudson decision. In taking such a stance, we have attempted to balance the non-member employees' First Amendment rights with the labor organization's need to collect the agency shop fee. Our position has differed from yours in some respects, but we have at all times attempted to keep in contact with your office.¹⁴

In turn, the PLF and Zumbrun caught an assault from Clay Tice, Jr., a grassroots, small contributor, "Your double talk is not acceptable."¹⁵

To force the issue, more litigation did occur. NRTWLDF's staff attorney, David T. Bryant, pledged that the organization would "do everything in our power to have the courts correct this major injustice" for individual rights.¹⁶

Unanimous Decision Interpreted

On March 4, 1986, the U.S. Supreme Court did unanimously uphold safeguards against compulsory agency fees. Unions could no longer finance those political or ideological activities which non-members opposed. "The 9-0 decision against the Chicago Teachers Union said that the union must give non-members a detailed explanation. . . ." ¹⁷

¹⁴See Appendix page: A-IV.d.1-2, Ronald A. Zumbrun, Pacific Legal Foundation Letter, (7 December 1988.)

¹⁵See Appendix page: A-IV.e, Clay Tice, Jr., letter to Ronald Zumbrun, (10 March 1989.)

¹⁶See Appendix page: A-III.b. David T. Bryant, NRTWLDF, Inc. Letter, (22 March 1989.)

¹⁷Wall Street Journal, "High Court Rules on Union Fees by Non-members," (March 5, 1986), 6.

and this was interpreted to mean that non-union employees would be given factual information for the purposes of weighing considerations and accounts.

However, in Hudson this was not spelled out, for the Supreme Court decision lacked a full formula for implementation and enforcement, leaving the ruling open for clarification. Each case closes in on a definitive dispatch of the legal interpretation, but continues with a "mixed bag of conclusions," as is displayed in Lehnert vs. Ferris Faculty Association. James P. Lehnert requested accountability on the part of the union, so he could know "exactly where and how his money is being spent." In contrast, Robert H. Chanin, general counsel for the NEA, made reference to this argument as "totally missing the point of union affiliation and its mission."¹⁸

Mandatory fees and union accountability remain in contention, while the court walks the thin line between satisfying both components. While this is not unusual, it does lead factions into more litigation. Laws are often still open to interpretation in this society, whether the Court's vote is split or unanimous. Loopholes are often closed later by specific governmental instructions for implementation and enforcement.

¹⁸See Appendix page: A-IV.k. Debra E. Blum, "Supreme Court Case Could Define How Unions Use Professors' Dues," The Chronicle of Higher Education, (November 14, 1990), A16.

Agencies Interpret Policies

Various agencies sort through the mixed reactions after public review, processing laws regarding policy. Both bureaucrats and citizens work out interpretations of the pertinent legal rulings. Justice Scalia comments that an agency has the right to interpret a policy pragmatically, when it is part of the cultural or "common experience of the people."¹⁹

Richard Brisbin explains Justice Scalia's brand of conservatism, showing that Scalia votes to uphold agency interpretations over 60 percent of the time. Brisbin points to evidence that Scalia apparently believes, along with Felix Frankfurter and Alexander Bickel, that the courts are not "designed to be a good reflex of the democratic society . . . to the extent that the choice of procedures is left to the agencies themselves, to the same extent (that) the agencies are left to determine a substantial aspect of their own power." Even though this all reflects a fine line for clarification, Brisbin says that Scalia advocates a balancing of needs for "order and political stability" and a "defined purpose for rights."²⁰

¹⁹Richard A. Brisbin, Jr., "The Conservatism of Antonin Scalia," Political Science Quarterly 105, No. 1, Spring, 1990), 1-29.

²⁰Ibid.

To explain a complicated issue briefly: Within limits, agencies are free to interpret laws involving themselves. They can, however, be sued, as the NRTW demonstrated in its California-based case against PERB's decipherment of the Hudson decision (Johnson v. PERB, 1989). Governmental offices do have power, but not without being the possible target of questions raised by an involved citizenry or group. In Lehnert vs. Ferris Faculty Association (1991), Scalia dissented in favor of individual rights, and non-union members paying "only the costs of performing the union's statutory duties as an exclusive bargaining agent."²¹ By this dissent, Scalia is sending his personal message to the Court and to the citizenry. In turn, his statements could help interpretation of legislation and policy formation.

Favorable Legislation

Within the last few years, NRTW has realized that the courts alone could not resolve issues, and has increased efforts to influence a more favorable legislative design. Tim McConville, state legislative director for the NRTW, works to channel an agenda for getting favorable laws enacted to curtail the NEA/CTA. In the Sacramento conference,

²¹See Appendix page: A-I.d. Debora E. Blum, "Both Sides See Gain in Court's Decision on Union Fees," The Chronicle of Higher Education, (5 June 1991).

18 February 1989, he stated that, "the NEA/CTA is strong and this points right to their machine. It is my job to give them grief." He regards 80 percent of the regulations concerning unions as bad: agency shops, and teacher certification are examples. He suggests a repeal of monopoly privileges, starting with union exclusive bargaining rights.²²

While McConville works on California's legislators, Karl Gallant makes waves on the federal level. The problem there, Gallant stated at the same conference in 1989, is that "the union controls committees." He divulged that unions can be partisan down to the nation's households, with PACs being fed by compulsory dues. His suggested remedies include convincing legislators that union members must be notified about their rights and that they need to have a right to resign membership. Comprehensive union audits should itemize expenses, and compulsory dues for political purposes should not be levied or disguised. He regrets that, "The numbers just are not there," in Congress; however, he believes that this debate will generate media attention." He related that the NRTW Committee is distressed about presidential appointments to the NLRB. He

²²See Appendix page: A-IV.b, Tim McConville, "Legislative Remedy," Panel discussion covered by author's notes and personal contacts.

was pleased that Rosemary Collyer had left as General Counsel.²³ This should give the NRTW a chance to lobby for a more acceptable NLRB member.

Reed Larson reported some cooperative exchanges with Elizabeth Dole, former Labor Secretary, but he does not anticipate that Lynn Martin, the new Cabinet member, will protect the non-union employees unless NRTW pressure is profound. Larson stated that he will offer "direct and decisive" steps to be taken by Martin. He insists that "the Labor Department needs to closely monitor union spending." Finally, he intends to make sure that ". . . union officials obey the Supreme Court's Beck decision."²⁴

Keynote: Voluntary Unionism

The keynote speaker for the California RTW Conference in February, 1989, was the 40th District Assemblyman, Chris Cox. Formerly a top aide in the Reagan White House, he is an outspoken proponent for voluntary unionism. Cox encouraged everyone to read Brooks Jackson's book, Honest Graft, stating the example that big money can start with \$16.48. This small amount, taken from Annie Lee Hudson, sparked the litigation which became a landmark decision.

²³See Appendix page: A-IV.b, Karl Gallant, "Legislative Remedy."

²⁴See Appendix page: A-IV.f.1-2, "Members Urge Federal Beck Enforcement." National Right to Work Newsletter 37, No. 5, (June 1991.)

"Why is this important?" asked Cox. "Because unions have become huge contributors of soft money. Voluntary unionism can be an advantage," but he pointed out that forced "unionism can be abusive!"²⁵

Competition for Policy Control

Interest groups are in competition to influence and control policy. As an example, Reed Larson rallied his California Right to Work supporters by applauding their efforts and showing them a map of a hundred legal cases: "If the Foundation's supporters are as generous as they've been in the past, we should be able to take the battle as far as necessary to protect the teachers' rights."²⁶

Combining donations and membership dues with active participation, the NRTW has future plans to impact law-making, but at this time that appears to be a fairly low priority, since it is a slow process. However, an example of some adversity did hit Assemblyman Tom Hayden, Chairman of the Labor and Employment Committee. AB-1100, designed to become the Financial Core Workers Fair Share Dues Act of 1989, was the issue. Hayden opposed the bill, which would allow employees to refrain from joining unions; prohibit

²⁵Christopher Cox, "Keynote Address," Speech delivered at the NRTW Conference, Sacramento, CA, 18 February 1989, author's notes.

²⁶See Appendix page: A-IV.g.1-2, Right to Work Legal Action in California, (May, 1990.)

charges not directly related to collective bargaining; and provide for union dues audits. Writing to Hayden, Charlton Heston declared, "I'm told that your committee will vote this coming Wednesday on the merits of AB-1100." Heston urged an "Aye vote." His letter continued, "How could any American vote against legislation which simply requires that workers be informed about their U. S. Supreme Court protections?"²⁷

The vote was postponed, as Mark McIntire, NRTW activist, explained, (because) "Assembly Speaker Willie Brown removed two Republicans from the Labor Committee scheduled to vote on AB-1100 this morning. Had we proceeded with the hearing and vote," he stated in his memo to Reed Larson, "AB-1100 would have died forever."²⁸

Legislative sessions are always robust with activity. Some bills die in committees, while other bills are born. With perseverance, AB-510, the Faculty Forced Dues Bill, aimed at university faculty and involving agency shop provisions, passed both houses to reach Deukmejian's desk. Since the California budget was a concern, there were reports that employees' rights might be a political trade-off.

²⁷See Appendix page: A-IV.h, Charlton Heston letter to Tom Hayden, (8 May 1989.)

²⁸See Appendix page: A-IV.i, Financial Core Foundation, Fax memo, (May 10, 1989.)

However, pro-RTW "loyalists kept the heat on the governor to use his veto stamp." He did, with the message, "This bill is unnecessary There is simply no need to compel employees to pay dues to the union if they do not wish to join it."²⁹

Deukmejian gave up his seat, but the Republicans kept the office filled with Pete Wilson. Sponsored by Robert Campbell, Democrat, AB-128 appeared in the legislature and is currently pending passage at this writing. California Assembly Speaker Willie Brown says, " . . . it will never fly," because it attempts to reconstruct unions.³⁰

Ed Foglia of CTA stated that Governor Wilson's suggested amendments of AB-128 will gain support from troubled school districts who are willing to forfeit union influence for money bailouts. Wilson asks for changes including a suspension of collective bargaining (allowing teacher layoffs or freezes) to help solve the state's fiscal crisis, or a teacher salary freeze, before state money is used to bail out insolvent districts.³¹

²⁹See Appendix page: A-IV.j, National Right to Work Newsletter 36, No. 9, (December 1990/January 1991), 4.

³⁰Herbert A. Sample, "Wilson: Suspend School District's Worker Contracts," The Sacramento Bee. (February 6, 1991), AB.

³¹Ibid., AB.

Wilson stated that union leaders are " . . . attempting a massive pay grab" in a year of budget crisis. He went on to take notice of a television-commercial campaign featuring a 10-year-old girl worrying about losing her favorite teacher. William Endicott reports that the union campaign to keep teachers out of the budget-cutting structure was paid for by an assessment of \$12 from each member. Wilson's reply: "The real threat to that little girl is our state's ballooning deficit It mortgages her future and threatens to deny her family essential services."³²

If AB-128 does not include Wilson's suggested changes, he can threaten to veto it. This power is often enough to bring about compromise, but even this will not end the conflict, for many more deals will be structured and restructured before discord can be reconciled in California.

When pressure mounts, interest groups select sides. It is an assured prediction that compromises will be made, for the veto is strong medicine. However, no record will be kept of conversations, deals and pressures placed on the lawmakers. Later, political scientists will be hard pressed to prove who did what, why, and who 'caused' the ultimate 'effect.' History will record the outcome.

³²William Endicott, "Wilson Fires Broadside at Teacher Union," The Sacramento Bee, (Sunday, February 24, 1991), A3.

Bargaining Agents

Albert Shanker of the AFT explains the union position, and why teachers should pay agency shop fees:

" . . . a union chosen to be a bargaining agent must negotiate salaries, pensions, holidays, and other conditions of employment for all. It is illegal to negotiate for members only."³³

Shanker's concerns are reasonable. The unanswered question is: when non-union teachers made a request to lift this burden, why didn't the union agree?

Plausibly, a union would become weakened if any choice about joining or not joining is given to non-union teachers. Incomplete research shows that union membership drops between six percent and fifteen percent with right-to-work laws, and when a concession is made for non-membership. Negotiation costs, however, "remain the same, regardless."³⁴

Every collective bargaining situation must operate under rules determined by state law, the NLRB, and judicial interpretation.³⁵ The implications are enough to stagger any social scientist: one book devoted to analyzing these research efforts lists over a thousand studies, noted Holley

³³Holley, 338.

³⁴James W. Kuhn, "Right-To-Work Laws: Symbols or Substance," Industrial and Labor Relations Review 14 (July 1961): 592-593, quoted in Holley, 341.

³⁵Ibid., 182.

and Jennings.³⁶ They also quoted George Constantino, who states that the collective bargaining process is " . . . little known and widely misunderstood."³⁷

What, then, should the unions do? They conceivably will lose power and potency if they offer freedom of choice, but their rosters would still expect the same strength and commitment in bargaining. For organizations, any weakening of domination is unacceptable when it comes to representing members. But the question remains: How can non-member teachers be forced to pay dues to promote ideological causes and involve themselves in a negotiation process against their own choosing? This appears to violate the unanimous court ruling which has been interpreted to establish individual rights of choice.

Such issues are neither simple nor one-sided, yet without an establishment of policies which the country can proudly sanction, bargaining agents and non-members will remain in conflict and perpetually cycle within a system of political interactions.

³⁶Jeffrey Z. Rubin and Bert Brown, The Social Psychology of Bargaining, (New York: Harcourt Brace Jovanovich, 1975). See also, Milton Derber, Research in Labor Problems in the United States, (New York: Random House, 1967), 301-341, quoted in Holley, 192.

³⁷George E. Constantino Jr., "Defining Line and Staff Roles in Collective Bargaining," Personnel Journal 58 (October 1979): 689, quoted in Holley, 164.

CHAPTER V

CONCLUSION

"The legal system does not march to a separate drummer. It is a part of the social order . . . law follows social change and adapts to it . . . courts are part of our system of control, geared to our needs and traditions . . . rules hold society together."¹

Throughout this thesis the reader has been led down the path of interest group conflict. As an example of the imperfect cycle of political procedures, teachers have been featured. The teachers' union, in general terms, subjected non-union teachers to compulsory dues to generate revenue for collective bargaining and other related expenses. The latter objected to such coercive tactics and turned to litigation to establish, in most cases, their right to work without enforced membership. However, their fair share of collective bargaining expenditures have been legally designated to be paid. Unfortunately, verifiable costs have not yet been determined, and are not obtainable, so there is a remaining disparity in financial reckoning. Agency shop

¹Lawrence M. Friedman, American Law: An Introduction, (New York, Norton, 1984), 256-257.

agreements between employers and unions often cause conflict for non-organized employees, as the rules may be unclear and/or unacceptable.

Litigants in several Supreme Court cases Abood, Ellis, Hudson and Beck were not able to establish a legal procedure acceptable to all parties concerned. Messages of intent, however, which were in the Supreme Court's unanimous decision on Hudson have been strong: unorganized employees are to be protected; unions must open their books to establish proven costs for collective bargaining negotiations. Following, in 1991, the Lehnert vs. Ferris Faculty Association case has designated some costs as inappropriate for calculating fees.²

The PERB has set policies agreeable to labor's lobbying demands, even though the NRTWLDF protests. Both organizations differ historically and currently. The union is well established, broad-based, with a steady financial-dues structure, while the NRTW is less stable, singular in purpose, with funds coming from voluntarily collected donations. Both have used litigation as a political tool, but find it insufficient when used alone for societal acceptance. Other avenues of influence are necessary when the total populace is part of the implementation and enforcement procedure. Labor leadership achieved political

²See Appendix page: A-I.d. Blum.

potency with the right to strike and to organize, and is now in the process of protecting its turf, as the NRTW influence, power and legitimacy increases.

In 1980, a grassroots organization, the San Jose Teachers' Association, sued non-member teachers for back dues in Santa Clara County small claims courts. These cases were dropped, since the San Jose Unified School District did not have union membership as a condition of employment. After a bitter strike and bankruptcy, the district agreed in negotiations to allow agency shop. New litigation came before the California Supreme Court, which ruled in favor of the PERB as having jurisdiction over the controversy. The NRTWLDF represented non-union teachers in SJTA v. Abernathy., which went on appeal to the U. S. Supreme Court, but was sent back on the basis of the Hudson case decision, to be vacated with cost.

Since the PERB was still interpreting the law, nothing had changed. In protest the NRTW sued the PERB, and won. This cycle of events is typical of local political action, which rotates and interacts with state and national agencies. The First and Fourteenth Amendments of the Constitution remain viable for both arguments: equal protection; deprivation of liberty and property, and the right to petition for a redress of grievances. Manipulations within the legislature and executive branches become evident in

such spirals for issue resolution. The politics of litigation is also impure--the courts react to pressure. Any tactic imaginable may be created by either side in order to win friends and influence the citizenry, for this democratic process cycles until there is acceptance, implementation, and enforcement.

Unorganized teachers have been labeled as "free riders" who do not pay their fair share. The CEAFU has asked to be allowed to negotiate for themselves, but the employee organizations have refused to drop them from the bargaining process. The CTA and the AFT do not allow any choice in agency shop agreements. Teachers must pay a fee to these organizations. Unions lobby aggressively to maintain this organizational structure. This is a paradox, since they also complain of the burden. There is evidence, however, that unions lose measurable power by informing employees of their right not to join. The media has not picked up on this competitive struggle. Broadcasting agents are not abundantly available, and there has not been an open forum on this issue.

This system of government encourages groups, interested persons, and their generated debates. David Ricci quotes Joseph Schumpeter: " . . . the democratic method is that institutional arrangement for arriving at political

decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote."³

The current struggle is broader than the free-rider conflict. Understandably, the union fears losing an authoritative role in governmental, economic and educational negotiations. Maintaining membership and a flow of dues money gives labor a real sense of strength, one consistent with the closed-loop theory of politics. Such a system tends to maintain power, once acquired, but needs to persuade agencies and legislation favorably to preserve its existing structure. This hierarchy becomes elite, extending tenure directly and indirectly and manipulating circumstances to maintain its position.⁴

The union leaders may also gather strength by getting mutual support from other group heads; a process of collusion between chieftains at the top. This helps sustain the organization.⁵

While individuals in authority positions do not necessarily agree, philosophically, they must cooperate to influence a broad segment of government and the public. This process is often subtle, and "circular in its flow of

³David M. Ricci, Community Power and Democratic Theory. (New York: Random, 1971), 153.

⁴Ibid., 172-173.

⁵Ibid., 38-39.

power: a closed-loop,"⁶ so that the existing leadership remains.

Historically, non-union employees were not considered a threat to the union structure, but in the last 30 years they have formed an entrepreneurial-association through the NRTW organization, which gained its power and strength through litigation. To grow in clout, and to affect policy, the NRTW must gain media attention through a crisis-issue, for it does not possess any legitimate position within the bureaucracy, as the union does. However, legal action for individual protections could, with the Supreme Court's affirmation, "sow a whirlwind" of change.

While the Court can declare, the Congress can enact, and the President can announce, it is not until the people accept, that a democratic policy becomes meaningful, and can be established. Robert Bork said it eloquently:

Our freedoms do not ultimately depend upon the pronouncements of judges sitting in a row. They depend upon their acceptance by the American people, and a major factor in that acceptance is the belief that these liberties are inseparable from the founding of the nation.⁷

The controversy under discussion here appears to fit the Madison Dilemma, which Bork explains as " . . . the

⁶Ibid., 172.

⁷Robert H. Bork, The Tempting of America: The Political Seduction of the Law (New York: Free Press/Macmillan, 1990), 353.

freedom of the majority to govern and the freedom of the individual not to be governed remains forever in tension. The resolution of the dilemma must be achieved anew in every case." The search is never-ending for the correct balance.⁸

To restate the thesis: Interest group litigation is dependent on a political cycle for acceptance, implementation and enforcement. This has not changed, constitutionally, for this is a government of citizens; they work to resolve conflict through a system of checks and balances. Together citizens formulate a center of gravity, or an equilibrium, which becomes the will of the nation.

⁸Ibid., 139-140.

WORKS CITED

WORKS CITED

- Argyle, Nolan J. "The Impact of Collective Bargaining on Public-School Governance." Public Policy 28, No. 1 (Winter, 1980): 139-141.
- Austin, Donna. Letter to L. Burna and the Board of Education. 25 March 1981.
- Austin, Donna. Telephone interview with author, 5 March 1989.
- Barry, Brian. Political Argument. New York: Humanities, 1965.
- Batchelder, Dennis R. California Memorandum. Sacramento, CA: PERB, 29 June 1988.
- Bauer, Raymond and Kenneth Gergen, eds. The Study of Policy Formation. New York: Free Press, 1968.
- Beck, Bob. Telephone Interview with author, 5 March 1989.
- Becker, Gary S. "A Theory of Competition Among Pressure Groups for Political Influence." The Quarterly Journal of Economics XCVIII, No. 3 (August, 1983): 371-379.
- Bentley, Arthur F. The Process of Government, Edited by Peter H. Odegard. Cambridge: The Belknap Press of Harvard University Press, 1967.
- Berry, Jeffrey M. The Interest Group Society. Boston: Little, Brown, 1984.
- Blaylock, Bill. "Vasconcellos: Talking Tough." California School Board Journal (July 1987): 329.
- Bloom, Stephen G. "S.F. Slowly Losing its Union Label." Sacramento Bee, 5 August 1990: 1.
- Blum, Debra E. "Both sides See Gain in Court's Decision on Union Fees." Chronicle of Higher Education. (5 June 1991): A11.

- Blum, Debra E. "Supreme Court Case Could Define How Unions Use Professors' Dues." Chronicle of Higher Education. (14 November, 1990): A16.
- Bork, Robert H. The Tempting of America: The Political Seduction of the Law. New York: Free Press/Macmillan, 1990.
- Brisbin, Richard A. "The Conservatism of Antonin Scalia." Political Science Quarterly 105 (Spring 1990): 1-29.
- Bryant, David T. Staff Attorney's Letter, NRTWLDF, Inc. 22 March, 1989.
- CEAFU Pamphlet. "Agency Shop."
- California Right To Work Conference. Program. Sacramento, CA: 18 February 1989. Author's notes and personal contacts.
- Cobb, Roger W. and Charles D. Elder. Participation in American Politics: The Dynamics of Agenda-Building. Boston: Allyn and Bacon, 1972.
- Colon, Ed. "School District and Teachers at Odds." News-Review, Inyokern/Ridgecrest, CA: 15 January 1987: 1.
- Concerned Educators Against Forced Unionism (A Division of the NRTW Committee.) Pamphlet. 8001 Braddock Rd., Springfield, VA: n.d.
- Constantino, George E., Jr. "Defining Line and Staff Roles in Collective Bargaining." Personnel Journal 58 (October, 1979): 689.
- Costain, W. Douglas and Anne N. Costain. "Interest Groups as Policy Aggregators in the Legislative Process." Polity XIV, No. 2 (Winter, 1981): 255.
- Cox, Christopher, U. S. Rep., California Right To Work Conference Speech. Author's notes. 18 February 1989.
- Cupertino Courier. 36, No. 12. 25 March 1981. "Why this Teacher Fought and Beat Her Union in Court."
- Dahl, Robert. Who Governs? Democracy and Power in an American City. New Haven: Yale University Press, 1961.
- Degler, Carl N. "The Workers' Response." Abridged in Vol. II of Taking Sides: Clashing Views on Controversial

Issues in American History. 2d ed., ed. Eugene Kuzirian and Larry Madaras, 70-72. Guilford CT: Dushkin, 1987.

Easton, David. The Political System: An Inquiry Into the State of Political Science, 2d ed. New York: Knopf, 1970.

Endicott, William. "Wilson Fires Broadside at Teacher Union." Sacramento Bee. 24 February 1991: A3.

The Federalist Papers, No. 10. ed. Roy P. Fairfield. Garden City, NY: Doubleday, 1961.

Financial Core Foundation. Fax memo. (10 May 1989).

Fisher, Louis. Constitutional Dialogues: Interpretation as Political Process. Princeton, NJ: Princeton University Press, 1988.

Foglia, Ed. "Teacher Views." Sacramento Bee 20 September 1988. (Paid Advertisement.)

Forsythe, David P. and Susan Welch. "Joining and Supporting Public Interest Groups." The Western Political Quarterly 36 (Sept. 1983): 387-397.

Friedman, Lawrence M. American Law: An Introduction. New York: Norton, 1984.

Gallant, Karl. California Right To Work Conference Speech. Sacramento, CA: 18 February 1989. Author's notes.

Gilbert, Robert G. "John F. Kennedy and the Civil Rights for Black Americans." Presidential Studies Quarterly XII, No. 3 (Summer, 1982): 386.

Grady, Robert C. "Judicial Democracy and Democratic Values: An Evaluation of Lowi's Alternatives to Interest Group Liberalism." Polity XVI (Spring, 1984): 404-415.

Heard, Alexander, ed. State Legislatures in American Politics. Englewood Cliffs, NJ: Prentice-Hall, 1966.

Heston, Charlton. Letter to Tom Hayden, 8 May 1989.

Hilbert, L. Acting President, Letter from SJTA, 23 October 1980.

- Hitchner, Dell Gillette and William Henry Harbold. Modern Government. 3d ed. New York: Dodd Mead, 1975.
- Hoeber, T. R. and C. M. Price, ed. California Government and Politics Annual: 1988-1989. Sacramento: California Journal, Inc., 1988.
- Houx, Mary A. Interview by author. 9 November 1988.
- Holley, William H., Jr. and Kenneth M. Jennings. The Labor Relations Process, 2d ed. Chicago: Dryden, 1984.
- Janda, Kenneth, Jeffrey M. Berry, and Jerry Goldman. The Challenge of Democracy: Government in America, 2d ed. Boston: Houghton Mifflin, 1989.
- Kuhn, James W. "Right-To-Work laws: Symbols or Substance." Industrial and Labor Relations Review 14 (July 1961): 592-593.
- Kuzirian, Eugene and Larry Madaras, ed. Taking Sides: Clashing Views on Controversial Issues in American History. Vol. II. 2d ed. Guilford CT: Dushkin, 1987.
- Larson, Reed. California Right To Work Conference Speech. Sacramento, CA: 18 February 1989. Author's notes.
- Levinson, Sanford. Constitutional Faith. Princeton, NJ: Princeton University Press, 1988.
- Luttbeg, Norman R. and Harmon Zeigler. "An Assessment of Cohesion." The American Political Science Review LX, No. 3 (Sept., 1966): 655-666.
- McConville, Tim. California Right to Work Conference Speech. Sacramento, CA: 18 February 1989. Author's notes and personal contact.
- McCool, Daniel. "Political Viability of Subgovernments." Political Science Quarterly. (Summer 1990): 289.
- McIntire, M. Fax Memo to Larson, 10 May, 1989.
- Matthews, Christopher. Hardball: How Politics is Played -- Told by One Who Knows the Game. New York: Summit Books, 1988.
- Meltzer, Gloria. Interview by author. 11 September 1988.

- Murphy, Walter F. and C. Herman Pritchett. Courts, Judges and Politics: An Introduction to the Judicial Process. New York: Random, 1979.
- Murray, Charles. In Pursuit of Happiness and Good Government. New York: Simon & Schuster, 1988.
- National Right To Work: NRTW Conference Program, Sacramento, CA. 18 February, 1989.
- National Right To Work: Newsletter 35, No. 7. 3 July 1988.
- National Right To Work: Newsletter 36, No. 9. December 1990/January 1991: 4.
- National Right To Work: Newsletter 37, No. 5. June 1991.
- National Right To Work: Questions and Answers. (GI 521). December 1989.
- O'Connor, Karen and Lee Epstein. "Amicus Curiae Participation in U.S. Supreme Court Litigation? An Appraisal of Hakman's 'Folklore'." Law and Society Review 16, No. 2 (1981-82): 311-312.
- Olson, Mancur, Jr. The Logic of Collective Action. Cambridge: Harvard, 1965.
- Orren, Karen. "Standing to Sue: Interest Group Conflict in Federal Courts." The American Political Science Review LXX, No. 3 (September 1976): 733.
- Outten, Wayne N. and Noah A. Kinigstein. The Rights of Employees: The Basic ACLU Guide to Employees' Rights. New York: Bantam, 1983.
- Rehnquist, William H. The Supreme Court: How It Was, How It Is. New York: Quill/William Morrow, 1987.
- Ricci, David M. Community Power and Democratic Theory. New York: Random, 1971.
- Right To Work Legal Action In California. May 1990.
- Roche, John P. and Murry S. Stedman. The Dynamics of Democratic Government. New York: McGraw-Hill, 1954.
- Ross, Diane. "Agency Fees -- Where Do We Stand." California Teachers' Association: Action. (10/88).

- Ross, Michael J. California: Its Government and Politics, 3d ed. Pacific Grove, CA: Brooks/Cole, 1988.
- Rubin, David and Steven G. House. The Rights of Teachers: The Basic Guide to Teachers' Constitutional Rights, rev. ed. New York: Bantam, 1983.
- Rubin, Jeffrey Z. and Bert Brown, The Social Psychology of Bargaining. New York: Harcourt Brace Jovanovich, 1975.
- Sample, Herbert A. "Wilson Fires Broadside at Teacher Union." The Sacramento Bee (Sunday, 24 February, 1991): A3.
- Schattschneider, E. E. The Semisovereign People. Hensdale, IL: Dryden Press, 1975.
- Scheidt, Bruce. "Union Power." California Journal (July, 1987): 326-330.
- Scheidt, B. "Teachers Unions: Marriage or Mayhem." California Journal (July, 1987): 329.
- Schrag, Peter. "Declining School Boards." Sacramento Bee, 16 December 1987.
- Seff, M. K. "Teacher is a Scab." California Today: San Jose Mercury News 3 May, 1981: 8-14.
- Seigler, Richard. "Why Deukmejian Froze out Bill Honig?" California Government and Politics Annual: 1988-1989. ed. T. R. Hoeber and C. M. Price. Sacramento, CA: California Journal, Inc., 1988: 103-104.
- Taylor, George W. "Public Employment: Strikes or Procedures?" Industrial and Labor Relations Review 20 (July 1967).
- Tice, Clay, Jr. Letter to Zumbrun, 10 March 1989.
- Tolly, Howard, Jr. "Interest Group Litigation to Enforce Human Rights." Political Science Quarterly 105, No. 4 (Winter, 1990-1991): 638.
- Vieira, Edwin. California Right To Work Convention, Sacramento, CA: 18 February, 1989. Author's notes and personal contact.

Walker, Jack L. "The Origins and Maintenance of Interest Groups in America." The American Political Review 77 (1983): 390.

Wall Street Journal. "High Court Rules on Union Fees by Nonmembers." 5 March 1986: 6.

Wasby, Stephen L. "Interest Groups in Court: Race Relations Litigation." In Interest Group Politics, eds. A. J. Cigler and B. A. Loomis. Washington: CQ Press, 1983.

Wilson, James Q. American Government: Institutions and Policies, 4th ed. Lexington MS: Heath, 1989.

World Research INK 3, No. 5. San Diego, CA: World Research, Inc.

Wurman, Richard Saul. Information Anxiety. New York: Doubleday, 1989.

Zinn, Howard. "A People's History of the United States: Socialist Challenge." in Taking Sides. Eugene Kuzirian and Larry Madaras, ed. Guilford CT: Dushkin, 1987. 80-82.

Zumbrun, Ronald A. Letter to Reed Larson, Pacific Legal Foundation. 7 December 1988.

APPENDIX

SAN JOSE TEACHERS ASSOCIATION

2476 Almaden Expressway
San Jose, California 95125

(408) 287-0411

October 23, 1980

Dear Professional Colleague:

Last year the bargaining unit overwhelmingly voted the implementation of Article 7500 of the Agreement, (all employees in the SJTA/CTA/NEA bargaining unit must either join the Association or pay a service fee equal to the membership dues of the Association).

I encourage you to fill out the enclosed membership application now and return it to the Association office through the "pony" before October 31st. Dues for 1980-81 are \$279.00 (SJTA \$100, CTA \$134 and NEA \$45); payroll deductions are \$34.87 per month until the end of the year.

Since you will be required by contract to pay the service fee equal to Association dues, why not become an active member in the bargaining unit now? Your active participation helps:

1. Protect your professional rights,
2. Meet your professional needs,
3. Determine Association goals, and
4. Guide Association action.

Become a fully-working member of your professional organization - join your fellow teachers today by returning the enclosed membership application.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lee Hilbert'. The signature is fluid and cursive, with the first name 'Lee' being more prominent.

Lee Hilbert
Acting President

P.S. If you choose not to use payroll deduction, you may pay the full amount of \$279.00 by check no later than October 31st.

March 25, 1981

To Lillian Barna and the Board of Education:

Last February 5th, I was taken to Small Claims Court with four other teachers for not joining or paying the full Agency fee of \$279. I have the philosophical belief that all Americans have the constitutional right of free association, that is the right to join or not join an organization. It took many hours of research and preparation as well as great moral courage to face an institution as strong as our exclusive bargaining agent SJTA, CTA, NEA. The union told us we had no choice, we had no right not to pay and that they would get even with us if we tried. Forty six more teachers were summoned for hearings at a later date. We were served our summons by fellow teachers at school and very often during school time. When asked why this was being done in this manner, one teacher who served the summons responded that it was strictly for harrassment. By writing letters, threatening to serve summons, the union whittled the 105 teachers that were non-payers down to 76. Now they realize with our victory in court, they will lose not only our fees but those of the teachers who are waiting to unjoin in June. The union's only alternative is either a class action suit or to bargain for Agency shop, that is pay the dues or be fired. Class action suits are costly and they know we are prepared and represented.

The burden of our fate rests with the elected Board of Education for San Jose Unified. I know you must represent the good of all the people in all areas. Will you allow the union the power to hire and fire teachers based on membership or dues payments rather than on the teachers' qualifications, classroom performance and years of experience? Will you jeopardize our academic freedom and quality education as well as teachers' personal freedom?

- 2 -

Remember the courage of our forefathers who preserved their ideals of freedom of speech (without the threat of a grievance filed), freedom of association (without having to go through a bargaining agent), and the right to Equal Protection (being represented equally regardless of membership), in the Bill of Rights. Free choice is American. I urge you to reject agency shop in your negotiations now and in the future.

From teachers who won't join, who won't pay, and who won't quit.

Donna Austin
5th & 6th Grade Teacher

Pat Haid
Primary Teacher of the Deaf

Mary O'Connor
Reading Specialist

Cupertino

Vol. 35, No. 12
Wednesday, March 25, 1981

Courier

Serving the community since 1952

Donna Austin won her fight.

Amy Huntton

Why this teacher fought and beat her union in court

Donna Austin of Cupertino doesn't like to be forced to do anything.

That includes joining the union in the San Jose Unified School District where the 41-year-old Austin has taught at Hester Elementary School the past 12 years.

Austin took the 1,640-member San Jose Teacher's Association to small claims court last fall when it tried to "force" her to pay \$279 in union membership dues.

"I did not like the way they were forcing me to join," Austin said of her motives for going to court.

In a ruling that could have repercussions for other teacher's unions in the area, the small claims court ruled just recently that Austin doesn't have to pay up.

"I'm very happy with the ruling," Austin beamed.

Brian McKenna is very angry.

He is executive director of the San Jose Teachers Association and calls the ruling in Austin's favor a "gross miscarriage of justice."

McKenna said the union is so perturbed by the Austin ruling that it is currently bargaining with the school district for a contract that would make union dues mandatory. Period.

During the course of the court case, McKenna and Austin apparently had some hard words. Austin said the ruling left the excitable McKenna "foaming at the mouth."

"I am not foaming at the mouth," McKenna said bitterly, adding that Austin has "escaped for this year only" the paying of dues.

He noted that the union ends up benefitting all teachers whether they join or not because the contracts

(Continued on Page 2)

She fought union

(Continued from Page 1)

that are hammered out apply to all.

McKenna accused Austin of taking the benefits of the union "and she doesn't contributed one red cent."

There were about 50 other teachers who had challenged the dues payment. Austin said she kind of carried the torch in the matter.

She sat out the 11-day strike last fall. She didn't want to hurt her students.

"There must be some other way" for teachers to succeed at the bargaining table, Austin sighed.

June 5, 1991 • THE CHRONICLE OF HIGHER ED.

Personal & Professional

Both Sides See Gain in Court's Decision on Union Fees

At issue is allocation of money
paid by non-union employees

By DEBRA E. SLUM

WASHINGTON

Both sides claimed a victory last week after a deeply divided Supreme Court ruled in a case that had been expected to determine how professors' union fees should be allocated among national unions and their local affiliates.

The 5-4 decision, with different justices concurring and dissenting on various parts, came in the case, *Lehnert v. Ferris Faculty Association*.

The ruling makes it easier for non-union public employees to withhold some union fees from unions that represent them in collective bargaining. But at the same time, the Court held that fees from non-union employees may be used for some activities not directly related to collective bargaining.

Justice Scalia Dissents

Writing for the Court, Justice Harry A. Blackmun said unions could not use money from fees paid by a non-union member to finance political lobbying, public-relations efforts, or litigation that does not concern the individual's bargaining unit. But he gave some leeway to state and national unions to use the money for certain collective-bargaining activities that do not directly benefit the objecting employee's bargaining unit.

In a dissenting opinion, Justice Antonin Scalia said non-union members should be forced to pay only for "the costs of performing the union's statutory duties as exclusive bargaining agent."

The decision came in an appeal by six

Continued on Page A14

Both Sides See Gain in Court Ruling

Continued From Page A11

faculty members from Ferris State University who sued the university in 1978, claiming that paying a mandatory union fee had helped to finance activities unrelated to contract negotiations and violated their rights to free speech and due process. The professors chose not to join their campus faculty union, which is affiliated with the National Education Association, but they were still included in the faculty collective-bargaining unit. Under the union contract, they had to pay a special fee in lieu of union dues.

Union Generally Pleased

Robert H. Chanin, general counsel for the N.E.A., argued for the union during the Supreme Court hearing last fall. He said last week that while the decision was a "mixed bag," the union was generally pleased. On a key issue—whether dissenters must share in

the cost of maintaining the national union as a resource for the local unions—the Court came down for the union, he said.

But Raymond J. LaJeunesse, Jr., a lawyer for the National Right to Work Legal Defense Foundation, who represented the professors, said the decision represented a significant victory for union objectors. "In calculating compulsory fees for non-union members in the future, unions are going to have to exclude a great many activities," he said. "This is exactly what the professors were fighting for—the preservation of their First Amendment rights."

The recent decision refines a 14-year-old high-court ruling that affirmed the right of public employees to withhold any portion of their union fees used for activities not related to collective bargaining. The same right was extended to private-sector employees in 1988. ■

NATIONAL RIGHT TO WORK NEWSLETTER

VOLUME 35, NUMBER 7

JULY 3, 1989

Committee Backs New 'Political Rights Act'; HR 2589 Enforces High Court's *Beck* Ruling

Newly introduced legislation that would give employees the facts regarding their union-membership rights and would make it easier for them to exercise their rights to challenge illegal union political spending is receiving the enthusiastic support of the National Right to Work Committee.

HR 2589, dubbed "The Workers Political Rights Act" by its patron, U.S. Rep. Thomas DeLay of Texas, was unveiled at a June 8, Capitol Hill news conference during which Committee President Reed Larson hailed the bill as "a key element of a major new campaign to implement the Supreme Court's *Beck* decision."

(A separate undertaking, a campaign to inform conscripted workers of their rights under the Supreme Court's ruling in *Communications Workers of America v. Harry Beck*, was kicked off last month in California by the Committee's sister organization, the National Right to Work Legal Defense Foundation. For full coverage, please see page 7.)

In the *Beck* decision, won by Legal Defense Foundation attorneys in June 1988, the Supreme Court ruled that union officials violate their duty of fair representation and the National Labor Relations Act by funneling money seized from dissenting forced-dues payers into activities—chiefly partisan politics—unrelated to collective bargaining.

Big Labor Bosses Defy Supreme Court Precedents

This decision, in tandem with previous Supreme Court rulings won by Right to Work attorneys, is a huge stride forward for the Right to Work movement because it strikes at the heart of the forced-dues-fed campaign apparatus

Minority Whip Newt Gingrich

At a Capitol Hill news conference, Rep. Thomas DeLay, right, unveiled the "Workers Political Rights Act." HR 2589 was embraced by, among others, House Minority Whip Newt Gingrich.

used by union bosses to buy control of Congress and so many state legislatures.

But as Larson explained during last month's news conference, enactment of HR 2589 is urgently needed because Big Labor's forced-dues politicking abuses continue in defiance of the *Beck* decision—which affects most private-sector workers—and similar Supreme Court rulings affecting public employees and railway

Rep. Tom DeLay

who called on colleagues to cosponsor the measure containing "very, very important" steps to enforce the *Beck* precedent won in the Supreme Court last year by Right to Work attorneys.

and airline workers.

"How is it, one has to ask, that in the face of declining membership figures, union officials have actually solidified their hold in the political arena? The answer, I don't have to tell you, is money, pure and simple."

Forced-dues politicking, Larson said, "is a corrupt practice ... every bit as sor-

See *Beck* page 6

CONTENTS

Mission Accomplished

Jim Wright's departure climaxes year-long
Right to Work campaign 2

Getting the Story Told

Congressmen fume as constituents get the
facts on Hatch Act cave-in 3

Alaska's Climate of Fear

Big Labor's reign of terror takes its toll in
The Last Frontier 4

"It's Your Money"

National campaign launched to inform
employees of their rights 7

Committee Led Charge that KO'd Wright

Confounding so-called experts who predicted Jim Wright would never be dethroned from the House of Representatives' Big Labor-backed hierarchy, Right to Work champions led the stubborn, unyielding investigative charge that forced him to resign in disgrace.

When Wright finally issued his swan song from the well of the House chamber on May 31, left in tatters was the shroud of secrecy that for so long had protected his corrupt financial dealings with mob-dominated union bosses.

Wright was cited for dozens of violations of House rules that even his hand-picked fellow Democrats on the Ethics Committee could not ignore. And as he went down in a blaze of forced-dues-fed corruption, he took with him another union-boss backscratcher, House Majority Whip Tony Coelho (D-Calif.).

Frantic Scramble to Cling To Power Was Lost Cause

Wright had stood second in line to the presidency after a 34-year career of snapping to attention at union bosses' commands and, during the final weeks of spring, he made a frantic attempt to cling to power. At one point, he summoned his fellow union-boss cronies to his defense, posing in the midst of their semicircle for a defiant, hour-long performance before television cameras.

But despite this open blustering and public threats of revenge against parties pressing for a full investigation, Wright's dictatorial reign as House speaker collapsed as anti-coercion forces tenaciously pursued the truth in his illegal forays for union bosses.

"Free-choice activists have done the Right to Work movement and the entire nation a great service," said National Right to Work Committee President Reed Larson. "By daring to stand up to King Jim and insisting that the sun shine on his illicit transactions with union bosses, Right to Work supporters have made it clear there is a price to pay for trampling the rule of law that other Americans abide."

Committee Spearheaded Fight Beginning in July 1988

There were no fewer than five key stages in Right to Work forces' year-long campaign to see justice served in the Wright scandal.

The first came in July 1988, when evidence of wrongdoing surfaced and

(Associated Press photo)

Less than an hour after the House Ethics Committee charged him with 69 ethics violations, then-Speaker Jim Wright sought and received a heavy dose of stroking from his buddies in the

AFL-CIO hierarchy. Rolling out the red carpet at this federation event is Leo Zeferetti, left, chief lobbyist for the union conglomerate's building and construction trades division.

more than 100,000 free-choice activists were urged to issue a knockout blow against Right to Work's most powerful enemy in Congress.

In the weeks that followed, as evidence of illegal activity piled higher and higher, Right to Work loyalists turned up the heat on House members to ensure that partisan political maneuvering would not sweep evidence of impropriety under the rug.

Anti-Whitewash Mailing Drew Howls of Indignation in D.C.

A critical period in the drive to expose Wright's shady transactions came last January, when the Right to Work Committee brought reports of what had become a dawdling, eight-month-old probe back onto television screens and newspapers' front pages.

The Committee drew howls of indignation from the Washington establishment when it responded to news of a possible cover-up with a mailed alert to some 3,000 supporters in the district that is home to Rep. Charles Pashayan (R-Calif.), an Ethics Committee member who almost always follows the dictates of union officials.

Free-choice advocates were called on to urge Pashayan, identified as the central figure in the possible whitewash, to support a motion of censure against Wright.

As news spread of the Committee's alert to Pashayan's constituents, a stream of shrill protests erupted from some of

Big Labor's most obedient lap dogs in Congress. Both the Washington Post and Washington Times newspapers editorialized against the Committee as well.

Wright's grand designs for a relatively quiet escape from the ethics imbroglio went up in smoke, all the same, as Right to Work forces reminded the D.C. establishment there is a political price to pay for sacrificing workers' rights on Big Labor's altar.

Free-choice loyalists, long victimized by Wright's machinations on behalf of his union-boss benefactors, soon began peppering House members with a new wave of letters and postcards seeking full disclosure of the humongous mountain of evidence piling up against Big Labor's most powerful congressional collaborator.

Book Sold Like Hotcakes To Teamsters' Ruling Elite

Among the biggest of the ethics clouds hanging over Wright's head was his involvement in a book publishing scam that allowed the speaker to skirt well-established House rules limiting outside income. The preposterously high royalties he received from publication of his mini-book, "Reflections of a Public Man," made it possible for his union-boss pals to funnel thousands of dollars into his bank account by buying the 117-page "think piece" in bulk.

And buy it they did.

In 1984-85 top bosses of the mob-

See Ethics page 3

third party was hired to "protect" me and left me playing the role of a beggar at the union's back door. I didn't need the union for anything. I stood on my performance.

I wanted them to know that I believe we teach best by example. I had endeavored to be an example to my students. . . . an example of a mature, principled adult. I taught my students to stand tall, to be proud of a job well done, to guard their privacy and their freedoms, to be responsible for their own actions, to care profoundly about the terms upon which their lives are lived, but I could not ask them to look up to me if I allowed myself to be forced to my knees. I told them I could not face my students if I am not true to myself.

CEAFU: What did your experience teach you?

Sciambi: I can't imagine how I would be now were I still working for such an employer under such conditions. The emotional distress is almost indescribable. In retrospect, I would say that I am not sorry for what I tried to do, but until the citizens and parents care enough to spend the time necessary to watch over their public schools, the schools will continue to decline.

CEAFU: What was it you most wanted your students to understand about your resignation?

Sciambi: I wrote a letter to my students when I resigned so that they would know the truth. I always spoke the truth to them and I cared that they would understand my reasons and not be deceived. As I told them then, I believe there are sacred relationships in life and they and I had shared one. The relationship between teacher and student takes on its own very special character that includes caring, friendship, and trust. They deserve to be taught by those who merit their respect. I told them my employer intended to confiscate my wages without my permission and that was the status of a slave. I wanted them to understand that I could not return to them in September and teach them to stand tall as a free man or woman if I could not.

THIS PAMPHLET IS A PUBLICATION OF CONCERNED EDUCATORS AGAINST FORCED UNIONISM (CEAFU)

CEAFU is:

- the education division of the National Right to Work Committee, a non-profit, nonpartisan citizens organization dedicated to the principle that all Americans must have the right but must not be required to join or support a labor union.
- dedicated to preserving educators' freedom of choice by opposing all forms of forced unionism in the academic community, including "exclusive representation" (monopoly bargaining), the "agency shop" (forced union dues), and "maintenance of membership" agreements.
- supported totally by voluntary contributions; we welcome the support of education professionals, parents, students and all citizens who support our single-purpose goals.

For free information,
contact Mrs. Jo Ann Secker, Director:

CONCERNED EDUCATORS AGAINST FORCED UNIONISM

8001 Braddock Road, Suite #500
Springfield, Virginia 22160
(703) 321-8519

"Agency Shop":

*Union dues required,
competence ignored*

"My employer is confiscating my wages without my permission. This is the status of a slave. How can I return to you in September and teach you to stand tall as a free man or woman if I cannot?"

Charleen Sciambi
from a letter to her
students

Charlotte Sciambi, a 13-year veteran California teacher honored in 1983 as the state's best "Foreign Language Teacher of the Year", was fired for refusing to pay union dues in a lump sum in advance or by payroll deduction as demanded by union officials. Mrs. Sciambi successfully appealed her dismissal in the courts, only to be faced with a new school board decision (supported by the California State legislature) to automatically deduct the coercive fees from her paycheck and give them directly to the union. She resigned from teaching rather than be "reduced to playing the role of a beggar at the union's back door." The following interview tells her story.

CEAFU: Why did you resign from teaching after 13 highly successful years in the same school system?

Sciambi: I resigned because my employer, the Fremont Unified School District in California, demanded that I support the Fremont Unified District Teachers Association (FUDTA/CTA/NEA) union in order to hold my teaching position. It became apparent that my performance was not the important issue, but rather the compliance with "agency shop." I do not approve of forcing free people to do anything against their will. The basic tenets upon which this nation was founded find that idea abhorrent.

CEAFU: The "agency shop" clause was agreed to by your school board members two years prior to your resignation. Why didn't you resign then?

Sciambi: I did not resign then because I wanted to try to remedy the situation. There is enough Don Quixote in me that I thought that if I worked hard enough, I could convince the school board to delete the forced dues clause from the subse-

quent contract. After two years of making my best effort in that regard, I knew that I was indeed "dreaming the impossible dream and fighting the unbeatable foe." Not only did they negotiate the new contract with "agency shop," but they changed the present contract that had only two and a half months to run so that the union could have my wages confiscated without my permission. I resigned before the signing of the new contract because at that point I had no way to fight the union's demand.

CEAFU: How did you feel when the FUDTA/CTA/NEA union officials demanded that dues be deducted from your paycheck?

Sciambi: I was demoralized. I did not want to believe that my employer had so little regard for me as a human being, as an American citizen, and as an exemplary employee. When I signed my first contract, I made a commitment. I thought in exchange, the other party would give me the atmosphere in which I might become better and better at my work. Instead, they did quite the opposite by agreeing to a compulsory unionism contract. It was the biggest disappointment of my life.

CEAFU: Did you have any reactions, or from your students, their parents, or your fellow teachers when your resignation was made public?

Sciambi: I had many supportive reactions in the form of cards, letters, telephone calls and even invitations to share some time together. My students basically had two messages: they were sorry for themselves that I would not be returning to them for the next school year, but even with that in mind, they were glad for me that I would no longer be enduring the pain and distress of the last two years. Parents and my colleagues were generally depressed by their inability to fend off the political pressures affecting the students. They also conveyed to me a sense of personal loss.

CEAFU: What was the reaction of union officials?

Sciambi: They made a target of me in terms of constant harassing letters. At first they attempted to force an arbitration board on me and then they forced my employer to enact the process of dismissal which ultimately resulted in making me suffer through a court case. The court's decision was in my behalf, but I received the good news at the end of January after I had worried about being fired since the middle of October. By the middle of February, I was aware that the union push for automatic deduction of the forced dues in my district was on the way.

CEAFU: You were named "Outstanding Foreign Language Teacher of 1983" by The California Foreign Language Teaching Association. How do union officials justify their emphasis on payment of union dues rather than quality teaching?

Sciambi: They cannot. In fact, to my knowledge, they have not tried. Union officials totally ignore recognition for achievement. It is a mystery to me that all agencies, even my employer, do not pay much attention to quality teaching. It is ironic that this honor should come to me the year that I resigned. The award was a great honor, one that I never expected to receive. California is a large state. There must be so many fine teachers. Union officials have not spoken a word as to my performance. Would you if you were they? They are hoping that everyone has forgotten about me by now.

CEAFU: What did you tell your board of education when you resigned?

Sciambi: I told them that when I decided to accept their offer of a teaching position, I arrived with my youth, my enthusiasm, my academic training, and my values. I believed that they would keep outside pressures from distracting me in my pursuit of excellence, that they would carry my banner, rejoice with me in my success, and protect me from outside interference. But it seems a

State of California

M E M O R A N D U M

PUBLIC EMPLOYMENT RELATIONS BOARD
Headquarters Office
1031 - 18th Street
Sacramento, CA 95814
June 29, 1988

TO : Members, Public Employment Relations Board

SUBJECT: Proposed Agency Fee Regulations

At the April 27, 1988 public meeting of the Public Employment Relations Board (PERB), the Board directed the PERB Executive Director and Acting General Counsel to meet with PERB parties and to report back to the Board on June 30, 1988 with any recommendations or changes to the proposed agency fee regulations pending before the Board (hereinafter known as the April 27, 1988 version).

We have met informally with representatives of parties that have expressed particular interest in the proposed April 27, 1988 agency fee regulations. We have met and/or discussed these regulations with representatives of the AFL-CIO, Pacific Legal Foundation, National Right to Work Committee, California State Employees Association, California School Employees Association, California Teachers Association, International Brotherhood of Teamsters, and several other professionals in the field of labor-management relations. We have also reviewed the voluminous PERB record of testimony on this subject.

The proposed April 27, 1988 agency fee regulations are strongly opposed by labor organizations. The most commonly voiced complaint is that these regulations, if implemented, would cause severe hardship on existing union agency fee appeal procedures--procedures which labor maintains are in compliance with the requirements set forth in Chicago Teachers Union Local No. 1 v. Hudson (1986). Labor representatives maintain that adoption of the April 27, 1988 agency fee regulations would result in considerable internal union disruption and expense. Numerous other points of disagreement can be found in previous testimony before the Board. Those who traditionally represent agency fee objectors are in general agreement with these pending regulations.

Attached is a draft of yet another version of agency fee regulations (hereinafter known as the June 30, 1988 version). This approach permits labor organizations to continue with their current internal methods of adjudicating agency fee appeals, provided that such internal procedures are fair, impartial, and prompt, as required by Hudson. More precisely, these regulations mandate the agency fee amount; notification; financial disclosure; an agency fee appeal procedure, including set time limits and requirements for a hearing before an impartial decisionmaker; escrowing of disputed agency fee amounts; and finally, the confirmation of the right of an agency fee objector to file an unfair labor practice charge with PERB, but only after the objector has first exhausted the union's internal agency fee appeal procedure.

Board Members
June 29, 1988

As a result of our informal discussion with the various parties, it is our belief that the June 30, 1988 language is far more acceptable to the great majority of PERB parties, both labor and those who traditionally represent agency fee objectors, than the April 27, 1988 regulations. We also believe the June 30, 1988 language meets the Board's statutory responsibilities under Hudson.

RECOMMENDATION

1. Defer action on the proposed April 27, 1988 agency fee regulations pending before the Board.
2. Since all PERB parties have not had the opportunity to review and comment on the proposed June 30, 1988 agency fee regulations, direct the Executive Director to distribute the June 30, 1988 agency fee regulations to all PERB parties for review and invite written comment.
3. Direct the Executive Director to advise the parties that public comment will be taken at the next public meeting and that at this time the Board may adopt either the April 27, 1988 or the June 30, 1988 version and thereby initiate the Administrative Procedures Act process.

Respectfully submitted:

DENNIS R. BATCHELDER
Executive Director

JOHN W. SPITTLER
Acting General Counsel

Attachment

0351E
PWP
jn

NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC.

(established in 1968)

8001 BRADDOCK ROAD • SPRINGFIELD, VIRGINIA 22160 (703) 321-8510

March 22, 1989

Re: Johnson v. PERB, No. 507208

Dear Client:

As you know, your unfair labor practice charge has been sitting before the PERB for quite some time. The PERB has now issued regulations to handle such charges. Unfortunately, they are very hostile to individual employee rights.

Enclosed please find a copy of the above-referenced complaint that we filed on March 2, 1989, less than thirty (30) minutes after the Office of Administrative Law (OAL) approved the notorious PERB agency shop regulations, despite our February 23, 1989 letter of protest, which was summarily rejected. (A copy of our letter to OAL is enclosed for your information.)

As the only defender of Hudson rights for independent, non-union employees, we will do everything in our power to have the courts correct this major injustice. We will continue to keep you informed of our efforts.

If you have any questions or comments, please do not hesitate to contact me at our toll-free number, 1-800-336-3600.

Very truly yours,

David T. Bryant
David T. Bryant
Staff Attorney

DTB:nl
encls.

306 INTEREST GROUPS AND LITIGATION	AMICI BRIEFS IN THE BAKER CASE 307 308 INTEREST GROUPS AND LITIGATION	U.S. National Student Association
IN SUPPORT OF ALLAN BAKER:	Americans for Democratic Action	John Vasconcellos (Democratic member of the California Assembly)
American Federation of Teachers (AFT-CIO)	Asian-American Bar Association of the Greater Bay Area	Marion J. Woods, director of California Dept. of Benefit Payments
American Jewish Committee	Aspirants of Americas (national organization of Puerto Rican educators and students)	Young Women's Christian Association
American Jewish Congress	Association of American Law Schools	OTHERS
American Subcontractors Association	Association of American Medical Colleges	Antioch School of Law—Urge that the case be sent back to lower court for rehearing
Anti-Defamation League of B'nai B'rith	Association of American Educators	Price M. Cobbs and Ephraim Kahn, representing 29 doctors and medical educators—Takes position that Court should not have agreed to hear case because of inadequate lower court record.
Chamber of Commerce of the U.S.A.	Association of Mexican American Educators	Equal Employment Advisory Council—Urge Court to set guidelines for determining to what extent race or sex-conscious employment decisions are constitutional.
Committee on Academic Nondiscrimination and Integrity	Bar Association of San Francisco	National Association of Affirmative Action Officers—Urge that case be sent back to lower court for rehearing.
Conference of Pennsylvania State Police Lodges of the Fraternal Order of Police	Black Law Students Association at U. of California at Berkeley	National Conference of Black Lawyers—Urge that the case be sent back to lower court for rehearing, but if decision is made, should be for U. of California.
Fraternal Order of Police	Black Law Students Union of Yale U. law school	
Council of Supervisors and Administrators of the City of New York	Board of Governors of Rutgers, the State University of New Jersey	
	Children's Defense Fund	
	Cleveland State U. chapter of Black American Law Students Association	
	Columbia University	
	Council on Legal Education Opportunity	
	County of Santa Clara, Cal.	
	Fair Employment Practices Commission of the State of California	
	GI Forum	
	Harvard University	
	Image	
	International Union of Electrical, Radio, and Machine Workers (IUM-UMW)	
	International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW)	
	Japanese American Citizens League	
	Jerome A. Lachner, director of California Dept. of Health	
	La Raza National Lawyers Association	
	Law School Administrators Council	
	Lawyers' Committee for Civil Rights Under Law	
	League of United Latin American Citizens	
	Legal Services Corp.	
	Los Angeles County Bar Association	
	Los Angeles Mecha Central Mexican American Legal Defense and Educational Fund	
	Mexican-American Political Association	
	Minister Legal Defense and Educational Fund	
	National Association for the Advancement of Colored People	
	National Association for Equal Opportunity in Higher Education	
	National Association of Equal Educational Opportunity	
	National Association of Minority Contractors	
	National Bar Association	
	National Council of Churches of Christ in the U.S.A.	
	National Council of La Raza Women	
	National Education Association	
	National Employment Law Project	
	National Fund for Minority Engineering Students	
	National Health Law Program	
	National Lawyers' Guild	
	Order of the Sons of Italy in America	
	Pacific Legal Foundation	
	Polish-American Affairs Council	
	Polish American Congress	
	Polish-American Educators Association	
	Queens Jewish Community Council	
	Ukrainian Congress Committee of America (Chicago Division)	
	Union National	
	Rep. Henry A. Waxman, Democrat of California	
	Young Americans for Freedom	
	IN SUPPORT OF THE UNIVERSITY OF CALIFORNIA:	
	American Association of University Professors	
	American Bar Association	
	American Civil Liberties Union	
	American Civil Liberties Union of Northern California	
	American Civil Liberties Union of Southern California	
	American Coalition of Citizens with Disabilities	
	American Federation of State, County, and Municipal Employees (AFL-CIO)	
	American Indian Bar Association	
	American Indian Law Center	
	American Indian Law Students Association	
	National Advocates Society	
	National Jewish Commission on Law and Public Affairs	
	National Medical and Dental Association	

From: W. F. Murphy and C. H. Pritchett. Courts, Judges and Politics: An Introduction to the Judicial Process. New York: Random, 1979.

Table 1. Amicus Curiae Participation in Supreme Court Cases 1928-1940, 1941-1952, 1953-1966, and 1970-1980

Years	Percentage with Amicus Briefs N=2016	Total Number of Cases
1928-1940	1.6% (3)	181
1941-1952	18.2 (67)	368
1953-1966	23.8 (149)	626
1970-1980	53.4 (449)	841

Source: For the 1928-1966 figures, Hakman (1969: 209-210).

Table 2. Amicus Curiae Participation in Supreme Court Cases 1970-1980

	Percentage With Amicus Briefs N=	Percentage Without Amicus Briefs N=	Total Number of Cases per Category
Unions	87.2% (75)	12.8% (11)	86
Sex Discrimination	77.5 (31)	22.5 (9)	40
Race Discrimination	67.7 (42)	32.3 (20)	62
Free Press	66.7 (16)	33.3 (8)	24
Information Act	63.6 (7)	36.4 (4)	11
Church-State	62.9 (22)	37.1 (13)	35
State-Federal Employees	55.0 (11)	45.0 (9)	20
Military	52.9 (9)	47.1 (8)	17
Indigents	52.5 (32)	47.5 (29)	61
Obscenity	51.6 (16)	48.4 (15)	31
Conscientious Objectors	50.0 (5)	50.0 (5)	10
Elections	48.9 (23)	51.1 (24)	47
Free Speech	44.8 (13)	55.2 (16)	29
Criminal	36.8 (120)	63.2 (206)	326
Others	64.0 (27)	36.0 (15)	42
Totals	53.4 (449)	46.6 (392)	841

Table 3. Amicus Curiae Participation in Supreme Court Cases 1928-1966* and 1970-1980

Case Type	Percentage of Cases With Amicus Briefs, 1928-1966 N=	Percentage of Cases With Amicus Briefs, 1970-1980 N=
Unions	51.2% (41)	87.2% (86)
Free Press	46.8 (32)	66.7 (24)
Race Discrimination	27.3 (157)	67.7 (62)
Church-State	26.8 (67)	62.9 (35)

*Source: For the years 1928-1966, Nathan Hakman (1969: 209-210).

World Research *INK*

Vol. 3, No. 5

A Monthly Publication of World Research, Incorporated
11722 Sorrento Valley Road, San Diego, California 92121
(714) 755-9761

May, 1979

Persona Grata

An Interview with Susan Staub

Mrs. Staub is a graduate of Emory & Henry College, Emory, Virginia, and a former high school speech, English and dramatics teacher. Philosophically committed to the Right to Work principle, she had strenuously objected to the pressure to join the United National Education Association and had refused to join. Mrs. Staub decided the best way she could serve responsible education was to work actively for Right to Work. She resigned her position and joined the staff of the National Right to Work Committee. She has been with the National Committee for ten years in varying capacities and is presently Activities Director, and Director of Concerned Educators Against Forced Unionism.

Barbara Stevens
Patricia Morris

INK: What is the background of the National Right to Work Committee and how did Concerned Educators grow out of that?

STAUB: The National Right to Work Committee was organized in 1955 as a citizens' coalition. It was started as a result of the passage of the Federal Railway Labor Act, which authorized compulsory unionism for railroad employees. Five employees of the railroad formed an ad hoc commit-

tee to oppose the forced unionism provisions. That law, as you may know, provides for the "union shop"—the requirement to join the union after a specified period of time. One of those original railroad employees, Duke Cadwallader, is President Emeritus of

the Committee twenty-five years later. They were all employees and that is important. The National Right to Work Committee has always been an employee-oriented organization.

Since the late sixties, the problem of compulsory unionism has been focused

more and more in the public sector. In the private sector the level of unionization has not significantly increased in about fifteen years. Unions represent only about 21% of the working people in the private sector.

But the problem of compulsory unionism in the public sector didn't come into sharp focus until the late sixties. One of the reasons for this activity was the "unification" drive of the National Education Association (NEA), with its state and local affiliates. In the late sixties, the union promulgated a plan that would require an individual to join the local, state and the national association. Therefore, individuals could not elect to belong to any combination of the three. That in itself doesn't necessarily represent a compulsory unionism situation, since in most states at that time there was no requirement to join or support any of the associations. Many educators, myself included (I was a classroom teacher in the sixties), were members of a local and state, but not the national association. When the NEA started pushing "unification," I was one of the opponents. I saw a very large vested interest in the National Education Association. Up to that time, the NEA had been a relatively dormant, professional or-

ganization of some forty to fifty thousand members, and had not fluctuated that much one way or the other. INK: At that time they weren't involved in lobbying or political action, were they?

STAUB: It was minimal. But following unification in 1970, the NEA president said, "Within ten years I think this organization will control the qualifications for entrance into the profes-

to Work Committee's already well-established education programs, to deal with the problem.

INK: I understand that the NEA now has 1.8 million members.

STAUB: It's probably close to that, but no one seems to know precisely. However, in that 1.8 million, I think it is important to note that they apparently include their retired members, students and categories of

teachers would not be popular, then they refer to themselves as the Association.

INK: They sound like many politicians.

STAUB: They're intensely political. My former school system in Virginia, for example, is a microcosm, I think, of the rest of the country. There, teachers have been members of their association for years. Many of these were local associations that had nothing to do with bargaining. In many states, there are no bargaining laws. Individuals have been members since they started teaching because it was always thought the "professional" thing to do. Many of the educators who have been members of the NEA since the thirties, forties and fifties are appalled at some of the current practices of the organization.

INK: What are the benefits of joining a union such as the NEA? It seems that most of the benefits would be covered as public employees.

STAUB: Our organization doesn't speak to that. But several other organizations do speak to the inappropriateness of mandatory collective bargaining in the public sector. Their argument is that teaching, for example, is service. The basic wages, hours and working conditions of em-

NEA estimated at somewhere between 46 and 52 million dollars a year. That is a big business. I think that one would have to be naive not to assume that many of the goals set in the name of either "education" or "teachers" are, in fact, to the benefit of the perpetuation of the organization itself.

INK: Can you give us some examples of compulsory unionism laws?

STAUB: In the private sector, the federal policy on labor management relations is the National Labor Relations Act or the Wagner Act of 1935. There is no such law governing the public sector, so each state has its own set of laws governing its public sector employees. Statutes may differentiate groups of public employees so that they operate under different structures within the state and no two states are alike.

Compulsory unionism in the private sector is authorized by the National Labor Relations Act. The only prevention for compulsory unionism in the private sector are Right to Work laws, sanctioned by Section 14(b) of the Taft-Hartley amendments to the NLRA. The major public sector unions have been pushing for a similar federal law over the public sector for years. The AFL-CIO entities would

"We're concerned about how persons committed to compulsion are going to teach freedom of choice, voluntarism. It is devastating to our whole concept of academic freedom."

sion, and for the privilege of remaining in the profession." In 1972, President Barrett said, "We are the biggest potential striking force in this country and we are determined to control the direction of education."

The face of the association then changed dramatically. With the establishment and relative growth of the public employee coalition within the AFL-CIO—represented largely by the American Federation of Teachers (AFT) and the American Federation of State, County and Municipal Employees—the drive for monopoly representation privileges shifted to the public sector union officials with some problems not inherent in the private sector. In spite of the union officials' claims to the contrary, most persons do identify a difference between the private and public sectors. And therefore, they recognize serious difficulties in taking the industrial model of mandatory bargaining from the private sector.

The NEA, through its "unification plan," became one of the most serious promulgators of forced unionism.

In 1975, the National Right to Work Committee's board of directors and several educator members of our membership at large, urged us to formulate a program aimed at the problem of compulsory unionism in education. We formed Concerned Educators Against Forced Unionism, a division and an identifiable extension of the National Right

associates.

INK: Why is the NEA so much larger than the AFT?

STAUB: The National Education Association enjoys a very different stature than the American Federation of Teachers, and I believe that's an important factor. The AFT is and always has been a trade union and has always billed itself as such. It is the educators' union in the international order of the AFL-CIO.

On the other hand, the National Education Association was chartered by the Congress over one hundred years ago as the National Education Association of the United States. There are still many teachers today who will tell you that there is a big difference between the "association" and the "union." When one says "union" to them, they think AFT and when one says "association," they view that as an entirely different ideological organization. The National Education Association, however, has been classified by the Internal Revenue Service as a labor union because it does in fact negotiate collective bargaining contracts and agreements and also, by the way, has more compulsory unionism agreements nationwide than the American Federation of Teachers. But its identity as a "professional association" is one that's been used by its officials to its advantage. The organization itself will use either "association" or "union" to its own benefit. If they're talking in an area where a labor union of

"We don't oppose voluntary unionism . . . We believe no one should be discriminated against because of their choice to support or not to support a labor union."

ployment are set by state statute. Therefore, the bargaining process becomes involved not in the traditional terms and conditions of employment, but in questions of educational policy. I think that union officials have misled many educators to believe that they should have the main voice in determination of school policy and use of school funds. I think it's important to differentiate the goals of individual educators, and the goals of the NEA officials.

The NEA was at one time billed as a professional association. But we have to recognize that this is not a benevolent society. That is, it is a large business with membership revenues to

like to extend the National Labor Relations Act to the public sector, thereby, of course, extending the compulsory unionism policy to all the states. The NEA has heretofore said that that model is not appropriate for the public sector and a different set of laws needs to be set up. However, they intend to effect the same compulsory unionism arrangement. And last year, for the first time, the NEA agreed with what has been recognized as the American Federation of Teachers' bill and endorsed the extension of the National Labor Relations Act to the public sector.

INK: Are there any unions in the public or private sec-

tors that have supported non-compulsory unionism?

STAUB: Yes. Several small independent unions—ones which have broken away from the Nationals—deplore compulsion, but they are, unfortunately, in general, in the minority.

INK: So the unions feel they know what's better for labor than labor does?

fusing to pay dues to the American Federation of Teachers.

INK: So you don't receive the benefits, but you pay the dues anyway?

STAUB: You're assuming that there are benefits. An individual may not have what you or someone else consider a totally viable reason for not wanting to join a

down their decision, the union insisted that, since the Court did not strike down "agency shop," the case was over and urged the school board to fire her. Dr. Parks had two choices, she could pay the money and continue to teach or she could not pay and be fired. She decided that she could not pay. She said, "If my students don't learn anything else, maybe they'll learn that some people still stand up for principle." The whole situation has not one thing to do with her merits as a teacher. She was in the middle of a program with her students and had asked if she could stay to finish the program with no pay. The union officials insisted that she be denied even that. She was barred from school grounds.

INK: That seems to show that the interests of the AFT are not necessarily those of quality education.

STAUB: If she had not had the National Right to Work Legal Defense Foundation's assistance, there is no way that she and her fellow teachers could have taken that case through the courts. Unless they're independently wealthy, there is no way that individual educators are going to be able to fight an issue like this on their own. There are just too many delays that the union officials, with an enormous amount of money, can afford to go through, and an individual can't. The NEA and the AFT officials say, "Well, there are only a couple of people who have been fired, it's not a big deal." That's not the point. The point is not the few

to pay. She says, "The Bill of Rights be damned, I'm a slave. I have to pay. I can't quit, and I'm paying something I'm absolutely opposed to. I'm paying a tribute just to keep my job. My quality of service, my length of service, my merit as a teacher does not mean one thing. The bottom line is if I can't pay these union dues, I'm not going to teach." So it comes down to that power to tax, that power to coerce by the private organization, the teachers' union.

INK: Does the NEA have any say in what is being taught in the classroom?

STAUB: We're concerned about how persons committed to compulsion are going to teach freedom of choice, voluntarism. It is devastating to our whole concept of academic freedom. If the NEA can tell an educator not what he teaches necessarily, but whether he teaches at all, that's the ultimate threat to academic freedom.

In some areas, they are influencing curriculum. For example, in Woburn, Massachusetts, the curriculum is selected by a curriculum committee of three teachers and three administrators. That sounds fine. But the three teachers have to be members of the teachers' union and the three administrators have to be members of the administrators' union.

INK: So the bias is definitely toward compulsory unionism?

STAUB: That's one part of what our program addresses. We work with teachers so that they can

"If a labor union can produce the results it says it can, people will join. If they demand compulsion, what are they saying about their union?"

STAUB: It's the activity of the union official, rather than the union member, who seeks to dictate "what's good for all," yes.

Every independent public opinion survey on the subject of forced unionism shows the American public overwhelmingly in opposition to compulsory unionism arrangements. As many as 70% oppose compulsion, including 50% of all the union members surveyed.

INK: I can believe that. I was in a union myself and the only reason I joined that union was because I knew their medical benefits were very good. That was the only reason I took that job.

STAUB: We don't oppose voluntary unionism. But we believe no one should be discriminated against because of his choice to support or not to support a labor union. That choice, either in the public or the private sector, should not be a determinant in getting or keeping a job.

INK: Are there any Right to Work cases in the courts right now?

STAUB: In 1973, the Michigan legislature passed a law authorizing the payment of "agency shop" fees. "Agency shop" does not require an individual to join a labor union. Therefore, many union officials say that it's not compulsory unionism. But an "agency shop" requires that one pay a fee to the union—usually the same amount a member pays as dues—as a condition of employment. If the individual does not pay, he or she is fired. Dr. Anne Parks, a tenured teacher for 35 years in the inner-city schools of Detroit, Michigan, was fired for re-

labor union. But our point is that he must have a choice, no matter what his reasons. His continued employment must not be conditioned by whether or not he chooses to join or support a union. All those who don't wish to join that local, state or national union, for whatever reason, are fired under "agency shop" if they don't pay. That's what happened to Dr. Parks in Michigan.

INK: Did she have the help of the Legal Defense Foundation?

STAUB: Dr. Parks did seek help from the National Right to Work Legal Defense Foundation. In 1969, some six hundred teachers filed suit opposing the "agency shop." They objected to paying money to the Detroit Federation of Teachers for the union's political, social or ideological causes. They said, "We don't think it's right to have to pay, period. But certainly we shouldn't be required to pay to support the political and ideological concerns of the union."

The Legal Defense Foundation took the case all the way to the Supreme Court of the United States. And the Supreme Court decided unanimously that 1) there certainly is a constitutional issue involved in the payment of political, ideological, and sociological monies and 2) the Michigan courts would have to hear the case. That's where they are now, back in the Michigan courts. The school board in Detroit had agreed they would not take any action against Dr. Parks and her colleagues until the case was resolved. Meanwhile, Dr. Parks continued to be part of the school system. When the Supreme Court handed

"There is a very big difference between the American Labor Movement and the American Union Movement."

who've felt they had to stand up so far, who have said, "I'm not going to pay for something I don't support," it's all those people in fourteen states where compulsory unionism is legal who would be fired tomorrow if they stopped paying. Just because they're not dead, doesn't mean there isn't a gun pointed at them.

Take Sarah Barrie, for example. She is a teacher of 32 years who is the sole supporter of her family. There's no way that she can refuse

present the problem of compulsory unionism in its objective entirety. We also research the problem of classroom and instructional bias against the freedom of choice principle. We have found that there is a very definite problem of bias in the teaching of the American Labor Movement. This point was made very clear by a recent situation in Indiana. Indiana trade unions had helped support an illegal strike by Indiana teachers. When asked what

the teachers could do to thank them, the union officials said, "Teach labor history." "Labor" is not the same as union. We are each laborers. There is a very big difference between the American Labor Movement and the American Union Movement. We're quite concerned about the promulgating of compulsion to students in the classroom. We have reviewed over 200 textbooks and have found more than 60% of them to be inaccurate, purposely biased, or both. Our position is that if the American Labor Movement is to be taught, it must be taught in its objective entirety, which includes Right to Work. We believe that the student, given the opportunity to view all sides, will choose voluntarism on its own merits.

INK: Have there been changes made by publishers in response to your survey?

STAUB: Seven textbooks have been changed so far. To demonstrate the problem of textbook bias, we conducted a seminar at the Midwest Social Studies Convention in Chicago. We gave a quiz to the teachers in which all five of the questions were false, and most of the teachers knew that, although they did miss some. What they didn't know was that all five questions came directly from material given as facts in textbooks. If the teachers don't know what's accurate and what isn't, certainly the students won't. And you know that the tendency is to think, if it is in the book, it's "gospel."

We're not required as teachers to program students, to teach them a particular set of thoughts, our own or anyone else's. We are required to teach them to think and to teach them to be able to assimilate all of the facts and to make some decisions. And I'm convinced that we aren't doing that with respect to the American Labor Movement. Young people in a classroom are a captive audience; the power is enormous. The potential impact of a monopolized

system of teachers, gained through compulsory unionism legislation, could literally change the face of the county in the next generation. We're trying to reach out to other associations, to ask professional groups to deal with this problem.

INK: I understand that President Carter received a lot of financial support for his campaign from the NEA, so I found this quote by him to be interesting. "The fight against inflation becomes nearly impossible when special interest lobbyists are successful."

STAUB: I wonder which special interest he's talking about? I find that very interesting when he is pushing for a Department of Education—the number one goal of NEA, which is definitely a special interest group. We aren't opposed to a Department of Education per se, but we have suggested an amendment to the bill creating a separate department which would insure that the authority and resources of such a department could not be used by the NEA or other special interests to advance compulsory unionism.

INK: How do the unions argue for the "agency shop"? (The mandatory paying of union fees whether one is a member or not.)

STAUB: The laws read that unions must represent everyone in a bargaining unit, equally and without discrimination. The union becomes the "exclusive representative" of teachers when it seeks that special privilege. They say, therefore, that those people who don't want to be members ought to pay something for the "benefits" that they get. They claim these non-members are "free riders," but the truth is these people are captive passengers. Even if they vote against the union, and they must accept the services of a union they didn't want in the first place, "agency shop" requires them to pay for it. If union officials really feel it's a burden to have to represent non-members, then they

can change the law. The law reads that they have to represent everyone *only because union officials demanded it be that way*. We say, let's not tax people who didn't want the union in the first place; that's no solution. Let's change the law so that union officials have to represent only the people who want their services.

INK: How do union people respond when you suggest changing the law?

STAUB: They're not interested. The truth is, it's not a burden to represent all teachers, it's a special privilege. They want the monopoly power to represent them all, and then they want the special privilege of making them all pay. Let's assume a union obtains an "agency shop," and then 10% of their membership decides the next year they don't like what the union is doing. They can drop their membership, but the union is going to get their money anyway. Where, then, is the incentive to be responsive to members? If an individual doesn't control his dues dollar, he cannot think he controls the organization. The only means for dissent is that dollar; if the individual doesn't approve of some union activity, the only way he can show that is to withdraw his support. But if he's legally mandated to give his support as a condition of employment, then he's locked into them—and he's clearly a captive.

INK: The argument I run into sometimes in discussing social programs in general is that *someone* has to take care of people, that they need protection.

STAUB: Who knows what our best interests are? An individual must have the right to decide what's best for himself, even if he finds later he may have been "wrong." Removing individual choices in life removes the quality of life, the joy of being.

If a labor union can produce the results it says it can, people will join. If they demand compulsion, what are they saying about their union?

Someone said in New York that, "If we don't get this 'agency shop' law, our union will die." If they can't stay alive by any other means than compulsion, obviously they are not providing a service individuals want. Labor unions are the only private entity in our society that have been given the power of a government, the power to tax.

INK: It's been my experience that groups who seek the compulsion of government control of a certain area are the ones who are not very competitive to begin with. STAUB: I've seen nothing that would indicate disagreement with that.

In the case of the Right to Work Committee, if our contributors cease to contribute to our work, we will cease to exist. There are more than 1.5 million members of the National Right to Work Committee and CEAUFU has about 30,000 members—all supporting us because they believe in our work.

INK: Does Right to Work legislation have an effect on employment?

STAUB: Bureau of Labor Statistics figures show that the twenty Right to Work states have had more gains in new manufacturing jobs than all thirty of the non-Right to Work states. Last year's figures were so dramatic: the twenty Right to Work states showed a gain and the thirty non-Right to Work states showed a loss in jobs.

INK: Are you optimistic or pessimistic about the future?

STAUB: Definitely optimistic. One person does matter, one person does make a difference.

To paraphrase Edmund Burke, all it takes for evil to prevail is for enough good people to do nothing. In the Right to Work movement, enough good people are doing something and union officials are being handed defeat after defeat because the people are saying no to coercive unionism. To be sure, there is a long way yet to go. But we're convinced that if we are diligent, freedom of choice will prevail.

★ ★ ★ ★ ★

Copies available from
NATIONAL RIGHT TO WORK COMMITTEE
8001 Braddock Road
Springfield, Virginia 22151

THE NATIONAL RIGHT TO WORK COMMITTEE

(QUESTIONS AND ANSWERS)

1. WHAT IS THE RIGHT TO WORK COMMITTEE?

The National Right to Work Committee, established in 1955, is a nonprofit, nonpartisan, single-purpose citizens' organization dedicated to the principle that all "Americans must have the right but not be compelled to join labor unions."

ple that all "Americans must have the right but not be compelled to join labor unions."

2. WHAT IS THE PURPOSE OF THE NATIONAL RIGHT TO WORK COMMITTEE?

The National Right to Work Committee combats compulsory unionism through an aggressive program designed to make the public aware of the evils of compulsory unionism and, at the same time, encourage their support of Right to Work legislation. Specific objectives of the program include:

- Safeguarding Section 14(b) of the Taft-Hartley Act (that section of the national labor law which reaffirms the right of states to have Right to Work laws).

- Helping state organizations to promote, enact, and protect state Right to Work laws.
- Working to obtain legislation at the national and/or state level which will curb the use of compulsory union dues for political activity; prevent compulsory unionization of public employees or farm workers; ultimately obtain national Right to Work protection for all employees.

3. WHO ARE THE MEMBERS OF THE NATIONAL RIGHT TO WORK COMMITTEE?

The members of the Committee are men and women—in all walks of life, union members as well as nonunion employees from every corner of America—

who, through their voluntary contributions, support the work of the Committee.

4. HOW MANY MEMBERS DOES THE NATIONAL RIGHT TO WORK COMMITTEE HAVE?

The National Right to Work Committee is one of the largest public-interest groups in America. The Committee has over 1.7 million supporters nationwide.

wide. Studies have shown, moreover, that 75% of all Americans sympathize with the objectives of the Committee and oppose forced union membership.

5. HOW MUCH DOES IT COST TO JOIN THE RIGHT TO WORK COMMITTEE?

The members of the National Right to Work Committee contribute whatever they can afford. The average member contributes approximately \$31.00.

Some people contribute hundreds of dollars each year.

6. AS A TAXPAYING CITIZEN, DON'T I PAY ENOUGH FOR THIS SORT OF THING ALREADY?

The National Right to Work Committee receives no tax money. The Committee is a private organization,

financed entirely by the generosity of its contributors.

7. WHAT ARE THE CONTRIBUTIONS USED FOR?

Contributions to the National Right to Work Committee are used to promote the Right to Work principle

through a variety of Committee programs.

8. ARE CONTRIBUTIONS TO THE NATIONAL RIGHT TO WORK COMMITTEE TAX-DEDUCTIBLE?

Contributions to the National Right to Work Committee are not deductible as charitable contributions for federal income tax purposes. However, they may be

deductible under other provisions of the Internal Revenue Code.

9. HOW DOES THE COMMITTEE DIFFER FROM THE NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION?

The National Right to Work Committee and the National Right to Work Legal Defense Foundation are separate and distinct organizations. Their work, however, is complementary.

The Committee works for legislation which would outlaw all forms of forced unionization. It also conducts a nationwide educational program on the principle of Right to Work.

ple of Right to Work.

The Foundation, on the other hand, established in 1968, works solely through the courts to assist employees whose human and civil rights are being violated because of compulsory unionism. It engages in no legislative activity whatsoever.

THE RIGHT TO WORK ISSUE

(QUESTIONS AND ANSWERS)

1. WHAT IS THE RIGHT TO WORK PRINCIPLE?

The Right to Work principle — the guiding concept of the Committee — affirms the right of every American to work for a living whether or not he or she belongs to a union. Compulsory unionism in any form — "union," "closed," or "agency" shop — is a

contradiction of the Right to Work principle and the fundamental human right which that principle represents. Every individual must have the right, but must not be compelled, to join a labor union.

2. WHAT IS A RIGHT TO WORK LAW?

A Right to Work law guarantees that no person can be compelled, as a condition of employment, to join or not to join or to pay dues to a labor union.

Section 14(b) of the Taft-Hartley Act affirms the right of states to enact Right to Work laws. Currently 21 states have passed such laws.

3. WHAT IS 14(b)?

Section 14(b) of the Taft-Hartley Act guarantees the states the right to enact Right to Work laws which prohibit compulsory unionism as a condition of employment. The National Labor Relations Act

authorizes forced unionism, but Section 14(b) of Taft-Hartley allows states to protect their citizens from this abusive federal policy.

4. IS RIGHT TO WORK "ANTI-UNION"?

The Right to Work Committee is neither "anti-union" nor "pro-union." It is a matter of individual freedom. The Right to Work Committee affirms the right of all Americans to voluntarily join labor unions and to bargain collectively. But unions, after

all, are private organizations. No other private organization in America insists on having the power to force membership on unwilling people. The Committee opposes forced unionization in all its forms.

5. WHAT IS "EXCLUSIVE REPRESENTATION"?

"Exclusive representation" gives union officials the power to represent all employees in a company's "bargaining unit"—including employees who oppose

Big Labor and don't want its "services." This monopoly bargaining power is a special privilege granted to union officials by federal law.

6. WHAT DO UNION PROPAGANDISTS MEAN BY THE TERM "FREE RIDER"?

"Free Rider" is the name given by advocates of forced unionism to any employee who does not pay the union for "services" he does not want but which he is forced to accept because of "exclusive represen-

tation." Such an employee is actually a "captive passenger," or a victim of union officials' "fee raider" schemes.

7. WHAT EFFECT DOES A RIGHT TO WORK LAW HAVE ON A STATE'S STANDARD OF LIVING?

Statistics show that Right to Work states enjoy greater economic vitality than do states where union membership is compulsory. Per capita income is growing at a faster rate of increase in Right to Work

states. Right to Work states also have faster growth in manufacturing and nonagricultural jobs, capital expenditures, and lower unemployment rates and fewer work stoppages.

8. WHAT IS "COMMON SITUUS"?

"Common Situs" picketing, now illegal, is designed to bring universal compulsory unionism to the construction industry by giving construction union officials the power to totally shut down any construction project employing workers who are not union members (either because they don't want to be, or aren't permitted to be). In 1976 Common Situs legislation

was vetoed by President Ford. And in 1977, Situs picketing was stopped cold in the House of Representatives. Union spokesmen credit the National Right to Work Committee with mobilizing the public opposition which resulted in Ford's veto and the House defeat of Situs.

8001 BRADDOCK ROAD • SPRINGFIELD, VIRGINIA 22160

National Right to Work
Committee

December, 1989
GI 521

CALIFORNIA RIGHT TO WORK CONFERENCE

Hilton Inn
2200 Harvard Street
Sacramento, California
February 18, 1989

MORNING
(Eagle Room)

9:00 a.m.	Coffee and Doughnuts	
9:30 a.m.	Welcome	Reed Larson, President, National Right to Work Committee
9:45 a.m.	History and Outline of <u>Chicago Teachers Union</u> <u>v. Annie Lee Hudson</u>	Dr. Edwin Vieira Jr., Attorney, Manassas, Virginia
10:30 a.m.	California (A Special Problem)	Rex H. Reed, Executive Vice President and Legal Director, National Right to Work Legal Defense Foundation; Donna Austin, Teacher, San Jose, California
11:15 a.m.	Keynote Address	U.S. Rep. Christopher Cox, (R-California)
11:45 a.m.	Questions and Answers	All Panel Members
12:15 p.m.	Luncheon (Brandywine Dining Room)	

AFTERNOON
(Eagle Room)

1:30 p.m.	Oregon (A Model Program)	John C. Scully, Staff Attorney, National Right to Work Legal Defense Foundation, John Elvin, Public Employee, Salem, Oregon
2:15 p.m.	Legislative Remedy	Karl Gallant, Vice President, Federal Legislation, National Right to Work Committee; Patrick Thomas, Private Employee, Los Angeles, California; Tim McConville, Director, State Legislation, National Right to Work Committee
3:30 p.m.	Questions and Answers	All Panel Members
4:30 p.m.	Closing Remarks	Reed Larson

Calif. Teachers Assoc. Action
10/88

LEGAL ISSUES

Agency fee - Where do we stand?

By Diane Ross
Legal Counsel

*For the most part,
PERB's proposed regu-
lations would allow
CTA to continue with
its current agency fee
procedures.*

Despite attempts to discredit them, CTA's agency fee provisions have passed muster with the courts, labor arbitrators, and the California Public Employment Relations Board. A small group of anti-union teachers throughout the state has waged a vociferous campaign against CTA locals, complaining about the implementation of agency fee agreements. They write to school boards and the press, speak at board meetings, and distribute their own publications, claiming that their constitutional rights are being violated. Unfortunately, their criticisms have been fueled by the National Right to Work Foundation, which often feeds these teachers an incorrect and distorted view of the law and the facts.

Despite the objections of these fee payers, school districts throughout the state (with only one or two exceptions) have continued to honor the agency fee provisions of their union contracts.

In 1986, the U.S. Supreme Court announced in *Chicago Teachers Union v. Hudson*, that the constitution requires unions to maintain certain procedural safeguards for the collection of agency fees. Among other things, unions are required to calculate the portion of their annual expenditures devoted to collective bargaining-related activities ("retainable" expenditures) and the portion devoted to political and ideological activities unrelated to collective bargaining ("Rebateable" expenditures). Unions must also provide an annual notice to fee payers that they have a right not to have their fees used for rebateable purposes and provide fee payers with the opportunity to challenge the union's calculations of retainable and rebateable expenditures before a neutral decision-maker. In response to this

CON'T

Continued from previous page. . .

decision, CTA developed an agency fee procedure for use by all CTA locals.

Certain fee payers have repeatedly claimed that CTA's procedures do not comply with the *Hudson* decision and they have attacked those procedures in several lawsuits. The only decisions that have been issued to date have approved CTA's procedures in their entirety. *Grunwald v. San Bernardino City Unified School District* (C.D. Ca. June 15, 1987) Case No. CV 87-3381 (Federal District Court Order re Preliminary Injunction); *Abbot v. San Ramon Valley Education Association* (1987) Case No. SF-CO-309 (Proposed Decision of PERB Administrative Law Judge).

Complaining agency fee payers have also claimed that CTA's calculation of its retainable and rebateable expenditures is grossly incorrect. Yet, when this issue was put to two labor arbitrators selected by the American Arbitration Association, CTA's calculations were almost completely approved. The first arbitration covered the 1985-86 and 1986-87 school years. Although the calculation for 1985-86 was adjusted by approximately 2 percent because of some missing records, the arbitrator approved CTA's calculation for 1986-87 in its entirety. A second arbitration was held before a different arbitrator covering the 1987-88 school year. Again, CTA's calculation was completely approved.

Proposed PERB regulations

The Public Employment Relations Board has worked for approximately two years to put together regulations governing the procedures for collection of agency fees. During this time, fee payers, the National Right to Work Foundation, and

all affected unions have fought about the regulation's content. Finally, in July, 1988 PERB formally adopted proposed regulations. These regulations must still be approved by the Office of Administrative Law and may also be subject to later challenge in court.

For the most part, PERB's proposed regulations would allow CTA to continue with its current agency fee procedures. One major change would be required, however. The regulations require unions to collect a reduced fee from *all* fee payers. Under current constitutional law, it is not to be assumed that a fee payer objects to the use of his or her fee for political purposes unrelated to collective bargaining. All fee payers who do not want to pay for such activities must affirmatively make their objections known before they will be allowed to pay a reduced fee. In CTA's experience, less than one fourth of its fee payers lodge such objections and request a reduced fee. Under PERB's regulations, however, all fee payers would automatically be charged a reduced fee. Obviously, this aspect of the regulations will be challenged by CTA when and if the regulations are finally enacted.

Update on King City

The law is still somewhat unclear on the precise dividing line between rebateable and retainable expenditures. This issue was raised before PERB in the *King City* case years ago and PERB's decision was eventually appealed to the California Supreme Court. After sitting there for more than two years, oral argument was finally held on May, 1988. A decision is expected soon.

PACIFIC LEGAL
FOUNDATION

December 7, 1988

Mr. Reed E. Larson
President
National Right to Work
Legal Defense Foundation, Inc.
8001 Braddock Road
Springfield, VA 22160

Dear Reed:

Thank you for your thoughts on the California Public Employment Relations Board's (PERB) proposed Hudson regulations.

As you know, First Amendment rights of nonmember employees have always been a high priority issue with Pacific Legal Foundation. PLF has been a leader in California opposing regulations and government actions that limit freedom of personal expression. For example, in Cumero v. Public Employment Relations Board the Foundation argued that the California Teachers' Association and the National Education Association are not entitled to agency fees under California law and the federal Constitution. We hope that the California Supreme Court will define the permissible uses of agency fees with this decision.

We have tried to advance our position by urging PERB to initiate rulemaking procedures to implement the Hudson decision. In taking such a stance, we have attempted to balance the nonmember employees' First Amendment rights with the labor organization's need to collect the agency shop fee. Our position has differed from yours in some respects, but we have at all times attempted to keep in contact with your office.

It would not be accurate, however, to characterize PLF's position as "being on the same side of this fight as the teachers union." The California Teachers' Association's view of what is allowed by these regulations, like their view of what is allowed by the Constitution, is seriously flawed. I sincerely hope that you will help us clarify any misperception of PLF's position.

Sharon Browne of our staff has studied the proposed regulations and your office's comments to determine what course the

555 Capitol Mall, Suite 350 • Sacramento, CA 95814 • (916) 444-0154 • FAX (916) 441-0119

Alaska Litigation Office: 807 G Street, Suite 200 • Anchorage, AK 99501 • (907) 278-1731
Seattle Liaison Office: 1200 One Market Union Square • Seattle, WA 98101 • (206) 447-7254

Mr. Reed E. Larson
December 6, 1988
Page 2

Foundation should take at the December 8, 1988, meeting. I am enclosing for your information testimony that Ms. Browne will present to PERB. You will note that on page two, we concur in National Right's belief that the concurrent notice feature is improper under Hudson. Moreover, it remains our position that any regulations adopted by PERB must meet the constitutional prerequisites outlined in Hudson and be carefully tailored to minimize the First Amendment impingement on the rights of nonmember employees.

We will continue to encourage PERB to introduce some form of uniformity in these agency fee procedures. It remains to be seen whether this can be achieved.

We look forward to continuing our close working relationship with you on these issues.

Sincerely,

RONALD A. ZUMBRUN
President

Enclosure

48-871 North View Drive
Palm Desert, CA 92260
10 March 1989

Mr. Ronald A. Zumbrun
Pacific Legal Foundation
555 Capitol Mall, Suite 350
Sacramento, CA 95814

Dear Mr. Zumbrun:

I am a small contributor to the Pacific Legal Foundation as well as to the National Right To Work Committee and the National Right To Work Legal Defense Foundation and have been for many years. Now, I find it difficult to support the PLF position in the matter of the California Teacher Association's right to use compulsory union fees collected from nonmember employees for purposes other than the cost of collective bargaining. I am very disappointed in the position taken by the PLF!

Reference your letter to Reed Larson dated 7 December, which may go down as another day of infamy, you recalled that the PLF had argued in Cumero v. Public Employment Relations Board that the California Teachers' Association and the NEA are not entitled to agency fees under California law and the federal Constitution. Yet, in the same letter you state that you have attempted to balance the nonmember employees' First Amendment rights with the labor organization's need to collect the agency shop fee. Then you also state that your position remains that any regulations adopted by PERB must meet the constitutional prerequisites outlined in Hudson and be carefully tailored to minimize the First Amendment impingement on the rights of nonmember employees.

It is very difficult to reconcile your statement that the teachers' associations are not entitled to agency fees with your attempt to balance the nonmember employees' rights with the labor organization's need to collect the agency shop fee and to minimize the impingement on the rights of nonmember employees. If the associations are not entitled to agency fees then whether or not they have a need is no longer an issue nor can there be any consideration of minimizing an impingement on the rights of nonmember employees. Your doubletalk is not acceptable.

Very truly yours,

Clay Tice, Jr.

NATIONAL RIGHT TO WORK NEWSLETTER

VOLUME 37, NUMBER 5

June 1991

Members Urge Federal *Beck* Enforcement *Labor Secretary to Meet Larson After Thousands Protest Obstruction*

A rising tidal wave of protest from Right to Work members nationwide has persuaded Labor Secretary Lynn Martin to agree to meet with Reed Larson, president of the National Right to Work Committee, to discuss her department's attempts to shield the union political machine's massive, illegal collection and use of workers' forced dues.

Larson has responded to the invitation by vowing to gather 25,000 petitions from across the nation urging Martin to end the Labor Department's three-year stall on implementing regulations enforcing the U.S. Supreme Court's landmark *Communication Workers of America v. Beck* decision.

"I met with former Labor Secretary Elizabeth Dole. She promised to 'study' *Beck* enforcement, and eventually agreed that the Labor Department had a duty to assist workers in asserting their rights — but no action.

"Now we're back to square one," Larson said.

"I hope this is more than a gesture designed to deflect Right to Work supporters' demands that the Department of Labor shut off illegal union-boss politics.

"Right to Work activists want concrete steps taken to stop Big Labor from stealing workers' wages to buy political supremacy in Congress," Larson added.

Martin Failing to Act Against Union Barons' Corrupt Politics

Martin has, so far, been noncommittal to congressional appeals for enforcement of the *Beck* decision.

After hearing from thousands of Right to Work members, Labor Secretary Lynn Martin has promised to meet with Reed

Larson to hear what steps she must take to crack down on illegal union oppression of workers.

That's why the National Right to Work Committee continues to encourage Right to Work supporters to urge Martin to use her power to protect American workers from illegal union-machine politics.

In a letter to Right to Work supporters who receive this NEWSLETTER, Larson summoned Committee members to sign

petitions to Martin, urging her to "fulfill her sworn duty and crack down on Big Labor's illegal, forced-dues-fed political machine."

Larson also urged Committee members to "sign and return your petition to Labor Secretary Martin immediately, so

See Beck next page

CONTENTS

Bosses Besiege States

Forced unionism advocates launch attacks in six states3

Voters Betrayed

Congressmen snub pro-Right to Work constituents in Strike bill vote7

Strike Bill Advances

Pushbutton Strike bill showdown looms in U.S. House6

Members Speak Out

Construction Forced Unionism petitions flood Capitol Hill8

Beck

Continued from page 1

"I'll be able to present them to her during our very important meeting."

Labor Department Has Power To Protect American Workers From Union Bosses' Tyranny

Larson will offer Martin "direct and decisive" steps she can take to protect American workers from union-boss oppression:

- Post new federal notices in all work places, informing employees and employers that workers cannot be forced to pay full union dues as a condition of employment and explaining how workers can protect their rights under federal law.

- Revise union disclosure forms to ensure that workers know how much of their forced dues are spent illegally.

(Martin's predecessor, Elizabeth Dole, acknowledged her department's duty to take this step, but nothing was done.)

The Labor Department needs to closely monitor union spending, making sure union officials obey the Supreme Court's *Beck* decision.

And the department should push for prosecution of union officers who violate the law — and assist employees who stand up to union lawyers in court.

Martin Has Shaky Record On Right to Work

Martin's motives for refusing, so far, to back new regulations — which would inform American workers of their rights to refuse to fund union-boss politics — are unclear.

She has shown herself susceptible to bad advice in recent actions.

This includes her attempt, as a member of the House of Representatives, to appease postal union chieftains with her vote to destroy the federal Hatch Act in 1989.

Had she prevailed and the Hatch Act been gutted, union officials would have been free to coerce 2.9 million federal workers into supporting union-machine politics.

The result of the Labor Department's stonewalling policy is all too clear: Organized Labor's illegal forced-dues pipeline continues to flow from workers' wallets, pumping over \$350 million into

“n the Record”

Union Czars Sure of Hatch Repeal

“With Sen. John Glenn’s (D-Ohio) April 24 reintroduction of his Hatch Act [repeal] bill, supporters rejoined the battle they nearly won last year.

“[Union-machine Rep. William] Clay has said the [Hatch Act repeal] measure can pass the House within 10 days of whenever he decides to move it through his Post Office and Civil Service Committee.

“Robert Tobias, president of the National Treasury Employees Union, said, ‘We look forward to a veto-proof majority of senators joining Senator Glenn this year in his unfailing support’ [of Hatch Act repeal legislation].”

— Federal Times, May 6, 1991

the campaigns of union-puppet politicians nationwide.

Martin has also ignored calls from the Republican National Committee (RNC) for her to implement the *Beck* decision protecting workers' rights.

The RNC's virtually unprecedented endorsement of *Beck* enforcement came as rank-and-file GOP activists demanded more concerted action to stop illegal union-boss political spending.

Right to Work Members Seek Presidential Action To Implement *Beck* Decision

Obstruction of *Beck* enforcement by the Labor Department and other federal agencies has prompted Right to Work supporters to begin petitioning President Bush for his direct intervention.

The President has authority by executive order to require Martin to take action to protect American workers from Big Labor's illegal forced-dues schemes.

That action, along with pro-Right to Work appointments to key federal enforcement agencies, would bring the combined enforcement powers of the Labor Department, the National Labor Relations Board (NLRB), the Justice Department and other enforcement agencies to bear on the union brass' illegal forced-dues-funded politics.

Right to Work activists recall that

NLRB Chairman James Stephens and Jerry Hunter, NLRB general counsel, have repeatedly blocked NLRB efforts to enforce *Beck*.

Stephens (whom President Bush recently reappointed) sided with the chiefs of Organized Labor in opposing the Supreme Court's decision in *Communication Workers of America v. Beck*.

And collecting dust on Hunter's desk are hundreds of pleas for NLRB action from American workers being forced to fund union-boss politics.

Despite public pledges to implement the *Beck* decision, the President has so far failed to act.

Reed Larson Seeks Help Of Right to Work Members

“Now that Labor Secretary Martin has offered to hear the concerns of Right to Work members petitioning for *Beck* enforcement, I want to communicate those concerns loud and clear,” Larson said.

“To be blunt, I want to bury her in petitions from Right to Work supporters when I sit down with her in a few weeks.

“That means every Committee member needs to sign and return the petition I've mailed with the June NEWSLETTER.

“Only an overwhelming response will make the difference,” Larson explained.

May 1990

"No Compromise" Strategy Pays Off As Foundation Attorneys Strike Down PERB Regulations

It was a difficult battle, but the refusal of the National Right to Work Legal Defense Foundation attorneys to cave in to Big Labor paid off once again last month in California.

And as before, the dividends were great.

The Foundation's sweeping victory struck down key provisions of state Public Employment Relations Board (PERB) regulations that force California public employees to pay union dues just to keep their jobs.

"Everyone approved of the regulations except the National Right to Work Foundation," said Reed Larson, President of the Foundation.

"We said they were unconstitutional and now the judge has ruled we were right," said Larson as he recounted the suit's history.

Steered through the courts by Foundation legal experts, the case of Annie Lee Hudson (above) now provides American workers with safeguards against the illegal collection of forced union dues.

In an April 1989 Sacramento conference, Foundation President Reed Larson rallied California Right to Work supporters against the PERB's unconstitutional regulations.

The case, which still could be appealed by union lawyers or the PERB, was another example of the Foundation's effectiveness in plotting legal strategies and pursuing them to victory against what sometimes seem to be insurmountable odds.

It all started in 1986 when National Right to Work attorneys won the landmark U.S. Supreme Court decision, *Chicago Teachers Union v. Annie Lee Hudson*.

The precedent-setting ruling provides strict due process safeguards against the illegal collection of compulsory union dues.

After the decision, National Right to Work attorneys began working with the California PERB to develop regulations that would implement the *Hudson* decision for California employees.

Foundation's Draft of Regulations Is Sound

By April of 1988, with the Foundation's help, the PERB

(continued)

(continued from page 1)

staff developed tentative rules which were sound and fair.

They protected employee rights to the full extent of the U.S. Supreme Court doctrine in *Hudson*.

Then, suddenly, everything changed.

The employee protections in the original draft were completely gutted and the Right to Work Foundation was soon in vigorous opposition to the watered-down version.

Union Lawyers Back Fouled Regulations

Big Labor quickly embraced the PERB rules — a scheme they knew would allow the continuation of their forced dues reign over California's public employees.

"For the most part, PERB's proposed regulations would allow CTA to continue with its current agency fee procedures," a California Teachers Association (CTA) union lawyer declared.

In June 1988, the PERB presented the regulations with the claim that the proposed rules were acceptable both to union officials and to "those who traditionally represent agency fee payers."

A group called the Pacific Legal Foundation (PLF), which often opposed compulsory unionism, baffled Right to Work attorneys by unexpectedly supporting the flawed regulations. PLF proclaimed its support for the disastrous regulations, saying they hoped the rules would "balance the non-member employees' First Amendment rights with the labor organization's need to collect the agency shop fee."

That compromise position startled Right to Work attorneys who had hoped to see PLF voice opposition to the coercive regulations. The stance also gave the PERB a much stronger position allowing it to claim the coercive regulations were supported by "those who traditionally represent agency fee payers."

Despite testimony by Reed Larson against the regulations, the PERB approved a final draft and sent them to the state officials for final rubber stamp approval.

Right to Work Attorneys File Suit Against PERB, Win Victory

On March 2, 1989, thirty minutes after the rules were approved, Right to Work attorneys filed suit against the PERB on behalf of Janice Johnson, a Pleasanton teacher, and two other citizens.

In the suit, the Foundation once again stated the regulations violated the constitutional rights guaranteed to employees in the *Hudson* decision.

Last month, the Superior Court in Sacramento agreed with the Foundation's legal experts and struck down as unconstitutional key provisions in the coercive regulations.

Under *Hudson*, union officials are required to notify forced dues payers before the dues deductions actually begin. The notice is required to inform employees of such things as the amount of the compulsory dues and how the amount was determined.

Los Angeles press reports Foundation victory in *Johnson* as well as efforts to enforce the win.

In striking down the rules' notice provisions, Judge Joe S. Gray stated, "The regulations' allowance of notice concurrent with collection of compulsory fee deductions is in violation of the Constitution and cannot stand."

Foundation Enforces Victory With Charges Against Teacher Unions

Armed with its sweeping victory in *Johnson*, Foundation attorneys moved decisively to protect teachers' rights from further forced unionism abuse in California.

Only three days after the win, the Foundation filed PERB charges against 26 affiliates of the California Teachers Association (CTA) and the National Education Association (NEA) teachers unions.

"Our goal now is to enforce our *Johnson* win," declared Larson, as he announced the filing of the charges.

The Foundation's charges were filed on behalf of over 100 teachers whose rights were violated when teacher union officials forced them to pay union dues just to keep their jobs.

If the Foundation prevails in the PERB cases, the collection of the compulsory fees will end until the union bosses abide by the *Hudson* decision.

Larson looked forward to the battle and expressed confidence that supporters would provide the Foundation with the necessary funds to win the battle before the PERB.

"If the Foundation's supporters are as generous as they've been in the past, we should be able to take the battle as far as necessary to protect the teachers' rights," he said.

A-IV.h

From : FINANCIAL CORE FOUNDATION <213> 652 7512

May. 10. 1989 11:39 AM

P03

CHARLTON HESTON

2859 COLDWATER CANYON DRIVE, BEVERLY HILLS, CALIFORNIA 90210

May 8, 1989

Assemblyman Tom Hayden,
Chairman, Labor and Employment Committee
State Capitol, Room 3091
Sacramento, California 95914

Dear Chairman Hayden,

I'm told that your committee will vote this coming Wednesday on the merits of AB-1100. I'll be on location filming in England by then, so I won't be able to give live testimony. As a former six-term union President, I write urging an 'Aye' vote on AB-1100.

Indeed, although some will try, it's hard to imagine how anyone could possibly vote against this Bill. How could any American vote against legislation which simply requires that workers be informed about their U.S. Supreme Court protections?

I hope you and the other members of your committee will protect the rights of all California workers and send AB-1100 to the full Assembly for consideration with your support. How could you do otherwise?

Cordially,

c: Labor and Employment Committee Members

From : FINANCIAL CORE FOUNDATION <213> 652 7512

May. 10. 1989 11:39 AM Pg1

FINANCIAL CORE FOUNDATION

P.O. BOX 691449 West Hollywood, California 90069
213/856-8274 VOICE 213/652-7512 FAX

FAX MEMO

Mark Mc Intire
President

TO: Reed Larson, Milton I. Chappell, Tim Mc Conville

FROM: Mark Mc Intire DATE: May 10, 1989

Benefactors

MESSAGE: VOTE ON FINANCIAL CORE BILL POSTPONED

Jackie & Gene Autry

Assembly Speaker, Willie Brown removed two Republicans from the Labor

Claude Akins

Committee scheduled to vote on AB-1100 this morning. Had we proceeded with the hearing and vote AB-1100 would have died forever.

Isabel Boniface

Rory Calhoun

Don De Fore

Representative
Gil Ferguson

Assemblyman Ferguson and I decided to outmaneuver the Speaker and Tom

Ambassador
John Gavin

Hayden (committee chair) and put the Bill over for vote next January. AB-1100 still lives.

Hugh Gillin

Bruce Kerschensohn

I thought you might be amused by the 'legislative analysis' prepared for the committee by Hayden's staff.

Charlton Heston

Howard Keel

Christopher Mitchum

As you can see by the list of those on the record as opposed we need to dump thousands of letters on the committee in support. We also need groups and organizations. (This sounds like a job for Tim Mc Conville!)

Morgan Paull

Wayne Rogers

Jimmy Stewart

Frank Sinatra

Marie Windsor

Alan Young

Douglas A. Smithers
Counsel

NATIONAL RIGHT TO WORK NEWSLETTER

VOLUME 36, NUMBER 9

DECEMBER 1990/JANUARY 1991

Forced-Unionism Bill Finally Melts Under Sustained Right to Work Heat

Deukmejian Vetoes AB 510

SACRAMENTO — After pouring thousands of letters, postcards and telephone calls into the office of Gov. George Deukmejian, Right to Work supporters saw their hard work rewarded this fall with a gubernatorial veto of the forced-unionism bill AB 510.

The hard-earned triumph capped a two-year, uphill struggle for pro-Right to Work advocates who only months prior to Deukmejian's Sept. 25 veto had faced the prospect that their efforts to protect some 20,000 state-university faculty members from compulsory unionism would be sabotaged by back-room bartering between the governor and top union bosses.

Deukmejian, reported a Sacramento journalist last summer, "passed the word that he supports the bill. Capitol sources say that Deukmejian has made a deal with the unions to trade the (compulsory) agency shop for restraint in wage negotiations this year, thus making it easier for Deukmejian to resolve his state-budget deficit."

Enactment of AB 510 would have showered millions of compulsory-dues dollars annually into union treasuries, mandating payments that union kingpins would divert illegally into an array of partisan campaign operations to advance

their Tax-and-Spend, anti-Right to Work agenda.

Governor Acknowledges Right to Work Impact

Unbowed by reports that Deukmejian might be trading away employee rights for budget relief, pro-Right to Work loyalists kept the heat on the governor to bring down the veto stamp on AB 510. They responded overwhelmingly to mail and telephone alerts urging them to contact the governor.

Ultimately heeding the pro-freedom refrain of his constituents, Deukmejian stated in his veto message, "This bill is unnecessary... There is simply no need to

Deukmejian heeds Right to Work outcry.

This bill is unnecessary.

— Gov. George Deukmejian

compel employees to pay dues to the union if they do not wish to join it."

And in a letter to the National Right to Work Committee, which mobilized opposition to AB 510 along with the Sacramento-based Californians for Freedom to Work organization, the gov-

ernor wrote that the fervent, pro-freedom outcry from Right to Work supporters was "helpful to me in reaching my decision to veto this legislation."

Crucial to defeat of AB 510, Right to Work Committee President Reed Larson said, was the sustained effort of union-choice champions throughout the two-year legislative battle. The Big Labor-backed bill advanced only in fits and starts as union lobbyists continually probed for openings to ram the bill through but failed to surmount the wall of core opposition held in place by Right to Work champions. ■

Indianans Reeling From

Supreme Court Case Could Define How Unions Use Professors' Dues

By DEBRA E. BLUM

WASHINGTON

The Supreme Court last week heard arguments in a case that could help define how professors' union fees should be allocated among national unions and their local and state affiliates.

The case also may help define how much financial support public employees who choose not to join unions can withhold from collective-bargaining units that represent them.

The case, *Lehnert v. Ferris Faculty Association*, pitted six professors at Ferris State University against the association, the Michigan Education Association, and the National Education Association. The six chose not to join the local union, which is affiliated with the N.E.A., but were still included in the faculty collective-bargaining unit. Under the union's contract, they had to pay a special fee in lieu of union dues.

In 1978 the professors sued the Ferris Faculty Association, claiming that paying the mandatory fee

helped finance activities unrelated to contract negotiations and violated their rights to free speech and due process. They complained that much of the fee was being spent by the state and national unions to support political causes, labor conventions, lobbying and public-relations activities, and strike preparation in a state where it is illegal for public employees to strike. (Faculty members at Ferris State struck in 1978 and 1987.)

'A Matter of Principle'

"It's been a matter of principle all along," said James P. Lehnert, the main plaintiff in the case, after last week's oral arguments. "We don't care about the money; we just want to know exactly where and how our money is being spent."

Mr. Lehnert, who retired three years ago after teaching biology at Ferris State for 21 years, stood outside the Supreme Court wearing a medallion on his lapel signifying 20 years of service to the university.

"I'm proud of Ferris and I'm not

James P. Lehnert, left, with his lawyer, Raymond J. LaJeunesse, Jr. "Unions need to be accountable."

Robert H. Chanin: Mr. Lehnert's position "totally misses the point of union affiliation."

necessarily anti-union," he said. "Unions need to be accountable, that's all."

Raymond J. LaJeunesse, Jr., a lawyer for the National Right to Work Legal Defense Foundation, represented Mr. Lehnert and the other professors in the hour-long

hearing. He argued that since the affiliation between local and national unions is informal, the national union should charge the local unions only for services performed on the locals' behalf. Hence professors who are not members of the union, he said, should not be charged for activities that don't relate directly to their bargaining unit, he told the Court.

"Affiliation is not an insurance policy or a service contract," Mr. LaJeunesse said.

Robert H. Chanin, general counsel for the N.E.A., argued on behalf of the union. He told the Court that Mr. LaJeunesse's assessment "totally misses the point of union affiliation and its mission."

He contended that the six professors must share in the cost of maintaining the national union as a resource for the local unions. Although national unions are not legally bound to assist their local affiliates, their sole purpose is to provide the locals with lawyers, negotiators, researchers, and operating money when needed, he said.

While local unions may not directly benefit from every activity of the state and national organizations, national-union fees, like health-insurance premiums, pay for the availability of services, he said.

Discounts for Non-Members

Parent organizations like the N.E.A. should discount fees for non-union members at the local level, he argued. He also said non-members should not have to pay for political or charitable contributions made by the union or for services offered to members, such as insurance programs.

In an interview after the oral arguments, Mr. Chanin said that a fair fee for non-union members who are currently represented by a local N.E.A. unit would be about 75 percent of the national union's regular fee.

In 1986 a U.S. District Court in Michigan ruled in the *Lehnert* case that the six professors who objected to paying the fee could be charged only 10 per cent of the union's dues for academic 1981-82. At the same time, however, the court held that certain activities, such as lobbying, referendum campaigns, public relations, union conventions, and preparations for

strikes could be charged to non-union members.

The professors were ordered to pay the union \$28.59 rather than the \$284 annual fee paid by union members in 1981-82.

The professors, who estimated that their fee should have been only \$12.75, argued that their First Amendment rights were violated by the union's activities. They appealed.

Last year a federal appellate court ruled against them. It said the union must be allowed to advance the interests of those it represents beyond the bargaining table, through such activities as lobbying state legislators. The professors then appealed the decision to the Supreme Court.

Previous Supreme Court rulings have held that both public and private employees who are not members of a union—but who are represented by one—have a right to withhold any portion of union dues used for activities unrelated to collective bargaining. But those activities have never been defined by the Court.

A ruling in the case is expected in the spring.