**Friedrichs: The Death Knell of Unions or Our Next Challenge?**

By David Cicarella, NHFT President

The case, *Friedrichs v. California Teachers Association*, is the latest tactic in a long running conservative campaign to deny working people the right to band together, form a union, and speak up for one another in order to get the wages and benefits that they can sustain their families on. While this case goes after the rights of public service workers like teachers, nurses, social workers, and firefighters, it’s really an attack on the ability of working people to collectively bargain for decent wages, working conditions, and health care benefits. A group of disgruntled California public teachers is insisting that they should not be required to pay any “fair share” fees even though they will be covered by the contract that was negotiated on their behalf and they will get all of the benefits of the contract. And they must be represented by the union. Yes, you read that correctly! If we lose this case, then workers can simply decide to not pay any union fees whatsoever and still enjoy the protection that the contract provides and was paid for by all others in the union. The ruling would permit “freeloaders”. The loss of revenue greatly diminishes the union’s ability to provide services to its members. So while some may find it inviting to freeloade and not pay their fair share, we should all know for sure the union’s collective ability to fight for and defend its members will be drastically curtailed without adequate funding. And that small savings each month will quickly go for naught.

“...though Friedrichs has been brought on behalf of teachers in the cause of free speech, its implications involve all public sector workers, and the matter at hand is really the weakening of public sector unions.” *The New Republic*, 1/11/16

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The New Haven Federation of Teachers is getting behind a lawsuit in Superior Court to challenge the existing state law which allows the Department of Children and Families (DCF) to substantiate allegations of abuse and neglect made against teachers based solely on hearsay evidence. The existing DCF regulation prohibits children from testifying in DCF appeals hearings. This means DCF can place a teacher on the child sexual registry without ever allowing the teacher to “face their accuser”. Any teacher on this list is essentially terminated from their teaching career. We recognize the need to protect children from traumatic events. Testifying in court or at DCF hearings can be difficult. Our issue is that Connecticut state statute does not allow a teacher to be terminated exclusively on hearsay evidence. Allowing DCF to place a teacher on the child sexual registry based solely on hearsay evidence, in fact terminates a teacher, which is a violation of state law. The NHFT Executive Board voted unanimously at our February meeting to pursue this lawsuit and has authorized the AFT law firm of Ferguson, Doyle, and Chester to file on our behalf of our former colleague, Robert Schmitt, and also agreed to pay for reasonable court costs.

This lawsuit is prompted by Robert’s recent case. He was a Special Education teacher here in New Haven and terminated based on an allegation of sexual abuse. This is a thumbnail of the events over the past few years.

- The NHFT supported our colleague and represented him in his teacher termination case.
- There were 4 students who originally made allegations of abuse and neglect against the teacher. During the course of the termination hearing, one student was called to testify and admitted to making up the statement. A second student changed the story completely. A third was deemed intellectually disabled and never did testify. The fourth (the student originally making the complaint) did not testify in the teacher employment hearing, ignoring the subpoena for testimony filed by our AFT attorney.
- We prevailed at the termination hearing as the recommendation from this panel was to return the teacher to his position. We won the case! The Board of Education ignored this decision and chose to fire this teacher anyway.
- DCF substantiated the charge of sexual abuse. The NHFT supported the teacher’s appeal of the case to DCF and we were denied on appeal. DCF would not overturn their own ruling. He remains on the child sexual registry list and therefore cannot teach anywhere; a de facto termination.
- At the criminal trial in CT State Court the teacher was cleared and found not guilty of all charges brought by the first student. The prosecution then dropped all charges related to the remaining three accusers.

Our lawsuit takes aim at the state statute that allows DCF to place a teacher on the child sexual registry based exclusively on hearsay evidence. This DCF regulation denies a person the right to confront their accuser. At our Executive Board meeting, all members agreed that this case is important not only for our terminated colleague but for all teachers as we move forward.
It is important to elevate the role of unions as one of the only avenues for average Americans to stand up to the wealthy special interests. Workers should understand why unions are important – and why it’s to their benefit to be a member of one. Union members have higher wages, access to health care, a secure retirement, and due process. Those who don’t have the opportunity to join a union should also understand how strong, vital unions benefit everyone in the community.

It’s no surprise, then, that the group behind this case, the Center for Individual Rights, is funded by the Koch Brothers, many of their obscenely wealthy friends, and other right-wing special interests. The lawyer who is arguing the case is the same one who tried (and failed) earlier this year to convince the Supreme Court to strike down a key part of the Affordable Care Act and take away healthcare from millions of Americans.

“The list of foundations and donor-advised funds supporting the Center for Individual Rights reads like a who’s who of the right’s organized opposition to labor. A number of those funders, unsurprisingly, enjoy the support of Charles and David Koch, the billionaire brothers who are principals in Koch Industries, the second-largest privately held corporation in the United States...” American Prospect, 10/29/15

The Supreme Court will be urged by a group of mislead California public-school teachers to rule that the state is violating the 1st Amendment by requiring them to contribute to the teachers union. Their argument is that the union engages in political activity and funding which they should not be obligated to pay for. A perfectly legitimate point.

Workers cannot be compelled to join a union and fund political activities. They merely must pay a fair share fee for services the union provides. The Supreme Court upheld “fair share” payments in the 1977 case of Abood vs. Detroit Board of...
Seattle Teachers Reach Settlement after Five-Day Strike

Samantha Winslow
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“This is just the tip of the iceberg... We have energized a whole new generation of teachers.”

After a five-day strike, Seattle teachers returned to work today as they reviewed their tentative agreement. While some members were disappointed that wage increases were not higher, they won on other important issues, including evaluations.

When the agreement was reached yesterday morning, said bargaining team member Andy Russell, chanting from supporters outside the building gave negotiators a boost. “Picketers started showing up at 5 a.m.,” he said.

Contentious issues were teacher pay, concessions demanded by the district, such as lengthening the school day without compensation, and union proposals to guarantee recess and curb standardized testing.

The settlement includes raises of 3 percent, 2 percent, and 4.5 percent over three years (members will also get a 4.5 percent cost-of-living increase from the state). The Seattle Education Association (SEA) succeeded in removing standardized test results from teacher evaluations and in establishing caseload caps for nurses and counselors.

The district was able to lengthen the school day by 20 minutes. The longer day will go into effect the third year, and teachers will be compensated with additional funds generated by a local “tech” tax.

In a far from unanimous vote, the SEA executive board recommended the settlement 17 votes to 5, and 60 percent of the delegate assembly voted yes. The ratification vote will be held on Sunday.

Russell, an elementary school teacher, was on the picket line the first three days of the strike, when no negotiations took place. “The spirit was amazing,” he said. “We had no idea it was going to be as great as it was.”

Russell said that on day one 95 percent of members were picketing and by day two it was 97 percent, on top of community support.

“Parents were coming out of the woodwork. We had students there,” Russell said.

The strike fell on the three-year anniversary of the Chicago teachers strike, which electrified teachers across the country in 2012.

UNANIMOUS STRIKE VOTE

On September 3, members packed a 2,500-seat concert hall wearing red t-shirts, chanting, and voting unanimously to strike. The union represents 5,000 teachers, nurses, counselors, instructional assistants, office workers, and paraprofessionals, in a school district that serves 53,000.

Raises were a central issue. “We haven’t gotten a cost of living increase in six years,” said substitute teacher Dan Troccoli. In Washington, the state legislature determines the base teacher salary, but districts can supplement it in negotiations. SEA members wanted the district to make up for years of the state’s underfunding of teacher pay.

Russell said that although many teachers felt they didn’t get everything they wanted in the settlement, one key victory was that non-teaching staff got the same raises as teachers. In the past, Russell said, “office staff and instructional assistants were left behind and it’s embarrassing that teachers went along with it.

“We made it priority number 1. We said every group will get the same raise.”
The union also got the district to agree to 30 “race and equity teams,” groups of teachers in each school who will plan how to address the disproportionate discipline of students of color. Initially Seattle teachers wanted such teams in all schools and the district would agree to only six.

The union succeeded in de-linking teacher evaluation and student performance, which is calculated in part by standardized test results. Seattle’s previous evaluation system had factored in “student growth,” including test scores, a practice many teachers say is arbitrary and unfair. Washington, unlike many other states, has so far avoided a statewide mandate to include student performance and test scores in teacher evaluation, making Seattle an outlier.

**DRY RUN FOR STRIKE**

Seattle teachers had not struck the district in 30 years, since a five-week strike in 1985. They did strike for one day in May this year, in an action aimed at the state government.

The May strike was part of a wave of one-day strikes by teachers in 65 districts across Washington over the state’s refusal to properly fund public schools and reduce class sizes.

In 2012, the state Supreme Court found the legislature was violating the state constitution by refusing to adequately fund education. On August 13, the court announced that until the legislature complied, it would begin imposing fines of $100,000 a day. In past years the legislature had cut funding despite obligations to increase it.

Seattle teachers struck May 17, just as negotiations were beginning. The district, in part willing to allow the teacher protest over much-needed state funding, closed school for the day. Teachers picketed at high schools and then marched downtown, where they were joined by other districts in a crowd of 5,000.

The one-day strike offered a dry run as union members were starting their contract campaign, this time with a larger, more representative bargaining team of 40 members. “It trained people who had never struck what it’s like to walk the line,” Troccoli said.

In the settlement, the two sides agreed to guarantee 30 minutes of recess in all schools. Troccoli said the union’s initial proposal of 45 minutes was in concert with parent protests that schools have been cutting into students’ free time to make way for test prep. Teachers and parents say this disproportionately impacted schools with low-income students of color.

A study by University of Washington researchers found Seattle students had 12 minutes on average of seated lunchtime, and that no school had as much as 20 minutes. “It’s crazy: you either have kids who are foregoing lunch to run around outside or they are just staying in the lunchroom,” Troccoli said. “It’s problematic on both sides.”

Teachers have worked to build relationships with community groups. The movement to opt out of standardized tests built alliances between teachers, the Seattle NAACP chapter, and parent groups such as Parents Across America.

**SUPPORT FROM PARENTS**

PTA member Ljiljana Stanojevi-Peñuela organized strike support through the Facebook group Soup for Teachers. In less than a week, the group grew to 1,300. By the strike’s end it had 2,800 members.

Stanojevi-Peñuela said she supported the union’s fight to protect recess, along with its wage proposals. “Is it fair? Yes,” she said, pointing to Seattle’s development boom and rising rents. “It’s harder to live in Seattle on a teacher’s salary.”

Soup for Teachers brought food to locations near schools, working with rank-and-file strike captains. “This is a completely parent-run thing,” Stanojevi-Peñuela said.

As teachers went back to work, Russell said the union’s focus will be on bringing in more state funding and that the strike, which didn’t win everything, got new teachers involved in the union. Russell said the picket captains at his school were second- and third-year teachers.

“This is just the tip of the iceberg,” Russell said. “We have energized a whole new generation of teachers.”

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“This may not be a fight we sought, but it’s also not a fight we intend to lose. The future of the middle class, the promise of high-quality public education, and the strength of our democracy all depend on us.”

Noting the public and employer interest in labor stability, the Court found it reasonable for a public-sector union shop to charge non-members the equivalent of union dues – called an “agency fee” or “fair-share fee” – for its services. But it restricted the immediately enforceable portion of that fee to union costs in negotiation and administration of the relevant collective-bargaining agreement, and required unions to give non-members a convenient way to opt out of paying for all other union activities, which typically include public advocacy.

“At least, the court should be extremely wary, as it usually is, of upending long-settled precedent. The Abood ruling has stood, and been repeatedly reaffirmed, for nearly 40 years. It would be troubling if it was now reversed by a deeply divided vote.” New York Times Editorial, 1/9/16

But the issue before the court isn’t whether teachers’ unions are beneficial or harmful. It is whether the 1st Amendment prohibits California and other states from requiring public employees who choose not to join the union – but who benefit from agreements the union negotiates – to help defray the costs associated with collective bargaining. That doesn’t mean that an employee may not exercise his 1st Amendment right to criticize the union or the policies it pursues at the negotiating table.

The Court has revisited Abood six times since its first announcement, most recently in last year’s Harris v. Quinn. Strong majorities on the Court have reaffirmed the ruling – five times unanimously – in all of those cases. Every member of the present Court has either authored or joined in at least one of those reaffirmations.

On January 11, the Supreme Court heard arguments on Friedrichs v. California Teachers Association, a full-bore attack on public-sector unions. The lead Friedrichs plaintiffs, a group of fiercely anti-union California public-school teachers, seek to reverse Abood v. Detroit Board of Education (1977) on First Amendment grounds. Abood has provided the bedrock constitutional analysis and recommended administrative structure for public-sector unionism for nearly 40 years.

Friedrichs was thrown together by a variety of business-backed anti-union advocacy groups led by the hard-right Center for Individual Rights. The suit raced through the District Court and the Ninth Circuit Court of Appeals without full evidence or oral argument. (Both courts dismissed it.) Astonishingly, despite unanimity among the Circuit Courts against the anti-union, far-right position they gained review by the Supreme Court on their first try. This raises an eyebrow at the very least and questions the Supreme Court’s motives and integrity at the worst.

What others say

“It’s not known how Jefferson would have felt about public-sector unions. But what’s sinful and tyrannical is for billionaires to take over the electoral process and the government – and for the highest court in the land to take aim at the last remaining counterweight.” Dana Milbank in the Washington Post, 1/11/16

Will a handful of the richest people in America be allowed to consolidate their control over our economy and our democracy? Will the excessive money of the ultra-rich be allowed to control every aspect of our lives and the ability of the average American to earn decent wages and provide for a stable life for them and their families?

Justice Stephen Breyer, one of the Democratic appointees, argued that there were good arguments on both sides of the case, but no compelling reason to ‘overrule a compromise that was worked out over 40 years and has lasted reasonably well.’ Said Breyer: ‘I guess people could overrule our decisions just as easily. And you start overruling things, what happens to the country thinking of us as a kind of stability in a world that is tough because it changes a lot?’” Dana Milbank in the Washington Post, 1/11/16

These court cases are part of a concentrated and growing effort to silence working people. In Bain v California Teacher Association, their argument is not whether unions provide much-needed benefits. Instead, the plaintiffs are claiming that as nonmembers of a union, they should still get the full benefits of belonging to a union for free.

To quote AFT-President Randi Weingarten… “This may not be a fight we sought, but it’s also not a fight we intend to lose. The future of the middle class, the promise of high-quality public education, and the strength of our democracy all depend on us.”