



Foundation Action

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of the National Right to Work
Legal Defense Foundation, Inc.

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NLRB to Reexamine Controversial “Card Check” Organizing Tactics

*Federal agency to
reconsider policy supporting
push-button union
recognition*

WASHINGTON, D.C. — Responding to compelling legal arguments brought by National Right to Work Foundation attorneys, the National Labor Relations Board (NLRB) voted 3-2 on June 7 to reconsider its policy of propping up the coercive “card check” union recognition process.

More than 50 of the nation’s newspapers and several wire services covered the development, as red-faced union officials from the AFL-CIO and major international unions scrambled to denounce the Foundation’s efforts to defend employee freedoms.

The NLRB granted review of two cases appealed by Foundation attorneys on behalf of employees at two automotive suppliers (Dana and Metaldyne) who recently found themselves organized by the United Auto Workers (UAW) union. As these are the lead cases on this cutting-edge issue, the federal agency is soliciting legal briefs from the entire labor-management community as to the general legality of an increasingly prevalent top-down union organizing method.



Due in part to public pressure brought by Foundation-assisted workers and Congressman Charlie Norwood (R-GA), the NLRB bureaucracy is starting to get off the dime and reconsider the permissibility of certain top-down organizing methods.

“Increasingly unable to sell workers on union membership, union officials have resorted to coercive tactics such as ‘neutrality’ agreements and the in-your-face “card check” solicitation process to intimidate workers into supporting a union,” said Stefan Gleason, Vice President of the National Right to Work Foundation. “Employees should be allowed to decide whether to unionize free of union and employer coercion.”

Future of “card check” process on the line

The NLRB’s ultimate decision will impact the enforceability of so-called “neutrality” agreements, increasingly prevalent backroom agreements found in the automotive, service, retail, health care, hotel, textile, and construction industries in which an employer agrees to actively assist organizers in exchange for

an end to vicious union attacks in the press, orchestrated pressure from customers, and/or costly lawsuits filed in courts and at regulatory agencies.

Under these so-called agreements, union operatives gain sweeping access to their work-

see NLRB PERSUADED, page 5

IN THIS ISSUE

- 2 Workers Trek to Capitol Hill to Demand Action
- 3 Washington Supreme Court to Decide Fate of “Paycheck Protection”
- 4 Long Range Gift Planning Offers Tremendous Tax Advantages
- 6 Union Coughs Up \$12,000 After Ordering Unlawful Firing
- 7 Teamsters Union Fines Non-Striking California Grocery Workers

Workers Trek to Capitol Hill to Demand Action

Foundation-assisted victims of top-down organizing speak to national media

WASHINGTON, D.C. — Nearly a dozen Foundation-assisted workers from across the country traveled to Washington, DC to appear at a Capitol Hill press conference to voice their opposition to the coercive tactics perpetrated by union organizers under so-called “neutrality and card-check agreements.”

In recent years, union organizers have increasingly pressured employers into foisting union affiliation upon employees through “neutrality” agreements and a “card check” recognition process.

Under these backroom agreements, union agents are allowed to bully workers one-on-one — through on-the-job harassment, lies and misrepresentations, “captive audience” speeches, and intimidating “home visits” — into signing union authorization cards that are counted as “votes” in favor of unionization.

This abusive process has given rise to a national epidemic of workers’ rights violations, and nearly two dozen unfair labor practice cases are



Foundation-assisted Dana assembly line worker Clarice Atherholt appeared at a press conference on Capitol Hill to expose the NLRB’s foot-dragging.

awaiting action by a stubborn NLRB bureaucracy.

“Determined to increase their forced-dues treasuries, union officials are leveraging companies to help impose forced unionism from the top down,” said Mark Mix, President of the National Right to Work Foundation.

Joining the workers to voice opposition to these abuses were Congressman Charlie Norwood (R-GA) and Congressman Joe Wilson (R-SC).

Workers make public statements about ugly tactics

Several of the Foundation-assisted workers told reporters from numerous newspapers (as well as radio and television stations) of the abuse and intimidation they suffered at the hands of union officials during “card check” organizing drives. As Chairman of the Workforce Protections panel in the U.S. House of Representatives, Congressman Norwood holds oversight jurisdiction over matters relating to compulsory union dues and also announced the introduction of legislation to ameliorate certain top-down organizing tactics.

Meanwhile, NLRB General Counsel Arthur Rosenfeld and his staff were urged to get off the dime and begin issuing complaints. Thousands of citizens have signed and sent petitions to Congressman Norwood asking him to call Rosenfeld before Congress to testify as to why the General Counsel’s office has so far failed to issue complaints and defend employee freedom. (Although the Board itself voted to reconsider prior precedent in this realm [see page 1], the General Counsel’s office has continued to stonewall and has not chosen to prosecute unfair labor practice complaints and to present them to the Board for adjudication.)

Donna Stinson, an employee of Dana Corporation in Bristol, Va., who has filed federal charges with the NLRB against the United Auto Workers union over violations of workers’ rights during a “card check” organizing drive, said, “card checks force you to choose sides out in the open and defend your choices, they divide the workplace and create a very hostile environment. The union organizers are allowed to stay and pressure employees until they get enough cards signed, and, feeling the heat, many cave in just to get along.”

Foundation Action

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

Wash. Supreme Court to Decide Fate of “Paycheck Protection”

Appeals court struck down remaining useful element of over-hyped “reform”

SEATTLE, Wash. — After a Washington state appellate court threw out provisions of the state’s campaign finance law that supposedly required union officials to obtain the prior consent of public employees before spending mandatory union fees for politics, the state’s over-hyped “paycheck protection” law is now on its last legs, hobbling toward a final decision on its fate by the state’s Supreme Court.

In recent years, the developments in Washington state have only strengthened arguments for ending, rather than “regulating,” compulsory unionism.

The latest blow to the regulatory approach came with Washington state appellate rulings overturning all fines assessed by a state trial court against the Washington Education Association (WEA) union and, at the same time, dismissing a separate suit brought by National Right to Work Foundation attorneys seeking damages for 4,200 non-union teachers from whom the union hierarchy failed to obtain permission before using a portion of their agency fees for political activities.

Unless these appellate court rulings in *Davenport v. WEA*, and *Public Disclosure Commission v. WEA* are reversed, the proponents of a Big Government regulatory approach to addressing the problems of compulsory unionism will be dealt such a serious blow that sincere reformers may well abandon the “paycheck protection” approach and focus their efforts on Right to Work approaches, which seek to eliminate, rather than regulate, union special privileges.

\$400,000 fine against union overturned

Union lawyers for the WEA had filed an appeal in *Davenport* after the lowest court — Thurston County Superior Court — ruled that the class

of nonunion teachers had an implied right of action under Washington’s I-134 to recover the fees the WEA union had used, without their authorization, for political purposes. In a related case, the Thurston County Superior Court fined the WEA union \$400,000 for intentionally violating I-134 and enjoined it from automatically collecting that portion of the agency fee that is used for politics.

However modest, those victories were overturned by the appellate level court last year. Foundation attorneys have appealed the *Davenport* ruling and the State’s attorney general appealed its loss to the Washington state Supreme Court. The state’s highest court heard both cases in May with a decision expected by this end of the year.

“These cases just show that so-called ‘paycheck protection’ laws are ineffective in halting the practice of forcing teachers to function as ATMs for union political operatives,” said Stefan Gleason, Vice President of the National Right to Work Foundation.

“Paycheck protection” fails to slow down Big Labor

In theory, “paycheck protection” laws force union officials to obtain the prior consent of public employees before spending mandatory union dues for politics. This is supposed to reduce the resources unions are able to spend on political campaigns and other activi-



Though backers claim that “paycheck protection laws” reduce the use of forced dues for politics, the Washington state branch of the NEA has actually increased its political expenditures since the law’s passage.

ties because workers who object to union officials’ radical agenda will withhold their consent.

Nevertheless, Washington’s so-called “paycheck protection” law, like its counterparts in other states, has ultimately proven ineffective in limiting the use of union dues for political activities.

In the case of the WEA teacher union, union officials have managed actually to *increase* its political resources since the law passed. By its own admission, the WEA union spends millions of dollars each year on activities unrelated to collective bargaining. Yet, the much-hyped “paycheck protection” regulation has offered little relief to Washington teachers.

Even if the Washington state Supreme Court reinstates the Thurston County court’s rulings, teachers will still be able to reclaim only \$8 each per year, on average, under I-134. Much more substantial relief continues to be available under a settlement of a First Amendment lawsuit litigated by Foundation attorneys in recent years.

see OVER-HYPED “REFORM,” page 5

Long Range Gift Planning Offers Tremendous Tax Advantages

Gifts to National Right to Work generate tax savings and possible lifetime income

SPRINGFIELD, Va. — National Right to Work Foundation President Mark Mix offered thanks to Right to Work supporters who have helped wage the battle on compulsory unionism through increasingly popular planned giving vehicles.

“More and more of our supporters are reaping the many tax benefits of planned giving while helping ensure that the Foundation will have the

resources to continue its program for as long as union officials stomp on individual freedom,” Mix stated.

Meanwhile, statistics show that most Americans who make contributions to charitable causes are still not aware of — and do not take full advantage of — the many planned giving tools that have the potential to lower personal tax liability, generate immediate tax deductions, avoid capital gains

taxes, bypass estate taxes, and even generate income for themselves or a loved one. The sidebar appearing below details several exciting planned giving approaches.

If you would like to learn more about these planned giving opportunities, please call Foundation Vice President Alicia Auerswald, (800) 336-3600, ext. 3304, or e-mail her at aaa@nrtw.org. 

Help Defend Individual Freedom through Planned Giving

Gifts of Appreciated Stocks, Bonds, Mutual Funds and Other Investments

- Avoid paying capital gains tax to the IRS
- Receive a charitable deduction for the full fair market value of the security donated

A bequest through a Will or Trust

- Leave a legacy by naming Right to Work as a beneficiary of your estate
- Help facilitate the management and distribution of property and minimize probate expenses
- Retain control of your assets during your lifetime through a living trust
- Sample language: I give, devise and bequeath to National Right to Work Legal Defense and Education Foundation, Inc., 8001 Braddock Road, Springfield, Virginia 22160, for its general purposes:
 - a) The sum of \$ _____; or
 - b) _____ percent of the rest, residue and remainder of my estate, including property over which I have a power of appointment; or,
 - c) all the rest, residue and remainder of my estate, including property over which I have a power of appointment.

Gifts of Appreciated Real Estate

- Receive an income tax deduction for the fair market value of your gift
- Avoid all capital gains taxes

- Reduce the amount of your taxable estate when donated through your will or living trust

A Future Gift through a Charitable Remainder Trust

- Generate an immediate income stream for you or a loved one
- Receive an immediate income tax deduction
- Reduce estate taxes and probate costs
- Support Right to Work with the remainder of your gift

A Periodic Gift through a Charitable Lead Trust

- Generate a periodic gift to Right to Work
- Receive an immediate income tax deduction
- Reduce estate taxes and probate costs
- Designate yourself or a loved one as the beneficiary of the remaining assets

Gifts through Charitable Gift Annuities

- Fixed interest rates up to 11.3%
- Receive an immediate income tax deduction
- Receive a fixed income for life
- Larger gifts yield larger returns
- Very easy to establish
- Not available in all states

Gifts of Retirement Plans

- Minimize the taxes due on funds you are forced to withdraw from your plan
- Eliminate or reduce the huge taxes levied by the government on plans bequeathed to family members

Be sure to check with your own advisor if you have any questions about the effect of a particular planned giving option on your personal tax situation. The information in this newsletter is, of necessity, general in nature.

Over-hyped “Reform” Had Little Chance of Being Effective

continued from page 3

Under that case, *Leer v. WEA*, non-member teachers may annually reclaim more than \$175 each.

“The experience in Washington and other states has shown that so-called ‘paycheck protection’ laws do little or nothing to stop union bosses from spending employees’ compulsory dues on politics,” stated Gleason. “In fact, they may actually provide cover for union political operatives who instead claim they are spending compulsory dues merely on ‘educational activities’ or who exploit other loopholes.”

Ending compulsory unionism the only real solution

Although the appeal to the Washington Supreme Court by Foundation attorneys gives the state’s court system one last chance to protect certain rights of non-union teachers in the state, even a total victory in the two cases would only be a band-aid on a gaping wound.

Experienced leaders in the battle against union abuse realize that, in the long run, the only way to ensure

employees are not being forced to pay for union political activities is to end compulsory unionism altogether. Only breaking the chains that force workers to pay any union fees as a condition of employment will truly empower workers to stop their money from being used to fund political activities they do not support.

This knowledge is what compelled Nobel Laureate and internationally renowned economist F. A. Hayek to call the Right to Work approach the “only practicable way of restoring freedom.”

NLRB Persuaded to Reconsider Clinton-Era Ruling

continued from cover

places and employees’ personal information, strip workers of the opportunity to a secret ballot representation election, and hold mandatory “captive audience” speeches about why employees should be unionized. Workers also are typically subjected to “card check” drives in which union operatives bully workers face-to-face to sign union authorization cards that count as a “vote” in favor of unionization.

In granting review, the majority wrote: “We believe that the increased use of recognition agreements, the varying contexts in which a recognition agreement can be reached, the superiority of Board supervised secret ballot elections, and the importance of Section 7 rights of employees [to refrain from unionization], are all factors which warrant a critical look at the issues raised herein.”

NLRB policy locks workers into unwanted union affiliation

The NLRB ruling comes in the consolidated cases of employees at Dana Corporation in Upper Sandusky, Ohio and Metaldyne in St. Marys, Pennsylvania, who filed decertification

petitions (with 35 percent and more than 50 percent of employees signing, respectively) seeking elections to decide whether the nation’s largest auto workers union hierarchy truly enjoys the support of a majority of employees and can lawfully act as their “exclusive representative.” The NLRB regional directors dismissed the election petitions, and the employees appealed to the NLRB in Washington, DC.

Clarice Atherholt, a Foundation-assisted Dana assembly line worker, applauded the Board’s preliminary decision saying, “This will bring to the attention of more people how unfair card checks are.” Atherholt added in her remarks to the *Detroit Free Press* newspaper that the UAW union’s approach to union organizing was “the most unfair, undemocratic, un-American way that I have ever heard of.”

The Board will reevaluate its so-called “voluntary recognition bar rule,” the non-statutory, Board-created rule stipulating that unions gaining voluntary recognition from an employer may avoid all employee challenges and bargain with an employer for a so-called “reasonable period” —



UAW boss Ron Gettelfinger has been viciously lashing out at the Foundation in dozens of newspapers in recent weeks.

sometimes lasting for up to one year.

If the NLRB voids the “voluntary recognition bar” and a decertification election is allowed and successful, the UAW would lose its power to act as the “exclusive bargaining representative” of the employees at Dana and Metaldyne. And employees in many industries would have greater ability to protect their right to negotiate their own terms and conditions of employment without union interference.

Meanwhile, nearly two dozen formal allegations of employee abuse challenging the validity and implementation of so-called “neutrality” or “partnership” agreements are pending before the NLRB General Counsel and regional directors who have not yet issued complaints in even the most egregious cases.

Union Coughs Up \$12,000 After Ordering Unlawful Firing

Union officials forced to pay damages, inform workers of their rights

FT. RUCKER, Ala. — Settling federal charges filed by National Right to Work Foundation attorneys on behalf of a Shaw Infrastructure engineer at Ft. Rucker, union officials have agreed to pay \$12,000 in damages after unlawfully having him fired for refusal to pay union dues.

In August 2003, Danny McDuffie filed unfair labor practice charges at the National Labor Relations Board (NLRB) against Wiregrass Metal Trades Council (WMTC) union officials for unlawfully having him fired for refusal to pay full union dues and sign a dues check-off form authorizing the automatic deduction of union dues from his paycheck. McDuffie tells **Foundation Action** that his religious faith and disdain for paying for union politics played a role in his decision to defy WMTC officials. Just as importantly, he did not want the union to ignore his rights, and was prepared to stand on principle at great personal cost to take on the WMTC hierarchy.

"It made me resentful that they would even try anything like that," McDuffie stated. "I felt that I knew in my heart they didn't have the right to do that."

While Alabama's highly popular Right to Work law, on the books since



AFL-CIO czar John Sweeney and virtually all of his affiliated unions are going all out to spend workers forced dues this election year.

1953, normally prevents workers from having to pay dues to an unwanted union, much of Ft. Rucker is an "exclusive federal enclave" that instead falls under the jurisdiction of federal labor laws which authorize compulsory unionism. Nevertheless, Foundation-won U.S. Supreme Court victories establish that employees laboring under compulsory unionism have certain due process rights.

Union officials work overtime to keep workers in the dark

Prior to having McDuffie fired, WMTC union officials failed to inform Shaw Infrastructure employees of their right to refrain from formal union membership and their right to be forced to pay for no more

than the union's monopoly bargaining costs.

"Union officials were so bent on crushing any dissent that they drove Danny McDuffie from his job, while trying to keep workers in the dark about their rights," stated Ray LaJeunesse, Vice President and Legal Director of the National Right to Work Foundation. "Union officials seem to care much more about stuffing their coffers with workers' dues rather than treating the rank-and-file employees they claim to represent with respect."

While McDuffie has decided not to accept re-instatement, and thereby refuse the forced "representation" of WMTC union officials, the union must pay him \$12,000 in lost pay (plus interest) and immediately post notices conspicuously in the workplace to inform current Shaw Infrastructure workers of their rights.

The actions of WMTC union officials violated the Foundation-won *Communications Workers v. Beck* U.S. Supreme Court decision. Under *Beck*, workers may resign from formal union membership and halt and reclaim the portion of forced union dues spent on activities unrelated to monopoly bargaining, such as union electoral politics. Union officials must also provide workers with an independent audit of union expenditures to verify that forced union dues are not spent on non-monopoly bargaining activities.

"As we are heading into a contentious election season, the Foundation expects a substantial increase in reports of union harassment, firings, and unlawful forced-dues politicking. We must continue to be prepared to take aggressive legal action," concluded LaJeunesse. ✎

"I felt in my heart they didn't have the right to do that," McDuffie stated.

Newsclips Requested

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

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

Teamsters Union Fines Non-Striking Grocery Workers

Workers who honored Teamsters own “no strike” pledge fight unlawful retaliation



California grocery workers who refused to tow the union line and walk picket lines faced \$1,600 fines as well as violence for refusing to abandon their jobs.

LOS ANGELES, Calif. — Federal charges filed by several employees of Albertson’s grocery chain who face retaliatory fines for refusal to engage in illegal “sympathy strike” activity have forced union officials to waffle on issuing the fines. Nevertheless, retaliation continues against many workers who refused to obey the illicit strike order.

Teamsters Local 592 union officials have been socking employees with confiscatory fines — \$1,600 per employee — simply for following the union’s own “no strike” contract with Albertson’s. The targeted employees merely continued to work during the recent statewide grocery strike ordered against Albertson’s, Vons, and Ralphs by United Food and Commercial Workers (UFCW) union officials.

With help from National Right to Work Legal Defense Foundation attorneys, Juan Saldana and several other Albertson’s distribution center employees filed unfair labor practice charges with the National Labor Relations Board (NLRB) after Teamsters union

officials imposed \$1,600 fines on the workers for refusal to abandon their jobs.

Responding to the charges, union officials dropped the discipline for some employees — but then inexplicably reinstated the fines. Other employees are seeing their fines dropped, but Foundation attorneys continue to receive inquiries from fined workers about their rights.

Worker threatened with firing simply for reporting to work

Saldana and his coworkers have alleged that Teamsters Local 592 officials unlawfully failed to inform workers of their rights to refrain from formal

union membership and to object to paying for the union’s nonrepresentational activities, such as electoral politics. The charges state that union officials also misled workers by telling them they had to sign automatic dues deduction cards, pay full union dues, and remain full members as a condition of employment.

Furthermore, Teamsters union officials told Saldana that they would “have his union card pulled” and that he would be fired if he refused to violate the union’s own “no-strike” policy and strike against his employer.

“Teamsters union officials have been waging an ugly and illegal campaign of retaliation against workers who decided to honor their commitments to their families and their employer by refusing to walk off the job,” said Mark Mix, president of the National Right to Work Foundation.

In November 2003, Saldana and his coworkers learned from sources independent of the union of their rights to

refrain from formal union membership and to be forced to pay no more than the union’s monopoly bargaining costs. Once the workers resigned their formal memberships, union officials again misled them by informing the workers that their resignations would have to be renewed annually.

The actions of Teamsters union officials violated worker protections recognized in the U.S. Supreme Court ruling in *Communications Workers v. Beck*, a case argued and won by Foundation attorneys. Under the *Beck* ruling, workers may not be compelled to pay dues beyond the union’s monopoly bargaining costs, and they are entitled to an independent audit of union expenditures.

Teamsters officials told Saldana they would “have his union card pulled” and have him fired.

see GROCERY WORKERS, page 8

Grocery Workers

continued from page 7

UFCW union battled for privilege to collect forced dues for organizing

Years before leaning on the Teamsters union officials to do its bidding in the recent California grocery strike, the UFCW union hierarchy battled tirelessly to preserve its power to force compulsory union dues payers to finance union recruiting.

Michigan grocery worker Phillip Mulder, along with other grocery clerks across America, challenged the UFCW's collection of forced union dues to fund union organizing. The case, litigated by Foundation attorneys, took a winding path through the NLRB and the federal courts, eventually leading to a U.S. Supreme Court appeal in 2002.

Because the Supreme Court refused to hear the *Mulder* case, the 7.8 million American workers who labor in compulsory union shops under the National Labor Relations Act must not only continue to finance union monopoly bargaining via their forced dues, but — for the time being — must also pay for union recruitment activities. Such activities often consume more than 30 percent of a union's budget.

Until the case ended on the doorstep of the Supreme Court, UFCW union officials battled Mulder and his coworkers at every turn. The NLRB shuffled the case around for nearly a decade before ruling in 1999 that objecting non-members can be required to subsidize union organizing, despite the Supreme Court's ruling in the earlier *Ellis* case that similarly situated railway and airline workers cannot be forced to do so. Next, the U.S. Court of Appeals for the Ninth Circuit first unanimously overturned the NLRB's ruling, but later upheld it by an 11-0 vote after an *en banc* rehearing.

"UFCW union officials shake down any worker they can to fund their pet projects, and they are relentless in running roughshod over workers' rights to preserve and expand Big Labor's government-granted coercive power," stated Mix. †



Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter:

Out-of-control thugs!

Just like schoolyard bullies, union bosses again and again look for workers they can try to intimidate or exploit. But when your National Right to Work Foundation enters the fray, we can often force a retreat.

In this issue of **Foundation Action**, we report on two cases out of many in which Foundation attorneys have defended workers who are the victims of union bullying. In one case, engineer Danny McDuffie, with Foundation assistance, filed federal charges against Wiregrass Metal Trades Council (WMTC) union officials for unlawfully having him fired from his job as a Shaw Infrastructure engineer.

McDuffie refused to pay full union dues and sign a dues check-off form authorizing the automatic deduction of union dues from his paycheck. WMTC union officials, meanwhile, were so intent on seizing their forced-dues booty that they illegally kept McDuffie and other employees in the dark about their legal rights. Fortunately, Foundation attorneys won him \$12,000 in damages.

In another outrageous example of union bullying, officials of Teamsters Local 592 in California went after Juan Saldana and his fellow workers. Saldana and others refused to engage in illegal "sympathy strike" activity during the statewide grocery strike ordered by United Food and Commercial Workers (UFCW) union officials.

In retaliation, Teamsters officials threatened the workers with losing their jobs and hit them with confiscatory fines simply for following the union's own "no strike" pledge with the grocers. Foundation attorneys are vigorously defending these workers right now.

You can read more about both of these cases in this issue of **Foundation Action**, and I think you'll agree with me that there is only one good way to deal with union thuggery: Stand up and fight back! And with your continued support, that is exactly what the Foundation will do.

Sincerely,

Mark Mix

P.S. I'd ask you to read page 4 carefully and thoughtfully consider a planned gift to the Foundation. It can be very easy.