



Foundation Action

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

Vol. XXVII, No. 6

8001 Braddock Road • Springfield, Virginia 22160

www.nrtw.org

November/December 2007

Foundation Strikes Blow Against 'Card Check' Organizing

***NLRB persuaded to expand
employee rights to resist
abusive organizing methods***

WASHINGTON, DC – The National Right to Work Foundation secured new rights for employees across the nation after persuading the federal labor board to issue a sweeping 3-2 ruling overturning one of its longstanding anti-employee policies. For decades, the policy barred employees from obtaining a secret ballot vote over unionization after a union was recognized by way of a controversial “card check” organizing drive.

Recently, card check has become Big Labor’s “go-to” organizing method because it seriously undermines employees’ ability to resist unwanted unionization. During a card check campaign, union officials avoid the less-abusive secret ballot election process – administered by the National Labor Relations Board (NLRB) – and instead wage a high-pressure, in-your-face card signing campaign. Union organizers frequently harass, mislead, or outright threaten employees to induce them into signing authorization cards that are then counted as formal votes favoring unionization.

However, as a result of the Foundation’s *Dana/Metaldyne* victory, the NLRB will now give employees



New York Times

AFL-CIO union chief John Sweeney had a “hissy fit” after the NLRB sided with Foundation attorneys and noted that “card check” instant organizing is “admittedly inferior” in protecting employee free choice.

notice that they have 45 days after a card check recognition to file a decertification petition to obtain a secret ballot election to vote out the unwanted union.

The long-awaited NLRB ruling came in the consolidated cases of employees at Dana Corporation in Upper Sandusky, Ohio, and Metaldyne in St. Mary’s, Pennsylvania. National Right to Work attorneys brought the cases after the automotive employees found themselves organized by the unwanted United Auto Workers (UAW) union.

“This is a step forward for employee freedom, but there is more to do,” said National Right to Work Foundation President Mark Mix.

Old NLRB rule entrenched unions for four years

Right to Work Foundation attorneys helped employees fight back at the Board after Dana and Metaldyne announced that they would each recognize and bargain with the UAW union on the basis of card checks. In response, Dana and Metaldyne employees filed decertifi-

cation petitions with a significant number of employees signing.

However, the NLRB Regional Directors dismissed the employees’ election petitions, basing their decision on the so-called “voluntary recognition bar rule.” The Board-fabricated policy stipulated that unions pressuring an employer to grant them monopoly bargaining privileges may avoid all employee challenges and bargain with

see **DANA-METALDYNE** page 7

IN THIS ISSUE

- 2** Year-End Charitable Giving Can Pay Big Dividends
- 3** Foundation Prompts FEC to Sock ACT with \$775,000 Fine
- 4** Foundation Seeks to Alert Over 12,000 Workers to Privacy Invasion
- 5** Foundation Makes Hollywood Union Officials Face the Music
- 6** Official Right to Work YouTube Channel Launched

Year-End Charitable Giving Can Pay Big Dividends

As detailed in recent issues of *Foundation Action*, there are several exciting ways for donors to wind up their financial goals for this year. Many Right to Work Foundation supporters are looking for opportunities to lessen their “tax hit” for 2007, so here are a few options:

Give IRA retirement funds to Foundation before December 31st

The clock is ticking to take advantage of the 2006-2007 Pension Protection Act which allows tax-free gifts from (non-employer sponsored) IRAs and allows the gifts to count as required minimum distributions. Please review the following special **tax-free conditions** and make a special gift to the National Right to Work Legal Defense and Education Foundation, Inc. today:

- the donor must be 70 1/2 years or older when the gift is made;
- the transfer of funds is made directly from the IRA to the Foundation (a qualifying charity) during 2007; and
- the gift is given outright and in an

amount of \$100,000 or less, aggregated with other such gifts.

Time is of the essence! These IRA provisions are set to expire after December 31, 2007.

Capitalize on other planned giving methods

There are many additional charitable giving options available to generous donors to the Foundation. Other tax-advantaged giving options that are available include:

1. gifts of cash
(a tax deduction in the current year);
2. gifts of stock and/or securities
(a tax deduction for the full market value and no capital gains tax);
3. wills and living trusts
(a plan for the future);
4. gift annuities
(a tax deduction in the current year and an income stream for life-not available in all states);
5. pooled income fund
(an alternative life income solution); and
6. charitable lead trusts and charitable remainder trusts.




Enroll in the National Right to Work Foundation's Legacy Society

As the Foundation celebrates the second anniversary of the Legacy Society, it extends an invitation to all supporters to become members by making a planned gift of any kind to the Foundation and then alerting the Foundation to this fact.

As members of the Society, donors are entitled to benefits such as special event invitations, their name listed on the Legacy Society plaque in the Foundation's office, and the assurance that you are making a significant impact on the future of the Right to Work movement!

A planned gift to the Foundation is an investment in building the Foundation's strategic litigation and media programs to combat the evils of compulsory unionism abuse.

As with all planned giving options, you should consult your own legal or tax advisor with respect to your particular circumstances. 

Foundation Action

Rev. Fred Fowler

Reed Larson

Mark Mix

Stefan Gleason

Ray LaJeunesse, Jr.

Chairman, Board of Trustees

Executive Committee Chairman

President

Vice President and Editor in Chief

Vice President and Legal Director

Distributed by the
National Right to Work Legal Defense and Education Foundation, Inc.
8001 Braddock Road, Springfield, Virginia 22160
www.nrtw.org • 1-800-336-3600

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.

If you would like additional information
on the Foundation's Legacy Society,
or any planned giving information listed
above, please contact
Ginny Smith at 1-800-336-3600.

Foundation Prompts FEC to Sock ACT with \$775,000 Fine

Foundation exposes forced-dues money laundering scheme during 2004 election

WASHINGTON, DC – After a three-year-long federal investigation sparked, in part, by the National Right to Work Foundation, the Federal Election Commission (FEC) fined the Service Employees International Union (SEIU) front group America Coming Together (ACT) over three quarters of a million dollars for violating campaign finance laws.

The fine came after the FEC probed the SEIU union for diverting tens of millions of dollars in workers' forced dues through ACT, a so-called "527" political organization. Most of these funds were illegally converted into "hard money" and spent to finance Democrat political campaigns during the 2004 presidential election season.

Foundation helped bring misconduct to attention of federal agency

After learning that officials at the SEIU union diverted at least \$26 million, taken mostly from workers' forced union dues, into ACT's partisan and overt electioneering activity, the National Right to Work Legal Defense Foundation filed a complaint at the FEC. This complaint helped to trigger an extensive investigation into the shady activities of the George Soros and union boss funded ACT organization.

Under federal election law, union officials specifically must not contribute to political campaigns using "dues, fees, or other moneys required as a condition of membership in a labor organization."

Since ACT spent the funds on overt electioneering, rather than general political organizing such as voter identification and voter registration activities, the FEC prosecuted ACT. On the other hand, the FEC let the Democrat

National Committee and the SEIU union off the hook, claiming that they could not have known that ACT had converted the funds into illegal uses. Because SEIU boss Andy Stern was a key player in the creation and operation of ACT, the FEC dismissal of the union from the case raised eyebrows.



Leftist George Soros' union-funded "America Coming Together" political committee faced a federal investigation for improper expenditures.

Stern diverted \$26 million in forced dues to ACT

In fact, SEIU chief Andy Stern had boasted to the media that "the SEIU is the largest contributor to America Coming Together at \$26 million." Meanwhile, Stern went on to brag that SEIU union officials intended to give funds paid by "regular dues-paying members" to ACT's political activities.

"SEIU officials used the forced dues of rank-and-file workers to bankroll the campaigns of hundreds of political candidates across America that those workers oppose," stated Stefan Gleason, vice president of the Foundation.

Almost immediately following the filing of the Foundation's complaint, Foundation staff received evidence that ACT officials were furiously shredding bags of documents at their Florida headquarters. Similar shredding likely

occurred in ACT offices throughout America as word of the Foundation's complaint hit news wires and media outlets.

Based on evidence and photos provided by a police officer revealing the massive shredding campaign, Foundation attorneys immediately asked the FEC to obtain a federal injunction halting the unlawful destruction of critical evidence. However, the FEC declined to take action to preserve much of the evidence.

Reliance on campaign finance regulation is misplaced

After years of formal investigation, the FEC slapped a \$775,000 fine against ACT, which the FEC touted as the third largest fine in the Commission's 33-year history.

However, the ACT fine is less than one percent of nearly \$100 million the FEC determined had been used illegally for activities such as "giving George W. Bush a one-way ticket back to Crawford, Texas." Moreover, the FEC's conciliation agreement finalized at the end of August 2007 failed to return one penny to workers who were forced to foot much of the bill as a condition of employment.

"The FEC 'enforcement' is a light slap on the wrist," said Gleason. "The fine against the union-dues-funded ACT 527 group is a pathetic joke."

Federal election laws give false hope

In media reports following the FEC fine, the *Wall Street Journal's* John Fund

Foundation Seeks to Alert Over 12,000 Workers to Privacy Invasion

Union agents obtained workers' addresses by illegally accessing DMV records

PHILADELPHIA, PA – The National Right to Work Foundation has filed a motion to intervene in a federal court case, seeking approval from the court to inform an estimated 12,000 individuals that union organizers have covertly violated their privacy rights.

Employees at the Cintas Corporation originally filed the class-action lawsuit *Pichler v. UNITE* against the UNITE union in 2004. The U.S. District Court for the Eastern District of Pennsylvania ordered the union to pay damages because union organizers unlawfully used the license plate numbers of Cintas employees to access their personal information in official Department of Motor Vehicles (DMV) records.

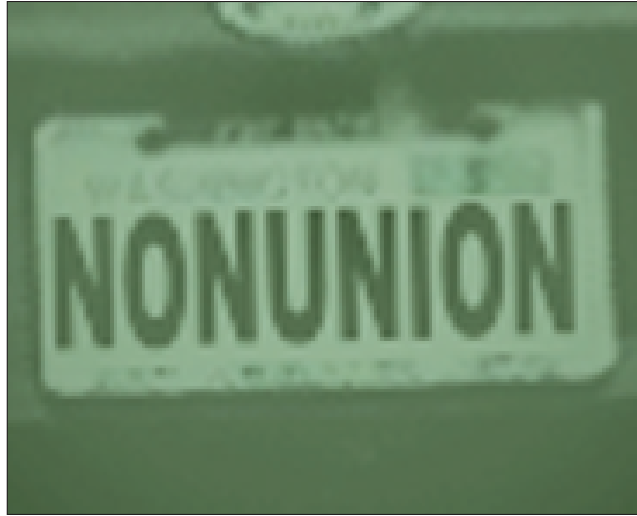
The case also revealed that in total, union officials conducted approximately 12,000 DMV record searches of individuals not employed by Cintas. These employees still do not know that union operatives possess their personal information.

The Foundation's motion seeks to modify a protective order in the case, which paradoxically prevents any of the other workers from being notified about the violation of their rights.

"Thousands of employees deserve to know that UNITE union organizers may have violated their privacy by rifling through their DMV records," said Mark Mix, president of the National Right to Work Foundation.

Operatives cruised parking lots, gathered license plate numbers

The U.S. District Court determined that union operatives conducted surveillance of numerous parking lots used by workers, collected license plate



Union agents secretly cruised parking lots and gathered nonunion employees' license plate numbers to obtain illegally up to 12,000 workers' personal information.

making "house calls" on the employees to pressure and brow-beat them into signing union authorization cards.

Union organizers intended to use these cards to compel employers to bargain with the union outside of the less abusive secret ballot election process for determining whether or not workers actually desire to unionize.

numbers, and then searched thousands of driving records.

But, so far, there are thousands of employees still in the dark about these violations, despite the fact that union officials might have to pay them millions of dollars for the violations of their privacy rights.

The original case revealed that union officials did illegally abuse the rights of over 1,500 Cintas employees by violating the Driver's Privacy Protection Act (DPPA) of 1994. That federal law bars anyone from using motor vehicle records to obtain individuals' personal information.


According to court records, the union operatives illegally accessed the DMV records in Connecticut, New York, Pennsylvania, Ohio, Indiana, Illinois, Michigan, Wisconsin, Nevada and California.

Union organizers make 'house calls' to pressure employees

The *Pichler* case further revealed that union organizers unlawfully obtained personal records for the purpose of

Employees may be entitled to \$30 million

In the latest legal filing, the Foundation is seeking the right to do a one-time mailing under court supervision to each citizen the union operatives targeted. Ultimately, an estimated 12,000 other victims could be entitled to a total of over \$30 million in liquidated damages from the UNITE union.

"Citizens should not be prevented from learning that union operatives are secretly and illegally accessing their private personal information," ended Mix. 

Free Newsletter

If you know others who would appreciate receiving *Foundation Action*, please provide us with their names and addresses. We'll rush them the next issue within weeks.

Foundation Makes Hollywood Union Officials Face the Music

Music professionals fight back after threatened by union with arrests

HOLLYWOOD, CA – When union officials told film score violinist Sai-Ly Acosta, a nonunion member, she risked being arrested if she practiced with her orchestra, she responded by filing a federal charge and going to the media.

Acosta and other musicians have turned to the National Right to Work Foundation after the Hollywood-based American Federation of Musicians (AFM) Local 47 union officials launched an ugly intimidation campaign against independent-minded musicians – musicians who assert their limited rights to refrain from formal union membership and payment of dues for non-bargaining activity.

The union brass is attempting to enforce its illegal policy requiring all musicians to be “members in good standing” with the union in order to practice in a union-owned rehearsal facility used by orchestras.

Under the Foundation-won U.S. Supreme Court ruling in *Communications Workers v. Beck*, union officials can require the payment of union dues for collective bargaining as a condition of employment, but cannot compel formal membership or payment of full dues.

“This union intimidation underscores the ongoing effort by union officials to retaliate against musicians for exercising their legally protected rights,” said Raymond LaJeunesse, vice president and legal director of the National Right to Work Foundation.

Union bosses wage bullying campaign against independent musicians

Acosta and other musicians endured waves of union intimidation and retaliation over several months, as union operatives



Local 47 union officials threatened violinist Sai-Ly Acosta (pictured) and other musicians with possible arrests if they dared to show up to rehearse with their orchestra.

Union domination holds entertainment industry by the throat

harassed the dissenting musicians, calling them “scabs” and hinted at having them arrested for trespass.

As more and more musicians exercised their Foundation-won rights, Local 47 officials retaliated by blatantly warning the musicians that the union will “enforce the long-standing policy concerning the use of the Local’s facilities.” The policy explicitly states that “...Local 47 reserves the right to remove and/or cite for trespass, any party found on the premises....”

Union backtracks as Foundation springs to action

After Right to Work attorneys helped Acosta file the charge at the National Labor Relations Board (NLRB), union officials grudgingly backed off from their threats to have dissenting musicians forcibly removed from their jobsite.

Acosta and the other musicians have been allowed to rehearse with the orchestra for the time being. However, eyewitnesses said that union operatives painted the inside of the building with bold signs that read “Full Members Only” during the night of the rehearsal.


One musician even noted that there were so many signs posted that she was surprised that there was not a separate bathroom designated just for those who exercised their *Beck* rights.

Forced unionism has America’s entertainment industry by the throat. Moreover, many standard union practices in the industry are blatantly illegal. Consequently, the National Right to Work Foundation is no stranger when it comes to helping victims of Hollywood unions.

In recent years, Foundation attorneys represented Barry Williams (best known as Greg Brady in the ABC TV series *The Brady Bunch*) in successful litigation against the Actors Equity Association (AEA) union. In his case, union officials illegally fined him \$52,000 for starring in a national tour show “The Sound of Music,” a production that was not a signatory to an Actors Equity union agreement.

In 1998, Foundation attorneys took a case for actress Naomi Marquez all the way to the U.S. Supreme Court. The Screen Actors Guild had blackballed her from obtaining a part on a Fox Television sitcom because she had not formally joined the union.

Unfortunately, many entertainers – particularly those who are struggling up-and-comers – deeply fear objecting to union-boss domination and extortionate tactics, as it could end their careers.

“Right to Work attorneys stand ready, willing, and able to provide free legal assistance to performers targeted by union bully tactics in Hollywood,” promised LaJeunesse. 

Official Right to Work YouTube Channel Launched

Foundation supporters encouraged to subscribe for regular video updates

SPRINGFIELD, VA – The National Right to Work Foundation has enlisted cutting edge media tools in the fight against compulsory unionism by creating its very own Right to Work YouTube channel.

The Right to Work channel features a rapidly growing selection of short video clips about the Foundation, its cases, and clients who have stood up for their rights, as well as clips with Foundation spokesmen on national cable news networks such as *Fox News* and *CNN*.

Foundation Action readers are encouraged to click on www.youtube.com/RightToWork and subscribe to the Right to Work channel to receive regular video updates in the months to come. Millions of YouTube users can comment on and rate videos as well as subscribe to the channel for the latest information about the Right to Work movement. †



The National Right to Work Foundation's new YouTube channel provides short video clips about the fight against compulsory unionism.

Spotlight on...

Derek Poteet,
Staff Attorney



Derek A. Poteet is the most recent addition to the National Right to Work Foundation's expert legal team. Poteet will help build on the Foundation's successful litigation record for victims of compulsory unionism that now includes 13 trips to the United States Supreme Court.

A United States Marine Corps Reservist, Poteet was recently promoted to Major. The Marines called him into service for active duty in 2005 and he served in Iraq through 2006. As the Officer-in-Charge for the Detentions Evaluation and Assessment Program, he conducted compliance inspections of U.S. and Iraqi detention facilities throughout Al Anbar province.

Poteet also brings superior discovery and litigation skills to the Foundation's expert legal staff. As a law clerk for a federal judge between 1997 and 1998, he helped to interpret and apply federal and state laws to specific cases. In serving with the Marines, he has also provided legal assistance to service members and their families.

Immediately before joining the Foundation, Poteet served as an associate attorney at Coon & Purnell, P.C., where he defended property rights and advised business clients on employment law. He is experienced in civil and criminal litigation in state and federal courts, and won reinstatement and full back pay for a state employee who was unjustly terminated.

Poteet was admitted to the Virginia bar in 1997. During the same year, he received his J.D. from Washington & Lee School of Law in Lexington, Virginia, where he served as the President of the Federalist Society Chapter. Poteet holds a Bachelor of Arts degree from the University of Virginia, where he double majored in political and social thought as well as foreign affairs.

Currently, Poteet resides in Virginia with his wife, their son, and four daughters.

Dana-Metaldyne Victory Slows Down Coercive Card Checks

continued from cover

the employer for a so-called “reasonable period” – sometimes lasting up to one year. If union officials obtain a contract within that period, a “contract bar” would then deny employees a chance to vote the union out for up to *three more years*.



Dana employee Clarice Atherholt described how UAW union officials imposed unionization via a “card check” scheme at a press conference in Washington, DC.

In response, Right to Work attorneys helped the employees file appeals to the full NLRB in Washington, DC.

Almost two dozen unions, business and public policy groups filed briefs at the NLRB arguing for a variety of outcomes in this high-profile Foundation case. Ultimately, the NLRB adopted a procedure advocated by Foundation attorneys.

In fact, the Board stated that decertification petitions filed during this newly created window could also contain signatures collected before unionization is imposed by card check, allowing employees to start decertification petitions early to improve their odds of success.

Employees that brought successful cases punished

Unfortunately, the NLRB majority’s decision took a bizarre tack in one key area. The Board ruling would only apply *prospectively*, punishing the very employees who brought the winning cases.

As a result, the forcibly unionized

Dana and Metaldyne employees – as well as other employees who similarly filed decertification petitions after card check campaigns – were not allowed the requested election to toss out the unions forcibly imposed upon them.

“There is no moral or legal justification for penalizing the very employees who brought the cases by barring them from throwing out these imposed unions,” Mix stated.

Even NLRB agrees card check is ‘inferior’

However, the NLRB majority opinion recognized the “superiority of Board-supervised secret ballot elections” over use of the “admittedly inferior” card check process.

The NLRB pointed out that “card checks are less reliable because they lack secrecy and procedural safeguards... union card-solicitation campaigns have been accompanied by misinformation ...workers sometimes sign authorization cards...to get the person off their back.”

Meanwhile, the dissenting opinion in the case claimed that the Foundation’s victory “cuts voluntary recognition [or card check organizing] off at the knees.” While this hysterical reaction from the two union partisans on the Board (Wilma Liebman and Dennis Walsh) may be overblown, union officials will undoubtedly redouble their efforts in Congress to make Big Labor’s abusive card check procedure mandatory.

A red-faced AFL-CIO boss John Sweeney wasted no time attacking the decision. He immediately filed a complaint with the United Nations’ International Labor Organization, ridiculing the labor board as “kryptonite for America’s workers” for “curtailing workers’ rights.” (His UN complaint did not explain how

a ruling that gives employees new rights actually diminishes their rights.)

Bush NLRB must ‘get on the ball’ before it’s too late

Meanwhile, America’s workers have grown weary of the federal board’s reluctance to tackle other pressing cases of employee rights violations, some languishing at the Board for several years.

In one Foundation-aided case, employees pleaded for the Board’s protection from union coercion for 18 years after filing charges. As the July/August 2006 edition of *Foundation Action* highlighted, a case brought in 1989 by David and Sherry Pirlott collected dust while the Berlin Wall fell, the American public voted in four presidential elections, and six new justices were appointed to the U.S. Supreme Court.

The Pirlotts sought a bright-line ruling that employees cannot be compelled to fund any union organizing activities, a question dodged by the NLRB earlier this year after the agency had promised the U.S. Supreme Court it would squarely address the issue.

Meanwhile, George Gally of Connecticut is still waiting for a final ruling in his case filed by Foundation attorneys in 2003, as reported in the last edition of *Foundation Action*. Gally is challenging the UAW union’s nationwide policy of requiring employees to object annually to receive refunds of forced union dues spent for non-collective bargaining activities such as union politics and lobbying.

“With three NLRB vacancies at the end of this year, there will be one final opportunity for this president to show he cares to protect employee freedom at the NLRB,” stated Mix. “Union bosses could not have hoped to be in a better position than they are now after seven years of the Bush Administration.”

FEC Ruling

continued from page 3

agreed that federal election laws are flawed. "The FEC takes years to catch up with those who break the law...it's clear the FEC can't be relied upon to report on the law-skirting by major political players before voters render their judgment at the polls in 2008," Fund wrote.

Similarly, a couple of states have enacted so-called "paycheck protection" campaign finance laws in an attempt to regulate union political spending, but they are so narrowly defined that they have very limited reach when it comes to union political expenditures. The FEC case, and cases seeking enforcement of so-called "paycheck protection" laws, demonstrate that government regulation is no solution to the abuses of forced unionism.

"Stripping union officials of their power to force American workers to pay dues in the first place would do far more to clean up the political process than relying on some feckless federal agency like the FEC," ended Gleason. ²

Newsclips Requested

The Foundation asks supporters to keep their scissors sharp for clipping news items exposing the role union officials play in disruptive strikes, outrageous lobbying, and political campaigning.

Please clip any such stories that appear in your local paper and mail them to:

NRTWLDF

Attention: Newsclip Appeal

8001 Braddock Road

Springfield, VA 22160



Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter:

Victories for employee rights at the National Labor Relations Board (NLRB) can be hard to come by. The slow-moving Board bureaucracy has a strong bias in favor of compulsory unionism.

That's why I'm proud that our Foundation was able to win a sweeping victory for employees nationwide in the combined *Dana/Metaldyne* case at the NLRB (please see cover story). In a ruling long sought by Foundation attorneys, the Board recognized that federal law gives workers the right to demand a secret ballot vote after a union is forced on them through the abusive "card check" process. This ruling provides an important defense for workers in a system stacked in favor of union officials.

But there is so much left to do.

Despite this important victory, the Bush NLRB is maintaining much of its bias in favor of compulsory unionism. While the Bill Clinton NLRB overturned a jaw-dropping 1,181 years of legal precedents to stack the deck even more in favor of union bosses, the Bush NLRB has rectified only a handful of those activist rulings in 7 years.

And now, because there will be three vacancies by the end of 2007 on the five-member Board, there is little time left. President Bush must recess three solid members in January 2008 to have the best chance of achieving during his presidency a positive legacy that advances employee free choice.

The bottom line is that while Bush's NLRB dithers, union bosses are using their political machine to increase their already extraordinary list of special legal privileges.

Waging these crucial battles depends on your generous support. With your support, we are striking blows for employees desperately struggling against compulsory unionism.

Sincerely,

Mark Mix