

# Judge rules PIRG call center fired worker for union activism

By **DON McINTOSH**  
Associate Editor

A federal judge ruled Oct. 25 that the Fund for the Public Interest broke federal labor law when it fired pro-union phone fundraiser David Neel last November at its Portland call center.

In a 28-page legal decision, administrative law judge Margaret Brakebusch ordered the Fund to offer Neel full reinstatement and back pay plus interest, which could total around \$26,000.

"I feel it's a genuine vindication for everyone the Fund has fired," Neel said. "They've taken every opportunity to fire people, and they've been getting away with it."

Fund for the Public Interest is the fundraising arm of a national network of groups that includes state PIRGs (Public Interest Research Groups) as well as environmental groups like Environment Oregon, Environment Colorado, and the National Environmental Law Center. The Fund signs up members for its affiliated groups using door-to-door and on-street canvassers in 40 states, and then hits them up for additional contributions from call centers in Boston, Sacramento, and Portland.

But draconian pay and discipline practices led workers at the Portland call center to join Communications Workers of America (CWA) Local 7901 in November 2011. Two years later, they still have not reached agreement on a first union contract, and in that time, the Fund has fired at least a dozen union supporters. In at least eight of those terminations, CWA filed charges with the National Labor Relations Board (NLRB) alleging that the workers were fired because of their union or related activities. If true, that would be a violation of federal labor

law. But the NLRB dismissed every unlawful termination case except Neel's, saying "evidence was insufficient."

Of course, that's not the same as saying the Fund was innocent. Most of the workers were fired for missing a fundraising quota for two consecutive weeks. But union supporters are convinced that managers are purposely assigning them tough call lists, tough enough that top fundraisers who never missed a quota in years can be terminated in two weeks time. As yet, the union has been unable to prove that managers are tailoring the call lists to get rid of union activists, despite the fact that every one of the workers who initially led the union drive has been fired. If a manager were to come forward with smoking gun evidence, those cases could be reopened, with the Fund on the hook for bigger damages.

Brakebusch's decision is based on a two-day hearing that took place Aug. 6 and 7 in Portland, during which both sides presented sworn testimony.

Just before the hearing began, the Fund offered Neel full back pay — about \$23,000 at the time — if he would agree to drop the case. He refused.

In the hearing, the Fund denied that it fired Neel for his union activism, but Brakebusch found Fund managers' testimony to be contradictory and not credible. Neel was one of the Fund's top fundraisers. He had never failed to meet his weekly quota since starting in Spring 2011, and he had earned the Fund's top rate of \$14.50 an hour since January 2012. But he was also a thorn in management's side.

Though unionizing had been a collective decision by Fund phone callers, Neel was, as one co-worker put it, the "flaming tip of the spear for the union."



**David Neel — pictured with his teenage sons Andrew and Max — stood on principle in August when he turned down a \$20,000-plus offer from the Fund for the Public Interest to drop charges that they fired him for his union activism. Now Neel is feeling vindicated: On Oct. 25, a federal judge ordered the Fund to pay an even bigger back pay award, and to reinstate Neel to his call center job raising money for groups like OSPIRG.**

Or, as Fund call center manager Referd Raley told Neel: "You're leading this rabble."

After workers voted 19-5 to unionize, Neel was elected steward and a member of the union contract bargaining team. At work, he gave out red teddy bears with union buttons attached for co-workers to display at their desks. On Thursdays, he would bring a 5-foot stuffed alligator toy to the call center as part of a silent protest against the policy of firing workers for the second week of missed quota. When the Fund terminated co-worker Ben Woodhouse on June 14, 2012, it was Neel who stood up and announced that co-workers

were walking out to protest the "unfair" firing. He led another walkout two weeks later, when nine-year employee Cortina Robinson was fired.

In the hearing, Fund managers testified that Neel was fired for veering from the official phone script, failing to "triple confirm" pledges, and misreporting the outcome of phone calls. Neel denied the allegations. But it didn't matter; Brakebusch found that those stated reasons were pretexts.

Fund manager Kate Fielding testified that she listened to Neel's calls for two straight hours, overheard as many as eight policy violations, and wrote them down on a piece of scrap paper —

not the monitoring forms Fund managers usually use. Two days later, her boss Raley fired Neel by phone, told him not to come into the office, and overnighted his personal belongings to him.

Normally, when Fund call center directors hear a caller make a mistake, they intervene soon afterward to correct it. But Fielding, Brakebusch noted, made no attempt to stop Neel or to intervene in any way. She allowed him to complete his shift, and said nothing to him about the alleged mistakes. Fund managers made no attempt to investigate, or even ask Neel for clarification about the allegedly "egregious" interactions. And Fund records showed that other workers were repeatedly counseled, and not fired, for making the same mistakes Neel was alleged to have made.

During the hearing, the Fund's attorney also argued that the Fund shouldn't have to reinstate Neel even if it was found that he was fired unlawfully — because he was quoted in the Portland Mercury newspaper making a statement that harmed the Fund's reputation and relationship with partner organizations.

"I don't believe in what they do anymore," Neel told the Mercury reporter. "It's a Ponzi scheme to get money out of progressive people."

But Brakebusch rejected that argument, and quoted a 1976 NLRB decision: "It is wholly natural for an employee to react with some vehemence to an unlawful discharge."

The Fund has until Nov. 22 to appeal the judge's decision.

## Machinists consider Boeing 777X proposal

Members of the International Association of Machinists and Aerospace Workers (IAM) District 751 and District W-24 were scheduled to vote on a contract extension proposal from the Boeing Company Wednesday, Nov. 13. If approved, it would assure that the new Boeing 777X wings and fuselage will be built by union members in the Pacific Northwest. In exchange, Boeing proposed a new eight-year labor agreement that will expire in September 2024.

The vote was to be held after this issue of the Labor Press went to press.

Union officials expected a close vote. The IAM represents more than 35,000 Boeing workers, 1,200 in Portland are members of Lodge 63.

The proposal by Boeing includes modifications to the current labor agreement, including cessation of pension accruals for current employees and the establishment of an alternative com-

pany-funded retirement plan. Additionally, within 30 days of ratification, all members would get a \$10,000 signing bonus.

Full details of the proposal are posted on line at [www.iam751.org](http://www.iam751.org).

In addition to the eight-year contract, Boeing demanded that the Washington Legislature extend special tax breaks.

Gov. Jay Inslee quickly called a special session and within a week — on Nov. 9 — lawmakers overwhelmingly passed a \$8.7 billion package of extended tax breaks, education and workforce support, and permit streamlining for Boeing.

Inslee signed the bill Nov. 11.

Depending on the outcome of the union vote, another special session could be called later this month to consider a \$10 billion, 10-year, transportation infrastructure package that Boeing wants.



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