



Foundation *Action*

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

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50 Caterpillar Workers File Charges Against Union for Strike Fines

Chicago employees faced nearly \$1,000,000 in strike fines for refusing to abandon their jobs

CHICAGO, IL – Dozens of Joliet, Illinois-area Caterpillar Inc. workers are fighting back against retaliatory strike fines levied in the wake of last summer’s Machinist union boss-instigated strike against the company.

With free legal assistance from National Right to Work Foundation staff attorneys, 50 workers filed federal charges with the National Labor Relations Board (NLRB) regional office in Chicago. The employees were among the over one hundred workers who refused to abandon their jobs despite International Association of Machinists (IAM) District Lodge 851 union bosses ordering about 800 Joliet, Illinois Caterpillar workers on strike.



Veteran Caterpillar employee Steven Olson and dozens of his coworkers face nearly a million dollars in union strike fines.

Foundation wins settlement for two workers

As reported in the December 2012 issue of **Foundation Action**, two Caterpillar workers, Daniel Eggleston and Steven Olson, won a federal settlement after IAM union brass levied retaliatory strike fines against them. The two workers refrained from membership in the IAM union and its local District Lodge 851 affiliate for years and were thus exempt from the union hierarchy’s discipline.

Under federal law, workers who are not voluntary union members are exempt from the union hierarchy’s con-

stitution and bylaws and thus cannot be disciplined for continuing to work during a union boss-ordered strike.

Even though Eggleston and Olson were not union members, IAM union bosses tried to discipline them for continuing to work during the strike. After the two workers filed charges at the NLRB with free legal assistance from Foundation attorneys, the IAM union hierarchy was forced to rescind the strike fines.

Additional workers come forward

In the wake of the strike, IAM union brass sent letters to most of the over 100 workers who refused to toe the union line to summon them before a union tribunal. The purpose of the kangaroo

court was for union bosses to punish the workers with crippling strike fines.

In a partial list made by IAM union officials and later obtained by

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Right to Work Attorneys Defeat Labor Board's Biased Rule at Appeals Court

Foundation fights rule that would promote forced unionism in workplaces across the country

WASHINGTON, DC - Thanks to a legal challenge filed by the National Right to Work Foundation, a federal appeals court has struck down the National Labor Relations Board's (NLRB) controversial new rule requiring virtually every private-sector employer in the country to post one-sided information about employee rights online and in the workplace.

The new rule would have given union bosses another tool to push workers into forced union dues ranks, and threatened employers that didn't display the pro-compulsory unionism propaganda on their property with legal consequences.

Huge overreach by NLRB

In the past, employers were required to post notices of workers' rights only if they violated labor laws or settled an alleged violation. The new rule effectively required every job provider in America, from Mom and Pop shops and small businesses to larger companies, and even some religiously-affiliated



The NLRB's latest scheme to promote forced unionism and expand the Board's power was just struck down in federal court.

organizations, to post the biased notices about workers' rights to unionize. The notices did not explain to workers how to refrain from union affiliation and dues payments.

After the NLRB announced the new rule, the National Right to Work Foundation, in conjunction with the National Federation of Independent Business, filed a federal lawsuit challenging the notice posting rules with the

United States District Court for the District of Columbia. The Court consolidated the Foundation's case with another legal challenge brought by another organization.

The filing of the Foundation's lawsuit did cause the NLRB to delay implementation of the new rule. Foundation staff attorneys argued in court that the NLRB had clearly exceeded its authority granted by Congress and that the new rule infringed upon free speech.

The district court judge turned precedent on its head and upheld large parts of the Obama NLRB's forced unionism ploy. The judge also ruled that, if an employer fails to post the notice, it could potentially be found to have committed an unfair labor practice and that fact could be used as evidence of "anti-union animus" in other cases in which an employer is accused of violating federal labor law.

Foundation wins on appeal

Foundation attorneys appealed the case to the U.S. Court of Appeals for the District of Columbia, which granted their motion.

The appeals court issued its decision in early May, striking down the NLRB's notice posting rule as a violation of employer's free speech rights.

"We are pleased that the appeals court reined in one of the NLRB's more outrageous efforts to expand itself into a taxpayer-funded union organizing operation by holding that the federal agency cannot compel private entities to post pro-Big Labor messages in their workplaces," said Ray LaJeunesse, Vice President of the National Right to Work Foundation. "The appeals court's decision is good news both for workers and for all who value workplace independence and free speech." 

Foundation Action

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Patrick Semmens
Ray LaJeunesse, Jr.
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Ohio Workers' Legal Battle Highlights Aggressive Union Organizing Tactics

Employees unanimously opposed aggressive union boss organizing campaign from the start

TOLEDO, OH – For over six months in 2012, 24 Foundation-assisted Nova Services employees endured an aggressive union organizing campaign launched by Ironworkers Local 55. Although a recent settlement between their employer and Ironworker union officials may finally give Nova Services workers a chance to get rid of the unwanted union, their experiences are indicative of the lengths union organizers will go to impose monopoly bargaining on unwilling employees.

In a recently-filed legal motion, Foundation attorneys submitted testimony from all 24 of the Nova Services workers. These first-hand accounts reveal union organizers' increasingly desperate tactics, as Ironworker operatives repeatedly tried to harass, threaten, and bribe Nova Services employees into supporting unionization.

Union officials bribed, threatened workers during organizing drive

Union lawyers originally claimed that Nova Services coerced employees into voting against the Ironworkers. However, employees say that it was union organizers, not company officials, who resorted to threats and bribery.

As documented in employee legal charges and a motion to intervene in a legal dispute between the union and the company, a union organizer told employees at an August 2012 meeting that he could provide them with legal immigration status in exchange for supporting the union. Union operatives also made similar offers individually to at least six employees.

“. . . [T]hey promised me if I signed with the union they would give me a work visa and a better salary,” said Joel

Gutierrez, one of the workers represented by Foundation attorneys.

“I was promised a work visa if I would sign a union authorization card,” said Javier Sanson, another Foundation-assisted Nova Services employee. “[A union official] told me if I did not sign it, I would not get the work visa or benefits.”

Later that month, union officials threatened to report the company for immigration violations if employees failed to support the Ironworkers' organizing drive. Union officials continued to make similar threats and offers for the next six months.

Workers say that union organizers also resorted to outright bribery to obtain employee support. In August, one union organizer offered a worker \$50,000 in exchange for supporting the union's campaign. Another worker was offered \$3,000 to back the union. Other employees were offered weekly payments and waivers of union initiation fees.

Juan Hernandez, who also works at Nova Services, told Foundation attorneys that the company did not try to bribe or coerce him.

“. . . [O]n the contrary, the union tried to bribe me by offering a sum of \$50,000 to support them.”

Testimony highlights dangers of aggressive union organizing

Unfortunately, union organizers often resort to similar tactics to force employees into a union-controlled bargaining unit. After they secure support from a slim majority of employees, union officials are then empowered to collect dues from and dictate terms and conditions of



During an Ironworkers organizing drive in Toledo, Ohio, union operatives resorted to bribes, threats, and harassment to win employee support.

employment to everyone in the workplace.

“Instead of making a positive case for their union to Nova Services employees, union organizers resorted to bribery, threats, and petty harassment,” said Patrick Semmens, Vice President of the National Right to Work Foundation. “This sordid organizing campaign demonstrates how little regard union officials have for the very workers they claim to represent. Until union bosses reject compulsion, they'll continue to alienate employees across the country.”

Newsclips Requested

The Foundation is always on the lookout for stories exposing union malfeasance. Send any stories that appear in your local paper to:

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

Supporters can also email online stories to wfc@nrtw.org

Second Appeals Court Rules Obama Recess Appointments Unconstitutional

Meanwhile, another court orders the NLRB to justify its actions in the wake of recent rulings

WASHINGTON, DC – On May 16, the U.S. Court of Appeals for the Third Circuit struck down one of President Barack Obama's purported "recess appointments" to the National Labor Relations Board (NLRB) dating back to March 27, 2010. Earlier this year, the U.S. Court of Appeals for the District of Columbia Circuit struck down two later recess appointments to the Board.

Consequently, the Board has lacked a quorum since at least August 2011, and under a U.S. Supreme Court precedent established in 2010, the Board's rulings during that period are invalidated. Over 1,500 NLRB decisions may be rendered invalid as a result of these rulings.

"The NLRB should cease operations immediately before more cases are tainted by these illegal appointments," said Ray LaJeunesse, Vice President and Legal Director of the National Right to Work Foundation. "This latest decision highlights the constitutional chaos the President created by gaming the system for Big Labor's benefit."

Court orders NLRB to respond to recess appointment petitions

Earlier in May, the U.S. Court of Appeals for the District of Columbia Circuit ordered a consolidation and renewed briefing in three mandamus cases. The three cases, the first of which was brought by Foundation staff attorneys, ask the Court to order the NLRB to suspend further action in the wake of the first ruling invalidating President Barack Obama's controversial recess appointments to the Board. In *Noel Canning*, the Court held that the President's recess appointments to the NLRB are invalid because the vacancies the President purported to fill did not "happen" during an intersession recess,



Thanks to legal action by Foundation attorneys and others, President Obama's outrageous NLRB "recess appointments" are facing tough scrutiny in federal courts.

as required by the United States Constitution. The mandamus petitions seek an order that requires the Board to cease and desist actions on all pending cases in light of the *Canning* ruling.

Of the three consolidated mandamus petitions, one was filed by National Right to Work Foundation attorneys for Jeanette Geary, a former Rhode Island nurse. Geary originally filed an unfair labor practice charge against a local nursing union for forcing her to pay for union lobbying to keep her job.

In 2012, a Board panel that included two illegal recess appointees held that union officials could require Geary and her coworkers to pay for some of the union's lobbying efforts, a clear violation of Foundation-won Supreme Court precedent.

The *Geary* decision gives union operatives plenty of room to circumvent what few protections employees have to refrain from supporting union political

activism. According to the NLRB's ruling, union bosses can force nonunion workers to subsidize union lobbying as long as it "may ultimately enure to the benefit" of employees in a given workplace.

Of course, union bosses always say their political activities are aimed at helping workers, and the Obama NLRB is ready and willing to give them the benefit of the doubt. According to an analysis prepared by veteran labor-management attorney John Doran, if the *Geary* decision stands, the Board will "determine that the vast majority of [union-boss] lobbying expenses may be charged to *Beck* objectors."

Illegitimate Labor Board undermines worker rights

Adding insult to injury, the NLRB followed up on the *Geary* decision by asking for further briefs on the issue of charging nonmember employees for union boss lobbying instead of issuing a final order, which could at least be appealed by Right to Work attorneys in federal court.

In February 2013, Foundation attorneys filed their petition for a writ of mandamus or prohibition asking the DC Court of Appeals to bar the NLRB from further action in Geary's case until a valid Board is seated. Now that Geary's petition has been consolidated with two similar cases, oral argument will be heard in September 2013.

"Illegally-installed Obama NLRB appointees continue to place the interests of union bosses above the rights of independent-minded workers," said LaJeunesse. "We hope these developments will force the Board to cease operations and stop undermining the rights of employees to refrain from supporting union politics." 

Michigan Workers Defend State's New Right to Work Law in Federal Court

Union legal challenge could threaten Michigan's recently-enacted Right to Work protections

DETROIT, MI - Four Michigan workers have moved to intervene in a Big Labor-backed federal lawsuit challenging Michigan's newly-enacted Right to Work law, which frees workers from paying union dues just to get or keep their jobs.

Although union bosses lost the legislative fight over Right to Work in Michigan, this hasn't stopped them from trying to delay or even roll back implementation of the new law in court. That's why the National Right to Work Foundation created a special task force to defend the law from both state and federal legal challenges.

"We didn't expect Big Labor to relinquish its forced dues privileges in Michigan without a fight," said Patrick Semmens, Vice President of the National Right to Work Foundation. "Fortunately, we have a team of staff attorneys to make sure that Michigan workers enjoy the benefits of their newly-enacted Right to Work law."



Michigan's new Right to Work law is facing union legal challenges, but several employees have stepped forward to defend the law in court.

Michigan employees defend their Right to Work

Terry Bowman and Brian Pannebecker, who work for Ford Motor Company in Ypsilanti and Sterling; Aaric Aaron Lewis, who works for

AT&T in Kalamazoo; and Robert G. Harris, who works for Aunt Millie's Bakery in Jackson, filed the motion to intervene in the United States District Court for the Eastern District of Michigan with the help of National Right to Work Foundation staff attorneys. The four workers are currently forced to financially support a union to keep their jobs because the contracts between their employers and the unions who claim to represent them predate Michigan's recently-enacted Right to Work law.

If granted, the workers' motion to intervene would make them full participants in the lawsuit.

In February, the Michigan State AFL-CIO union, the union-affiliated group Change to Win, and the AFL-CIO-affiliated Michigan State Building and Construction Trades Council union filed the federal lawsuit claiming that federal labor law preempts Michigan's Right to Work law.

See MICHIGAN RIGHT TO WORK page 8

Foundation Expands Norma Zimdahl Studio to Reach New Right to Work Supporters

Although the National Right to Work Foundation's Norma Zimdahl studio has received some substantial recent upgrades, the mission remains the same: spreading the message of Right to Work freedom far and wide.

Foundation staff recently upgraded studio hardware (including new cameras, lighting and computer equipment) and software to streamline the video-making process and create better visuals to communicate the message of workplace freedom to online users.

Foundation staffers continue to produce hard-hitting videos dedicated to exposing forced unionism abuses, intimidation, and violence and promoting liberty for American workers. Foundation public relations staffers have also started filming a popular weekly video news series aimed at updating and



informing concerned citizens and workers across the country who seek to better understand their rights.

Meanwhile, the Foundation's videos and other content disseminated via the latest social media techniques not only energize people to support Right to Work, but have also encouraged union-abused workers to

reach out to the Foundation for legal aid.

Moreover, the studio is now capable of assisting local news networks from across the country to broadcast live interviews with Right to Work spokespersons from the Foundation's offices. For example, an ABC News affiliate in Alaska recently interviewed National Right to Work Foundation President Mark Mix about a significant Alaskan case and the prospects of Alaska passing a Right to Work law.

"Americans from all walks of life are learning more about how forced unionism threatens American workers and their families," said Patrick Semmens, Foundation Vice President for Public Information. "The combination of video technology in the Norma Zimdahl Studio and online social media has revitalized the debate over Right to Work and workplace freedom."

Make a Gift to the Foundation Today for Future Tax Advantages



Now that April 15th has come and gone, you are probably wondering what you could have done in 2012 to improve your tax returns. Now is the time to plan for future tax hits as well as making suitable estate plans for you and your family.

Planning today can make a real difference in achieving financial goals while supporting the tax-deductible work of the National Right to Work Legal Defense Foundation. Here are a few items to consider:

- **Gifts of Cash** – Cash, in the form of a check or credit card gift, is the most common method of making a charitable gift today to the Foundation. Gifts of cash reduce either regular or alternative minimum income taxes. Your actual savings depend on your current tax rate and other factors.
- **Gifts of Stock** – Gifts of appreciated stocks, mutual funds or other securities that have increased substantially in value since they were purchased and have been held over a year are important considerations when deciding to make a charitable gift to the Foundation. Such appreciated securities are subject to a capital gains tax when they are sold by the owner. Gifts of such stock may be deducted in amounts totaling up to 30 percent of your AGI limit. With the stock market continuing to leap to record highs, a gift of stock may be the best option for you to send a gift to the Foundation today.

- **Long-Term Planned Gifts** – Many donors have expressed an interest in leaving the Foundation in a will or estate plan. The Foundation is thankful to be considered in any estate plans. The continued generosity of our donors makes our work possible today – and in the future – to assist those union-abused workers and combat union coercive power across the country.

Make Donations of Stock or Electronic Transfers of Securities to:

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Homecare Workers Could Challenge Forced Unionization at Supreme Court

Another Foundation legal showdown with the Service Employees International Union looms next term

WASHINGTON, DC – Union bosses are making a state-by-state push to expand their forced-dues powers over home-based child care and personal care providers nationwide.

In Illinois, Foundation attorneys are providing free legal assistance to Pam Harris, a Chicago homecare provider who cares for her developmentally disabled son. Harris and about 24,500 other home care providers are or may be forced to pay union dues and accept union “representation” as part of corrupt bargains between Illinois governors Rod Blagojevich and Pat Quinn and the Service Employees International Union (SEIU).

“My primary concern is that someone else will be telling me how to best care for my son,” said Harris. “Union dues would be a deduction from what we have available to provide for my son’s needs.”

“And then I would be giving my money to a union to exercise their political muscle on issues I may vehemently disagree with.”



Pam Harris, a Chicago homecare provider, hopes to defend her right to care for her son free from union interference at the Supreme Court.

Case could end homecare unionization scheme

Harris and other Illinois providers are challenging the SEIU scheme at the U.S. Supreme Court. Last year, the Supreme Court requested a brief from the U. S. Solicitor General on the issues

presented in *Harris*, which indicates heightened interest and could bode well for the case’s chances.

In May, the U.S. Solicitor General finally submitted his brief to the Court. Foundation attorneys have since responded to the Solicitor General’s brief. The Court will announce whether it will take the case this month.

Foundation attorneys helped beat back a similar unionization drive in Michigan, but Big Labor is already pushing for homecare organizing pacts in several other states, including Minnesota, Vermont, and California. Foundation attorneys hope that Harris’s case will set a favorable Supreme Court precedent that can be used to fight these organizing drives in court.

“Pam Harris has fought long and hard to care for her developmentally disabled son free from union interference,” said Mark Mix, President of the National Right to Work Foundation. “We hope the High Court steps in to protect the rights of home-based care providers.”

Foundation Defends Caterpillar Workers against Retaliatory Strike Fines

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Foundation attorneys, the 50 workers were fined over \$900,000. Thus, the total amount of strike fines could easily surpass a million dollars and even approach two million dollars.

Disturbing pattern of misinformation and abuse emerges

In March, Foundation attorneys helped 24 workers file charges against the IAM union hierarchy. In April, 22 additional workers filed charges against the union with Foundation assistance. Two more filed charges in May.

All of the 48 Caterpillar workers allege in their charges that they were never truly voluntary members of the union. All allege that IAM union brass never informed them of their right to refrain from formal union membership. Several allege that union bosses illegally told them union membership was mandatory as a condition of their employment when they tried to resign membership.

Moreover, some of the workers allege that union officials even gave them implicit permission to go back to work to continue to support their families. Several workers say that union militants also threatened them with violence.

One worker alleges that union militants physically assaulted his wife and child. He also says that the union hierarchy has since collected twice the normal amount of union dues from his paycheck.

“As more abused Caterpillar workers come forward, the pattern of rights abuses perpetrated by IAM union bosses has become even clearer,” said Mark Mix, President of the National Right to Work Foundation. “The ugly aftermath of the Caterpillar strike underscores the need for an Illinois Right to Work law, which would make the payment of union dues and union membership completely voluntary.”

Michigan Right to Work

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Big Labor threatens other state reforms

Foundation attorneys have often faced down Big Labor attacks on state labor reforms. Shortly after Indiana became the nation's 23rd Right to Work state, United Steel Worker (USW) union bosses filed a lawsuit challenging the law's constitutionality in state court.

Right to Work attorneys quickly responded by submitting a brief opposing the union's lawsuit for two workers who are employed at facilities unionized by USW operatives and are forced to pay union dues just to keep their jobs. Foundation attorneys attended oral argument on a motion to dismiss on October 16, 2012, and sent local counsel to a hearing in January 2013.

Foundation staff attorneys are also defending Wisconsin's recently-enacted public sector union reforms - including Right to Work protections for most state employees - in state and federal appeals courts for several state civil servants.

Foundation has strong track record in court

Despite these attempts to undo Michigan's recent reforms, federal labor law explicitly gives states the power to pass Right to Work laws. National Right to Work Foundation staff attorneys have successfully defended state Right to Work laws from union-backed challenges before, and the U.S. Supreme Court has long held that state Right to Work laws are constitutional.

"Union bosses are desperate to keep extracting forced dues from Michigan employees, but we're confident that their spurious legal challenges will fail," continued Semmens. "After all, Big Labor's track record of attacking state Right to Work laws in court is abysmal." 



Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter,

Your National Right to Work Foundation has the out-of-control National Labor Relations Board (NLRB) on its heels.

Just months after a federal court relied on arguments made by Foundation staff attorneys when it ruled that Barack Obama's "recess" appointments to the NLRB were unconstitutional, your Foundation scored another major victory against the Board last month.

As you'll read in this issue of **Foundation Action**, the same U.S. Court of Appeals for the D.C. Circuit struck down a rule rammed through the NLRB in 2011 that would have forced job providers to post a biased, incomplete notice about employee rights that effectively served as a roadmap to forced unionization.

Tellingly, there was no mention in the rule's notice of any of the individual rights we fight to protect and enforce at the Foundation.

Fortunately, the court agreed with Foundation attorneys and ruled that the one-sided new rule violated the National Labor Relations Act's freedom of speech protections and overstepped the NLRB's congressional mandate.

This is yet another big win against the Obama Labor Board, but the biggest battle is still to come.

Foundation attorneys will participate in oral arguments this September in our case to make the unconstitutional NLRB cease and desist until a valid Board is seated, and a final showdown at the U.S. Supreme Court is likely just around the corner.

With such flagrant abuses of power by the Obama Administration, I'm grateful for the continued generosity of Right to Work supporters like you who enable us to fight back in the courts and in the media.

Our latest victory is encouraging and reminds us why our legal program is so critical. Thanks for helping us stand up for worker freedom and the U.S. Constitution.

Sincerely,

Mark Mix