



Impact of Right-to-Work Laws

March 11, 2013

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National Right to Work Legal Defense Foundation



SHRM Employment Law & Legislative Conference

March 10-13, 2013



NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC.

*Defending America's workers from the abuses of compulsory
unionism since 1968*

*“To compel a man to furnish
contributions of money for the
propagation of opinions which he
disbelieves is sinful and tyrannical.”*

– Thomas Jefferson

Right to Work Laws

- **Prohibit** requirements that employees join or pay money to a union as a condition of employment
- **Remedies vary:** Some provide for civil enforcement with damages and injunctive relief; some provide for criminal penalties in addition or instead

The History

- 1st RTW Laws – Alabama & Florida – 1943
- Eleven more states in 1940s (AR, AZ, GA, IA, NB, NC, ND, SD, TN, TX, VA)
- Next six decades, nine more (ID, KS, LA, MS, NV, OK, SC, UT, WY), most recent (ID -1986, OK - 2001) by referenda 54%-46%

History (cont.)

- 1947 – Taft-Hartley Act, NLRA § 14(b), 29 U.S.C. § 164(b)
- *Algoma Plywood & Veneer Co. v. Wis. Employment Rels. Bd.*, 336 U.S. 301 (1949): state RTW laws authorized under Wagner Act before § 14(b)
- Railway Labor Act § 2, Eleventh (1951), 45 U.S.C. § 152, Eleventh, preempts RTW laws
- *Retail Clerks Local 1625 v. Schermerhorn*, 373 U.S. 746 (1963): state RTW laws may prohibit both forced fees and forced membership

Recent Developments

- Ohio – 2011
 - SB 5 banned public-sector bargaining & forced fees
 - Repealed in referendum 62%-38%
- Wisconsin
 - 2011 – Act 10 limited public-sector bargaining, & banned forced fees, except public safety & transit
 - 2012 – Gov. Walker survives recall 53%-46%

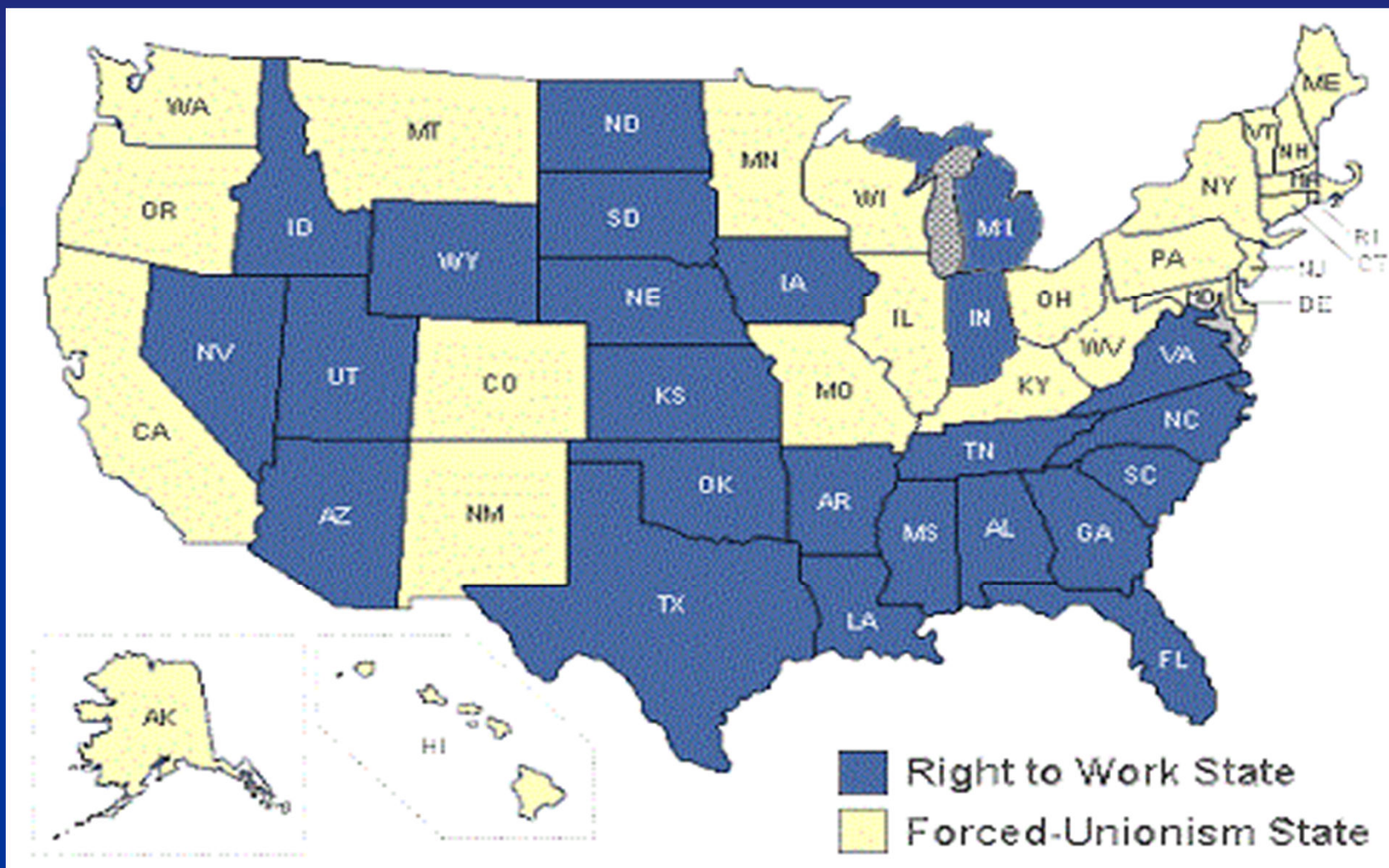
Indiana

- Indiana Legislature – February 2012
 - 23rd private-sector RTW law
 - Culmination of almost 10 year project
 - Nov. 2012 – pro-RTW Governor & more pro-RTW legislators elected

Michigan

- November 2012 – Ballot proposition to prohibit RTW defeated 57%-43%
- December 2012 – separate private-sector & public-sector laws enacted
 - Private-sector is 24th
 - Public-sector does not apply to police & fire-fighters

Twenty-Four Right to Work States



Public-Sector

- Fifteen states' RTW laws apply to all public employees either explicitly or by interpretation
- Four other RTW states have separate RTW statutes for public employees – IN (teachers, state, & public safety employees), ND, MI (except police & firefighters), & TN (teachers)
- Three other RTW states prohibit public-sector monopoly bargaining – GA (teachers), NC & SC
- Public-sector compulsory unionism de facto illegal in two other RTW states (AL & WY)
- Three non-RTW states protect public employees – KY (court decisions prohibit monopoly bargaining), WV (de facto public-sector RTW), & WI (Act 10 prohibits forced unionism for all public employees except public safety and transit workers)

Constitutionality

- *Lincoln Federal Labor Union v. Northwestern Iron & Metal Co.*, 335 U.S. 525 (1949): state RTW laws do not violate
 - 1st Amendment
 - Impairment of contracts clause
 - Equal protection clause
 - Due process clause
- *Davenport v. Washington Education Ass'n*, 551 U.S. 177 (2007): “unions have no constitutional entitlement to the fees of nonmember-employees.”

The Litigation – Oklahoma

- *Eastern Oklahoma Building & Construction Trades Council v. Pitts*, 82 P.3d 1008 (Okla. 2003): RTW law does not violate state constitutional provisions; NRTWF attorneys represented defendant-intervenor worker
- *Local 514 Transport Workers Union v. Keating*, 358 F.3d 743 (10th Cir. 2004): RTW law valid although certain of its provisions are preempted by federal law in certain circumstances; NRTWF attorneys represented three defendant-intervenor workers

The Litigation – Wisconsin

- *Wisconsin Education Ass'n Council v. Walker*, 2013 WL 203532 (7th Cir. Jan. 18, 2013): Entire Act 10 upheld
 - Ban on payroll deduction of union dues does not violate 1st Amendment
 - Exemption of public safety employees from ban on forced fees and other bargaining limitations does not violate equal protection
 - NRTWF attorneys: amicus briefs for workers in district court, brief & oral argument in court of appeals, but intervention denied
 - WEAC could petition for S. Ct. review – due 4/18

The Litigation – Wisconsin (cont.)

- *Madison Teachers v. Walker*, 2012 WL 4041495, 194 L.R.R.M. (BNA) 2113 (Dane Cnty., Wis., Cir. Ct. Sept. 14, 2012): Act 10 unconstitutional
 - Act violates unions' 1st Amendment rights and equal protection
 - No injunction, appeal pending in Wis. Ct. of Appeals
 - NRTWF attorneys: amicus briefs for workers supporting State in both courts

The Litigation – Indiana

- *Sweeney v. Daniels*, 2013 WL 209047, 194 L.R.R.M. (BNA) 3229 (N.D. Ind. Jan. 17, 2013): challenge to Indiana RTW law dismissed
 - Law does not violate contracts, ex post facto and equal protection clauses of U.S. Constitution nor is it preempted by federal labor laws
 - Indiana Attorney General's office consulted NRTWF attorneys about arguments to defend law
 - Union has noticed appeal to 7th Circuit

The Litigation – Indiana (cont.)

- *United Steel Workers v. Daniels*, No. 45C01-1207-PL-00071 (Lake Cnty., Ind., Super. Ct. filed Mar. 15, 2012):
 - Alleges that RTW law violates state constitutional provision that “no person’s particular services shall be demanded without just compensation”
 - Defense: no violation because unions are volunteers.
 - NRTWF attorneys filed amicus briefs supporting State for workers; case still pending

The Litigation – Michigan

- *Cook v. State*, No. 12-1309-CL (Ingham Cnty., Mich., Cir. Ct. filed Dec. 6, 2012):
 - Alleges that RTW laws passed in violation of Mich. Open Meetings Act
 - Pending

The Litigation – Michigan (cont.)

- *In re Request for Advisory Opinion on Constitutionality of 2012 PA 348 & 349*, No. 146595 (Mich. S. Ct. filed Jan. 28, 2013):
 - Governor requests advisory opinion as to whether under Mich. Constitution public-sector law applies to state civil service employees and whether RTW laws violate equal protection
 - NRTWF attorneys will file amicus brief for workers if court agrees to consider Governor's request
 - Michigan AFL-CIO has opposed request

The Litigation—Michigan (cont.)

- *Michigan State AFL-CIO v. Callaghan*, No. 2:13-cv--10557 (E.D. Mich. filed Feb. 11, 2013):
 - Alleges private-sector RTW law preempted by federal labor laws
 - NRTWF attorneys will file amicus brief for workers
- *United Auto Workers v. Green*, No. 314781 (Mich. Ct. App. filed Feb. 14, 2013):
 - Alleges public-sector law cannot under Michigan Constitution apply to state civil service employees
 - NRTWF attorneys provided legal memo to state authorities rebutting that claim, may file amicus

The Foundation

“The Foundation has done enormously important work ...working with individual employees and defending their rights.”



The National RTW Legal Defense Foundation

- § 501(c)(3)
- Contributions, no government money
- 15 attorneys: advice & representation - **workers only**
- Litigation in federal & state courts & labor agencies
- No lobbying/political activities
- Legal Information Department

How Do Workers Request Our Help ?

- Website: www.nrtw.org
- Email: legal@nrtw.org
- Telephone toll-free: 800-336-3600
- Mail: NRTW Foundation, Suite 600, Springfield, VA 22160

The Foundation's website

www.nrtw.org

Resource for
employees, HR,
the media, and
concerned
citizens as to
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The National Right to Work Legal Defense Foundation is a non-profit organization providing free legal aid to thousands of employees nationwide whose human and civil rights have been violated by compulsory unionism abuses. Employees, [click here](#) to learn your legal rights.



Breaking News!

- [Union Bosses 1, Workers 0: Union officials sweep janitors' rights away](#)
In the *National Review Online*, Foundation Vice President Stefan Gleason explains the recent assault on employee free choice at the University of Miami and what it means for the rights of America's workers
- [Safeway Employee Hits Union with Federal Civil Rights Lawsuit for Religious Discrimination](#)
Seattle-area UFCW union officials maintain discriminatory scheme, refuse to honor worker's right to religious freedom under federal law
- [Machinists Union Hit with Charges for Illegal Retaliatory Fines Against Boeing Employees](#)
Union officials unlawfully fined workers at rocket manufacturing facility \$4,500 each for refusing to walk off the job during a union-ordered strike
- [Freightliner Faces Federal Prosecution for Retaliation Against Employee Who Questioned Special Treatment of Union Reps](#)
Worker suspended, demoted, and stripped of leadership position for voicing concerns about management's pattern of special treatment of UAW union officials
- [State Labor Board Prosecutes Union for Bullying Workers at California Mushroom](#)
UFW union officials illegally demanded full union dues and threatened dissenting workers with firings and loss of health benefits

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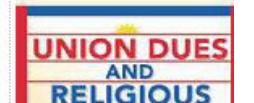
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Foundation's litigation has achieved major victories for **employees' rights**

- 8 Foundation-won U.S. Supreme Court decisions
- More than 80 federal appellate court precedents established
- More than **2600 cases won or settled favorably**
 - *E.g.*, \$8.3 million won for 53,000 PA state employees
- At any given time almost **200 cases** representing thousands of workers

Goals of Foundation's Litigation Program

- Enforcing workers' existing legal rights to refrain from union representation, association, and activities, including through lawsuits under RTW laws
- Winning new legal rights to refrain from union representation, association, and activities
- As in OK, WI, IN, and MI, defending RTW laws against union challenges

The Salt Lake Tribune

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Utah railcar workers sue over union dues

Lawsuit » Company, union allegedly violated state's Right to Work law

By Steven Oberbeck | The Salt Lake Tribune

First Published Feb 26 2013 05:58 pm • Last Updated Feb 26 2013 06:11 pm

Four employees of [Progress Rail Service Corp.](#) in Salt Lake City have filed a lawsuit against the company and its union claiming their rights were violated under Utah's Right to Work law.

The four employees — Bryan Rees, James Rogers, Richard Simone and Jason Wilson — contend the company and the Brotherhood of Railway Carmen/International Association of Machinists [Local 6601](#) illegally coerced them into paying thousands of dollars in dues to the union by telling them union membership and full dues payments were a condition of their employment.



The lawsuit was filed in Utah's Third District Court with the aid of the National Right to Work Foundation. It asserts that under Utah's Right to Work law, workers have the right to refrain from union membership and dues payments.

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The four workers joined Progress Rail about different times between December 2005 and August 2011, but all alleged they were told of the union membership and dues requirements. As a result the four men claim they paid nearly \$10,000 in "illegal" union dues from their paychecks through October 2012, which was

The Salt Lake Tribune



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Published on National Right to Work Legal Defense Foundation (<http://www.nrtw.org>)

Employee Rights Group Wins Security Guard's Reinstatement After Year-Long Suspension for Refusal to Pay Union Dues

By Webmaster

Created 28 Jun 2007 - 12:00am

El Paso, TX (June 28, 2007) – After a year-long ordeal, El Paso security guard Juan Vielma received an offer of full reinstatement to his job yesterday after he was illegally suspended in 2006 without pay – in violation of Texas' Right to Work law. But a national employee rights organization pressed the state's top prosecutor to aggressively pursue numerous other violations of the Texas Right to Work law still occurring.

Immediately after Vielma contacted National Right to Work Foundation attorneys for help, they filed unfair labor practice charges at the National Labor Relations Board in early November 2006 against the Security, Police and Fire Professionals of America (SPFPA) union. Union officials and AKAL Security suspended Vielma indefinitely without pay over a year ago in retaliation for asserting his protected right not to pay union dues.

AKAL Security and union officials had claimed, with no basis whatsoever, that Vielma and his coworkers work on an "exclusive federal enclave" not protected by Texas' Right to Work law prohibiting forced union dues.

The reinstatement offer comes after a federal Administrative Law Judge agreed with arguments presented by Foundation attorneys and ruled unequivocally earlier this month that the Texas Right to Work law applies to the Immigration and Customs Enforcement (ICE) facility where Vielma worked. The judge also ordered the payment of full back pay and benefits. Testimony at trial in March revealed that AKAL and union bosses had no basis for claims that the Right to Work law did not apply to the El Paso ICE facility. The trial also revealed the existence of an illegal union scheme to violate the law across Texas and in other Right to Work states.

Foundation president Mark Mix today reiterated his earlier request of Texas Attorney General Greg Abbott to investigate and aggressively prosecute widespread violations of the Right to Work law. Foundation attorneys first brought these violations to the attention of the Attorney General's office on November 21, 2006.



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Employee Rights Group Reacts to Attorney General Abbott's Long-sought Legal Action to Enforce Texas' Right to Work Law

By Webmaster
Created 24 Jul 2007 - 12:00am

****Corpus Christi & El Paso, TX**** (July 24, 2007) – National Right to Work Legal Defense Foundation Vice President Stefan Gleason made the following statement regarding Texas Attorney General Greg Abbott's long-sought legal action this afternoon to initiate the state's enforcement of the highly popular Right to Work law:

“The National Right to Work Foundation welcomes the Attorney General to our ongoing battle to prevent the erosion of Texans' Right to Work. No employee should be forced to pay union dues just to get or keep a job. But the violations Foundation attorneys uncovered in Corpus Christi and El Paso may only be the tip of the iceberg.

“Evidence obtained several months ago by Foundation attorneys during a federal labor board trial suggests that Big Labor's phony 'exclusive federal enclave' scheme to violate the Right to Work law is widespread. Foundation attorneys are pressing ahead to protect all employees who are victim to this compulsory unionism scheme, and we urge the Attorney General to do the same.

“Union officials must be put on notice that a Texan's Right to Work is sacred. Every violation must be prosecuted to the fullest extent of the law, or union officials will only be emboldened.”

****Background****: National Right to Work Foundation attorneys are currently representing two Texas security guards in cases before the National Labor Relations Board and have convinced federal officials to prosecute the Security, Police and Fire Professionals of America (SPFPA) union for unlawfully threatening the security guards' jobs. Foundation attorneys first brought Texas Right to Work law violations to the attention of the Office of the Attorney General in November 2006. Today's action is the first formal legal action taken by the State.

The Future

- NRTW Committee targets: Alaska, Kentucky, Maine, Missouri, Montana, New Hampshire, Pennsylvania, Wisconsin, special emphasis on PA
- Hearings on RTW in New Hampshire, Missouri, Maine, and Pennsylvania
- National Right to Work Act, S. 204, introduced 1/31/13 by U.S. Sen. Rand Paul (R-KY) (11 cosponsors), & H.R. 946, introduced 3/5/13 by Rep. Steve King (R-IA) (57 cosponsors)

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Questions? Please contact:

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