



Foundation Action

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

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Foundation Convinces NLRB to Target “Neutrality Agreements”

NLRB General Counsel classifies back room deals as “premature bargaining”

WASHINGTON, D.C. — After a number of meetings as well as submission of formal legal arguments, National Right to Work Foundation attorneys convinced the General Counsel of the National Labor Relations Board (NLRB) to issue the first-ever unfair labor practice complaints in a series of employee cases challenging Big Labor’s coercive organizing method known as “neutrality agreements.”

As word about the federal prosecution of Big Labor’s most prevalent method of corraling dissenting employees into union collectives reached the media, an explosion of national media coverage — coupled with red-faced denunciations by America’s top union bosses — ensued.

Foundation attorneys brought the original unfair labor practice charges after being contacted by workers who found themselves targeted for organization by the unwanted United Auto Workers (UAW) union at Freightliner’s Gaffney, South Carolina, facility as well as Dana Corporation’s plants in Bristol, Virginia, and St. Johns, Michigan.

“Though long overdue, the General



Foundation staff attorney Bill Messenger testified about abusive union organizing tactics at a recent U.S. Senate hearing while an AFL-CIO lawyer closed her eyes to the truth.

Counsel’s decision is an encouraging step towards protecting the rights of tens of thousands of workers across the country facing this coercive union organizing tactic,” said Foundation Vice President Stefan Gleason.

The decisions in these Foundation-led cases will affect the content of so-called “neutrality” or “card check” agreements, in which employers actively assist union organizers’ efforts.

Union officials sell out workers’ interests

In return for relief from corporate campaign tactics — which include costly and embarrassing lawsuits, picketing and negative public relations campaigns — employers typically agree to pre-determined bargaining concessions and grant union operatives sweeping access to their workplaces and employees’ personal information, strip workers of the opportunity for a government-supervised secret ballot representation election, and hold mandatory “captive audience” speeches about why employees should be unionized. Workers are 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 the Freightliner case, Gaffney workers filed federal charges against Freightliner, Daimler-Chrysler, and the UAW union for illegally withholding scheduled pay raises as part of a strategy to coerce employees into ceding to unionization. Although an overwhelming 70 percent of employees signed a petition denouncing union affiliation, the company and the union nevertheless agreed to numerous substantive terms and conditions of employment, including agreements regarding work hours, seniority, pay scale, and work rules.

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UFW Union to Pay \$105,000 After Illegal Mass Firings

More than 100 berry pickers fired unlawfully at order of UFW union officials

OXNARD, CA — The United Farm Workers (UFW) union agreed to pay out over \$105,000 in back pay to a large group of strawberry pickers unlawfully fired from their jobs for refusal to join the union and sign dues check-off authorizations permitting the union to collect full dues directly from their paychecks.

The settlement comes after attorneys with the National Right to Work Legal Defense Foundation persuaded the General Counsel of California's Agriculture Labor Relations Board (ALRB) to issue a complaint against the UFW union in December 2003 for unlawfully ordering and causing the mass firings of more than 100 Oxnard Coastal Berry employees in 2001. Under the settlement agreement, those workers will receive checks within the next several weeks to compensate them for lost pay.

With the assistance of Foundation attorneys, Francisco Alcazar, Bertha Ambriz, Bertha Andrade, Ella Carranza, Alma Rose Arredondo, and Manuel Mena filed the class-action unfair labor

practice charges against the UFW union in June 2001. Coastal Berry, which employs approximately 750 workers, is the world's largest strawberry producer.

"These employees so disdained the notion of joining and supporting the UFW union, that they decided they would rather lose their jobs," said Foundation President Mark Mix. "It's an outrage that the union would attempt to drive dissenting workers into financial ruin."

UFW union power grab results in workers' rights violations

The unionization of Oxnard Coastal Berry occurred under controversial circumstances in the first place. In May 2000, by order of an ALRB packed with three one-day appointments by Governor Gray Davis, UFW union officials were granted monopoly bargaining power over Coastal Berry employees—even though a large number of the



Cesar Chavez's shameful legacy of violence and abuse lives on with the recent firing of more than 100 dissenting workers.

employees did not support the union. In March 2001, Coastal Berry entered into a collective bargaining agreement with the UFW union. Within days, UFW officials demanded that all Coastal Berry workers join the union and sign payroll deduction cards that would have allowed union officials to seize dues from their paychecks.

The ALRB complaint stated that UFW union officials unlawfully demanded that the berry pickers pay full union dues as a condition of employment, violating several Foundation-won U.S. Supreme Court decisions, including *Chicago Teachers v. Hudson*. UFW union officials also unlawfully failed to inform employees of their right to object to paying for non-collective bargaining activities (such as politics), and the right to challenge the union's fee calculations before an impartial decision maker.

California State Senator Tom McClintock (R-19th District), whose legislative district borders Oxnard, weighed in for the workers: "The National Right to Work Foundation should be commended for representing the hard-working Californians that have been denied their jobs due to politics. Ironically, the UFW claims to be for workers, yet it turned more than 100 workers away from the fields where they have labored for years." 📌

Foundation Action

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Firefighters Sue for Constitutional Violations

Foundation defends first responders from forced-dues-for-politics rip-off scheme

CINCINNATI, OH — Five Cincinnati firefighters filed a class-action lawsuit in federal court against an International Association of Fire Fighters (IAFF) union affiliate and top city officials for violations of the First Amendment by seizing compulsory union dues from the paychecks of scores of nonunion firefighters.

Receiving free legal aid from the National Right to Work Legal Defense Foundation, members of an independent black firefighters group charge that IAFF Local 48 union officials acted in concert with the City of Cincinnati and seized compulsory union dues from them without first providing an adequate independent audit of the union's expenditures. The complaint also names Cincinnati Mayor Charlie Luken, among other top city officials, for signing and enforcing an agreement with the union that resulted in the unconstitutional acts.

The firefighters filed the complaint in the Western Division of the U.S. District Court for the Southern District of Ohio.

City and union officials acted in collusion

Like many similar agreements around the country, the Cincinnati monopoly bargaining agreement also included an "indemnification clause" in which union officials promise to pay all legal costs the city may incur in defending a suit that results from illegal seizures of compulsory dues. These agreements remove the incentive for the employer to ensure union bosses are not violating workers' rights. Some courts, including the U.S. Court of Appeals with jurisdiction over Ohio, have struck these agreements down as void as against public policy.



Reuters Photo

In order to back their political allies like Senator John Kerry, firefighter union officials have illegally seized compulsory union dues to fund their political operations.

"IAFF union officials simply want nonunion firefighters to shut up and pay up," said Mark Mix, President of the National Right to Work Foundation. "Union operatives should not be allowed essentially to bribe city officials to do their dirty work by promising to reimburse all legal costs that arise out of violating firefighters' First Amendment rights."

The firefighters are asking the court to enjoin IAFF officials from seizing forced dues from any nonunion employee represented by Local 48 until they provide the legally required notice and procedures.

The workers also seek class-action status for their case, and restitution for all firefighters represented by IAFF Local 48 in the form of a refund of all past forced dues collected since July 2002. If the court grants class-action status, a remedy in the case could force significant financial reimbursements to all past and present nonunion fire-

fighters who were forced to pay such union fees—an amount estimated as high as \$100,000.

Under the Foundation-won U.S. Supreme Court decision *Chicago Teachers Union v. Hudson*, before collecting any forced dues, union officials must first provide an audited disclosure of the union's expenses. Such audits are intended to ensure that forced union dues seized from nonunion public employees do not fund union activities unrelated to collective bargaining.

Minority firefighters get short shrift from union

Independent black firefighter groups are typically Right to Work allies, as they often feel that the "old boys" system in charge of the IAFF union monopoly has acted discriminatorily toward minorities. In fact, the International Association of Black Professional Fire Fighters recently invited Foundation Vice President Stefan Gleason to speak at its international conference held in Los Angeles, as well as a regional conference in Chicago. ↗

Free Newsletter

If you know others who would appreciate receiving

Foundation Action, please provide us with their names and addresses.

They'll begin receiving issues within weeks.

Worker Challenges UAW's Agreement with "Big Three"

Deal requires parts suppliers to grease the skids for unionization

WASHINGTON, D.C. — A Dana Corp. employee filed federal charges challenging an unlawful provision within the master agreement between the "Big Three" auto makers (General Motors, Daimler Chrysler, and Ford) and the United Auto Workers (UAW) union that blackballs "tier one" suppliers who refuse to help forcibly unionize their employees.

The charges attack an increasingly common "top-down" organizing tactic that is used to short-circuit traditional grassroots-driven union organizing drives and bypass the less-abusive secret ballot election process.

The worker alleges that the UAW union's "good corporate citizen policy" and other contract clauses are illegal "secondary boycott" provisions that require Big Three parts suppliers to assist union organizers or lose their significant sales contracts.

With free legal aid from attorneys with the National Right to Work Legal Defense Foundation, Dana Corp. employee Joseph Montague filed the charges with the National Labor Relations Board (NLRB) against the UAW union. Montague and his coworkers at Dana's St. Johns, Michigan, plant currently face a UAW union organizing drive precipitated by the national agreement.

"Good corporate citizen" policy penalizes non-union suppliers

Facing pressure from the Big Three's "good corporate citizen policy," Dana signed a so-called "neutrality agreement" with the UAW. The agreement requires the company to deny employees an opportunity to vote in a traditional secret ballot election, and to give

union organizers employees' private information, including home addresses.

The deal subjects employees to a highly coercive "card check" recognition process which includes "home visits" and other intimidation of employees into signing cards counted as "votes" for unionization. If a majority of the employees are successfully pressured to sign the cards, the union hierarchy is granted "exclusive representation" power and the employees are ultimately forced to pay union dues as a condition of employment.

"The UAW union's so-called 'good corporate citizen policy' is nothing more than a coded statement that if you do not grease the skids for unionization at your company, you will lose your business with the Big Three," said Stefan Gleason, Vice President of the National Right to Work Foundation.

"Because employees are increasingly less likely to opt in favor of unionization when actually given a chance to vote their consciences, union organizers have resorted to harassment, bullying, and other tactics."

Allegations of systemic UAW abuse continue to mount

Montague's charges come on the heels of another round of federal charges he filed with coworkers Kenneth Gray and Gary Smeltzer seeking a prosecution for the use of threats and other coercion directed against non-union employees at the St. Johns facility.

Montague also alleged that union and Dana officials began unlawful bargaining over health benefits and other terms of employment, despite the union's lack of majority support from workers. The General Counsel of the



UAW union chief Ron Gettelfinger was forced to eat his words after two years of work by Foundation attorneys led to issuance of multiple complaints against the UAW's organizing schemes.

NLRB agreed with this allegation and recently ordered a complaint (see page 1).

Moreover, Gray alleged that, as the UAW union's organizational efforts repeatedly failed, union officials conspired with Dana to "gerrymander" employees in or out of the bargaining unit—and to re-classify their employment status—strictly on the basis of their support for the union. Gray claims that management informed workers who do not sign union authorization cards that they will face demotion to less-favored "salaried" positions, which would result in losses of salary and benefits.

UAW chief lashes out at Foundation

When confronted with the widespread allegations of abuse under "neutrality" agreements by UAW operatives nationwide, UAW chief Ron Gettelfinger belittled the workers' charges and lashed out at the Foundation repeatedly.

"The National Right to Work Legal Defense Foundation may have a problem with majority rule, but we don't," he

see **BIG THREE**, page 7

Foundation Beats Back Assault on Workers' Free Speech

Evidence of "serious and extensive" interference prompts order for new election

ANCHORAGE, AK — A National Labor Relations Board (NLRB) Region has called into question a local Teamsters union affiliate's monopoly bargaining status over roughly 250 employees, citing violations of worker free speech during a recent decertification election campaign.

Employees of First Student, Inc., which provides school bus services to the Anchorage School District, sought an election earlier this year to toss out the Teamsters Local 959 union hierarchy as their exclusive bargaining agent. School bus driver Jane Larressy contacted the Foundation following an unsuccessful decertification election in May, complaining that employees opposing the union were unable to make their views known.

Foundation attorneys argued that First Student unfairly discriminated against Larressy by denying her — an employee opposing forced unionism — the right to distribute literature.

"First Student officials pulled the rug out from underneath workers by stifling certain employee speech," said Foundation Vice President and Legal Director Ray LaJeunesse. "Workers ought to decide their representation for themselves and they should be able to get all sides of the story before making that decision."

Pro-decertification literature confiscated by union militants

First Student officials' discriminatory policy of silencing dissent stemmed from a private conversation between First Student manager Deborah Daniels and Teamsters union shop steward Brooks Gaines. According to testimony, the company official informed Gaines that no literature would be allowed to be distributed during the decertification campaign.



AP/Wide World Photo

A group of school bus drivers in Alaska refused to be pushed around by Jimmy Hoffa's Teamsters union goons.

Not knowing of the policy change, Larressy distributed materials in a manner consistent with the long-standing written policy at the company, as well as relying on the verbal advice of a former company contract manager and her recollection of literature distribution practices just months earlier during previous union drives. Records obtained by Foundation attorneys further indicate that, over the past year, Teamsters union partisans distributed materials on company property related to dues check-off arrangements, letters ridiculing the pro-decertification employees, and other literature without retaliation from the company.

Larressy exercised her right to oppose the union hierarchy by distributing flyers in the company parking lot promoting the decertification of the Teamsters as monopoly bargaining agent. Once all of the cars had been covered, she departed on her morning bus route. Shortly after Larressy left, union activists quickly seized the flyers from the vehicles and turned them over to union steward Gaines, who then reported the incident to Supervisor Daniels.

As she returned from her route, Larressy noticed that all of the cars had been stripped of the flyers. Daniels immediately called her into her office and ordered her not to distribute campaign materials on company property.

Additionally, Daniels told Larressy that this was her "verbal warning," and any further action designed to circulate pro-worker literature was subject to discipline.

Larressy was reprimanded a second time on the day of the election when she stood in a non-work area and reminded people to vote. The union steward saw her approach voters and recommended to Daniels that she stop the activity. Larressy was subsequently relegated to reminding voters in a far less conspicuous place.

Foundation wins new election for employees

Although Teamsters officials retained their monopoly bargaining powers by 12 votes, the Foundation successfully persuaded NLRB Region 19 in Anchorage to set aside the election on the basis that the employer violated Larressy's rights to free speech.

Foundation attorneys convinced the Region 19 Hearing Officer that forcing her to distribute flyers off the property and limiting her right to express her views was an "overly broad rule" which infringed on Larressy's right to inform other workers and reduced employees' opportunities to receive written communications about campaign issues.

The Hearing Officer also found that the timing of the election called into question the union victory in light of the "serious and extensive" stifling of employee speech.

The Region has ordered a new election, allowing Larressy and other dissenting workers the chance to be heard. The new election has not yet occurred, because the union appealed the order to the full NLRB in Washington, DC. In response, Foundation attorneys have filed a cross-appeal alleging additional deficiencies in the first election. ↗

Foundation Persuades AWOL Bureaucrat to Follow Board Order

Workers obtain hearing in high-profile decertification case

WORCESTER, MA — The National Right to Work Legal Defense Foundation convinced a National Labor Relations Board (NLRB) official to reverse her questionable decision denying employees of St. Gobain Abrasives a hearing in an ongoing union decertification battle that has even been joined by Senator John Kerry (D-MA).

The struggle originated when employees became dissatisfied with the United Auto Workers (UAW) union's performance as their monopoly bargaining agent. Employees circulated a decertification petition to trigger an election to remove the union.

Under the National Labor Relations Act, if 30 percent or more of the employees in a bargaining unit sign a decertification petition, the NLRB should conduct a secret ballot election to determine if a majority of the employees wish to throw the union out — thereby allowing employees to negotiate their own terms of employment and be rewarded on their individual merit.

Despite workers' wishes, union officials short-circuited the petition by filing an unfair labor charge, claiming that St. Gobain unilaterally implemented an unpopular health care plan in a deliberate attempt to sour relations. Region One Director Rosemary Pye then dismissed the decertification petition, holding that workers were too coerced to be able to freely express their views about the UAW union.

The workers appealed to the NLRB in Washington, which reversed the dismissal and ordered Pye to hold a hearing. Pye then scheduled a hearing, but suddenly canceled it.

Since refusal by an NLRB official to follow a direct Board order is an extraordinary action, Foundation staff attorneys helped St. Gobain employees file an emergency petition asking the Washington, DC-based NLRB to order the Boston office to honor its earlier order that it hold a hearing on the employees' petition for the election.

Foundation calls for internal NLRB investigation into apparent collusion

Meanwhile, evidence of the union officials collaborating with the Region One director in her decision-making began to surface. The record indicates that Pye's office had previously leaked pre-decisional information to the UAW union and the press. In response to Pye's actions, Foundation President Mark Mix filed an urgent request to NLRB General Counsel Arthur Rosenfeld and Inspector General Jane Altenhofen calling for a formal investigation and Inspector General's review of the NLRB region, expressing concern that board procedures had been disregarded.

Mix wrote, "These troubling actions — which include refusing to follow a Board directive, failing to follow Board procedure, apparent collusion between the union and the Region, as well as a general lack of regard for employees' Section

7 rights [to refrain from unionization] — do not reflect well on the General Counsel's office or the agency as a whole. I urge each of you to investigate this matter and take appropriate action."

Foundation efforts pay off

Following a period of increased scrutiny by the Foundation, the media, and the Inspector General's office, Pye reversed her initial judgment and announced that the evidentiary hearing would be held in September. In her communiqué, the Director retracted previous rulings and said that she has "determined that there is an immediate need to make and preserve a record."

"We are pleased that the Foundation was able to convince the Region to follow the law and its own policies," said Foundation President Mark Mix in response to the Region's most recent decision.

Pye's face-saving reversal means that a hearing was held to determine the truth about the UAW union's claims of unfair labor practices on the part of the employer. (Unfortunately, the NLRB's General Counsel and Inspector General declined to take formal action against Pye.)

Senator Kerry intervenes on behalf of UAW union

The plight of St. Gobain's workers was featured recently in the *Wall Street Journal*, underscoring how the union hierarchy's demands have hamstrung the French-owned company's efforts to invest in American workers and create jobs.

Many politicians, including Senator John Kerry, have been quick to kowtow to the UAW union, sending letters to employees urging them to unionize and even picketing the company. However, the health benefit concessions that union officials seek would drive up the company's operating costs for the

continued on next page



Spotlight on...

Stefan Gleason
Foundation Vice President

Stefan Gleason is Vice President of the National Right to Work Foundation, where he has pursued his passion to defend individual liberty and the free enterprise system



and to rally Americans against the expansion of Big Government.

Beginning his ninth year of service at the Foundation this summer, Gleason directs its legal information program, which uses a wide variety of communications methods to publicize the illegal and violent abuses of union officials.

In addition, Gleason manages the Foundation's fundraising activities, including direct mail and telemarketing, newsletters, planned giving, grant-seeking, major donor solicitation, and other resource development activity.

Meanwhile, as the Foundation's primary spokesman, Gleason frequently appears on national television shows and networks such as Fox News Channel's *O'Reilly Factor* and *Special Report with Brit Hume*,

MSNBC's *Buchanan & Press*, Christian Broadcasting Network, CNN, and C-SPAN's *Washington Journal*.

He is also frequently interviewed on nationally syndicated radio shows such as the Michael Reagan Show, G. Gordon Liddy Show, Blanquita Cullum Show, and Ken Hamblin Show, as well as scores of local radio programs. Op-eds and other articles by Mr. Gleason have also been published in national publications, including the *Wall Street Journal*, *The Washington Times*, and *National Review*, as well as hundreds of regional and local publications across the country.

Gleason holds a Bachelor of Arts degree from the University of Florida, majoring in Political Science and with additional coursework in Criminal Law.

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Worcester plant and likely force St. Gobain to outsource 1,700 American jobs to facilities in other countries.

"Keeping such [health care] costs under control is essential to staying competitive," a company advisor commented, explaining that within two years the cost of benefits for employees will exceed the cost of wages. Despite a generous health plan already in place, and wages up to 25% more than workers at similar jobs in Massachusetts, actions by union officials and their political cronies threaten to force the outsourcing of the very jobs they claim to protect. ↗

For breaking news visit:
www.nrtw.org

Big Three

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brazenly stated recently in the *Detroit Free Press* and other major newspapers covering the Foundation's activity.

In reality, it was Gettelfinger's "neutrality agreement" that took away the opportunity of workers to decide on union affiliation in the privacy of a voting booth.

Union bosses seek to ban secret ballot votes

Because union officials like Gettelfinger can't get workers to vote for unionization by secret ballot much anymore, they are working to reshape the law so that employees facing unionization nationwide will have to tell union

operatives "no" to their faces. In such cases the employee's decision is not secret, because union operatives keep lists of who has signed a card and who has not.

A choice against signing a union "authorization" card does not end the decision-making process for an employee in the maw of a "card check" drive. Often it represents only the beginning of harassment and intimidation for that employee.

"Despite their use of deceptive statements and half-truths in the media, the actions of Ron Gettelfinger and other Big Labor officials prove that all they want is to grab more government-granted coercive power to corral workers into unwanted union membership," stated Gleason. ↗

NLRB

continued from cover

Meanwhile, in the cases brought by Dana employees, company and union officials negotiated over health benefits and other substantive terms of employment without the union first having a majority of workers' support.

NLRB General Counsel Arthur Rosenfeld ordered that complaints be issued alleging that deals the UAW union cut with Freightliner (owned by Daimler Chrysler) and automotive supplier Dana Corporation amounted to unlawful premature bargaining under long-established law. The illegal agreements had each been reached long before the UAW provided any evidence that a majority of the companies' employees wanted anything to do with the union.

Foundation's lead cases "the most important" in a decade

On another front, the Board side of the NLRB, which holds original jurisdiction over representation election matters, solicited formal comment from the entire labor relations community regarding the lead Foundation cases challenging the enforceability of "card check" recognition agreements.

Earlier this summer, the Board voted 3-2 to reconsider whether to ignore petitions signed by at least 30 percent or a majority of employees requesting a secret ballot election to throw out the union during or after a "card check" organizing drive (see **Foundation Action** page 1, May/June 2004). As former member of the NLRB John Raudabaugh pointed out in the *Detroit Free Press*, "This is starting a discussion on the most important issue in American labor law of the current period, certainly in the last 10 years."

A ruling in these consolidated cases is awaited anxiously by the labor-management legal community. †



Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter:

Senator John Kerry has become a shill for the United Auto Workers (UAW) union bosses. (No surprise there!)

But workers at the flagship St. Gobain Abrasives plant in Worcester, Massachusetts are still committed to obtaining an election to throw out the union. However, the St. Gobain workers have encountered obstacles at every turn, including the opposition of a presidential candidate.

Another obstacle in their path has been Rosemary Pye, the National Labor Relations Board's (NLRB) Region One Director. In an act of apparent bias against the workers' rights, she dismissed their decertification petition, despite an order from the NLRB in Washington, D.C.

I won't tell you the whole story here, but please read the complete report on page 6 of this newsletter to find out how Foundation attorneys have provided crucial help to the workers as they struggle to claim the freedoms supposedly guaranteed them by law.

Then read a related story on page 5 about how school bus driver Jane Larressy and her fellow workers had their right to free speech stifled by Teamsters union bosses in Anchorage, Alaska. Once again, Foundation attorneys are defending the workers as they test whether the union hierarchy really has the support of the workers it claims to represent.

These two cases highlight that Big Labor is not interested in letting the voices of actual workers be heard if those workers threaten the union bosses' monopoly on power.

Your Foundation has been incredibly busy in recent months, achieving several breakthroughs at the NLRB and landing widespread national media coverage.

Thanks so much for your support in the past. With all that's on the line right now, we need your support more than ever.

Sincerely,

Mark Mix