



Foundation Action

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

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Foundation Urges NLRB to Kill Policies Used to Trap Workers

Comments: End arbitrary restrictions on employee votes to remove unwanted unions

WASHINGTON, DC – The National Right to Work Legal Defense Foundation submitted comments to the National Labor Relations Board (NLRB) in January, urging it to issue a final rule to eliminate arbitrary policies that union officials frequently manipulate to trap workers in union ranks.

The three policies at issue in the NLRB’s rulemaking are not mandated or even mentioned by the National Labor Relations Act (NLRA), the federal law that the NLRB is charged with enforcing. These policies were created by rulings of past Big Labor-friendly Boards. The comments approve of the Trump NLRB’s plan to alter all three policies, but advocate the Board go even further to protect independent-minded workers in how it deals with so-called “blocking charges.”

“Delays in the rulemaking process this Board has used to address these coercive policies means workers across the country continue to be trapped in unions they oppose,” National Right to Work Foundation President Mark Mix observed. “Which is why the NLRB should now swiftly finalize these rules as the Foundation’s comments advocate.”

The NLRB’s “blocking charge” policy lets union bosses file often baseless unfair labor practice (ULP) charges against an employer to halt employee votes to decertify unions. These charges regularly block votes even if the allegations against the



Free at last: Lead petitioner Liz Chase (front, left) and her fellow Alaska bus drivers hold up “no-union” buttons after finally ousting an unpopular Teamsters union from their workplace. Union bosses trapped them in union ranks for years.

employer have no connection to the decertification effort.

Foundation: Stop Letting Union Bosses Block Votes to Remove Unwanted Unions

The agency plans to eliminate that policy and replace it with one that lets decertification elections proceed while such charges are pending, but requires the results of the vote to be withheld until those charges are resolved.

Instead, the Foundation urges the Board to release vote tallies first to “decrease litigation and give parties greater information on whether to settle” unfair labor practice charge allegations unlikely to impact the election’s outcome. This would help prevent attempts by union bosses to drag out the ULP process and keep

workers trapped in forced-dues paying ranks.

Foundation staff attorneys have provided legal assistance to scores

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Michigan Nurse Sues Teamsters for Violating Michigan's Right to Work Law

Lawsuit: Union bosses illegally ignored repeated requests to stop union dues deductions

FLINT, MI – Madrina Wells, a nurse at the Genesys Regional Medical Center, first tried to exercise her right to end all union dues deductions from her paycheck in December 2018, in accordance with Michigan's Right to Work Law.

But, for well over a year now, the Teamsters union bosses at her workplace have continuously violated that right and kept requiring her to pay union fees. Finally, in December, she filed a lawsuit against them with free legal aid from National Right to Work Foundation staff attorneys.

Teamsters Officials Ignored Six Attempts by Nurse to Exercise Rights

According to the complaint filed in Genesee County Circuit Court, Wells resigned her union membership in February 2018 and requested that Teamsters officials cease all dues deductions from her paycheck in December of the same year.

Notwithstanding her request, Teamsters bosses sent her a letter in January 2019 demanding that she pay them non-member forced fees



Since former Michigan Gov. Rick Snyder signed Right to Work into law, Foundation staff attorneys have filed well over 100 cases for workers fighting forced unionism in the state.

after she returned from a stint on medical leave, which she had begun in December 2018.

Though a reduced amount of union dues can be charged to private sector employees who abstain from formal union membership in non-Right to Work states, in Right to Work states like Michigan no public or private sector employee is required to pay any amount of union fees as a condition of employment.

Wells resumed work in July

2019, and sent a letter to Teamsters officials “renewing her objection” to tendering any dues or fees whatsoever to the Teamsters hierarchy. Teamsters bosses again rebuffed her request and subsequently demanded forced fees from Wells for July through December of 2019, all in clear violation of her rights.

Wells responded to each demand by reiterating her objection to the illegal fees, but submitted the fees demanded by Teamsters bosses under protest. Even so, Genesys Regional Medical Center not only deducted the Teamsters’ so-called “agency fee” from Wells’ paycheck in August 2019, but also seized the full amount of union dues from her paycheck in October.

Scores of Workers Turn to Foundation After Right to Work Enacted

Since Michigan's Right to Work Law went into effect in 2013, Foundation staff attorneys have provided free legal aid to Wolverine State workers in over 120 cases.

In 2018, Foundation staff attorneys won a settlement for Port Huron-area public school employees Tammy Williams and Linda Gervais, ending dues demands made by the Michigan Education Association union (MEA) in violation of the Right to Work law. To date, as a result of that settlement, over 20 Wolverine State teachers have been freed from illegal dues demands.

“Once again Michigan union bosses have been caught shamelessly violating the Wolverine State's Right to Work law,” commented National Right to Work Foundation Vice President Patrick Semmens. “Foundation staff attorneys will continue the fight until all Michigan workers can freely exercise their right not to fund unions they fundamentally disagree with.”

Foundation Action

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THE WALL STREET JOURNAL.

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OPINION

Trapped by the Teamsters

by Mark Mix

School-bus drivers Billie McClinsey and Brad Mayer didn't like being represented by the Teamsters and wanted to put the matter to a vote. That should have been straightforward. Federal law provides that if union opponents collect signatures from 30% of their co-workers, they can ask the National Labor Relations Board to schedule a vote. But the process is frequently made convoluted and oppressive. As a result, Messrs. McClinsey and Mayer are trapped – likely indefinitely – in the union they oppose. The NLRB is soliciting comments on proposals to lift barriers that limit workers' right to remove a union.

Messrs. McClinsey and Mayer work for First Student, a nationwide contractor, in New York state and Rhode Island, respectively. Both facilities had been unionized by different Teamsters locals. Plenty of their co-workers agreed they'd be better off without the local Teamsters unions. Messrs. McClinsey and Mayer collected the requisite signatures and filed decertification petitions.

But then they discovered that their separate, locally organized bargaining units had been merged into a single nationwide bargaining unit of more than 22,000 workers at more than 100 locations. The bus drivers had agreed to unionize in their local workplace on the basis of a vote by local fellow employees. But under the NLRB's merger doctrine, the union couldn't be removed even if all of those workers wanted to do so.

So to get a vote to decertify the Teamsters, Messrs. McClinsey and

Mayer needed thousands of signatures from First Student employees in 33 states. Even if they knew the names and locations of these workers, they would have to use their own resources to collect signatures. Decertifying became practically impossible. Workers across the country are trapped in union ranks by this merger doctrine, which is nowhere in the National Labor Relations Act and is merely a bureaucratic creation of the NLRB.

A variety of other nonstatutory policies, doctrines and "bars" prevent workers from holding votes to oust unions they oppose. In many cases, the policies are applied one after the other, blocking escape routes.

Why it can take 7,000 signatures to decertify a union with nine members.

A majority of workers at a Wisconsin trucking company experienced this over the past two years. First, they were blocked from removing their union by the so-called voluntary-recognition bar. This stops workers from decertifying a union for up to a year after the union is installed through "card check" – a procedure that avoids the need for a secret ballot and makes workers vulnerable to union intimidation.

Then, after waiting a year for that bar to expire, the Wisconsin workers found they had been merged by Teamsters officials into a multicompany nationwide bargaining

unit of about 24,000 workers. Suddenly the petition to oust the local union was 7,000 signatures short – for a workplace with fewer than 10 union workers. Last month the NLRB declined the Wisconsin workers' appeal, though a majority of voting board members signaled they would revisit the "merger doctrine" policy in the future.

Other workers face other hurdles: The "settlement bar" blocks a decertification vote because of an NLRB settlement to which the workers weren't a party; the "successor bar" blocks a vote for up to a year after a company is acquired; the "contract bar" blocks a vote for up to three years after a union contract is forged; and a "blocking charge" blocks a vote while union allegations against a company are pending. None of these are required by law.

The NLRB is addressing the voluntary-recognition bar and blocking charges through the current rule-making process, but the other policies are similarly destructive of workers' legal right to vote out a union that lacks majority backing. Congress should act to protect workers from being trapped in union ranks they oppose, but in the meantime the NLRB has the authority to eliminate these barriers.

Union officials unable to win the support of a majority of the workers they purport to represent shouldn't maintain power solely because of bureaucratic rules. Instead, whenever enough workers file a petition to remove a union they oppose, the NLRB should simply let them vote.

*Mr. Mix is president of the National Right to Work Legal Defense Foundation.
(Reprinted from The Wall Street Journal)*

NLRB Cases Challenge Coercive ‘Neutrality Agreements’ Used to Impose Forced Unionism

Housekeepers demand NLRB block unionization resulting from back-room “Card Check” deals

SEATTLE, WA – Housekeeper Gladys Bryant was granted an appeal by the National Labor Relations Board (NLRB) General Counsel in her case challenging the use of a so-called “neutrality agreement” between UNITE HERE union officials and her employer to impose a union on the hotel’s workers.

Meanwhile, four Boston housekeepers have filed similar NLRB charges against their employer Yotel Boston and UNITE HERE Local 26, alleging that union officials violated federal law by imposing union representation on workers through a coercive “Card Check” drive with their employer’s assistance.

General Counsel Finds That UNITE HERE “Card Check” Unionization Was Tainted

Bryant filed the unfair labor practice charges after the UNITE HERE Local 8 union was installed at the Embassy Suites hotel in May 2018 through an oft-abused “Card Check” drive which bypassed the NLRB’s secret ballot election process.

As part of its so-called “neutrality agreement,” Embassy Suites agreed to give union organizers access to the hotel to meet and solicit employees. The agreement also provided union officials with a list of all employees’ names, jobs, and contact information to assist the union in collecting authorization cards from employees.

After NLRB Region 19 officials declined to prosecute the union or employer for violations of the National Labor Relations Act (NLRA), Bryant appealed the case to the NLRB General Counsel in January 2019.

The NLRB General Counsel agreed with Bryant’s Foundation attorneys that Embassy Suites provided UNITE HERE’S



From left, housekeepers Lady Laura Javier, Cindy J. Alarcon Vasquez, and Yesica Perez Barrios are charging hotel officials and union bosses with illegally corraling workers into union ranks with a corrupted “Card Check” recognition.

organizing campaign with more than “ministerial aid” and thus violated the NLRA. The NLRB has long held that an employer taints employees’ efforts to remove a union if it gives the employees support such as providing a list of bargaining unit employees or use of company resources.

Bryant’s appeal successfully argued that the “ministerial aid” standard must also apply when an employer aids union officials’ efforts to gain monopoly bargaining power over workers.

Boston Housekeepers Argue Union “Card Check” Must Be Overturned

Faced with a similar situation, Boston-area housekeepers Cindy J. Alarcon Vasquez, Lady Laura Javier, Yesica Perez Barrios, and Danela Guzman filed unfair labor practice charges with the NLRB. With free legal aid from the National Right to Work Foundation, the housekeepers argue that UNITE HERE union officials violated federal law by imposing union representation on workers through a coercive “Card Check” drive with the assistance of their employer, Yotel Boston.

As in the Seattle case, they

charge that Yotel Boston company officials provided UNITE HERE’S organizing campaign with more than “ministerial aid” and therefore illegally tainted the union’s installation as the employees’ exclusive representative in the workplace. The housekeepers charge union officials with violating the NLRA by requesting and accepting the illegal assistance, and the hotel for providing it.

“It is long past time that the NLRB put an end to this biased double standard that allows union bosses to abuse workers’ rights,” said National Right to Work Foundation Vice President and Legal Director Ray LaJeunesse. “The General Counsel is correct to finally recognize that what qualifies as more than ‘ministerial assistance and support,’ and thus violates the National Labor Relations Act, cannot depend on whether the employer is helping outside union organizers impose unionization on workers or assisting workers in exercising their right to remove an unwanted union.”

“These cases represent another breakthrough in the Foundation’s challenges to the pro-forced unionism skew at the NLRB,” added LaJeunesse. ✚

Foundation Aids Workers Nationwide in Cases to Vindicate *Janus* Rights

Workers seek rulings ordering union bosses to refund dues taken in violation of landmark decision

NEW YORK, NY – The Foundation’s victory at the Supreme Court in *Janus v. AFSCME* set a groundbreaking precedent. The High Court finally recognized that requiring public sector workers to pay union dues as a condition of employment violates their First Amendment rights, and that “affirmative and knowing” consent is required before deducting dues from any employee.

But union bosses from AFSCME and other public sector unions still refuse to relinquish dues money that they seized from employee paychecks without their consent before the *Janus* decision came down. While Mark Janus continues his case to get back seized dues, Foundation staff attorneys are also arguing in federal Courts of Appeals for other public servants from Connecticut and New Hampshire seeking the return of dues seized from thousands of workers in violation of the *Janus* precedent.

Connecticut, New Hampshire Public Workers Demand Refunds for Thousands

At the Second Circuit Court of Appeals, Connecticut Department of Energy and Environmental Protection (DEEP) employees Kiernan Wholean and James Grillo seek a ruling that will make Service Employees International Union (SEIU) Local 2001 bosses give back at least two years’ worth of fees exacted from their paychecks in violation of *Janus*, plus interest. Because their lawsuit is a class action, a favorable ruling could result in refunds for hundreds of Connecticut public employees.

At the First Circuit Court of Appeals, Foundation staff attorneys are litigating another class action lawsuit for New Hampshire public employees Patrick Doughty and Randy Severance. Doughty and Severance are asking the court



Connecticut public employees Kiernan Wholean (left) and James Grillo are fighting SEIU bosses at the Second Circuit Court of Appeals, demanding years of dues seized in violation of their *Janus* rights.

to make New Hampshire SEIU bosses return three years of unconstitutionally seized fees, as permitted by the statute of limitations.

All four employees are not members of their respective SEIU local unions. In these and similar cases, union bosses have used a dubious “good faith” argument to defend their seizing of dues before *Janus* came down. Foundation staff attorney Jeffrey Jennings points out in his argument for Wholean and Grillo that, on top of the *Janus* ruling making those deductions illegal, union bosses certainly have “no reasonable grounds for believing [they] could keep their money” after the *Janus* decision.

In Connecticut, Foundation staff attorneys in 2019 successfully secured a refund of dues seized before *Janus* for UConn accounting professor Steven Utke, whom American Association of University Professors (AAUP) bosses targeted with illegal dues deductions since he was hired in 2015. When AAUP officials chose to settle the case in 2019 after Foundation staff attorneys filed a lawsuit, Utke received back over \$5,000 in refunds.

“The Supreme Court was crystal clear in *Janus*: All union

fees seized from a public worker without his or her consent violate the First Amendment,” observed National Right to Work Foundation President Mark Mix. “Despite that clarity, union hierarchies around the country are still flush with dues money that was seized in violation of public employees’ First Amendment rights.”

Since the *Janus* decision in 2018, Foundation attorneys have litigated more than 30 cases seeking to enforce and expand the *Janus* victory. Ten of those have already resulted in refunds of seized dues for employees, including Oregon wildlife employee Debora Nearman’s case, the first case in the nation to result in a refund of dues seized in violation of the *Janus* precedent. SEIU bosses were forced to settle and give back to Nearman nearly \$3,000 in illegal fees they had seized from her over two years, during which they sponsored an aggressive political campaign against Nearman’s own husband, who ran successfully for the Oregon Legislature in 2016. †



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San Diego Charter School Teachers Demand Election to Oust Union Bosses

Union bosses attempt to block educators from voting to escape controversial union

SAN DIEGO, CA – Teachers at San Diego's Gompers Preparatory Academy (GPA) have collected enough signatures to trigger a vote to remove the San Diego Education Association (SDEA) union from monopoly bargaining power at the school.

Dr. Kristie Chiscano, a chemistry teacher at the charter school, submitted the decertification petition at the California Public Employment Relations Board (PERB) with free legal aid from the National Right to Work Legal Defense Foundation. However, rather than allow the teachers to vote in a secret ballot election whether to remove the union, SDEA bosses have filed "blocking charges" at the PERB in an attempt to block the election.

Teachers and Parents Oppose Union Power Grab at School

Controversy has surrounded the SDEA's presence at GPA, as the union installed itself in January 2019 after conducting a "Card Check" drive. In the abuse-prone "Card Check" process, union organizers bypass a secret-ballot election and instead rely on a variety of pressure tactics to get employees to sign union cards that are later counted as "votes" for unionization.

GPA transitioned from being a regular public school to a charter preparatory academy in 2005 as the result of a campaign by parents, teachers, and administrators who believed that school district and union bureaucracies were not serving the students' interests. Specifically, many in the community felt the old regime was failing to combat gang violence and teacher attrition at the school.

Since the school's unionization without a secret ballot vote in January 2019, no monopoly bargaining contract has been approved. All the while, GPA parents and educators



Dr. Kristie Chiscano, chemistry teacher at GPA, spearheaded the effort for a vote to remove SDEA union bosses from the school. Despite having the signatures of more than enough teachers, union bosses are trying to block the vote.

have accused SDEA agents of sowing division at the school, including by supporting anti-charter school legislation, making unnecessary and disparaging comments to school leadership during bargaining sessions, and plotting to prevent the California NAACP from giving the school's director, Vincent Riveroll, an award for helping minority students succeed.

"It all changed once the union started," GPA parent Theressah Rodriguez told the *San Diego Union-Tribune* about the union in January. "Now, whenever you come in, you feel the hostility."

Foundation Aids Educators in Filing Popular Petition to Remove Union

Dr. Chiscano, who teaches chemistry to 10th and 11th grade students, began circulating the decertification petition last October. She soon obtained the signatures of well over the number of her fellow educators necessary to trigger a PERB-supervised secret-ballot vote to remove the union. The petition

was filed with PERB immediately following the one-year anniversary of the union's installation, the soonest she could file the petition under California law.

However, last December, union officials preemptively filed a charge at PERB seeking "that the certification year be extended." That would block the educators' right to remove the union from their workplace for another year despite no evidence or even an allegation that any educator violated the law.

Such "blocking charges" are a tactic union lawyers frequently use to block rank-and-file employees from holding secret-ballot elections that could result in the removal of union officials from power as the employees' designated monopoly representative.

With an impending legal battle over the union's attempt to block her decertification petition, Dr. Chiscano turned to the National Right to Work Foundation to challenge this attempt by union officials to stymie her and her coworkers' right to hold a decertification vote to oust a union they believe lacks the support of a majority of the school's educators.

"Rather than face a secret-ballot vote of the rank-and-file educators they claim to represent, SDEA union bosses are resorting to legal trickery to trap teachers in a union they oppose by blocking their right to hold a decertification election," observed National Right to Work Foundation Vice President Patrick Semmens. "By using these coercive tactics to attempt to trap teachers in union ranks, SDEA union officials do wrong by GPA's namesake, AFL-CIO union founder Samuel Gompers, who himself urged devotion to 'the principles of voluntarism' and reminded all American workers that 'no lasting gain has ever come from compulsion.'" †

Tax Season 2020 is Here!

With the income tax filing deadline fast approaching, Right to Work supporters across the country are looking to maximize their tax efficiency and consider their planned giving goals for 2020.

Because the National Right to Work Legal Defense Foundation is a 501(c)(3) charitable organization, like a church or university, your generous support not only makes it possible for Foundation staff attorneys to represent workers challenging Big Labor coercion with strategic legal action, it can also provide you with ways to minimize your tax bill.



Here are just a few ways you can make a difference!

1. Gifts of Cash (a tax deduction in the current year);
2. Gifts of Appreciated Stocks or other Securities (a tax deduction plus no capital gains tax);
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4. A tax-free IRA Rollover Gift (for those 70 ½ or older subject to RMDs);
5. A Charitable Gift Annuity* (a tax deduction in the current year and income for life).

*not available in all states

With the stock market reaching record-breaking highs this year, a gift of appreciated stock to the Foundation may be particularly advantageous to many Right to Work supporters.

The information below is all you need to send a gift of appreciated stock to assist the work of the Foundation. As always, we suggest you consult your tax advisor or estate attorney before making any planned gift for you and your loved ones.

For more information, please contact Ginny Smith at gms@nrtw.org or 1-800-336-3600.

Instructions for a gift of Stock or other Securities:

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Comments Defend Workers' Rights to Kick Out Unpopular Unions

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of workers faced with “blocking charges,” including recently a group of Alaskan bus drivers who were finally freed in December 2019 from an unpopular Teamsters union after three years of attempts to remove it. One employee in that situation, Don Johnson (pictured front, right), commented to the NLRB that Teamsters officials’ continued blocking of an election was “the most unfair and anti-democratic event” with which he had ever been involved.

The Foundation’s comments also support the NLRB’s move to modify the so-called “voluntary recognition bar.”

Comments: Put a Check on “Card Check” and Other Coercive Schemes

This reform will allow employees and rival unions to file for secret-ballot votes after unions have been installed in workplaces through abuse-prone “Card Check” drives, which bypass the NLRB-supervised

election process.

The NLRB would reinstate a system secured by Foundation staff attorneys for workers in the 2007 *Dana Corp* NLRB decision. Although thousands of workers used the process to secure secret ballot votes after being unionized through card checks, the Obama NLRB overturned *Dana* in 2010.

The Foundation’s comments also support the agency’s proposed rule to crack down on schemes in the construction industry where

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Foundation Prompts Trump NLRB Reforms

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employers and union bosses are allowed to unilaterally install a union in a workplace without first providing proof of majority union support among the workers. Foundation staff attorneys represented a victim of such a scheme in a case (*Colorado Fire Sprinkler, Inc.*) that ended when a D.C. Circuit Court of Appeals panel unanimously ruled for the worker, who had been unionized despite no evidence of majority employee support for the union.

Foundation Supporters Flood NLRB with Comments Supporting Rule Changes

The Foundation has long called for the NLRB to abandon all barriers to employee decertification of unions not required or mentioned in the text of the NLRA. In reply comments filed later with the NLRB, Foundation staff attorneys made this point, and also supported comments made by NLRB General Counsel Peter Robb calling for expanded protections for workers unionized through coercive “Card Check” drives.

In addition to the Foundation’s detailed legal arguments, the Foundation used its email list to rally thousands of supporters to sign petitions to the Board in favor of eliminating the non-statutory policies that union bosses rely on to trap workers in forced unionism ranks against their will. All told, more than 18,000 petitions were submitted, asking the Board to “immediately implement the rule changes as detailed in the National Right to Work Foundation’s comments.”

The NLRB is expected to issue the final rule in the coming months. ✚



Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter:

The National Right to Work Foundation has concentrated its efforts on winning legal precedents to protect large numbers of employees from the abuses of forced unionism.

No other national organization carries out this crucial mission and few, if any, nonprofit legal organizations can match the Foundation’s record of precedent-setting victories — including multiple victories at the U.S. Supreme Court.

In this issue of **Foundation Action**, you will learn about how Foundation staff attorneys have effectively applied this strategy to challenge so-called “neutrality agreements.”

For years, the Foundation has been on the forefront of fighting the abuses inherent in so-called “neutrality agreements,” designed to sweep workers into forced-dues ranks without even a secret-ballot election.

Under “neutrality agreements,” employers often provide union officials with private information about employees to enable coercive union “Card Check” drives. Yet, while union bosses cut these often secret deals, employees are barred from receiving similar assistance from employers when they are seeking to free themselves from union ranks.

Recently, Foundation staff attorneys have achieved a breakthrough challenging this pro-forced unionism double standard for housekeepers in Seattle and Boston (page 4). In fact, in the Seattle case the General Counsel of the National Labor Relations Board for the first time recognized that this practice violates federal law.

This is just one recent example of how the National Right to Work Foundation is rolling back compulsory unionism through strategic litigation.

Of course, this work is only possible because of the generosity of supporters like you. Thank you for all that you do.

Sincerely,

Mark Mix