



Foundation Action

The bi-monthly newsletter
of the National Right to Work
Legal Defense Foundation, Inc.

50th ANNIVERSARY 1968-2018

Vol. XXXVIII, No. 4

8001 Braddock Road • Springfield, Virginia 22160

www.nrtw.org

July/August 2018

Workers ask Trump Labor Board to Reverse Obama-era Card Check Precedent

2011 NLRB ruling blocks employees from voting out an unwanted union

MILWAUKEE, WI – With free legal aid from the National Right to Work Legal Defense Foundation, a group of women working in the clerical offices of shipping company USF Holland have appealed to the National Labor Relations Board to overturn *Lamons Gasket*, a ruling by the previous Obama-appointed board which established significant roadblocks to workers seeking to remove an unwanted union from their workplace.

Teamster officials cancelled an NLRB secret ballot election they had scheduled, and gained monopoly powers days after through a card check. Using card check schemes, union bosses harass employees into signing cards that count as “votes” for the union. Once the workers realized what had happened, they quickly circulated a petition, signed by half of the current employees, seeking to kick the Teamster union officials out through a secret ballot decertification vote.

Obama NLRB Protected Abusive Card Check Tactics

“The Teamsters have a long and well-deserved reputation for corruption and violence, so it’s no surprise that the women in this case who filed for a decertification vote prefer the privacy of a secret ballot to the coercion and pressure tactics inherent in a union card check organizing drive,” observed National Right to Work Foundation President Mark Mix.

However, the workers’ petition



Foundation staff attorneys asked the new Trump NLRB to end an Obama-era policy which blocked workers from voting out an unwanted union from their workplace after the union was installed through an abuse-prone card check drive.

was dismissed by the NLRB Regional Director, relying on the 2011 *Lamons Gasket* decision by an Obama-appointed NLRB majority. That decision prevents all decertification votes for at least a year after a workplace is unionized through the abuse-prone card check process.

Card checks are notorious for the coercive tactics union organizers use. Because the cards signed to be used as “votes” are not secret, there are many documented cases of union officials misleading or bullying workers into signing them. Prior to the *Lamons Gasket* ruling, workers could combat against these card check tactics by holding a secret ballot vote to remove a union

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Oregon Civil Servant Challenges Forced Union Fees

State worker currently forced to fund SEIU union hierarchy that spent over \$50K attacking her husband

EUGENE, OR – Debora Nearman, a public employee, was forced to financially support and associate with an organization that opposes her personal views, including her religious beliefs, and her husband's public service. In April, she filed a lawsuit with the help of Foundation staff attorneys. Nearman's suit is one of many Foundation cases across the nation that challenge the constitutionality of mandatory union fees as a condition of government employment.

Civil Servant Forced to Support Organization that Campaigned Against Her Husband

Nearman, an employee at the Oregon Department of Fish and Wildlife, is not a union member. However, to keep her job she is forced to pay compulsory fees to Service Employees International Union (SEIU) Local 503. She believes that her money is being spent by SEIU on public policy positions that violate her political and religious beliefs.



Debora Nearman is forced to fund the SEIU even though they spent over \$50,000 attacking Oregon Rep. Mike Nearman.

In the 2016 general election, Nearman's husband, Mike Nearman, successfully ran for State Representative in the Oregon Legislature. His success came at no thanks to SEIU officials who poured over \$53,000 into a union-funded attack campaign against him, that included the distribution of disparaging fliers.

One flier that SEIU distributed claimed that Rep. Nearman

was hostile toward people with disabilities. Nearman herself wears leg braces and uses a cane due to a progressive genetic disorder.

"He's very loving and supportive," she said about her husband. "I was just shocked. My heart ached for my husband that he was portrayed that way."

Additionally, the SEIU hierarchy takes positions on political issues that conflict with Nearman's sincerely held religious beliefs. By being forced to financially support SEIU, Nearman is unable to exercise her First Amendment right to freedom of association – she must either associate with an organization whose actions violate her conscience, or lose her job.

Foundation Challenges the Constitutionality of Mandatory Union Fees for Public Sector Employees

"I had a firsthand view of how the union impacts the politics of this state," Nearman told one reporter about her case. "I was really shocked by how much money they put in my husband's race and the disgusting nature of the fliers they circulated about him."

Unwilling to submit to the violation of her First Amendment rights, Nearman filed a lawsuit at the United States District Court for the District of Oregon with the help of National Right to Work Legal Defense Foundation staff attorneys.

"It is wrong that Nearman has been forced by her state government to subsidize an organization that dragged her husband's name through the mud," said National Right to Work Foundation Vice President Patrick Semmens. Since Nearman's suit was filed the Supreme Court in *Janus v. AFSCME* has declared forced fees for public sector workers like Nearman to be unconstitutional. ✚

Foundation Action

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Distributed by the
National Right to Work Legal Defense Foundation, Inc.
 8001 Braddock Road, Springfield, VA 22160
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The Foundation is a nonprofit, charitable organization providing free legal aid to employees whose human or civil rights have been violated by abuses of compulsory unionism. All contributions to the Foundation are tax deductible under Section 501(c)(3) of the Internal Revenue Code.

Hospital Employee Successfully Halts SEIU Coercive Unionization Scheme

Union bosses' backroom deal sought to "acquire" employees who had previously rejected union organizing attempts

LONG ISLAND, NY – After her employer made a deal with union officials behind closed doors, Kathleen Flanagan came to the National Right to Work Foundation to halt the scheme and free her coworkers.

The backroom deal between Northwell Health and 1199 SEIU United Healthcare Workers East (SEIU 1199) officials forced Flanagan, a physical therapist assistant, and her colleagues into union ranks without a vote. Unwilling to accept being coerced into unionization, she filed unfair labor practice charges at the National Labor Relations Board (NLRB) with free Foundation legal assistance.

In May, Northwell Health and 1199 SEIU officials were forced to give up their under-the-table agreement, a triumph for Flanagan and her coworkers who had previously rejected SEIU unionization attempts.

Workers Compelled to Join Union Ranks

SEIU 1199 union officials already had monopoly bargaining power over some workers at Northwell Health's facilities. However, workers in other classifications, including Flanagan's physical therapy and occupational therapy department at Long Island Jewish Medical Center, had rebuffed union organizers.

In November 2017 a Northwell Health representative informed Flanagan's department that SEIU 1199 had "acquired them legally." The department, as well as other departments at Northwell's two facilities, was "accreted" into the union's monopoly bargaining unit and forced to accept the union's unwanted "representation."

At a mandatory union meeting, a union official unlawfully told the workers they were required

Kathleen Flanagan's settlement rescued her coworkers from a collusive scheme between her employers and union officials, in which employees were illegally told they must become union members and pay union membership dues.



to join the union, and therefore pay full union dues, by January 1, 2018. If Flanagan had remained an employee, she would have been required to accept union representation, pay union fees, and accept a reduction in benefits.

Faced with a reduction in benefits due to a union she and her coworkers never wanted, Flanagan chose to retire instead.

Union Officials' Scheme with Hospital Exposed

Flanagan's former coworkers were still being forced by union bosses to accept "representation" they didn't want. To challenge the so-called "accretion" as unlawful, Flanagan went to Foundation staff attorneys, who helped her file charges with the NLRB.

Northwell and SEIU 1199 eventually settled the charges, rather than face further litigation for violating workers' legal rights. Under the settlements, Northwell ceased recognition of SEIU 1199 as the monopoly bargaining representative of the illegally accreted hospital workers, and SEIU 1199 was forced to relinquish monopoly bargaining privileges

over those employees.

"The so-called accretion doctrine, which is not mandated by the National Labor Relations Act, empowers union bureaucrats to coerce workers into unions without a vote, frequently after the targeted workers reject union organizing attempts," commented National Right to Work Foundation Vice President and Legal Director Ray LaJeunesse. "However, the collusion between the company and union brass in this case was so egregious and flagrantly illegal that the NLRB had no choice but to take action."

The illegally accreted workers are now freed from unwanted union representation and will be reimbursed for union fees they were forced to pay. Furthermore, notices will be posted at both of Northwell Health's facilities and emailed out to affected employees to inform them of their rights.

"Thanks to Kathleen Flanagan, this ugly power-grab by SEIU officials was successfully halted and reversed," continued LaJeunesse. "To protect other workers across the country from being forced into unwanted unions, the Trump NLRB should overturn this outrageous accretion doctrine." ✚

Featured Foundation Commentary

Despite Janus, Big Labor Doubles Down on Coercion

By Mark Mix

See more about
the *Janus v. AFSCME*
victory in the enclosed
Special Edition

In the landmark *Janus v. AFSCME* decision issued June 27, 2018, the Supreme Court struck down mandatory union payments for government employees as a violation of the First Amendment rights of freedom of speech and association. When it comes to financially supporting a union, state and local government employees in 25 states that had been forced to pay union dues or fees finally have a choice.

Not only does this decision restore the First Amendment rights of over five million teachers, police officers, firefighters and other government workers like Mark Janus, who filed the First Amendment lawsuit with legal representation from the National Right to Work Foundation, it also gives those workers a way to hold union officials accountable. Now rank-and-file workers can simply withhold financial support for ineffective or wasteful union officials, which explains the strong support for voluntary dues among workers.

A poll commissioned earlier this month by the education news site *The 74 Million* found that a majority of union households favored voluntary dues. Among households with a government union worker 65 percent agreed workers should be allowed to stop payments. Despite support of voluntary unionism by the workers they purport to represent, union officials are predictably outraged by the *Janus* ruling that overthrows their forced-fee privileges.

Yet a look at history suggests top union officials haven't always embraced coercive powers and eschewed voluntary arrangements. One notable proponent of voluntary unionism was Samuel Gompers, who founded the American Federation of Labor and served as the longest-tenured president of the group that would later become the AFL-CIO.

In 1916, as president of the AFL, Gompers wrote: "The workers of America adhere to voluntary institutions in preference to compulsory systems which are held to be not only impractical but a menace to their rights, welfare and their liberty." Gompers understood that real "solidarity" cannot be achieved through government-granted powers.

Unfortunately, Gompers' vision for unions as voluntary institutions has been wholly rejected by today's top labor officials. Instead, in the face of *Janus* union officials have doubled down on using the heavy hand of the state to keep their treasuries full of dues.

With their forced-dues-enhanced political influence, union officials coast-to-coast have already successfully lobbied for new privileges intended to limit government employees' ability to exercise their rights under the *Janus* decision, with others considering such measures now. One favored legislative means of evading *Janus* is mandatory union orientation requirements, where new hires are forced to meet with union officials who then pressure or even mislead them into signing themselves into nearly perpetual dues payments.

A handful of states have already blocked workers from exercising their First Amendment *Janus* rights except during a few days each year, merely 10 days a year under New Jersey's version. California is currently considering an additional law mandating that public employers deduct any dues that union officials claim they are due, without any evidence that employees authorized such deductions.

State and local governments don't just have their eyes on public employees' dues. After *Janus*, expect more schemes like the one being challenged in *ASPA v. LAX*, in which the U.S. Supreme Court recently requested a brief from the Trump Solicitor General. At issue is a so-called "Labor Peace" ordinance that requires that vendors at the Los Angeles airport enter into a no-strike agreement as part of a union monopoly bargaining agreement, effectively mandating that every worker at LAX must be under a forced-dues union contract.

Meanwhile, Seattle is attempting to require that to drive with ridesharing companies, drivers must pay dues to the Teamsters union. California legislators are already considering a similar requirement depending on the outcome of legal challenges to Seattle's law, including a lawsuit filed by a group of Uber and Lyft drivers represented by the Foundation attorney who successfully argued *Janus v. AFSCME*.

So while the *Janus* decision frees millions of public employees from mandatory union payments, don't expect Big Labor to suddenly embrace Gompers' view of a union movement built on workers' voluntary support. Instead, expect more government-granted powers for union bosses over rank-and-file workers and more lawsuits by workers like Mark Janus who want their rights to be respected.

Mark Mix is president of the National Right to Work Legal Defense Foundation.

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16-year-old Clerk Files Charges after Illegal Forced-Dues Demands

UFCW union officials demanded Danville teenager pay or else be fired

DANVILLE, CA – Union officials demanded teenager Christopher Ratana-Kelley pay fees to keep his job as a Safeway grocery clerk. But when union officials failed to provide the 16 year-old with the legally required information about the mandatory fees they demanded from him, Ratana-Kelley decided to take action to protect his legal rights.

In May, National Right to Work Legal Defense Foundation staff attorneys helped Ratana-Kelley file federal unfair labor practice charges with the National Labor Relations Board (NLRB).

Officials Failed to Explain Forced Dues

California does not have a Right to Work law, which means that when Ratana-Kelley began his job as a Safeway courtesy clerk, union officials at United Food and Commercial Workers (UFCW) Local 5 could legally compel the teenager to pay union fees as a condition of employment.

However, in the Foundation-won United States Supreme Court *CWA v. Beck* decision, the High Court provided some protection to workers by ruling that employees can only be forced to pay union dues for certain union activity.

The *Beck* decision also gave employees the right to information of the fees demanded by union officials, including an independent audit of union expenditures and calculation that the percentage of dues that non-members are forced to pay does not include political spending and other non-collective bargaining expenses.

Union officials never provided Ratana-Kelley with the legally required disclosures about union spending and how his compulsory

dues were calculated. When he objected to paying fees to the UFCW beyond what he could be legally required to pay and asked for a breakdown of how his fees were calculated, union officials continued to refuse to provide the information.

Concerned by being kept in the dark about how his fees would be spent, Ratana-Kelley turned to the National Right to Work Foundation for free legal assistance in filing charges with the NLRB.

“Christopher is a teenager just entering the workforce,” said Patrick Semmens, Vice President of the National Right to Work Foundation. “It takes a lot of courage to stand up to a Goliath, and Christopher has chosen to hold the union giants accountable for their flagrant neglect of his rights. This case underscores the need for California to pass a Right to Work law making union affiliation and dues payments completely voluntary.”

UFCW has History of Targeting Teenagers

Christopher is not the only teen who has experienced union officials’ illegal demands for forced dues. In 2007, then-sixteen-year-old Danielle Cookson, a front courtesy clerk for Albertsons, Inc., filed federal charges against UFCW after union officials unlawfully demanded she be fired from her job unless she joined the union and paid full dues.

Local UFCW union officials sent a “termination letter” to Cookson’s employer, ordering her to pay forced dues within seven days of



UFCW officials also tried to bully then-16-year-old Danielle Cookson to pay full union dues rather than save her part-time wages for college.

the notification or she would be removed from the schedule and terminated. In response, Cookson came to the Foundation for help in filing charges with the NLRB.

In 2015, another teenage clerk, at Ralphs Grocery, used free Foundation aid to win a federal case after UFCW union officials refused to let him resign from union membership and pay reduced compulsory fees. ✚

Extra! Extra! Newsclips Requested!

Send articles exposing abusive union practices from your local paper to:

NRTWLDF

ATTN: Newsclip Appeal

8001 Braddock Road, Ste. 600
Springfield, VA 22160

Supporters can also email stories to:
info@NRTW.org

Have You Considered a Gift of Stock to Combat Forced Unionism?

With tax season behind us and recent changes to the tax code, now is a good time to consider the many options you have to assist the National Right to Work Legal Defense Foundation in its continued fight against the abuses of compulsory unionism.

While there are many options to consider, an increasingly popular choice is a tax-deductible gift to the Foundation in the form of appreciated stock or other securities.

Tax-deductible gifts of cash are still the most common method of making a charitable gift, but you can gain additional tax savings with an outright gift of stock, mutual funds, or other securities that have increased in value since they were purchased.

Although appreciated securities are subject to capital gains tax when sold by individuals, gifts of appreciated stock held for more than one year may be deducted in amounts totaling up to 30% of your AGI limit.

Not only would you be eligible for a tax deduction for the full current value of the appreciated security, but you would eliminate capital gains taxes by donating the stock to the National Right to Work Foundation, which is a qualified 501(c)(3) charity.

So please consider a tax-deductible gift of stock today! Your gift will go a long way in assisting the Foundation in its fight to secure freedom from Big Labor for working men and women.

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If you would like more information on a planned gift, estate gift or a gift of stock, please contact Ginny Smith at the Foundation at 1-800-336-3600, or gms@nrtw.org.

Workers ask Trump Labor Board to Reverse Obama-era Card Check Precedent

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after a card check.

Although the National Labor Relations Act explicitly restricts workers from voting out a union for one year following an NLRB-supervised secret ballot election, nothing in the law suggests that union recognition through card check should be treated the same. In fact, in 1969 the U.S. Supreme Court unanimously ruled card check recognition to be “admittedly inferior” to secret ballot votes. Despite this, the notoriously pro-forced unionism Obama Labor Board extended the “election bar” to union card check drives, then destroyed thousands of ballots cast by workers in decertification elections.

“The disastrous *Lamons Gasket* decision was one of many by the Obama Labor Board that elevated the powers of union bosses over the rights of individual employees.

It should be swiftly overturned,” said Mark Mix, President of the National Right to Work Foundation. “Nothing in the National Labor Relations Act says that workers should be denied a secret ballot decertification vote on the basis of a card check recognition, which the Act and U.S. Supreme Court view as inherently inferior to an NLRB-run vote.”

After being denied a secret ballot vote to remove the unwanted union, the USF Holland workers appealed to the full National Labor Relations Board with representation from National Right to Work Legal Defense Foundation staff attorneys. Their appeal asks the new Labor Board, with a majority appointed by President Trump, to at a minimum revert to prior rules for decertification (under the Foundation-won *Dana* precedent), or better yet, simply allow a

decertification vote at any time after a card check.

Trump Board Asked to End Barriers to Removing Unwanted Unions

In the coming months, Trump-appointed NLRB Members will have the opportunity to demonstrate their independence and respect for the rights of workers opposed to unionization by granting the appeal and ending the Obama-era policy that put union boss compulsory powers ahead of the rights of workers opposed to unionization.

The appeal for the USF Holland workers is one of many instances of National Right to Work Foundation staff attorneys seeking to end obstacles in the law to removing a union that is not supported by

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a majority of the workers union officials claim to “represent.”

With Foundation legal aid, workers have filed numerous challenges to unions’ use of “blocking charges” to delay or even permanently prevent decertification votes. Under the NLRB’s current blocking charge policy, timely petitions for an election to remove a union can be blocked by union lawyers filing meritless charges against the employer. Despite zero allegations of wrongdoing by the workers themselves, these blocking charges can stop workers from having a vote to remove a union for months or even years, while union bosses remain in power and, in states without Right to Work laws, continue forcing workers to pay union dues or fees.

Foundation staff attorneys also filed comments with the NLRB in the spring of 2018, calling for significant reforms to the NLRB election procedures to protect workers from being trapped in a union opposed by a majority of workers. The Foundation comments called for changes to a myriad of one-sided rules, which empower unions to hold quick-snap elections to unionize workplaces virtually anytime they want, but frequently stop workers from holding elections to remove unions for years.

The comments call on the new NLRB to not only end its blocking charge rules, but also to end various bureaucratically-created “election bars” (including *Lamons Gasket*) that protect incumbent unions from being removed. The Foundation further called on the Board to create new worker protections, by making unions regularly prove they at least have the support of a majority of workers or else lose their monopoly “representation” powers over employees. ✎



Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter:

Since the Foundation began in 1968, we have fought for the principle that no worker should be required to pay union dues or fees just to get or keep a job .

Years of strategic litigation -- and 18 Supreme Court cases -- have paid off in a monumental victory for workers’ individual rights in your National Right to Work Foundation’s *Janus v. AFSCME* case.

Finally, the Supreme Court has established, as we have known all along, that the First Amendment protects the rights of government workers to choose whether or not to fund union speech.

With the *Janus* victory, public sector workers are now free from compulsory unionism. Teachers, firefighters, police officers, and other civil servants can no longer be forced to pay tribute to union officials to keep their jobs.

Janus may be the culmination of years of dedication from Foundation staff attorneys, independent-minded workers, and our supporters, but it is by no means the end of the road.

Much work remains to be done. Union officials are already pushing back in attempts to reclaim some of their lost power, and the Foundation will need to remain vigilant in enforcing new protections. Even with the new *Janus* precedent, many individual employees in America continue to be victims of union officials’ abuses of their constitutional and civil rights.

This milestone in the Right to Work movement was made possible by the generosity of Foundation supporters like you. With your continued support, the Foundation will enforce its victories -- and seek new ones until every American worker is free from forced unionism.

Sincerely,

Mark Mix