



Foundation Action

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

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Foundation Helps Childcare Providers Fight New York Unionization Scheme

Legal challenge builds on Foundation's precedent-setting Harris Supreme Court victory

SYRACUSE, NY - With free legal assistance from National Right to Work Foundation staff attorneys, several New York home-based childcare providers have filed a federal lawsuit challenging a statute that subjects them to compulsory unionization. The providers' lawsuit also seeks a refund of illegally-seized union dues.

In early December, Mary Jarvis and nine other providers filed the suit in U.S. District Court for the Northern District of New York. The lawsuit seeks to build on the landmark, Foundation-won Supreme Court victory in *Harris v. Quinn* from earlier this year.

Jarvis and the other providers are challenging the AFSCME-affiliated Civil Service Employees Association (CSEA) union's claim to exclusively represent thousands of caregivers outside New York City who operate home-based childcare businesses. Union officials have also been empowered to collect dues from all eligible childcare providers, even those who want nothing to do with the union.

"[The union] said, 'You can say you're not a member, but we're gonna take your money,'" said plaintiff Charlese Davis, who's been a child care provider for 25 years. "That's exactly what was said to me."

"New York childcare providers shouldn't be forced to pay union dues or accept the CSEA's unwanted 'representation,'" said Patrick Semmens, Vice President of the National Right to Work



Charlese Davis, a Foundation-assisted childcare provider from upstate New York, was told she had to pay full dues even if she didn't join the union.

Foundation. "We hope the District Court recognizes that caregivers' fundamental First Amendment rights take precedence over union bosses' desire for forced dues."

Applying the *Harris* victory to the states

A 2007 executive order signed by disgraced former Governor Eliot Spitzer set the stage for this latest unionization scheme. New York childcare providers receive a small remittance from the state to assist their caregiving activities, and Spitzer's order made union "representation" and dues payment mandatory for childcare providers who receive a state subsidy.

Thanks to a series of lawsuits filed with Foundation legal aid, home-based child and personal care providers from

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Foundation Helps Civil Servants File Lawsuit Against SEIU, Santa Clara County

County employees seek to end automatic dues deductions for union politics

SANTA CLARA, CA - Two Santa Clara Valley Medical Center employees have filed a federal class-action lawsuit against a local union and the county that employs them, seeking to expand public employees' right to refrain from paying union dues for politics.

With free legal assistance from National Right to Work Foundation-provided attorneys, Santa Clara county employees Jeffrey Lum and Andrew Li filed the lawsuit in California District Court in early December.

Lum and Li are not union members, but the Service Employees International Union (SEIU) Local 521 has acquired monopoly bargaining privileges for their workplace. Because California does not have a Right to Work law, workers can be required to pay union dues or fees as a condition of employment if their workplace is unionized. However, nonmember workers have the right to refrain from paying for union politics and any other activities unrelated to workplace bargaining.



Two Santa Clara civil servants are seeking to end automatic dues deductions for politics by challenging SEIU policies in court.


Despite Lum and Li's nonunion status, SEIU and county officials continue to deduct an amount equal to full union dues from both employees. For up to 14 months after taking full dues from their paychecks, SEIU officials were free to illegally spend that money on their extensive and often radical political operations.

"The SEIU's current policy amounts to an interest-free loan to union bosses that can be used for any number of political activities that may be contrary to the views of those forced to pay dues," said Patrick Semmens, Vice President of the National Right to Work Foundation. "Nonunion workers should never have to pay for union politics, not even in the form of an interest-free loan, which is why the Foundation stepped in."

Suit builds on Foundation Supreme Court victory

This lawsuit also challenges existing lower federal court case law that requires nonmember public employees to pay an amount equal to full union dues – including the portion used for union politics – unless they affirmatively object. Workers who object must also renew their objections annually.

In 2012, the Foundation-won *Knox v. SEIU* Supreme Court decision struck down an affirmative objection requirement for special assessments. The Court also indicated that it was ready to reassess whether union bosses' forced-dues powers, which it called "something of an anomaly," include the power to use "an opt-out system for the collection of fees levied to cover nonchargeable expenses." Responding to that suggestion, Lum and Li's lawsuit seeks to expand the *Knox* precedent to apply to all instances in which public employees refrain from union membership.

"Union bosses have the government-granted power to force workers to fund their political activities unless workers object – a power granted to no other private organization," continued Semmens. "Workers shouldn't have to go through onerous opt-out procedures just to assert their fundamental First Amendment rights." 

Foundation Action

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California Confectioner Fights Union Bosses' Sweetheart Deal with Company

Candy company worker was suspended without pay for trying to exercise her workplace rights

OAKDALE, CA – Thanks to free legal assistance from the National Right to Work Foundation, a Modesto-area Sconza Candy Company employee received back pay after she filed federal charges against a local bakers union and her employer for a litany of rights violations.

After Sconza utility worker Athena Manning was hired in September 2013, company management and Bakers Union Local 125 officials failed to notify her of her right to refrain from full-dues-paying union membership. Company and union officials also actively misled her about her obligations to the union.

Union officials violate law; employee suspended without pay

Because California lacks a Right to Work law, employees can be required to pay union dues or fees as a condition of employment. However, in the National Right to Work Foundation-won *Communications Workers v. Beck* case, the U.S. Supreme Court held that workers who refrain from formal union membership have the right to refrain from paying for union boss politics and any other activities unrelated to workplace bargaining.

Furthermore, union officials must provide newly-hired workers with notice of their rights to refrain from membership and the payment of activities unrelated to bargaining when seeking to require them to pay union dues. If any employee chooses not to join the union and objects to paying full dues, union officials must provide an independently-audited breakdown of their expenditures to help employees determine what they are obligated to pay.

Photo Credit: *The Oakland Leader*



Sconza Candy utility worker Athena Manning filed federal charges after she was illegally suspended without pay for a week for exercising her rights.

In May, company management and union officials claimed that joining the union and paying full dues were required as a condition of employment. Even though union officials never provided Manning with accurate information about her rights, she was notified by a Sconza manager on June 9 that she was being suspended without pay from her job for a week for failing to join and pay dues to the union.

“There’s something rotten here with the union and Sconza,” Manning told a local paper, *The Oakdale Leader*. “The union doesn’t take care of their employees or their rights.”

Foundation attorneys help worker assert rights

After the incident, Manning requested that union officials follow federal disclosure requirements and provide her with a verified breakdown of their forced-dues expenditures.

“I want employees here to have information and a choice to prepare for

what’s right for them,” Manning told *The Leader*.

Union officials denied her request, and then threatened to have her fired if she refused to pay union dues.

With the help of National Right to Work Foundation staff attorneys, Manning filed federal unfair labor practice charges against the union and the company with the National Labor Relations Board (NLRB). Shortly after she filed charges, the company backed down and reimbursed her for lost wages stemming from her suspension in June. Manning and her Foundation attorneys are still pursuing the charges against the company and the union.

“Union and company officials punished this worker for exercising her rights so they could collect more forced-dues cash for union bosses’ coffers,” said Mark Mix, President of the National Right to Work Foundation. “Workers will continue to face similar schemes until California passes a Right to Work law, which would ensure that union membership and dues payment are completely voluntary.”

Obama NLRB Aggressively Pushes 'Card Check Lite' via Bureaucratic Fiat

Obama Labor Board expands Big Labor's privileges despite rejection from Congress, voters

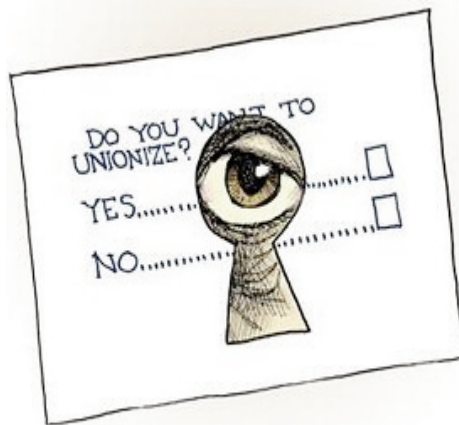
WASHINGTON, DC - In his book *The Audacity of Hope*, then-presidential candidate Barack Obama wrote: "I owe those unions." After Big Labor spent nearly \$1 billion to get President Obama and his forced-unionism allies elected in 2008, they went right to work to pass the so-called "Employee Free Choice Act" – the sole purpose of which was to codify the coercive and unreliable union organizing tactic known as "card check."

Now, during the homestretch of Obama's presidency, the National Labor Relations Board (NLRB) has released a steady stream of decisions and rules designed to push coercive card check union organizing via bureaucratic fiat after card check legislation failed in Congress.

Obama Labor Board rolls back employee rights

Early in Obama's first term, the president and a filibuster-proof Democratic majority failed to pass the card check bill. In response, Obama sought to implement card check legislation via the administrative powers of the NLRB and nominated union lawyers Craig Becker (a notorious card check proponent) and Mark Pearce to the Board. After Becker's nomination failed in the face of bipartisan opposition in the Senate, Obama recess-appointed him to the Board.

The Obama Labor Board soon went to work. The new majority of Obama appointees, including Becker, voted to overrule the National Right to Work Foundation-won *Dana* precedent. Under *Dana*, workers were, for the first time, accorded some protections against card check unionization, including the right to petition for a secret-ballot vote in the wake of a card check forced unionization campaign in their workplace. Becker refused to recuse himself



CARD CHECK

Undeterred by a series of legislative setbacks, union political operatives are now pushing to implement "card check lite" through bureaucratic rule-making.

from the case even though he previously had opposed those protections while participating in the original *Dana* case as an AFL-CIO union lawyer.

NLRB policy reveals card check double-standard

Less than two years later, Obama notoriously subverted the U.S. Constitution and installed pro-forced-unionism radicals Sharon Block and Richard Griffin on the Labor Board as purported "recess" appointments while Congress was not in recess – a move that the U.S. Supreme Court unanimously struck down as illegal.

Now, former illegal "recess" appointee Griffin, who serves as the NLRB's General Counsel, is pushing a new policy in which union bosses can file federal charges to block employers from withdrawing recognition of a union as the workers' monopoly bargaining representative even after a

majority of the workers indicate their desire to remove the union from their workplace. This new policy gives Griffin the power to prosecute a company that voluntarily removes recognition of an unwanted union at workers' behest even if the company has done nothing wrong.

National Right to Work Foundation staff attorneys are assisting workers across the country who seek to protect their rights to remove unwanted unions from their workplaces.

An Arlington Metals Corporation steelworker from Franklin Park, Illinois, and a San Francisco-area Scoma's of Sausalito restaurant worker have moved to stop Griffin from foisting unwanted union representation back on their respective workplaces. Meanwhile, Chehalis, Washington, steel manufacturer Bradken, Inc. workers seek to have their ballots counted to determine whether the workers want to remove a local Machinist union from their workplace after the NLRB blocked the count. And a Hope, Arkansas, Southern Bakeries worker asked a federal court to allow him to intervene after the federal agency tried to foist unwanted union representation back on his workplace after he and two-thirds of his coworkers expressed their desire to remove the union.

Underscoring the Board's double standard, the NLRB still maintains that a company can recognize a union if a majority of workers sign union "cards" through the card check method, even as its top lawyer works to eliminate workers' ability to use the same procedure to oust an unwanted union.


Obama appointees push ambush election rules

Even though the 2014 Republican electoral wave forced President Obama

to back down from reinstalling illegal “recess” nominee Sharon Block to the Board, Obama’s substitute for Block, Lauren McFerran – a former union lawyer and staffer to Senators Ted Kennedy and Tom Harkin – was forced through the Senate via outgoing Senate Majority Leader Harry Reid’s (D-NV) “nuclear option” during the December “lame duck” session.

McFerran’s confirmation ensures that Obama’s radical appointments will hold a majority until at least August 2018 and, without any fear of imperiling any member’s successor’s nominations, opened the door for the NLRB to issue new unionization election regulations. These new rules closely mimic card check forced unionism tactics, making union organizing campaigns even more one-sided.

In mid-December, the NLRB issued new rules designed to push workers into union ranks by ambushing them with “quick-snap” elections, which will stifle the free speech rights of employees who may oppose the unionization of their workplace. The rules also force employers to hand over to union organizers the name, address, phone number, email address, and shift schedule of each employee, exposing workers to “home visits” and other intimidation tactics. Coupled with an NLRB ruling issued the day before mandating that employers allow company-owned email systems to be used for union organizing, the new rules open the door for cyberbullying by union organizers

“After suffering a decisive defeat in Congress, the Obama NLRB is attempting to bypass the legislative process by incrementally implementing the worst features of card check forced unionism,” said Mark Mix, President of the National Right to Work Foundation. “This is just the latest example of the Board’s campaign to undermine worker rights, and Foundation attorneys are researching how to legally challenge the Obama NLRB’s enactment of union bosses’ card check wish list.” 

Make a Planned Gift in 2015 and Invest in the Future of Right to Work

As we start 2015, Congress has yet to propose what changes will take place in the New Year that concern charitable giving and tax incentives. The volatile stock market continues to reach new highs, but remains unstable due to the price of oil around the world. In this environment, it is crucial to explore what you can do to maximize your tax saving options for the future and provide a tax-deductible gift to the National Right to Work Foundation.

Over the next few months, all of us will be preparing and filing our 2014 tax returns and many will consider what we can do to alleviate heavy tax burdens in the future. Reviewing your estate plan is crucial for economic security for you and your loved ones. At this time, there are several options to consider to take advantage of making a charitable gift to the Foundation – and to assist its ongoing fight against the abuses of compulsory unionism.

Gifts of cash are the most common method of making a charitable gift, but many also make a gift of stock. A gift of stocks, mutual funds, or other securities that have increased in value since their purchase is another way to make a charitable gift to the Foundation right now. Appreciated securities are subject to capital gains tax when they are sold. A gift of stock (held for more than one year) may be deducted in amounts totaling up to 30 percent of your AGI limit. (Please see below for instructions on how to give a tax-deductible gift today.)

Now may be an ideal time to review all of your estate plan, but most importantly, your will or trust docu-

ments that give financial security to you, your family, and the charities you choose to include in your estate plan. You may wish to include the Foundation through a charitable gift annuity, charitable remainder trust, charitable lead trust, life insurance policy, or an outright bequest. We encourage all of our supporters to review their estate plans today.

Your continued investment and partnership in the fight against forced unionism in the workplace is deeply appreciated. Your generosity to the Foundation goes a long way toward assisting thousands of workers nationwide who are bravely standing up to union coercion in the workplace.

We encourage you to consult your own tax advisor or estate attorney and receive the peace of mind that you have provided a will or estate plan for your loved ones and the charities you support. If you have any questions, or need additional information on a planned gift, please contact Ginny Smith at 800-336-3600. Thank you again for your generosity and have a Happy New Year!

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Judge's Ruling Advances Airline Workers' Landmark Forced Dues Lawsuit

Receiving class-action status an important step toward protecting workers' First Amendment rights

DALLAS, TX – In late November, a courageous group of airline employees who filed a potentially landmark lawsuit that seeks to expand airline and railway workers' right to refrain from paying dues for union politics won a federal court ruling granting their motion for class certification.

With free legal assistance from National Right to Work Foundation staff attorneys, five American Eagle Airlines baggage handlers from Texas and four Southwest Airlines flight attendants from Maryland, California, and Nevada filed the class-action lawsuit against the Transport Workers Union of America (TWUA), which enjoys monopoly bargaining privileges for 50,000 railroad and airline workers across the country under the jurisdiction of the Railway Labor Act (RLA).

The airline workers who filed the suit are not TWUA members but must still accept the TWUA as their "exclusive bargaining representative." Moreover, the RLA empowers union officials to extract union dues from workers as payment for their so-called "representation," even in Right to Work states.

Supreme Court questions union forced-dues powers

In 2012, the Supreme Court suggested in the Foundation-won *Knox v. SEIU* ruling that it was ready to reassess whether union bosses' forced-dues privileges, which it called "something of an anomaly," violate workers' First Amendment rights. The Court also questioned union bosses' power to automatically require workers to pay full dues unless those workers affirmatively exercise their right to refrain.

Responding to the Court's skepticism regarding union bosses' forced-dues powers, the airline workers in *Serna v.*




Building on the Foundation's Knox Supreme Court victory, a group of airline employees are seeking to ensure that union bosses receive consent from air and railway workers before collecting dues for political activities.

Transport Workers Union of America seek to eliminate forced unionism across the country.

Alternatively, the workers seek to expand the *Knox* ruling to apply to all instances in which railroad and airline workers refrain from union membership. If they are successful on that front, workers who do not join a union will also automatically not pay for union political activism and other non-bargaining activities. Under the new standard the airline employees hope to establish, union officials would be required to get workers' affirmative consent before collecting union dues for political activism.

Workers win class-action status for lawsuit

A U.S. District Court for the Northern District of Texas judge granted the workers' motion for class-action certification of their lawsuit in December. The judge held that all workers refraining from TWUA union membership in the past, present, and future can be part of the class.

"Union bosses have abused their extraordinary government-granted power to automatically compel workers to fund their political activities unless workers object – a power granted to no other private organization in our country – for far too long," said Mark Mix, President of the National Right to Work Foundation. "The First Amendment right to automatically refrain from paying union dues, especially for politics, is long overdue." 

Newsclips Requested

We're always looking for news stories that expose union corruption, mismanagement, and abuse. Send articles that appear in your local paper to:

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

NLRB's Budget Doubles as Workload Plummet

The federal government's top labor arbiter has seen its budget skyrocket even as its caseload plummeted to record lows over the past three decades, according to a new study.

The National Labor Relations Board, which oversees workplace disputes and union elections, is issuing fewer decisions and handling fewer cases than it ever has before thanks to plummeting union membership numbers. However, that decline in work has coincided with an ever-increasing budget, according to an analysis published by the National Right to Work Legal Defense Foundation.

"Since 1980, fiscal year total case intake (representation cases and unfair labor practice cases) is down 58%; published decisions are down 85%; appropriations in 2014 dollars are up 98%," the report says.

Staffing levels no longer reflect the workload that the agency handles, according to study author and former NLRB board member John Raudabaugh.

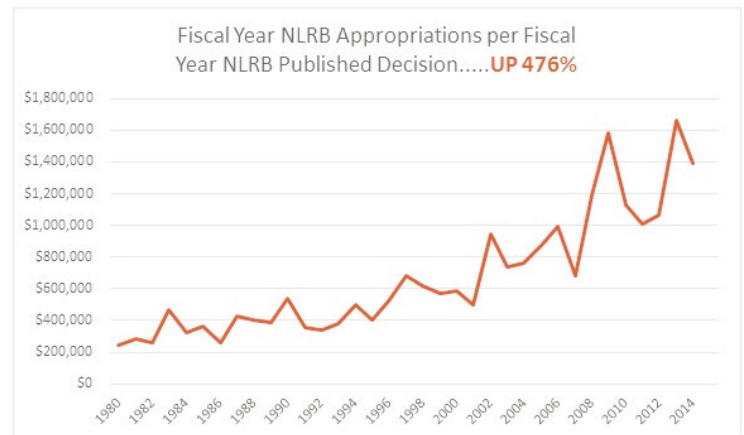
The agency spends four times more on its workforce per decision issued than it historically did and it continues to maintain local offices across the country even as right to work laws have spread and union membership has been reduced from a peak of 30 percent in the 1950s to about 10 percent today.

"They've made no serious effort to consolidate local and regional offices," Raudabaugh said in a phone interview. "The board needs to be encouraged just like any other government agency to be run efficiently and held accountable to the taxpayer."

The NLRB declined to comment for this story.

A 2013 agency report said the NLRB reduced local offices from 32 to 26, according to the report. It plans to streamline its operations through more video conferencing and digitized case management files. The report concluded that the NLRB was effectively streamlining its caseload and efficiently clearing its docket.

"The NLRB established two performance measures. In particular, the timeliness and quality of case processing, from the filing of an ULP charge to the closing of a case upon compliance with a litigated or agreed-to remedy, are the focus of those performance measures," the report said.



Raudabaugh said that the agency's measures do not give an accurate picture of efficiency. The board should base its standards on how much money is used per case, rather than simply measuring how fast cases are handled. A lower caseload has led to increased trips and redundant activity designed to "educate people about a statute [the National Labor Relations Act] that has been around since 1935," Raudabaugh said.

The decline in caseload has not stopped the agency from complaining about the "severe austerity" that occurred in 2013 when its budget was reduced by 5 percent to about \$264 million.

"The reduction in Agency funding combined with an increase in caseload, wages, and other non-discretionary costs, such as rent and security, along with required spending on essential programs, initiatives and resources that have been deferred or curtailed and those that must be renewed ... will cause drastic measures to be undertaken," the report said.

Raudabaugh said that the agency's handling of its budget demonstrates that it is not serious about being a good steward of taxpayer dollars.

"Their work is slowly going down and yet the board is not adjusting to lower intake," Raudabaugh said. "We need to cut through all the ridiculousness and focus on how many people do we really need to appropriately handle the NLRB's mission."

This article was first published in The Washington Free Beacon on 12/3/14.

Childcare Lawsuit

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across the country have challenged similar unionization schemes in several states, including Illinois, Massachusetts, Minnesota, and Michigan.

Last Summer, the U.S. Supreme Court issued a landmark ruling in *Harris v. Quinn* that struck down the Illinois scheme, holding that individuals who receive state subsidies based on their clientele cannot be forced to pay compulsory union fees. The next day, the Court cleared the path for 50,000 home childcare providers in Michigan to receive a refund of union dues illegally confiscated under that state's now-defunct homecare unionization scheme.

Building on the favorable *Harris* precedent, Foundation attorneys argue that the New York scheme violates the providers' First Amendment right to choose who they associate with to petition the government.

People shouldn't be forced to be part of a club they don't want to join, said Mary Jarvis, another Foundation-assisted plaintiff. "We want to keep our money in our day cares, doing things for our children."

"Forcing New York childcare providers to pay dues and accept mandatory union 'representation' is a violation of their First Amendment rights," said Semmens. "This latest scheme, which forces small business owners into union ranks, is completely contrary to the principle of free association."

"Fortunately, our landmark Supreme Court victory in *Harris v. Quinn* gives Foundation staff attorneys the tools to challenge homecare unionization drives in states across the country," continued Semmens. "We hope the New York District Court takes note of the Supreme Court's *Harris* decision, which strongly affirms homecare providers' First Amendment rights, and rules accordingly." 



Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter,

The American people spoke loud and clear on November 4 against Big Labor's radical forced-dues agenda.

But you and I can't expect the Obama Administration to heed their message.

Barack Obama and his "team" have never been shy about paying back their union-boss benefactors through the National Labor Relations Board, Department of Labor, and other powerful agencies in the executive branch.

I fear that the Obama Administration will do the most damage yet to worker freedom now that Obama himself doesn't have to face the voters again and Big Labor can't force its agenda through Congress.

Just a month after the voters spoke in the midterm elections, the Obama Labor Board rammed through new union certification election procedures that will empower union bosses to ambush workers with quick-snap elections and expose them to many of the same abuses as card check forced unionism.

Those of us committed to the cause of freedom must be prepared for more tooth-and-nail battles against Big Labor's handpicked bureaucrats and schemes like that one.

I'm grateful knowing the National Right to Work Foundation has supporters like you enabling us to fight back in court.

Thanks to your help, Foundation staff attorneys have already fought back – and won – against some of the Obama Administration's most egregious union-boss power grabs.

Your continued generosity enables us to stay on guard. Thank you.

Sincerely,

Mark Mix