



Foundation Action

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

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Right to Work Foundation Helps Secure High Court Review

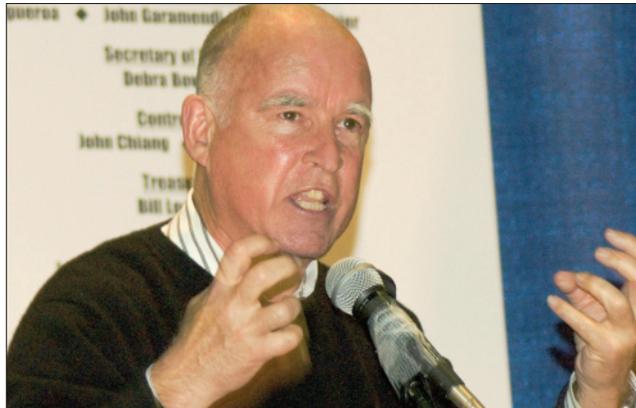
**Attacks California law
designed to force workers
into unionization**

SPRINGFIELD, VA – The National Right to Work Foundation helped secure United States Supreme Court review of a controversial Ninth Circuit ruling that pressures companies to assist in coercive union organizing drives.

The High Court’s decision to grant a petition for a *writ of certiorari* occurred after Foundation attorneys filed an *amicus curiae* brief, arguing that California’s special-interest state statute is preempted by provisions of federal law which are supposed to protect employees from pressure to unionize by union officials and other entities.

The High Court will now review whether the California state policy violates the Supremacy Clause of the U.S. Constitution.

“The National Right to Work Foundation denounces this rogue appellate ruling and applauds the U.S. Supreme Court’s decision to review it,” said Mark Mix, president of the National Right to Work Foundation.



westlawclub.org

**“Governor Moonbeam”
Jerry Brown, now
California’s attorney
general, is defending
the controversial law.**

amicus brief in *Healthcare Association of New York State v. George Pataki*, arguing that state-imposed “neutrality agreements” are illegal.

Neutrality agreements, which are contracts

signed between a union and an employer, force employers to actively support a union’s attempt to organize employees. Often employers must hand over workers’ personal information which facilitates face-to-face union intimidation, thereby making it even easier for union bosses to impose unionization upon the targeted employees.

see **SUPREME COURT** page 7

An *en banc* panel of the Ninth Circuit had reversed two of its earlier appellate rulings in *United States Chamber of Commerce v. Jerry Brown* by a vote of 8-3, upholding a state law that will effectively force coercive union organizing upon employees of private companies that receive state funds.

This is a bellwether case, because union bosses have been pressing other states and local municipalities to pass similar laws.

Ninth Circuit again broke ranks with other courts

In 2005, the Seventh Circuit ruled that federal law preempted any state regulation that interferes with the monopoly bargaining process governed by federal law. The decision stemmed from a Foundation-assisted case out of Milwaukee, Wisconsin, in which Right to Work attorneys successfully pointed out that third parties cannot lawfully pressure employers to unionize.

Similarly in New York state during 2006, Right to Work attorneys filed an

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Right to Work Foundation Launches New Cutting-Edge Website

Video production studio built at Right to Work headquarters

SPRINGFIELD, VA – Enlisting cutting-edge internet technology, the National Right to Work Foundation launched a redesigned website to make it easier for all users to access the latest information about the Right to Work movement.

The new site is designed to allow users to easily navigate the website, find information they need quickly, and take advantage of more interactive features.

The new homepage contains six main topic boxes, including the latest from the Freedom@Work blog, featured videos that are simultaneously archived on the Right to Work YouTube Channel, a map of Right to Work states, and much more.

Additionally, all internet surfers who use so-called “Web 2.0” tools including social networking, such as the popular *Facebook*, *StumbleUpon*, or *del.icio.us* accounts, can track and save all the latest Right to Work news.

“The Foundation’s new website is more advanced – yet simpler to use – no matter the level of one’s internet know-how,” explained Mark Mix, president of the National Right to Work Foundation. “From viewing regular



video updates to reading up on the latest news and views from the Right to Work movement, supporters can now interact with the Foundation online at an unprecedented level.”

Foundation builds new in-house production studio

Simultaneously, the Right to Work Foundation has constructed an in-house digital video production and editing studio from scratch.

Using cutting-edge video technology,

By accessing the Foundation’s new website and YouTube Channel, supporters can now interact online at an unprecedented level.

the Foundation plans to regularly produce breaking news videos about the Foundation’s activities, conduct interviews with Right to Work experts, and air video commentaries about Right to Work developments.

All the video clips will be posted on the homepage and the



With its new in-house production studio, Right to Work staff will produce online videos about the battle against compulsory unionism.

Freedom@Work blog, as well as the Right to Work YouTube channel, for anyone to access.

“This recording studio opens up an exciting new front in the fight against compulsory unionism,” continued Mix.

Foundation Action readers are encouraged to click on www.nrtw.org to view the new website, as well as subscribe to the Right to Work YouTube channel, accessible at www.youtube.com/RightToWork, for regular video updates. ☩

Foundation Action

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Congress Complains About Foundation Legal Victories

Big Labor-backed politicians denounce expansion of independent employees' rights

WASHINGTON, DC – In mid-December, a Joint Subcommittee hearing by the U.S. House and Senate attacked recent National Right to Work Foundation victories for independent-minded workers' rights at the National Labor Relations Board (NLRB).

The partisan grandstanding brought under a microscope rulings the NLRB issued in September, as former Board Chairman Robert J. Battista and Member Wilma Liebman, among others, testified before the Joint Subcommittee.

While Chairman Battista argued that the Board was performing its mission of impartially enforcing the law, Member Liebman, a union partisan, read prepared answers to prepared questions posed by the Senators. Legal observers noted that Liebman went beyond the bounds of appropriate commentary and made statements that tend to undermine any appearance of her objectivity, as she even attacked the underlying statute that she is charged with upholding.

"Big Labor bosses and their pals in Congress and at the NLRB have essentially declared war against America's employees who wish to remain union-free," stated Stefan Gleason, vice president of the National Right to Work Foundation.

Foundation win against 'card check' abuse at center of hearing

Front and center in the hearing was the Right to Work Foundation's recent *Dana/Metaldyne* victory, which Senator Edward Kennedy labeled a "notorious" case.

In its September *Dana/Metaldyne* decision, the NLRB voted 3-2 to give employees access to a secret ballot election

vote over unionization when union bosses are recognized through the abuse-ridden "card check" instant organizing process.

Under the ruling (described in detail in the November/December issue of *Foundation Action*) the NLRB now gives employees notice that they have 45 days after a card check recognition to file a decertification petition to obtain a secret ballot election to vote out an unwanted union.

Under the card check organizing scheme, union organizers need only mislead or coerce a majority of employees at a company to sign cards, then counted as "votes" favoring unionization. Union operatives often browbeat employees one-by-one during these instant organizing campaigns until they agree to support unionization.

Board vacancies will curtail workers' rights cases

Putting aside the over-the-top criticism of union propagandists, the Bush NLRB has failed to correct dozens of activist rulings handed down by President Clinton's NLRB.

Throughout its tenure, Clinton's NLRB aggressively expanded special privileges for union officials. It strengthened union coercive power over employees and entrenched unions in workplaces without the support of a majority of employees. Similarly, the Clinton Board allowed for the rampant misuse of forced union dues for politics.

In fact, a striking analysis by Jones Day attorney G. Roger King, shows that from 1994 to 2001 the Clinton NLRB overturned 60 long-standing decisions, throwing a jaw-dropping 1,181 years of precedent out the window.

However, Bush's appointees have revisited only a few of those controversial Clinton NLRB rulings.

"Despite the ruling in *Dana/Metaldyne*, pro-employee rulings under the Bush NLRB have been the exception, not the rule," commented Gleason.

And with three of five Board seats currently vacant, union officials will likely be

allowed to further solidify their coercive union privileges over employees in 2008.

Remaining are activist Member Liebman, whose latest term expires in 2012, and Member Peter Schaumber, who will serve in the NLRB until 2011.

"With these three vacancies, this president has one final opportunity to show American workers he cares to protect employee freedom at the NLRB," continued Gleason. "Rather than pursue a futile effort to cut a confirmation deal with the Democrat Senate, he should recess appoint at least two more members who pledge to uphold employee rights."

Federal board notorious for long delays

With a few exceptions, employees seeking to protect themselves against



Senator Teddy Kennedy (D-MA) called the Foundation's victory for employee freedom achieved in the *Dana/Metaldyne* case "notorious."

bostonnow.com

Discriminatory Union Objection Procedure Smacked Down Again

Arbitrary union policy required annual objections to forced dues for politics

PENSACOLA, FL – After nearly a four-year delay, National Right to Work Foundation attorneys prompted a National Labor Relations Board (NLRB) trial judge to strike down an international union's nationwide requirement designed to hamstring employees who object under *Communications Workers of America v. Beck* to the use of their forced union dues for politics.

Despite repeated court rulings, the International Association of Machinists (IAM) union continued to require nonunion workers to object every single year to assert their legal right to pay an amount less than full union dues.

"The bosses running this major union have thumbed their noses at employee rights and court rulings to keep their political machine fully funded," said Raymond LaJeunesse, vice president and legal director of the Foundation.

IAM union officials erect hurdles to block employee objections

In 2000, a U.S. District Court struck down the IAM union's annual objection policy.

However, the ruling technically only applied to employees covered by the Railway Labor Act (RLA).

Consequently, in November 2003, when Robert Prime, an L-3 Communications employee at the Pensacola Naval Air station, filed a "continuing objection" with IAM union officials to funding their political activities, they refused to honor it, claiming that Prime and his coworkers must object annually because they are not subject to the RLA.

IAM union officials claimed that Prime and other employees working



guidedogsofamerica.com

Head honcho of the Machinists union, Tom Buffenbarger, refused to end the union's arbitrary policy requiring annual objections to forced dues for politics.

under the National Labor Relations Act (NLRA) were still required to object annually, even though such a policy is blatantly discriminatory, as three federal courts have now held.

Foundation persuades another judge to rule against arbitrary union policy

Foundation attorneys helped Prime file unfair labor practice charges at the NLRB against IAM Local Lodge 2777 in December 2003.

Right to Work attorneys highlighted that union officials violated his rights by forcing him to renew his objection to funding union political advocacy every single year.

Foundation attorneys ultimately persuaded NLRB Administrative Law Judge Michael A. Marcionese to issue a ruling from the bench striking down the IAM union's unlawful policy.

In his ruling, Marcionese stated that the IAM union policy was arbitrary and discriminatory, "bordering on irrational."

Union ordered to reimburse all continuing objectors

Prime's victory put the spotlight on a common union tactic used to raise hundreds of millions of dollars in forced

union dues that are spent on Big Labor's political agenda.

In his written decision, the administrative law judge clarified that Prime and all other objecting employees throughout the nation who filed "continuing objections" are entitled to a full refund, with interest, of forced dues seized and spent on political activity within the past four years.

Unfortunately, the nationwide remedy excluded any nonmembers since 2004 who exercised their right to refrain from union membership but did not request that their objections be continuous—keeping the burden on those employees.

"This lengthy legal battle underscores why no one should be forced to pay dues to an unwanted union in the first place," continued LaJeunesse.

NLRB punted another annual objection case

Meanwhile, National Right to Work attorneys are helping George Gally, a 40-year veteran Colt Firearms employee in Hartford, Connecticut, who is challenging the United Auto Workers (UAW) union's similar nationwide policy that bars employees from asserting their rights unless they object annually.

Having languished at the NLRB in Washington, DC since March 2003, Right to Work attorneys filed a rare *mandamus* petition asking a federal appellate court to order the NLRB to rule in Gally's case.

However, rather than decide the long-pending case, the NLRB instructed its Region 34 to hold a hearing before an administrative law judge, claiming that the record in the case was insufficient to issue a final decision. The judge has yet to issue his decision. 

Foundation Helps Nurses Fight Illegal Retaliation

Union officials threatened fines, jail, and arrests for refusing to strike

POMONA, CA – National Right to Work Foundation attorneys helped a brave nurse at the Pomona Valley Hospital Medical Center file unfair labor practice charges against a gigantic healthcare union after its officials threatened loyal nursing professionals with the possibility of jail, fines, and arrests for refusing to abandon their patients.

After Carol Jean Badertscher and others wished to resign from formal union membership, cut off union dues, and tend to their patients' health needs during a series of union-ordered strikes, Service Employees International Union (SEIU) Local 121RN officials misled and threatened employees in violation of their rights under federal labor law.

Union officials also distributed a flier illegally misleading approximately 1,000 nurses that the law requires employees to continue paying compulsory dues after the expiration of a contract.

SEIU officials told nurses that when a new contract went into place, they could require all employees to pay "back dues," implying forcefully the nurses could be fired if they chose not to pay up.

"True to form, SEIU bosses are shamelessly flouting federal law in an effort to intimidate these nurses into heeding the union officials' unpopular commands," said Raymond LaJeunesse, vice president and legal director of the Foundation.

SEIU officials backed nurses into corner with string of strikes

Local 121RN union officials also exploited California's so-called "professional strikebreakers" law – a law that is not legally enforceable – by ordering a series of repeat strikes to trigger the

law's application.

In early September 2007, Local 121RN officials ordered the nurses to abandon their patients and walk off the job, but after several days, union officials called off the strike.

Then, after the monopoly bargaining contract at the hospital expired, SEIU union officials ordered a second, five-day strike in October.



Union officials illegally threatened Carol Jean Badertscher (pictured) and other nurses for refusing to abandon their patients.

A determined Badertscher explained, "No nurse should be forced into choosing whether to go on strike for a union or care for their patients."

As a result, Right to Work attorneys helped Badertscher file federal charges against the union, citing that SEIU union officials violated the union's so-called "duty of fair representation," which supposedly prevents union discrimination against employees.

But with a third strike threat on the table, a top local union official threatened that nurses who defied union bosses' strike orders three times within a five-year period could be subject to "a fine of up to \$1,000 and up to 90 days in jail" under the "professional strikebreaker" law.

Union official must eat words

In response to the federal charges filed at the National Labor Relations Board (NLRB), a red-faced SEIU union top official named Sue Weinstein blurted

to the press that the nurses' charges had no basis and that Badertscher's claims were "outrageous."

Meanwhile, union operatives distributed a coercive notice that union bosses could collect the employees' forced dues at any time during the negotiations over the contract.

But Weinstein later conceded to the press that the local union would not enforce any demands for back dues.

Deciding that enough was enough, Badertscher and over 30 percent of the nurses have since filed for a decertification election, an NLRB-supervised secret ballot election used to oust an unwanted union. However, the NLRB regional office has delayed granting the employees the election until February due to a series of so-called "blocking charges" hastily filed by SEIU lawyers. Meanwhile, the unfair labor practice charges await a decision by NLRB officials in Washington, DC.

Arrest threats by union bosses are increasing

Union officials appear to be making increasing use of threats of arrest, jail, and fines as more independent-minded employees stand up for their rights.

As reported in the November/December 2007 *Foundation Action* newsletter, union officials threatened Sai-Ly Acosta and her fellow Hollywood musicians with possible arrests for the "crime" of practicing with their orchestra without formally joining the union.

When Foundation spokesmen went to the press after Foundation attorneys assisted Acosta in filing federal charges against American Federation of Musicians Local 47, union officials begrudgingly backed off for the time being. 

Laidlaw Transit Drivers Kick Unwanted Union Off the Bus

Union officials illegally bargained with employer after employees rejected union

BATAVIA, IL – For the second time in months, Laidlaw Transit, Inc. employee Russell Haasch and his coworkers fought and won to remove the Amalgamated Transit Union (ATU) Local 1028 union as the “exclusive bargaining representative” of approximately 160 transit workers. But the case demonstrates how union bosses refuse to take “no” for an answer.

Employees at the busing company voted to oust the unwanted union from their workplace after National Right to Work Foundation attorneys helped them obtain a decertification election under supervision of the National Labor Relations Board (NLRB).

Decertification elections, which are generally an uphill battle for workers to win, are generally only obtainable during narrow periods every few years. And union lawyers are skilled at abusing NLRB procedures to gum up the works with baseless charges that often block an election for years.

However, the employees’ election win comes shortly after a majority had already petitioned their employer to withdraw recognition from the ATU union brass.

“Despite ATU union officials’ attempt to force this unpopular union on employees, Haasch and his coworkers have formally shown them the door,” said National Right to Work Foundation Vice President Stefan Gleason.

Free Newsletter

If you know others who would appreciate receiving *Foundation Action*, please provide us with their names and addresses. We’ll rush them the next issue within weeks.



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Transit union officials want a free ride with employees’ forced dues

In spring 2007, Haasch collected signatures from an overwhelming majority of his coworkers. In June he presented the petition to their employer, Laidlaw Transit.

In turn, Laidlaw legally and properly ended its recognition of the ATU union as the employees’ monopoly bargaining agent.

However, just when the transit workers thought they were in the clear, British company FirstGroup, PLC, completed its purchase of Laidlaw.

Stealthily, ATU union officials and FirstGroup illegally began bargaining over the wages and working conditions of the employees that the union no longer represented, despite the fact that Haasch and his coworkers had successfully demonstrated earlier in the year the union had insufficient support.

Federal law prohibits pre-recognition bargaining

According to the National Labor Relations Act (NLRA), bargaining over the wages and working conditions of employees that a union does not

Laidlaw Transit busing employees voted to kick out an unwanted union.

legally represent, or engaging in “pre-recognition” bargaining, is unlawful.

Yet as part of their negotiations, the union hierarchy sought a forced-dues clause in the contract that would make payment of dues a job requirement.

Having suddenly realized that Laidlaw’s corporate successor, FirstGroup, ignored the employees’ wishes to remain union-free, Haasch and his coworkers filed unfair labor practice charges, asking for immediate injunctive relief, with help from attorneys at the National Right to Work Foundation.

Employees kick out unwanted union, again

And with growing dissatisfaction and irritated with the ATU union hierarchy’s arrogance, Haasch and his coworkers also gathered signatures for a decertification election to speed up the process.

Facing possible embarrassing prosecution, officials of ATU Local 1028 and FirstGroup had no choice but to agree to the secret ballot decertification election.

In the December election, the busing employees voted to oust the unwanted union from their workplace. As a result, Haasch and his fellow employees will now be free to negotiate their own terms and conditions of employment and be rewarded on their individual merit.

“This was a hard fought victory for employees at Laidlaw transit,” stated Gleason. “It’s sad when an employer is so leveraged by union pressure that it will not stand behind its employees’ wishes.”

Supreme Court to Review California's Union Organizing Law

continued from cover

The U.S. Court of Appeals for the Second Circuit rejected the Ninth Circuit's reasoning, determining that the New York statute governing employers with state-funded contracts might be preempted by federal law, and remanded the case for more fact finding.

"The Ninth Circuit's decision to break with these other appellate courts ripened this issue for Supreme Court review," continued Mix.

Want government projects: Hand over your workers

In 2000, former California Democrat Governor Gray Davis signed the controversial bill into law, which took effect in 2001.

The law successfully granted union officials the power to use the heavy hand of government to trample upon workers' rights.

Specifically, the California statute interferes with an employee's choice whether or not to join a union by barring employers that receive state grants over \$10,000 annually from using the funds to "assist, promote, or deter union organizing."

As a result, however, employees of private employers wishing to accept funds from the state are denied truthful information regarding the downsides of unionization. Consequently, trumped up union complaints could result in employers being blackballed from government contracts unless they clear the path for union organizers to

recruit new forced-dues-paying union members.

And, an employee's right to freely choose or reject unionization is hindered or destroyed by the law, since it effectively gags employers and limits their free speech.

But with an even larger power grab, union organizers will insist that the state law entitles them to sweeping access to company facilities, employees' private personal information, and the power to sidestep the less-abusive secret ballot election process for determining whether employees actually want a union.

"Let's hope that with the Foundation's help, the U.S. Supreme Court will overrule the Ninth Circuit and strike down California's one-sided attempt at 'labor law reform,'" concluded Mix. ↗

Tax Season 2008: Planned Giving Helps Reduce the Tax Bite

As the April tax deadline looms, many National Right to Work Foundation donors are considering tax-saving options to make this year's "tax bite" less severe. Careful financial planning now will ensure added tax benefits in the future. Here are just a few options that may fit a supporter's financial situation now – and in the future:

The National Right to Work Foundation is a 501(c)(3) charitable organization and a cash gift is the easiest way to make a tax-deductible donation.

But gifts of appreciated stock or securities to the Foundation can provide donors with an even bigger tax break!

Appreciated securities are subject to a capital gains tax when they are sold. If an individual donates stock (that has been owned for more than one year) to the Foundation, the capital gains are not taxable! At the same time, individuals benefit from a charitable tax deduction for the FULL fair market value of the securities as of the date of the gift.

In addition, supporters may want to consider more structured planned giving vehicles—bequests, charitable gift annuities, or even trusts. Individuals can avoid a hefty estate tax bill and, in many cases, secure a lifetime income stream.

By starting early, supporters can best put a plan into action that works for them and their loved ones, while supporting the Foundation and its expanding strategic litigation and media programs right now.

For more information about planned giving, please contact Ginny Smith at 703-770-3303, or gms@nrw.org. Foundation personnel are available to guide supporters about the variety of planned giving options that exist. (Of course, donors are also encouraged to consult with their own financial advisor, accountant, or attorney before making any formal decisions.) ↗

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NLRB Failures

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union coercion have received short shrift from the Bush NLRB throughout this decade. Although the long-awaited *Dana/Metaldyne* case was an encouraging step forward for employee free choice, the Bush NLRB has either taken years to decide other important cases or has failed to address fundamental issues altogether.

For example, in a separate case, *Dana Corp.*, the Board has yet to rule whether pre-recognition bargaining on workers' wages and working conditions during card checks is illegal, as argued by Foundation attorneys. The case, filed by Right to Work attorneys in December 2003, challenges Dana and the United Auto Workers (UAW) union's "neutrality agreement" scheme.

Under the agreement, Dana assisted UAW union officials in their organizing campaigns while entering into negotiations over employees' wages and working conditions before the union had majority support from employees. Company officials essentially agreed to assist the union's coercive organizing effort in exchange for future concessions. ⚡

Newsclips Requested

The Foundation asks supporters to keep their scissors sharp for clipping news items exposing the role union officials play in disruptive strikes, outrageous lobbying, and political campaigning.

Please clip any such stories that appear in your local paper and mail them to:

NRTWLDF

Attention: Newsclip Appeal
8001 Braddock Road
Springfield, VA 22160



Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter:

It is an encouraging time for the Right to Work movement.

As reported in this issue of *Foundation Action*, Right to Work staff have put a lot of elbow grease into launching our completely overhauled website and to open the Foundation's new in-house video recording and editing studio.

We intend to use these cutting-edge communication tools to help spread Right to Work's message of freedom to potentially millions of internet users and more effectively communicate with the media.

Right to Work's new website, accessible at www.nrtw.org, received a fresh look and now features more innovative internet technology. Its easy-to-use features incorporate all of the latest internet tools, including social bookmarking, our Freedom@Work blog, readers' comments, and even brief video clips from our very own YouTube channel (www.youtube.com/RightToWork).

And in recent weeks, our staff also constructed an in-house video recording and editing studio from scratch. After completing the studio, Right to Work staff are gearing up to produce up-to-the-minute video content about Right to Work developments.

Using cutting-edge technology, our staff will highlight breaking news about the Foundation's activities, conduct interviews with Right to Work experts, and broadcast video commentaries about the Right to Work movement.

I think you'll agree these powerful tools open up an exciting new front in the fight against compulsory unionism. Without your generous support, however, these projects would not have been possible.

We couldn't do it without your help — for which we are truly thankful.

While we know the fight against forced unionism and working with freedom-minded employees is our top priority, I believe the efforts to improve our outreach and "curb appeal" will pay great dividends going forward.

Onward,

Mark Mix