



Foundation *Action*

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

Vol. XXXI, No. 5

8001 Braddock Road • Springfield, Virginia 22160

www.nrtw.org

October/November 2011

Obama NLRB Exceeds Legal Authority in Payback to Big Labor

*Foundation sues to
stop another Obama gift
to union bosses*

WASHINGTON, DC — As the list of Obama Administration political paybacks to Big Labor grows, the National Labor Relations Board (NLRB) — ruled by President Obama's appointees — recently implemented a new rule designed to push more workers into forced unionism.

Far exceeding its statutory authority, the NLRB is now forcing its way into as many as six million private-sector workplaces. The new rule requires job providers to post biased notices that effectively serve as a roadmap to unionization, even if workers don't want to labor under union-boss control, and even if the company has never been accused of an "unfair labor practice."

Board gives union organizers free pass to ignore workers' rights

As a result, mom and pop shops, small businesses, larger companies, and even some religiously-affiliated organizations and their employees are now in the Obama Labor Board's crosshairs.



While President Obama claims to promote job growth, his hand-picked bureaucrats at the NLRB are adding job-killing regulations that will force more workers into Big Labor's ranks.

Before the NLRB implemented the changes, employers were required to post NLRB notices only if a violation of labor law occurred or a workplace election was scheduled. However, the unprecedented rules require every employer to post incomplete information about employee rights online and in the workplace, even if they've never committed a violation or been accused of unfair labor practices.

However, the rule does not require union officials to issue information about workers' rights to refrain from union membership or opt out of union dues — leaving workers with even less information about their rights and giving union organizers more opportunities to compel independent-minded employees into forced-dues payments.

For example, the prescribed notice makes no mention of workers' rights to decertify an unwanted union; to opt out

of paying any forced fees at all if they live in a Right to Work state; to divert forced union dues to a charity if they have a religious objection to union membership but live in a state without a Right to Work law; or to refrain from financially supporting union-boss politics.

Independent-minded workers have nowhere to turn

The new rule hands aggressive union organizers another weapon in so-called "corporate campaigns", in which they drag a business through the mud by leveling frivolous accusations of employer misconduct in the media. Union bosses only back off after the employer agrees

see **FOUNDATION LAWSUIT** page 2

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Foundation Lawsuit Challenges NLRB Rulemaking Authority

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to throw its employees under the bus — pitting the company against workers — and let the union launch an abusive “card check” organizing campaign.

This dangerous new weapon for union organizers against independent workers is compounded by the NLRB’s overturning of the *Dana* ruling, won by Right to Work Foundation attorneys in 2007. That ruling let workers initiate an immediate secret ballot vote after being unionized through the notoriously abusive card check process. [See page 6 for more details.]

“Under these new rules, employees’ workplaces have been commandeered as a weapon against independent workers,” said Mark Mix, President of National Right to Work. “This ‘divide and conquer’ strategy should erase all doubt that the biased and ideologically-charged Obama Labor Board has turned into an organizing tool for Big Labor.”

NLRB change exceeds Congressional authority

Under the National Labor Relations Act (NLRA), the NLRB was given two chief functions by Congress. First, it administers union certification and decertification elections. Second, it adjudicates

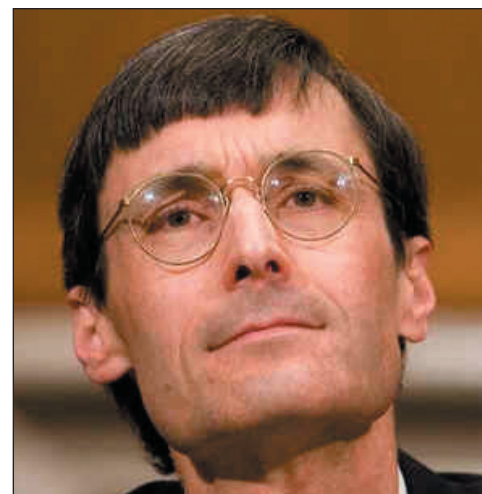
cases when workers, employers, or union officials file unfair labor practice charges against either unions or companies.

But now the NLRB has invented out of whole cloth a new “unfair labor practice” without Congressional approval. Any job provider that fails to post the biased notice could find itself forced into a lengthy and costly legal battle. And anyone can file the unfair labor practice charge, not just the company’s employees, leaving the door open for round after round of frivolous charges by professional union organizers.

No other federal agency has ever made it unlawful to fail to post a notice that wasn’t required by Congress. National Right to Work Foundation attorneys thus believe the NLRB has exceeded its authority granted by Congress.

Foundation sues over biased rules

Meanwhile, the Board recently proposed changing the rules for union organizing elections, drastically reducing the time frame the elections take place — thereby giving independent-minded employees less time to withstand better-funded, professional union organizers. The proposed rules also force job providers to disclose



The Obama NLRB, including former SEIU lawyer Craig Becker, is launching an all-out assault on worker rights.

the personal contact and shift information of all its employees — opening workers up to an enhanced risk of being subjected to abusive card check forced-unionism organizing tactics.

“These unprecedented rule changes fundamentally change (and expand) the NLRB from a remedial role to an agency that is involved with every workplace in the country even if no allegations of violations have occurred,” stated National Right to Work Foundation Legal Director Raymond LaJeunesse.

Therefore, the Foundation has sued the NLRB in federal court challenging the legal basis of the biased posting requirement.

“Just as the Obama Administration promises to lessen the job-destroying weight of federal regulations, Obama’s NLRB comes out with a new rule to saddle every business — from ‘mom and pop’ stores to the largest American employers — with new mandatory posting requirements designed solely to grease the skids for more forced unionism,” added Mix.

“Your National Right to Work Foundation is fighting back against each of the NLRB’s power grabs in the media, the courts, and at the NLRB itself.” ✎

Foundation Action

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Distributed by the
National Right to Work Legal Defense and Education Foundation, Inc.
8001 Braddock Road, Springfield, Virginia 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.

Foundation Overturns Union Schemes that Forced Nonunion Workers to Subsidize Big Labor's Radical Political Agenda

“Annual renewal” policies were designed to push nonunion workers back into unions’ full-dues-paying ranks

WASHINGTON, DC — In recent months, Foundation attorneys have successfully gotten the National Labor Relations Board (NLRB) to invalidate two unions’ policies that forced nonunion workers to annually renew their objection to funding union political activism within a narrow window period. The decisions result from unfair labor practice charges filed by employees against the United Steel Workers (USW) union and the International Brotherhood of Electrical Workers (IBEW) union. These employees were assisted by National Right to Work Foundation staff attorneys.

Under the Foundation-won *Communications Workers v. Beck* Supreme Court decision, nonunion employees can only be forced to pay union dues for activities that union officials can prove are related to workplace bargaining. Although workers cannot be compelled to subsidize unrelated activities — such as union political spending or members-only events — IBEW and USW union officials would not accept employees’ permanent objections and instead required nonunion workers to annually restate their opposition to subsidizing union politics.

Foundation leads effort to rollback Big Labor’s “annual renewal” gambit

In the case of the IBEW, union officials required nonunion employees to restate their objection to union political spending every November. USW officials designated a similar 30 day window period for nonunion employees to renew their opposition to subsidizing union political

activities. Under both schemes, union officials could “flip” nonunion workers back to paying full dues if they didn’t jump through the unions’ administrative hoops during the designated window periods.

The Board’s decisions require both unions to get rid of their annual objection policies and notify all employees in their respective bargaining units they no longer have to renew their objections to union political spending.

In recent years, litigation spearheaded by National Right to Work Foundation staff attorneys has rolled back similar annual objection policies at several other major unions, including the International Association of Machinists and the Communications Workers of America.

Forced dues injustice continues

According to Foundation attorneys, policies like the IBEW’s annual renewal

procedure are aimed at discouraging nonunion workers from renewing their objections to union political spending. Bureaucratic hurdles make it even more difficult for time-strapped employees to navigate a web of paperwork and cut off the flow of forced dues to union political coffers.

Although the new rulings ensure that some employees will only have to object once to get out of funding controversial union political activism, union bosses continue to enjoy massive special privileges that allow them to extract forced dues from millions of employees as a job condition.

“We’re happy to report that all employees subject to IBEW and USW union monopoly bargaining can no longer be required to object repeatedly to stop their dues from being used for union politics,” said Raymond LaJeunesse, Legal Director for the National Right to Work Foundation. “However, nonunion workers can still be forced to pay some union dues just to get or keep their jobs, an injustice that can only be ended through Right to Work protections that make all union dues voluntary.”



Thanks to Foundation attorneys, nonunion employees no longer have to clear the same bureaucratic hurdles year after year to cut off dues payments for USW and IBEW union politics.

The Washington Times

Beyond Boeing: The Obama Labor Board's Forced-Unionism Agenda

By Mark Mix

American workers, entrepreneurs and other concerned people have correctly expressed outrage at the Obama National Labor Relations Board's persecution of the Boeing Co.

For creating more than 1,000 new jobs in South Carolina over the objections of union bosses 3,000 miles away.

It's not every day that federal labor board proceedings catch the media spotlight, but there's good reason for all the attention. The complaint against Boeing by Acting General Counsel Lafe Solomon is as preposterous as it is unprecedented, and the sought-for remedy is unfair and punitive, all of which has been well covered on these pages.

While the Boeing case is a visibly egregious assault on our free-enterprise system, it's hardly the first, or even the latest, forced-unionism power grab launched by the Obama labor board.

Through its decisions in cases and in internal "rule-making," the board effectively has taken up Big Labor's agenda, which Senate Majority Leader Harry Reid and House Minority Leader Nancy Pelosi, the former speaker, were unable to get through Congress. In particular, the board is pushing card-check unionization, an aggressive organizing tactic in which union operatives harass or intimidate workers — often at workers' homes — to sign "union authorization cards" and install the union in the workplace without a secret-ballot vote.

In fact, through the Boeing case, the board appears to be pushing card-check recognition as the preferred NLRB "remedy" for union accusations of employer misconduct, a likelihood bolstered by re-

ports that a card-check "neutrality agreement" has been discussed three times already in settlement negotiations.

Meanwhile, Mr. Solomon has filed lawsuits for the NLRB against states for passing state amendments that attempt to guarantee workers a secret-ballot vote. Mr. Solomon claims federal laws pre-empt such measures, but the NLRB has not filed similar actions against other states with laws designed to promote forced unionism, including a California law that threatens workers with fines and even jail time for returning to work during union-boss-ordered strikes.


Just recently, the NLRB proposed new guidelines for quick-snap elections, which amount to little more than a backdoor card-check scheme. Under these new procedures, professional union organizers could spend years secretly collecting "union authorization cards" before acquiring cards from 30 percent of workers in the workplace, just enough to trigger an election within a few days, ambushing the remaining employees and their employer alike before they can share all the relevant facts regarding the costs of union monopoly bargaining.

Largely unnoticed in the new rules for these quickie elections, though perhaps most valuable to union organizers, is a provision requiring companies to hand over the personal contact information of their employees. Almost immediately after union officials file for an election, union organizers must be given the names and addresses and — in an unprecedented requirement — email, telephone and shift information for all employees they seek to unionize.

Compounding those problems, the Obama labor board is poised to overturn a key precedent providing a safe-

guard for workers victimized by the abusive card-check process. Before former Teamster lawyer and current NLRB Chairman Wilma B. Liebman's term expires at the end of August, the board is expected to overturn the 2007 Dana Corp. precedent, which holds that employees may demand a secret-ballot election to kick out an unwanted union from their workplace within 45 days of notice that their employer recognized the union through card check. Disturbingly, NLRB member Craig Becker (formerly counsel for the Service Employees International Union and AFL-CIO) has refused to recuse himself from the current case even though he co-authored a union brief in Dana Corp.

But the list of power grabs pushed by the Obama labor board does not end there: In December, the board approved backroom deals between company and union officials that include limits on employee wages in exchange for card check as not violating the long-standing prohibitions on union pre-recognition bargaining. In proposed rules announced in February, the board also asserted the power to force virtually every employer in America to post a notice informing workers how to unionize but not informing them how to exercise their right to refrain from union activities.

The Boeing case is just the tip of the iceberg when it comes to the workings of the Obama labor board. Its goal of empowering union bosses comes at the expense of individual employees and employers. Congress should rein in the rogue NLRB. 

A version of this op-ed appeared in The Washington Times.

Connecticut Police Officer Wins Forced Dues Refund

AFSCME, AFL-CIO illegally-confiscated union dues from Bridgeport officer

BRIDGEPORT, CT — With the help of National Right to Work Foundation attorneys, a veteran police officer has reached a settlement after filing suit against two unions and the City of Bridgeport for illegally confiscating union dues from his paycheck. The agreement requires the Bridgeport Police Local 1159 and Council 15 AFSCME, AFL-CIO unions to refund all illegally-seized dues to William Bailey, a nonunion police officer.

Although Bailey is not a union member, all Bridgeport police officers are subject to a monopoly bargaining agreement between the city and the unions. After resigning his union membership in 2007, Bailey indicated that he wished to opt-out of dues used for politics and other non-bargaining activity in 2011.

"I don't like being treated differently and I quit the union," said Bailey, explaining his decision to stop paying full dues.

Civil servants remain vulnerable to union collections racket

Because Connecticut lacks a Right to Work law, workers can be forced to pay union dues and fees as a condition of employment. However, the Foundation-won Supreme Court decision *Teachers Local 1 v. Hudson* holds that public employees must be notified about what part of their dues are spent on union activities unrelated to bargaining — such as members-only events and political activism — and given the opportunity to opt out of paying for those activities.

Despite this precedent, the agreement between the City of Bridgeport and Local 1159 and Council 15 allows union officials to deduct a "service charge" from nonunion employees equal to the dues paid by full union members. Since January 2011, Bridgeport seized and union

"This 'service charge' scheme was nothing more than an underhanded way to trick nonunion employees into paying full union dues."

operatives collected the equivalent of full dues from Bailey's paycheck over his objections. Moreover, Bailey was not given the opportunity to challenge the amount collected or review the union's finances.

"This 'service charge' scheme was nothing more than an underhanded way to trick nonunion employees into paying full union dues," said Patrick Semmens, Legal Information Director for the National Right to Work Foundation.

Case highlights need for Connecticut Right to Work law

After union officials repeatedly refused to respond or even acknowledge his objections, Bailey turned to Right to Work attorneys for help. According to local media reports, he learned about



Foundation attorneys helped William Bailey, a nonunion police officer, reclaim forced dues collected for the purpose of union political activism.

the Foundation's free legal aid program from Foundation attorneys' past efforts for union-abused Bridgeport firefighters.

"I told them I am working in a hostile working environment and they said they could help me out," said Bailey.

"Thanks to the Foundation's free legal aid program, William Bailey will reclaim some of his earnings, but litigation is no substitute for a law that protects workers' rights," said Mark Mix, President of the National Right to Work Foundation. "Until Connecticut makes union membership and dues payment completely voluntary by passing a Right to Work law, similar abuses will continue elsewhere, unchecked." ✂

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 stories that appear in your local paper and mail them to:

NRTWLDF
Attention: Newsclip Appeal
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Supporters can also email online stories to wfc@nrtw.org

NLRB Shreds Secret Ballots after Overturning Landmark Foundation-won “Card Check” Precedent

Dana ruling’s modest restrictions on card check were apparently too much for the NLRB’s Big Labor sympathizers

WASHINGTON, DC — In late August, the National Labor Relations Board (NLRB) — including former SEIU lawyer Craig Becker — overturned the landmark Foundation-won *Dana* ruling, a decision that placed modest restrictions on coercive “card check” union organizing. As a result, workers no longer have the right to an immediate secret ballot election to challenge the results of a union card check drive. Moreover, thousands of employee ballots cast in now-defunct *Dana* decertification elections will never be counted.

Although Big Labor-backed legislation aimed at making card check the law of the land was stopped in 2008 through 2010, union politicians rebounded from their stinging midterm electoral defeat by adopting a new strategy. Instead of working through the legislative process, Big Labor operatives turned to the federal bureaucracy to expand their already-extensive special privileges. Thanks to their longstanding alliance with the Obama Administration, their pleas didn’t fall on deaf ears.

New NLRB ruling undercuts employee rights

Card check drives allow aggressive union organizers to harass and intimidate workers face-to-face until they sign cards that are then counted as “votes” for unionization. Under current law, union operatives can only get recognition by cards if they browbeat targeted companies into agreeing to forego a secret ballot election, but union politicians are intent on expanding the scope of card check organizing through any means necessary.

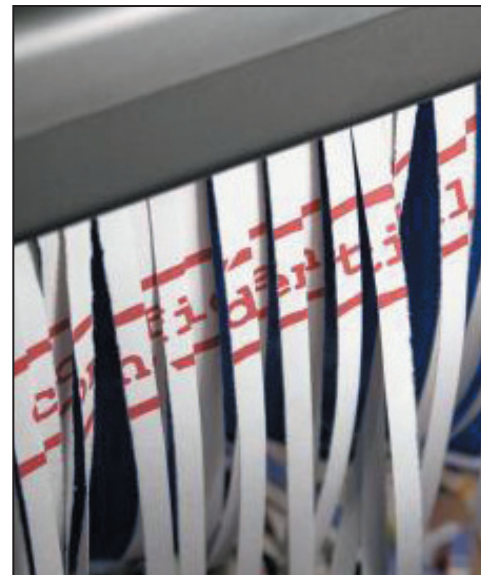
In the recent *Lamons Gasket* case, the Obama NLRB decided 3–1 to eliminate workers’ access to an immediate secret ballot election following a card check drive. Once union officials get in via card check, they enjoy monopoly bargaining privileges and — in states without Right to Work laws — can collect forced dues from every worker in the bargaining unit.

What’s worse, the NLRB’s ruling has already halted numerous pending secret ballot elections. Once the Board announced its decision to revisit *Dana*, union lawyers filed blocking charges and appeals to stop the NLRB from actually counting votes in elections aimed at overturning union card check campaigns.

Overturning *Dana* points to Big Labor bureaucratic offensive

Now that the Board has decided these elections are not permitted, thousands of employee ballots will be ignored or even destroyed. Other *Dana* elections that were scheduled to take place now have been called off. Workers who voted or were planning to vote in these elections are now stuck with union “representation” for up to a year or the duration of the union’s contract with their employer, which could be up to three years before expiring.

Unfortunately for workers, the Board’s card check ruling is just the beginning. Union operatives have effectively hijacked the administrative agencies responsible for administering labor law to expand their special privileges. Despite his history as an SEIU lawyer, Craig Becker is poised to decide several



*By reversing the Foundation-won *Dana* precedent, the NLRB expanded coercive “card check” organizing and effectively shredded thousands of employee ballots cast in worker-initiated elections aimed at removing unwanted unions.*

NLRB cases involving that union’s local affiliates. Moreover, the NLRB also has proposed new workplace rules that would force employers to turn over employees’ phone numbers and email addresses to aggressive union organizers. Other bureaucratic power grabs like the NLRB’s anti-Boeing campaign have made national headlines.

“After being soundly rebuked by voters, Big Labor operatives are turning to the federal bureaucracy to expand their forced-dues empire,” said Patrick Semmens, Legal Information Director for the National Right to Work Foundation. “That’s why the Foundation’s strategic litigation program is so vital. No other organization is positioned to effectively challenge these under-the-table power grabs through the courts.” ✚

National Right to Work Labor Day News Round-Up

Every Labor Day, the Foundation's Legal Information Department works to counter the pro-forced unionism propaganda of Organized Labor. Here are a few of the over 100 reports covering National Right to Work during the Labor Day Holiday.

Despite all of President Obama's rhetoric about creating jobs, he and his political appointees on the NLRB seem quite set on doing exactly the opposite. At every opportunity, they've put the priorities of union bosses ahead of the rights of America's independent-minded workers.

-- *The Detroit News*

[National Right to Work] president Mark Mix criticized... President Barack Obama for "mounting an unprecedented bureaucratic offensive to grab more coercive power."

-- *The Pharos-Tribune (Indiana)*

The National Right to Work Legal Defense Foundation is one of my favorite nonprofits. They're aggressive, but in my experience only as aggressive as their union counterparts.

-- Amity Shlaes on *National Review Online*



Mark Mix took calls from viewers on C-SPAN Labor Day morning.

Violence isn't a partisan issue. It's a simple question of right or wrong. Union thugs shouldn't be empowered to intimidate, beat up and even kill workers who refuse to toe the union line... Congress should close the union-violence exemption immediately and restore law and order to the American work force.

-- *The Washington Times*

There's one simple reason the union bosses and their puppet politicians didn't bring up the state's new public-sector right-to-work law on the campaign trail and over the airwaves: Right to work is popular with the people.

-- *The Daily Caller*

Despite the recession, Virginia boasts a modest unemployment rate, and its average hourly wages top the national mean. What's the Old Dominion's secret? One factor that sets Virginia apart from its less fortunate neighbors is the state's popular Right to Work law.

-- *The Richmond Times-Dispatch*

If union officials really want to celebrate Labor Day, they'd renounce their special privileges and free hard-working Americans from compulsory unionism. Otherwise, their talk of "workers' rights" rings awfully hollow.

-- A nationally-distributed commentary that appeared in over 40 newspapers.



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If you are interested in a Foundation Charitable Gift Annuity (and would like a free sample illustration) or any other estate gift, please call Ginny Smith at 1-800-336-3600, ext. 3303 or email plannedgiving@nrtw.org



Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter,

With the 2012 election season approaching, the union bosses know there may not be much time left for the Obama Administration to ram more power grabs through the National Labor Relations Board (NLRB) and the rest of the federal bureaucracy.

But they expect payback for their billion dollar bet on Obama in 2008. And this summer, Obama's NLRB delivered:

The outrageous complaint against Boeing for creating thousands of new jobs in Right to Work South Carolina; the proposed ambush election scheme to corral more workers into dues-paying ranks; the rule change to create a new "unfair labor practice" out of whole cloth against any employer who doesn't post a biased, Big Labor-approved notice in the workplace.

It surprised no one, then, to see union bosses like Richard Trumka, Mary Kay Henry, and Bob King to fly on Air Force One to a Labor Day political rally -- or just days later, to see Trumka sitting next to the First Lady as President Obama's guest of honor at a speech before a joint session of Congress.

Nor was it surprising to hear Teamster union chief Jimmy Hoffa, Jr. at the Labor Day event attended by President Obama declare war against Americans who worry about the state of the economy and government debt but disagree with President Obama's prescription for yet more spending and new ways to force workers under Big Labor's thumb.

I won't repeat Hoffa's vulgar language here, but his threats are a clear indication that Big Labor is worried about the challenge to their forced unionism power.

Because of your investment, the National Right to Work Foundation is uniquely positioned to take on this corruption from both ends -- fighting back against the bureaucratic assault on worker freedom and standing up for workers who don't want to support union boss politics.

And we couldn't do it without you.

Sincerely,

Mark Mix