



Foundation Action

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

Vol. XXXIII, No. 5

8001 Braddock Road • Springfield, Virginia 22160

www.nrtw.org

September/October 2013

Airline Workers' Lawsuit Seeks to End Unions' Forced-Dues Powers

Workers rely on Foundation's landmark Knox Supreme Court victory to push for voluntary dues

DALLAS, TX – Six airline workers have filed a federal class-action lawsuit that seeks to end forced unionism in America. Following last year's National Right to Work Foundation-won Supreme Court decision in *Knox v. SEIU*, it is the first lawsuit that aims to end union bosses' special powers under the Railway Labor Act to compel non-member railway and airline workers to pay union dues as a condition of employment, even in Right to Work states.

With free legal assistance from National Right to Work Foundation staff attorneys, the five American Eagle Airlines baggage handlers from Texas and one Southwest Airlines flight attendant from Baltimore, Maryland filed the lawsuit in U.S. District Court in Dallas.

"This case is a real game changer," explained Ray LaJeunesse, Vice President and Legal Director of the National Right to Work Foundation. "It seeks to change the current 'default' of requiring nonmember workers to affirmatively object to a new 'default' in which workers don't pay dues unless they voluntarily join a union."

The six workers must accept the Transport Workers Union of America (TWUA) hierarchy as their monopoly bargaining representative even though they are not union members. As non-members, they are prohibited from voting on the union's bargaining agreement with their employers or participating in union meetings. Federal labor law also



Why do union bosses have such extraordinary powers to collect forced dues from unwilling workers? The Supreme Court has hinted it wants to revisit that very question.

empowers union officials to extract union dues and fees from the workers for their so-called "representation." If workers refuse to pay the union, they'll lose their jobs.

Supreme Court opens door for worker freedom

Millions more workers across the country face the same dilemma. In 26 states without Right to Work laws, other private sector nonunion workers can be forced to pay union officials to keep their jobs. But a Foundation Supreme Court victory could change that.

In 2005, the California State Employees Association (CSEA) union, a

local affiliate of the Service Employees International Union (SEIU), imposed a "special assessment" on every civil servant in its bargaining unit to pay for a campaign to defeat several California ballot initiatives.

CSEA officials seized money from all employees to pay for union political activism, including those who were not union members. Last year, Foundation attorneys convinced the Supreme Court to strike down that scheme in their precedent-setting *Knox* ruling. The Court ruled for the first time that union officials must obtain affirmative consent from workers before using workers' forced dues for politics.

In the *Knox* ruling, the Supreme Court suggested that it was ready to

See AIRLINE LAWSUIT page 8

IN THIS ISSUE

- 2 Union "Card Check" Drive Targets Auto Workers in Right to Work States
- 3 Air Traffic Controller Hits Union, FAA with Discrimination Charges
- 4 USA TODAY Op-Ed: "Big Labor, Big Spender"
- 6 Foundation-assisted IKEA Employees Win Dues Refunds from IAM Union
- 7 Foundation Attorneys Submit Brief, Prep for Arguments at Supreme Court

Union “Card Check” Drive Targets Auto Workers in Right to Work States

Reeling UAW hierarchy seeks to export failed Detroit-style forced unionization

CHATTANOOGA, TN – The very union bosses that helped bring the Detroit automotive industry to bankruptcy are now vying to export their Detroit-style monopoly powers in a desperate attempt to gain a foothold in Right to Work states. Right to Work states have experienced an increase in auto manufacturing production (largely due to foreign automakers expanding production in those states) over the last several years.

United Auto Workers (UAW) bosses are pulling out all the stops to become the monopoly bargaining agent for autoworkers in Chattanooga, Tennessee who work for German-based auto company Volkswagen. The UAW union hierarchy is reportedly using coercive “card check” unionization tactics in a last-ditch effort to expand its grasp over workers after 75 percent of their members have fled the union since 1980.

UAW targets Carolinas

This not the first time UAW union bosses have sought to expand into Right to Work states using card check. In



UAW President Bob King launched several aggressive organizing campaigns in Right to Work states.

2002, UAW union officials struck a backroom deal with German-based auto manufacturer Daimler to strong-arm Freightliner Custom Chassis Corporation workers in Right to Work states North Carolina and South Carolina into the union.

Union organizers were given full access to Freightliner workers’ personal information (including their home addresses) and company facilities for the purposes of unionization. Union organizers then made “home visits,” went about unfettered on the shop floor,

and browbeat workers into signing “cards” that later were counted as votes to install the union in the workplace.

The company even allowed union organizers to hold captive audience meetings to pressure workers into signing union cards on company property. Freightliner managers and supervisors were forbidden from saying anything negative about the UAW during the organizing drive.

In exchange, the UAW union hierarchy secretly made concessions at the workers’ expense, including concessions over wages and benefits. And UAW officials did their best to keep the arrangement hidden from workers until after they were already unionized.

UAW officials test propaganda in Chattanooga

Perhaps UAW bosses learned a lesson from 2002 after National Right to Work Foundation staff attorneys challenged the legality of the Freightliner/UAW “neutrality agreement.”

For the first time, UAW union officials are touting German-style “works councils” as a new way of unionization to help sell themselves to Chattanooga Volkswagen workers. Ironically, the “collaborative model” with a “German-style labor board” UAW union bosses seek is the same model they previously opposed. Big Labor aggressively lobbied President Bill Clinton to veto the TEAM Act, which would have allowed employee labor committees to negotiate with a nonunion company without a union’s involvement.

UAW union bosses denounced the bill, stating that it “would undermine the rights of workers to organize and bargain collectively” and “legalize company dominated unions in which management could pick who would serve as

See CHATTANOOGA AUTO WORKERS page 6

Foundation Action

Rev. Fred Fowler
Patrick Semmens
Ray LaJeunesse, Jr.
Mark Mix

Chairman, Board of Trustees
Vice President and Editor-in-Chief
Vice President and Legal Director
President

Distributed by the
National Right to Work Legal Defense Foundation, Inc.
8001 Braddock Road, Springfield, Virginia 22160
www.nrtw.org • 1-800-336-3600

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.

Air Traffic Controller Hits Union, FAA with Discrimination Charges

Employee says that union officials violated his religious beliefs and threatened his livelihood

POTOMAC, VA – A Federal Aviation Administration (FAA) employee has filed charges against the FAA and the National Air Traffic Controllers Association (NATCA) union, alleging that union and FAA officials used his religious beliefs to punish him after he resigned from the union.

With the help of National Right to Work Foundation staff attorneys, Matthew Gray, a Subject Matter Expert for Airspace and Procedures at the Potomac, Virginia TRACON facility, filed the charges with the Equal Employment Opportunity Commission (EEOC) and the Federal Labor Relations Authority.

Employee punished for leaving union

Gray, a Seventh-day Adventist, resigned his union membership in NATCA because he believes union membership is contrary to his faith.

“My Church has a historic teaching that members of the Church should not be members of labor unions,” stated Gray. “I decided that I should be obedient to Church teaching on union membership, therefore I resigned from the union.”

After Gray resigned his union membership, he was informed by a union official that he was being removed from his detail and transferred to another as punishment for leaving the union.

“The union representative at my facility met with me at my cubicle and informed me that because I resigned from the union, the union would punish me by having me removed from my detail and sent back to the operations facility,” recalled Gray.

Gray told union officials that he only resigned because of his religious beliefs



A Virginia air traffic controller faces retaliation for adhering to his faith in the face of union pressure.

and the transfer would cause a scheduling conflict with his religious obligations. A central doctrine of Gray’s church is weekly worship, and not working, on Saturday. Gray’s old position allowed him to avoid any scheduling conflict between his work and religious obligations but the new position does not.

Worker forced to choose between job and faith

NATCA officials ignored his objections and went through with the transfer request. Instead of standing up to the union, Gray’s manager told him that he was complying with the union’s transfer request because he “no longer represent[s] the best interests of NATCA.” In other words, Gray’s manager acknowledged that Gray was being punished simply because he resigned his union membership.

Religious workers who dare to exercise their rights and refuse to toe the union-boss line are often bombarded with threats, harassment, or retaliation.

Over the years, National Right to Work Foundation attorneys have helped many religious workers like Gray fight back against union boss abuses.

Union-instigated religious discrimination widespread

In a similar case, Carol Katter, a 21-year teaching veteran from Ohio, challenged a law that denied public employees their right to religious accommodations regarding the use of their union dues unless the objecting employees belonged to certain state-approved religions.

Katter, a lifelong Catholic with religious objections to the union hierarchy’s position on hot-button political issues such as abortion, was denied her right to divert her forced union dues to a mutually-agreed-upon charity. Ohio teacher union officials used the state law to deny Katter’s request to an accommodation. The union’s lawyer added insult to injury by telling her she must “change religions” to receive a religious accommodation.

With the help of Foundation attorneys, Katter successfully sued to have the law struck down.

Fortunately, workers with strong religious convictions like Gray and Katter have the National Right to Work Foundation to turn to.

“It’s unconscionable that an independent-minded worker was punished for attempting to exercise his deeply-held religious beliefs,” said Patrick Semmens, Vice President of the National Right to Work Foundation. “Workers shouldn’t face retaliation for exercising their right not to join or affiliate with a labor union. The Foundation will continue to do everything possible to defend employees’ freedom of conscience in the workplace.” 



Big Labor, Big Spender

Labor unions are forcing employees to fill their coffers, and a lot of that money goes toward political spending

By Mark Mix, President of the National Right to Work Foundation

\$1.7 billion. That's how much labor unions spent on the 2011-2012 election cycle, according to a new analysis from the National Institute for Labor Relations Research that tallies Federal Election Commission, IRS and state campaign finance reports and self-reported union disclosure forms from the Department of Labor.

To put that in context: If Big Labor was running as a presidential candidate, he or she would have outspent the Obama campaign (the most expensive in history) more than two to one. In fact, the unions' \$1.7 billion political blitz is roughly equal to the combined spending of the Obama and Romney campaigns (\$1.17 billion) and both national parties (\$678 million) for the 2012 elections.

Surprised? You shouldn't be. Labor unions have long been influential players in national politics, but over the past few years, their political spending has reached astronomical proportions. According to the Wall Street Journal, three of the five biggest spending groups in the 2010 midterms were labor unions. From 2005 to 2011, unions are estimated to have spent \$4.4 billion on electioneering.

Individual donors, business groups, and outside organizations of all ideological stripes also spend big on politics. So why single labor unions out for special criticism?

Unlike other organizations, labor unions can force nonunion employees to fill their coffers. In states without Right to Work protections, workers can be forced to pay union dues just to get or keep a job.

Nonunion employees technically have the right to abstain from paying dues for political activism. However, workers are often unaware (or deliberately kept in the dark) of these rights. Many unions have adopted complicated bureaucratic procedures to discourage workers from opting out. Others simply ignore employees' requests to cut off political spending unless they're taken to court.

How many nonunion workers are routinely forced to subsidize union politics? Numbers are hard to come by (union officials don't exactly advertise their illegal practices) but the outcome of a recent U.S. Supreme Court case from California is telling. In *Knox v. SEIU*, the High Court determined that nearly 40,000 nonunion civil servants out of a bargaining unit of just under 100,000 employees were eligible to reclaim illegally-seized union dues spent on an SEIU political campaign. In

other words, four out of 10 workers in one of the largest SEIU bargaining units in the country aren't voluntary members, and nearly all of them were forced to pay into a union political fund without their express consent.

Moreover, the legal protections that safeguard workers' rights to abstain from supporting Big Labor's agenda are being steadily eroded by a federal labor bureaucracy that seems more interested in enabling unions than protecting employee rights.

Last December, the National Labor Relations Board – the agency responsible for administering private sector labor law – issued a ruling that undermines longstanding Supreme Court precedents protecting workers' rights.

In *United Nurses v. Geary*, the NLRB ruled that union officials can force nonunion employees to pay for political lobbying as long as the lobbying "may ultimately inure to the benefit" of those employees.

Under this elastic standard, union officials can make outlandish claims about the supposed benefits nonunion workers receive from being forced to financially support Big Labor's agenda. The *Geary* case itself, involving a nonunion Rhode Island nurse who was charged for union lobbying in Vermont, demonstrates the absurdity of this arrangement. If out-of-state lobbying qualifies as chargeable under the NLRB's new standard, what union political activities won't be billed to nonunion workers?

Right now, union politicians funnel forced-dues cash to sympathetic politicians, who then make appointments and enact policies that further entrench Big Labor's forced-dues privileges. It's no accident that the three NLRB members responsible for the *Geary* decision included Richard Griffin, a former union lawyer who was appointed by President Obama. Obama is perhaps the most visible beneficiary of Big Labor's political largess.

Spending money in the political arena is no crime, but union activism shouldn't be subsidized by unwilling participants. If Big Labor's agenda has merit, union officials should have no trouble getting contributions from voluntary union members and other supporters. If not, they shouldn't be allowed to prop up their political agenda on the backs of nonunion employees.

This article appeared in USA TODAY on Labor Day.

Labor Day 2013: National Right to Work in the News

Over Labor Day weekend, Right to Work spokespeople appeared in print, television, and radio to speak out against forced unionism. Here are highlights from Right to Work op-eds and television appearances:



The question is **do you force someone who never wanted, never voted for, and never asked for a union into that collective and then force them to pay dues to keep their job?**” - Right to Work President Mark Mix on C-SPAN’s “Washington Journal”

HOUSTON CHRONICLE

“Poll after poll shows **the American people**, and even union members, **overwhelmingly oppose forced union dues** and affiliation.”

MILWAUKEE · WISCONSIN JOURNAL SENTINEL

“Perhaps the reason why more workers are refusing to affiliate with a union now than any other time in almost a century is because **union boss political activism takes precedence over protecting worker rights.**”

The Washington Times

“The NLRB . . . has worked zealously to administratively enact power grabs Big Labor has failed to obtain through the legislative process.”

Foundation-Assisted IKEA Employees Win Dues Refunds from IAM Union

Union officials went to great lengths to mislead workers about their rights

ELKTON, MD – Thanks in part to the efforts of National Right to Work Foundation staff attorneys, four Elkton, Maryland IKEA employees reached a class-wide settlement with their employer and the International Association of Machinists (IAM) union in early August. The settlement allows IKEA workers to retroactively resign from the union and receive refunds for any union dues spent on political activism since September 1, 2012.

So far, several other IKEA employees have followed the lead of their three coworkers and used the settlement to reclaim union dues that were unlawfully deducted from their paychecks.

The settlement is the result of unfair labor practice charges filed by four IKEA employees with the help of Foundation staff attorneys in January and February 2013. The charges alleged that union officials failed to inform IKEA employees of their rights to refrain from union membership and the payment of full union dues. Many workers were threatened with termination by union officials for refusing to join the IAM or pay full dues.

In Maryland and other states without Right to Work laws, employees can be



Several Maryland IKEA workers were able to reclaim dues used by IAM union officials for political activism.

required to pay union dues or fees just to keep a job. However, workers have the right to refrain from formally joining a union and opt out of paying for union activities unrelated to workplace bargaining, such as members-only events and political activism.

Union bosses misled workers about their rights

Not only did IAM officials and IKEA fail to notify workers of their rights, they actively misled employees about their obligations to the union. IAM officials claimed that joining the union and paying full dues were required as a condition of employment.

When one worker asked about his right to refrain from financially sup-

porting the IAM's political activities, he was told by union officials that he had no such rights. What little material union officials provided to IKEA employees about their rights was deliberately obscured. Union officials printed information on employees' right to refrain from full dues-paying membership on the back of a pink piece of paper in tan ink, making it virtually invisible.

The settlement requires union officials to return illegally-seized dues to three of the IKEA employees who filed charges and post workplace notices explaining workers' rights to refrain from union membership and the payment of full union dues. The union is also obligated to refund any dues unrelated to workplace bargaining collected since September 1, 2012 to employees who resign.

"IAM bosses have finally acknowledged that it is illegal to require nonunion employees to subsidize union political activism," said Patrick Semmens, Vice President of the National Right to Work Foundation. "We hope this settlement will encourage other Elkton-based IKEA employees to recoup some of their hard-earned dues spent on union politics." 

Chattanooga Auto Workers File Charges to Counter UAW Card Check Drive

continued from page 2

the representatives for workers." Now UAW union officials are all for Volkswagen choosing UAW agents to serve as workers' representatives.

In response to media reports about the UAW's card check campaign, the Foundation announced that it would provide free legal aid to workers who feel unfairly pressured by UAW officials.

Eight Volkswagen workers took up the Foundation's offer and filed charges against the UAW union for misleading and coercing them and other workers to

forfeit their rights in what is now a card check unionization drive by the UAW.

Union organizers misrepresented that the cards were for a secret ballot election. UAW officials also told workers that they had to physically appear at the union office if they wanted to revoke their signatures and have their cards returned to them.

"Despite making it so easy to sign union cards, UAW union officials are now demanding workers go to the union office to exercise their right to

reclaim their cards," said Mark Mix, President of the National Right to Work Foundation. "This case demonstrates how card check unionization makes it 'easy to check in, but impossible to check out.'"

The charges ask the NLRB to order UAW union officials to cease and desist from demanding recognition based upon the tainted cards.

Meanwhile, Volkswagen workers in Chattanooga are circulating petitions against the UAW's presence in their workplace. 

Foundation Attorneys Submit Brief, Prep for Arguments at Supreme Court

Upcoming case will determine the legality of certain backroom “card check” organizing deals

WASHINGTON, DC – On September 20, Foundation staff attorneys submitted a brief stating their arguments in *Mulhall v. UNITE HERE*, a Supreme Court case that could determine whether companies are allowed to hand over workers’ personal information to union organizers in exchange for union concessions.

Meanwhile, Foundation attorneys are also preparing for the oral argument in *Mulhall*, which is scheduled to take place on November 13. The case marks the sixteenth time Foundation attorneys have argued before the highest court in the land.

In 2004, UNITE HERE Local 355 and Martin Mulhall’s employer, Mardi Gras Gaming, agreed to a backroom deal in which union officials agreed to devote over \$100,000 to pass a gambling ballot initiative and guaranteed not to picket, boycott, or strike against Mardi Gras.

In return, Mardi Gras agreed to give union operatives employees’ personal contact information (including home addresses), grant access to company facilities during a coercive “card check” organizing campaign, refrain from informing workers about the downsides of unionization, and refrain from requesting a federally-supervised secret ballot election.

With the help of Foundation staff attorneys, Mulhall filed a lawsuit challenging this organizing pact in 2008. Under the Labor Management Relations Act, employers are prohibited from handing over “any money or other thing of value” to union organizers, a provision that is supposed to prevent union officials from selling out workers’ rights in exchange for corporate concessions.

Mulhall won a significant victory last spring, when the Eleventh Circuit Court of Appeals ruled that the company’s

organizing assistance could constitute “a thing of value,” but UNITE HERE lawyers appealed that decision to the Supreme Court.

The Foundation’s brief argues that strong prohibitions on management handing over things of value to union organizers – such as workers’ personal information – are necessary to prevent unscrupulous employers and aggressive union organizers from agreeing to backroom deals that undermine worker rights.

“Foundation attorneys are preparing for oral arguments in a Supreme Court case that will have a profound impact on employee rights,” said Ray LaJeunesse, Vice President and Legal Director of the National Right to Work Foundation. “We hope the High Court will take this opportunity to protect workers from backroom organizing deals that undermine their rights.”

Estate Planning - You Can Make a Difference!



You can make planned giving decisions that will offer tax savings today – and help the future of the Right to Work movement.

In previous issues of **Foundation Action**, we have explained how loyal supporters can benefit from an estate plan while helping the National Right to Work Legal Defense and Education Foundation, Inc.

Making your will and estate plans can be a simple and rewarding process – and it gives you the opportunity to set aside part of your estate for your favorite charities like the Right to Work Foundation.

One such example of a planned gift idea is the **Charitable Lead Trust**. This estate plan is most commonly referred to as “the gift that comes back to you.” A donor can set up a trust fund that makes annual gift payments to the Foundation for a certain number of

years. At the end of this period, the assets used to fund the gift can be returned to you or your heirs.

Another popular trust instrument is the **Charitable Remainder Trust**, which is the reverse of a Charitable Lead Trust described above. This trust allows you to make a tax-deductible gift to the Foundation now while ensuring a future income stream.

This is how a Charitable Remainder Trust works: You transfer assets into a trust to be held and invested by a trustee you designate. Income is paid to you (or a designated beneficiary) over the course of a time period you designate, perhaps even for life, with the remainder of the trust going to a charity like the National Right to Work Foundation.

As the donor, you receive an immediate charitable deduction for income tax purposes

for the value of the projected charitable remainder interest. This particular trust may disburse either a fixed amount or a fixed percentage of the net value of the trust assets, which are valued each year (making payments dependent on the investment performance of the trust).

At the end of the income interests, the Foundation receives the remainder of the trust assets, thereby completing the donor’s gift.

In the case of all planned gifts, we encourage you to consult your tax advisor or an estate planning attorney to discuss these options.

If you would like more information about making a planned gift to the Foundation, please contact Ginny Smith at 1-800-336-3600.

Airline Lawsuit

continued from page 1

reassess whether union bosses' extraordinary forced dues powers, which it called "something of an anomaly," violate workers' First Amendment rights.

Responding to the Court's suggestion in *Knox*, the airline workers' lawsuit seeks to expand that precedent to apply to all instances in which airline, railway, and public employees refrain from union membership.

Workers also challenge dues used for politics

Even if the federal court fails to strike down forced unionism in totality, the lawsuit could still have a meaningful impact on American labor law.

In their suit, the airline workers also seek to expand the *Knox* ruling to all union forced fees allocated to politics and other non-bargaining activities. In other words, the airline workers' lawsuit seeks to reverse federal law that empowers union bosses to collect dues used for union politicking unless the employees affirmatively object. If the suit is successful, union bosses would be required to get workers' consent before they collect dues for politics.

The workers are also challenging the TWUA union bosses' burdensome requirement that workers must annually opt out of paying full union dues.

"Union bosses have abused their extraordinary government-granted power to 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. "Recognizing the First Amendment right of workers who refrain from union membership to automatically refrain from paying union dues, and especially dues for politics, is long overdue." 



Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter:

Imagine a snowball rolling down a hill. At first, it's almost insignificant. But then it gains momentum. The snowball gets bigger. Pretty soon, that snowball is an avalanche, hurtling downhill at a breakneck pace.

This is a great metaphor for the National Right to Work Foundation's strategic litigation program. When the Foundation was founded in 1968, the legal landscape was pretty bleak for independent-minded workers. But over the years, we've slowly but steadily expanded employee rights while pushing back against union bosses' forced dues privileges. And now the pace is picking up considerably.

It started with Foundation-won Supreme Court precedents like *Abood*, *Ellis*, *Hudson*, and *Beck*. These decisions established workers' rights to refrain from union membership and opt out of dues for union politics in both the private and public sectors.

Last year, the Foundation's landmark Supreme Court victory in *Knox* was another step forward. For the first time, the Supreme Court held that workers must affirmatively consent to having their dues used for politics. In other words, you have to "opt-in" instead of having to "opt-out."

Our lead story in this issue of **Foundation Action** is about a group of courageous airline employees who are seeking to apply the standard established in *Knox* to the air and railway industries. Their lawsuit challenges the very essence of union bosses' forced dues powers by arguing that workers should have to consent to all union dues, not just dues spent on politics.

Once again, the Foundation is on the cutting edge of legal work that expands employee rights and diminishes the curse of forced unionism.

With the strength of your continuing support and the courage of individual employees willing to stand up, we're making a difference.

It's now possible that one day, the Supreme Court will rule that union bosses' forced-dues powers are unconstitutional. We couldn't have gotten to this point without Right to Work supporters like you. Thank you for your help.

Sincerely,

Mark Mix