

SEIU Must Return \$5,000,000 In Illegally Seized Dues

Settlement ends Golden State battle to protect 60,000 home care providers

LOS ANGELES, Calif. — National Right to Work Legal Defense Foundation attorneys have forced officials of one of the most militant California unions to return an estimated \$5 million in union dues illegally seized from 60,000 non-union home care providers. The refunds include monies spent for activities unrelated to collective bargaining, such as political activism.

The settlement agreement brings to a close a suit brought by Foundation attorneys on behalf of Carla West and other non-union home care providers who work in Los Angeles County. After the state government imposed a novel and constitutionally suspect unionization scheme upon them, the employees filed the class-action case in U.S. District Court for the Central District of California against the AFL-CIO-affiliated Service Employees International Union (SEIU) Local 434B, the Personal Assistance Services Council (PASC) of Los Angeles County, and Attorney General Bill Lockyer.

Court fails to overturn new union scheme

Despite the large settlement, this is only a partial victory for the non-union home care providers. The court recently dismissed arguments that the U.S. Constitution does not allow Local 434B and PASC to impose union affiliation on home care workers who do not desire union representation — and in many cases had never even heard of the union.

Unfortunately, the court did not agree with Foundation attorneys' arguments on the main issue in the case: whether independent home care providers who perform services through a public assistance program can be declared "public employees" for collective bargaining purposes *only*.

The legislature created this condition despite the fact that home care workers do not resemble traditional public employees — governmental bodies have no involvement in the providers' hiring, firing, work schedules, workplace safety, and employment disputes.

Although they are reimbursed through the state, the home care providers are independently hired, fired, and supervised by individual recipients of home care. Many of these independent contractors who contacted the Foundation about the situation had never even heard of the union until it began automatically seizing dues out of their paychecks.

"Even though the union must now cough up upwards of \$5 million in illegally seized dues, the state of California should not have forced independent home care workers into union collectives in the first place," said Mark Mix, Executive Vice President of the National Right to Work Foundation. "Years ago, union operatives set their sights on California's home care sub-

sidy program as a major cash cow. Now California taxpayers must pay tens of millions of dollars that are laundered through the program and dumped into union coffers."

AFL-CIO eyes home care dollars nationwide

The AFL-CIO has called the forced unionization of the Los Angeles County home care providers organized labor's single largest organizing victory ever. Sacramento and San Diego Counties and, more recently, Oregon and Washington State, have since adopted virtually identical schemes.

"Union chiefs want to use this lucrative new scheme to raise money at the expense of taxpayers, disabled citizens, and especially those who care for them," said Mix. "Looking toward the future, Foundation attorneys intend to pursue other opportunities to persuade the courts to toss out this emerging union scheme as unconstitutional." ✚

Foundation Action

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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.

High Court Refuses Review of Key Clinton NLRB Ruling

Bush appointees endorsed firing of employees for refusal to fund union organizing

WASHINGTON, D.C. — The U.S. Supreme Court announced that it will not review a key ruling issued by Bill Clinton's National Labor Relations Board (NLRB) that dramatically diminished the rights of employees to refrain from supporting objectionable union activities with their forced union dues.

By declining to grant a *writ of certiorari* in the case known as *Mulder v. NLRB*, the Supreme Court has, for the moment, cleared the path for union officials to force millions of workers in the private sector to finance union organizing drives or lose their jobs. Union officials often spend in excess of 30% of union dues on organizing activities.

Unfortunately, U.S. Solicitor General Ted Olson and NLRB General Counsel Arthur Rosenfeld, both Bush appointees, weighed in on behalf of the union lawyers' position. Olson and Rosenfeld argued that the Supreme Court should deny the petition for review filed by National Right to Work Legal Defense Foundation attorneys for Phillip Mulder and five other workers forced to pay union dues to keep their jobs.

Decision guts previous landmark Supreme Court ruling

"It's disturbing the Bush Administration took this position in opposition to enforcement of the *Beck* decision," said Reed Larson, President of the Foundation, referring to the Supreme Court's *Communications Workers v. Beck* (1988) decision. "No one should be forced to fund the recruitment of supporters to a private ideological cause to get or keep a job."

Under *Beck*, a case argued and won by Foundation attorneys, employees may reclaim their forced union dues that are spent on activities unrelated to collective bargaining, such as union ideological activity.



AP/Wide World Photo

AFL-CIO Secretary-Treasurer Richard Trumka plays a key role in directing militant union organizing drives.

Union power expanded under veil of 'organizing'

As a result of the Supreme Court's refusal to hear the *Mulder* case, the 7.8 million American workers that labor in compulsory union shops under the National Labor Relations Act (NLRA), in order to keep their jobs, must not only continue to finance union monopoly bargaining via their forced fees, but now must also pay for union recruitment efforts.

Before the case reached the Supreme Court, it had been on a long, twisting path. The NLRB shuffled the case around for nearly a decade before ruling in 1999 that objecting non-members can be required to subsidize union organizing in the same competitive market. Next, the U.S. Court of Appeals for the Ninth Circuit first unanimously overturned the NLRB's ruling, but later unanimously upheld it during an *en banc* rehearing.

Many labor law experts agree that, in addition to gutting the *Beck* ruling, the Ninth Circuit's decision affirming the NLRB directly violates the Foundation-won precedent *Ellis v. Railway Clerks*. In *Ellis*, the nation's highest court determined under the Railway Labor Act (RLA) that all union organizing expenses are, at most, only tenuously related to

collective bargaining, and thus employees under the RLA who are not members of a union could not be legally forced to financially support this activity. The Supreme Court had also previously described the relevant provisions of the RLA and the NLRA as "statutory equivalents."

Even Big Labor allies concede that there is a close connection between union organizing and politics. Testifying on behalf of the United Food and Commercial Workers (UFCW) union in the *Mulder* trial, labor economist Paula Voos testified that union "organizing" occurs for many reasons unrelated to employee wages and benefits. Often these include enhancing the political sway and incomes of the union leadership, and fostering the public perception of the "social idealism" and "ideological gains" that come about through organizing.

"Despite Big Labor economists' confessions that organizing is inextricably tied to politics, the NLRB and the Ninth Circuit had other ideas," said Larson.

In affirming the NLRB and establishing a nationwide precedent in conflict with previous Supreme Court rulings, the Ninth Circuit ignored the pleas of the grocery clerks who challenged the objectionable activities of the UFCW union. The Supreme Court has now closed the door on the employees' claims.

Foundation moves forward on other fronts

Currently, the NLRB is sitting on other cases that address the issue of union organizing. Since 1992, NLRB officials have failed to resolve a case brought by Sherry and David Pirlott, employees at Schreiber Foods in Green Bay, Wisconsin, against the Teamsters union Local 75. Teamsters officials had illegally rebuffed the Pirlotts' attempts to exercise

see ADMINISTRATION SPURNS, page 7

Teacher Union Humiliated by Religious Discrimination

Case draws national attention to how the NEA wrongs people of faith

CLEVELAND, Ohio — Rather than face religious discrimination charges, Ohio Education Association (OEA) union officials begrudgingly agreed to stop harassing Kathleen Klamut, a Cleveland-area teacher whose religious beliefs prohibited her from supporting the union's radical social agenda.

With free legal assistance from National Right to Work Legal Defense Foundation attorneys, Klamut filed charges with the Equal Employment Opportunity Commission (EEOC) against the OEA, and its local affiliate, for refusing to accommodate her religious objections to supporting the union. A devout Christian, Klamut objects to having her money subsidize the union's pro-abortion agenda.

"The union has always contended that you cannot object to their dues, but I objected specifically to their stand on abortion," Klamut told *CNSNews.com*.

Under Title VII of the Civil Rights Act of 1964, union officials may not force any employee to support financially a union if doing so violates the employee's sincerely held religious beliefs. To avoid the conflict between an employee's faith and a requirement to pay fees to a



Ohio schoolteacher Kathleen Klamut's religious discrimination struggle against the NEA landed her on Fox News Channel's #1 talk show with Foundation Vice President Stefan Gleason (right).

union he or she believes to be immoral, the law requires union officials to attempt to accommodate the employee — usually by designating a mutually acceptable charity to receive the funds.

Union refuses to admit wrongdoing

Last fall, when she began working as a school psychologist in the Ravenna

City Schools, Klamut asked to have her dues re-directed to the American Cancer Society. OEA officials refused to accommodate her, and Klamut was told the union hierarchy was planning to take legal action against her.

Unfortunately, this is not the first time Klamut had been the target of union harassment. In 1997, while working for the Louisville School System, Klamut sparred with the union after she was ordered to send her dues to a union-controlled "charity" or it would not honor her status as a religious objector.

After a two-year struggle, Klamut was able to have her compulsory dues diverted to the American Cancer Society. However, as soon as she moved school districts, the union hierarchy began its harassment all over again.

Even when the EEOC found that the union violated the law, OEA officials refused to admit any wrongdoing. Finally, to avoid further embarrassment, union officials sent Klamut a snide letter stating, "We are granting your requested accommodation. We are not acknowledging the sincerity of your professed beliefs nor are we acknowledging the law requires us to grant this accommodation."

Case garners media attention and prompts congressional hearings

Despite the efforts of union officials to downplay their illegal behavior toward teachers like Klamut, there has been an explosion of national media coverage of this issue. In addition to nearly one hundred newspaper articles, magazine articles, and radio interviews on the subject, Klamut and the



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For more information on the many ways you can ensure that your support of the Foundation continues, call the Foundation at (800)336-3600 or (703) 321-8510. Please ask to speak with Alicia Auerswald.

Right To Work Movement Profiled In TV Documentary

National PBS program showcases Foundation's cases and mission

SPRINGFIELD, Va. — The Public Broadcasting System (PBS) is scheduled to air nationwide a documentary featuring the Right to Work movement and the National Right to Work Legal Defense Foundation strategic legal-aid program. The profile will air as a part of a series entitled *Voices of Vision* — a Telly Award-winning documentary group.

“The *Voices of Vision* documentary is an all-too-rare public recognition of the freedom-protecting work the Foundation and its supporters make possible,” said Reed Larson, President of the National Right to Work Foundation.

The specific time and date the program will air depends on local scheduling, and usually is determined station-by-station.

Foundation's precedent setting program outlined

The PBS feature manages to cover a large portion of the Foundation's work and history in a short period of time, including:

- **Heart-breaking profiles of union-violence victims** the Foundation has aided, making Big Labor pay a stiff price for the lives it harms.
- **Foundation-won landmark U.S. Supreme Court cases**, especially the *CWA v. Beck* decision, that have taken tens of millions of dollars in illegal forced dues out of union-boss pockets.
- **Fired, harassed, and illegally fined workers** whose jobs and paychecks the Foundation protected.
- **Battles to expose and block the \$800 million flood of illegal-dues-for-politics** that union bosses pour into elections every two years.
- **The important role played by the Foundation's sister organization**, the National Right to Work Committee, in advocating for the Right to Work principle through grassroots and legislative action.



Teaching Learning Network

PBS's Scott Simon profiles the Foundation's mission and the Right to Work movement in the nationwide television documentary series titled Voices of Vision.

“This PBS feature highlights the Foundation's important work, and shows personal examples of how union coercive power causes ruin in the lives of workers of all types,” said Ray LaJeunesse, Vice President and Legal Director of the Foundation.

Individual workers recount personal triumphs

The documentary also brings home the real tragedy of Big Labor abuses on the lives of several workers, and how the Foundation helped these individuals overcome them in court.

The program details how union thugs wreaked havoc in the lives of workers like Shucheng Huang, who suffered egregious vandalism — including having a severed, bloody cow's head placed on the hood of her car to accompany other death threats from United Auto Workers union militants.

Airline mechanic John Masiello and teacher Sandra Crandall also give personal accounts of how union officials sought to

make their lives miserable in retaliation for defying their demands.

Masiello reveals how he lost his job simply for choosing not to join a union and pay for its far-left political agenda. And Crandall describes how her decision not to join a teacher union brought on harassment even as she escorted her first graders into the classroom. When given the opportunity to defend their actions, cowardly teacher union officials refused to comment.

“The ruthlessness suffered by these courageous employees shows how powerful and well-entrenched Big Labor's operatives remain,” said LaJeunesse. “It also signifies how much vital work there is for the Foundation still to do.”

Feature bucks establishment media trend

By not only recognizing but focusing on the real tragedy brought into many workers' lives by compulsory unionism abuses, and by relating how powerful Big Labor remains, PBS's documentary on the Foundation differs from traditional media coverage. Avoiding undue deference to union officials and their propaganda, the feature focuses instead on how the Foundation has made a difference in

workers' lives and the naked corruption the Foundation aims to defeat.

“Although public television has a history of focusing on advocating for generally far-left causes, it has produced a fair and objective glimpse of the Foundation's uphill struggle against union tyranny,” said LaJeunesse.

Free copies of the PBS documentary may be obtained by calling Jean Griffith at 800-336-3600. 



Union terror victim Shucheng Huang recounts how union thugs threatened her life.

Port Workers Face Retaliation For Rejecting Unionization

continued from cover

a band-aid on a gaping wound," said Gleason. "Only ending compulsory unionism will ultimately protect America from outrageous union abuse."

Non-union workers despised by union hierarchy

Meanwhile, learning that the union had secured the elimination of their non-union jobs during negotiations, a group of 30 workers employed by Stevedoring Services of America (SSA) at its Salt Lake City "planning" facility sought free legal aid from the National Right to Work Foundation.

SSA is the largest company at the West Coast ports, and the union hierarchy is especially eager to gain control over its computerized rail, yard, and vessel planning employees. These employees are responsible for tactical management of day-to-day activities, including determining when and how cargo is to be loaded and unloaded, by whom, and how and where it is to be transported. If such key jobs were performed by unionized marine clerks, the union hierarchy would be in a position to demand more concessions from the company by deliberately fouling up these vital operations at the drop of a hat.

If allowed to stand, the final settlement of the port dispute would further solidify ILWU union control over virtually every aspect of operations at the West Coast ports.

"They got together and negotiated our jobs away," said Sherry Goff, one of the SSA employees represented by Foundation attorneys, to the *Salt Lake Tribune*. "Historically, these have always been non-union jobs. We have voted down union representation in the past."

When the employees asked for help,



AP/Wide World Photo



PBS.org

Senator Robert Bennett (R-UT) (right), Congressman Chris Cannon (R-UT) (left), and Senator Orrin Hatch (R-UT) have joined the fight to defend 30 Salt Lake City non-union employees whose jobs are being handed over to the union.

Foundation attorneys immediately filed charges against the ILWU at the National Labor Relations Board (NLRB). These charges seek an injunction to block the imminent and unlawful elimination of the Salt Lake City jobs that would occur simply because the employees have not opted for union representation.

Work relocation would violate workers' rights

By insisting that this planning work be performed at new facilities at the ports staffed by unionized "marine clerks," rather than non-union employees, ILWU and PMA officials violate the employees' right to refrain from unionization under federal law, and the principles of voluntary unionism established by Utah's Right to Work Law. In the past, the NLRB has aggressively prosecuted this type of illegal discrimination — known as a "runaway shop."

"These have never been union jobs," said Mike Bourgault, who works in SSA's Salt Lake City facility. "The thing is the ILWU isn't losing any jobs at the ports, but they still want to take ours."

As this article goes to press, it is still unclear whether the NLRB's General Counsel will request a federal court injunction that would bar the PMA and ILWU from eliminating the Utah jobs before it is too late.

Utah pols urge swift NLRB action

However, knowing that the NLRB bureaucracy is often lethargic and unresponsive to pleas from non-union employees who suffer from union abuse, United States Senators Orrin Hatch (R-UT) and Robert Bennett (R-UT) joined Congressman Chris Cannon (R-UT) last month in sending a strongly worded letter to the NLRB urging it to expedite the investigation.

The letter, which the congressional delegation sent to General Counsel Arthur Rosenfeld and the local NLRB office handling the investigation, echoed the Foundation's charges that the ILWU and PMA's pact violates federal law and the spirit of Utah's highly popular Right to Work Law.

"Given the imminent nature of the threat and the support of Utah's congressional delegation, we are hopeful that the NLRB will act quickly to ensure these workers' jobs are not swallowed up as part of another union power grab," said Gleason. ¶

"They got together and negotiated our jobs away," said Sherry Goff.

Spotlight on...

W. James Young
Staff Attorney



Foundation Staff Attorney Jim Young has worked vigorously to defend workers' rights since joining the Foundation's legal staff in 1989. Having assisted a broad range of workers, Young has taken on a number of the country's most powerful and influential union hierarchies.

In particular, Young helped 37,000 California state employees file a federal class-action lawsuit against the California State Employees Association (CSEA) after Governor Gray Davis attempted to corral 140,000 of these workers into compulsory union membership illegally. Despite the clear edicts of the U.S. Supreme Court, the state deducted forced union dues without any independent audit showing that the cash was not being used illegally

on activities like organizing, lobbying, or politics. As a result of the action filed by Young, the CSEA was ordered to cease collecting up to \$1.1 million a month from the pockets of these workers.

As a Foundation staff attorney, Young has represented workers in the U.S. Supreme Court, seven of the country's 13 federal circuit courts, as well as district courts in 11 states and the District of Columbia.

Young earned his J.D. degree from the Emory University School of Law in Atlanta, Georgia, after receiving his B.A. degree from Hampden-Sydney College in Virginia. Young and his wife Brenda were married in 1989, and have two boys, William James II, and Patrick. The Young family resides in Montclair, Virginia.

Administration Spurns Foes of Militant Union Organizing

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their rights under *Beck*, and have forced them to pay for union organizing drives, including organizing efforts in other industries.

Meanwhile, Foundation attorneys plan to bring forward similar cases in various other federal court jurisdictions with the hope of ultimately persuading the Supreme Court to address union organizing, an issue of increasing importance in recent years.

Unions organize employers rather than employees

As union organizers have had less success in recent years in persuading employees to vote in favor of unionization during secret ballot elections, the AFL-CIO has instead adopted a strategy of organizing employers. Bolstered by a series of Clinton NLRB rulings, union operatives increasingly use "neutrality

agreements" and other "top-down" organizing techniques to bully employers into bargaining with union officials without so much as a vote by the employees.

So-called "neutrality agreements" not only include a promise from the employer that it will not counter the union's propaganda directed at employees, but also usually require employers to give union organizers the names, home addresses, and telephone numbers of all employees, as well as permission to come on company property during work hours to collect union authorization cards. These so-called "card check schemes" deny employees' the right to reject unionization in a secret ballot election. Moreover, workers are often misled, harassed, or threatened into signing union authorization cards.

Employers are often pressured into signing these "neutrality agreements" after a union runs a successful "corporate campaign" in which the goal is to paint the targeted company as a

social outlaw. These campaigns involve massive public relations assaults, union pressure on a company's suppliers and stockholders, and utilization of elected officials as well as administrative agencies to embarrass the company and bog it down in costly litigation. Ultimately, the goal of a corporate campaign is to achieve unionization of the company's employees regardless of employees' views.

"These union organizing tactics amount to blackmail," said Larson. "The Foundation is placing a high priority on bringing new cases that will challenge the legality of these emerging methods." ✚



Teacher Union

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Foundation's Vice President, Stefan Gleason, appeared on the Fox News Channel's *The O'Reilly Factor* to expose the union's policy of harassment.

Meanwhile, the Workforce Protections Subcommittee of the United States House of Representatives held hearings chaired by Congressman Charlie Norwood (R-GA) to investigate the problems faced by religious objectors. At the hearings, Klamut and another Foundation-assisted teacher, Dennis Robey, testified on the range of abuses suffered at the hands of the NEA union and its affiliates:

"I feel that the union's plan was simply to wear me down. The union threatens to take my job away unless I violate my religious beliefs," said Klamut. "It seems that every day I have to choose between my family's economic security and the requirements of my faith. This is not right. I should be allowed to do my job without this constant hassle."

Looking back on her long struggle and her final victory over the NEA and OEA, Klamut hopes other workers will follow her example and have the strength to come forward.

"I would really encourage those who have this heartfelt conviction to do it," Klamut said. †

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Message from Reed Larson

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter:

So far, the Bush Administration has proposed only a few tiny reforms to the way Big Labor is regulated. At issue this month are new financial disclosure requirements for the annual LM-2 forms that unions are supposed to file.

Everyone agrees that employees should be able to find out where their dues money is going. But the 40-year-old LM-2 disclosure forms provide little in the way of meaningful information.

Of course, the union bosses are screaming bloody murder, even though the Labor Department's proposed reforms are so mild as to be innocuous.

Foundation attorneys provided advice on drafting the regulations, but many crucial recommendations have been ignored.

Most importantly, unlike corporations, union officials are not currently required to provide members independent audits of union books and records—an outrageous omission that the new regulations do nothing to remedy.

Just as importantly, the dollar requirements for disclosure may be set so high that little useful information will be revealed. For example, if expenditures under \$2,000 or even \$5,000 can be swept into the category of miscellaneous expenses, then expenses for politics, organizing, or just lavish "entertainment" can be shielded from public view.

The recent scandal (reported in the last issue of **Foundation Action**) involving former Ironworkers union boss Jake West and his cronies spending \$460,000 at Washington's fancy Prime Rib restaurant could easily be covered up by splitting the item into a large number of miscellaneous expenses, none of which would have to be individually reported.

Regulation of — as opposed to elimination of — Big Labor's government-granted power is not the best approach, and the Labor Department's flimsy attempt at reform shows once again the weakness inherent in the regulatory approach.

Ultimately, ending compulsory unionism is the only way to force the union hierarchy to be truly accountable. Only concrete steps in that direction will return power to employees to discipline abusive union officials.

Sincerely,

Reed Larson



Foundation Action

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

Vol. XXIII, No. 1

8001 Braddock Road • Springfield, Virginia 22160

www.nrtw.org

January/February 2003

Foundation Works to Block Firings of Non-union Port Workers

*Union brass shut down
West Coast commerce
to expand power*

SALT LAKE CITY, Utah — National Right to Work Foundation attorneys have been called upon by employees of the largest stevedoring company on the West Coast ports to defend their right to refrain from union representation.

International Longshore and Warehouse Union (ILWU) officials, implementing their plan to shove all port-related jobs under union control at the port facilities, struck an agreement with the Pacific Maritime Association (PMA) that places the jobs of more than thirty Utah-based non-union employees in imminent jeopardy. Unless Foundation attorneys succeed in the employees' unfair labor practices case, the settlement of the West Coast port controversy will require that the Utah workers' jobs be eliminated and re-established under union control at the ports.

"This is a shameless retaliation against workers simply because they opted not to unionize," said Stefan Gleason, vice president of the Foundation.



AP/Wide World Photo

The 10-day union shutdown of all West Coast ports cost the American economy nearly \$2 billion per day.

Union officials exploit crises to grab power

Late last year, in a vivid reminder of the crippling effects of compulsory unionism, America watched in shock as union officials further jeopardized America's struggling economy and national security effort by shutting down all ports on the country's West Coast.

Experts estimate that the 10-day port shutdown cost the American economy more than \$20 billion, and workers, consumers, and small businesses will likely feel the effects of the interruption well into 2003.

"The reckless and selfish actions of ILWU officials were true to Big Labor's time-tested strategy of making excessive demands during moments of national vulnerability," said Gleason.

Federal law makes kings of union bosses

Contrary to union propaganda, negotiations usually come down to the

core issue of union coercive power, not employee benefits. In the case of the ports, the main sticking point was whether employees added or reassigned in recent years through modernization would be placed under the union's monopoly at West Coast ports.

Citing the struggling national economy and the war on terrorism, President George W. Bush responded to the port shutdown by invoking provisions of the 1947 Taft-Hartley Act to impose an 80-day "cooling off period" for negotiations to continue without further work interruption. Presidents have taken similar action in 11 previous port closures, but only three of those disputes were resolved within the 80-day period.

"Although it was the right thing to do, invocation of Taft-Hartley was merely

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