Foundation Action

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

Vol. XXXVIIII, No. 1 | 8001 Braddock Road • Springfield, Virginia 22160 | www.nrtw.org | January/February 2019

U.S. Supreme Court Asked to Hear Case Challenging Monopoly Bargaining Power

Homecare providers challenge mandatory union 'representation' as First Amendment violation

WASHINGTON, D.C. – With free legal representation provided by National Right to Work Foundation staff attorneys, a group of homecare providers seeking to care for their sons and daughters without union boss interference have taken their case to the U.S. Supreme Court.

The providers' lawsuit, *Bierman v. Dayton*, challenges a Minnesota scheme that forces thousands of providers under the exclusive monopoly "representation" of Service Employees International Union (SEIU) officials.

Bierman follows on the heels of *Janus v. AFSCME*, argued and won at the Supreme Court by Foundation staff attorneys. In *Janus*, the Court declared forced union fees for public sector employees to violate the First Amendment and opened the door to further cases seeking to uphold workers' right of freedom of speech and freedom of association.

Suit: Monopoly Bargaining Violates Freedom of Association

Teri Bierman and the seven other petitioners provide homecare services to their sons and daughters and receive state Medicaid assistance to help pay for the care.

After Minnesota declared homecare providers to be "state employees" solely for unionization purposes, SEIU Healthcare Minnesota officials moved to put all under the "exclusive representation" of union officials.

SEIU bosses force Teri Bierman (pictured with her family) to affiliate with the union as a condition of caring for her own daughter in her own home.

Once granted, "exclusive representation" made union officials the state-designated representative of all providers, even those opposed to unionization and who would prefer to represent themselves or be represented by a different organization.

SEIU officials notified the state that, if the union was certified, it would not force non-members to pay union fees, which the U.S. Supreme Court held to be unconstitutional for homecare providers in the Foundation-won *Harris v. Quinn* decision in 2014. Union officials would still, however, have the power to act as homecare providers' sole "representative" in lobbying the state.

Concerned that the impending vote could empower union bosses to interfere with their care for their children, the group of nine homecare providers came to Foundation staff attorneys to challenge the encroachment on their First Amendment rights.

In August 2014, SEIU officials won a sham mail-in election in which just 13 percent of the nearly 27,000 care providers voted in favor of SEIU affiliation.

Consequently, even though seven out of eight providers didn't vote for unionization, SEIU officials are now empowered to deal with the State for all care providers.

"The sparse vote only adds insult to injury for these homecare providers oppposed to union affiliation," said National Right to Work Foundation Vice President and Legal Director Ray LaJeunesse. "It's wrong, and contrary to the

*See **Monopoly Bargaining Power** page 8*

IN THIS ISSUE

Workers Challenge Big Labor's 'Window Period' Schemes to Restrict *Janus* Rights

Union bosses attempt to block public employees from ending union dues payments

TRENTON, NJ – The Foundation's Supreme Court victory in *Janus v. AFSCME* was a direct hit on Big Labor's forced fees coffers. As government employees have begun exercising their *Janus* protections, union officials have attempted to avoid the Supreme Court precedent and continue violating the rights of the workers they claim to represent.

Foundation staff attorneys are currently litigating more than fifteen cases to enforce the *Janus* decision. Recently, Foundation staff attorneys filed several class action lawsuits challenging union officials' "window period" schemes, arbitrary windows of time limiting when employees can exercise their First Amendment right to refrain from subsidizing a union.

Foundation staff attorneys are litigating several class action lawsuits for civil servants, including teachers Susan Fischer (left) and Jeanette Speck, who are victims of union officials' coercive "window period" schemes.

NJ Teachers Challenge State Law Limiting *Janus*

Before *Janus*, New Jersey public school teachers Susan Fischer and Jeanette Speck, along with five million other public sector workers, were required to subsidize a union even if they were not union members.

"You have to pay if you join and pay if you don't join," said Fischer. "That was so un-American to us."

Days after the monumental ruling at the Supreme Court, both teachers resigned their union memberships under the *Janus* decision's protection of their choice to completely refrain from supporting a union. However, the teachers were informed that they could only stop payments and withdraw their membership during an annual 10-day window period.

In anticipation of *Janus*, New Jersey state legislators enacted a law in May to limit workers from exercising their rights under the then-pending Supreme Court decision except during the annual 10-day window. Fischer and Speck sought free legal aid from Foundation staff attorneys to file a lawsuit arguing that the law is unconstitutional and must be struck down.

In the class action lawsuit, filed against the Township of Ocean Education Association (TOEA), the New Jersey Education Association (NJEA), and the National Education Association (NEA) unions, Fischer and Speck also seek a refund of the union dues forced from their paychecks. The lawsuit asks the U.S. District Court to certify a class to include all other public employees whose attempts to resign and cease subsidizing a union following *Janus* have been rejected by the NJEA and its affiliates.

CA Homecare Provider Seeks to Stop Unconstitutional Forced Fees

Delores Polk, a California home healthcare provider who cares for her daughter, is not a voluntary member of an SEIU

*See **Class Action Lawsuits** page 6*

Foundation *Action*

Sandra Crandall	Chairman, Board of Trustees
Ray LaJeunesse, Jr.	Vice President and Legal Director
Don Loos	Vice President
Patrick Semmens	Vice President and Editor-in-Chief
Mark Mix	President

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

Public Employees Hit Union with Charges for Intimidation and Discrimination

California workers targeted by union official for opposition to unionization

SACRAMENTO, CA – After a union official attempted to search their emails to harass and intimidate them for seeking to exercise their rights, three California public sector workers came to Foundation staff attorneys for free legal aid in filing charges.

Ryan Wagner, Brett Day, and Mark Pipkin work at the Sacramento-Yolo Mosquito & Vector Control District. Their employer notified them that an Operating Engineers (IUOE) Local 3 official had used the state's public record request system to request copies of all three employees' emails.

Three workers, including Ryan Wagner (left) and Mark Pipkin, turned to National Right to Work Foundation staff attorneys for free legal aid after a union boss illegally attempted to search their emails.

Union Official Harasses Workers for Seeking to Remove Union

The union official requested copies of emails with keywords such as "decertification," "PERB," "union," "decertify," "how to get rid of union," "Public Employee Relations Board," and "Meyers Milias Brown Act." The terms are related to the employees' legal rights under California law, specifically the Meyers-Milias-Brown Act (MMBA), which includes county and municipal employees' right to remove a union that has lost the support of a majority of workers.

Under the MMBA, workers have a right to abstain from union membership and participation in union activities. Unions are prohibited from interfering with, intimidating, restraining, coercing, or discriminating against any public employee who chooses to exercise those rights.

In response to the union official's attempt to harass them for being critical of the union, Wagner, Day, and Pipkin sought free legal assistance from Foundation staff attorneys in filing unfair labor practice charges against IUOE Local 3 with the California Public Employee Relations Board (PERB).

In the charge, Foundation staff attorneys argue that the union official's requests violate the workers' rights under California's labor law. As a remedy for the illegal intimidation, the three workers ask that union officials be required to post notices informing all employees of their right to refrain from union activities under California law, and that the union officials acknowledge they violated the workers' legal rights and cease the illegal activities.

Before the Foundation's victory at the Supreme Court in *Janus v. AFSCME*, public sector employees in California could be required to pay union dues or fees to get or keep a job. After *Janus* upheld government employees' First Amendment right to refrain from funding union speech without fear of losing their jobs, over five million workers – including Wagner, Day, and Pipkin – were freed from forced union dues.

However, the three workers are still stuck under IUOE Local 3's monopoly bargaining contract and so-called "representation." A decertification election, about which the union official had sought to comb the workers' communications, would force the union to prove it actually has the support of at least a majority of the workers it claims to represent. If a majority of workers vote against the union in a secret ballot decertification election, the unwanted union would be removed from the workplace.

"This case shows that union officials will go to any lengths to try to trap workers under a union monopoly they oppose," said Patrick Semmens, vice president of the National Right to Work Legal Defense Foundation. "Apparently, IUOE union bosses are so fearful of letting workers vote on unionization, that they are willing to harass and attempt to intimidate workers whom they claim to 'represent.'"

Workers Sue Labor Board Over Rule Blocking Them From Holding Vote to Remove Union

School bus drivers' petition for a decertification election blocked under 'settlement bar' rule

PITTSBURGH, PA – Two Pennsylvania school bus drivers have filed a federal lawsuit against the National Labor Relations Board (NLRB) after the Board blocked their petition to hold an election to remove an unwanted union from their workplace.

Marcia Williams and Karen Wunz, employed by Krise Transportation, filed their lawsuit to challenge the NLRB "settlement bar" rule. That rule blocks employees in a union monopoly bargaining unit from holding a secret ballot election to decertify the union until an NLRB-mandated period of time after a settlement agreement between the employer and the union. The complaint asserts that this Board-created policy violates the workers' rights under the National Labor Relations Act (NLRA).

NLRB Blocks Pennsylvania Bus Drivers' Attempt to Oust Unwanted Union

In March, Krise Transportation and Teamsters Local 397 (the union with monopoly bargaining power over Williams, Wunz, and their coworkers) entered into a settlement agreement in an unfair labor practice case. The agreement included a clause that barred workers from challenging Teamsters Local 397 union officials' monopoly bargaining status for a year after the officials' first bargaining session with Krise. Williams and Wunz were not parties to the agreement.

In May, Williams filed a petition with the NLRB to decertify Teamsters Local 397. Out of 28 Krise employees, 24 employees signed the petition to oppose union officials' representation. Despite the overwhelming opposition to the union, the NLRB Regional Director blocked their decertification petition using the "settlement bar" rule. Williams requested that the NLRB review the Regional Director's decision, but the NLRB upheld the dismissal and blocked the employees' decertification petition.

Williams and Wunz are represented free of charge by Foundation staff attorneys in their attempt to free themselves and their coworkers from unwanted Teamsters union "representation."

Lawsuit: 'Settlement Bar' Rule Violates Workers' Rights

In the federal lawsuit, Foundation staff attorneys argue that the NLRB's "settlement bar" rule conflicts with the clear text and plain meaning of the NLRA. The NLRA requires the Board to investigate any petition in which an employee alleges that a union no longer commands a majority of the workers' support, and that if a question of representation exists the Board must direct a secret ballot election.

However, the NLRB's "settlement bar" rule blocks Williams, Wunz, and their coworkers from raising a question concerning representation and forces them to submit to the monopoly bargaining privileges of a union they oppose. Foundation staff attorneys point out that nothing in the NLRA grants the Board the authority to issue a "settlement bar" rule blocking employees, even for a "reasonable time," from raising a question concerning representation, "let alone a rule based merely on the employer's settlement of unfair labor practice charges to which the employees were not parties."

Williams and Wunz ask the court to declare the NLRB's "settlement bar" rule a violation of the Board's Congressionally delegated authority and to order the Board to move forward with their decertification petition.

"The National Labor Relations Act is premised on the notion of employee rights to associate or refrain from associating with a union. Yet the NLRB has concocted several rules that undermine the Act by blocking workers from voting out unwanted representation," commented Mark Mix, president of the National Right to Work Foundation. "Such doctrines have been restricting workers' voices for far too long. Ms. Williams and Ms. Wunz are standing up to challenge the Board's union boss-friendly practices, and the Foundation is proud to help them challenge this policy that directly contradicts their rights under federal labor law." ⚖

School Employees Seek Refunds and an End to Union Bosses' Illegal Forced-Dues Demands

Citing Janus*, Michigan civil servants file lawsuit to challenge coercion over forced union fees*

LANSING, MI – Even after Michigan enacted its popular Right to Work Law protecting workers from being forced to pay union dues or fees as a condition of employment, union officials continued to harass and threaten two public school employees in attempts to illegally extract forced union fees from them.

After years of union bosses' intimidation tactics, Linda Gervais and Tammy Williams filed a federal class action lawsuit, with free legal aid from Right to Work Foundation staff attorneys, to enforce their First Amendment protections under the Foundation-won *Janus v. AFSCME* decision. Their lawsuit demands that union officials stop the harassment, including the use of debt collectors, and refund dues illegally obtained from potentially thousands of other victims.

Linda Gervais is one of the independent-minded Michigan workers receiving help from Foundation staff attorneys to enforce Michigan's Right to Work Laws and halt union bosses' illegal intimidation tactics.

Michigan Education Association Union Bosses Ignore Law and Harass Workers for Dues

Gervais and Williams both are employees of the Port Huron Area School District. Both workers exercised their right to resign their union memberships in September 2013, within a year after Michigan enacted Right to Work legislation freeing employees to choose whether or not to financially support a union without fear of being fired.

However, Michigan Education Association (MEA) union officials refuse to acknowledge that Gervais and Williams have resigned their union membership and continue to claim that the workers still owe union dues.

Ignoring the Right to Work law that protects workers' right to refrain from subsidizing a union, MEA agents contacted Gervais and Williams dozens of times demanding hundreds of dollars worth of back dues. Although the workers were under no legal obligation to pay, union agents threatened to take both women to court to extract the fees.

Foundation Continues to Defend Michigan Right to Work Law -- Litigated More Than 100 Cases In Michigan

Gervais and Williams sought free legal assistance from Foundation staff attorneys in filing a class action lawsuit to put an end to MEA officials' demands. The complaint asks the court to certify a class including other workers who faced, or continue to face, the same harassment, along with refunds for all workers who paid the dues MEA officials unlawfully demanded.

Their lawsuit seeks to apply to the class the protections established in *Janus*. In the landmark *Janus* decision, the Supreme Court ruled that union officials violate the First Amendment by demanding or coercing public employees to pay union dues or fees without the workers' affirmative, clear consent.

Since the 2012 passage of Right to Work legislation in Michigan, Foundation staff attorneys have litigated more than 100 cases in the state to combat compulsory unionism and union bosses' attempts to stop workers from exercising their Right to Work.

"As union bosses' attempts to counteract Michigan's Right to Work Law demonstrate, the fact that union membership and financial support are voluntary under the law doesn't mean Big Labor will obey that law," said Ray LaJeunesse, vice president and legal director of the National Right to Work Foundation. "Thankfully, armed with the Foundation-won *Janus* Supreme Court decision, Linda, Tammy, and countless other Michigan educators are a step closer to ending this multi-year campaign of illegal dues threats."

Class Action Lawsuits Seek to Halt Union Boss Schemes to Undermine *Janus*

continued from page 2

local union. However, pressured by an unsolicited call from an SEIU telemarketer, Polk verbally agreed to join the union and pay dues.

When Polk reconsidered days later and attempted to resign her membership and stop paying union dues, union officials informed her via letter that she had missed the "window period" to cut off payments and must wait another year before opting out.

Polk was never notified of her First Amendment rights, protected by *Janus*, to refrain from joining or subsidizing SEIU Local 2015, and did not sign any written documentation agreeing to be a union member or waiving her First Amendment rights as the *Janus* ruling requires.

Despite her lack of consent, the California State Controller, at the behest of SEIU Local 2015, continues to deduct union dues from the Medicaid funds Polk receives to care for her daughter.

Polk came to Foundation staff attorneys to file a lawsuit challenging the scheme. Her lawsuit asks the court to certify a class, including the potentially thousands of home healthcare providers who have been forced to pay union dues even after notifying the State Controller or SEIU Local 2015 officials, that they do not consent to financially supporting the union.

Ohio Civil Servants Sue AFSCME to Exercise First Amendment Rights

After *Janus*, several Ohio public sector workers each resigned their memberships from AFSCME Council 8. Despite the employees' desire to refrain from subsidizing the union, AFSCME union officials have continued siphoning union dues from the workers' paychecks, citing a union policy that restricts revocation of dues deductions to a narrow 15-day window before a new monopoly bargaining contract is enforced.

Even though AFSCME lost the Janus ruling at the Supreme Court, AFSCME officials, including union president Lee Saunders (left), continue to block workers from exercising their First Amendment rights.

The workers sought free legal aid from Foundation staff attorneys to file a complaint. In the lawsuit, filed on behalf of all other Ohio public employees who were blocked by AFSCME Council 8 from exercising their *Janus* rights after attempting to cease paying union dues and fees, the workers ask the court to declare AFSCME's revocation policy unconstitutional and to stop union officials from collecting dues from non-consenting public employees. The class potentially includes thousands of workers.

On the same day that lawsuit was filed, Foundation attorneys filed another class action lawsuit against AFSCME for an Ohio civil servant seeking to reclaim forced union fees coerced from workers by AFSCME Local 11 officials before *Janus*. (Read more about that case on page 7.)

These most recent lawsuits join several others in which Foundation staff attorneys are providing free legal aid to public employees, challenging policies that block their First Amendment rights under *Janus*. In just two examples, Pennsylvania school bus driver Michael Mayer and California court worker Mark Smith each filed federal complaints after union officials blocked their attempts to exercise their *Janus* rights.

"Contrary to the wishes of union bosses and their allies in state legislatures, First Amendment rights cannot be limited to just a matter of days out of the year," said Mark Mix, president of the National Right to Work Foundation. "The Foundation-won *Janus* decision at the Supreme Court recognized that all civil servants may exercise their rights to free speech and free association by resigning their union membership and cutting off union payments whenever they choose. Foundation staff attorneys remain committed to enforcing the constitutional rights of millions of public sector workers guaranteed by *Janus*."

Learn more about *Janus* at
MyJanusRights.org

Ohio Civil Servant Sues for Return of Coerced Union Fees

Class Action Lawsuit Seeks to enforce Janus

COLUMBUS, OH – The Foundation's victory at the U.S. Supreme Court in *Janus v. AFSCME* opened the door for public sector workers to reclaim years' worth of forced union fees seized without their consent. In *Janus*, argued and won by Foundation staff attorneys, the Court held that no government employee can be forced to pay union dues or fees as a condition of employment. Government employees are now seeking to hold union officials accountable for money seized without consent before the *Janus* decision.

Foundation staff attorneys have already filed several class action lawsuits to reclaim unconstitutionally seized fees from Big Labor's coffers for workers who earned it in the first place. Together, the lawsuits seek over $170 million in forced-fees refunds. That number is anticipated to grow as the Foundation receives more requests for free legal aid to enforce *Janus*.

Ohio Worker Demands Refunds of Forced Fees

One recent lawsuit, filed by an Ohio public sector worker, seeks to hold union officials accountable for potentially millions in forced fees.

As an employee at Ohio's Department of Taxation, Nathaniel Ogle exercised his legal right to refrain from membership in the Ohio Civil Service Employees Association (AFSCME Local 11). However, before *Janus*, Ogle and many other union non-member employees were compelled to pay union fees.

After the *Janus* decision, Ogle came to Foundation staff attorneys for free legal aid in filing a federal lawsuit against AFSCME Local 11. The lawsuit asks that the court certify a class to include all other employees who during the statutory limitations period were forced by

With free legal aid from Foundation staff attorneys, Nathaniel Ogle seeks the return of forced union fees to thousands of workers.

AFSCME Local 11 to pay union fees without their consent. AFSCME Local 11 has monopoly bargaining power over more than 30,000 Ohio government employees, meaning a potential class of forced-fee victims may have union fees totaling millions of dollars due to them.

Foundation attorneys continue to enforce the *Janus* precedent through several other class action lawsuits to refund victims of union boss coercion. The victory strengthened the ongoing *Hamidi v. SEIU* case, currently pending at the Ninth Circuit U.S. Court of Appeals.

In *Hamidi*, a certified class of over 30,000 California workers is challenging SEIU Local 1000 union officials' "opt-out" policy that required workers to affirmatively opt out of the portion of union fees that workers cannot be legally required to pay. Foundation staff attorneys notified the Court of Appeals of the *Janus* decision's relevance to *Hamidi*, and the case was argued in December.

"Thanks to the landmark *Janus* ruling, tens of thousands of public sector employees are now a step closer to finally receiving recompense for years of being forced to hand over their hard-earned money to a union under threat of being fired," said Patrick Semmens, vice president of the National Right to Work Foundation. "The Foundation will continue to enforce workers' First Amendment protections."

AVOID CAPITAL GAINS TAXES WITH A STOCK GIFT TODAY

Did you know that you can make a gift to the National Right to Work Foundation today through a gift of securities? While gifts of cash are still the most popular way to support the Foundation and its Strategic Litigation Program, a gift of stocks or other securities can provide additional tax benefits for the contributor.

A gift to the Foundation of an appreciated stock (or other security) that you have held for at least a year, will allow you to bypass any capital gains taxes and claim a deduction for the full current market value of the stock.

This extra tax advantage is why a gift of stock or securities is an attractive option for you as a supporter of the Foundation. To make a gift of stock today or for more information, please contact Ginny Smith at 1-800-336-3600, Ext. 3303 at the Planned Giving Department.

Make a Donation of Stock or Electronic Transfers of Securities to:

Merrill Lynch
11951 Freedom Drive, 17th Floor
Reston, VA 20190
DTC #: 5198
FBO: National Right to Work Legal Defense and Education Foundation, Inc.
Foundation Account #: 86Q-04155

SCOTUS Asked to Hear Challenge to Monopoly Bargaining Power

continued from page 1

principle of freedom of association, to force them to affiliate with and accept the so-called representation of a private organization they oppose."

The homecare providers continue to challenge the forced union "representation." Their legal odyssey has so far taken four and a half years, and is now at the steps of the Supreme Court. In December, Foundation staff attorneys filed a petition for certiorari with the High Court, asking it to hear the case.

Janus Victory Opens Door for Further First Amendment Protections

By asking the Court to declare it a First Amendment violation to force homecare providers to submit to union officials' sole power to speak for them to the state, Foundation staff attorneys seek to build on the *Janus* victory in June 2018. In *Janus*, Justice Samuel Alito wrote in his opinion for the Court: "Designating a union as the employees' exclusive representative substantially restricts the rights of individual employees."

Foundation staff attorneys are litigating another challenge to union officials' monopoly bargaining privileges in *Mentele v. Inslee,* brought by Washington homecare providers. *Mentele* was argued at the Ninth Circuit U.S. Court of Appeals in December.

"Forcing folks who care for their relatives into forced union representation is a slap in the face of fundamental American principles we hold dear," continued LaJeunesse. "If the Supreme Court agrees to hear *Bierman*, these homecare providers will be one step closer toward vindicating their rights and establishing First Amendment protections for thousands of other individuals."

Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter:

The aftermath of your Foundation's historic *Janus v. AFSCME* Supreme Court victory has confirmed two things: union bosses are willing to violate workers' rights to cling to their forced-fees privileges, and the National Right to Work Foundation will not rest until every worker is freed from compulsory unionism's abuses.

As more and more government employees have moved to exercise their right under *Janus* to stop subsidizing union boss activities, the Foundation continues to take on Big Labor for resisting the precedent and violating the Constitution.

Foundation staff attorneys are litigating class action lawsuits to assist hundreds of thousands of public sector workers across the country trapped in forced dues by union "window period" schemes, a tactic in which union bosses attempt to limit workers' First Amendment rights to a narrow window of time.

Even as the Foundation enforces the *Janus* precedent, we are at the steps of the Supreme Court once again. By asking the Court to hear *Bierman v. Dayton*, Foundation staff attorneys are launching an opportunity to establish a precedent freeing homecare providers from union officials' coercive monopoly bargaining powers.

Such a challenge to union boss privileges would shake the pillars of compulsory unionism.

The *Janus* milestone and these new opportunities are made possible by the generosity of Foundation supporters like you, but much work remains to be done. Compulsory unionism is far from extinct.

With your continued support, the Foundation will fight until every American worker is free from forced unionism.

Sincerely,

Mark Mix