



Foundation Action

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of the National Right to Work
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Workers Nationwide Press NLRB to Scrap Policy Blocking Right to Vote Out Unions

Foundation cases contend 'contract bar' must be eliminated to protect employee freedom

WASHINGTON, DC - Foundation attorneys in January filed a Request for Review to the full National Labor Relations Board (NLRB) in Washington, D.C. The Request defends the right of Virginia Transdev workers to have a vote to remove unpopular Office and Professional Employees International Union (OPEIU) Local 2 bosses from power at their workplace.

The Transdev employees, who work at the Fairfax Connector bus service in Northern Virginia, now join Foundation-backed workers in Delaware and Puerto Rico, all of whom are urging the NLRB to eliminate the "contract bar." That is a non-statutory NLRB policy which forbids employees from exercising their right to vote out an unpopular union in an NLRB-supervised "decertification election" for up to three years after their employer and union finalize a monopoly bargaining contract.

Foundation attorneys point out in each of these cases that the "contract bar" appears nowhere in the National Labor Relations Act (NLRA), the federal law the NLRB is charged with enforcing, and is merely the result of past union boss-friendly decisions by the Board. They also argue that the bar undermines workers' basic right under the NLRA to remove unions that lack majority support.

"The 'contract bar' undermines the fundamental objective of federal labor law: Employee free choice. It makes rank-and-file employees



Foundation staff attorneys are assisting Delaware poultry workers in challenging UFCW bosses' attempts to use the "contract bar" to trap them in union ranks.

prisoners of an unpopular union, with no way out for up to *three years*," commented National Right to Work Foundation President Mark Mix. "This inevitably creates an environment in which, as these employees can certainly attest, it's impossible to hold self-serving union bosses accountable because workers are denied the right to vote them out."

Unpopular OPEIU Bosses Went Behind Workers' Backs to Sign Contract

The petitioner in the Transdev workers' case, Amir Daoud, submitted a petition on November 10, 2020, signed by the necessary number of his coworkers to trigger a "decertification election" in his workplace. This was after news had gotten around that an OPEIU union

agent had told some employees in October he had "negotiated a new agreement" with Transdev management and "intended" to sign it without a ratification vote." Workers had already voted down

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Oregon ABC Cameraman Wins Ruling Against Illegal Dues-Seizing NABET Bosses

Administrative Law Judge orders union boss to refund all illegally taken money

PORTLAND, OR – Jeremy Brown, a “daily hire” cameraman for ABC who had worked on and off for the company since 1999, would not have thought that a new president taking over the National Association of Broadcast Employees and Technicians (NABET) Local 51 union would mean anything for him when he resumed work in 2016. After all, he had worked for ABC for nearly three years, and the union had never even contacted him and he had never joined the union.

Then, in 2019, he received a series of letters from the new union honcho, demanding he pay nearly \$10,000 in initiation fees and so-called “back-agency dues.” Brown quickly obtained free legal aid from National Right to Work Legal Defense Foundation staff attorneys and asserted his rights under the Foundation-won *CWA v. Beck* Supreme Court decision.

Beck prevents private sector union bosses from forcing employees who have abstained from formal union membership to pay for anything unrelated to the union’s bargaining functions, such as political expenses. Moreover, it requires union officials to provide information



He’s done playing games: After cameraman Jeremy Brown sought free legal aid from the Foundation, an NLRB Administrative Law Judge ruled against NABET bosses for violating his Beck rights for years.

on the union’s fee calculation and expenditures to non-members.

New NABET Chief Demanded Thousands, Then Snubbed Cameraman’s Beck Rights

Because Brown works primarily in non-Right to Work states, he can be legally forced as a condition of employment to pay some fees to union bosses.

After receiving the baffling, belated dues demands, Brown emailed the new union president, Carrie Biggs-Adams, asking for clarification. He also exercised his *Beck* rights by objecting “to the collection and expenditure by the union of a fee for any purpose other than” certain bargaining activities. Believing that he would be fired if he did not agree to pay union dues, he filled out a form authorizing NABET to take full dues from his paycheck, but did so under duress.

Biggs-Adams ignored several follow-ups by Brown. According to legal documents, she “believed Local 51 had no obligation to [reply to Brown] because *Beck* objections” are handled only by the union’s national headquarters under NABET rules. Even so, she never apprised Brown of NABET’s national mailing address, or provided him the dues reduction or any of the information mandated by *Beck*.

In December, Brown won a decision from a National Labor Relations Board (NLRB) Administrative Law Judge (ALJ) about the union’s *Beck* rights violations.

The ALJ’s decision holds the NABET union violated Brown’s rights under the National Labor Relations Act (NLRA) through its officials’ omissions and the failure to reduce his dues. The ALJ ordered NABET Local 51 to provide Brown with “a good faith determination of the reduced dues and fees objectors must pay,” and “reimburse Brown for all dues and fees collected” beyond what is required under *Beck*, with interest.

“While this decision vindicated Mr. Brown’s legal rights, it also demonstrates why every American worker deserves the protection of a Right to Work law to shield them from union boss threats to pay up or be fired,” commented National Right to Work Foundation Vice President Patrick Semmens. ✚

Foundation Action

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Ohio Municipal Employee Challenges Deceitful Unconstitutional Dues Deductions

IUOE bosses' scheme renames forced-fee payments clearly outlawed in Janus decision

CINCINNATI, OH – With free legal aid from National Right to Work Foundation staff attorneys, City of Hamilton employee Timothy Crane is suing International Union of Operating Engineers (IUOE) Local 20 union officials and the City of Hamilton for seizing a compulsory fee from his paycheck in violation of his First Amendment rights.

His complaint, filed in the U.S. District Court for the Southern District of Ohio, contends that union bosses are infringing on his rights under the *Janus v. AFSCME* decision by forcing him to pay a so-called “agreement administration fee” equal to more than 90 percent of full union dues as a condition of his employment.

In the 2018 Foundation-won *Janus* decision, the High Court ruled that no public worker can be forced to pay union dues or fees as a condition of getting or keeping a job. The Court also held that union dues or fees can only be deducted from a public employee’s paycheck if that employee clearly and affirmatively waives his or her right not to pay. Justice Samuel Alito wrote for the Court majority that “such a waiver cannot be presumed” by union or state officials.

Even After City Employee Exercised His *Janus* Rights, Union Honchos Seized Fees

Crane sent letters to IUOE union officials in both August and September of 2020, attempting to exercise his First Amendment *Janus* right to end dues deductions from his paycheck. After sending these two letters, however, he discovered that an “agreement administration fee” was now being taken from his pay by the City at the behest of IUOE union bosses.

Crane’s complaint contends that this is just a so-called “agency fee” -- compulsory union payments



Veteran Foundation staff attorney William Messenger successfully argued *Janus* over two years ago, but union bosses are still concocting schemes to circumvent it. Timothy Crane is now fighting a particularly flagrant example.

charged to employees who refrain from formal union membership that were definitively outlawed by the *Janus v. AFSCME* decision -- masquerading under a different name. The suit urges the District Court to declare it unconstitutional for IUOE Local 20 and the City of Hamilton to force him to pay this compulsory union fee. Crane’s lawsuit also seeks a refund of all money that the union has illegally taken from his paycheck under the unconstitutional arrangement.

Chain of Foundation-backed *Janus* Victories for Ohio Workers Likely to Continue

Since *Janus* was handed down by the Supreme Court, Foundation staff attorneys have already won favorable settlements in four cases for Buckeye State public workers who have challenged illegal union-created restrictions on the exercise of *Janus* First Amendment rights. In a July 2020 settlement in a class-action lawsuit filed by four state workers, nearly 30,000 Ohio public employees were freed from an

“escape-period” scheme imposed by Ohio Civil Service Employees Association (OCSEA) union chiefs, which limited to just a handful of days every few years the time in which a public employee could exercise his or her *Janus* rights.

“IUOE bosses, who may have thought they were going to trick employees into funding their agenda against their will with this blatantly unconstitutional scheme, have now been caught red-handed,” commented National Right to Work Foundation Vice President and Legal Director Raymond LaJeunesse. “Rank-and-file workers like Mr. Crane now see that IUOE officials are far more interested in keeping hard-earned employee cash flowing into their coffers than in respecting the First Amendment rights of the workers they claim to represent.”

LaJeunesse continued: “The string of Foundation victories for independent-minded Buckeye State employees who just want to exercise their First Amendment rights is not going to end here.” ✚

Puerto Rico Workers Ask Court to Stop Union Officials' Illegal Dues Cover-up

Union bosses threaten healthcare unless employees 'authorize' years of improperly seized dues

SAN JUAN, PR – Employees of the University of Puerto Rico have filed a motion for a preliminary injunction against the University of Puerto Rico Workers Union. The motion asks the court to block and reverse union officials' efforts to bar health insurance from employees who refuse to sign away their First Amendment rights.

It comes as part of the employees' class action lawsuit against the university's president in his official capacity and the union for illegally seizing dues from workers' paychecks without their authorization. The suit was originally filed in May 2020 with free legal assistance from National Right to Work Legal Defense Foundation staff attorneys.

The forced-dues seizures infringe on employees' rights as recognized in the 2018 Foundation-won *Janus v. AFSCME* U.S. Supreme Court decision. In *Janus*, the High Court ruled that requiring public employees to pay union dues as a condition of employment violates the First Amendment, and further held that union fees can only be taken from public employees with their affirmative waiver of the right not to pay.

Union Threats: Approve Past, Present and Future Dues or Lose Healthcare

Antonio Mendez and Jose Ramos have been employed by the University as maintenance workers since 1997 and 1996, respectively. From then, their complaint says, university and union officials "have regarded Ramos and Mendez as members of the Union" and seized dues from their paychecks, despite neither ever having signed a union membership or dues deduction authorization form.

On December 28, 2020, the lawsuit was amended to include two additional plaintiffs, Jose Cotto and Ignieris Perez, and to challenge



In an attempt to cover up their misdeeds, union bosses threatened to axe Jose Ramos' (left) and Jose Cotto's healthcare if they didn't retroactively OK years of unconstitutional dues deductions.

a recent attempt by union officials to coerce university workers into signing a document retroactively approving all previously deducted dues and consenting to an unspecified number of future deductions. According to the complaint, employees who do not comply with union officials' demands that they sign this document lose access to the union-administered healthcare plan which is paid for by the employer.

On December 30, the plaintiffs moved for a preliminary injunction to block union officials' efforts to force employees to choose between losing their healthcare and retroactively agreeing to union dues deductions taken in violation of their rights.

Union Bosses' Forced-Dues Scheme Violates First Amendment Rights

The employees' lawsuit contends that union and university officials violated the First Amendment by seizing dues from employee paychecks without written authorization, and by requiring

employees to become full union members in violation of longstanding precedent that predates *Janus*. The lawsuit additionally seeks an order forbidding further enforcement of the unconstitutional scheme and requiring the union to refund to employees dues that were seized illegally "within the . . . 15-year statute of limitations period for breach of contract."

"For years, University of Puerto Rico Workers Union bosses have gotten away with taking dues out of the pockets of those they claim to represent without ever getting their permission," said National Right to Work Foundation President Mark Mix. "Union bosses were caught red-handed violating not only workers' rights under *Janus*, but precedents going back decades against mandatory union membership.

"Now, rather than making workers whole, these union officials are doubling down on their illegal acts by taking away the healthcare of anyone who doesn't retroactively 'authorize' years of unconstitutional union dues deductions." †

Union-Label Biden Labor Board Appointee Moves to Scuttle Foundation Cases

Unprecedented: Biden removes NLRB top prosecutor despite 11 months left on his term

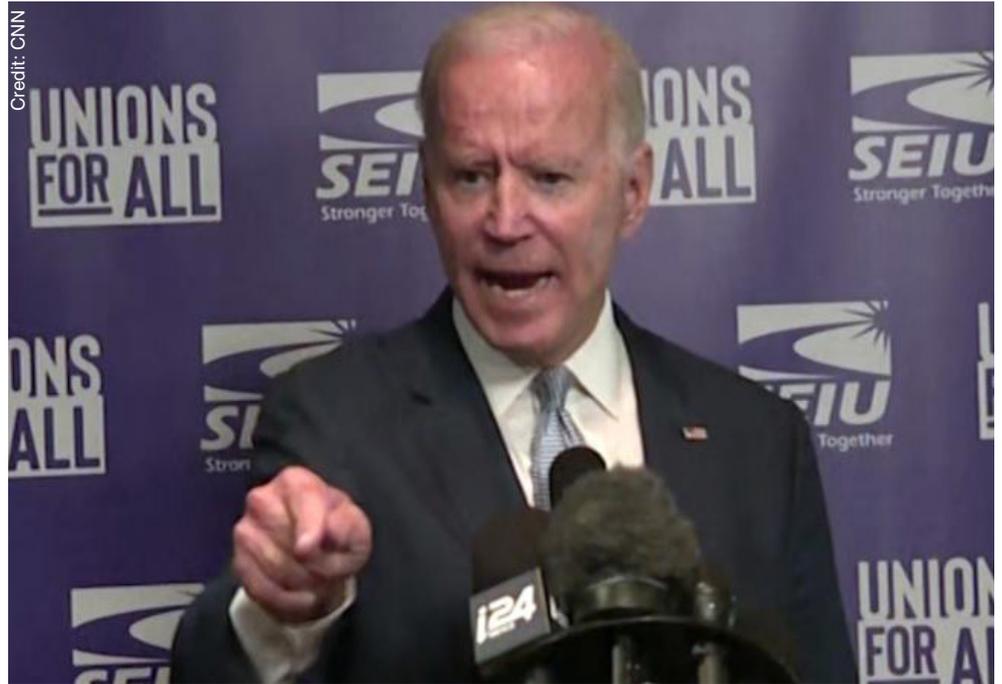
WASHINGTON, DC – With National Right to Work Foundation staff attorneys having won numerous National Labor Relations Board (NLRB) cases in recent years curtailing coercive union practices, union bosses pushed the Biden Administration to take unprecedented measures to protect Big Labor's power over rank-and-file workers.

In January, top union bosses, including Service Employees International Union (SEIU) chief Mary Kay Henry, formally demanded that upon taking office President Biden make the unprecedented move of removing NLRB General Counsel Peter Robb, despite nearly a year remaining on his term. Union officials were furious Robb had frequently sided with Foundation-backed employees in many cases during his tenure, including cases in which workers successfully challenged union boss demands that workers subsidize their spending to put Biden in the White House.

Just 23 minutes after taking office on January 20, in response to Big Labor's demands, Biden took the legally dubious action of removing Robb. Robb's Senate-confirmed term runs through November 2021.

In the 85-year history of the NLRB, no previous NLRB General Counsel had ever been fired before their four-year term -- meant to protect the office from political pressure -- expired. For example, Robb's predecessor, Obama-era NLRB General Counsel Richard Griffin, served almost a full year into Trump's presidency to complete his term.

Following Robb's unprecedented removal, Biden designated union partisan Peter Ohr as "Acting General Counsel." Within days of his installation, the ersatz General Counsel moved to undo actions taken by Robb in Foundation-backed cases, in each instance



President Biden took the radical step of firing NLRB General Counsel Peter Robb just minutes after Biden's inauguration, as multiple Robb-backed Foundation cases threatened union boss privileges."

reversing course to the benefit of Big Labor officials.

On January 29, Ohr ordered Seattle NLRB officials to stop prosecuting the Embassy Suites Pioneer Square hotel and UNITE HERE Local 8 union officials for making a backroom agreement designed to unionize housekeepers through a coercive "Card Check." The "Card Check" bypassed an NLRB-supervised secret-ballot election. The very next day after Ohr's order, Boston NLRB officials also pulled their prosecution of Boston Yotel and UNITE HERE Local 26 officials in a similar case brought by four Foundation-represented housekeepers.

Biden's "Acting" Appointee Targets Foundation Cases Scheduled for Trial

In each case, Foundation staff attorneys were prepared to argue at trial that the "top-down" agreements for "Card Check" were illegal and tainted the installation of the union.

But by pulling complaints weeks prior to when trials were set to begin before Administrative Law Judges (ALJs), Ohr blocked the cases from even being heard.

Those orders were then followed by a flurry of other activity by Ohr that included instructing local NLRB officials not to move forward with cases related to enforcing workers' *Beck* rights, which protect them from being required to fund union political activities.

"Biden's intent in firing Robb was obvious: So his handpicked NLRB replacement could move unimpeded to protect the privileges of his union boss political allies at the expense of individual workers' rights," observed National Right to Work Foundation Vice President Patrick Semmens. "Robb often sided with Foundation-backed workers, which made him a threat to Big Labor that needed to be eliminated."

Though Ohr, at Biden's behest, is weaponizing the NLRB against independent-minded workers' rights so the union elite can escape scrutiny,



Giving the Gift of Freedom

Are You Prepared for Tax Season?

Every day, National Right to Work Legal Defense Foundation staff attorneys work in the courts to defend freedom-loving workers across the country from the evils of coercive unionism. Only the generosity of our supporters makes this critical work possible!

With tax season looming, now is the time to review your and your family's tax matters for the year to come. With the new Administration reportedly considering substantial changes to tax laws, this may be a particularly advantageous time to make a *tax-deductible* gift to support your National Right to Work Foundation's mission.

Here are just a few examples of ways you can make a difference today:

1. Gifts of Cash (most popular way to receive a tax deduction in 2021);
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Three Foundation Cases Attack Pro-Union Boss ‘Contract Bar’ Policy

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an earlier union boss-promoted monopoly bargaining contract in June.

Foundation attorneys filed a Request for Review, which notes that the union agent didn't inform Daoud and his coworkers of when he planned to approve the new contract -- until *after* Daoud filed the petition. The new contract was signed by union agents on October 30 and Transdev representatives on October 31.

NLRB Region 5 in Baltimore dismissed Daoud and his coworkers' decertification petition on December 22, ruling that the "contract bar" applied because the employees' petition was submitted just after the new contract was signed, even though the employees had no way of knowing whether or when that signing would occur.

This prompted Daoud to ask the NLRB in Washington to review the case. Because Daoud recently accepted a job with Transdev outside the OPEIU's monopoly bargaining control, the Request for Review asks the NLRB to recognize his coworker Sheila Currie as the new petitioner to represent the interests of the workers who signed the decertification petition.

The Request exposes the arbitrariness of the "contract bar," pointing out that the NLRB Regional Director applied it "merely because the Union 'won the race' and signed the contract ten days" before Daoud submitted the petition, even though the petition clearly demonstrated the employees' interest in voting the union out.

VA and Puerto Rico Cases Follow Groundbreaking Effort by DE Poultry Workers

The Virginia Transdev employees, and a Puerto Rico armored transit guard who submitted a similar Request for Review on behalf of his coworkers with Foundation aid in January, are now battling



Local media continue to cover Mountaire Farms workers' effort heavily. Mark Mix appeared in a 47 ABC news segment to explain that "if the NLRB rules that the contract bar is valid, then [employee] votes will be just thrown in the trash."

the "contract bar" like Delaware Mountaire Farms poultry worker Oscar Cruz Sosa and his coworkers. For almost a year now, Cruz Sosa and his fellow employees have been fighting United Food and Commercial Workers (UFCW) union bosses' attempts to use the "contract bar" to block their valid petition for a decertification vote. The Mountaire employees are now waiting for the NLRB to issue a ruling on their case.

In that case, UFCW officials claim that the "contract bar" should apply to bar any elections at Mountaire, despite an NLRB Regional Director's decision allowing the vote because the union contract contains an invalid forced-dues clause.

When the UFCW bosses asked the full NLRB to review the Region's order allowing the election, Cruz Sosa's attorneys filed a brief urging that, if the Board granted review, it should use the opportunity to review the entire non-statutory "contract bar" policy. The Board is now doing just that. The UFCW

union bosses are even arguing that the impounded ballots *already cast* by Mountaire workers should be destroyed, claiming the election should never have been held.

The Requests for Review submitted by Foundation staff attorneys for the Puerto Rico guard and Virginia Transdev employees each request that the NLRB should either grant review or least hold the case until a decision is issued in Cruz Sosa's case. ✚

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Foundation Fights Coercive Union Tactics after Biden Power Grab

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some important Foundation cases are already before the full Board and by law out of the General Counsel's control.

Through August 27, 2021, the Trump-appointed Board majority will retain their seats and are immune to Biden's whims. That means these cases for workers still could take down erroneous union boss-friendly precedents that have harmed workers for decades.

Groundbreaking Foundation Cases Still Advancing to Full Labor Board

Among the Foundation cases pending at the full NLRB in Washington are challenges by three separate groups of workers to the pernicious "contract bar" doctrine (see page 1), a separate case about "neutrality agreements" for Corpus Christi, TX-based nurse Marissa Zamora and Michigan AT&T employee Veronica Rolader's challenge to restrictive "window period" policies which let union bosses collect forced dues even after a contract has expired.

Semmens added: "The Foundation is proud to stand with workers challenging all types of union coercion, and will continue to stand ready to defend workers against Big Labor and, when necessary, the Biden-Harris Administration." ✚

**National Right to Work
Legal Defense Foundation**

**Rated "A"
by
Charity Watch**

Source: *Charity Rating Guide*
Winter 2020-2021
American Institute of Philanthropy



Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter:

If you needed evidence of just how impactful the Foundation's legal program is, look how quickly and aggressively the Biden-Harris Administration came after us.

Only 23 minutes into Biden's presidency the White House began the process of removing the National Labor Relations Board (NLRB) General Counsel Peter Robb, and replacing him with a union partisan whose top priority appears to be undermining your Foundation's legal action for private sector workers.

Biden was still on the inauguration stage when the White House broke with over 70 years of precedent to launch the premeditated attack on the independence of the General Counsel's office.

Biden installed a handpicked Big Labor partisan at the NLRB who was given a clear mission: Shut down the National Right to Work Foundation's biggest cases immediately.

In fact, the first moves by Biden's union-label "Acting General Counsel" were to derail cases for workers victimized by union "Card Check" tactics that were about to go to trial. His next actions: Rescind legal memos issued by Robb, including several based on Foundation cases that prioritized protecting workers from being forced to fund union bosses' radical political agenda.

As the saying goes: If you're not catching flack, you're not over the target.

Needless to say, this is merely the opening salvo in what will be a sustained assault on your Foundation and the independent workers for whom we fight. But no matter what the Biden-Harris Administration and union operatives throw our way, you can be sure that your Foundation is prepared to fight back.

You see, Foundation staff attorneys have decades of practical experience effectively challenging bureaucratic dictates in federal court. We plan to use every tool at our disposal to stop Biden from implementing Big Labor's radical agenda through federal fiat over the next four years.

Of course, none of this is possible without your generous support. I look forward to continuing to partner with you to oppose forced unionism.

Sincerely,