



Foundation Action

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

Vol. XLI, No. 5

8001 Braddock Road • Springfield, Virginia 22160

www.nrtw.org

September/October 2021

Sixteen States Back Foundation’s Petition to High Court in Chicago Educator Case

Amicus brief: Unions “refuse to stop collecting dues despite unequivocal employee demands”



“Janus has been ignored,” wrote sixteen attorneys general in their amicus brief supporting Ifeoma Nkemdi and Joanne Troesch’s petition pressing the Supreme Court to hear their case and declare “escape periods” a First Amendment violation.

WASHINGTON, DC – In July, sixteen attorneys general threw the support of their states behind Chicago Public Schools educators Ifeoma Nkemdi and Joanne Troesch, who are urging the U.S. Supreme Court to hear their case defending their First Amendment right to cut off union financial support as recognized in the Foundation-won *Janus v. AFSCME* decision.

In an amicus brief encouraging the High Court to hear the case, attorneys general from Alaska, Alabama, Arizona, Arkansas, Indiana, Kansas, Louisiana,

Missouri, Montana, Nebraska, South Carolina, South Dakota, Tennessee, Texas, Utah, and West Virginia argue that “escape period” restrictions like the one that Chicago Teachers Union (CTU) bosses foisted on Troesch and Nkemdi are a widespread threat to public employees’ rights under the *Janus* Supreme Court decision.

In 2018, the Supreme Court ruled in *Janus v. AFSCME* that public employees’ First Amendment rights are violated when they are forced to fund a union as a condition of employment. The Court also held

that union dues can only be taken from a public employee with an affirmative and knowing waiver of that employee’s First Amendment right not to pay.

Unions Are Seizing Money from ‘Tens of Thousands’ Unconstitutionally, Brief Says

The CTU-concocted “escape period” Nkemdi and Troesch are challenging blocks employees from exercising their First Amendment *Janus* right to end union financial support except during one month per year. The educators’ petition for writ of certiorari presses the High Court to hear their case to affirm that *Janus* does not permit union bosses to profit from schemes that constrict workers’ constitutional right to refrain from subsidizing a union.

See ‘Attorneys General Bolster’ page 7

IN THIS ISSUE

- 2 Foundation Assists Workers in Kicking Out Unwanted Union Bosses
- 3 Victory: CO Worker Wins Against Union Bosses Who Demanded Illegal \$21,000 Fine
- 4 NLRB Keeps Union Bosses in Power Despite Unanimous Opposition
- 5 University of California Lab Assistant Challenges California’s Anti-*Janus* Law

Foundation Assists Workers in Kicking Out Unwanted Union Bosses

Worker decertification efforts target SEIU, Teamsters union officials

CHICAGO, IL – Workers in three different states recently waged successful campaigns to remove the union bosses who controlled their workplaces. In each instance workers utilized free legal assistance from National Right to Work Legal Defense Foundation staff attorneys to navigate the overly-complicated process for getting a vote to remove an unwanted union.

The National Labor Relations Act (NLRA) -- which is enforced by the National Labor Relations Board (NLRB) -- gives workers the right to hold a decertification vote to end union officials' monopoly bargaining power over workers. In theory, under the NLRA, workers who collect signatures from 30 percent of a workplace can hold a decertification vote at any time, provided there has not been a unionization vote there in the previous 12 months.

However, because of complicated NLRB doctrines compounded by union legal tactics, obtaining a vote to decertify a union can often be a challenge. That's why workers in workplaces across the country turn to the Foundation for free legal aid as they seek to hold such a vote.



Desert Springs "Decert": Tammy Tarantino (third from left) and her fellow healthcare workers at Desert Springs Medical Center booted SEIU union bosses from their workplace with Foundation aid, voting by a 3-1 margin for decertification.

Workers' ability to exercise their right to vote out an unwanted union is especially important in states without Right to Work protections, where union bosses can use their monopoly bargaining powers to force every worker to pay union dues or fees or else be fired.

But workers' right to decertify a union is still critical in Right to Work states, because even without forced union payments, federal law gives union bosses the power to impose

their so-called "representation" and resulting union monopoly contracts on members and non-members alike at unionized workplaces. Only once a union is decertified are workers free to represent themselves and communicate with their employer directly.

Foundation Helps Workers Navigate Tricky Legal Process

Highlighting recent activity, three separate workplaces have waged successful decertification efforts.

Petitioner Tim Mangia led the charge at Chicago's Rush University Medical Center, where he and his fellow maintenance workers voted to remove Teamsters union bosses by a better than 3-1 margin. Separately, in Del Rio and Eagle Pass, Texas, salesmen for Frito-Lay also voted to free themselves from unwanted Teamsters union "representation" following free assistance from Foundation legal staff.

Meanwhile, Tammy Tarantino and her fellow technical employees at the Desert Springs Hospital Medical Center in Las Vegas successfully removed a Service Employees International Union

See '*Foundation Aid*' page 7

Foundation Action

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Distributed by the
National Right to Work Legal Defense Foundation, Inc.
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Victory: CO Worker Wins Against Union Bosses Who Demanded Illegal \$21,000 Fine

Union must back down after trying to punish worker who left union, found new job

COLORADO SPRINGS, CO – Colorado metal worker Russell Chacon was angry when he received a letter from International Association of Sheet Metal, Air, Rail, and Transportation Workers (SMART) Local 9 union officials in May, demanding he pay \$21,252 in disciplinary fines. Six months earlier he had resigned his union membership, and had left his job at Colorado Sheet Metal to work for Rocky Mechanical, an employer that isn't under the control of Sheet Metal union bosses.

Union officials demanded Chacon fork over the ruinous sum to cover an alleged union "loss of funds" for a period through May 31, which included days that Chacon had not even worked yet.

Sheet Metal Union Officials Violated Established Law to Harass Worker

Chacon obtained free legal representation from National Right to Work Foundation staff attorneys and filed federal unfair labor practice charges against the Sheet Metal union at National Labor Relations Board (NLRB) Region 27 in Denver. He asserted that the fines were levied against him specifically in retaliation for his leaving the union and finding new work.

Soon after the Foundation-assisted charges, Sheet Metal union officials dropped the illegal fine demands, and are now forced by a settlement to inform workers that they will not subject them to internal union discipline if they exercise their right to end union membership.

Decades-old federal law prohibits union officials from forcing internal union discipline on workers who have resigned union membership, and from restricting the exercise of that basic right to refrain.

"If union officials were really concerned about us workers they would be happy I was able



Foundation staff ensured Russell Chacon's frustrations with Sheet Metal union bosses' illegal fines were covered by the Colorado Springs Gazette. Shortly after the article appeared, Sheet Metal union officials backed down from their demand.

to get a better opportunity, even though it was at a facility that isn't unionized," Chacon told the Colorado Springs Gazette in May. "Instead they are violating my rights with this outrageous fine threat and harassment, just because I did what was best for me and my family."

Although Sheet Metal union bosses informally rescinded their fine demands soon after Chacon filed his charge, NLRB Region 27 continued to investigate Chacon's charge that union officials had instigated the discipline specifically in retaliation for his leaving the union.

Settlement Follows NLRB Finding Merit in Worker's Charges of Retaliation

The NLRB found merit in Chacon's claims of retaliation in July, forcing union officials to settle in order to avoid NLRB prosecution.

The settlement requires Sheet Metal union officials to post a notice at the union office stating that they "will not fail to inform or misinform you about the proper process for resigning your membership," "will not fail to give effect to resignations

of membership from the Union," and "will not restrain and coerce you by instituting and prosecuting disciplinary proceedings and levying fines after failing to give effect to resignations." The notice also confirms that Chacon is no longer subject to the fine demands.

"As the conclusion of this case shows, Sheet Metal union officials were caught red-handed violating workers' most basic right to refrain from associating with an organization to which they don't want to belong," commented National Right to Work Foundation Vice President and Legal Director Raymond LaJeunesse. "Although we are pleased that Mr. Chacon is no longer saddled with an outrageous fine demand, unfortunately other Colorado workers can still be forced to pay dues to union bosses because The Centennial State lacks a Right to Work law."

LaJeunesse continued, "Right to Work protections ensure that all union financial support is strictly voluntary, and that no worker can be fired just for refusal to pay dues to unwanted union bosses." ❧

NLRB Keeps Union Bosses in Power Despite Unanimous Opposition

Labor Board seeks to force company to “bargain” with union opposed by all workers

WASHINGTON, DC – The National Labor Relations Board (NLRB) refused to overturn a decision that blocked an employee’s decertification petition and allowed union bosses to remain in power at a workplace despite no employee support for the union.

After a regional NLRB official declined to allow the vote to go forward, Neises Construction Company employee Mike Halkias challenged the ruling blocking his unanimous petition for a vote to remove the union with free legal aid from the National Right to Work Legal Defense Foundation. In July, the Labor Board in Washington, DC, upheld NLRB Region 13’s decision to dismiss the unanimous decertification petition.

The petition was filed by workers at Neises Construction Company in Crown Point, Indiana. None are members of the Indiana/Kentucky/Ohio Regional Council of Carpenters union (IKORCC), but federal law allows IKORCC union bosses to act as the workers’ “exclusive bargaining representative.”

Pro-Forced-Unionism Ruling Treats Workers Like ‘Children’

Though the petition had support from every member of the bargaining unit, the NLRB regional office rejected the petition, pointing to ongoing litigation between IKORCC and Neises over negotiations for the workers’ contract.

Before it will give workers a chance to remove union bosses, the NLRB said, unbelievably, that Neises must bargain with IKORCC officials for a union monopoly contract, even though no Neises employee supports the union or wants it to bargain for them. The Region used the union’s active legal dispute with the employer to justify dismissing the workers’ petition for a decertification vote.

Foundation attorneys argued in their appeal to the full NLRB



Foundation attorneys argued that NLRB bureaucrats are treating Neises Concrete Construction Corp. workers like “children” and not “freethinking individuals” by forcing them under the control of an IKORCC union none of them support.

that the employer’s dispute with IKORCC bosses should not take away the workers’ right to remove the unwanted union. As the appeal stated, “Halkias and his fellow employees are not children, but freethinking individuals who have the right to dislike the union for a host of reasons having nothing to do with Neises or the Union’s unproven, adjudicated allegations.”

NLRB Outrageously Kills Worker Effort to Remove Unwanted Union Bosses

The appeal implored the Board to, at the very least, investigate whether the alleged employer wrongdoing had diminished the employees’ ability to make an informed choice about union boss “representation.”

Instead, the Board denied the workers’ appeal, accepting the Region and union officials’ reasoning that the pending employer charges should block the workers’ request for a vote. The workers at Neises remain under union “representation” they unanimously oppose.

“It is beyond outrageous that federal law lets union bosses force workers to accept unions’ so-called ‘representation’ against their will -- even when workers unanimously oppose the union,” said National Right to Work Legal Defense Foundation Vice President Patrick Semmens. “Federal law purports to protect workers’ ‘freedom of association’ and to ensure union representation ‘is of their own choosing,’ however, as this case demonstrates, the NLRB frequently protects union boss power to the detriment of workers’ freedom.”

“This outcome shows how federal labor law is broken,” added Semmens. “These workers simply want a vote to remove a union they oppose, yet the NLRB response is not only to block any such vote but also to seek to force their employer to bargain further with a union supported by precisely zero rank-and-file workers.”



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University of California Lab Assistant Challenges California's Anti-Janus Law

Employee wanted to stop dues but law let union bosses demand photo ID

IRVINE, CA – California has long been at the forefront when it comes to promoting forced union dues. So when it became clear the Supreme Court would likely side with National Right to Work Foundation staff attorneys in the 2018 *Janus v. AFSCME* case, union boss allies in the California legislature quickly got to work passing laws to undermine public employees' First Amendment rights. Among the most pernicious of the series of California's anti-Janus laws is one that gives government union bosses unilateral control over which workers have dues money seized from their paychecks, even over the objections of those workers.

Now, with free legal representation from National Right to Work Foundation staff attorneys, University of California Irvine lab assistant Amber Walker is challenging the law in the U.S. District Court for the Central District of California, suing both the University of California system and University Professional and Technical Employees (Communications Workers of America, UPTE-CWA 9119) union officials.

Her case contends that the California statute, which makes public employers completely subservient to union officials on dues issues, let union bosses demand she provide a photo ID just to exercise her First Amendment right to stop union financial support. Her Foundation-provided staff attorneys argue that the California statute violates both due process and First Amendment guarantees.

In the Foundation-argued *Janus v. AFSCME* Supreme Court case, the Court declared that forcing public sector workers to fund unions as a condition of employment violates the First Amendment. The Justices also ruled that union dues can only be taken from a public employee with an affirmative and knowing



Foundation staff attorney William Messenger scored a huge win for worker freedom in Janus. He's now on Amber Walker's legal team.

waiver of that employee's First Amendment right not to pay.

"The University is leaving me helpless against these union officials who just seem to want to take my money despite the fact that I clearly don't want to be part of the union," Walker told a *Los Angeles Times* reporter. "The *Janus* decision said that I should have a choice when it comes to supporting a union, but UPTE has been denying me my rights and the university is letting the union get away with it."

Statute Prevents Workers from Telling University Admin to Stop Illegal Takings

Walker's lawsuit explains that she sent CWA union bosses a letter in June 2021 exercising her right to end her union membership and all union dues deductions from her wages. Although Walker submitted this message within a short annual "escape period" that CWA officials impose to limit when workers can revoke dues deductions, they still

rebuffed her request, telling her she needed to mail them a copy of a photo ID to effectuate her revocation.

The photo ID requirement, seemingly adopted purely to frustrate workers' attempts to exercise their constitutional rights, is mentioned nowhere on the dues deduction card Walker had previously signed to initiate dues payments.

Lawsuit: Union Officials Should Not Control Workers' First Amendment Rights

UC Irvine and CWA officials are still seizing cash from Walker's paycheck, and will likely continue to do so for at least another year as the CWA's arbitrary and short annual "window period" elapsed by the time CWA officials notified Walker that her attempt to stop dues was rejected for lack of photo ID.

The university administration can't stop dues payments for Walker because of the California statute that gives union officials total control over union dues deductions.

Foundation staff attorneys state in Walker's complaint that, because of the California statute, CWA officials

See 'Anti-Janus Law' page 8

**National Right to Work
Legal Defense Foundation**

Rated "A"

by
Charity Watch

Source: *Charity Rating Guide*
Summer 2021

American Institute of Philanthropy



Protect America from Forced Unionism:

Make A Planned Gift to the National Right to Work Foundation Today!

Experts advise putting a will or estate plan in place now to avoid putting an unnecessary burden on family members later. Including the National Right to Work Foundation in your estate and giving plans allows you to invest in the Foundation's battle against Big Labor coercion while enjoying the tax advantages of supporting an IRS-recognized charity.

In addition to including the Foundation in your will or estate, Foundation supporters are increasingly taking advantage of the following planned giving options, each with its own specific benefits:

CHARITABLE LEAD TRUST

A gift to the Foundation now; return of principal later.

- You can make a significant, ongoing gift to the Foundation;
- Future economic security for you as well as your family because the principal may be returned to you or your estate;
- You may be able to provide your family with a greater inheritance than would otherwise be possible without an estate plan;
- You can reduce or eliminate income, estate and gift taxes now and in future years.

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- Creation of a source of a needed income stream for your family or close relatives you designate in your Trust.

Regardless of whether you are considering your estate plans for the first time or are reviewing the ones you have in place already, there is a sense of relief when you take the time to plan ahead with an estate strategy. Additionally, by including the National Right to Work Legal Defense and Education Foundation, Inc. in your estate plans, you can join the Foundation's Legacy Society.

As with all planned gifts, please be sure to contact your estate attorney or tax advisor to help you and your family formulate the best plan for the future. If you have any questions or need additional information, please contact Ginny Smith, Director of Strategic Programs for the Foundation, at 1-800-336-3600.

Foundation Aid, Decertification Reforms Assisting Workers

continued from page 2

(SEIU) local from their workplace with Foundation help.

Reforms: Union Bosses Can't Use Bogus Charges to Block Decertification Elections

These cases proceeded without significant delays from union “blocking charges,” the often-spurious charges against employers filed by union lawyers seeking to delay a decertification vote. Under old NLRB rules, such charges would have to be resolved before workers’ decertification votes could proceed, delaying the vote for months or even years.

Thanks to NLRB rulemaking advocated by the Foundation and backed by thousands of Foundation supporters, votes now virtually always proceed first with the results quickly announced, so that



Union boss “blocking charges” couldn’t stand in the way of John Adams and his fellow Frito-Lay salesmen’s effort to vote Teamsters officials out of their West Texas workplace.

elections cannot be delayed nearly indefinitely by unsubstantiated union boss claims.

In the Las Vegas medical workers’ case, the new “blocking charge” rules allowed Tammy Tarantino

to have a vote, despite attempts by union lawyers to use charges against the hospital to delay the election. Without being able to rely on the “blocking charge” policy to maintain their power over the workplace, SEIU officials soon found themselves voted out with just 13 of 64 eligible voters voting for the union.

“While we look forward to the day when every individual worker has the freedom to decide whether to pay union dues or be represented by a union, it is especially egregious when union bosses are in power without even the support of a bare majority of rank-and-file workers,” said National Right to Work Foundation Vice President Patrick Semmens. “The National Right to Work Foundation is proud to help workers exercise their right to throw off the yoke of unwanted union so-called ‘representation.’” ✚

Attorneys General Bolster Foundation Supreme Court Petition

continued from page 1

The states’ amicus brief emphasizes how glaringly union officials have flouted *Janus* with restrictions, as well as how widespread the schemes are: “*Janus* has been ignored. Across the country public-sector unions have resisted *Janus*’s instructions and devised new ways to compel state employees to subsidize union speech. Unions place onerous terms on dues forms that prohibit state employees from opting out of paying dues except during narrow (and undisclosed) windows during the year.”

The brief continues: “Unions refuse to inform state employees that they have a First Amendment right not to pay union dues. And unions refuse to stop collecting dues despite unequivocal employee demands. The result is that tens of thousands of state employees across the country are having dues deducted to subsidize union speech

without any evidence that they waived their First Amendment rights”

Nkemdi and Troesch’s case “implicates these precise concerns” and the Court must hear it, the brief maintains.

In addition to the states’ brief, policy groups Goldwater Institute, Cato Institute, Freedom Foundation, and Liberty Justice Center filed amicus briefs backing the case.

Justices May Already Be Showing Interest in Foundation-Backed Case

In late July, the Supreme Court ordered lawyers for CTU and the Chicago Board of Education to file a response brief to Troesch and Nkemdi’s petition, a signal that some Justices may be interested in taking up the case.

Also pending at the High Court is Foundation attorneys’ anti- “escape-

period” case for Susan Fischer and Jeanette Speck, two New Jersey teachers. Both that case and Troesch and Nkemdi’s case are expected to be fully briefed in October, after which the Justices will decide whether to take them.

“As union bosses continue to use deceptive ‘escape period’ arrangements to keep worker money flowing unconstitutionally into their coffers, support continues to roll in from across the country for Troesch and Nkemdi, who are sticking up for independent-minded public servants who simply want to serve their communities without being forced to fund union activities,” observed National Right to Work Foundation President Mark Mix. “The High Court must weigh in to affirm that public workers’ First Amendment rights cannot be confined to union officials’ arbitrary schedules.” ✚

Anti-Janus Law Challenged in New Federal Lawsuit

continued from page 5

were able to trample Walker's desire to keep her own money and were allowed to infringe on her First Amendment *Janus* rights.

Walker seeks refunds of the dues taken from her and other university workers under CWA's photo ID scheme. She also seeks to stop the State of California from enforcing the state law outsourcing the process for stopping and starting union dues deductions to self-interested union officials.

UPTE Bosses Designed Scheme Knowing CA Law Would Protect Them

"California CWA union bosses clearly value illegally filling their coffers with Ms. Walker's money over respecting her First Amendment and due process rights," commented National Right to Work Foundation Vice President and Legal Director Raymond LaJeunesse. "They created this photo ID requirement out of thin air to block workers from exercising their *Janus* rights, safe in the knowledge that California's union dues policies would stifle any chance a public worker has of getting his or her employer to stop seizing dues money for the union."

"By giving union bosses total control over how and when workers can exercise their First Amendment *Janus* right to stop dues payments, California is allowing the fox to guard the henhouse to the detriment of public employees' constitutional rights," added LaJeunesse. 🇺🇸

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Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter,

Eighteen National Right to Work Foundation cases have already been argued at the U.S. Supreme Court. Now the High Court is considering taking up two more Foundation cases brought for public employees.

As you will read in this issue of **Foundation Action**, these two cases -- along with more than a dozen additional active federal lawsuits filed for civil servants by your Foundation -- challenge so-called "escape-period" schemes created by Big Labor to keep workers trapped paying union dues.

You see, public sector union bosses use narrow "escape periods" to block government workers from exercising their First Amendment right to stop union dues from being seized from their paychecks -- often for months or even years at a time.

Of course, that violates the landmark Foundation-won *Janus v. AFSCME* Supreme Court decision establishing no government workers can be forced to pay money to union officials against their wishes.

Already a groundswell of support has risen for these Foundation cases. Attorneys general from 16 states, plus four policy groups, sided with your Foundation asking the Supreme Court to take up this critical issue.

And, as we await the Court's decision whether to hear these cases, Foundation attorneys are filing additional lawsuits for workers victimized by these vicious "escape-period" schemes.

This includes a class-action lawsuit filed for University of California Irvine lab assistant Amber Walker with free Foundation legal aid, challenging a California anti-*Janus* law granting union bosses the sole authority to decide whether to seize dues from California public employees' paychecks.

Your Foundation is the leading national organization working to systematically oppose such schemes. To date we are litigating more than 40 cases across the country to enforce our *Janus* victory.

Of course, we couldn't take on new cases for the victims of Big Labor coercion without the generosity of supporters like you.

So thank you for everything that you do.

Sincerely,