



Foundation *Action*

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Foundation Blasts Biden NLRB's Proposed Rule to Trap Workers in Unions

Former union lawyers target Foundation-backed reforms easing removal of unpopular unions

WASHINGTON, DC – Bureau of Labor Statistics data show that over 90 percent of American workers have chosen not to affiliate with a union, and recent polling by Gallup shows non-union workers are overwhelmingly “not interested at all” in unionization. This isn’t a surprise considering modern day union officials’ overwhelming focus on politics, the way that monopoly “representation” often disadvantages the best employees, and union bosses’ “pay up or be fired” demands leveled at workers in non-Right to Work states, among other reasons.

The National Right to Work Foundation helped create an easier path for employees to vote out union officials they oppose by filing comments in support of the “Election Protection Rule,” which the National Labor Relations Board (NLRB) adopted in 2020. The Foundation-backed Rule eliminated several non-statutory NLRB policies that union officials manipulate to block any attempt by employees to vote them out of a workplace.

Now, former union lawyers Biden appointed to the NLRB are repaying the President’s union boss political allies by moving to eliminate the Election Protection Rule, thus restoring to union officials several coercive methods used to trap workers in unions they oppose by making it more difficult for employees to successfully petition for a decertification election.

The Foundation slammed the plan in February comments filed with the NLRB, maintaining that the rule change will trample workers’



In its comments to the NLRB, the Foundation emphasized its leading role in defending workers’ right to vote out unwanted unions. Above are just a few workers whom Foundation attorneys have aided recently in decertification efforts.

statutory right to vote out unions they oppose while entrenching unpopular union officials. Foundation attorneys followed up with reply comments in March, which refuted several arguments union officials and Biden’s NLRB General Counsel put forth in comments supporting the Election Protection Rule’s elimination.

Biden NLRB Will Again Let Union Officials Weaponize Unproven ‘Blocking Charges’

The Foundation’s comments explain that, if the Election Protection Rule is tossed, union officials will again be able to exploit often-unproven allegations of employer unlawful behavior to delay employee-requested union decertification votes. Prior to the 2020 reforms, union officials could often stall a decertification vote for months or even years by filing these so-called “blocking charges.”

The 2020 Election Protection Rule overturned the blocking charge policy, so workers are currently allowed in most cases to cast ballots in a decertification vote before the NLRB deals with any allegations surrounding the election. This procedure eliminates the incentive

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Disney Worker Hits UNITE HERE Union with Federal Charge for Illegal Dues Seizures

Union officials ignoring worker's right under Florida Right to Work law to stop dues payments

ORLANDO, FL – With free legal aid from the National Right to Work Foundation, a Disney Parks and Resorts employee in Orlando, Florida, has filed federal charges with the National Labor Relations Board (NLRB) against the UNITE HERE Local 362 union, stating that union officials ignored his resignation and dues checkoff revocation letter.

Since 1943, Florida's Right to Work protections have made union membership and financial support strictly voluntary. However, when Jose Class filed his unfair labor practice charge, UNITE HERE union officials had not acknowledged his unequivocal exercise of his rights to abstain from both.

According to the charge filed in December 2022, Class resigned his union membership and revoked the union's authorization to deduct dues from his paycheck. That December letter also requested, if union officials did not immediately accept his dues checkoff revocation, that the union, within 14 days of receipt, provide him with a copy of any checkoff he may have signed.

As of the filing of the charge, union officials had not stopped collecting dues from his wages, nor



Not so magical: Lurking behind Disney World's cheery exterior are UNITE HERE union officials who apparently don't respect employees who exercise their right to free themselves from unwanted union membership and dues deductions.

had they provided him with the requested copy of a signed checkoff authorization, which might specify when revocation is allowed.

Long History of Union Bosses Violating Disney World Workers' Rights

UNITE HERE is not the only union that has violated Disney World workers' right to stop all dues payments as guaranteed by Florida's longstanding Right to Work law. In a series of cases brought against

Florida-based Teamsters Local 385, Foundation attorneys ultimately won an NLRB decision that Teamsters officials violated workers' rights by "repeatedly and deliberately" failing to honor the workers' requests that deduction of union dues from their wages stop.

"In what is an unfortunately familiar story, union officials ignored Mr. Class' resignation letter and his dues deduction revocation," commented National Right to Work Foundation Vice President and Legal Director Raymond LaJeunesse. "No American worker should ever be forced to subsidize union activities, which is why a longstanding priority of the National Right to Work Foundation is assisting workers in exercising their right to cut off financial support for union officials they oppose." ✝

Foundation Action

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Teen Supermarket Cashier Fired for Refusing to Join and Fund UFCW Union

Union officials required teen to violate his religious beliefs or be fired

PITTSBURGH, PA – Josiah Leonatti, a high schooler, was fired last year for his religious beliefs. Giant Eagle and the United Food and Commercial Workers (UFCW) union compel employees, like Leonatti, to either join or fund the union to keep their jobs. The problem for Leonatti is that he cannot do so without compromising his religious beliefs.

When Leonatti was hired, he never expected that union bosses would force him to choose between his job and his religious convictions. But the union officials did just that.

With free legal aid from National Right to Work Foundation staff attorneys, Leonatti hit UFCW union officials and Giant Eagle in January with federal discrimination charges. Although Giant Eagle rehired Leonatti to limit liability, neither Giant Eagle nor the union agreed to accommodate his religious beliefs. So Leonatti faces discharge, again, unless he funds the union.

Moreover, the union demands that Leonatti submit to an illegal “religion test.” Before the company and union will consider accommodation, they demand that Leonatti answer irrelevant and inappropriate questions to determine whether his religious beliefs are valid.

UFCW Bosses Tried to Get Teen Fired After He Voiced Religious Objections

Foundation attorneys filed charges for Leonatti against the union at both the Equal Employment Opportunity Commission (EEOC) and the National Labor Relations Board (NLRB) based on federal law. Foundation attorneys also filed charges against Leonatti’s employer, Giant Eagle.

Federal law requires unions and employers to accommodate employees who have religious objections to joining or paying dues



Josiah Leonatti may be young, but he’s not afraid to stand up to UFCW bosses, who got him fired over objecting to union membership and dues on religious grounds.

to a union. And federal law also prohibits forced union membership regardless of a worker’s reason for not wanting to affiliate with a union.

Leonatti’s charges report that he attended employee training last year as a cashier trainee. There, a store manager told new hires that they “must sign papers to join the United Food And Commercial Workers.” According to the NLRB charges, “No other options were even hinted at.”

After reviewing the papers with his family, Leonatti’s charges explain, he mailed a letter to UFCW officials detailing his sincere religious objections to joining and supporting the union. He also presented the same letter in person at training.

Rather than accommodate his religious beliefs as required by law, a company official “dismissed [Leonatti] from training and sent [him] home.” The same official later called Leonatti and told him that union membership is compulsory at Giant Eagle, and admitted the grocery store had terminated him over his refusal to join.

UFCW officials responded to Leonatti’s letter by mail on November 10, 2022, rejecting the

written explanation of his religious objection and demanding he “complete its religious examination” before they even considered granting him an accommodation. Even if he passed this “test,” the charges say, union officials threatened that he would still have to pay an amount equal to full UFCW union dues to a charity approved by union bosses.

Giant Eagle has not offered a religious accommodation to Leonatti, and the union has not retracted its threats or agreed to accommodate him.

Teen’s Firing Shows Need for Pennsylvania Right to Work Protections

Leonatti’s EEOC charges seek to compel the UFCW union and Giant Eagle to provide him a legally required religious accommodation. In addition, the NLRB charges state that relief must include unit-wide notice and corporate training regarding workers’ right to refrain from union membership, among other remedies.

“Union bosses’ attempt to coerce a high school student to violate his religious beliefs is unconscionable and illegal,” commented National Right to Work Foundation Vice President Patrick Semmens. “We’re proud to support Mr. Leonatti as he defends his rights and beliefs. This should serve as a stark reminder that all Americans deserve Right to Work protections.”

“If Pennsylvania were a Right to Work state, Leonatti wouldn’t be forced to present his religious objections to expectedly hostile union chiefs,” Semmens added. “In a Right to Work state, he and other dissenting employees would have a statutorily protected right to cut off dues payments for any reason. All employees deserve the right to choose whether to fund a union.”✝

Foundation Slams Biden Labor Board's Biased Ruling in Federal Appeals Court

Brief contends NLRB distorted precedent to trap workers in union they oppose

WASHINGTON, DC – Foundation staff attorneys recently filed an amicus brief with the D.C. Circuit Court of Appeals in a case challenging a National Labor Relations Board (NLRB) decision reversing workers' attempt to remove union "representation" they oppose.

In the case, J.G. Kern employees, frustrated with the United Auto Workers (UAW) Local 228 union, decided to petition to decertify, or formally remove, the union from their workplace. The workers presented this majority petition to their employer, leading to the company removing its recognition of the union.

The petition contained overwhelming support from workers in favor of removing the union. Yet, after the company withdrew recognition from the union, UAW officials ran to the Biden Labor Board in an attempt to remain in power. The Biden-appointed NLRB majority sided with the union officials by re-imposing the unpopular union over the workers' objections.

With the case now in the federal court of appeals, the Foundation filed an amicus brief arguing the NLRB's April 2022 ruling ignores precedent and misapplies longstanding law in siding with union officials.

Decertification Rules Already Rigged Against Workers Opposed to Union Affiliation

As the brief points out, workers looking to file a petition to remove a union they oppose already face numerous hurdles due to NLRB rules, most of which are contained nowhere in the federal statute the NLRB is charged with enforcing.

For example, a petition must be gathered outside of work hours, and outside of work-related areas. Also, unless employees use certain Board-specified language in their petition, the petition is invalid. Furthermore, employees cannot ask their employer



A majority of J.G. Kern employees petitioned to oust the UAW, which has seen two of its former presidents (Gary Jones, right, and Dennis Williams, left) go to jail for corruption. But a biased NLRB ruling trapped the workers in UAW ranks anyway.

for further information regarding the decertification process or the petition will be invalid.

The Foundation's brief observes how workers must operate "in the dark, without help from their employer, and even if they do everything right, their efforts might come to naught through no fault of their own." It also shows how the Biden Board has made it more difficult for individual workers to express their right to decertify unwanted, unpopular unions.

Biden NLRB Aims to Force Union on Workers Who Overwhelmingly Object

Under the Board's "certification bar" doctrine, a union that wins a secret ballot election cannot be challenged for one year after its victory is certified by the NLRB. In this case, the UAW's certification bar ended on October 3, 2019. In November 2019, J.G. Kern employees delivered a majority-backed petition to their employer.

The Biden Board claimed, however, that because J.G. Kern did not bargain in good faith during a three-month period at the beginning of the certification year, the employees' majority petition was invalid. According to the Biden Board, the employer's alleged unfair labor practices prospectively "extended" the certification year beyond its

normal 12-month period.

The brief highlights the disingenuousness of the Board, pointing out that "the employees would have to divine the future to know they were collecting a petition during the 'extended certification year.'" The Foundation urges the D.C. Circuit to command the Board to follow precedent that requires the Board to determine whether there was a "nexus" between the employer's unfair labor practices and the decertification petition.

NLRB's Power Grab Takes Away Workers' Rights

The Foundation's brief emphasizes how the Board's decision can abolish employees' rights guaranteed by the National Labor Relations Act. An example of that is the J.G. Kern workers' petition, where it was only after the petition was gathered that the Board extended the union's certification bar period.

The brief notes that usually "an employee's decertification petition is presumptively valid unless there is a causal nexus between the unfair labor practice and the petition." However, this is not the case under the J.G. Kern ruling.

Should the NLRB's ruling be upheld, it "will further incentivize incumbent unions to file unfair labor practice charges to chill employees' Section 7 ability to collect petitions," the brief concludes.

"The NLRB's blatant disregard for the rights of workers who don't want anything to do with coercive unionism is on full display in this case," commented Mark Mix, president of the National Right to Work Foundation. "The arbitrary cherry-picking of legal precedents to fit the Board's agenda is outrageous, while expected, given the Biden Administration's all-out effort to expand Big Labor's coercive ranks." ✚

Busted: Kroger Worker's Card Illegally Altered to 'Authorize' Forced Dues

Employee's UFCW union card indicating objection to financial support changed without her knowledge

HOUSTON, TX – Supermarket clerk Jessica Haefner began her job at a suburban Houston Kroger store in August 2022. She attended a mandatory meeting for new employees run by United Food and Commercial Workers (UFCW) local union agents. Despite the union's hard-sell at the meeting, she knew her rights under Texas' Right to Work law: Union bosses couldn't force her to pay any dues or fees to the union to keep her job.

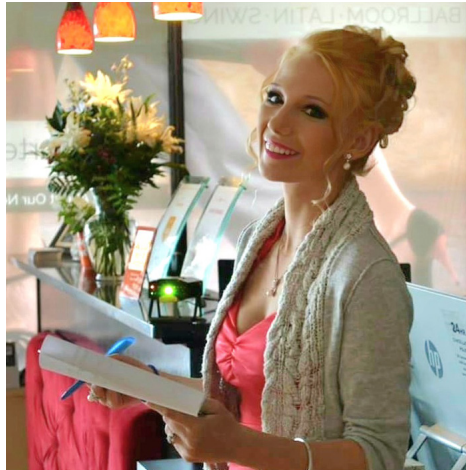
During the meeting, Haefner followed a union representative's instructions to indicate on a union form that she did not want to be a part of the union or pay dues or fees. But she was shocked to discover just weeks later not only that union dues were coming out of her paycheck, but also that the union form she was required to sign had been altered to indicate she consented to those deductions.

Haefner, with free legal representation from National Right to Work Foundation staff attorneys, slammed UFCW officials and Kroger with federal charges at the National Labor Relations Board (NLRB). The charges state that UFCW bosses' and Kroger's actions violate her rights under Section 7 of the National Labor Relations Act (NLRA), which guarantees American private sector workers' right to abstain from any and all union activities.

"I was lied to . . . and my rights were not only violated as an employee but as an American citizen," said Haefner.

Employee's Dues Form Was Altered, Forced Dues Deductions Began

According to Haefner's charges, a UFCW agent passed out a union membership application and a dues checkoff on a single form that he claimed was mandatory for meeting attendees to complete. Another piece of onboarding literature stated



Jessica Haefner clearly exercised her rights under Texas' Right to Work law. Foundation attorneys will get to the bottom of who faked her consent to dues deductions and restore her rights.

that Kroger management had the "opinion that you should participate and be active in the Union."

When Haefner asked how she could exercise her right to refrain from joining the union or paying union dues, the union agent instructed Haefner to write "\$0" in the field marked "union dues" on the form.

Haefner followed these instructions. But after discovering later that union dues were indeed coming out of her paycheck, Haefner quickly obtained a copy of the form on which Kroger and UFCW officials based their dues deductions. She saw that someone had changed the dues deduction amount in the field she marked "\$0" to a dollar amount to induce dues deductions from her paycheck.

UFCW Chiefs Illegally Seizing Dues from Grocery Workers Across Country

UFCW's violation of Haefner's rights is not an isolated incident. In Pennsylvania, Foundation staff attorneys are also representing Giant Eagle supermarket cashier Josiah Leonatti, who charges UFCW Local 1776KS union officials with refusing to accommodate his religious

objections to union membership (see page 3). King Soopers grocery employees from Colorado are also receiving free legal aid from Foundation staff attorneys in opposing illegal UFCW strike fines, some of which are as high as about \$4,000 per worker.

"Jessica Haefner knew her rights under Texas' popular Right to Work law and actively asserted them, yet UFCW union officials still brazenly took her money against her will," commented National Right to Work Foundation President Mark Mix.

"As cases brought for workers with free Foundation legal aid show, UFCW bosses have a long and documented history of violating workers' rights, whether through thousands of dollars in illegal strike fines, illegal religious discrimination, threatening teenagers' jobs, and now by altering a worker's dues authorization," Mix added. †

Watch Foundation Staff Attorney Alyssa Hazelwood discuss Jessica Haefner's case with Mark Mix



Scan the QR code above or visit nrtw.org/Kroger.

Foundation: Texas Taxpayers Shouldn't Be Forced to Fund Union Activities

Brief says Janus explains why TX Supreme Court must invalidate 'official time' scam

AUSTIN, TX – Union officials spend billions of dollars to influence the political system every election cycle. This is why they are so desperate for forced-dues power -- it gives them a guaranteed stream of revenue to sustain their agendas, regardless of whether workers support the union hierarchy's aims.

But workers are increasingly taking advantage of their rights under Right to Work laws and the landmark National Right to Work Foundation-won *Janus v. AFSCME* U.S. Supreme Court decision to refrain from financially supporting union bosses of whom they do not approve.

Union bosses in Austin, TX, have apparently worked around this dilemma by shifting the burden for funding the union agenda to taxpayers. Through a so-called "official time" scheme, City of Austin employees who are union officials receive compensation from the public purse for conducting union business on the clock.

'Official Time' Boosts Inherently Political Government Union Agenda

Foundation attorneys recently filed a brief in the Texas Supreme Court case *Roger Borgelt v. City of Austin*, arguing that the Foundation-won *Janus* decision definitively shows why Austin's scheme violates the Texas Constitution's prohibitions against payouts of public funds to serve private interests (known as the "Gift Clauses"). The High Court ruled in *Janus* that forcing public sector workers to fund any union activities as a condition of employment violates the First Amendment, and that union dues can only be deducted from a public sector worker's paycheck with his or her freely given consent.

An "official time" scheme, which instead forces taxpayers into funding those same union activities, "conflicts with the Supreme Court's reasons



Don't Mess with Taxes: The Foundation urged the Texas Supreme Court (above) in recent legal briefs to quash the City of Austin's scheme funneling taxpayer money to union ideological activities.

for holding in *Janus* that it violates the First Amendment to require public employees to subsidize union activities," says the Foundation's brief.

The Foundation points out in its brief the *Janus* Court's holding that all public sector union undertakings "constitute speech and petitioning on matters of political...concern," and that by funneling taxpayer money into such speech "the City is effectively paying individuals to lobby the City for a private advocacy organization and its members."

"The notion that this political advocacy predominantly serves a public purpose, as opposed to predominantly benefiting the private organization, is untenable," the brief reads.

The brief also refutes an assertion from a lower Texas court that "official time" payments made by the city are actually part of union officials' compensation for their normal job duties. This defies *Janus*' reasoning that public employees who are also union officials "do not act as government agents pursuing their official job duties when they act as union officials."

"For example, in granting paid leave to employee Bob Nicks to act as the Union's president, the City is not paying Mr. Nicks for his services as a firefighter or as a public servant," the brief explains. "The City is paying Mr. Nicks for his services as an agent of a private organization."

The brief also reveals the disturbing implications of the union-backed argument that taxpayer subsidies for "official time" are needed to maintain harmonious relations between the city and the union: "If respondents contend that Union officials would disrupt City services if they did not receive ['official time'], that would make the benefit akin to the City paying protection money" to union officials, reads the brief.

Union Bosses Should Not Get Public Funds to Pursue Union Interests

"The Texas Supreme Court should recognize that union officials are not entitled to a slice of taxpayer funds to 'bargain' against public interests," commented National Right to Work Foundation Vice President and Legal Director Raymond LaJeunesse. "Texas' Gift Clauses forbid the payout of public funds for activities that don't have a tangible public benefit, and it's hard to think of an arrangement that violates the Clauses more plainly than letting union bosses pursue private union business on the taxpayer dime."

"Although *Janus* now protects public employees around the country from being forced to fund union activities and speech against their will, unfortunately many states and municipalities across the country permit union bosses to subsidize those same inherently political activities using direct payment of tax dollars," LaJeunesse added. "If union bosses cannot convince rank-and-file workers to voluntarily fund such activities as *Janus* requires, they should re-examine their priorities, not seek to force taxpayers to pay for what public employees will not." ✚



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If you would like to consider a QCD, please contact your tax advisor or your IRA custodian today to assist the Strategic Litigation Program of the Foundation. QCDs can be made electronically (directly to the Foundation) or by check payable to the National Right to Work Legal Defense Foundation.

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Biden NLRB Attacks Worker Free Choice

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for unions to file baseless charges in order to delay elections. If the Rule is jettisoned, unions may once again file baseless charges so that employees are blocked from even voting, let alone having their votes counted, any time a decertification petition is filed and union officials can conjure up claims of employer workplace malfeasance.

Notably, a Foundation-assisted Alaskan bus driver, who with his colleagues finally ousted an unpopular Teamsters union after years of trying, commented to the NLRB in 2020 that the agency's continued blocking of the election based on the Teamsters' unfair labor practice charges was "the most unfair and anti-democratic event" with which he had ever been involved.

The Foundation's March reply comments also debunk a union argument that leaving the Election Protection Rule in place would lead to more tainted elections, stating: "no commenter writing in support of this rule cited a single case to justify the Board's expressed fears about holding too many re-run or tainted elections that end up being dismissed."

Unions Will Retain Power Despite No Evidence of Majority Support

The Biden NLRB's slated elimination of the Election Protection Rule will also block workers from filing for secret ballot decertification elections to challenge so-called "card check" recognition of unions. A "card check" is a process in which union officials claim majority support among employees in a workplace based solely on authorization cards union officials gather, instead of a secret ballot vote among workers. The process is prone to coercive and intimidating tactics by union officials, who can collect the cards directly from workers through pressure and often

See 'Foundation Defends' page 8

Foundation Defends Workers' Right to Secret Ballot Elections

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outright deception. Once recognized via this card check process, under the NLRB proposal there will be a year-long non-statutory bar, during which unions are immunized from decertification attempts.

The Election Protection Rule gives employees the opportunity to challenge the union's claim of majority support during a 45-day window period beginning upon notice of recognition. If workers collect a sufficient showing of interest for an election and file it during the 45-day window, the NLRB will hold an election in that bargaining unit. This provides a check against the most egregious card check campaigns. Barring these worker-submitted union decertification petitions "only shields what may well be a minority union from challenge" and "destroys employees' [statutory] rights," the Foundation's comments say.

Worker Majority Support Doesn't Matter for Union Elites

The comments also oppose the Biden NLRB's plan to let union officials subject construction workers to monopoly union so-called "representation" without providing evidence of any individual worker's support for such control, let alone a majority.

"The move to eliminate the Election Protection Rule will re-impose arbitrary policies that trample workers' rights and allow union bosses to maintain power despite the overwhelming opposition of rank-and-file workers," observed National Right to Work Foundation Vice President Patrick Semmens. "The Biden NLRB, now stocked with former union lawyers, is putting on full display that its priorities lie with top D.C. union brass, not rank-and-file American workers." ¶



Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter,

In 2022, National Right to Work Foundation staff attorneys litigated an all-time high number of decertification cases, assisting worker-led efforts to hold votes to remove unwanted unions.

You see, workers nationwide are attempting to throw off the shackles of unwanted union so-called "representation," resulting in a nearly 20 percent increase in decertification petitions filed with the NLRB compared to 2021 numbers.

Needless to say, union bosses have noticed, and they are terrified for what it means for their forced-dues empire.

Predictably, their response is not to evaluate why so many workers think they would be better off without a union, but instead to turn to the government to protect Big Labor's power and influence.

And they've got a willing ally in the Biden Labor Board.

As you can read on the front page of this **Foundation Action**, the Biden NLRB is actively trying to stifle the trend toward worker freedom by reversing the "Election Protection Rule" that eliminated some of the most egregious tactics used by union officials to delay or even completely block workers' decertification votes.

Of course your Foundation is already opposing this move in addition to litigating other NLRB attempts to keep unwanted unions in power.

For example, the Foundation recently filed a brief (see page 4) at the D.C. Circuit Court of Appeals countering the Biden NLRB's baseless rejection of a majority worker petition asking their employer to oust unpopular UAW officials.

Union bosses have massive influence at the highest levels of government -- I don't need to tell you that.

So, as opposed to winning over workers' support voluntarily, union bosses have chosen to double down on government-backed coercion.

With your support, however, the Foundation is defending freedom-loving workers against both union boss strong-arm tactics and the machinations of union partisans in the Biden Administration.

Thank you for making this critical fight possible.