Foundation Action

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

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Union Officials Lust for Forced Unionization of Health Care Sector

Foundation battles attempts to impose costly unionization on health care professionals

WASHINGTON, DC – Facing a barrage of Top Down organizing by union officials searching for access to even more forced union dues, health care workers from across the country have turned to the National Right to Work Foundation for legal assistance to fight off unwanted union affiliation.

Three recent Foundation cases in Toledo (Ohio), Portland (Oregon) and Santa Ana (California) illustrate the national push by union officials to seize control of the health care industry and its workers.

Foundation forces union officials to withdraw tainted recognition

In Portland, the Foundation scored a victory for employee free choice by helping a group of health care workers force Service Employees International Union (SEIU) Local 49 officials to renounce their monopoly bargaining power over employees of Kaiser Foundation Health Plan (a component of the national Kaiser Permanente health network) after union organizers strong-armed the company to force unionization on the employees.

California Nurse Association union chief Deborah Burger (right) works closely with Big Labor-friendly politicians like Democrat Lieutenant Governor Cruz Bustamante (left) to retain and expand forced unionism control of health care workers.

Kaiser capitulated to a Top Down campaign by the SEIU union in October 2005 based on the results of a tainted "card check" drive – where union organizers browbeat employees to sign cards that were counted as "votes" for unionization – even though an agreement between the company and union specifically stated that recognition would only be granted after a secret-ballot election. Workers reported that union operatives lied to them by saying that signing the cards was not a vote for unionization, but instead was simply a request to hold an election and to receive more information.

After having the unwanted union forced upon her and her coworkers, Karen Mayhew, who works in the Patient Business Services Department at a local Kaiser office, contacted the Foundation for free legal aid. The resulting charges forced union officials to renounce their monopoly bargaining privileges.

Nurses seek to block unlawful employer-union pact

Meanwhile, a group of Foundation-aided nurses in

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IN THIS ISSUE

Foundation Punishes Unlawful Retaliation at Freightliner

Company took retribution against employee who questioned special treatment of UAW

CHARLOTTE, NC – With free legal assistance from the National Right to Work Foundation, a Freightliner worker won a victory in late July against her employer after suffering retaliation for questioning a pattern of special treatment of United Auto Workers (UAW) union members by company officials.

Kristi Jones, a Freightliner employee at the truck maker's Gastonia facility, filed unfair labor practice charges at the National Labor Relations Board (NLRB) in early April after she was punished for simply asking a question about a new work rule.

Jones had sent an email that inquired whether a new shop policy applied to UAW union shop stewards in the plant as well as nonunion workers. The rule in question specified that workers on the facility floor must wear safety glasses with clear lenses.

Jones sought the clarification of how the new rule would be enforced because there had been an ongoing pattern of special treatment for union officials at Freightliner - including the exemptions of union stewards from ten-minute team "huddle meetings" and from a requirement that workers formally sign in when working overtime. For raising concerns about this illegal favoritism, she was suspended, demoted, and stripped of her leadership position.

Kristi Jones faced union retaliation for filing a federal racketeering lawsuit. Her coworkers traveled to the UAW's Detroit headquarters to announce the lawsuit in January.

Responding to Jones' charge, a Regional Director for the NLRB filed a formal complaint and agreed to prosecute Freightliner. But before that hearing could take place, Freightliner officials capitulated and inked a settlement agreement promising to reinstate Jones in her leadership position (with seniority), issue her back pay, post notices of employees' rights throughout the workplace, and agree not to threaten or coerce other Freightliner workers.

"The bullying of employees who do not support favoritism for union officials requires swift legal action," said Stefan Gleason, National Right to Work Foundation Vice President. "This settlement stalls illegal UAW and Freightliner collusion intended to stifle any union dissent."

Retaliation follows workers' federal racketeering suit

The illegal retaliation against Jones is only the latest in a long history of unlawful collusion between UAW and Freightliner officials that systematically undermines employees' rights. Because federal law hands so much coercive power to union officials over employees, many buckle under the pressure and are effectively co-opted.

In recent months, employees assisted by the Foundation – including Jones – filed a federal racketeering lawsuit against the UAW union and Freightliner in U.S. District Court seeking significant damages.

The pending racketeering complaint outlines a secret *quid pro quo* arrangement between Freightliner and the union in which UAW officials agreed in advance to significant concessions at the expense of Freightliner's workers at its nonunion facilities in exchange for valuable company assistance in coercing those employees into union ranks. The workers filed their suit under the Racketeer Influenced and Corrupt Organizations Act (RICO), used to prosecute criminal enterprises like organized crime, gang activities, and union corruption.

"Ms. Jones has won a battle against unlawful Freightliner and UAW retaliation – but until the courts shut down this racketeering activity, UAW union officials will continue to win the war on employee free choice," said Gleason.

Foundation *Action*

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Foundation Helps Pilots Slap Union for Blocking Benefits

Airline union officials denied nonunion United pilots access to company stock benefits

WASHINGTON, DC – With help from the National Right to Work Foundation, a group of 15 United Airlines pilots filed a federal class-action lawsuit against the Air Line Pilots Association (ALPA) union after the union hierarchy purposefully and illegally failed to inform nonunion employees of their right to sell future company stock shares issued during the airline's bankruptcy reorganization plan. The discriminatory scheme has cost more than 200 non-union pilots an aggregate amount estimated to be in the hundreds of thousands of dollars – profits realized only by union members.

The workers filed the lawsuit in U.S. District Court for all nonmember United pilots across America.

ALPA union officials and United Airlines agreed that, before the issuance of the new company stock upon its emergence from bankruptcy, each pilot would have the option to sell their future right to receive the stock.

The ALPA union hierarchy, headed by Duane Woerth, grounded nonmember pilots.

Any pilot could exercise that option by authorizing ALPA union officials to sell his or her interest in the claim for the highest price achievable in the market.

Union bosses damage pilots' financial health

As a result of this agreement, employees who participated in the auction profited from the new United stock at a substantially greater amount than what the shares could be sold for when subsequently distributed.

But ALPA union bosses never informed those refraining from formal union membership of this option to participate in the auction. Information regarding the option to sell future stock, and the forms required to participate in the auction, were secluded to a remote "members only" portion of the union's website accessible only with a password not given to nonmembers.

"The ALPA union hierarchy deliberately and unlawfully misled nonmembers to retaliate against them for exercising their right to refuse formal union membership," said Stefan Gleason, vice president of the National Right to Work Foundation. "Union officials wanted to send a message to all United pilots: 'If you don't join the union, you had better watch your back.'"

Nonmember pilots forced to accept union 'representation'

Even though United pilots have the legal right to resign from formal union membership at any time – as affirmed by the Foundation-urged U.S. Supreme Court ruling in *Patternmakers v. NLRB* – the nonmember employees are still forced to accept and pay for the union's monopoly bargaining "services" and its one-size-fits-all contract provisions regarding salary, benefits, seniority, and pensions, which penalize the best employees.

see **ALPA STOCK SCAM,** *page 8*

Free Newsletter

If you know others who would appreciate receiving **Foundation *Action*,** please provide us with their names and addresses. They'll begin receiving issues within weeks.

Foundation Takes Free Speech Fight to the Supreme Court

'Paycheck protection' battle could cause collateral damage to employees' rights

SEATTLE, WA – Responding to an outrageous Washington State Supreme Court ruling that created a supposed "constitutional right" for union officials to spend political funds seized from nonunion employees, National Right to Work Foundation attorneys in mid-June appealed to the U.S. Supreme Court.

If the High Court does not take up the appeal and reverse the ruling, it could open the door for union legal attacks against America's 22 state Right to Work laws.

Using tortured reasoning and, as the dissent pointed out, "turn[ing] the First Amendment on its head," the 6-3 ruling by the state court struck down the last remnants of Washington State's so-called "paycheck protection" law, a campaign finance regulation that sought to require union officials to obtain permission from nonmember public employees before spending their mandatory union dues on union political activities.

Although wrongheaded, the ruling has helped to bring into focus difficulties with the paycheck protection regulatory approach – and how it has created an opening for activist court rulings to damage employee rights and perhaps ultimately undermine state Right to Work laws.

"The real solution is to attack forced unionism at its roots, rather than regulate its ill effects," said Stefan Gleason, vice president of the National Right to Work Foundation. "But we have an obligation to try to reverse the damage to the First Amendment caused by this ruling."

The U.S. Supreme Court has an opportunity to reverse the Washington State Supreme Court majority that "turned the First Amendment on its head."

'Paycheck protection' opened door to court mischief

Immediately after the passage of Washington State's campaign finance measure in 1992, also known as Initiative-134 (which included language now dubbed "paycheck protection" language), union officials ultimately raised even more political funds than they could before the statute took effect. Union accountants merely juggled the books and changed the way they accounted for political funds. Later, the Washington courts interpreted the law not to apply to full union members.

Foundation attorneys agreed to help a group of Washington teachers who were not union members secure the law's application to them. A lawsuit was filed in 2001 in a county Superior Court against the Washington Education Association (WEA) union for more than 4,000 nonmember teachers who are forced to pay union dues.

That court ruled favorably that the teachers had an implied right of action under a state statute to recover the fees the WEA union had taken, without their authorization, for political purposes. The trial court also certified the case as a class-action for the thousands of nonmember teachers who had not consented to the union using their money on political activities.

State Right to Work laws endangered by court decision

But the long-awaited Washington high court ruling in mid-March upheld an appellate court's decision – thereby overturning the trial court and ruling the last remaining union fees provisions in I-134 unconstitutional. The court opined that union groups had constitutional rights that totally overshadowed the rights of nonmembers forced to pay union dues – a novel theory that conflicts with numerous legal principles established by the nation's courts.

"The state supreme court has now created an even larger problem by construing the First Amendment in a fashion that opens the door for outright attacks on Right to Work laws," stated Gleason.

Union Control of Health Care Bad News for Workers and Patients

continued from cover

the Golden State filed National Labor Relations Board (NLRB) charges to stop a similar scheme in which the California Nurses Association (CNA) union entered into a so-called "neutrality agreement" (more accurately called a "gag-order") with the nurses' employer, Western Medical Center in Santa Ana. The neutrality agreement laid out a sham "election process" where the CNA could become the nurses' exclusive bargaining agent – and be able to compel the employees to pay forced union dues – without even demonstrating that a bare majority of the nurses supported the union.

Under the Supreme Court's *International Ladies Garment Workers v. NLRB* decision, union officials cannot become the monopoly bargaining representative of workers without the proven support of at least a majority of all employees. Furthermore, in the NLRB's long-standing *Majestic Weaving Co.* decision, the Board recognized that allowing union officials to engage in pre-recognition bargaining over substantive terms of employment with an employer is a violation of workers' rights.

Toledo nurses stand up to union campaign of intimidation

In Toledo, Ohio, a group of nurses seeking to remove the United Auto Workers (UAW) union – that's right, the UAW! – as their monopoly bargaining agent faced an organized campaign of intimidation by union agents. The health professionals faced the illegal union bully tactics as they sought to collect the signatures necessary to hold a decertification vote to throw out the union. While initially it appeared that

Having already devastated America's auto industry, UAW bosses have now set their sights on infecting America's health care system with compulsory unionism.

the nurses would collect enough signatures despite these bully tactics, the regional NLRB Director later determined that the nurses were just short of the required number.

In response, Foundation attorneys helped a nurse file unfair labor practice charges against the union for its "thuggish and unlawful activities" including surveillance of nurses, writing down license plate numbers, stalking employees, massing around employees who sought to sign the decertification petition, verbal and physical intimidation of nurses and threats against employees seeking decertification.

Additionally, once it was determined that the decertification drive was unable to gain momentum as a result of the illegal union response, Foundation attorneys amended the charges and are now asking the NLRB to order the decertification vote anyway because the inability of the nurses to collect a sufficient number of signatures was the direct result of the union's illegal intimidation campaign.

Big Labor injects its militancy into medicine

Union officials view America's rapidly growing health care industry, which now comprises approximately 16 percent of the economy, as a plentiful source of forced union dues. Starting in June 2001, the United American Nurses union joined up with the powerful AFL-CIO, which already collects dues from 1.2 million health care professionals, and the conglomerate has vowed to devote large portions of its coercively collected cash into "organizing" even more health care professionals.

Even the notoriously violent Teamsters union has inserted itself into the medical profession. Meanwhile, traditional nursing unions are adopting the Teamsters-perfected tactics of threats, vandalism, and terrorism.

For instance, the Massachusetts Nurses Association union launched a strike in the spring of 2000 in which strikers abandoned patients while a battalion of union militants terrorized employees who chose to continue doing their jobs. As part of the campaign of harassment, union goons littered employees' houses with eggs, stuffed rats, and "scab" signs.

"Union bosses are thirsting for forced union dues," said Foundation President Mark Mix. "Unfortunately for employees in the health care industry, union officials see them as the easiest way to quench that thirst no matter what the impact on health care quality or whether it violates the Hippocratic oath."

Employee Forces End to Religious Discrimination

Seattle-area UFCW union officials refused to respect worker's religious freedom

SEATTLE, WA – Foundation attorneys helped a Safeway employee achieve victory over United Food and Commercial Workers (UFCW) officials, forcing the union hierarchy to drop its discriminatory policy which deters workers from exercising their religious freedoms.

Daniel Gautschi, manager in a Seattle-area Safeway meat department, filed a federal civil rights lawsuit in U.S. District Court for the Western District of Washington with free legal assistance from the National Right to Work Foundation early this year. UFCW Local 81 union officials had established conditions that forced employees, if they should ever encounter an employment grievance, to affiliate with – and pay additional money to – a union that conflicts with their religious beliefs.

Shortly after Gautschi filed his lawsuit, the union hierarchy – governing Safeway stores in King and Kitsat counties – backtracked and quickly inked a settlement that provides that religious objectors will be treated just like any other employee when it comes to adjusting problems under the union contract.

UFCW top dog Joe Hansen (right) leads a union that has little regard for employees exercising their religious freedoms.

"This victory stalls the UFCW union officials' all-out offensive on employees' right to freedom of religion in this part of Washington," said Raymond LaJeunesse, vice president and legal director of the National Right to Work Foundation. "However, employees of faith should not have to take legal action to force union officials to honor their fundamental rights."

Union policy designed to bully employees of faith

Union officials allowed Gautschi to divert his forced union dues to a charity – an accommodation previously won by Foundation attorneys – before Gautschi filed his lawsuit. However, they maintained an illegal scheme which deters employees from exercising their right to assert religious objections in the first place.

The discriminatory policy forced only employees who assert religious objections to pay the union all costs associated with use of the grievance procedures under the bargaining agreement – even though union officials tightly control the process and employees cannot file grievances on their own.

As a devout Christian, Gautschi believes that supporting the UFCW union conflicts with his deep personal religious convictions due to the union hierarchy's support for special rights for homosexuals. Under Title VII of the Civil Rights Act of 1964, union officials may not force any employee to financially support a union if doing so violates the employee's sincerely held religious beliefs.

Important Tax Benefits to You

Tax-deductible gifts of cash are excellent. But a gift of stock or other securities to the National Right to Work Foundation can provide donors with an even bigger tax break.

Not only will you be able to support the Foundation and its strategic litigation and media programs right now, but you can save significantly on taxes at the same time. Appreciated securities are subject to a capital gains tax when they are sold. If you donate a gift of stock (that you have owned for more than one year) to the Foundation, the capital gains are not taxable to you. At the same time, you will benefit from a charitable tax deduction for the FULL fair market value of the securities as of the date of the gift.

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Foundation Fends Off Illegal Union Strike Fines

Machinist union officials hit workers with outrageous fines of $4,500 per worker

DECATUR, AL – Working to rein in a growing pattern of union abuse, the National Right to Work Foundation's legal team staved off unlawful retaliatory union fines for a group of eight Boeing employees in late July.

The employees filed federal charges against the International Association of Machinists (IAM) union in May for illegal retaliatory fines levied against them for refusing to abandon their jobs during a union-ordered strike that concluded earlier this year.

In an outrageous attempt to stifle dissent, the IAM hierarchy fined employees $4,500 apiece at the Boeing rocket manufacturing facility simply for working to feed their families.

The courageous employees, led by Larry Bonner, filed federal unfair labor practice charges at the National Labor Relations Board (NLRB) against IAM union Local Lodge 44. In response to the workers' Foundation-assisted charges, top international union president R. Thomas Buffenbarger wrote to the Local Lodge 44 boss on July 27 ordering him to rescind the fines.

"If nothing else, you have succeeded in cleansing your ranks of those who do not support the union's ideals," smirked Buffenbarger in his letter to the IAM local chief.

"IAM union officials tried to make an example of these independent-minded Boeing workers for defying union edicts and putting their families first," said Mark Mix, president of the National Right to Work Foundation. "The union hierarchy's thuggish tactics demonstrate how its interests are squarely at odds with the very employees it claims to represent."

IAM union bosses order workers to march up and down picket lines. If they refuse, they are fined thousands of dollars.

Union bosses use 'discipline' to stiffle any dissent

In the NLRB charges, Foundation attorneys pointed out that the eight Boeing employees could not be lawfully fined because they resigned their formal union memberships (and thus were no longer subject to internal union rules) while continuing to work – their right under the Foundation–supported *Patternmakers v. NLRB* U.S. Supreme Court decision.

Because Alabama is a Right to Work state, IAM union officials' actions also are contrary to the spirit of that highly-popular state law.

Additionally, once an employee becomes a non-member – even where not protected by a Right to Work law and, therefore, able to be forced to pay dues to a union to keep a job – union officials have no legal basis for enforcing internal union "discipline" against them.

"It is despicable for union officials to try to put employees in the poorhouse for refusing to abandon their jobs," said Mix.

"The union hierarchy's thuggish tactics demonstrate how its interests are squarely at odds with the very employees it claims to represent."

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ALPA Stock Scam

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Under the Railway Labor Act, it is unlawful for employees to negotiate their own, more-favorable contracts with their employer.

Because of the monopoly granted power, the law stipulates that union officials owe nonmembers in the bargaining unit a so-called "duty of fair representation," which supposedly prevents them from acting against the interests of employees who refrain from formal union membership. However, as dozens of other Foundation-led cases show, union officials commonly trample this supposed protection. This case points out just how unjust the whole notion of union monopoly bargaining is.

The United pilots' lawsuit seeks an order that the ALPA union breached its duty of fair representation, and the award of monetary damages. Each employee is legally entitled to compensation equivalent to the share difference between the auction sales price and the actual trade price of the stock at the time it was issued, plus interest.

Newsclips Requested

The Foundation asks supporters to keep their scissors sharp for clipping news items exposing the role union officials play in disruptive strikes, outrageous lobbying, and political campaigning. Please clip any stories that appear in your local paper and mail them to:

NRTWLDF
Attention: Newsclip Appeal
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A Foundation For The Future

Mark Mix, President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter:

When supporters of the well-meaning "paycheck protection" regulation passed a campaign finance law in Washington State that was supposed to limit the spending of union dues on politics, we predicted that the measure would not achieve its admirable goal.

As it turned out, unfortunately, we were dead-on correct.

Union bosses easily evaded its limited restrictions. Then they launched a legal counterattack that has resulted in a Washington State Supreme Court ruling that threatens to jeopardize hard-won Right to Work protections nationwide.

Clearly, the "paycheck protection" regulatory approach – which uses campaign finance laws – has been a disappointment.

As we report in this issue of **Foundation *Action***, Foundation attorneys are working to salvage the situation by appealing the *Davenport v. WEA* ruling to the U.S. Supreme Court. The potential damage to state Right to Work laws nationwide is too severe to let this decision stand without a full-court legal challenge.

Mounting an appeal to the U.S. Supreme Court is costly and time-consuming. It requires the Foundation to dedicate valuable staff resources to the effort because a U.S. Supreme Court ruling can shape the law nationwide for a generation or more.

The stakes in this case are so high we are personally committed to this effort no matter what the cost of time, talent, and treasure. I hope you will join me by sending the Foundation a generous, tax-deductible contribution in the postage-paid reply envelope enclosed. Thank you.

Sincerely,

Mark Mix