

## Obama Labor Board Threatens Foundation Attorney, Worker Rights

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and pay union dues, their attorney wasn't even allowed to advise two of his clients who were called to testify during the inquiry.

### Obama Labor Board favors forced unionism

Unfortunately, the Board's pro-Big Labor slant is far from surprising. Over the past several years, the NLRB has done everything in its power to further union boss interests, often at the expense of independent-minded employees' rights.

Egged on by International Association of Machinist (IAM) union bosses, the NLRB prosecuted Boeing in 2011 for daring to open a production line in Right to Work South Carolina. According to the Board, Boeing should have expanded its Puget Sound facilities to accommodate more production.

Of course, Boeing's Washington State facilities are subject to IAM monopoly bargaining. Moreover, Washington

allows union officials to require workers to pay dues as a condition of employment, a lucrative source of union revenue that was threatened by Boeing's move.

After Foundation attorneys intervened for three South Carolina Boeing employees concerned about their livelihoods, the NLRB eventually settled. However, the Board's anti-Boeing campaign threatened thousands of South Carolina jobs and over a billion dollars in local investment. It also sent a clear message to other companies considering expansion or relocation: Invest in Right to Work states at your own risk.

As Latino Express employees recently discovered, the Board isn't very interested in helping workers get rid of an unwanted union, either. In fact, the NLRB recently overturned a landmark precedent aimed at ensuring that a majority of employees in a given workplace actually support a union presence.


Under the Foundation-won *Dana* precedent, employees who were union-



***Once again, the Obama NLRB is doing the union bosses' bidding at the expense of independent-minded workers' rights.***

ized by a 'card check' drive – a type of organizing campaign that allows union operatives to collect signed cards from workers that are then counted as 'votes' for unionization – were able to submit a union decertification petition for 45 days after notice that a union has gotten in. This safety valve was established because card check organizing is less reliable and more prone to intimidation and coercion than traditional secret ballot elections.

In August 2011, however, the Obama Labor Board overturned the *Dana* precedent. Now, workers who get saddled with unwanted unions thanks to dubious card check organizing campaigns don't have a window period to challenge the result. Instead, they're stuck with the union until its contract with their employer expires, something that usually takes years.

"The Obama Labor Board has systematically favored Big Labor's interests over job creators and individual workers. That trend shows no sign of abating, which is why the Foundation's legal aid program remains vitally important," concluded Mix. 

## Foundation Action

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The Foundation is a nonprofit, charitable organization providing free legal aid to employees whose human or civil rights have been violated by abuses of compulsory unionism. All contributions to the Foundation are tax deductible under Section 501(c)(3) of the Internal Revenue Code.

## Foundation's Challenge to Obama's 'Recess Appointments' in Federal Court

*Right to Work Foundation attorneys are leading challenges to unconstitutional Obama power grab*

WASHINGTON, DC – As this issue of **Foundation Action** goes to press, the U.S. Court of Appeals for the Seventh Circuit in Chicago is set to hear arguments in a precedent-setting challenge to President Barack Obama's purported 'recess appointees' to the National Labor Relations Board (NLRB). The case is the first challenge to the Obama recess appointments in the nation to reach oral arguments at a federal appellate court and may help set the standard for all further challenges.

David Yost and Ronald Echegaray of Morgantown, West Virginia; Doug Richards of Ligonier, Indiana; and John Lugo of Chicago, Illinois filed their cases with free legal assistance from National Right to Work Foundation staff attorneys after union bosses illegally forced them to annually renew their objections to paying full union dues.

The NLRB found in the workers' cases that the union bosses' annual renewal schemes were blatant violations of federal law. However, the NLRB – filled with President Barack Obama's legally-suspect appointments – only applied their ruling prospectively, and provided no retroactive remedy to the employees and other workers who objected in the past to paying full union dues to the respective unions.

### Foundation attorneys appeal, challenge Obama appointments

Foundation staff attorneys appealed the Board's decisions to apply its remedy only prospectively, and also challenged Obama's unprecedented move to install three members on the NLRB as recess appointees in January 2012, despite the fact that the U.S. Senate was not then in recess.



**Thanks to Foundation attorneys, President Obama's outrageous NLRB recess appointments will face tough scrutiny in federal courts.**

Foundation staff attorneys will argue before the appeals court that the appointments are unconstitutional and, therefore, the Board lacks the quorum necessary to hear any cases. If Obama's NLRB appointments are unconstitutional, then the Board has only two valid members and lacks a quorum to enact rules or enforce federal labor law under a U.S. Supreme Court precedent set in 2010.

"The Obama Labor Board should cease ruling in Foundation and all other cases until a legitimate quorum is established," declared Mark Mix, President of the National Right to Work Foundation.


### Foundation attorneys spearhead other challenges

National Right to Work Foundation staff attorneys were the first in the nation to argue a case against the so-called recess appointments. Shortly after the supposed appointments were made, Foundation

attorneys made a motion challenging the scheme in the U.S. District Court for the District of Columbia as part of a larger federal challenge to new NLRB rules requiring every employer in the nation to post incomplete and biased information about employee rights online and in the workplace.

The district court judge, an Obama appointee, denied that challenge on procedural grounds.

Meanwhile, Foundation staff attorneys filed an *amicus curiae* brief in August in another case challenging the recess appointments pending now before the U.S. Court of Appeals for the District of Columbia Circuit, and have raised the issue in other cases as well.

"Barack Obama's so-called recess appointments to the Labor Board clearly violate the U.S. Constitution," said Mix. "Foundation staff attorneys will at every opportunity advance legal challenges to Obama's unprecedented and unconstitutional scheme to stack the NLRB with his appointees without Congressional approval and are prepared to take this issue to the U.S. Supreme Court if necessary." 

## Police Officers Hit Union Officials with Federal Civil Rights Lawsuit

### *Union hierarchy's power grab violated Colorado police officers' constitutional rights*

LONGMONT, CO – Two Longmont city police officers have filed a federal lawsuit against the Fraternal Order of Police (FOP) union, its city union affiliate, and the City of Longmont itself for violating their rights.

Cary Nickolls and James Bundy filed the lawsuit in the U.S. District Court for the District of Colorado in Denver with free legal assistance from National Right to Work Foundation staff attorneys.

Both Nickolls and Bundy refrain from formal union membership in the Longmont Fraternal Order of Police (LFOP) Lodge 6 union, an affiliate of the Colorado Fraternal Order of Police, and invoked their right to not pay full union dues.

“For most of my career, [the FOP] was more of a social organization than a union. In 2001, six days after 9-11, my father passed away. The FOP totally ignored his passing as I wasn’t one of the inner circle. That was when I quit the FOP,” recalled Nickolls, a 34 year veteran on the force. “The FOP then began a fight to be recognized by the City of Longmont as a union and to bring in collective bargaining. A small group of us fought them in the press and beat them by 10 percent of the vote.”

### Police union bosses intimidate officers

“In 2008... The FOP jumped on board with the firefighters in Longmont to get their unionization passed by the citizens of Longmont and added into the City Charter,” said Nickolls. “When the FOP won their election, they misrepresented what ‘fair share’ meant to us non-members and then to their membership... They took a vote of their membership and got ‘fair share’ added into the [contract].”

Because Colorado lacks a Right to



**Longmont Police officer Cary Nickolls found out about the Right to Work Foundation through a coworker: “I knew [union officials] weren’t complying [with federal law] but all they did was threaten us with a huge bill for arbitration.”**

Work law, workers can be forced to pay part of union dues as a condition of employment. However, the U.S. Supreme Court ruled in the Foundation’s *Chicago Teachers Union v. Hudson* case that while union officials can collect union fees as a condition of employment, they must first provide nonmember public workers with an independently-audited financial breakdown of all forced-dues union expenditures and the opportunity to object and challenge the amount of forced union fees before an impartial decision maker.

This minimal safeguard is designed to ensure that workers have an opportunity to refrain from paying for union

boss political activities and lobbying and union member-only events.

“When we received a bill for the second year of the contract, [the forced union fees] increased 78 percent,” stated Nickolls. Several of us then filed the paperwork required by the FOP to object... They had their union labor attorney in Kansas City send us each a letter threatening a \$5,000 to \$10,000 bill to have our dispute arbitrated.”

“We all dropped our disputes for obvious reasons.”

### Police union flouts the law, violates officers’ civil rights

Despite the *Hudson* precedent, FOP Lodge 6 union officials demanded forced union fees from the officers even though union officials have continuously refused to provide an audited breakdown of FOP and LFOP union expenditures. The City is named as a defendant in the lawsuit for its complicity in agreeing to and enforcing the forced dues clause in the monopoly bargaining agreement.

The officers seek in their lawsuit refunds of all forced union fees illegally demanded, with interest, and to enjoin future collection of any fees until LFOP union officials comply with the requirements the Supreme Court laid down in *Hudson*.

“To keep their forced-dues gravy train going, Colorado police union bosses are violating the rights of officers who are sworn to protect the general public,” said Patrick Semmens, Vice President of the National Right to Work Foundation.

Regardless of the outcome of Nickolls and Bundy’s lawsuit, independent-minded civil servants from forced unionism states ranging from Connecticut to Alaska will continue to

## Caterpillar Workers Strike Back Against Illegal Union Strike Fines

### *Union officials attempt to retaliate against employees who defied union strike order*

CHICAGO, IL - Machinist union bosses are targeting over a hundred Joliet, Illinois-area Caterpillar Inc. workers for continuing to work during last summer's high-profile union boss-instigated strike against the company.

On May 1, International Association of Machinists (IAM) Local 851 union bosses ordered over 800 Joliet Caterpillar workers on strike. Caterpillar workers Daniel Eggleston, Steven Olson, and over a hundred others continued to work despite the IAM union bosses' demands.

### **Union brass illegally punish workers**

Eggleston and Olson have refrained from union membership in the IAM union and its local District Lodge 851 affiliate for years and are thus exempt from the union hierarchy's constitution and bylaws. However, because Illinois does not have Right to Work protections making union affiliation completely voluntary, they are still forced to pay part of union dues to keep their jobs. Other Caterpillar workers were never truly voluntary members of the union because IAM union brass never informed them of their right to refrain from formal union membership.

In the wake of the strike, Machinist union brass sent letters to most of the over 100 workers who continued to work during the strike to summon them to trial before a union tribunal. However, the kangaroo court's purpose was for union bosses to punish workers who refused to toe the union line with crippling strike fines.

Under federal law, workers who refrain from union membership cannot be disciplined for continuing to work during a union boss-ordered strike. So with free legal assistance from National



***Until Foundation attorneys stepped in, IAM union bosses were poised to bulldoze individual worker rights.***

Right to Work Foundation staff attorneys, Eggleston and Olson filed a federal charge with the National Labor Relations Board (NLRB) regional office in Chicago.


"I think [union officials] are just being vindictive," Eggleston told the press after the charge was filed.

### **Union bosses forced to back down**

IAM union bosses backed off from trying to punish Eggleston and Olson after the Foundation filed charges with the NLRB. Despite the fact that Eggleston and Olson exercised their rights under the Foundation-won U.S. Supreme Court precedent in *Communication Workers v. Beck* to refrain from full-dues-paying union membership and not pay for union activities unrelated to workplace bargaining, such as politics and political lobbying, union officials continued to extract full union dues.

Foundation attorneys are still pursuing the NLRB charge because it also challenges the amount of forced dues taken from the workers' paychecks and the long and cumbersome process workers must undergo to refrain from full-dues-paying union membership in the IAM union.

Meanwhile, IAM union officials continue to try other Caterpillar workers who refused to leave their jobs during the union-instigated strike. In fact, Foundation attorneys anticipate more charges will be filed for other Caterpillar workers at the facility.

"IAM union bosses are trying to punish workers who had the temerity to stay on the job to support their families during a union-boss instigated strike," said Patrick Semmens, Vice President of the National Right to Work Foundation. "Foundation staff attorneys stand ready to defend any Caterpillar worker subjected to illegal retaliation by IAM union operatives, who will stop at nothing to punish independent-minded workers." 

## Year-End Planning: Financial Goals Met With Smart Choices



As 2012 draws to an end, many supporters are considering various year-end giving options to maximize tax savings with a charitable gift. Many Right to Work donors know that this is the time of year to consider a gift of cash or publicly traded securities.

The following options are available today for your consideration:

- 1. Gifts of cash (a tax deduction for the 2012 tax year);*
- 2. Gifts of stock/securities (a tax deduction for the full market value and NO capital gains tax);*
- 3. Review your family plans for a living will or trust (it's never too early to plan your estate);*
- 4. Gift annuity (a tax deduction in the current year of the CGA and an income stream for life, not available in all states);*
- 5. Charitable lead trusts and charitable remainder trusts.*

As of this date, Congress and President Obama have not come to terms on how they are going to compromise, extend, or otherwise deal with the Bush-era tax cuts for many wealthy Americans beyond 2012. President Obama has proposed that the tax cuts expire for those with incomes over \$250,000, making it important for

those earning more than that to start planning today to avoid the effects of significantly higher taxes in 2013! In addition, estate taxes are due to return to a much higher level next year.

If you are inclined to review your estate plans, now is the time to consult with your tax advisor or attorney to consider the best planned giving option for you and your family. The future of the Right to Work movement rests in the hands of generous supporters like you.

So today, please consider a major gift to the National Right to Work Foundation before December 31, or make plans soon for a future gift with an estate gift to the Foundation that will support our work in years to come.

### Make Donations of Stock or Securities Electronic Transfer of Securities to:

Bank of America, N.A.  
100 W. 33rd Street  
New York, NY 10001  
First Credit: Merrill Lynch  
11951 Freedom Drive, 17th Floor  
Reston, VA 20190  
Routing (ABA) Number: 026009593  
DTC# 5198  
Account # 6550113516  
FBO: National Right to Work Legal Defense  
and Education Foundation, Inc.  
Foundation Account #86Q-04155

*As with any planned gift, we encourage you to contact your estate attorney or tax advisor to help you and your family achieve your financial goals.*

**Need more information? Contact Ginny Smith at (703) 770-3303 or [plannedgiving@nrtw.org](mailto:plannedgiving@nrtw.org)**

## Possible Supreme Court Cases Loom for Right to Work Foundation

*Two Foundation legal challenges could impact worker rights during High Court's next term*

WASHINGTON, DC – Fresh off a Supreme Court victory in the *Knox* case, which bolstered protections for nonunion employees who wish to refrain from funding union politics, the National Right to Work Foundation could be defending employee rights in two more important Supreme Court cases next term.

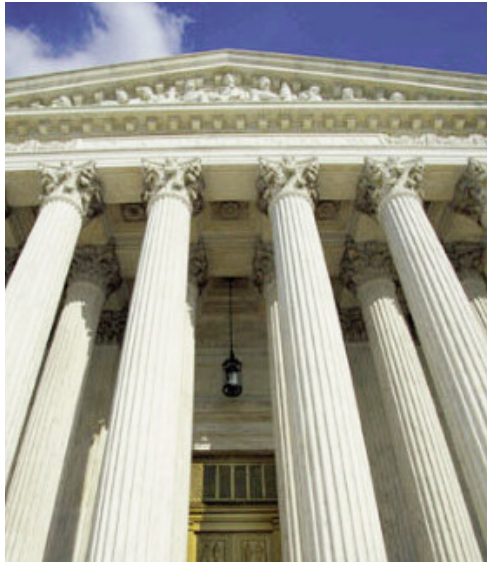
The first case was brought by Foundation attorneys for Pam Harris, a Chicago home care provider who was forced to pay union dues and accept union “representation” as part of a corrupt bargain between Illinois governors Rod Blagojevich and Pat Quinn and the Service Employees International Union (SEIU).

### Case would end homecare unionization scheme

The SEIU's scheme is part of a nationwide push to force home-based care providers into union ranks. Foundation attorneys helped beat back a similar unionization drive in Michigan, but Big Labor is already pushing for home care organizing pacts in several other states, including California. Foundation attorneys hope that Harris's case will set a favorable Supreme Court precedent that can be used to fight these other organizing drives in court.

The Supreme Court has already requested a brief from the U.S. Solicitor General on the issues presented in *Harris*, which indicates a heightened interest on the Justices' part and could bode well for Pam Harris's chances to present her case in Washington.

“Pam Harris has fought long and hard to care for her developmentally disabled son free from union interference,” said Ray LaJeunesse, Vice President of the National Right to Work Foundation. “We hope the High Court



**Foundation attorneys hope to argue two new cases during the Supreme Court's next term.**

steps in to protect the rights of home-based care providers and limit the damage from similar union organizing drives elsewhere.”

### **Mulhall case could provide check on coercive union organizing**


Meanwhile, Foundation attorneys have urged the Supreme Court to hear the case of Martin Mulhall, a Florida-based Mardi Gras Gaming employee who is challenging a secret organizing bargain between his employer and UNITE HERE union officials.

In 2004, UNITE HERE Local 355 and Mardi Gras Gaming entered into an agreement in which union officials promised to spend over one hundred thousand dollars on a gambling ballot initiative and guaranteed not to picket, boycott, or strike against Mardi Gras facilities.

In return, Mardi Gras agreed to hand over employees' personal contact information (including home addresses),

grant union operatives access to company facilities during a coercive ‘card check’ organizing campaign, and refrain from requesting a federally-supervised secret ballot election to determine whether its employees unionized.

With the help of Foundation attorneys, Mulhall is challenging this organizing pact on the grounds that the company's concessions were of substantial monetary value because they made UNITE HERE's organizing drive easier and less expensive. Under the Labor Management Relations Act, employers are prohibited from handing over “any money or other thing of value” to union organizers, a provision that is aimed at preventing union officials from selling out workers' rights in exchange for corporate concessions.

“We hope the Court will intervene in *Mulhall* to protect workers' rights by putting a brake on these corrupt union boss organizing pacts,” continued LaJeunesse. 

### **Newsclips Requested**

**The Foundation is always on the lookout for stories exposing union boss corruption, mismanagement, and abuse.**

**Please clip any stories that appear in your local paper and mail them to:**

**NRTWLDF  
Attention: Newsclip Appeal  
8001 Braddock Road  
Springfield, VA 22160**

**Supporters can also email online stories to  
wfc@nrtw.org**

## Police File Lawsuit

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experience the harmful effects of forced unionism in their workplaces.

“My personal beliefs are that unions do not belong in the public sector at all. My opinion of the FOP Lodge 6 is that they are only interested in money and perceived power they can squeeze from the commissioned and non-commissioned personnel of the Longmont Police Department,” stated Nickolls. “There is a lot of discontent with the union. In fact, many officers, including those that belong to the FOP, have congratulated me for taking this on.”

## Police still vulnerable to union collections racket

Like Nickolls and his fellow officers, workers and taxpayers are waking up to the true costs of forced unionism. And although union bosses continue to have strong political influence in statehouses across the country, voters are starting to put more heat on politicians to do the right thing and curtail some of Big Labor’s special forced-unionism powers (as seen in Wisconsin last year).

Meanwhile, Foundation staff attorneys are assisting teachers, police officers, and other civil servants across the nation to protect and expand their workplace rights in state and federal courts.

“While states like Colorado desperately need to pass Right to Work protections for all its workers, Foundation attorneys will continue to stand with freedom-loving civil servants as they seek to combat the abuses of forced unionism in the courts,” Semmens concluded. 

**For breaking news and other updates, check out the Foundation’s blog at [www.nrtw.org/blog](http://www.nrtw.org/blog)**



## Message from Mark Mix

President  
National Right to Work  
Legal Defense Foundation

Dear Foundation Supporter,

Another year is drawing to a close. As we prepare to celebrate the holiday season with friends and family, it’s worth taking a moment to reflect on how far we’ve come in 2012.

With your help, the National Right to Work Foundation has accomplished great things. Our 15th trip to the United States Supreme Court resulted in a ground-breaking legal precedent that will further protect workers’ paychecks from forced union political contributions.

The Foundation’s legal team is already working on follow-up litigation to enforce and expand the Hight Court’s *Knox* decision and further constrain union boss political power.

But our efforts at the Supreme Court are just the tip of the iceberg. As you’ll read about in this issue of **Foundation Action**, Right to Work staff attorneys continue to pursue litigation for thousands of employees in hundreds of cases nationwide.

In Colorado, we’ve filed a federal lawsuit for two police officers who were forced to pay dues for union politics. In Illinois, we’re helping protect independent workers from being disciplined for refusing to walk off the job during a union-instigated strike.

We’re also holding the Obama Administration accountable for its pro-forced unionism bias. Foundation attorneys are leading the charge to challenge Obama’s dubious ‘recess’ NLRB appointments in federal court.

Meanwhile, Foundation attorneys continue to defend Indiana’s new Right to Work law in state and federal court. You see, we have to play offense *and* defense against Big Labor’s massive forced-dues funded political machine.

It’s been a busy year, but that’s the way we like it. And we couldn’t stay busy without your support.

Unlike Big Labor, which draws on forcible contributions from unwilling workers, the National Right to Work Foundation is entirely dependent on voluntarism. Our free legal aid program would grind to a halt without generous contributions from supporters like you.

Thanks for helping us stay busy. As the new year beckons, we look forward to continuing the fight.

Sincerely,

Mark Mix



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## NLRB Threatens Foundation Attorney for Defending Clients' Rights

### *Labor Board prevented attorney from advising workers in a union decertification hearing*

CHICAGO, IL – Should employees be allowed to participate in a National Labor Relations Board (NLRB) hearing that will determine if they're stuck with an unwanted union? Not according to the Obama Labor Board, which denied a motion filed by over half of all Latino Express employees to participate in a hearing on their efforts to decertify an unwanted Teamsters local.

What's worse, the NLRB actually subpoenaed Matt Muggeridge, a Foundation staff attorney advising the affected employees, to testify during the hearing. Witnesses are sequestered from participating in any part of a hearing outside their testimony, so the NLRB's subpoena effectively prevented Muggeridge from advising three of his employee clients who were also called as witnesses.

Muggeridge refused to testify at the hearing on the grounds that it interfered with his duty to his clients. The NLRB responded by threatening to enforce the subpoena through a federal court order.

"Not only were Latino Express employees prevented from being parties to a hearing that will determine if they can be forced to pay dues and accept unwanted union 'representation', the NLRB wouldn't even let their attorney advise three of the employees who testified at the same hearing," said Mark Mix, President of the National Right to Work Foundation.

"Now, a Foundation staff attorney



***Due to the NLRB's heavy-handed tactics, a Foundation attorney was barred from advising his clients during a union decertification hearing.***

may face a federal court order for refusing to jeopardize his clients' rights," continued Mix.

### **Workers wanted to get rid of ineffectual union bosses**

The controversy began last summer, when Ramiro Lopez, a veteran Latino Express employee who is receiving free legal aid from the Foundation, submitted a decertification petition to his employer. The petition, which was signed by a majority of Latino Express employees, sought to remove the Teamsters union from their workplace.

Despite overwhelming employee opposition to the union's presence, Teamster lawyers filed charges with the NLRB to block the workers' decertification petition.

But most Latino Express employees continue to oppose the union. 37 Latino Express workers – a majority of the bargaining unit – responded by retaining Muggeridge as their attorney and filing a motion to intervene in the hearing on the Teamsters' charges.

The NLRB's reaction was swift and heavy-handed. Not only were Latino Express workers barred from participating in a hearing that will determine if they can be forced to accept the Teamsters' so-called 'representation'

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