



Foundation Action

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

Vol. XXIV, No. 2

8001 Braddock Road • Springfield, Virginia 22160

www.nrtw.org

March/April 2004

Recalcitrant NLRB Urged to Confront “Top-Down” Organizing Abuses

*Congress ratchets up
pressure on increasingly
derelict federal agency*

WASHINGTON, DC — In the face of a nationwide wave of coercion against workers by union officials and some “captured” employers, the National Right to Work Foundation has stepped up its comprehensive effort to persuade National Labor Relations Board (NLRB) officials to confront this abuse.

Using a variety of methods, the Foundation and its staff attorneys are building pressure against a recalcitrant NLRB bureaucracy which has so far failed to address egregious abuses under coercive so-called “neutrality” and “card check” agreements that are designed to corral workers into union membership through threats, harassment, and bribes—and without so much as a secret ballot vote.

Meanwhile, Congressmen Charlie Norwood (R-GA) and Ernest Istook (R-OK), key members of labor committees in the House of Representatives, have begun two separate inquiries into why the agency is standing on the sidelines while union organizers are riding roughshod over employee freedom.



Congressmen Charlie Norwood (R-GA) (left) and Ernest Istook (R-OK) (right) are taking initial steps to hold the NLRB bureaucracy accountable.

After being confronted with more than a dozen formal allegations of abuse filed with assistance from Foundation attorneys by workers across the country challenging the validity and implementation of so-called “neutrality” or “card check” agreements, the NLRB bureaucracy has failed to issue complaints or prosecute even the most egregious of these charges.

Threats, harassment, bribery increasingly common

“Big Labor’s friends within the NLRB bureaucracy are standing idly by while these collusive agreements between weak-kneed employers and devious union officials foist compulsory unionism on the backs of dissenting employees,” stated Mark Mix, President of the Foundation.

“Without immediate action, American workers stand to lose what few rights they currently enjoy to determine their own representation.”

“While the secret-ballot election process allows a majority of employees to take away rights of a dissenting minority,

it is less abusive than Big Labor’s alternative: shakedowns.”

NLRB bureaucracy neglects duty to enforce law

In addition to pursuing cases filed on behalf of workers against these coercive agreements—cases which have been featured in previous issues of *Foundation Action* as well as on page 3 of this issue—the Foundation is implementing a broad strategy to mobilize supporters, raise public awareness, and aggressively use the Freedom of Information Act (FOIA) to obtain internal NLRB documents.

Earlier this year, Foundation President Mark Mix asked supporters nationwide to sign postcards and petitions urging President George W. Bush,

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Court Delays Implementation of Union Disclosure Rules

Most union officials will conduct 2004 election activities free from scrutiny

WASHINGTON, D.C. — The U.S. District Court for the District of Columbia upheld, but delayed implementation of, the Bush Administration's new union financial disclosure regulations that were originally scheduled to go into effect on January 1, 2004.

The new requirements, which the National Right to Work Foundation has argued should have been much more stringent, will nevertheless provide more information than has been previously available to rank-and-file employees concerning how their compulsory union dues are spent.

After the AFL-CIO sued the Bush Administration, seeking a ruling that Secretary of Labor Elaine Chao lacked the authority to establish the reporting requirements, the Foundation filed as *amicus curiae* in defense of Secretary Chao. The only organization that filed arguments in the case other than the parties themselves, the Foundation asserted that the new rules did not impose an undue burden on unions and that the regulations were greatly needed to help combat rampant union corruption and financial malfeasance.



www.uscourts.gov

Judge Gladys Kessler has often ruled in favor of union officials. Her delay in implementation of the new union reporting rules helps Big Labor once again.

"The AFL-CIO hierarchy has gone all out to keep rank-and-file workers in the dark about union finances," said National Right to Work Foundation President Mark Mix. "Not only did Secretary Chao have the authority to do what she did, but she could have and should have gone much further to shine the light of meaningful transparency on Big Labor's finances."

Election year sop frees Big Labor from financial accountability

Though the new reporting rules were upheld, U.S. District Court Judge Gladys Kessler partially granted the

AFL-CIO's motion for an injunction, thereby halting the rules' implementation for all unions whose reporting year began on January 1. Only the few unions with financial reporting dates starting on or after July 1 of this year will be forced to disclose any expenditures made during this particular election cycle. And those LM-2 disclosure forms will not be due until September 2005.

"Judge Kessler gave Big Labor officials what they wanted—the ability to conduct an all-out campaign to defeat their political adversaries this year without having to reveal to rank-and-file workers the depth and breadth of the political activities funded by their compulsory union dues," stated Mix.

"For the past two years, the AFL-CIO's strategy has been to run out the clock in order to stall the implementation of this much-needed reform until such time as a new President would be in place to overturn it."

DOL's last-minute gutting of requirements baffles observers

At the direction of certain key players within the Department of Labor (DOL) hierarchy, the DOL inexplicably made a last-minute decision to raise the threshold for itemization of union expenditures to \$5,000 from an originally proposed level of \$250 (and publicly proposed \$2,000). This move allows union officials to conceal a large number of disbursements from union treasuries.

Congressman Charlie Norwood chastised Secretary Chao. "The final regulations have a high threshold for itemization of expenditures," said Norwood. "What can \$4,999.99 buy union officials? At four cents each, 125,000 phone calls from phone banks. That's unacceptable."

Foundation Action

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Distributed by the
National Right to Work Legal Defense Foundation, Inc.
8001 Braddock Road, Springfield, Virginia 22160
www.nrtw.org • 1-800-336-3600

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 Challenges NLRB Anti-Worker Rule

“Recognition bar” corrals dissenting workers into unwanted union for up to 4 years

WASHINGTON, DC — Employees at Dana Corporation’s Upper Sandusky, Ohio, facility filed an appeal with the National Labor Relations Board (NLRB) in Washington, D.C., asking that the agency abandon its arbitrary rule prohibiting employees from obtaining even so much as a vote on whether to unionize.

If the appeal is successful, a rapidly increasing Big Labor organizing tactic will be stalled. At the same time, the nation’s largest auto workers union could be stripped of its newly granted monopoly representation power over nearly two hundred of Dana Corp.’s employees.

In early December, Dana Corp. “recognized” the United Auto Workers (UAW) union based upon a so-called “card check.” Under the coercive “card check” process, union officials browbeat employees one by one into signing union recognition cards that are then counted as a “vote” in favor of unionization.

Within weeks of Dana’s “voluntary recognition,” over 35% of the employees at Upper Sandusky flocked to sign a decertification petition that asked for the opportunity to vote in a secret ballot on whether the union actually had even



AP/Wide World photo

UAW president Ron Gettelfinger has given up on the “outdated” notion of actually persuading employees to favor unionization, instead sending teams of union organizers across America to browbeat and threaten.

a simple majority of support among workers. The NLRB’s regional director dismissed the employees’ petition citing an NLRB-created doctrine called the “recognition bar rule.”

Arbitrary “recognition bar” imposes unwanted unions on workers

The anti-worker “recognition bar” rule is not in the statute, but is an NLRB guideline designed to perpetuate union monopoly representation, no matter how unpopular. This rule was most recently expanded by Bill Clinton’s NLRB.

The rule stipulates that once a union is “recognized” by an employer, the union must be allowed to bargain and is insulated from all employee challenges for a “reasonable period,” often as long as one year. Then, if the union manages to get a contract in place during that year, yet another NLRB “bar” kicks in, the so-called

“contract bar,” which also halts any attempts at decertification for a minimum of three more years.

“Workers ought to have a right to cast off the unwanted union representation at any time—especially when the union bullied its way into the workplace over the objections of the employees,” said Stefan Gleason, Vice President of the Foundation.

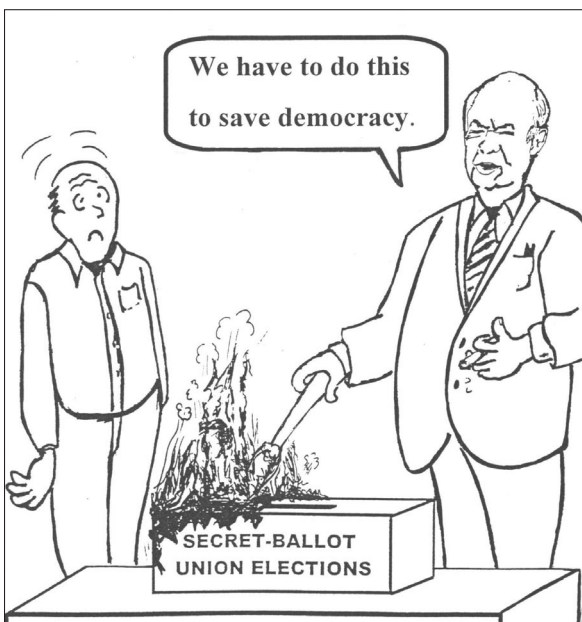
If the decertification election requested by the Dana workers is allowed and is successful, the UAW would lose its power to act as their monopoly bargaining representative. (See “Foundation Answers,” page 7.)

Back-room deal denied workers’ right to decide union affiliation

In early December, Dana and UAW officials began bargaining pursuant to a so-called “neutrality” agreement and a “card check” authorization process—a sweetheart deal that bypasses the less-abusive secret ballot election process and replaces it with joint union-employer pressure to unionize, while union organizers are turned loose to bully workers one-on-one into signing union recognition cards.

Company and union officials claimed a majority of Dana Corp. employees had indicated they supported unionization by signing a card. Based on this claim, which was not verified by any government official, company officials installed the union as the workers’ exclusive representative, granting union officials a monopoly on bargaining over wages and working conditions, including the power to compel dissenting employees to pay union dues or be fired from their jobs.

In recent years, union organizers have found it increasingly difficult to persuade employees to vote in favor of



SEIU Must Rebate Up to \$10 Million in Forced Dues

Foundation attorneys win big against forced unionism violations

LOS ANGELES, Calif. — More than 100,000 Los Angeles County home care providers received formal notice of the proposed settlement of a civil rights lawsuit that will require union officials to rebate up to \$10 million in illegally seized compulsory union dues. The rebates stem from actions by National Right to Work Foundation attorneys to hold Service Employees International Union (SEIU) Local 434B officials accountable for illegally forcing home care providers to pay for politics and other activities unrelated to collective bargaining.

When the settlement negotiations began in December 2002, the number of victimized home care workers was originally thought to be only 60,000 rather than 100,000. The rebates, originally estimated at \$5 million, are now expected to total as much as \$10 million. Union officials withheld the number of persons affected until an independent audit firm involved in the settlement recently released its estimates.

“This settlement is an incremental yet important step towards holding union officials in California accountable for how they collect and spend compulsory union dues,” said Ray LaJeunesse, Vice President and Legal Director of the Foundation. “However, the ultimate solution to this sort of abuse is to take away union officials’ government-granted privileges to force employees to pay union dues or be fired from their jobs.”

In December 2001, Carla West and three other home care providers filed the suit in the U.S. District Court for the Central District of California against SEIU Local 434B, the Personal Assistance Services Council (PASC) of Los Angeles County, California Attorney General Bill Lockyer, and others. The Court will hold a hearing in April to determine if the settlement is reasonable and fair. If the settlement is approved as expected, the rebate checks should be mailed in July.



AFL-CIO boss John Sweeney has labeled the drive to forcibly unionize California home care workers as Big Labor's "largest ever" organizing victory.

Majority of dues used for politics and other non-bargaining activities

During the period for which rebates are being paid, SEIU union officials failed to follow the Foundation-won Supreme Court decision in *Chicago Teachers v. Hudson*, which requires unions to provide objecting employees an audited financial disclosure and advance reduction of forced union dues used for politics and other non-bargaining activities. After months of stonewalling, SEIU officials produced an audit showing that a mere 48 percent of union dues are spent for collective bargaining. Objecting nonmember home care providers now pay less than half of what full union members pay in dues.

In 1999, Local 434B gained recognition by PASC as the so-called “exclusive bargaining agent” of home care workers who provide non-medical in-home support services to disabled low-income clients. Although they are reimbursed through the state, the workers are independently hired, fired, and supervised by individual recipients of home care.

The constitutionally suspect arrangement brokered between union operatives and government bureaucrats declares that home care providers are “public employees” for collective bargaining purposes *only*, even though the PASC “employer” lacks most traditional employer responsibility.

Government agencies act as “employers” on paper

The AFL-CIO, the umbrella organization overseeing the SEIU and most other unions, uses this lucrative new scheme to accumulate money at the expense of taxpayers, elderly and disabled citizens, and those who care for them.

The home care unionization scheme, first instituted in Los Angeles County where it resulted in nearly \$20 million annually in new forced union dues, has now appeared in San Diego, Sacramento, Oregon, and most recently in Washington State with the passage of I-775.

Under the auspices of state law, union officials may petition newly created

This settlement is an incremental yet important step towards holding union officials in California accountable for how they collect and spend compulsory union dues.

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THE WALL STREET JOURNAL

THURSDAY, MARCH 25, 2004

REVIEW & OUTLOOK

Very Hard Labor

Far be it from us to deny that even in the best of capitalist societies there lurk heartless employers who ride roughshod over collective bargaining agreements and refuse to recognize their employees' unions. An administrative law judge for the National Labor Relations Board recently issued a ruling pointing to one of them: the Kansas AFL-CIO.

That's right. When Connie Stewart was presented with a pink slip by the Kansas AFL-CIO after 26 years of faithful service, she didn't go quietly. Ms. Stewart protested that the layoff violated not only her seniority but the collective bargaining agreement with the Office and Professional Employees International Union (OPEIU), the in-house union that represented her. Whereupon her bosses responded like something out of "Norma Rae": What union? they asked. We don't see no union.

Though the Kansas AFL-CIO had been collecting dues on behalf of the OPEIU for decades, its officials argued that the union really didn't represent Ms. Stewart and the other employees. They further claimed that they were exempt from the labor board's reach anyway, oddly citing a Supreme Court case rejecting the NLRB's authority over Catholic schools. To understand the beauty of that particular line of argument it helps to know that it is precisely the opposite position the national AFL-CIO took in the amicus brief it submitted to the Supreme Court in that same case.

In any event the judge quickly saw through it all, pointedly noting that he found the explanations given by the Kansas AFL-CIO's executive secretary "labored, unconvincing, and utterly deceitful." It does our heart good to see another union-busting boss brought to justice.

As part of its aggressive media outreach activities, the Foundation continues to feed story ideas to journalists across America, resulting in pithy columns like this one that appeared recently in the Wall Street Journal.

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government "public assistance councils" to declare that home care providers employed by elderly and disabled citizens receiving assistance through a state welfare program are "public employees" for the purpose of collective bargaining. The SEIU union then obtains recognition from the "public assistance council" as the exclusive bargaining representative of tens of thousands of home care providers, and implements a forced unionism agreement that requires the providers to pay dues as a job condition.

Scam requires family members to pay union dues

Despite being classified as "public

employees" in such schemes, workers are independently hired and supervised by individual recipients of home care (many of whom are elderly or indigent relatives), not the government, and they must obtain their own insurance. Meanwhile, the agreement bartered between the "public assistance council" and union officials has no bearing on basic terms of workers' employment, including hours, workplace safety, disputes with employers, etc.

AFL-CIO President John Sweeney stated that unionization of home care workers "is part of a growing trend" that is enabling his union to "charter new territory." Union officials see home care workers as a largely untapped, plentiful source of forced union dues and fees. (The state of California alone funds over \$700 million in home care services annually for

nearly 200,000 regular recipients.) The AFL-CIO boasts that SEIU's Los Angeles County victory was the "largest ever" unionization drive in the United States, and they are employing this scheme in a growing number of other jurisdictions.

"AFL-CIO chieftains devised this lucrative scheme to seize money from taxpayers, disabled citizens, and those who care for them," said LaJeunesse. "Foundation attorneys intend at every opportunity to battle the AFL-CIO's designs to use government force to unionize independent home care providers across America." ✚

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NLRB's Dereliction of Duty Raises Congressional Interest

continued from cover

House Workforce Protections Subcommittee Chairman Charlie Norwood, and NLRB General Counsel Arthur Rosenfeld to address the growing threat to employee rights caused by these abusive top-down organizing campaigns. More than 114,000 postcards and petitions have already been generated.

Meanwhile, the Foundation filed repeated document requests regarding the NLRB's action on "neutrality" and "card check" agreement-related cases, but so far, the agency has stonewalled the requests—arguing that the information requested is somehow not in the public interest. Labor law experts find this claim absurd since every Democrat presidential candidate weighed in on the issue, several bills are currently pending in Congress, and hundreds of news articles have been published about this cutting edge development in the law and in the field of union organizing.

The Foundation is gearing up for federal court litigation against the agency



Insiders say that NLRB General Counsel Arthur Rosenfeld has been prevented by his union-apologist staff from lifting a finger to defend employees abused during top-down organizing drives.

under the Freedom of Information Act, but first it submitted a packet of scholarly articles, news clips, pending legislation, and other timely information on the subject to the NLRB's Washington, D.C. headquarters, as well as all 34 NLRB regional offices, further establishing for the record the weight of the issue and its importance to the public.

Congressional members join battle

Recognizing the grave threats posed to employee freedom of choice by these insidious "neutrality" agreements, several congressional leaders have joined the growing chorus of voices demanding accountability from the NLRB.

In February, House Workforce Protections Subcommittee Chairman Charlie Norwood (R-GA) and two other influential members of Congress—Marilyn Musgrave (R-CO) and Jim DeMint (R-SC)—sent a letter to General Counsel Rosenfeld demanding an explanation of why Big Labor officials are allowed to trample the rights of workers with no response from the NLRB.

"Until this present controversy, we thought it axiomatic that the Board was the arbiter of union certifications, and that the Board-conducted secret ballot election was the cornerstone of American labor law," the congressmen stated in their joint letter. "We are learning to our chagrin that this is no longer true."

"Indeed, if this trend continues to its logical end, it is hard to see what role the Board will play in the administration of American labor law," the letter continued. "By sitting on the sidelines, the Board may well be abdicating its statutory duties."

Istook cites smaller caseload in call for NLRB budget review


Meanwhile, Congressman Istook (R-OK), Vice Chairman of the House Labor, HHS, and Education Appropriations Subcommittee, contacted NLRB Chairman Robert Battista and General Counsel Rosenfeld and asked

why a budget cut was not appropriate for the agency in the coming fiscal year. Istook's subcommittee exercises jurisdiction over funding for federal agencies that include the NLRB.

In his hard-hitting letter, Congressman Istook pointed out that the rapidly increasing use of

"neutrality" agreements has led to an 11 percent reduction in the number of union representation elections conducted by the Board in the last fiscal year alone. Citing this trend, Congressman Istook rightly questioned the ongoing relevance of the NLRB in the future.

"The administration of employee secret ballot elections is a primary purpose of—and a primary rationale for the existence of—the NLRB," noted Istook. "Because the NLRB is being taken out of the union recognition process, please give me your thoughts about how these new developments will affect the NLRB's [future] funding needs..."

With these and other concerns looming about the NLRB bureaucracy's dereliction, the Foundation and its supporters are now urging Congress to hold oversight hearings on the NLRB's lack of enforcement of the law. 



Foundation Answers... *Facts you need about Right to Work issues*

What is a “decertification” election?

Although Big Labor’s special privileges make it tremendously difficult for employees to kick a union out of an organized workplace, the National Labor Relations Act (NLRA) does provide for a process that allows employees—under very limited circumstances—to call for a special election to get rid of the union as their monopoly representative. This is called a decertification election, because employees revoke the union’s “certification” to be the “exclusive bargaining representative.”

If 30% or more of the employees in the bargaining unit sign a decertification petition and file it with the National Labor Relations Board during a narrow window period (60-90 days, or in a health care institution 90-120 days, prior to the expiration of a contract or once every three years, whichever comes first), the government is supposed to conduct a secret-ballot election to determine if a majority of the employees wish to decertify the union. If a majority of those voting favor decertification, the company then becomes nonunion and all employees are free to bargain on their own, and negotiate their own terms and conditions of employment.

In this fashion, employees may restore their right to be judged on their individual performance rather than an

arbitrary union contract that typically rewards only the lowest common denominator. Aside from the window period, these elections are difficult to obtain because union officials have become adept at blocking elections by filing frivolous unfair labor practice charges. That’s why employees have been denied the opportunity to vote on the union’s status for years or even decades in many organized workplaces.

How does this differ from a “deauthorization” election?

A deauthorization election has only one purpose and effect: to remove the forced-unionism clause from the contract. If employees are victorious in a deauthorization election, the union nevertheless remains entrenched as the exclusive bargaining representative, and the collective bargaining agreement remains in effect except for the forced unionism clause.

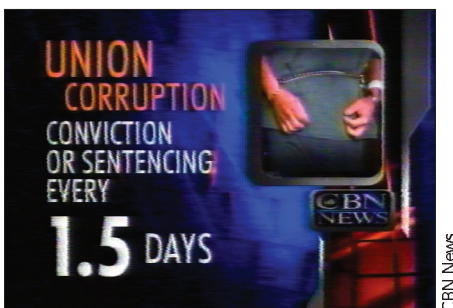
In contrast to decertification, a majority of all workers in the bargaining unit (not just of those voting) must vote in favor of deauthorization for the measure to succeed. A deauthorization election may be obtained once a year, not just in a narrow window period before the expiration of a collective bargaining agreement or once every three years.

Recognition Bar Rule May be Overturned

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unionization, and thus have focused instead on eliciting employer complicity or active support to corral workers into union collectives.

National Right to Work Foundation



A recent national television broadcast featuring the Foundation highlighted compulsory unionism’s corrupting influence.

attorneys have three unfair labor practice cases pending against Dana and the UAW union for abuses under these coercive “neutrality” agreements. Currently, there are two cases on appeal arising in Virginia and Kentucky, as well as charges pending for similar abuses in Michigan.

Metaldyne workers appeal to throw out unwanted UAW union

Meanwhile, in a strikingly similar case, a majority of employees of Metaldyne, in St. Marys, Pennsylvania, filed a decertification petition signed by an actual majority seeking to strip the UAW hier-

archy of its newly granted monopoly representation authority over several hundred employees. The case is currently on appeal at the NLRB in Washington, D.C.

As in the Dana Corp. case, Foundation attorneys are asking the Board to void the “recognition bar rule” for infringing on workers’ rights to have any say in their representation.

Metaldyne’s parent company, Heartland Industrial Partners LLP, currently faces related federal charges filed by another group of Foundation-aided workers. In addition to a U.S. District Court suit alleging an illegal sweetheart arrangement, workers under the Heartland umbrella have filed NLRB charges challenging an unlawful “secondary boycott” provision. ✚

Court Delays

continued from page 2

In addition, the new disclosure requirements do not mandate an independent audit or verification of any kind—an exemption that companies and most non-profit organizations do not enjoy. Foundation attorneys had even provided to DOL lawyers a legal analysis demonstrating that the statute clearly authorizes the Department of Labor to establish such a requirement.

However, the greatest betrayal of the goal of union financial transparency is embodied by DOL's last-minute decision to combine distinct categories of union expenditures. The most egregious of these combinations is allowing expenditures for union organizing activity—activity on which some unions now spend a majority of workers' forced dues—to be dumped into the unrelated “representational activities” category.

“Unfortunately, I was disappointed by the outcome of the finalized disclosure rule, which is substantially weaker than I had hoped,” stated Norwood.

Big Labor “repays” concessions with lawsuit

Aside from undermining enforcement of the Foundation's Supreme Court precedents, which establish that employees cannot be forced to pay for union organizing because it is unrelated to collective bargaining, this decision will allow union officials to conceal how much of their dues are actually spent on efforts to conscript new forced-dues-paying members to their private ideological cause. In recent years, unions have often spent half of their entire budgets on organizing.

Insiders and observers believe that watering down the reporting requirements was done in accordance with a concession strategy pursued by some within the Administration in an embarrassingly unsuccessful attempt to dampen Big Labor opposition to President Bush's reelection campaign. †



Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter:

Again and again, your National Right to Work Foundation is on the cutting edge in attacking compulsory unionism.

The Foundation is waging this battle all across America, but right now we're taking special aim at the National Labor Relations Board (NLRB), and we're recruiting important allies in our struggle.

The NLRB bureaucracy has so far turned a blind eye to Big Labor's attempt to bully workers into forced unionism without so much as the minimal protections of a secret-ballot election. Instead, as explained on page 1 of this issue, the union bosses are using “neutrality” and “card check” agreements to bully and deceive workers into supporting unionization without a chance to make their voices heard.

A majority of workers who are forced into union membership today are organized through this dishonest system of “top-down organizing.”

As usual, the NLRB bureaucrats are fighting us tooth and nail, but we're going on the offensive with lawsuits and Freedom of Information Act (FOIA) requests designed to compel the pro-forced unionism bureaucrats to account for their inaction. Foundation personnel are fanning out across America to brief the business and legal community about these new dangers, and we're recruiting more and more allies in our campaign to fight back. Meanwhile, key congressional allies are beginning to step up their oversight of the wayward agency.

With their explicit new strategy of “card checks” and pushbutton union recognition demands, the union bosses are dropping even the pretense that workers support the notion of unionization.

These recent developments amount to a pathetic admission of failure on their part in selling union membership on its merits, but the union bosses have always been beyond shame. They're thirsting—more than ever—for forced-dues dollars so they can expand their ability to intimidate politicians and increase their power.

That's why the Foundation's efforts are so crucial. We're the only national organization standing squarely in Big Labor's way with a strategic legal program that guards the real desires of workers for freedom from union tyranny.

Thank you for your continued support.

Sincerely,

Mark Mix