



# Foundation Action

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

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## Chicago Educators Press Seventh Circuit, Supreme Court to Stop Anti-Janus Schemes

### Teachers continue battling Chicago teacher union “escape period,” file brief with Supreme Court

CHICAGO, IL – With free legal aid from National Right to Work Foundation staff attorneys, Chicago Public Schools (CPS) educators Ifeoma Nkemdi and Joanne Troesch are appealing to the U.S. Seventh Circuit Court of Appeals their class-action civil rights lawsuit against the Chicago Teachers Union (CTU) and The Board of Education of the City of Chicago (Board) for unconstitutional dues seizures.

The suit challenges a union policy that blocks teachers from exercising their First Amendment right under the Foundation-won *Janus v. AFSCME* decision to stop payments to the union outside of the month of August. It also seeks refunds of all dues seized from dissenting educators by the Board.

In *Janus*, which was argued by one of Troesch and Nkemdi’s Foundation staff attorneys, the High Court struck down mandatory union fees as a violation of government employees’ First Amendment rights. The Court ruled that taking any dues without a government worker’s affirmative consent violates the First Amendment, and further made it clear that these rights cannot be restricted absent a clear and knowing waiver.

The appeal comes after the U.S. District Court for the Northern District of Illinois dismissed Troesch and Nkemdi’s lawsuit on February 25, 2021. The court sided with CTU and Board officials, ruling they didn’t violate *Janus* by forbidding the two educators from exercising their First Amendment



Credit: Terrence Antonio James/Chicago Tribune/TCA

**“I want people’s constitutional rights, the right to work to be established,” Ifeoma Nkemdi told the *Chicago Tribune* in 2020 about her and Joanne Troesch’s battle against CTU union boss-devised schemes to trap teachers in forced dues.**

right to cut off union dues except for one month a year. This prompted Foundation attorneys to appeal the case to the Seventh Circuit.

### CTU Bosses Pilfered from Paychecks Even after Educators Opted out

Troesch and Nkemdi’s lawsuit explains that they “did not know they had a constitutional right not to financially support” the union hierarchy until the fall of 2019. The pair independently discovered their First Amendment *Janus* rights while they were researching how to exercise their right to continue working during a strike that CTU bosses ordered in October 2019, the lawsuit notes. They sent letters the same month to CTU officials to

exercise their *Janus* right to resign union membership and cut off all dues deductions.

Both educators received no See ‘Restrictions on First Amendment’ page 7

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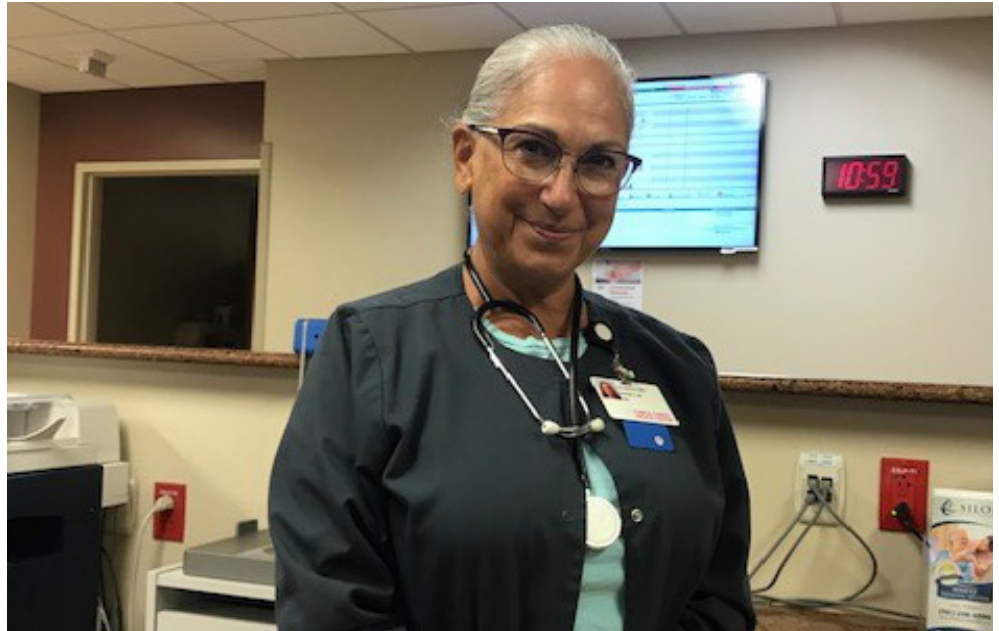
## WV, TX Employees Defend Rights as Biden NLRB Appointee Attempts to Block Cases

### 'Acting' GC tries to stop prosecution of union bosses for illegal dues, secret-organizing deal

WASHINGTON, DC – President Biden's unprecedented removal of National Labor Relations Board (NLRB) General Counsel Peter Robb, and subsequent installation of forced-unionism zealot Peter S. Ohr as Robb's "Acting" replacement, quickly threatened workers' individual rights. It also threatened the independence of the Board itself, including in multiple ongoing cases brought with National Right to Work Foundation legal aid.

In two cases brought by Foundation staff attorneys that are already before the NLRB, Ohr is attempting to stop the Board from ruling against union officials. One is a case for Texas-based nurse Marissa Zamora, which challenges union officials' ability to hide secret "neutrality agreements" that limit workers' rights. The other, brought for West Virginia Kroger employee Shelby Krockner, seeks to prosecute union officials for coercing workers into signing dues checkoff authorizations that are supposed to be voluntary.

Former NLRB General Counsel Peter Robb, who supported the workers in both of these cases, was removed by President Biden just minutes after his inauguration,



**Marissa Zamora is challenging the authority of NLRB "Acting" General Counsel Peter Ohr, who was installed by Pres. Biden in an unprecedented power grab and began attacking the rights of workers opposed to associating with union officials.**

despite the fact that Robb still had nearly 11 months remaining in his Senate-confirmed four-year term.

This unprecedented and possibly illegal maneuver flies in the face of the law creating the NLRB, which envisioned an independent General Counsel. Since the office of NLRB General Counsel was established in 1947, no sitting General Counsel

of the NLRB has ever been fired by a president before the end of their term, even when the White House changed hands.

Zamora's case progressed to the full NLRB in Washington, D.C., after an NLRB Administrative Law Judge (ALJ) dismissed a complaint that former NLRB General Counsel Peter Robb had issued, prosecuting the National Nurses Organizing Committee (NNOC) for refusing to disclose to represented employees its secret "neutrality agreement."

### TX Nurse Fights Biden Appointee Move to Shield Union's Secret Deal

Though Zamora's Foundation-provided attorneys and Robb had both filed exceptions urging the full Board to reverse the ALJ's decision, NLRB Acting General Counsel Peter Ohr filed a motion on February 23, 2021, seeking unilaterally to send the complaint back to the NLRB Fort Worth regional office to be dismissed.

So-called "neutrality agreements"

## 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.



## Multiple Units Oust Teamsters Bosses Thanks to Foundation-Backed NLRB Rule

### *Unpopular Teamsters officials voted out of California, New Jersey workplaces*

WASHINGTON, DC – Workers in California and New Jersey who were previously subject to Teamsters bosses' monopoly bargaining authority have freed themselves from unwanted union control.

The workers received free legal aid from Foundation staff attorneys, and benefited from rule changes at the National Labor Relations Board (NLRB) in Washington pushed for by the Foundation.

In California, Eliseo Haro, an employee at Los Angeles-based KWK Trucking, Inc., submitted a decertification petition with the NLRB because he and his coworkers were being ignored by Teamsters bosses. As Haro puts it, "The union never came in to talk to us, or negotiate a contract, or represent us. They disappeared."

Haro's petition was signed by nearly 80 percent of the workers in the 119-employee bargaining unit and called for an NLRB-supervised decertification election, in which KWK employees could vote out the unpopular union officials.

Rather than face an overwhelming defeat in the decertification election, Teamsters bosses chose to walk away. The union disclaimed interest in the unit, and NLRB Region 21 revoked Local 986's certification as the workers' monopoly bargaining agent.

### **New Jersey Decertification Effort Succeeds Despite Union Stall Tactics**

In Cinnaminson, New Jersey, Teamsters officials did not immediately leave when a decertification petition was filed by Miguel Valle and his coworkers at a branch of XPO Logistics. Instead, Teamsters lawyers used nearly two months of unnecessary court proceedings to delay the election.

They demanded the vote be held in person at the Teamsters union hall. Foundation attorneys argued



**Reforms urged by Foundation staff attorneys eased Miguel Valle and his coworkers' near-unanimous effort to vote out unpopular Teamsters officials, who tried to use "blocking charges," ultimately to no avail.**

that the union lawyers' requests were merely an effort to delay the vote. Ultimately, as expected, the NLRB's Regional Director ruled that the election would be conducted by mail.

When Valle and his coworkers finally had their election, they voted 16-2 to remove Teamsters bosses from their workplace.

### **Foundation-Backed Rule Changes Reduce Needless Election Delays**

For workers, just getting a decertification election is often difficult. In some cases, union bosses have created multi-year delays to stymie decertification efforts, trapping workers under union monopoly "representation" and often forced-dues payments they oppose, while they wait for a vote.

Union officials frequently attempt to delay or block decertification votes by filing "blocking charges," unfair labor practice charges that can be used to hold up an election, even when they have nothing to do with

the employees' dissatisfaction with the union.

Union officials' ability to use this tactic to block or delay votes has been limited by recent NLRB rulemaking, finalized in 2020. Under the NLRB's new policy, which draws on comments filed by the National Right to Work Foundation, union charges cannot indefinitely stall employee votes, and in most instances votes occur without delay.

Additionally, as the Foundation advocated in its comments, instead of ballots being impounded for months or even years while "blocking charges" are resolved, the NLRB modified its original proposed rule so that in most cases ballots are tallied and the results are announced after employees vote.

"Union bosses can stick around for years, even when they face overwhelming opposition from rank-and-file workers, because of the legal barriers that protect union officials from decertification votes," said National Right to Work Foundation Vice President and Legal Director Raymond LaJeunesse.

"Thanks to Foundation-backed reforms to the NLRB's 'blocking charge' policy, union officials' ability to trap workers in union ranks through legal trickery despite overwhelming opposition has been significantly curtailed." ✎

**National Right to Work  
Legal Defense Foundation**

**Rated "A"**  
by  
**CharityWatch**

Source: *Charity Rating Guide*  
April 2021  
American Institute of Philanthropy

## NLRB Blocks Attempt to Oust Union, Despite Unanimous Call for Union's Removal

*Every employee signed a petition for vote to remove Carpenters Union from their workplace*

CROWN POINT, IN – Mike Halkias and his coworkers at Neises Construction Corp. in Crown Point, Indiana, are subject to monopoly “representation” by officials of the Indiana/Kentucky/Ohio Regional Council of Carpenters (IKORCC) union.

Every bargaining unit member exercised the right under Indiana’s Right to Work Law to decline formal union membership and to refuse to pay any union dues or fees, but union officials still have the authority under federal law to “negotiate” with Neises for the employees despite their objections to that representation.

### NLRB Officials Snub Workers’ Unanimous Petition, Demand Union Bargaining

With free legal aid from the National Right to Work Legal Defense Foundation, Halkias submitted a decertification petition to Region 13 of the National Labor Relations Board (NLRB), signed by every member of his unit, to remove IKORCC union officials from their workplace.

Despite unanimous agreement by the unit’s workers to hold a vote to oust IKORCC bosses, NLRB Region 13 officials rejected the decertification petition. The Regional Director is demanding that the Indiana employer bargain with IKORCC, even though none of its employees want the union to “represent” them.

### Union Bosses Won’t Give Up Monopoly Bargaining Power over Non-members

So far union officials have stymied the vote through “blocking charges,” unfair labor practice charges filed by union lawyers that, before they are resolved, prevent a vote from taking place. Union officials claim



*Foundation staff attorneys are defending Neises Concrete Construction Corp. workers’ unanimous call to free themselves from the coercive reign of IKORCC union bosses.*

the vote cannot proceed until the company negotiates “in good faith” with the union.

That demand comes even though federal law makes it illegal for an employer to engage in bargaining with a union that it knows lacks the support of at least a bare majority of workers. The NLRB regional official’s order dismissing the employees’ petition did not even acknowledge that every employee in Mr. Halkias’ bargaining unit has shown a desire to be independent from the union by resigning union membership and asking for a decertification vote.

### Foundation Attorneys Bring Fight to National Board

The Foundation staff attorneys who represent Halkias have appealed to the NLRB in Washington to overturn the rejection of the decertification petition and to allow the workers to vote so they can be rid of the union whose so-called “representation” they all oppose.

“It is outrageous that in a workplace where every single worker wants nothing to do with a union, federal law still forces workers to accept the

so-called ‘representation’ of union bosses,” said National Right to Work Foundation Vice President Patrick Semmens. “The fact that this appeal is even necessary demonstrates how rigged federal law is against independent-minded workers who seek to exercise their right not to associate with a union.”

“This case is a reminder that, even in Right to Work states that protect workers from being forced to fund a union they don’t support, federal law still forces workers under union monopoly control even when those employees oppose the union and believe they would be better off without it.”

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## Teamsters Union Charged with Illegally Threatening UPS Worker: 'Join Union or Be Fired'

*Teamsters official falsely claimed worker could be fired if he did not join and pay full dues*

QUEENS, NY – With free legal aid from the National Right to Work Legal Defense Foundation, New York City UPS warehouse worker Kamil Fraczek has filed a National Labor Relations Board (NLRB) charge against Teamsters Local 804. The charge came after a Teamsters union official made repeated threats to his job and lied about his legal rights.

### Union Official Refused to Respect Worker's Rights under *Beck* Decision

When Fraczek began working at the warehouse full-time, a Teamsters representative tried to mislead him by telling Fraczek he must become a union member and sign documents authorizing dues deductions from his paycheck. Fraczek specifically asked about other options, but the union representative told him that if he did not sign the forms, Teamsters officials would ask UPS to fire him.

Because New York is a forced-unionism state that doesn't protect workers with a Right to Work law, Fraczek can be required to pay some union fees as a condition of his job.

However, under long-standing federal law, workers cannot be required to become formal union members nor can they be required to pay full union dues even in non-Right to Work states. Under the Supreme Court's 1988 *CWA v. Beck* decision, won by National Right to Work Legal Defense Foundation attorneys, no private sector worker can be compelled to financially support union activities unrelated to bargaining.

### Union Misinformation Continues Even after Employee Demanded Rights

Expenses which can't be charged to non-members under *Beck* include political expenditures and



*UPS worker Kamil Fraczek refused to kowtow to Teamsters officials' threats in his workplace when they untruthfully told him that he had to formally join the union and pay dues just to keep working.*

in Right to Work states, not in forced-unionism states like New York.

In response, Fraczek's Foundation staff attorneys filed an NLRB charge asserting his right to pay reduced fees

members-only activities.

Knowing his actual rights, Fraczek returned to the Teamsters official asking to be recognized as a non-member and *Beck* objector. He provided a letter to the representative stating his intention to pay only reduced fees and declining union membership.

*"Local 804's agent has repeatedly tried to mislead Mr. Fraczek about his rights and has invoked the Union's power to get him fired, all in an effort to coerce Mr. Fraczek into signing the membership and dues deduction authorization form..."*

– Fraczek's NLRB Charge

As the unfair labor practice charge states, instead of accepting Fraczek's request, the Teamsters official doubled down on his prior illegal threats. He demanded that Fraczek pay full dues and sign membership documents or face termination.

The official falsely claimed that only supervisors can opt out of the union, and that the federal laws protecting workers from funding union political activities only apply

under *Beck* and not to join the union.

### Teamsters Union Hit with Federal Charges for Illegal-Dues Demands

According to the charge, "Local 804's agent has repeatedly tried to mislead Mr. Fraczek about his rights and has invoked the Union's power to get him fired, all in an effort to coerce Mr. Fraczek into signing the membership and dues deduction authorization form..."

"Union officials are perfectly willing to tell outright lies to independent-minded workers who object to union membership," said National Right to Work Foundation President Mark Mix. "Union bosses blatantly ignore the law just to protect their forced-dues revenue stream, and it is workers like Mr. Fraczek who pay the price." †


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# ASSIST WORKER FREEDOM: *LEAVE A LASTING LEGACY*

With Joe Biden and Big Labor pulling out all the stops to coerce workers into union forced-dues ranks, the work of your National Right to Work Foundation is needed now more than ever.

Only your support makes the Foundation's work possible! Since 1968, the Foundation has been the only litigating organization devoted solely to promoting the cause of individual liberty in the workplace by providing free legal aid to heroic workers nationwide who stand up to compulsory unionism.

By leaving a Legacy to the Foundation, you and your family will ensure the Foundation has the necessary funds to mount challenges to Big Labor coercion from coast to coast.

You can make a difference by naming the National Right to Work Legal Defense Foundation as a beneficiary of your estate to receive either a specific or a residual bequest. A residual bequest comes to the Foundation after your estate expenses are paid and specific bequests are distributed.

Here is sample language for a gift in your Will or Trust:

I give, devise, and bequeath to National Right to Work Legal Defense and Education Foundation, Inc., 8001 Braddock Road, Springfield, VA 22160, for its general purposes:

- a. The sum of \$ \_\_\_\_\_; or
- b. Name a particular investment or piece of property with legal description, custodian, etc., as applicable; or
- c. \_\_\_\_ percent of the rest, residue, and remainder of my estate, including property over which I have a power of appointment; or
- d. All the rest, residue, and remainder of my estate, including property over which I have a power of appointment.

If you have not already done so, please take the time to put an estate plan in place for you and your loved ones. All gifts to the Foundation are tax deductible!

*As with all estate matters, we urge you to consult with your tax advisor or estate attorney. If you have any questions or would like more information, please contact Ginny Smith, Foundation Director of Strategic Programs, at [gms@nrtw.org](mailto:gms@nrtw.org) or 1-800-336-3600.*



## Workers Battle Biden Appointee's Attempts to Curb Union Prosecutions

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are organizing deals struck between union officials and employers, usually without the knowledge of employees in a workplace. They frequently contain provisions that require employers to silence opposition to unionization. In Zamora's situation, the neutrality agreement was used to limit her ability to inform her coworkers about their right to vote out the union.

Zamora's opposition brief challenges Ohr's attempt to kill the case. It argues that the case is already before the full Board, and she "is a full party with a right to have her pending exceptions decided by the Board." It notes that letting Ohr shut her out at this stage would "infringe on the Board's exclusive power to adjudicate violations of" federal labor law.

Further, the brief contends that because of Robb's unlawful removal,



**"Union officials want to convince people that they have to pay dues in order to work," Foundation President Mark Mix told WDTV 5 in WV about UFCW bosses' illegal dues demands.**

Ohr lacks the legal authority to even ask the NLRB to end the case. Allowing "the President to fire the General Counsel at will would do irreparable damage to the NLRB's function as an independent agency," the brief says.

In Krockner's case, NLRB Region 6 in Pittsburgh initially dismissed Krockner's charge challenging United Food and Commercial Workers Union (UFCW) checkoff cards which falsely stated that they "MUST BE SIGNED."

### West Virginia Kroger Employee Stands Up to Union-Allied Ohr

Foundation attorneys successfully appealed this dismissal to General Counsel Peter Robb, who sustained the charge and ordered NLRB Region 6 to issue a complaint prosecuting UFCW Local 400 for the violation.

In fact, Robb ordered Region 6 to issue the complaint on several additional grounds, including maintenance of a checkoff that prohibited employees from ending dues deductions after the expiration

See 'Foundation Fights' page 8

## Restrictions on First Amendment Janus Rights under Fire from Educators

continued from page 1

response until November of that year. CTU officials then confirmed receipt of the letters but said that they would continue to seize dues from the educators' paychecks "until September 1, 2020." CTU bosses relied on the fact that Troesch and Nkemdi had not submitted their letters within a union boss-created "escape period," which limits when teachers can exercise their First Amendment right to end dues deductions.

Troesch and Nkemdi contend that CTU and Board officials' attempt to curb employees' right to stop dues deductions with an "escape period," and the Board's seizure of dues after they dissociated from the union, both violate the First Amendment. Their lawsuit seeks to make the CTU union and the Board stop enforcing the "escape period," and notify all bargaining unit employees that they can end the deduction of union dues at any time and "retroactively

exercise that right."

Troesch and Nkemdi's efforts to defeat union boss-concocted "escape period" schemes don't stop at their lawsuit. The pair submitted an amicus brief in *Belgau v. Inslee*, which is currently pending on a petition for certiorari at the U.S. Supreme Court.

### New Legal Brief Backs SCOTUS Challenge to Union "Escape Period" Scheme

*Belgau* involves a group of Washington State employees, led by Melissa Belgau, who are fighting similar policies imposed by Washington Federation of State Employees (WFSE) union officials and the State of Washington.

University of California Santa Barbara employee Cara O'Callaghan, Maumee City (Ohio) School District employee Chelsea Kolacki, and Springfield (Ohio) Local School District employee Michelle

Cymbor also joined this brief. All of them have been subjected to First Amendment violations similar to those at issue in *Belgau* and the Chicago educators' case.

Foundation staff attorneys provided free legal aid in filing the brief, and currently represent public servants in at least 14 cases where union officials have tried to confine their First Amendment *Janus* rights to an "escape period."

"Each day that the courts fail to fully enforce *Janus* is another day that union bosses are allowed to seize the hard-earned money of dissenting public servants in clear violation of their First Amendment rights," commented National Right to Work Foundation President Mark Mix. "The Foundation is proud to stand with Ms. Troesch and Ms. Nkemdi, and will continue to defend all educators who simply want to serve their students and community without being forced to subsidize union activities." ✚

## Foundation Fights NLRB Bureaucrat Attack on Workers

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of a contract.

After an ALJ declined to rule that UFCW Local 400 officials violated the law with their “MUST BE SIGNED” demands and other unlawful provisions, Krockner’s Foundation staff attorneys and General Counsel Robb both appealed the case to the NLRB. Their appeals have been fully briefed before the Board since September.

After Ohr’s appointment, Region 6 entered into an inadequate informal settlement over Krockner’s objection and filed a motion to send the case back to Region 6.

## Biden Appointee Shielding Union Boss Privileges

Krockner’s opposition to that motion argues, as does Zamora’s, that her case is already pending before the full NLRB and that Ohr lacks the authority to divert it away from the Board’s judgment.

“Acting’ NLRB General Counsel Peter Ohr’s unabated attacks on Foundation cases seeking to defend workers’ individual rights clearly show how imminent a threat our cases are to union bosses’ coercive and greedy behavior,” commented National Right to Work Foundation Vice President Patrick Semmens. “Ohr demonstrates repeatedly that he has no problem with turning the NLRB into the Biden Administration’s tool for stifling the rights of independent-minded workers who dare to stand up to Biden’s union boss allies.” ✚

Learn more about the  
Foundation’s  
Janus victory at  
MyJanusRights.org



## Message from Mark Mix

President  
National Right to Work  
Legal Defense Foundation

Dear Foundation Supporter,

Union bosses like to claim they “represent” those forced under union monopoly representation, but time and time again National Right to Work Foundation legal action exposes that union officials fight for their own self-interests to the detriment of rank-and-file workers.

Union lawyers’ tactics to block workers from even holding decertification votes to remove unwanted unions are just one glaring example.

In this issue of *Foundation Action*, you’ll read about Mike Halkias and his coworkers at an Indiana construction company (*page 4*). Every one of those workers opposes the carpenter union that has been granted monopoly bargaining power over them. Further, under Indiana’s Right to Work Law, none are union members and all have cut off all union dues payments.

The same workers also all signed a petition asking for a decertification election to get the carpenter union out of their workplace.

Instead of heeding the wishes of every worker under their so-called “representation,” union bosses geared up for a legal battle, demanding any vote be blocked until the union could negotiate a contract to be imposed on the very workers unanimously opposed to the union’s presence.

Outrageously, the NLRB initially accepted the union’s demand.

Thankfully, your Foundation’s team of expert attorneys is ready to help workers fight back against a system that so often is rigged against workers opposed to union affiliation, even when each and every worker is on the record in opposition to unionization.

In recent years, Foundation staff attorneys have secured new precedents and policies curtailing many of the tactics used by union officials to block workers from ousting unpopular unions.

In this newsletter, you’ll read how Foundation attorneys have used those recent victories to assist other workers in removing unwanted Teamsters unions from their workplaces.

But as the case of Mike Halkias and his coworkers shows, there is still much work to do.

Thanks for making that work possible.

Sincerely,