Foundation Action

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

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NYC University Professors Take Aim at Forced Union 'Representation'

CUNY professors' lawsuit argues NY law forces them under power of anti-Semitic union

THE WALL STREET JOURNAL.

January 21, 2022 OPINION

I'm Stuck With an Anti-Semitic Labor Union

"Under New York law, even if I resign from the union, I will never be free to bargain or speak for myself . . . I am forced to rely on a union that says anti-Semitic, hateful things about Israel to negotiate on my behalf."

- *Prof. Avraham Goldstein*

Credit: The Wall Street Journal, Fairness Center

Prof. Avraham Goldstein recalled in a* Wall Street Journal *piece the anti-Semitism his family faced in the Soviet Union. He and other plaintiffs argue they shouldn't be forced to associate with a union that subjects them to similar hostility.

NEW YORK, NY – For decades, government sector union bosses have relied on two pillars of coercion -- forced dues and forced representation -- to maintain their grip on power over America's public servants and the public services citizens rely on.

While the Supreme Court in the 2018 National Right to Work Foundation-won *Janus v. AFSCME* Supreme Court case recognized that forcing government employees to pay dues to stay employed violates the First Amendment, a new Foundation-assisted civil rights lawsuit from six City University of New York (CUNY) system professors may finally defeat union bosses' privilege to impose union representation over the objections of public workers.

CUNY professors Jeffrey Lax, Michael Goldstein, Avraham Goldstein, Frimette Kass-Shraibman, Mitchell Langbert, and Maria Pagano sued the AFL-CIO-affiliated Professional Staff Congress (PSC) union, CUNY executives, and New York State officials in January, challenging New York State's "Taylor Law" that gives unions monopoly bargaining privileges in public sector workplaces like CUNY.

The plaintiffs, most of whom are Jewish, oppose the union's "representation" on the grounds that union officials and adherents have relentlessly denigrated their religious and cultural identity. Several of the plaintiffs exercised their *Janus* right to cut off dues after PSC officials rammed through a resolution in June 2021 that they found "anti-Semitic, anti-Jewish, and anti-Israel," according to the lawsuit.

Discrimination Cited in Groundbreaking First Amendment Case

The lawsuit, which was filed with legal aid from both the National Right to Work Foundation and Pennsylvania-based Fairness Center, says: "Despite Plaintiffs' resignations from membership in PSC, Defendants . . . acting in concert and under color of state law, force all Plaintiffs to continue to utilize PSC as their exclusive bargaining representative."

The resolution is not nearly the worst example of PSC officials' anti-Semitism, according to the lawsuit. Prof. Michael Goldstein asserts

*See **'Professors' Lawsuit'** page 2*

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Professors' Lawsuit Challenges Union Monopoly Power as Unconstitutional

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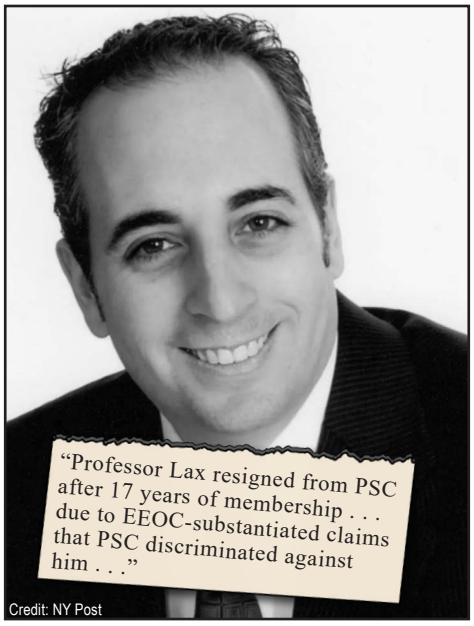
that adherents of PSC are waging a campaign to get him fired and have targeted him with harassment and threats such that he must have an armed guard accompany him on campus. Prof. Lax cites in the lawsuit a determination he has already received from the Equal Employment Opportunity Commission (EEOC) that "PSC leaders discriminated against him, retaliated against him, and subjected him to a hostile work environment on the basis of religion."

While all of the professors take issue with PSC bosses' radicalism, they also want to break free from internal conflicts within the large and disparate unit, which consists of full-time, part-time, and adjunct teaching employees and others. Prof. Kass-Shraibman states in the lawsuit that "instead of prioritizing the pay of full-time faculty, PSC expended resources advocating on behalf of teachers in Peru, graduate students at various other universities and the so-called 'Occupy Wall Street' movement."

On top of all that, Profs. Avraham Goldstein, Kass-Shraibman, and Langbert contend that PSC officials aren't even respecting their First



Despite a federal agency finding that PSC engaged in illegal discrimination, Jeffrey Lax is still forced under the "representation" of PSC union bosses.

Amendment *Janus* rights. Although all three professors clearly indicated they wanted to cut off financial support to the union, the lawsuit explains that "Defendants PSC and the City . . . have taken and continue to take and/or have accepted and continue to accept union dues from [their] wages as a condition of employment . . ." in violation of *Janus*.

"I had paid thousands of dollars in union dues for workplace representation, not for political statements or attacks on my beliefs and identity," Prof. Avraham Goldstein wrote in a piece for *The Wall Street Journal*. "I decided to resign my union membership and naively thought I could leave the union and its politics behind for good."

"I was wrong," recounted Prof. Goldstein. "Union officials refused my resignation and continued taking union dues out of my paycheck."

Suit Seeks Damages and to Overturn NY Law Authorizing Union Control

The lawsuit seeks a declaration from the U.S. District Court for the Southern District of New York that the Taylor Law's imposition of monopoly union control is unconstitutional, and that the defendants cease "certifying or recognizing PSC, or any other union, as Plaintiffs' exclusive representative without their consent." The lawsuit also demands the union and university return dues seized in violation of *Janus* to Profs. Avraham Goldstein, Kass-Shraibman, and Langbert.

"By forcing these professors into a monopoly union collective against their will, the state of New York mandates that they associate with union officials and other union members who take positions that are deeply offensive to these professors' most fundamental beliefs," observed National Right to Work Foundation President Mark Mix. "New York State's Taylor Law authorizes such unconscionable compulsion. It is time federal courts fully protect the rights of government employees to exercise their freedom to disassociate from an unwanted union, whether their objections are religious, cultural, financial, or otherwise."

Foundation *Action*

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Casino Worker Challenges Order Installing Unwanted Union via 'Card Check'

Ninth circuit panel signals willingness to end precedent allowing for imposition of union

LAS VEGAS, NV – A large majority of the workers at Red Rock Casino in Las Vegas, Nevada voted "no" to unionization, but a federal district court judge ordered their employer to bargain with union officials anyway. Casino officials appealed, and Red Rock employee Raynell Teske supported their efforts to overturn the judge's coercive order that overrides the choice workers made at the ballot box.

With free Foundation legal aid, Teske filed a brief arguing that the district judge had no reason to impose a union onto workers who had already soundly voted to reject it. A Ninth Circuit panel denied the initial appeal, but issued an unusual concurring opinion in which all three judges said they disagreed with that outcome, but were bound by Ninth Circuit precedent to uphold the district judge's order.

Binding precedent can only be overturned through an en banc hearing before a larger Ninth Circuit panel. Red Rock lawyers filed for an en banc rehearing of their appeal.The court then ordered National Labor Relations Board (NLRB) lawyers defending the order to respond, another signal the judges may be willing to overturn this ridiculous precedent and rule in the workers' favor. Teske filed a second amicus brief, urging the court to hear the case en banc.

Judge Overrides Workers' Vote Against Union 'Representation'

The situation at Red Rock began in December 2019, when the NLRB held a secret-ballot election on whether to unionize the Casino's workers. Employees rejected union officials' effort to become their monopoly bargaining "representatives" in an NLRB-supervised vote by a nearly 100-vote margin. Despite that outcome, NLRB Region 28 Director Cornele Overstreet sought a federal

NLRB officials stacked the deck against rank-and-file Red Rock Casino employees by imposing an unpopular union on them despite worker objections.

court injunction imposing the union over the workers' objections.

On July 20, 2021, District Judge Gloria Navarro agreed with the NLRB Director's request, and ordered Red Rock to bargain with union officials despite the employees' vote against unionization. The judge said the order was justified because union officials claimed that, before the vote, a majority of workers had signed union authorization cards.

Teske's amicus briefs argue those "Card Check" signatures don't prove that union officials ever had majority support. She contends the level of union support was tested fairly by the secret-ballot election, in which workers voted 627-534 against unionization.

Her briefs point out that the NLRB and federal courts have long recognized that secret ballots are a more reliable way of gauging worker support for a union, because workers are often pressured, harassed, or misled by union organizers into signing cards.

Unions officials know that Card Check signatures do not indicate solid worker support. The AFL-CIO admitted in its internal organizing handbook that it needed at least 75% Card Check support before having even a 50-50 chance of winning a secret-ballot election. Union bosses prefer Card Check unionization because they can more easily take control of workplaces where they lack popular support, and partisan NLRB appointees now are working to grant their wish.

Partisan NLRB Pushes Unreliable 'Card Check'

Past legislative attempts to enact Card Check unionization, including the so-called "PRO Act," pending in the U.S. Senate right now, faced bipartisan opposition. However, NLRB General Counsel Jennifer Abruzzo, a former high-ranking union lawyer, believes she can implement Card Check without congressional approval. Abruzzo has expressed interest in resurrecting a decades-old NLRB doctrine that allows unions to sue employers to try to force them to automatically bargain whenever the union possesses a pile of untested union cards.

"There is no reason why district court judges or NLRB bureaucrats should be able to override workers' choice at the ballot box," said National Right to Work Foundation Vice President Patrick Semmens. "A favorable ruling for Raynell Teske and her colleagues could provide legal ammunition for future workers if the NLRB tries to force them to accept union officials for whom they never even had a chance to vote."

After 18 Months, Mountaire Farms Workers Finally Oust Union

Overwhelming vote against UFCW follows NLRB shredding of first ballots

SELBYVILLE, DE – Almost two years after their initial attempt, Mountaire Farms poultry employees in Delaware have decisively voted to remove United Food and Commercial Workers (UFCW) union officials from their workplace. The drawn-out ordeal demonstrates how the "contract bar," a controversial National Labor Relations Board (NLRB) policy, unjustly traps workers in union ranks they oppose.

Under the National Labor Relations Act (NLRA), the federal statute the NLRB implements, workers possess an enumerated statutory right to remove an unwanted union through a decertification election. However, the NLRB has invented out of whole cloth a "contract bar." The "contract bar" halts workers' right to hold a decertification election to remove a union they oppose for up to three years after union officials and a company finalize a monopoly bargaining contract.

NLRB Chucks Workers' Votes Citing 'Contract Bar'

Mountaire Farms workers voted in an NLRB-supervised decertification election in June 2020, but UFCW lawyers appealed the case to the full Labor Board in Washington, D.C., and were able to get the ballots impounded. After a divided NLRB ruled for the union bosses in April 2021, hundreds of cast ballots were destroyed without being counted.

The June 2020 vote was requested by Mountaire employee Oscar Cruz Sosa, who received free legal representation from National Right to Work Legal Defense Foundation staff attorneys. Cruz Sosa had the support of hundreds of his coworkers when he submitted his petition to the NLRB requesting a vote.

Initially, an NLRB regional official rejected union arguments

Employees at Mountaire Farms in Delaware fought "contract bar" delays from tyrannical UFCW union officials for almost two years. Finally, they've overwhelmingly voted out the union.

that the decertification effort was blocked due to the "contract bar," and the election was held. However, UFCW union lawyers appealed that decision to the full Board, which impounded the ballots while the appeal was considered.

Cruz Sosa's Foundation attorneys urged the Board to reject the UFCW's attempt to impose the "contract bar." More importantly, they urged the Board to eliminate the bar completely because it is not found in the text of the NLRA, and serves only to protect unpopular union bosses from worker accountability. As the brief filed by Foundation staff attorneys pointed out, the only "bar" in the text of the NLRA states that workers must wait one year after an election before holding another vote, making the three-year "contract bar" particularly egregious.

Nevertheless, in an April 2021 ruling, a divided Board sided with union lawyers, upheld the "contract bar," and threw out the ballots cast by workers at the 800-employee facility. As a result, the employees were forced to wait almost another year, all the while subjected to forced union dues, for the "contract bar" to expire so they could restart the process for a decertification election.

Finally, without the barrier of the NLRB's "contract bar" policy the workers submitted another petition to hold a vote to remove the UFCW in October 2021.

Landslide Vote Against Union Highlights Injustice of Anti-Worker 'Contract Bar' Policy

In the subsequent vote that concluded in December 2021, the workers overwhelmingly rejected the union with 356 of 436 votes counted for removing the union. The workers are finally free of unwanted union "representation," nearly two full years after they started their effort to remove the union, which was highly unpopular among rank-and-file Mountaire Farms employees.

"The overwhelming final vote tally emphasizes the injustice of the decision to continue the Board-invented 'contract bar,' which resulted in the destruction of hundreds of ballots. From the outset it was clear how little support UFCW officials really had," observed National Right to Work Foundation Vice President and Legal Director Raymond LaJeunesse. "This case is yet another example of how the NLRB has twisted the law to protect union boss power at the expense of the statutory rights of rank-and-file employees."

"We're under no illusions that the Biden NLRB, stacked with former union officials, will end this longstanding impediment to workers' right to free themselves of an unwanted union. But this saga demonstrates why the injustice that is the non-statutory 'contract bar' must be ended by a future Board," LaJeunesse added.

The Journal News
WESTCHESTER • ROCKLAND • PUTNAM

January 21, 2022 OPINION

CUNY Professors' Lawsuit Shows Injustice of Forced Union Representation

Mark Mix | *Special to the USA TODAY Network*

Veteran professor Michael Goldstein needs full time security when he's on campus at the City University of New York because his Jewish faith and pro-Israel sentiments have made him the target of vicious attacks.

As part of a sustained campaign against the professor, vandals defaced a photo of Goldstein's late father outside his office with anti-Semitic graffiti, including the words "F--k Trump Goldstein, Kill the Zionist Entity." In an apparently related incident, fellow professor Jeffrey Lax, the head of Goldstein's department, had nails inserted into the tires of his car on the day of a college council meeting about the rising tensions on campus.

Obviously such attacks should be condemned. Yet, not only did CUNY officials do little to stop the harassment campaign, but the Professional Staff Council union that purports to "represent" the targeted professors publicly sided with their oppressors.

An official PSC resolution condemned the State of Israel using words like "occupation" and "apartheid." Many Jewish CUNY professors and supporters of Israel believe such rhetoric provokes anti-Semitism.

Yet PSC officials who push these views remain the professors' designated "representatives" under New York law, which grants PSC officials the power to speak for them and enter into contracts with the University that bind every faculty member, even those who want nothing to do with the union.

Now, a group of CUNY professors are fighting back. They filed a civil rights lawsuit against PSC officials, the University and the State of New York for forcing them to accept PSC as their so-called "representative."

The suit challenges the constitutionality of government imposed union monopoly bargaining, which gives union officials monopoly control over every employee in a unionized workplace, even those who aren't union members and who object to what the union is doing in their name.

This arrangement, the professors' lawsuit argues, violates workers' First Amendment rights to free speech and free association, because the State of New York has granted PSC, a private organization, the legal authority to speak for professors who totally disagree with its agenda.

This forces the professors to associate with an organization that has a verified track record of acting against their interests, and with others in the workplace who support the union's polarizing statements that the plaintiffs find so offensive.

Lax has already won a letter of determination from the Equal Employment Opportunity Commission, which found "that CUNY and PSC leaders discriminated against him, retaliated against him, and subjected him to a hostile work environment on the basis of religion." Yet PSC officials remain his "representative" because of New York law.

Other professors who have joined the lawsuit also believe union officials have the wrong priorities at the bargaining table, including by focusing on adjunct professors to the detriment of more senior staff.

Each of their reasons for opposing the PSC are unique, but all of them believe that they alone should get to decide who represents them in the workplace.

The constitutional issues with monopoly bargaining are particularly evident in the public sector, where government-designated unions are authorized to speak even over the objections of individual workers. Everything government unions bargain for is, by definition, political and a change in government policy.

Government unions are little more than uniquely positioned advocacy groups with a political agenda, which makes it especially offensive to the First Amendment when public employees like the CUNY professors are forced to associate with that agenda just to work for a government employer.

It is time for federal courts to recognize that union monopoly bargaining is an unconstitutional infringement on the rights of employees. Union officials should have to earn the voluntary support of those for whom they purport to speak, not rely on a government granted monopoly to force workers under their so-called representation.

Mr. Mix is president of the National Right to Work Legal Defense Foundation.
(Reprinted from *The Journal News)*

Do You Have a Plan for TAX Season?

Your National Right to Work Foundation is working tirelessly to protect individual workers' constitutional rights and roll back the corrupting influence of Organized Labor over the government and the economy.

As tax season is just around the corner, now is the time to review your and your family's tax matters. With the new Administration reportedly still considering major tax law changes to all income levels, this may be a particularly advantageous time to make a *tax-deductible* gift to support your National Right to Work Foundation's fight against forced unionism.

Here are just a few examples of ways you can make a difference today:

1. Gifts of Cash (most popular way to receive a tax deduction in 2022);
2. Gifts of long-term Appreciated Stocks or other Securities (fair market value tax deduction plus no capital gains tax);
3. Tax-free Qualified IRA Charitable Distribution (a great way to gift up to $100,000 for those older than 70 ½ years of age subject to Required Minimum Distribution);
4. Put a Will or Trust instrument in place (essential for your family and charitable goals for 2022); and
5. Establish a Charitable Gift Annuity (to receive a tax deduction in the current year and income for life; minimum gift of $10,000).

Now is the time to consider a *tax-deductible* gift to the Foundation, and possibly a long-term estate gift in your Will or Estate! Our work is only made possible with generous support from donors who believe in individual liberty in the workplace.

For more information on giving options, please contact Ginny Smith at gms@nrtw.org or 1-800-336-3600. Please consult your tax advisor or estate attorney before making a planned gift, will, or estate gift for you and your family.

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Nurses at Massachusetts Hospital Move to Boot Union After Divisive Strike

Union bosses caught red-handed illegally demanding dues from workers

WORCESTER, MA – Earlier this year, hundreds of nurses at St. Vincent Hospital in Worcester, MA, backed a petition to the National Labor Relations Board (NLRB), demanding a vote to oust Massachusetts Nurses Association (MNA) union officials from the facility. The effort followed a grueling, nearly year-long strike ordered by MNA bosses. As this issue of Foundation *Action* went to press, nurses were in the process of submitting ballots in the election.

Nurse Richard Avola submitted the petition to the NLRB in January. It contained enough employee signatures to trigger an NLRB-supervised decertification vote at the hospital. Soon after, he sought free legal aid from National Right to Work Foundation staff attorneys in defending the petition.

"People want change," Avola told a Spectrum News 1 Worcester reporter in January about the push for a vote. "They want change for our patients."

Many St. Vincent Hospital nurses reported the MNA union's 300+ day strike was filled with bullying and division. "Do we want to keep the MNA and continue that same behavior?" asked Nurse Richard Avola on Spectrum News 1.

Protracted and Political Strike Rife with Intimidation, Many Nurses Report

Avola and his colleagues' endeavor came after a 300-day strike ordered by MNA chiefs against the hospital -- the longest strike in Massachusetts history. In response to inquiries from nurses impacted by the union bosses' strike order, Foundation staff attorneys in March 2021 issued a legal notice informing St. Vincent nurses of their right to work during the strike and to cut off dues payments to the MNA hierarchy. The notice offered free legal aid to St. Vincent nurses who encountered union pushback in the exercise of their individual rights.

The union boss-ordered strike was intensely acrimonious. Union agents reportedly engaged in many harassing acts against nurses who exercised their right to continue working during the strike, including putting photographs of working nurses on strike paraphernalia and taking illicit pictures of nurses' license plates. Despite the union-instigated campaign against rank-and-file nurses, high-profile elected officials, including U.S. Senators Ed Markey and Elizabeth Warren, vocally sided against nurses who continued treating patients while exercising their right to rebuff the union strike demands.

MNA Union Agents Admitted to Illegally Demanding Union Dues During Strike

As the push for a vote to decertify MNA gained momentum, evidence emerged that union officials had demanded dues payments from nurses for periods during the strike when no contract existed between hospital management and the MNA union. Demanding dues during a contract hiatus is forbidden by long-standing federal law.

In response, St. Vincent nurse Regina Renaud hit the MNA union with Foundation-backed federal charges in January, maintaining that MNA agents had sent such illegal demands to her and other nurses. Just one day after Renaud filed her charges, MNA union officials effectively admitted their dues demands had breached federal labor law. They mailed hundreds of "error" letters to nurses dubiously claiming the illegal bills were an "oversight." The union stated that it needed to "clean up" its records and warned that other similar demands might still go out to nurses.

While Renaud abstains from union membership, she is still forced to pay some dues to the union to keep her job because Massachusetts lacks Right to Work protections for private sector workers. However, this requirement does not exist in the absence of an active monopoly

*See **'Mass. Nurses Battle'** page 8*

Extra! Extra!

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Mass. Nurses Battle Greedy Union Bosses

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bargaining contract with a forced-dues clause. In Right to Work states, union membership and financial support are always strictly voluntary.

Ugly Strike and Illegal Dues Divide Nurses and Community

"It's easy to see why Mr. Avola and so many of his coworkers want to oust MNA operatives from St. Vincent Hospital: Union bosses forced nurses to endure a gruelingly long strike that divided the hospital and the community, while those who went back to work and refused to abandon their patients faced harassment and intimidation tactics," observed National Right to Work Foundation Vice President Patrick Semmens. "Ms. Renaud's charges show that MNA officials ignored even the most basic legal protections for workers who do not wish to financially support a union."

"Foundation attorneys will continue to fight for St. Vincent nurses' rights, including the right to dispense with unwanted union representation, and will ensure any MNA union boss legal tactics do not stifle the nurses' voices," Semmens added.

Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter,

No employee should ever be forced under union boss "representation." But until forced monopoly representation is fully eliminated, it is critical that workers at least be allowed to exercise their right under federal law to vote out unions that lack the support of most workers.

Outrageously, over the years union lawyers and Big Labor partisans at the National Labor Relations Board (NLRB) have created numerous policies -- found nowhere in the statute the Board is charged with enforcing -- that trap workers in union ranks they oppose.

That's exactly what happened to workers at Mountaire Farms whose long battle to remove the union you can read about in this issue of **Foundation *Action*** (page 4). Union lawyers used the NLRB-invented "contract bar" policy to block Mountaire employees from voting out a union for nearly two years.

When the workers finally got their vote, over 80% cast ballots to free themselves from union ranks.

Of course, workers shouldn't have to wait for months or even years to rid themselves of an unpopular union. That's why these pro-union boss non-statutory doctrines like the "contract bar" need to be eliminated.

National Right to Work Foundation attorneys have already successfully led the charge to dismantle some of these NLRB-invented barriers, like the "blocking charge" policy, but as the multi-year saga at Mountaire Farms shows, much more needs to be done.

Currently, your Foundation is the only national organization equipped to challenge these coercive policies for independent-minded workers. Nobody else has the decades of experience or the capacity required to litigate hundreds of cases, while simultaneously filing comments, submitting amicus briefs, and rallying public support against the abuses of Organized Labor.

Now -- with your ongoing support -- your Foundation is preparing to challenge in federal court Big Labor's remaining coercive powers, along with new power grabs enacted by the Biden Labor Board.

This critical work is only possible with your generous support. Thank you for standing up for freedom in the workplace!

Sincerely,

Mark