# This is how the Trump NLRB is...

# TARGETING UNIONS

## By encouraging union members to choose "financial core" status, the NLRB has taken a decidedly anti-union stance

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**OUT OF ALL** of the oxymorons that exist in the legal world, the phrase "right to work" has to be one of the worst. Those of us who are labor activists know that "right to work" really means "right to work...*for less pay!*" The "right to work" doctrine gives workers the opportunity to get a free ride on the backs of those who actually pay for the union.

There are currently 26 "right to work" states in the country and 24 states where "right to work" is not law. In those states, Section 8(a)(3) of the National Labor Relations Act allows union contracts to compel union membership as one of the conditions of being employed. These provisions, known as **union security clauses**, greatly assist unions in both collecting dues and also preserving majority status in a workplace. Without majority status, an employer doesn't have to recognize a union as the collective bargaining agent of a group of workers. The union security clause also prevents "free riders" – workers who desire to reap the benefits of the union without financially supporting it.

However, as a result of several Supreme Court decisions, the requirement to join a union has been whittled down to what is commonly known as "financial core" status. Workers who are required in their contract to join the union can request "financial core" status. When workers request this status, a union cannot charge them for services that are not part of "representational functions," such as collective bargaining, grievance adjustment and contract administration services. What services a union can charge a financial core member is often the subject of debate, and most unions have appeal processes that permit members to challenge fees if they believe they are not part and parcel of union representational functions. This controversial subject has now engaged the attention of the National Labor Relations Board.

In March, the NLRB decided that union lobbying costs are not a chargeable union expense. (The case was United Nurses & Allied Professionals [Kent Hospital] 367 NLRB No. 94 [March 1, 2019]). On a technical level, the board wrote that lobbying is not the kind of activity that is a necessary part of a union's statutory function as exclusive bargaining representative and thus falls outside the scope of permissible fees that may be charged to financial core members. Even though lobbying efforts may impact representational functions, the NLRB held that it is still too far removed from representational functions to be chargeable. Thus a private sector union (like Local 802) will have violated its duty of fair representation if it charges lobbying costs to an objecting member. Additionally, any costs remotely related to lobbying efforts cannot be charged.

This decision clearly hobbles a union's effort to support beneficial legislation (such as national pension reform) by compelling it to front the costs for objecting members. To add insult to injury, the NLRB's Office of General Counsel recently issued a directive that completely shifts the burden when a financial core member wishes to challenge a reimbursable union expenditure.

When presented with a charge they believe is improper, a financial core member has two choices: (1) proceed with a challenge utilizing the union's internal procedure or (2) file an unfair labor practice charge alleging breach of duty of fair representation.

Prior to the new directive, the NLRB required financial core members to first utilize the internal union process before filing an unfair labor practice charge. The new edict now permits unfair labor practice charges to proceed independently of internal objections.

Furthermore, in a break from precedent, the NLRB will no longer require financial core members who file ULPs to explain why they believe a particular expenditure is improper. When a ULP challenging a union assessment is filed, the NLRB will now require the union to provide a "detailed explanation of the union's chargeability decisions for each major category of expenses."

With the burden now shifted, it is obvious that the NLRB has taken a decidedly anti-union stance. It is inevitable that more objections will be lodged and more expenses will be deemed non-chargeable.

As a result of these NLRB decisions, it is now more important than ever that union members be educated regarding the benefits of full membership and how the NLRB is prompting the financial ruination of unions by encouraging financial core membership. An informed membership is a strong membership!