

US federal judge upholds compulsory unpaid labor during government shutdown

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A US district court judge Tuesday denied requests to put an end to the compulsory unpaid labor of workers affected by the partial government shutdown. At least 420,000 federal employees have been required to work, despite the lack of funding for multiple government agencies since December 22. Another 380,000 have been furloughed. All 800,000 have missed paychecks.

Judge Richard Leon declared in his ruling that meeting the most basic demand of workers—to be compensated for their labor—would be “profoundly irresponsible.” He continued, “at best it would create chaos, at worst it could be catastrophic... I’m not going to put people’s lives at risk.”

Yet that is precisely what the shutdown has meant for many federal employees and contractors, as well as those who depend on services provided by furloughed workers. As the 26-day shutdown drags on, workers are being forced to skip meals, to ration medical care, to choose which necessities to pay for and which to forgo.

Arguing the case on behalf of the National Air Traffic Controllers Association (NATCA), Molly Elkin said Tuesday, “We need you, judge, to give this workforce hope that at least one branch of the American government has their back.” Leon did not oblige.

Under conditions where President Donald Trump has warned that the shutdown could go on for months or years, the ruling is a sharp rebuke of constitutional norms embodied in the 13th amendment, which prohibits slavery and indentured servitude.

The court heard arguments Tuesday from three consolidated lawsuits brought by trade unions and a group of employees.

The National Treasury Employees Union (NTEU), which covers parts of the Internal Revenue Service (IRS), Department of Agriculture, Environmental Protection Agency (EPA) and several other agencies

impacted by the shutdown, asked the judge for a restraining order to prevent the executive branch from obligating funds for work performed that has not been appropriated by Congress. They argued that the Anti-deficiency Act, which authorizes such spending obligations during a shutdown, violates the appropriations clause of the Constitution. In making its arguments, NTEU lawyers also requested a stay of its own proposal for three days to allow President Trump and Congress to agree on a deal.

NATCA, which formed after the decertification of PATCO in the wake of the defeated 1981 strike, argued that the forced unpaid work violated the Fifth Amendment to the Constitution, depriving employees of their pay without due process. They are seeking to compel payment of air traffic controllers through Department of Treasury funds not impacted by the shutdown.

Since the shutdown began, NATCA has pushed for a narrow fix to ensure air traffic controllers are paid, regardless of what happens to other federal employees, contractors and the public.

The third argument heard Tuesday involved a group of unnamed employees suing under the 13th amendment. The recognition that compulsory work with pay indefinitely delayed is tantamount to modern slavery has become common in federal workplaces and on social media. The plaintiffs asked for an injunction to allow workers to determine for themselves whether they perform unpaid work.

Judge Leon denied all these requests for immediate action.

Nevertheless, the unions continued to promote illusions in the viability of the court system to defend workers’ rights. “Obviously we’re disappointed that the judge was unwilling to enter the relief we

requested,” Michael Kator, an attorney for the plaintiffs said, “but he expressed a willingness to consider our arguments.”

The next court date is not scheduled until January 31, which would be the 40th day of the shutdown. A final decision could be months away.

A separate suit by the American Federation of Government Employees (AFGE), the largest of the federal unions involved in the shutdown, is seeking back pay and damages for workers required to report during the shutdown. This lawsuit, not heard Tuesday, is even more unlikely to result in immediate relief. More than 25,000 employees are still awaiting damages from a favorable ruling related to the 16-day shutdown in 2013.

For federal workers, the majority of whom live paycheck to paycheck, waiting for the resolution to these cases is untenable.

Meanwhile federal agencies are moving forward with plans to force additional workers into unpaid labor. The IRS is recalling much of its workforce, up to 46,000 employees, to process tax returns. The Federal Aviation Administration is expected to require 2,200 safety inspectors to report this week. The Food and Drug Administration also recently ordered 500 back to work.

The longer the shutdown goes on, the more evidence emerges that a significant section of the ruling class favors its continuation in order to advance a far-reaching restructuring of the public sector workforce and the services provided by the federal government. On Monday President Trump shared on Twitter an op-ed from the extreme right-wing *Daily Caller* advocating using the shutdown to gut federal agencies. “Furloughed employees should find other work, never return and not be paid,” the author, who claimed to be an anonymous senior administration official, wrote.

Hardship will undoubtedly prompt many of those eligible for retirement to do so. Others who are unable or unwilling to endure the uncertainty of when the next paycheck will arrive will simply quit. Reports have already emerged that some Transportation Security Administration screeners, among the lowest-paid of all federal workers, have been begun to seek other work.

The strategy of the trade unions was articulated by NTEU president Tony Reardon in a statement prior to the Judge Leon’s ruling. “We’ve asked our elected officials to end this disaster,” he said. “Now we are

asking a federal judge.”

While limply appealing to Congress and the courts, the unions are consciously working to isolate federal workers, including the 30,000 educators currently on strike in Los Angeles, and prevent any outbreaks of coordinated labor action. The unions have deemed impermissible any rejection by workers of the reactionary Taft-Hartley law, which outlawed strikes by federal workers. They hold up the PATCO strike as a lesson in what happens to those who dare to fight back.

In reality, the PATCO strike marked a transition in class relations, in which the ruling class rejected a previous policy of class compromise and began a sharp and sustained attack on the gains of the working class. It posed concretely the need to mobilize other sections of labor in a joint counteroffensive. The AFL-CIO bureaucracy, however, rejected this and became fully complicit with the Reagan administration in sabotaging the struggle of PATCO strikers.

Twenty-eight years later, AFGE, NTEU and NATCA are hostile to any effort of workers to exert their own power, let alone link all sections of workers in a common struggle. TSA workers, air traffic controllers and others could bring the shutdown to a head by closing down air traffic and other vital economic functions.

However, such a struggle can only succeed if workers recognize the necessity to break from illusions in both political parties, the courts and the trap of the trade unions, which are integrated fully into the Democratic Party apparatus. Workers’ true allies are the striking Los Angeles teachers and other public and private sector workers who have endured a relentless attack on their living standards.



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