

105TH CONGRESS
2D SESSION

H. R. 3246

AN ACT

To assist small businesses and labor organizations in defending themselves against Government bureaucracy; to ensure that employees entitled to reinstatement get their jobs back quickly; to protect the right of employers to have a hearing to present their case in certain representation cases; and to prevent the use of the National Labor Relations Act for the purpose of disrupting or inflicting economic harm on employers.

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1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fairness for Small
5 Business and Employees Act of 1998”.

6 **TITLE I—TRUTH IN**
7 **EMPLOYMENT**

8 **SEC. 101. FINDINGS.**

9 Congress finds that:

10 (1) An atmosphere of trust and civility in labor-
11 management relationships is essential to a produc-
12 tive workplace and a healthy economy.

13 (2) The tactic of using professional union orga-
14 nizers and agents to infiltrate a targeted employer’s
15 workplace, a practice commonly referred to as “salt-
16 ing” has evolved into an aggressive form of harass-
17 ment not contemplated when the National Labor Re-
18 lations Act was enacted and threatens the balance of
19 rights which is fundamental to our system of collec-
20 tive bargaining.

21 (3) Increasingly, union organizers are seeking
22 employment with nonunion employers not because of
23 a desire to work for such employers but primarily to
24 organize the employees of such employers or to in-

1 inflict economic harm specifically designed to put non-
2 union competitors out of business, or to do both.

3 (4) While no employer may discriminate against
4 employees based upon the views of employees con-
5 cerning collective bargaining, an employer should
6 have the right to expect job applicants to be pri-
7 marily interested in utilizing the skills of the appli-
8 cants to further the goals of the business of the em-
9 ployer.

10 **SEC. 102. PURPOSES.**

11 The purposes of this title are—

12 (1) to preserve the balance of rights between
13 employers, employees, and labor organizations which
14 is fundamental to our system of collective bargain-
15 ing;

16 (2) to preserve the rights of workers to orga-
17 nize, or otherwise engage in concerted activities pro-
18 tected under the National Labor Relations Act; and

19 (3) to alleviate pressure on employers to hire
20 individuals who seek or gain employment in order to
21 disrupt the workplace of the employer or otherwise
22 inflict economic harm designed to put the employer
23 out of business.

1 **SEC. 103. PROTECTION OF EMPLOYER RIGHTS.**

2 Section 8(a) of the National Labor Relations Act (29
3 U.S.C. 158(a)) is amended by adding after and below
4 paragraph (5) the following:

5 “Nothing in this subsection shall be construed as requir-
6 ing an employer to employ any person who is not a bona
7 fide employee applicant, in that such person seeks or has
8 sought employment with the employer with the primary
9 purpose of furthering another employment or agency sta-
10 tus: *Provided*, That this sentence shall not affect the
11 rights and responsibilities under this Act of any employee
12 who is or was a bona fide employee applicant, including
13 the right to self-organization, to form, join, or assist labor
14 organizations, to bargain collectively through representa-
15 tives of their own choosing, and to engage in other con-
16 certed activities for the purpose of collective bargaining
17 or other mutual aid or protection.”.

18 **TITLE II—FAIR HEARING**

19 **SEC. 201. FINDINGS.**

20 The Congress finds the following:

21 (1) Bargaining unit determinations by their na-
22 ture require the type of fact-specific analysis that
23 only case-by-case adjudication allows.

24 (2) The National Labor Relations Board has
25 for decades held hearings to determine the appro-

1 priateness of certifying a single location bargaining
2 unit.

3 (3) The imprecision of a blanket rule limiting
4 the factors considered material to determining the
5 appropriateness of a single location bargaining unit
6 detracts from the National Labor Relations Act's
7 goal of promoting stability in labor relations.

8 **SEC. 202. PURPOSE.**

9 The purpose of this title is to ensure that the Na-
10 tional Labor Relations Board conducts a hearing process
11 and specific analysis of whether or not a single location
12 bargaining unit is appropriate, given all of the relevant
13 facts and circumstances of a particular case.

14 **SEC. 203. REPRESENTATIVES AND ELECTIONS.**

15 Section 9(c) of the National Labor Relations Act (29
16 U.S.C. 159(c)) is amended by adding at the end the fol-
17 lowing:

18 “(6) If a petition for an election requests the Board
19 to certify a unit which includes the employees employed
20 at one or more facilities of a multi-facility employer, and
21 in the absence of an agreement by the parties (stipulation
22 for certification upon consent election or agreement for
23 consent election) regarding the appropriateness of the bar-
24 gaining unit at issue for purposes of subsection (b), the
25 Board shall provide for a hearing upon due notice to deter-

1 mine the appropriateness of the bargaining unit. In mak-
2 ing its determination, the Board shall consider functional
3 integration, centralized control, common skills, functions
4 and working conditions, permanent and temporary em-
5 ployee interchange, geographical separation, local auton-
6 omy, the number of employees, bargaining history, and
7 such other factors as the Board considers appropriate.”.

8 **TITLE III—JUSTICE ON TIME**

9 **SEC. 301. FINDINGS.**

10 The Congress finds the following:

11 (1) An employee has a right under the National
12 Labor Relations Act to be free from discrimination
13 with regard to hire or tenure of employment or any
14 term or condition of employment to encourage or
15 discourage membership in any labor organization.
16 The Congress, the National Labor Relations Board,
17 and the courts have recognized that the discharge of
18 an employee to encourage or discourage union mem-
19 bership has a particularly chilling effect on the exer-
20 cise of rights provided under section 7.

21 (2) Although an employee who has been dis-
22 charged because of support or lack of support for a
23 labor organization has a right to be reinstated to the
24 previously held position with backpay, reinstatement
25 is often ordered months and even years after the ini-

1 tial discharge due to the lengthy delays in the proc-
2 essing of unfair labor practice charges by the Na-
3 tional Labor Relations Board and to the several lay-
4 ers of appeal under the National Labor Relations
5 Act.

6 (3) In order to minimize the chilling effect on
7 the exercise of rights provided under section 7
8 caused by an unlawful discharge and to maximize
9 the effectiveness of the remedies for unlawful dis-
10 crimination under the National Labor Relations Act,
11 the National Labor Relations Board should resolve
12 in a timely manner all unfair labor practice com-
13 plaints alleging that an employee has been unlaw-
14 fully discharged to encourage or discourage member-
15 ship in a labor organization.

16 (4) Expeditious resolution of such complaints
17 would benefit all parties not only by ensuring swift
18 justice, but also by reducing the costs of litigation
19 and backpay awards.

20 **SEC. 302. PURPOSE.**

21 The purpose of this title is to ensure that the Na-
22 tional Labor Relations Board resolves in a timely manner
23 all unfair labor practice complaints alleging that an em-
24 ployee has been unlawfully discharged to encourage or dis-
25 courage membership in a labor organization.

1 **SEC. 303. TIMELY RESOLUTION.**

2 Section 10(m) of the National Labor Relations Act
3 is amended by adding at the end the following new sen-
4 tence: “Whenever a complaint is issued as provided in sub-
5 section (b) upon a charge that any person has engaged
6 in or is engaging in an unfair labor practice within the
7 meaning of subsection (a)(3) or (b)(2) of section 8 involv-
8 ing an unlawful discharge, the Board shall state its find-
9 ings of fact and issue and cause to be served on such per-
10 son an order requiring such person to cease and desist
11 from such unfair labor practice and to take such affirma-
12 tive action, including reinstatement of an employee with
13 or without backpay, as will effectuate the policies of this
14 Act, or shall state its findings of fact and issue an order
15 dismissing the said complaint, not later than 365 days
16 after the filing of the unfair labor practice charge with
17 the Board except in cases of extreme complexity. The
18 Board shall submit a report annually to the Committee
19 on Education and the Workforce of the House of Rep-
20 resentatives and the Committee on Labor and Human Re-
21 sources of the Senate regarding any cases pending for
22 more than 1 year, including an explanation of the factors
23 contributing to such a delay and recommendations for
24 prompt resolution of such cases.”.

1 **SEC. 304. REGULATIONS.**

2 The Board may issue such regulations as are nec-
3 essary to carry out the purposes of this title.

4 **TITLE IV—ATTORNEYS FEES**

5 **SEC. 401. FINDINGS AND PURPOSE.**

6 (a) FINDINGS.—The Congress finds as follows:

7 (1) Certain small businesses and labor organi-
8 zations are at a great disadvantage in terms of ex-
9 pertise and resources when facing actions brought by
10 the National Labor Relations Board.

11 (2) The attempt to “level the playing field” for
12 small businesses and labor organizations by means
13 of the Equal Access to Justice Act has proven ineff-
14 ective and has been underutilized by these small en-
15 tities in their actions before the National Labor Re-
16 lations Board.

17 (3) The greater expertise and resources of the
18 National Labor Relations Board as compared with
19 those of small businesses and labor organizations ne-
20 cessitate a standard that awards fees and costs to
21 certain small entities when they prevail against the
22 National Labor Relations Board.

23 (b) PURPOSE.—It is the purpose of this title—

24 (1) to ensure that certain small businesses and
25 labor organizations will not be deterred from seeking
26 review of, or defending against, actions brought

1 against them by the National Labor Relations Board
2 because of the expense involved in securing vindica-
3 tion of their rights;

4 (2) to reduce the disparity in resources and ex-
5 pertise between certain small businesses and labor
6 organizations and the National Labor Relations
7 Board; and

8 (3) to make the National Labor Relations
9 Board more accountable for its enforcement actions
10 against certain small businesses and labor organiza-
11 tions by awarding fees and costs to these entities
12 when they prevail against the National Labor Rela-
13 tions Board.

14 **SEC. 402. AMENDMENT TO NATIONAL LABOR RELATIONS**
15 **ACT.**

16 The National Labor Relations Act (29 U.S.C. 151
17 and following) is amended by adding at the end the follow-
18 ing new section:

19 “AWARDS OF ATTORNEYS’ FEES AND COSTS

20 “SEC. 20. (a) ADMINISTRATIVE PROCEEDINGS.—An
21 employer who, or a labor organization that—

22 “(1) is the prevailing party in an adversary ad-
23 judication conducted by the Board under this or any
24 other Act, and

1 “(2) had not more than 100 employees and a
2 net worth of not more than \$1,400,000 at the time
3 the adversary adjudication was initiated,
4 shall be awarded fees and other expenses as a prevailing
5 party under section 504 of title 5, United States Code,
6 in accordance with the provisions of that section, but with-
7 out regard to whether the position of the Board was sub-
8 stantially justified or special circumstances make an
9 award unjust. For purposes of this subsection, the term
10 ‘adversary adjudication’ has the meaning given that term
11 in section 504(b)(1)(C) of title 5, United States Code.

12 “(b) COURT PROCEEDINGS.—An employer who, or a
13 labor organization that—

14 “(1) is the prevailing party in a civil action, in-
15 cluding proceedings for judicial review of agency ac-
16 tion by the Board, brought by or against the Board,
17 and

18 “(2) had not more than 100 employees and a
19 net worth of not more than \$1,400,000 at the time
20 the civil action was filed,
21 shall be awarded fees and other expenses as a prevailing
22 party under section 2412(d) of title 28, United States
23 Code, in accordance with the provisions of that section,
24 but without regard to whether the position of the United
25 States was substantially justified or special circumstances

1 make an award unjust. Any appeal of a determination of
2 fees pursuant to subsection (a) or this subsection shall be
3 determined without regard to whether the position of the
4 United States was substantially justified or special cir-
5 cumstances make an award unjust.”.

6 **SEC. 403. APPLICABILITY.**

7 (a) AGENCY PROCEEDINGS.—Subsection (a) of sec-
8 tion 20 of the National Labor Relations Act, as added by
9 section 402 of this Act, applies to agency proceedings com-
10 menced on or after the date of the enactment of this Act.

11 (b) COURT PROCEEDINGS.—Subsection (b) of section
12 20 of the National Labor Relations Act, as added by sec-
13 tion 402 of this Act, applies to civil actions commenced
14 on or after the date of the enactment of this Act.

Passed the House of Representatives March 26,
1998.

Attest:

Clerk.