

# EXTENSIONS OF REMARKS

## FAIRNESS FOR SMALL BUSINESS AND EMPLOYEES ACT OF 1998

**HON. WILLIAM F. GOODLING**

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 24, 1998

Mr. GOODLING. Mr. Speaker, I rise today to introduce a bill which will help small businesses, small labor organizations, and employees, in their dealings with the large, aggressive, and burdensome bureaucracy known as the National Labor Relations Board.

The Fairness for Small Business and Employees Act of 1998 (FSBEA), is a bill with four titles—each title a bill previously introduced last session—which will level the playing field for small entities and greatly assist employees waiting for justice from the Board. The Act will assist small businesses and labor organizations in defending themselves against government bureaucracy; ensure that employees entitled to reinstatement get their jobs back quickly; protect the right of employers to have a hearing to present their case in certain representation cases; and, prevent the use of the National Labor Relations Act for the purpose of disrupting or inflicting economic harm on employers.

Let me say how appreciative I am of my friend, Rep. HARRIS FAWELL, of Illinois, chairman of the Subcommittee on Employer-Employee Relations. Rep. FAWELL is the author and sponsor of three of the bills incorporated into this legislation. He has for years done the heavy lifting on labor bills, and brings an unmatched expertise and enthusiasm to these issues. Today I introduce the Fairness for Small Business and Employees Act of 1998 with great gratitude to Rep. FAWELL, and anticipation that he will bring his wisdom to bear as this bill moves through committee and to the floor of the House.

Title I of the FSBEA addresses the problems employers face when victimized by “salting” activity—which includes disruption to the workplace, a decline in productivity and quality, and economic hardship on the company and employees who are legitimately working for the good of the company.

“Salting” involves sending paid or unpaid professional union agents and union members into non-union workplaces under the guise of seeking employment. These agents often state openly that their purpose is to advance union objectives by organizing the employer’s workforce. If an employer refuses to hire the union agents or members, the union files unfair labor practice charges.

Alternatively, if the “salts” are hired by the employer, they often attempt to persuade bona fide employees of the company to sign cards supporting the union—indeed, that is their sole purpose in accepting employment. The union agents also often look for other reasons to file unfair labor practice charges, solely for purposes of imposing undue legal costs on the employer they are seeking to organize.

Thus, under current law an employer must choose between two unpleasant options; ei-

ther hire a union “salt” who is there to disrupt the workplace and file frivolous charges resulting in costly litigation, or deny the “salt” employment and risk being sued for discrimination under the NLRA.

The committee has held numerous hearings on the most abusive aspects of union “salting.” Rep. FAWELL introduced H.R. 758, the Truth in Employment Act, on February 13, 1997. He has refined that Act’s language, and it is now Title I of the FSBEA.

Title I would amend Section 8(a) of the NLRA to make clear that an employer is not required to hire any person who is not a “bona fide” employee applicant, in that “such person seeks or has sought employment with the employer with the primary purpose of furthering another employment or agency status.” It is common sense that an employer should not have to hire someone whose true intention is not to work for the employer. Title I sets up a test that would require a determination of the applicant’s “primary purpose.” If the applicant’s motivation is at least 50 percent to work for the employer, they are a “bona fide” applicant under Title I and enjoy full rights and protections of the NLRA. This legislation will help restore the balance of rights that “salting” upsets, and that is fundamental to our system of labor-management relations.

Title II of the FSBEA is formerly H.R. 1595, the Fair Hearing Act, introduced by Rep. Fawell on May 14, 1997. Title II would require the NLRB to conduct hearings to determine when it is appropriate to certify a single location bargaining unit in cases where a labor organization attempts to organize employees at one or more facilities of a multi-facility employer.

This title is a response to the NLRB’s attempt to impose a “one-size-fits-all” rule for determining the appropriateness of single location bargaining units. The Board’s proposed rule ignores many factors relevant to a bargaining unit’s appropriateness, and is a rigid test that ignores realities of the workplace, and undermines the ability of employers to develop flexible solutions to the needs and demands of their workforces. Congress has attached riders to appropriations bills the past two years to prevent the Board from spending any money to impose such a rule, but Title II is necessary to ensure that a specific analysis is conducted of whether or not a single location unit is appropriate, given the facts and circumstances of a particular case. The NLRB wisely decided last week to withdraw its proposed rule, but Title II will permanently protect the employer’s right to a fair hearing, and give employers assurance that the Board will not resurrect its proposed rule.

A hearing process—as the Board has conducted for decades—will allow a more complete examination of the comprehensive approach to human resource policies and procedures pursued by many employers today that may influence the bargaining unit determination.

Title III of the FSBEA is formerly H.R. 1598, the Justice on Time Act, which I introduced on

May 14, 1997. Title III ensures that the NLRB resolves in a timely manner all unfair labor practice complaints alleging that an employee has been unlawfully discharged to encourage or discourage membership in a labor organization. The legislation amends Section 10(m) of the NLRA to make clear that the Board must dispose of the case not later than 365 days after the filing of the unfair labor practice charge. The legislation provides an exception for cases involving “extreme complexity.”

Title III recognizes that the lives of employees and their families, wondering whether and when they will get their jobs back, are hanging in the balance during the long delays associated with the NLRB’s processing of unfair labor practice charges. It also recognizes that the discharge of an employee who engages in union activity has a particularly chilling effect on the willingness of fellow employees to support a labor organization or to participate in the types of concerted activity protected by the NLRA.

The median time for the NLRB to issue a decision on all unfair labor practice cases in fiscal year 1996 was 591 days and has generally been well more than 500 days since 1982. This length of time is a disservice to the hard-working men and women who seek relief from the Board, and Title III sends a strong message that the NLRA can provide effective and swift justice.

Title IV is formerly H.R. 2449, the Fair Access to Indemnity and Reimbursement (FAIR) Act, which Rep. FAWELL introduced on September 10, 1997. Title IV amends the NLRA to provide that a small employer which prevails in an action against the NLRB will automatically be allowed to recoup the attorney’s fees and expenses it spent defending against the unworthy action.

Title IV would apply to an employer (including a labor organization) which has not more than 100 employees and a net worth of not more than \$1.4 million. These limits represent a mere 20 percent of the current 500 employee/\$7 million net worth eligibility limits for employers under the Equal Access to Justice Act (EAJA), a bill passed with strong bipartisan support in 1980 to provide small businesses with an effective means to fight against abusive and unwarranted intrusions by federal agencies. The EAJA—the vehicle by which employers prevailing against the Board must currently try to recover attorney’s fees and costs—has proven ineffective and is not often utilized against the NLRB.

A government agency the size of the NLRB—well-staffed, with numerous lawyers—should more carefully evaluate the merits of a case before bringing a complaint against a small business, which is ill-equipped to defend itself against an opponent with such superior expertise and resources. Furthermore, small employers have been victimized by relatively frivolous lawsuits by the Board, but have been unable to fight the case to its conclusion based on the merits due to lack of resources, and have had to settle the case. Title IV would at least provide some protection for a small

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Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

employer or union which feels strongly that its case merits full consideration. If the Board brings a losing case against a "little guy," it should pay the attorney's fees and expenses the company or labor organization had to spend to defend itself.

As a package, these four titles will greatly level the playing field for small companies and unions as they deal with the NLRB; will make sure that employees can depend on the Board for quick justice; will protect a multi-location employers' current ability to have a hearing to look at all relevant factors in determining the appropriateness of a single location bargaining unit; and will help prevent the NLRA from being used to inflict economic damage on employers.

TRIBUTE TO MICHAEL McDONALD,  
GENERAL MANAGER OF THE  
NORTHERN CALIFORNIA POWER  
AGENCY

**HON. VIC FAZIO**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, February 24, 1998*

Mr. FAZIO of California. Mr. Speaker, I rise today to pay tribute to Michael McDonald, General Manager of the Northern California Power Agency, who has served the citizens of California since 1985. Mr. McDonald, at the helm of NCPA, has provided public power customers with some of the highest quality electrical service in the nation. I wish him luck in his new career.

Mr. McDonald has served many cities in California. He was City Manager for the City of Healdsburg for eight years. He also spent over a decade at NCPA, a full service Joint Powers Agency comprised of 19 public entities, including the cities of Alameda, Santa Clara, Lodi, Palo Alto, among others. Mr. McDonald has also worked tirelessly as the Chairman of the Transmission Agency of Northern California, a Joint Powers Agency which owns and operates high voltage transmission between California and Oregon; a member of the Western Systems Coordinating Council Board of Trustees; and a member of the California Municipal Utilities Association Board of Governors.

I would like today to honor Mr. McDonald and his contribution to the citizens of California and wish him the best in his future.

1998 CONGRESSIONAL OBSERVANCE  
OF BLACK HISTORY MONTH

SPEECH OF

**HON. WILLIAM (BILL) CLAY**

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, February 11, 1998*

Mr. CLAY. Mr. Speaker, as we meet today in commemoration of Black History month, I would like to comment on the historic battle for educational opportunity that continues to this day in the state of Missouri. The State of Missouri is proposing to end the 17-year-old school desegregation program that is finally, after more than a century of struggle, beginning to offer equal educational opportunity to black children in the city of St. Louis.

It is almost impossible to comprehend the current controversy surrounding efforts to end

St. Louis' successful voluntary school desegregation program without understanding the sad, sordid history of state imposed segregation in Missouri's public schools. In 1847 the Missouri Legislature outlawed teaching reading and writing to colored children. In fact, for the next 18 years it was a state felony for any person to teach blacks to read or write. The crime was considered so heinous that those who committed it were subject to six months in jail and a fine of \$500. Fortunately, there were people of courage who stood up to this preposterous law.

Catholics, Quakers and Unitarians, the First Baptist Church, St. Paul A.M.E. and Central Baptist and other colored churches conducted clandestine schools in underground locations. Catholic nuns at the Old Cathedral openly defied the law and taught Negro children. Six Sisters of Mercy defied the state government and opened a school for blacks in 1856.

John Berry Meachum, a former slave, purchased his freedom and then saved enough money to buy a cooperage and boat supply company. He used his earnings to buy the freedom of many slaves and let them work for him until he was repaid. Meachum also became pastor of the First African Baptist Church. During the time that it was illegal to teach blacks to read and write, he operated covert classrooms on boats moored to a sandbar on the Mississippi River. When Meachum's boat schools were discovered, he built a steamboat, equipped with a library, and transported black children and illiterate adults to the middle of the Mississippi River where federal law prevailed. There blacks were taught to read, write and add numbers. His floating school continued until his death.

Despite, the heroic and valiant efforts of a few, the state government was determined to keep the black citizens of Missouri illiterate and uneducated. In 1865 the Missouri Constitution stated: "Separate schools may be established for children of African descent. All funds provided for the support of public schools shall be appropriated in proportion to the number of children without regard to color." The following year the City of St. Louis opened its first school for blacks. This was 28 years after the City had opened its first school for whites. In that era more than 120,000 blacks lived in Missouri and according to the 1865 report of Superintendent Ira Divoli, colored property owners paid taxes on between two and three million pieces of property.

In 1889, the Missouri Legislature enacted a law mandating separate schools "for the children of African descent." A year later, the Missouri Supreme Court upheld the statute and in its unanimous decision declared that "colored carries with it natural race peculiarities" justifying the separation of blacks and whites. Six years later, the U.S. Supreme Court in Plessy V. Ferguson declared segregated education the law of the land and ruled that "separate but equal facilities were legal." As "separate" became the edict, "unequal" became the standard for black tax-supported education throughout the nation and the state of Missouri.

For nearly 80 years after the historic Plessy V. Ferguson decision, the public schools in Missouri were legally segregated institutions of opportunity for white students and ill-equipped, underfunded dungeons of disgrace for black children who were provided an absolutely inferior education. In 1972, a class action suit was

filed alleging segregation in the City's public school system. But, in 1979, the federal district court ruled that the St. Louis Board of Education had not violated the Constitution's "equal protection" provisions.

Finally, in 1980, the 8th U.S. Circuit Court of Appeals recognized the plight of black children and overruled the 1979 decision. The lower federal court then issued an order allowing busing of children for the purpose of desegregating St. Louis' public schools.

Since 1980, more than \$100 million has been expended to improve the all-black schools in St. Louis and to assist the St. Louis County suburban schools which serve inner city children. Those who now condemn seventeen years as too long and assert that the expenditure of public funds has been too extravagant, need to familiarize themselves with the long and costly history of mis-education of blacks and the role played by the State of Missouri in this long, sad story.

I suggest that critics of the St. Louis school desegregation program compare what the State of Missouri spent in dollars and cents to deny black children an equal education with the amount that is now being expended to equalize educational opportunity. It is hardly the time to decry the cost of school desegregation as excessive and wasteful.

Under the court-approved plan each year, 13,000 black children from St. Louis attend public schools in the suburban districts of St. Louis County in the largest voluntary metropolitan desegregation program in the nation. White children from the County attend magnet schools in St. Louis and substantial funds are devoted to early grade reading programs and other educational improvement efforts in St. Louis. These thirteen thousand black students voluntarily board buses in the inner-city each school day and go to the suburban school districts where they learn in an integrated atmosphere alongside middle class white students. These poor black children fit into the latest national study showing that poor children attending predominantly middle class schools do much better than their counterparts who go to school with mostly poor children. And, the record reveals that the 13,000 inner-city students attending integrated and magnet schools in middle class neighborhoods are graduating from high school at twice the rate of students attending all black schools in the inner city.

These 13,000 St. Louis school children may be, at long last, ending one of the ugliest chapters in the history of the State of Missouri. Yet, unbelievably, some state leaders are rushing to dismantle their classrooms.

Mr. Speaker, Black History Month was established to inspire all people to learn a little more about the history of Black Americans. It is a history that Blacks were once denied the opportunity to learn by the power of the state. Those who do not comprehend this are conspiring to gamble away our future.

DANCE MARATHON MAKES SPECIAL CHILDREN'S WISHES COME TRUE

**HON. LOUISE McINTOSH SLAUGHTER**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, February 24, 1998*

Ms. SLAUGHTER. Mr. Speaker, I rise today to recognize the students of St. Fisher College