

Gibbons Livingston Salmon  
 Gilchrest LoBiondo Sanford  
 Gilman Lucas Saxton  
 Goode Manzullo Scarborough  
 Goodlatte McCollum Schaefer, Dan  
 Goodling McCreery Schaffer, Bob  
 Goss McDade Sensenbrenner  
 Graham McHugh Sessions  
 Granger McInnis Shadegg  
 Greenwood McIntosh Shaw  
 Gutknecht McKeon Shays  
 Hall (TX) Metcalf Shimkus  
 Hansen Mica Shuster  
 Hastert Miller (FL) Skeen  
 Hastings (WA) Moran (KS) Smith (MI)  
 Hayworth Morella Smith (NJ)  
 Hefley Myrick Smith (OR)  
 Herger Nethercutt Smith (TX)  
 Hill Neumann Smith, Linda  
 Hilleary Ney Snowbarger  
 Hobson Northup Solomon  
 Hoekstra Norwood Souder  
 Horn Nussle Spence  
 Hostettler Oxley Stearns  
 Hulshof Packard Stenholm  
 Hunter Pappas Stump  
 Hutchinson Parker Sununu  
 Hyde Paul Talent  
 Inglis Paxon Tauzin  
 Istook Pease Taylor (NC)  
 Jenkins Peterson (PA) Thomas  
 Johnson (CT) Petri Thornberry  
 Johnson, Sam Pickering Thune  
 Jones Pitts Tiahrt  
 Kasich Pombo Traficant  
 Kelly Porter Upton  
 Kim Portman Walsh  
 King (NY) Pryce (OH) Wamp  
 Kingston Quinn Watkins  
 Klug Radanovich Watts (OK)  
 Knollenberg Ramstad Weldon (FL)  
 Kolbe Redmond Weldon (PA)  
 LaHood Regula Weller  
 Largent Riggs White  
 Latham Riley Whitfield  
 LaTourette Rogan Wicker  
 Lazio Rogers Wolf  
 Leach Rohrabacher Young (AK)  
 Lewis (CA) Ros-Lehtinen Young (FL)  
 Lewis (KY) Roukema  
 Linder Ryan

NAYS—185

Abercrombie Edwards Lofgren  
 Ackerman Eshoo Lowey  
 Allen Etheridge Luther  
 Andrews Evans Maloney (CT)  
 Baesler Farr Maloney (NY)  
 Baldacci Fattah Manton  
 Barcia Fazio Markey  
 Barrett (WI) Filner Martinez  
 Becerra Forbes Mascara  
 Bentsen Frank (MA) Matsui  
 Berman Frost McCarthy (MO)  
 Berry Furse McCarthy (NY)  
 Bishop Gejdenson McGovern  
 Blagojevich Gephardt McHale  
 Blumenauer Gordon McIntyre  
 Bonior Green McKinney  
 Borski Gutierrez Meehan  
 Boswell Hall (OH) Meek (FL)  
 Boucher Hamilton Meeks (NY)  
 Boyd Hastings (FL) Menendez  
 Brown (CA) Hefner Miller (CA)  
 Brown (OH) Hilliard Minge  
 Capps Hinchey Mink  
 Carson Hinojosa Moakley  
 Clay Holden Mollohan  
 Clayton Hooley Moran (VA)  
 Clement Hoyer Murtha  
 Clyburn Jackson (IL) Nadler  
 Condit John Neal  
 Costello Johnson (WI) Oberstar  
 Coyne Kanjorski Obey  
 Cramer Kaptur Olver  
 Cummings Kennedy (MA) Ortiz  
 Danner Kennedy (RI) Owens  
 Davis (FL) Kennelly Pallone  
 Davis (IL) Kildee Pascrell  
 DeFazio Kilpatrick Pastor  
 DeGette Kind (WI) Pelosi  
 Delahunt Kleczka Peterson (MN)  
 DeLauro Klink Pickett  
 Deutsch Kucinich Pomeroy  
 Dicks LaFalce Poshard  
 Dingell Lampson Price (NC)  
 Dixon Lantos Rahall  
 Doggett Levin Reyes  
 Dooley Lewis (GA) Rivers  
 Doyle Lipinski Rodriguez

Roemer Skelton Tierney  
 Rothman Slaughter Torres  
 Roybal-Allard Smith, Adam Towns  
 Rush Snyder Turner  
 Sabo Spratt Velazquez  
 Sanchez Stabenow Vento  
 Sanders Stark Visclosky  
 Sandlin Stokes Watt (NC)  
 Sawyer Strickland Waxman  
 Schumer Stupak Wexler  
 Scott Tanner Weygand  
 Serrano Tauscher Wise  
 Sherman Taylor (MS) Woolsey  
 Siskisky Thompson Wynn  
 Skaggs Thurman

NOT VOTING—25

Bonilla Ford McDermott  
 Brown (FL) Gillmor McNulty  
 Cannon Gonzalez Millender-  
 Cardin Solomon McDonald  
 Conyers Houghton Payne  
 Cooksey Jackson-Lee Rangel  
 Crapo (TX) Royce  
 Diaz-Balart Jefferson Waters  
 Engel Johnson, E. B. Yates

So the resolution was agreed to.

A motion to reconsider the vote whereby said resolution was agreed to was, by unanimous consent, laid on the table.

¶26.17 PERMISSION TO FILE REPORT

On motion of Mr. LIVINGSTON, by unanimous consent, the Committee on Appropriations was granted permission until midnight, Friday, March 27, 1998, to file a privileged report on the bill making emergency supplemental appropriations for fiscal year 1998.

Pursuant to clause 8 of rule XXI, all points of order were reserved.

¶26.18 PERMISSION TO FILE REPORT

On motion of Mr. LIVINGSTON, by unanimous consent, the Committee on Appropriations was granted permission until midnight, Friday, March 27, 1998, to file a privileged report on the bill making supplemental appropriations for fiscal year 1998.

Pursuant to clause 8 of rule XXI, all points of order were reserved.

¶26.19 FAIRNESS FOR SMALL BUSINESS AND EMPLOYEES

The SPEAKER pro tempore, Mr. KINGSTON, pursuant to House Resolution 393 and rule XXIII, declared the House resolved into the Committee of the Whole House on the state of the Union for the consideration of the bill (H.R. 3246) 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.

The SPEAKER pro tempore, Mr. KINGSTON, by unanimous consent, designated Mr. MCCOLLUM as Chairman of the Committee of the Whole; and after some time spent therein,

¶26.20 RECORDED VOTE

A recorded vote by electronic device was ordered in the Committee of the Whole on the following amendment submitted by Mr. GOODLING:

Page 4, line 17, before the first period, insert “, including the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection”.

It was decided in the { Yeas ..... 398 affirmative ..... } Nays ..... 0

¶26.21 [Roll No. 77] AYES—398

Abercrombie DeLauro Hyde  
 Ackerman DeLay Inglis  
 Aderholt Deutsch Istook  
 Allen Diaz-Balart Jackson (IL)  
 Andrews Dickey Jenkins  
 Archer Dicks John  
 Armeey Dingell Johnson (CT)  
 Bachus Dixon Johnson, Sam  
 Baesler Doggett Jones  
 Baker Dooley Kanjorski  
 Baldacci Doolittle Kaptur  
 Ballenger Doyle Kasich  
 Barcia Dreier Kelly  
 Barr Duncan Kennedy (MA)  
 Barrett (NE) Dunn Kennedy (RI)  
 Barrett (WI) Edwards Kennelly  
 Bartlett Ehlers Kildee  
 Barton Ehrlich Kilpatrick  
 Bass Emerson Kim  
 Bateman English Kind (WI)  
 Becerra Ensigh King (NY)  
 Bentsen Eshoo Kingston  
 Bereuter Etheridge Kleczka  
 Berman Evans Klink  
 Berry Everett Klug  
 Bilbray Ewing Knollenberg  
 Bilirakis Farr Kolbe  
 Bishop Fattah Kucinich  
 Blagojevich Fawell LaFalce  
 Bliley Fazio LaHood  
 Blumenauer Filner Lampson  
 Blunt Foley Lantos  
 Boehlert Forbes Largent  
 Boehner Fossella Latham  
 Bonior Fowler LaTourette  
 Borski Fox Lazio  
 Boswell Frank (MA) Leach  
 Boucher Franks (NJ) Levin  
 Boyd Frelinghuysen Lewis (CA)  
 Brady Frost Lewis (GA)  
 Brown (CA) Furse Lewis (KY)  
 Brown (OH) Gallegly Linder  
 Bryant Ganske Lipinski  
 Bunning Gejdenson Livingston  
 Burr Gekas LoBiondo  
 Burton Gephardt Lofgren  
 Buyer Gibbons Lowey  
 Callahan Gilchrest Lucas  
 Calvert Gillmor Luther  
 Camp Gilman Maloney (CT)  
 Campbell Goode Maloney (NY)  
 Canady Goodlatte Manton  
 Capps Goodling Manzullo  
 Carson Gordon Martinez  
 Castle Goss Mascara  
 Chabot Graham Matsui  
 Chambliss Granger McCarthy (MO)  
 Chenoweth Green McCarthy (NY)  
 Christensen Hansen McCollum  
 Clay Gutierrez McCreery  
 Clayton Gutknecht McGovern  
 Clement Hall (OH) McHale  
 Clyburn Hall (TX) McHugh  
 Coble Hamilton McInnis  
 Coburn Hansen McIntosh  
 Collins Hastert McIntyre  
 Combest Hastings (FL) McKeon  
 Condit Hastings (WA) McKinney  
 Cook Hayworth Meehan  
 Costello Hefley Meek (FL)  
 Cox Herger Meeks (NY)  
 Coyne Hill Menendez  
 Cramer Hilleary Metcalf  
 Crane Hilliard Mica  
 Cubin Hinchey Miller (CA)  
 Cummings Hinojosa Miller (FL)  
 Cunningham Hobson Minge  
 Danner Hoekstra Mink  
 Davis (FL) Holden Moakley  
 Davis (IL) Hooley Mollohan  
 Davis (VA) Horn Moran (KS)  
 Deal Hostettler Moran (VA)  
 DeFazio Hoyer Morella  
 DeGette Hulshof Murtha  
 Delahunt Hutchinson Myrick

Nadler	Roemer	Stenholm
Neal	Rogan	Stokes
Nethercutt	Rohrabacher	Strickland
Neumann	Ros-Lehtinen	Stump
Ney	Rothman	Stupak
Northup	Roukema	Sununu
Norwood	Roybal-Allard	Talent
Nussle	Rush	Tanner
Oberstar	Ryun	Tauscher
Obey	Sabo	Tauzin
Oliver	Salmon	Taylor (MS)
Ortiz	Sanchez	Taylor (NC)
Owens	Sanders	Thomas
Oxley	Sandlin	Thompson
Packard	Sanford	Thornberry
Pallone	Sawyer	Thune
Pappas	Saxton	Thurman
Parker	Scarborough	Tiahrt
Pascarell	Schaefer, Dan	Tierney
Pastor	Schaffer, Bob	Torres
Paul	Schumer	Towns
Paxon	Scott	Trafficant
Pease	Sensenbrenner	Turner
Pelosi	Serrano	Upton
Peterson (MN)	Sessions	Velazquez
Peterson (PA)	Shadegg	Vento
Petri	Shaw	Visclosky
Pickering	Shays	Walsh
Pickett	Shimkus	Wamp
Pitts	Shuster	Watkins
Pombo	Sisisky	Watt (NC)
Pomeroy	Skaggs	Watts (OK)
Porter	Skeen	Waxman
Portman	Skelton	Weldon (FL)
Poshard	Slaughter	Weldon (PA)
Price (NC)	Smith (MI)	Weller
Pryce (OH)	Smith (NJ)	Wexler
Quinn	Smith, Adam	Weygand
Radanovich	Smith, Linda	White
Rahall	Snowbarger	Whitfield
Ramstad	Snyder	Wicker
Redmond	Solomon	Wise
Regula	Souder	Wolf
Reyes	Spence	Woolsey
Riggs	Spratt	Wynn
Riley	Stabenow	Young (AK)
Rivers	Stark	Young (FL)
Rodriguez	Stearns	

## NOT VOTING—32

Bonilla	Houghton	Millender-
Brown (FL)	Hunter	McDonald
Cannon	Jackson-Lee	Payne
Cardin	(TX)	Rangel
Conyers	Jefferson	Rogers
Cooksey	Johnson (WI)	Royce
Crapo	Johnson, E. B.	Sherman
Engel	Markey	Smith (OR)
Ford	McDade	Smith (TX)
Gonzalez	McDermott	Waters
Harman	McNulty	Yates
Hefner		

So the amendment was agreed to.

After some further time,

THE SPEAKER pro tempore, Mr. TIAHRT, assumed the Chair.

When Mr. MCCOLLUM, Chairman, pursuant to House Resolution 393, reported the bill back to the House with an amendment adopted by the Committee.

The previous question having been ordered by said resolution.

The following amendment, reported from the Committee of the Whole House on the state of the Union, was agreed to:

Strike out all after the enacting clause and insert:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Fairness for Small Business and Employees Act of 1998".

**TITLE I—TRUTH IN EMPLOYMENT****SEC. 101. FINDINGS.**

Congress finds that:

(1) An atmosphere of trust and civility in labor-management relationships is essential to a productive workplace and a healthy economy.

(2) The tactic of using professional union organizers and agents to infiltrate a targeted employer's workplace, a practice commonly referred to as "salting" has evolved into an

aggressive form of harassment not contemplated when the National Labor Relations Act was enacted and threatens the balance of rights which is fundamental to our system of collective bargaining.

(3) Increasingly, union organizers are seeking employment with nonunion employers not because of a desire to work for such employers but primarily to organize the employees of such employers or to inflict economic harm specifically designed to put non-union competitors out of business, or to do both.

(4) While no employer may discriminate against employees based upon the views of employees concerning collective bargaining, an employer should have the right to expect job applicants to be primarily interested in utilizing the skills of the applicants to further the goals of the business of the employer.

**SEC. 102. PURPOSES.**

The purposes of this title are—

(1) to preserve the balance of rights between employers, employees, and labor organizations which is fundamental to our system of collective bargaining;

(2) to preserve the rights of workers to organize, or otherwise engage in concerted activities protected under the National Labor Relations Act; and

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

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

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

"Nothing in this subsection shall be construed as requiring an employer to employ 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: *Provided*, That this sentence shall not affect the rights and responsibilities under this Act of any employee who is or was a bona fide employee applicant, including the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

**TITLE II—FAIR HEARING****SEC. 201. FINDINGS.**

The Congress finds the following:

(1) Bargaining unit determinations by their nature require the type of fact-specific analysis that only case-by-case adjudication allows.

(2) The National Labor Relations Board has for decades held hearings to determine the appropriateness of certifying a single location bargaining unit.

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

**SEC. 202. PURPOSE.**

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

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

Section 9(c) of the National Labor Relations Act (29 U.S.C. 159(c)) is amended by adding at the end the following:

"(6) If a petition for an election requests the Board to certify a unit which includes the employees employed at one or more facilities of a multi-facility employer, and in the absence of an agreement by the parties (stipulation for certification upon consent election or agreement for consent election) regarding the appropriateness of the bargaining unit at issue for purposes of subsection (b), the Board shall provide for a hearing upon due notice to determine the appropriateness of the bargaining unit. In making its determination, the Board shall consider functional integration, centralized control, common skills, functions and working conditions, permanent and temporary employee interchange, geographical separation, local autonomy, the number of employees, bargaining history, and such other factors as the Board considers appropriate."

**TITLE III—JUSTICE ON TIME****SEC. 301. FINDINGS.**

The Congress finds the following:

(1) An employee has a right under the National Labor Relations Act to be free from discrimination with regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. The Congress, the National Labor Relations Board, and the courts have recognized that the discharge of an employee to encourage or discourage union membership has a particularly chilling effect on the exercise of rights provided under section 7.

(2) Although an employee who has been discharged because of support or lack of support for a labor organization has a right to be reinstated to the previously held position with backpay, reinstatement is often ordered months and even years after the initial discharge due to the lengthy delays in the processing of unfair labor practice charges by the National Labor Relations Board and to the several layers of appeal under the National Labor Relations Act.

(3) In order to minimize the chilling effect on the exercise of rights provided under section 7 caused by an unlawful discharge and to maximize the effectiveness of the remedies for unlawful discrimination under the National Labor Relations Act, the National Labor Relations Board should resolve 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.

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

**SEC. 302. PURPOSE.**

The purpose of this title is to ensure that the National Labor Relations Board 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.

**SEC. 303. TIMELY RESOLUTION.**

Section 10(m) of the National Labor Relations Act is amended by adding at the end the following new sentence: "Whenever a complaint is issued as provided in subsection (b) upon a charge that any person has engaged in or is engaging in an unfair labor practice within the meaning of subsection (a)(3) or (b)(2) of section 8 involving an unlawful discharge, the Board shall state its findings of fact and issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice and to take such affirmative action, including reinstatement of an employee with or without backpay, as will effectuate the policies of this Act, or shall state its findings of fact and issue an

order dismissing the said complaint, not later than 365 days after the filing of the unfair labor practice charge with the Board except in cases of extreme complexity. The Board shall submit a report annually to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate regarding any cases pending for more than 1 year, including an explanation of the factors contributing to such a delay and recommendations for prompt resolution of such cases."

SEC. 304. REGULATIONS.

The Board may issue such regulations as are necessary to carry out the purposes of this title.

TITLE IV—ATTORNEYS FEES

SEC. 401. FINDINGS AND PURPOSE.

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

(1) Certain small businesses and labor organizations are at a great disadvantage in terms of expertise and resources when facing actions brought by the National Labor Relations Board.

(2) The attempt to "level the playing field" for small businesses and labor organizations by means of the Equal Access to Justice Act has proven ineffective and has been underutilized by these small entities in their actions before the National Labor Relations Board.

(3) The greater expertise and resources of the National Labor Relations Board as compared with those of small businesses and labor organizations necessitate a standard that awards fees and costs to certain small entities when they prevail against the National Labor Relations Board.

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

(1) to ensure that certain small businesses and labor organizations will not be deterred from seeking review of, or defending against, actions brought against them by the National Labor Relations Board because of the expense involved in securing vindication of their rights;

(2) to reduce the disparity in resources and expertise between certain small businesses and labor organizations and the National Labor Relations Board; and

(3) to make the National Labor Relations Board more accountable for its enforcement actions against certain small businesses and labor organizations by awarding fees and costs to these entities when they prevail against the National Labor Relations Board.

SEC. 402. AMENDMENT TO NATIONAL LABOR RELATIONS ACT.

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

"AWARDS OF ATTORNEYS' FEES AND COSTS

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

"(1) is the prevailing party in an adversary adjudication conducted by the Board under this or any other Act, and

"(2) had not more than 100 employees and a net worth of not more than \$1,400,000 at the time the adversary adjudication was initiated, shall be awarded fees and other expenses as a prevailing party under section 504 of title 5, United States Code, in accordance with the provisions of that section, but without regard to whether the position of the Board was substantially justified or special circumstances make an award unjust. For purposes of this subsection, the term 'adversary adjudication' has the meaning given that term in section 504(b)(1)(C) of title 5, United States Code.

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

"(1) is the prevailing party in a civil action, including proceedings for judicial review of agency action by the Board, brought by or against the Board, and

"(2) had not more than 100 employees and a net worth of not more than \$1,400,000 at the time the civil action was filed, shall be awarded fees and other expenses as a prevailing party under section 2412(d) of title 28, United States Code, in accordance with the provisions of that section, but without regard to whether the position of the United States was substantially justified or special circumstances make an award unjust. Any appeal of a determination of fees pursuant to subsection (a) or this subsection shall be determined without regard to whether the position of the United States was substantially justified or special circumstances make an award unjust."

SEC. 403. APPLICABILITY.

(a) AGENCY PROCEEDINGS.—Subsection (a) of section 20 of the National Labor Relations Act, as added by section 402 of this Act, applies to agency proceedings commenced on or after the date of the enactment of this Act.

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

The bill, as amended, was ordered to be engrossed and read a third time, was read a third time by title.

The question being put, viva voce, Will the House pass said bill?

The SPEAKER pro tempore, Mr. TIAHRT, announced that the yeas had it.

Mr. CLAY demanded a recorded vote on passage of said bill, which demand was supported by one-fifth of a quorum, so a recorded vote was ordered.

The vote was taken by electronic device.

It was decided in the { Yeas ..... 202 affirmative ..... } Nays ..... 200

¶26.22

[Roll No. 78]

AYES—202

Table listing names of members of the House of Representatives, organized in three columns: Aderholt, Archer, Arme...; Combest, Cook, Cox...; Goss, Graham, Granger...; and others.

Table listing names of members of the House of Representatives, organized in three columns: Lewis (CA), Lewis (KY), Linder...; Peterson (PA), Petri, Pickering...; and others.

NOES—200

Table listing names of members of the House of Representatives, organized in three columns: Abercrombie, Ackerman, Allen...; Hall (OH), Hamilton, Hastings (FL)...; Olver, Ortiz, Owens...; and others.