National Right to Work Committee®

Fact Sheet

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A COALITION OF EMPLOYEES AND EMPLOYERS

118th Congress

"Salting": A Coercive Big Labor Scheme to Increase Forced Unionism

As the year progresses, legislation has been reintroduced that would remove the federal authorization for Big Labor's "salting" of small firms with union militants whose goal is to force individual workers to accept union monopoly bargaining and pay union dues.

In this Congress, legislation to end "salting," a.k.a. the Truth in Employment Act (H.R.4320), is being sponsored by Representative Rick Allen

What is "salting"?

"Salting" is an organized conspiracy on the part of Big Labor bosses, aided and abetted by the National Labor Relations Board (NLRB) whenever it is dominated by pro-forced-unionism puppets of Big Labor, to obtain access to forced-dues dollars from non-union workers by destabilizing non-union workforces from within.

The term "salting" refers to union organizers applying for jobs with non-union employers with the aim of organizing the employers' workforce. Or, more frequently, triggering an "unfair labor practice" charge that will result in heavy back-pay costs to the target employer and an NLRB cease and desist order that will weaken the target employer's ability to fight future organizing efforts.

"Salts" are union organizers, not bona fide workers.

"Salting" is an underhanded method of intimidation designed by Big Labor bosses to blackmail employers into handing loyal employees over to union officials without the employees' consent.

How union-boss "salting" works

Union bosses pay (or simply order) "salts" to apply for jobs with a small firm, typically in the construction industry, so they can drum up so-called "unfair labor practice" charges, glean personal employee information, harass targeted firms' customers and instigate costly and often violent strikes.

As they often openly admit, "salts" do not intend to help the business run successfully and profitably. Instead, their avowed goal is to bully the employer into foisting union monopoly bargaining and, where state law permits, forced-union dues on longtime, loyal employees.

The forced-unionism tactic is designed to put unfair economic pressure on non-union employers. The "salts," paid and unpaid union employees and agents, seek access to an employer's workplace under the guise of seeking employment with the company. Whether overt or covert, the objective of a "salt" is to do whatever is necessary to force the company to hand over its workers to the will of the Big Labor bosses.

"Whatever is necessary" usually ends up with the use of tactics designed to cause internal disruption and increased business costs for the hiring employer. This action is abetted by kangaroo court filings of frivolous NLRB lawsuits.

Big Labor currently enjoys government blessing to "salt" companies

Current federal law and overly broad interpretations of the National Labor Relations Act (NLRA) allow "salt" applicants who are not hired, or are fired for failure to perform their jobs, to file a claim with the NLRB. These claims often initiate a legal battle that employers find costlier to win than to lose unjustly.

In one prominent example, the NLRB in slip 331-20 addresses the NLRB General Counsel action to bring two Section 8(a)(3) charges against an employer (FES - a division of Thermo Power).

The charges were for refusal to hire and refusal to consider nine applicants because of their union activity or affiliation. The NLRB remanded the refusal-to-hire charges for further hearings, and held that the employer committed "unfair labor practices" as to the refusal to consider.

With the help of the NLRB, an agency whose bureaucratic policymaking hierarchy is rife with current and former forced-unionism apologists, Big Labor bosses have perfected a multi-pronged attack on freedom of choice for non-union workers.

Since its 1974 decision in *Dee Knitting Mills*, the NLRB has consistently held that "salts," whether paid or volunteer, are employees under Section 2(3) of the NLRA. Therefore, as far as the NLRB is concerned, "salts" are protected by Section 8(a)(3) of the Act. It makes it an "unfair labor practice" to discriminate in regard to hiring, tenure or any term or condition of employment in order "to encourage or discourage membership in any labor organization."

In *Town & Country Electric, Inc.* 111 S. Ct. 450, (1995), the United States Supreme Court held that an individual can be a company's "employee" for purposes of the NLRA even "if, at the same time, a union pays that worker to help the union organize the company."

The Court observed that ordinary union organizing activity is protected by the NLRA. Because applicants for jobs are considered "employees" under the NLRA, the Supreme Court's

Town & Country Electric, Inc. decision applies to union "salts" who have merely applied for jobs.

Subsequent court of appeals decisions hold that it makes no difference whether the "salt" is paid by the union or is a volunteer.

In *Flour Daniels, Inc.* 311 NLRB 498, 500 (1993), the NLRB observed that an applicant who clearly indicates that he is a union organizer "explicitly places the employer on notice that he will try to exercise his statutorily protected right to organize his fellow employees."

Therefore, if a union believes that it has a good opportunity to organize a company from within, the "salt" may remain under cover until after he is employed.

But more typically, the "salt" is more interested in precipitating an "unfair labor practice" charge alleging a discriminatory failure to consider or hire a job applicant, or a discharge, than in actually organizing a company from within.

So, more often than not, "salts" announce their union support during the application or interview process, by writing "union organizer" on the application, wearing union paraphernalia (buttons, t-shirts, caps, etc.). Or, they simply tell the interviewer that they are union organizers in order to document employer knowledge of their pro-union sentiments, thus creating purported "proof" of unlawful motivation in the event they are not hired or are later discharged or disciplined.

Using the NLRB's power to demand reinstatement for workers never hired, back-pay and punitive "cease and desist" orders, Big Labor bosses can practically destroy small businesses unwilling to bend to their will through the uses of targeted "salting" campaigns.

"Salting" tactics developed due to Big Labor's increasing failure to persuade workers

As we can see in the past two decades, building-trade unions have seen declining numbers despite consistent growth in the construction industry. In fact, only 13.6% of construction jobs were controlled by building-trade union officials in 2019, down from 19.6% in 1999.

But this comes as no surprise. Between 1999 and 2019, while the number of American construction jobs grew by a remarkable 34%, the number of construction workers who have chosen to join a union actually *decreased* by 11%.

Union bosses responded to this trend, not by offering construction workers better services to attract more of them into unions, but by seeking to coerce those they were unable to persuade, and shutting down the employer when both of these fail.

Rather than seeking to demonstrate better value for their would-be members, union bosses are relying more and more heavily on the special privileges they enjoy under the NLRB and court decisions to help them corral unwilling workers into unions.

"Salting" is devastating our nation's businesses

Speaking before the Senate Health, Education, Labor and Pensions Committee the last time this issue received Congressional hearings, Bob MacDaniels, the president and co-founder of Oncore Construction, a firm based in Bladensburg, Maryland, testified on how "salting" works in practice:

"Some four months ago, two representatives from the Laborers' Union came to my office.

"During our conversation, they admitted that through their 'salting' efforts they have learned that my employees don't want to be in the union. But that did not matter.

"They gave me a choice -- either sign a collective [monopoly] bargaining agreement, regardless of my employees' wishes, or the union would do everything it could to put me out of business."

The conversation Mr. MacDaniels recounted was far from extraordinary.

In fact, a manual drafted for the Electrical Workers' union explicitly calls this practice "necessary to cause the employer to sign an agreement [forcing employees into the union], raise prices" or "scale back his business activities . . ."

Employers who refuse Big Labor's extortion ought eventually to "go out of business," says the union manual.

In the case of Oncore Construction, primarily a concrete contractor working for general contractors, property managers and owners, Laborers' Union officials allegedly used intelligence gathered from "salts" to track down and assault employees at various job sites and identify and harass customers:

"Led by a group of paid agents sent here from New York and New England, the union engaged in mass trespassing on my job sites, abused and assaulted my employees, disrupted job site work, and prevented deliveries," testified Mr. MacDaniels.

"Last week, some of our job site equipment was set on fire and exploded . . .

"Union agents even went to the homes of some of our customers to threaten their projects with economic harm if we were not replaced on their projects."

Oncore Construction filed charges against Laborers' Union bosses with the NLRB and was able to back up its charges with videotapes of illegal invasions of its job sites by union militants and affidavits from victimized employees and customers.

Although NLRB bureaucrats normally lend a sympathetic ear to union bosses accused of using threats and violence to corral employees into a union, in this case the evidence was so egregious that they ordered Laborers' Union bosses to terminate their illegal boycott.

However, Laborers' Union bosses and militants ignored the NLRB injunction and refused to leave Oncore employees and customers in peace. And Oncore was never compensated for its increased security costs, legal fees and job site delays.

How union-boss "salting" hurts all Americans

Not only an organizing tool, "salting" has become an instrument of economic destruction aimed at non-union companies, unwilling to just hand over their employees to the will of Big Labor bosses. Hiding behind the shield of the NLRA, union "salts" try to destroy their employers or deliberately increase costs through various actions, including sabotage.

They also file frivolous discrimination and "unfair labor practice" complaints with the NLRB, the Occupational Safety and Health Administration (OSHA) and the Equal Employment Opportunity Commission (EEOC).

And since federal agencies pay all of the costs to investigate and prosecute frivolous complaints filed by union "salts," the American taxpayers' hard-earned tax dollars are subsidizing the unions' unscrupulous, anti-competitive and often extortionate behavior.

"Salting" is one of Big Labor's favorite tricks, designed to blackmail employers into handing loyal employees over to Organized Labor bosses without the employees' consent.

And the worst part is that businesses and workers are almost powerless to fight back because of Big Labor's attack dogs at the NLRB.

The company's choice will be either halt expansion -- or, if they do seek new employees -- face a union "salting" campaign.

Either way, the employers and employees both lose in the end -- either the union bosses put the noose of forced unionism around another small company's neck, or union lawyers bleed the business dry with unfair lawsuits.

Unless something is done about Big Labor "salting," hundreds of thousands of honest employees in thousands of small businesses will be caught in a no-win situation.

Big Labor "salting" hurts all Americans. This kind of forced unionism will cost employers, employees, you, me and the entire country.

Something must be done to stop union bosses from forcing compulsory unionism on unsuspecting businesses.

If “salting” is allowed to continue, we will see more bitter strikes that shut down businesses and destroy jobs. Union militants will foment a “hate-the-boss” mentality and wield brickbats against anyone who gets in their way.

Millions more working Americans will be forced to pay union dues out of every paycheck -- money that should go to workers and their families.

Big Labor will seize hundreds of millions more dollars to pump into the campaign coffers of their handpicked, radical Tax-and-Spend politicians.

Ending “salting” will benefit more than just business owners and workers. Federally sanctioned “salting” leads to higher costs to would-be home buyers, as building-trades union bosses impose Big Labor restrictions on crew size, journeymen/apprentice ratios and use of helpers on formerly flexible firms.

“Salting” also leads to tax hikes to cover the costs of union-boss featherbedding on school and other public-works construction projects.

And worst of all, “salting” promotes disruptive and often violent strikes on job sites that endanger innocent bystanders as well as non-striking employees.

“Salting” has become an instrument of economic destruction aimed at non-union companies that is driving up the costs for targeted non-union companies, consumers and taxpayers.

Congress needs to amend the NLRA to make clear that an employer is not required to hire any person who is not a bona fide applicant because the applicant is simply seeking a job to promote interests unrelated to those of the employer.

In America, freedom and common sense dictate that business owners should have the right to not hire applicants who are intent on sabotaging their businesses.

Yet many business owners would rather hire “salts” than face costly litigation that can result from denying those non-bona fide applicants a job. The Truth in Employment Act would protect such employers from frivolous and coercive lawsuits intended to damage their businesses.

While supporting the right of unions to organize, we also must protect the rights of non-union businesses and their employees. In our society, the freedom not to organize is as precious as the freedom to organize. Both sides in labor discussions should advance their interests through persuasion, not coercion. The Truth in Employment Act will take important steps to protect businesses from anti-competitive, disruptive and unethical practices.