EXAMINING UNION "SALTING" ABUSES AND ORGANIZING TACTICS THAT HARM THE U.S. ECONOMY

FIELD HEARING

BEFORE THE

SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS

OF THE

COMMITTEE ON EDUCATION AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

May 10, 2004 in Round Rock, Texas

Serial No. 108-57

Printed for the use of the Committee on Education and the Workforce

Available via the World Wide Web: http://www.access.gpo.gov/congress/house
or
Committee address: http://edworkforce.house.gov

U.S. GOVERNMENT PRINTING OFFICE

93-621 PDF WASHINGTON : 2004

For sale by the Superintendent of Documents, U.S. Government Printing Office
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EXAMINING UNION "SALTING" ABUSES AND ORGANIZING TACTICS THAT HARM THE U.S. ECONOMY

Monday, May 10, 2004
U.S. House of Representatives
Subcommittee on Employer-Employee Relations
Committee on Education and the Workforce
Round Rock, Texas

The Subcommittee met, pursuant to call, at 2 p.m., in City Council Chambers, Round Rock City Hall, 221 E. Main Street, Round Rock, Texas, Hon. Sam Johnson (Chairman) presiding.

Members present: Representatives Johnson, Carter, and Grijalva.

Staff present: Loren E. Sweatt, Professional Staff Member; Kevin Smith, Senior Communications Advisor; Jody Calemine, III, Minority Counsel, Employer-Employee Relations.

STATEMENT OF HON. SAM JOHNSON, CHAIRMAN, SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE

Chairman JOHNSON. A quorum being present, the Subcommittee on Employer-Employee Relations of the Committee on Education and the Workforce will come to order. You all are probably wondering what a quorum is. It takes two to tango in Congress.

We're meeting here today on examining union "salting" abuses and organizing tactics that harm the United States' economy. I'd like to begin by thanking the city of Round Rock, and the Mayor, Hyle Maxwell, for hosting this hearing today. I want you to know I appreciate their hospitality and I'm pleased to be here. I'm eager to hear from our witnesses, but before I begin, I ask unanimous consent that the hearing record remain open for 14 days to allow Members' statements and other extraneous material referenced during the hearing to be submitted in the official hearing record. Without objection, so ordered.

I appreciate you all being in the audience today. Thank you all for coming. The Employer-Employee Relations Subcommittee is holding a series of hearings examining emerging trends in labor law in our country. This is the second in our series, and today we'll look at the strategies unions use to organize non-union workplaces and whether or not these practices are fair to both employers and workers.

In other words, does current law under the National Labor Relations Act provide a labor-neutral environment or is there room for improvement? Let me say up front that our concerns today have nothing to do with individual union members or unions in general. The role that Congress intended unions to play in the workplace is distinct from the subject of today's hearing.

Our hearing today will focus on the practice of "salting," and whether this tactic unfairly hinders the ability of employers to run their businesses, provide for their workers, and thrive in a fiercely competitive economic environment. Salting is the practice used by union organizers to enter a non-union contractor's company with the sole purpose of attempting to organize the employees from within.

Let's not kid ourselves here. Certain unions use "salts" to cause deliberate harm to businesses by increasing their costs and forcing them to spend time, energy, and money to defend themselves against frivolous charges, and sometimes, to run employers out of business. An employer has little choice but to hire these individuals. If they don't, they will soon find themselves defending unfair labor practice charges at the National Labor Relations Board, which can be economically devastating.

As a result of court decisions in the early 1990's, limiting the ability of unions to organize on or near a company's property, union leaders will defend the practice of salting as one of the only ways in which union organizers can meet with employees. Often, these employees, or salts, are paid by the union to organize and have little monetary incentive to perform the actual work they were hired to do at a satisfactory level. This creates a hardship for the employer for many reasons.

First, the employer is not getting a quality work product from his employee. This can put projects behind schedule, over budget, and create problems for other employees who must pick up the slack of the union salt. Second, because the union salt is actively trying to become a problem employee, the employer may feel he has no other choice but to fire the salt. This may provide the salt the opportunity to file unfair labor practice charges and if the employer chooses to fight these charges, it will cost him or her thousands of dollars. This negative financial impact is exactly the blow the unions are seeking to deliver.

What it comes down to is this: employers have to compete on an increasingly global basis against relentless competitors, here and abroad. They must compete in the face of high taxes, rising health care costs, and burdensome government regulations. They should not have to compete against employees within their own company, employees deliberately placed there by unions out to harm them. That is just plain wrong.

Our witnesses today have first-hand experience as targets of salting. These companies were caught in the crosshairs of the unions because they were successful firms. The National Labor Relations Act does not protect companies from some of these practices. Unfortunately, it may contribute to some of the problems. I welcome our witnesses and look forward to their testimony today.

[The prepared statement of Chairman Johnson follows:]

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Chairman JOHNSON. And before we allow you to begin, I would like to allow our Members who are here the opportunity to make an opening statement themselves and we normally limit our opening statements to 5 minutes each and I hope you all understand we'd like you, as well, to limit your opening remarks to that.

Mr. Grijalva, you're recognized for 5 minutes.

STATEMENT OF HON. RAUL M. GRIJALVA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. GRIJALVA. Thank you very much, Mr. Chairman, and first of all I'd like to thank Congressman Carter for hosting our Subcommittee here in Round Rock today and I especially thank the witnesses who have come to provide this testimony. We do appre-

ciate the time and effort that all of you took. Hearings sometimes require a witness at a moment's notice to make adjustments in their schedule and their time and we're all very appreciative of that and the role that you're playing today in providing us with facts and information is key in this process.

That is why we are all here today, to gather facts. We must do so with open and fair minds. We come to hear all sides on this issue.

I understand from the title of this hearing that the intent is to focus on union organizing tactics such as salting. Our Subcommittee had a hearing just a few weeks ago on union organizing tactics under voluntary recognition agreements such as a card check. So this is the second hearing we have had that focuses on union practices.

As we go about examining the state of labor relations and worker rights in this country, we must be careful to maintain a balanced view, one that puts a fair focus on both union and employer practices. I want to make sure, all of us want to make sure that we hear the whole story. The jurisdiction of our Subcommittee demands that balance and fairness.

The other side of the story must not be neglected. According to the latest number available in 1998 alone, there were 24,000 workers who won compensation after having been illegally fired or punished because of their union activity. This was up from one thousand such compensated workers in the 1950's. Fear pervades our workforce and stifles the exercise of workers' right to organize. A recent poll showed that a staggering 79 percent of workers felt they were very or somewhat likely to be fired for trying to organize a union. Unfortunately, these fears are often justified. Employers illegally fire employees for union activities in 25 percent of all organizing efforts, according to the latest study. These numbers reveal a real crisis in rights, in human rights in this country and I think this also merits Congress' urgent attention.

Now, as I understand it, the complaints about union salting seem to fall into three broad categories and yet each one of these categories implicates a fundamental right. One complaint is that union workers disrupt the workplace with their efforts to convince their co-workers to organize. At issue, there seems to be the fundamental right of association.

A second complaint is that salting practices are often accompanied by very public campaigns against non-union contractors. At issue here seems to be the union's freedom of speech.

And the third complaint is that salts file legal complaints against their employer for violating organizing rights or engaging in workplace practices and endanger workers' health and safety. At issue here seems to be the union or the worker's right to petition the government, another fundamental right.

For these reasons we must be particularly careful to take a balanced look at the issues being presented today. As stated, our very fundamental rights which Congress should not and cannot abridge. We must keep in mind that the work to organize is a fundamental, internationally recognized human right. The rights of workers' self-organization and collective bargaining form the core of the National Labor Relations Act. Freedom of association is enshrined in our

Constitution. It, along with the freedom of speech and the right to petition government were considered important enough to earn a top spot in our Bill of Rights.

But I am also sensitive to the needs of business owners who may complain about unlawful interference with their business operations and endeavors. Successful, vibrant businesses, especially small businesses are vital to our economy. They generate jobs and at the same time, the labor movement has served an equally vital role in assuring that the jobs generated lift up and maintain our standard of living, provide for and protect workers' health and care, and retirement security and give workers a fair voice in the workplace.

Business' role in creating jobs is particularly vital these days in an economy that has lost more jobs than any similar period since the Great Depression. Labor's role in protecting the quality of these jobs and workers' standard of living is also particularly vital these days. As our nation has hemorrhaged so many good jobs, outsourcing, people leaving, taking jobs out of this country, the new jobs pay an average of over 20 percent less than the old jobs they're replacing. The number of people without health care continues to rise and the number of people without access to historically strong guaranteed retirement benefits of union pension plans has increased also.

So I'm keenly interested in hearing from our witnesses on these issues on how we can improve labor relations in this country, resolve legitimate grievances and do so without abridging the basic rights of employers, workers and unions.

Again, thank you, Mr. Chairman. I look forward to the hearing. Thank you very much.

Chairman JOHNSON. Thank you, sir. We appreciate you coming in all the way from Arizona.

Mr. GRIJALVA. Enjoyed the trip.

Chairman JOHNSON. Texas is a good place to be.

Mr. GRIJALVA. Yes.

Chairman JOHNSON. I'd now like to recognize my colleague on the Education and the Workforce Committee, Mr. Carter, who as you know represents this area.

Mr. Carter, you're recognized for 5 minutes.

STATEMENT OF HON. JOHN R. CARTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. CARTER. Thank you, Mr. Chairman. And I want to thank all of you for coming in here today and joining us in the field hearing here in the great State of Texas. I'm especially pleased this Subcommittee has chosen to convene here in Round Rock which is our Home District.

The topic today for this hearing is no source of pleasure. However, as we examine the problem that has brought us together this afternoon, the problem of salting abuse, we discuss the damages these tactics are causing employers across the country. Salting is a practice in which the union attempts to get hired by non-union company in order to organize the company from within or simply to disrupt the non-union employer or to put it at a competitive disadvantage. It is a very old and widely known practice. It places em-

ployers in a no win situation. Most time employers must hire the union salt or face costly litigation that results from unfair labor practice charges.

Today, we are here to examine the fairness of these salting campaigns. I do not wish to delve into the arcane, but it is worth noting for the record that why this practice is called salting. The one that seems more accurate to me is the legendary story of the Roman salting the earth at Carthage to prevent anything from growing as punishment for resisting the Roman Empire. This, to me, seems especially apt as from many people's perspective salting is a practice that prevents companies from growing.

As Members of Congress, we have heard from many of our constituents that salting is an unfair practice leading to employment of union members who are not interested in providing quality work or giving their best to their employer. That is why Congressman Jim DeMint of South Carolina introduced and why I am a co-sponsor of H.R. 1793, the Truth in Employment Act which would prohibit the practice of salting. The Truth in Employment Act makes clear that an employer is not required to hire someone who is not a bona fide applicant in that the applicant's primary purpose in seeking the job is not to work for the employer. Simply put, no employers should be forced to hire a union salt.

As we face the challenges of job creation in this country, it is time to question a practice that, in fact, destroys people's livelihood, companies and demolishes the American dream. Our focus should be on helping employers create more jobs, not tearing them down and destroying them.

Our witnesses here today will describe how union salting campaigns have adversely affected their businesses and impacted their personal lives. And I also look forward to hearing recommendations on how the Congress should proceed.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Carter follows:]

Statement of Hon. John Carter, a Representative in Congress from the State of Texas

Thank you all for coming, it's an honor to host this field hearing in the great state of Texas, and I am especially pleased that the Subcommittee has chosen to convene this important hearing in our own district here in Round Rock.

The topic of today's hearing is no source of pleasure. However, as we examine the problem that has brought us all together this afternoon–the problem of salting abuse, and the damage these tactics are causing employers across the country.

Salting is a practice in which a union worker attempts to get hired by a non-union company in order to organize the company from within, or simply to disrupt the non-union employer or put it at a competitive disadvantage. It is a very old and widely known practice, and it places employers in a no-win situation: most times, Employers must hire the union salt or face the costly litigation that result from unfair labor practice charges. Today, we are here to examine the fairness of these salting campaigns.

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Chairman JOHNSON. Thank you, Mr. Carter. You didn't talk anywhere near 5 minutes. What happened? Have you ever heard of a Texas Judge who wasn't able to talk 5 minutes?

I think we have a very distinguished panel of witnesses before us today and I want to thank you all for coming. I understand my colleague from Texas would like to introduce the first witness on our panel today and I yield to Mr. Carter for that purpose.

Mr. CARTER. Thank you, Mr. Chairman. I'd like to introduce Sharon McGee who is the president and CEO of R.M. Mechanical based in Austin and established in 1976. The company provides heating, ventilation and cooling equipment and is able to fabricate sheet metal onsite. Among the many certifications she holds, Ms. McGee holds a Class A master mechanical license in the State of Texas, is a certified safety and health official and an adjunct constructor for Texas OSHA. I'd like to introduce Ms. McGee.

Chairman JOHNSON. Thank you. I'll introduce the other witnesses and then the Members will be advised that the witnesses will all testify before we begin the questioning process.

I'd like to introduce the No. 2 witness who is David Van Os. Is that correct? He's a union labor lawyer and is the managing shareholder with the law firm of Van Os & Associates. He represents various unions throughout Texas and is based in San Antonio, Texas.

Shelly Runyan is our third witness who founded Titus Electric in 1985 with her now husband, Ty, who is also here to answer questions, out of the back of their Dodge Satellite. Since then the company has grown to an average of 70 employees and is the largest independently owned contractor in Central Texas. They were the first independent company to offer health insurance. The company has focused on commercial and industrial electric services.

Our last witness is Mr. Tom Nesbitt who received his law degree from the University of Texas. You're not wearing an orange tie and his undergraduate degree from Baylor University. He practices labor and employment law and has first hand experience with the impact of the local salting campaign on small businesses in the Austin area.

Again, I would ask the witnesses to please try to limit your statements to 5 minutes and your entire written testimony and anything you wish to add may be added in the official record at the end of the hearing.

She's got a little clock here and if you hear it going beep, beep, beep, that's 5 minutes.

With that, I'll recognize the first witness to begin.

STATEMENT OF SHARON McGEE, PRESIDENT AND CEO, R.M. MECHANICAL, INC., AUSTIN, TEXAS

Ms. MCGEE. Thank you. Good afternoon, Chairman Johnson and Members of the House Subcommittee on Employer-Employee Relations.

My name is Sharon McGee and I am President and CEO of R.M. Mechanical, Inc. R.M. Mechanical has been serving Central Texas since January, 1976. I currently employ 60 people and perform heating, air conditioning, ventilation, design/build projects, sheet metal fabrication-retail and wholesale, service-residential and commercial and refrigeration. My company's make up is 80 percent commercial and 20 percent residential. I currently serve as the Chairman of the Board for the Central Texas Chapter of Associated Builders and Contractors here in Austin, ABC, of which R.M. Mechanical is a proud member. ABC is a national trade association comprised of 23,000 construction and construction-related firms from across the country, all of whom are bound by a shared commitment to the merit shop philosophy of awarding construction contracts to the lowest responsible bidder, regardless of labor affiliation, through open and competitive bidding. With 80 percent of construction today performed by open shop contractors, ABC is proud to be their voice.

I am here today to share with you my company's experience with salting abuse, and to express to you the desperate need for legislation prohibiting this nefarious union pressure tactic. Salting is the practice of intentionally placing trained union professional organizers on non-union jobsites to harass or disrupt company operations, apply pressure, increase operating and legal costs, and to ultimately put a company out of business. The objectives of the agents most often culminate in the filing of many unfair labor practice claims with the National Labor Relations Board.

On April 30, 1998, I retained Mr. Lynn Hensley, a labor law attorney based right here in Round Rock, Texas to represent my firm because R.M. Mechanical because it received word from the NLRB that unfair labor practice charges had been filed. In 1998, R.M. Mechanical, an open shop contractor, performed a substantial amount of work, over $7 million, at an IBM facility in Austin, Texas alongside other mechanical contractors that were signatory to the union. At that time, R.M. Mechanical was in need of additional HVAC workers; therefore, I placed a "help wanted" ad in the Austin American-Statesman for qualified, skilled workers. Immediately following the placement of the help wanted ad, R.M. Mechanical was salted by four union representatives who applied for work. These applicants were not immediately hired and they subsequently filed charges against me for unfair labor practices, discrimination and an investigation took place. Adhering to my company policy, I did not hire any applicant until I had completed the interviewing process with all applicants.

I, along with three other officers from R.M. Mechanical, gave statements to Mr. Armendariz, District Director for the NLRB. Our attorney was present for these statements. The union representatives continued to appear on my jobsites, talking with my employees and generally creating a disturbance on the jobsite and in their

personal lives. Many of our employees were intimidated by the continued presence of the union officials.

In the hopes of putting my employees' minds at ease, I held an open forum for all employees of R.M. Mechanical to facilitate a discussion. I explained to them that they have the right to join the union. I also shared that if they did so, they would be entering into a contract with the union which would be negotiated with union officials. It warrants mentioning that at that time, R.M. Mechanical employed two individuals who had previously been signatory to the union.

Subsequently, I had announced that R.M. Mechanical would hold an election so our employees could choose whether to remain open shop or to become unionized. At this time, I was still in need of people to perform our work, so I offered the union applicants positions with R.M. Mechanical. I then proceeded to make the Director of the NLRB aware of my course of action.

I informed Mr. Armendariz that I had offered the positions to the four union applicants. They would be performing the duties of the position that I advertised about and they were to begin work the next day. The four union members did not show up for work. I contacted the District Director and informed him of the "no show". He asked me, in turn, to leave the positions open for an additional 10 days, which I did. They once again failed to show up.

It took no less than $15,000 in legal fees to prove that R.M. Mechanical had done nothing wrong and had broken no laws. The charges were dropped by the NLRB and a statement was issued from the NLRB that R.M. Mechanical had operated on a fair and consistent basis according to law and did not discriminate.

I urge Congress to address this unscrupulous tactic by passing H.R. 1793, the Truth in Employment Act which was introduced in April of 2003 by Representatives Jim DeMint, Cass Ballenger and John Carter of Texas.

Thank you again for my opportunity to testify before you today.

[The prepared statement of Ms. McGee follows:]

Statement of Sharon McGee, President & CEO, RM Mechanical, Inc., Austin, TX on behalf of Associated Builders and Contractors

Good afternoon Chairman Johnson, Ranking Member Andrews, and members of the House Subcommittee on Employer–Employee Relations. I am extremely grateful for the opportunity to testify before you today on this issue of great importance to my company. My name is Sharon McGee and I am the President and CEO of R.M. Mechanical, Inc. R.M. Mechanical has been serving Central Texas since January, 1976. I currently employee 60 people and perform Heating, Air Conditioning, Ventilation, Design/Build projects, Sheet metal Fabrication–Retail and Wholesale, Service–Residential and Commercial and Refrigeration. My company make up is 80 percent commercial and 20 percent residential. I currently serve as the Chairman of the Board for the Central Texas Chapter of Associated Builders and Contractors (ABC) of which R.M .Mechanical is a proud member. ABC is a national trade association comprised of 23,000 construction and construction-related firms from across the country, all of whom are bound by a shared commitment to the merit shop philosophy of awarding construction contracts to the lowest responsible bidder, regardless of labor affiliation, through open and competitive bidding. With 80 percent of construction today performed by open shop contractors, ABC is proud to be their voice.

I am here today to share with you my company's experience with salting abuse, and to express to you the desperate need for legislation prohibiting this nefarious union pressure tactic. Salting is the practice of intentionally placing trained union professional organizers on non-union jobsites to harass or disrupt company operations, apply pressure, increase operating and legal costs, and to ultimately put a

company out of business. The objectives of the agents most often culminate in the filing of many unfair labor practice claims with the National Labor Relations Board (NLRB).

However, salting is not merely an organizing tool. It has become an instrument of economic destruction aimed at non-union companies that has little to do with organizing. A publication of the International Brotherhood of Electrical Workers, one of salting's principal proponents, has described that particular union's salting tactics as a process of "infiltration, confrontation, litigation, disruption, and hopefully annihilation of all non-union contractors." Unions send their agents into open shop workplaces under the guise of seeking employment when their true intentions are to deliberately increase costs to employers through workplace sabotage and the filing of frivolous discrimination charges. R.M. Mechanical and I, as well as other construction companies based here in Austin, have become all too familiar with how disruptive, intimidating and damaging these pressure tactics can become.

On April 30, 1998, I retained Mr. Lynn Hensley–a labor law attorney based right here in Round Rock, Texas to represent my firm because R.M. Mechanical received word from the NLRB that unfair labor practice charges had been filed. In 1998, RM Mechanical (an open shop contractor) performed a substantial amount of work—over $7 million—at an IBM facility in Austin, Texas alongside other mechanical contractors that were signatory to the union. At the time, R.M. Mechanical was in need of additional HVAC workers; therefore, I placed a "help wanted" advertisement in the Austin American Statesman for qualified, skilled workers. Immediately following the placement of the help wanted ad, RM was salted by four union representatives who applied for work. These applicants were not immediately hired and they subsequently filed charges against me for unfair labor practices/discrimination and an investigation took place. Adhering to company policy, I did not hire any applicant until I had completed the interviewing process with all applicants.

I along with three other officers from R.M. Mechanical, gave statements to Mr. Armandariz, District Director for the NLRB. Our attorney was present for these statements. The union representatives continued to appear on my jobsites, talking with my employees and generally creating a disturbance on the jobsite and in their personal lives. Many of our employees were intimidated by the continued presence of the union officials.

In the hopes of putting my employees' minds at ease, I held an open forum for all employees of RM Mechanical to facilitate a discussion. I explained to them that they have the right to join the union. I also shared that if they did so, they would be entering into a contract with the union which would be negotiated with union officials. It warrants mentioning that at that time, RM Mechanical employed two individuals who had previously been signatory to the union.

Subsequently, I announced that RM Mechanical would hold an election so our employees could choose whether to remain open shop or to become unionized. At this time, I was still in need of people to perform our work, so I offered the union applicants positions with RM. I then proceeded to make the Director of the NLRB aware of my course of action.

I informed Mr. Armandariz that I had offered the positions to the four union applicants. They would be performing the duties of the position that I advertised and they were to begin work the next day. The four union members did not show up for work. I contacted the District Director and informed him of the "no show". He, in turn, asked me to leave the positions open ten more days, which I did. They once again failed to show up.

It took no less than $15,000 in legal fees to prove that R.M. Mechanical had done nothing wrong and had broken no laws. The charges were dropped by the NLRB and a statement was issued from the NLRB that R.M. Mechanical operated on a fair and consistent basis according to law and did not discriminate against any applicant.

R.M. Mechanical Inc., along with the Associated Builders and Contractors, firmly believes in laws designed to protect employees; however, these laws are being manipulated by labor unions in order to regain their diminishing market-share. Salting abuse uses coercive governmental power to accomplish the unions' goals, rather than competing fairly and ethically based on merit. Additionally, I believe it is unfair for the government to compel an employer to subsidize a union organizer's disruptive behavior in the workplace; businesses like R.M. Mechanical should be able to hire people who truly want to work for that company.

Small businesses are not the only ones that suffer as a result of salting abuse. Since federal agencies pay all of the costs to investigate and prosecute these frivolous complaints filed by the union salts, the American taxpayer is funding the defense of unscrupulous, anti-competitive and often extortionist behavior. Moreover, investigating frivolous complaints wastes limited federal agency resources that could

be better spent at the agency. Ultimately, it is the America taxpayer who loses, by having hard-earned tax dollars go to sustain the union's tactic of generating frivolous charges and lawsuits. The government should not be forced to use taxpayers' dollars to support a flawed system that allows tens of thousands of cases to be brought against employers that are later dismissed as having no merit.

The unions' efforts against merit shop competitors also result in an increase in both the cost of doing business and the cost to the consumer. As I stated earlier, these frivolous salting charges have cost our company significant time, money and resources in defending ourselves against what amounts to baseless complaints. These complaints have prevented us from hiring more employees, investing in better equipment, securing more work to grow our company, and providing additional jobs in the community.

In defending ourselves against false and frivolous charges, employers incur thousands of dollars in legal expenses, delays, and lost hours of productivity. Unions and their agents have argued that they have the right to organize and to be hired to work on merit shop jobsites. While unions have the right to attempt to organize workers, open shop companies and their employees also has the right to refrain from supporting union activities and be free from unwarranted harassment.

I urge Congress to address this unscrupulous tactic by passing H.R. 1793, the Truth in Employment Act which was introduced in April of 2003 by Representatives Jim DeMint (R–S.C.), Cass Ballenger (R–N.C.) and John Carter (R–TX). This vital legislation amends section 8(a) of the National Labor Relations Act (NLRA) to make clear that an employer, such as R.M. Mechanical, is not required to hire any person who seeks a job in order to promote interests unrelated to those of the employer. This bill in no way infringes upon any rights or protections otherwise accorded employees under the NLRA. Employees will continue to enjoy their right to organize. The bills merely seek to alleviate the legal pressures imposed upon employers to hire individuals whose overriding purpose for seeking the job is to disrupt the employer's workplace or otherwise inflict economic harm designed to put the employer out of business.

Again, I thank you for the opportunity to testify before you today, and for your willingness to highlight this abusive practice. I am now happy to answer any questions the subcommittee may have. Thank you.

Chairman JOHNSON. Thank you. Appreciate your comments.

Mr. Van Os, you may begin.

STATEMENT OF DAVID VAN OS, ESQ., ATTORNEY, DAVID VAN OS & ASSOCIATES, P.C., SAN ANTONIO, TEXAS

Mr. VAN OS. Chairman Johnson and Members of the Committee, thank you very much for the invitation to appear before the Committee in this field hearing. It is an honor to participate in the American democratic process of self-government through the elected representatives of the people. It is especially an honor to participate in a field hearing wherein the people's elected representatives leave Washington, D.C., and come out here to the people. The Committee is to be commended for partaking of this process.

I have been practicing law as a labor lawyer for 27 years. And I am very familiar with the many obstacles that current law places against workers' human rights to organize unions in the workplace.

My testimony is offered on behalf of the Texas AFL-CIO. The Texas AFL-CIO, a federation of numerous affiliated unions in Texas, is the leading voice for the interests of working people and their families in the State of Texas. Through its affiliated local unions, the Texas AFL-CIO speaks on behalf of over half a million organized workers in Texas, as well as on behalf of the interests of millions of unorganized workers of every trade, craft, and occupation. We are the only institutional voice fighting every day, today, for American jobs. And I would like to take this opportunity to ask this Committee to hold a hearing, another hearing here in

Central Texas focusing on the massive outsourcing of high tech jobs that has devastated the livelihoods of so many Central Texans.

As long ago as 1941, the U.S. Supreme Court in the case of Phelps Dodge Corporation v. National Labor Relations Board, addressed the question of whether the National Labor Relations Act prohibited employers from refusing to hire applicants for employment because of their Union affiliation. There is nothing new about the tactic of salting.

Justice Frankfurter on behalf of the Supreme Court noted in pertinent part as follows: "The denial of jobs because of union affiliations is an old and familiar aspect of American industrial relations." Justice Frankfurter continued: "Indisputably the removal of such obstructions was the driving force behind the enactment of the National Labor Relations Act."

Clearly, Congress and the Courts recognized in passage of the National Labor Relations Act over six decades ago, nearly seven decades ago, that a key component in the ability of workers to seek union recognition was the ability of union affiliated workers to obtain employment in non-organized work places.

In my written testimony which I am submitting to the Committee, I discuss in much further detail the history and the practices and dynamics of salting, a history that goes back decades.

We often hear the employer community of employers who argue against salting, that salting somehow creates divided loyalties. This divided loyalties argument has no basis in reality and that fact is borne out by the indisputable truth that at this very moment in thousands of workplaces in America, there are hundreds of thousands of union stewards who are productive and loyal employees of their employer and at the same time serve as diligent and respected union representatives on behalf of their co-workers. Every day, these hundreds of thousands of union stewards, many of which are right here in Central Texas, fulfill jointly held loyalties to both their employer and their union. They are often among the most productive and exemplary employees of their employer. Union representation and collective bargaining bring to the workplace a productive partnership where both the employers' and employees' interests are taken into consideration and healthfully balanced.

It is also a fiction to suggest that union salts do not work productively for their non-union employer. For example, after Titus Electric Company of Austin, Texas hired union salts who were members of the International Brotherhood of Electrical Workers, Local 520, Titus' owner, Mr. Ty Runyan, announced at an employee meeting that two of the IBEW members whom he knew were union members were two of the most productive employees on the job site.

America's unions seek nothing more than good American jobs with the self-respect that is obtained by performing productive work in return for decent wages, benefits and working conditions in the context of a healthy, American economy.

Far from having any need to change laws so as to lessen the protection of workers' organizing rights, what America and the American economy need is more protection of those rights and more public education about the need for such protection and the salutary

advantages to the entire economy of union organization and collective bargaining.

Thank you very much, Committee, for your courteous attention to my comments.

[The prepared statement of Mr. Van Os follows:]

Statement of David Van Os, Esq., Attorney, David Van Os & Associates P.C., San Antonio, TX

CHAIRMAN JOHNSON AND MEMBERS OF THE COMMITTEE:

Thank you very much for the invitation to appear before the Committee in this Field Hearing. It is an honor to participate in the American democratic process of self-government through the elected representatives of the people. It is especially an honor to participate in a field hearing wherein the people's elected representatives leave Washington, D.C., and come to the people. The Committee is to be commended for partaking of this process.

My testimony is offered on behalf of the Texas AFL-CIO. The Texas AFL-CIO, a federation of numerous affiliated unions in Texas, is the leading voice for the interests of working people and their families in the state of Texas. Through its affiliated local unions, the Texas AFL-CIO speaks on behalf of over half a million organized workers in Texas, as well as on behalf of the interests of millions of unorganized workers of every trade, craft, and occupation.

Portions of this Statement will borrow, with express permission, from the excellent statement provided to the Subcommittee on Workforce, Empowerment and Government Programs of the Committee on Small Business, by Jonathan D. Newman, Esq., on February 26, 2004, on behalf of the Building and Construction Trades Department of the national AFL-CIO.

I.

To begin with, it is respectfully submitted that the very title of this hearing is a misnomer reflecting a fundamental misunderstanding and misperception of the history of labor law and labor relations in America. The title of this hearing appears to imply by predisposition that the Union organizing tactic of "salting" is inimical to recognized U.S. labor standards. Nothing could be further from the truth.

Salting is nothing more than the practice of Union-affiliated workers seeking to become employed by a non-unionized employer so that they may attempt to undertake the legally protected activity of encouraging their co-workers to authorize Union representation in dealing with the employer over wages, hours and conditions of employment. Far from being anything new, the practice of Union members attempting to obtain employment so as to discuss self-organization with other workers is as old as labor organization itself. To protect such activity was one of the core purposes of the enactment of the National Labor Relations Act in 1935, because the erection of impediments to such activity by employers who were hostile to their workers' self-organization was one of the core evils that the legislation was intended to redress.

As long ago as 1941, the U.S. Supreme Court in the case of *Phelps Dodge Corporation v. National Labor Relations Board,* 313 U.S. 177 (1941), addressed the question of whether the National Labor Relations Act prohibited employers from refusing to hire applicants for employment because of their Union affiliation. Writing on behalf of the Court, Justice Felix Frankfurter discussed in depth the history and purposes underlying the National Labor Relations Act of 1935 as bearing upon the question before the Court.

Justice Frankfurter on behalf of the Court noted in pertinent part as follows:

> The denial of jobs to men because of union affiliations is an old and familiar aspect of American industrial relations. Therefore, in determining whether such discrimination legally survives the National Labor Relations Act, the history which led to the Act and the aims which infuse it give direction to our inquiry. Congress explicitly disclosed its purposes in declaring the policy which underlies the Act. Its ultimate concern, as well as the source of its power, was 'to eliminate the causes of certain substantial obstructions to the free flow of commerce.' This vital national purpose was to be accomplished 'by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association.' Only thus could workers ensure themselves economic standards consonant with national well-being.
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> ....
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> Discrimination against union labor in the hiring of men is a dam to self organization at the source of supply. The effect of such discrimination is not confined to the actual denial of employment; it inevitably operates against the whole idea of the legitimacy of organization. In a word, it undermines the principle which, as we have seen, is recognized as basic to the attainment of industrial peace.
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> ....
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> We have seen the close link between a bar to employment because of union affiliation and the opportunities of labor organizations to exist and prosper. Such an embargo against employment of union labor **was notoriously one of the chief obstructions to collective bargaining through self-organization. Indisputably the removal of such obstructions was the driving force behind the enactment of the National Labor Relations Act.**
>
> (313 U.S. at 182-186)(emphasis added)

Thus, the judiciary has recognized and endorsed since the earliest days of the National Labor Relations Act that "the driving force behind the enactment" of the Act was the concept that refusal to hire workers because of their Union affiliation "is a dam to self organization at the source of supply," that such refusal "inevitably operates against the whole idea of the legitimacy of organization," and discrimination against Union affiliation in the hiring of workers "was notoriously one of the chief obstructions to collective bargaining through self-organization," which the enactment of the NLRA was designed to redress. Clearly, Congress and the Courts

recognized that a key component in the ability of workers to seek Union recognition was the ability of Union-affiliated workers to obtain employment in non-organized workplaces. Clearly, one of the principal purposes of the Act was and is to prevent such a "dam against self-organization at the source of supply."

Thus, as one recent commentator has accurately noted, salting as an organizing tactic "lie[s] at the core of NLRA protection." NOTE, ORGANIZING WORTH ITS SALT: THE PROTECTED STATUS OF UNION ORGANIZERS, 108 HARV. L. REV. 1341, 1347 (1995)

For illustrations of how "salting" has been utilized in Union organizing for many decades and in various industries, see NLRB decisions such as *Baltimore Steamship Packet Co.*, 120 NLRB 1521, 1533 (1958) (maritime industry); *Elias Bros. Big Boy Inc.*, 139 NLRB 1158, (1962) (restaurant); *Sears Roebuck & Co.*, 170 NLRB 533, 533, 535 n.3 (1968) (retail distribution center); *Dee Knitting Mills, Inc.*, 214 NLRB 1041, 1041 (1974) (textile industry); *Margaret Anzalone, Inc.*, 242 NLRB 879, 884-86 (1979) (clothing manufacturer); and *Oak Apparel, Inc.*, 218 NLRB 701, 702, 714-07 (clothing manufacturer).

The increased use of salting in more recent years, particularly in the construction industry, is largely the product of changes in the law that limit other types of organizational activity, particularly after the Supreme Court's decision in *Lechmere, Inc. v. NLRB*, 502 U.S. 527 (1992). In *Lechmere*, the Court held that the NLRA did not provide non-employee union organizers any right of access to an employer's property and that an employer could invoke state trespass laws to exclude union organizers from its property. *Lechmere* thus permitted employers, including those in the construction industry, to deny non-employee union organizers access to the employees that they wanted to assist in organizing.

Some employers who have been the object of salting campaigns have complained vociferously – to the NLRB, to the courts, and to Congress – about what they contend is the unfairness of salting. At bottom, however, the essence of these employers' complaints is that the law prohibits them from discriminating against employees simply because the employees intend to participate in union organizing. There is nothing unfair in that prohibition, and it is consistent with the basic policies of the Act.

Those who participate in a salting program are union supporters and organizers who apply for jobs with nonunion employers so that they can gain employment, perform exemplary work, and explain to unorganized employees the benefits of union organization. These organizers assist and support unorganized employees' efforts to obtain union recognition and a collective bargaining agreement from their employer. The participants are very often volunteers, who may be unemployed, and who are willing to work for nonunion companies in order to promote the union's goal of organizing unorganized employees.

Salts understand when they apply for work that they will be expected to fulfill the employer's legitimate employment expectations. Because union organizers do not want to give the nonunion employers an excuse to discharge them, and because they need to earn the respect of their nonunion co-workers, they are encouraged to be exemplary employees. They are instructed to obey all of the employer's work rules and to work efficiently and skillfully.

If, as frequently happens, an employer responds to a salting campaign by committing unfair labor practices – often by refusing to hire union salts, or by firing those it learns are union salts – charges will be filed with the NLRB. We make no apology for filing these charges; employers do not have the right to restrain, coerce, or discriminate against employees who support union organizing, and employers who commit those violations of the law should be held responsible for their conduct. That is not merely our view of how things ought to be; that is the law.

II.

Nonunion employers who are hostile to Union organization are often heard to complain that salting gives rise to employees who have "divided loyalties" between the employer and the Union. Again, these employers are simply complaining about the decades-old fact that the law prohibits, as it should, discrimination in hiring on the basis of Union activities or Union affiliation. The complaint of some employers that a salt should be denied the protections of the Act on the phony ground that he or she cannot be truly loyal to the employer has been rejected both by a National Labor Relations Board whose members were appointed by Presidents Reagan and the first President Bush and by a ***unanimous*** Supreme Court.

The case that so held is, of course, the now-famous *Town & Country Electric* case. In that case, Town & Country, a very large, nonunion electrical contractor, acting through an employment agency, ran a newspaper advertisement announcing job opportunities for licensed electricians, and set up interviews in a hotel suite. Eleven members of the International Brotherhood of Electrical Workers showed up for the interviews. Two were paid union organizers; the other nine were unemployed members. After learning that these eleven applicants were union members, the company canceled the interviews. When one of the unemployed electricians, Malcolm Hansen, protested that he had an appointment to be interviewed, the company interviewed and hired him. Once on the job, Hansen began soliciting support for the union during work breaks. Within a few days, the company fired him because of his organizational activities.

The company took the position before the NLRB that, regardless whether it is an unfair labor practice for an employer to fire an employee for engaging in organizing activities, there could be no violation here because neither the applicants nor Mr. Hansen were "employees" under the Act. The basis for this contention was the notion that receiving any sort of remuneration from the union rendered these members beholden to the union and, accordingly, incapable of possessing the degree of loyalty necessary to make them the employer's employees.

Reviewing the language of the Act, the legislative history, Supreme Court rulings and its own precedent, the National Labor Relations Board found consistent support for construing the term "employee" as "broadly cover[ing] those who work for another for hire," *Town & Country Electric, Inc.*, 309 NLRB 1250, 1254 (1992), and thus broad enough to encompass these union organizers. The Board found further support in common law agency principles, which provide that "[a] person may be the servant of two masters, not joint employers, at one time as to one act, if the service to one does not involve abandonment of the service to the other." *Id., citing Restatement (Second) of Agency* §226, pp. 498-500 (1957).

The Board then looked to the policies of the Act, to determine whether they were furthered by "protecting paid union organizers as 'employees.'" 309 NLRB at 1256. Starting with the proposition that "[t]he right to organize is at the core of the purpose for which the statue was enacted," the Board observed that "[n]o coherent policy considerations to the contrary have been advanced that do not, on analysis, resolve themselves into arguments that employers be permitted to discriminate based on an individual's presumed or avowed intention to join or assist a labor organization." *Id.* The Board found no conflict between affording these organizers the same protections enjoyed by other employees, and legitimate managerial rights. That is, the union organizer – like any other employee – is subject to the employer's direction and control, is responsible for performing assigned work, can be limited by lawful no-solicitation rules, and is generally subject to the same *nondiscriminatory* discipline. To the company's contention that paid organizers will, by their very nature, engage in conduct inimical to the employer's legitimate interests, the Board found that:

> "[t]he statute is founded on the belief that an employee may legitimately give allegiance to both a union and an employer. To the extent that may appear to give rise to a conflict, it is a conflict that was resolved by Congress long since in favor of the right of employees to organize." *Id.* at 1257.

That decision was appealed, and in 1995, the Supreme Court issued its decision in *National Labor Relations Board v. Town & Country Electric, Inc.*, 516 U.S. 85 (1995). Justice Breyer, speaking for the ***unanimous*** Court, asked and answered the question before the Court as follows:

> Can a worker be a company's "employee," within the terms of the National Labor Relations Act ... if, at the same time, a union pays that worker to help the union organize the company? We agree with the National Labor Relations Board that the answer is "yes." *Id.* at 87.

The Supreme Court held that the Board's decision was consistent with the unmistakable language of the Act's broad definition of "employee" and with the policies of the Act, including "the right of employees to organize for mutual aid without employer interference . . . ." *Id.* at 91.

In holding that union organizers are employees entitled to the Act's protections, the unanimous Court thoroughly rejected the argument that paid union organizers were not protected by the Act because their so-called "divided loyalties" could lead them to quit at a moment's notice, try to harm the company, or even sabotage the company's products. As the Court held:

> If a paid union organizer might quit, leaving a company employer in a lurch, so too might an unpaid organizer, or a worker who has found a better job, or one whose family wants to move elsewhere. And if an overly zealous union organizer might hurt the company through unlawful acts, so might another unpaid zealot (who may know less about the law), or a dissatisfied worker (who may lack an outlet for his grievances). This does not mean they are not "employees." [A] company disturbed by legal but undesirable activity, such as quitting without notice, can offer its employees fixed-term contracts, rather than hiring them "at will" . . . or it can negotiate with its workers for a notice period.

516 U.S. at 96-97.

Thus, in *Town & Country*, a unanimous Supreme Court established that there is no distinction between a union organizer and an applicant/employee who is not an organizer. Both are "employees" under the Act, and both are entitled to the Act's protections.

The fact that the "divided loyalties" argument has no basis in reality is borne out by the indisputable truth that at this very moment in thousands of workplaces in America there are hundreds of thousands of Union stewards who are productive and loyal employees of their employer and at the same time serve as diligent and respected Union representatives on behalf of their co-workers. Every day, these hundreds of thousands of Union stewards fulfill jointly held loyalties to both their employer and their Union. They are often among the most productive and exemplary employees of their employer. Rather than the sinister evil that Union-hostile employers often wish to portray, Union representation and collective bargaining bring to the workplace a productive partnership, where both the employers' and employees' interests are taken into consideration and healthily balanced. There is no conflict between balancing the interests of the employer and the employees for the mutual benefit of both. The suggestion that there is such a conflict undermines the very mission of this Employer-Employee Relations Subcommittee.

As the NLRB concluded in *Town & Country*,

> The Statute's premise is at war with the idea that loyalty to a union is incompatible with an employee's duty to the employer. The fact that paid union organizers intend to organize the employer's workforce if hired establishes neither their unwillingness nor their inability to perform quality services for the employer.
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> . . . .
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> The statute is founded on the belief that an employee may legitimately give allegiance to both a union and an employer. To the extent that may give rise to a conflict, it is a conflict that was resolved by Congress long since in favor or the right of employees to organize.

309 NLRB at 1257.

III.

Although salting is both a lawful and legitimate form of organizing, the most common response by some employers to a salting campaign is the commission of unfair labor practices. Employers refuse to hire union organizers because they are union organizers and, if they are hired, discharge them because they engage in organizing. For example, in one case in which an employer discriminated against an employee in recall from layoff because of his "open support for the union," the Administrative Law Judge ("ALJ") concluded that the employer's "testimony about [the employee's] productivity [failures] was pure fabrication in an attempt to obviate the real [unlawful] reasons for not wanting [him] to work." *H.B. Zachry Co.*, 319 NLRB 967, 979 (1995), *enforced in relevant part*, 127 F.3d 1300 (11th Cir. 1997). The same employer had refused to offer overtime to an employee unless he stopped organizing; told the employee that he had been put on the employer's "hit list;" and subsequently fired the employee. 319 NLRB at 974.

Another case involved a salting program in which union organizers had been admonished by their union to "work as hard for a nonunion contractor as they would for a union contractor," to "try to make a favorable impression," and in particular *not* to engage in "sabotage . . . lying, stealing cheating, obtaining information unlawfully . . . [or] mak[ing] any assumption that nonunion employees are less competent than union members." *Tualatin Electric*, 319 NLRB 1237, 1239 (1995), *enforced*, 84 F.3d 1202 (9th Cir. 1996). The employer responded to the salting campaign by "referring to [the union] as organized crime trying to put him out of business." *Id.* The owner told the superintendent "to eliminate wherever possible any personnel that were affiliated with the union;" told the employees that "as long as he owned the Company it would never be union;" and instituted a "no-moonlighting" policy for the specific purpose of eliminating those participating in the salting program. *Id.* The ALJ concluded that "Respondent's union animus is . . . pervasive and the nature of the unfair labor practices . . . egregious, striking at the very heart of the Act . . . Respondent ['s] . . . conduct was directed against any applicant that had either worked for a unionized employer or that it suspected of having ever had a union connection." *Id.* at 1241.

There is no question that the employer conduct that I have just described is unlawful; the NLRA simply does not permit employers to exclude people from the workforce solely because they intend to promote unionization. It makes no difference whether the union supporter is acting with or without financial support from the union. Yet, the volumes of NLRB decisions are filled with these cases, each telling a story of unlawful, often blatant, discrimination against union organizers. Nonunion employers, who find obeying the law either too burdensome or too threatening to their nonunion status, are promoting a fiction when they argue that working as union organizers converts these employees into an unprotected status and entitles the employers to discharge or refuse to hire them with impunity.

It is also a complete fiction to suggest that Union salts do not work productively for their nonunion employer. For example, after Titus Electrical Company of Austin, Texas, hired Union salts who were members of the International Brotherhood of Electrical Workers (IBEW) Local 520, Titus's owner, Ty Runyan, announced to an employee meeting that two of the IBEW salts, Kevin Gustin and Alan Stockton, whom he knew were Union members, were two of the most productive employees on the job site. (NLRB Case No. 16-CA-21598 et al., *Titus Electrical Contracting, Inc.*, Tr. 420)

IV.

Since a co-owner of Titus Electrical Company, Ms. Shelly Runyan, and Titus's attorney, Thomas Nesbitt, have been identified as witnesses for this hearing, it is reasonable to assume that the IBEW's campaign to organize the electrical workers of Titus may be raised as an issue to the Committee. As I am preparing this statement I do not know what any witness will say in testimony to the Committee, but I wish to point out in advance three salient facts about Titus Electrical's relationship with the IBEW that may be of interest to the Committee and that are relevant to the focus of this hearing.

First, the IBEW's campaign to seek a collective bargaining relationship with Titus began as a simple desire for employment in a depressed economy. The Union had a healthy collective bargaining relationship with an electrical subcontractor known as Guy's Electric on a public works job to construct a new Town Lake Special Events Center for the City of Austin. Guy's Electric lost its contract with the general contractor midway through the job. The general contractor opted to contract with Titus Electrical Company for the completion of the electrical subcontract. IBEW-represented workers, who were already working on the project, naturally and justifiably wished to continue their employment on the Town Lake job rather than enter the ranks of the unemployed. The IBEW, in an act of proper representation of its members, justifiably asked Titus Electrical to hire the Union-represented electricians and to enter into a collective bargaining agreement with the Union in order to maintain the workers' wages, benefits, and working conditions. Titus Electrical not only declined to enter into a collective bargaining agreement with the Union, it also refused to hire most of the workers who were already performing the work on the project and were familiar with the needs and requirements of the job. In the depressed economy of the time, other jobs were not readily available for many of these workers. Thus, the Union, understandably and justifiably, recognized that its only realistic choice to preserve employment for proficient electricians whom Titus Electrical had turned out to pasture was to attempt to organize the Titus Electrical workforce by encouraging Union-affiliated electricians, i.e. "salts", to continue to seek employment with Titus. Titus responded to the Union's legitimate organizing campaign by committing numerous unfair labor practices. The Union did the right thing by filing unfair labor practice charges against Titus over its discriminatory treatment of Union-affiliated employees and applicants for employment.

Secondly, it must be noted that the previous Town Lake electrical subcontractor, through its collective bargaining contract with the Union, had a structured contractual grievance procedure for the resolution of workplace disputes. Thus the Union had no need to seek external resolution of disputes through the National Labor Relations Board. The use of the NLRB that some employers complain about and erroneously attribute to the decades-old legal prohibition against discriminating against Union-affiliated applicants for employment occurs not only as a result of these employers' violations of the law, it also occurs because, as a result of these

employers' sometimes-hysterical hostility to Union organizing and the system of collective bargaining partnership, the workers have no place to turn for resolution of workplace disputes except the NLRB. If Titus Electrical Company, for example, had signed a contract with the IBEW, the Company would have sacrificed none of its ability to make legitimate managerial decisions, but disputes would have been handled "in-house" through the grievance procedure that a contract would have inevitably contained, with less expense, more efficiency, and in more of a mutual problem-solving environment.

Thirdly, albeit the ALJ's decision against Titus Electrical on Unfair Labor Practice remains pending on appeal to the NLRB, the IBEW and Titus Electrical have mutually and satisfactorily resolved all other outstanding litigation and complaints between them. In an amicable settlement agreement, containing the statement that the parties "wish to end the Lawsuits and resolve their differences amicably by agreement", IBEW Local 520 and Titus Electrical agreed in March 2004 to put many of their previous differences aside. In an exemplary, community-minded step, IBEW Local 520 and Titus Electrical premised the settlement upon the payment of $10,000, in the name of both Titus Electrical and IBEW Local 520, to two community programs that provide training to enable eligible individuals to enter skilled construction trades. The settlement between the Union and Titus Electrical contains a mutual and voluntary relinquishment of various charges and counter-charges, by recognition that "The Parties agree that nothing in this Agreement constitutes an admission by any Party, all liability being denied, or as an admission that the Party has engaged in wrongdoing or that any claim or counterclaim of the Party was without merit." As a further illustration that the Settlement represents the beginning of a rapprochement between Titus Electrical and the IBEW, the agreement further provides that, "The parties agree not to publicize this Agreement as an admission of wrongdoing by another Party or as an admission that a claim or counterclaim by another party was without merit." Obviously, I do not cite to the settlement agreement for either of the above improper purposes, but rather as a showing that mature parties are always able to work out differences in the labor-management context in responsible and constructive ways, and as a commendation to Titus Electrical and IBEW Local 520 for taking the beginning steps to doing just that. I respectfully request the opportunity to supplement this Statement with a copy of the Titus-IBEW settlement agreement.

V.

Prohibiting employers from discriminating against union organizers simply because they are union organizers does not deprive employers of any greater degree of control over their work force or their work place than is inherent in the employee protections afforded by the Act. Nothing in the law limits an employer's right to promulgate and enforce legitimate work rules that are not a pretext for discrimination against union supporters. Nothing in the law precludes an employer from discharging an employee who is insubordinate or incompetent. Nor does the law prohibit an employer from refusing to hire an employee for a valid business-related reason; if, for example, the employer concludes, based on nondiscriminatory grounds, that the applicant cannot perform the job adequately. Although employees have a protected right to communicate with each other on the subject of union organization, the law also permits an employer to promulgate valid "no solicitation" rules, which effectively prohibit organizing activity during work time. Additionally, the law permits the employer to exercise control over what work employees perform and how they perform it.

Contrary to the complaints of some nonunion employers, what is at stake here is not whether employers should be allowed to run their work places in accord with neutral rules designed to assure productivity and discipline. Rather, what is at stake is whether employers should be allowed to discriminate on the basis of suspected union membership and organizing activity. Indeed, employers who commit such violations victimize not only their employees, but also the legitimate employers who comply with the law and must compete with those that do not.

VI.

The only objective of salting is legitimate Union organizing. The Associated Builders and Contractors ("ABC") and some of its allies have claimed that salting is really about the filing of frivolous or harassing unfair labor practice charges against employers. That is simply not true. Charges are filed with the NLRB only in response to unlawful firings, refusals to hire, or other unlawful conduct by employers. Actually, the ABC has pointed out the fallacy of its own arguments. In the course of an ABC conference in 1995, entitled "Coping with COMET," ABC distributed a collection of papers. In those materials, this statement appeared: "Unions plan to wear down nonunion contractors by filing unfair labor practice charges with the NLRB *each time a contractor steps outside the National Labor Relations Act. (Emphasis added.)* That is absolutely correct; when an employer violates the National Labor Relations Act in order to defeat organizing activities, charges will be filed – and should be filed. In short, if there exists a "problem" of "too many" unfair labor practice charges being filed as a result of salting campaigns, that problem results from too many employers committing too many violations of the Act.

Some construction contractors have complained that union salts file frivolous unfair labor practice charges solely to make those contractors less competitive. Frequently these complaints come from contractors who have themselves been found to have violated the law. For example, Titus Electrical Company, which is providing a witness to this very hearing presumably to complain about Union salting, itself has been found guilty of numerous violations of federal labor law after extensive investigation and hearing by the National Labor Relations Board. See the attached decision of the ALJ in *Titus Electrical Contracting, Inc,* wherein the ALJ held Titus Electrical to have committed numerous Unfair Labor Practices.

When unfair labor practice charges are filed with the NLRB, the charging party must submit supporting evidence. If, but only if, such evidence is submitted, the NLRB General Counsel will conduct an informal investigation of the charge, during which employers generally do not retain or need legal counsel. Only if the NLRB General Counsel concludes that the charge has merit will an unfair labor practice complaint be issued and formal proceedings initiated.

In the *Titus Electrical Company* case, the NLRB did not issue complaints on all charges filed by the IBEW, but rather dismissed some charges as being found lacking in merit after the Board's investigation. The

Board only issued formal complaints on those charges that its investigation determined to be meritorious. This does not prove any point for the Union-hostile employers. To the contrary, this fact proves that the system is working. The NLRB is no rubber-stamp for Union unfair labor practice charges. The Board rigorously applies the law, conducts strict investigations, and only issues complaints where it deems charges to be meritorious after investigation. Thus, employers have ample legal protection. If they do not violate the law, the system protects them. If they would not continue to violate the decades-old and well-known law against anti-union discrimination in hiring, they would not have complaints issued against them by the Board and would not be found guilty of unfair labor practices.

Indeed, the National Labor Relations Board's own statistics demonstrate that any claim that salting has resulted in frivolous charges being filed with the NLRB is mistaken. For example, the National Labor Relations Board tracks the percentage of cases in which an NLRB regional office determines that a charge is meritorious and that more formal proceedings are warranted. From 1980 to fiscal year 2003, this "merit factor" percentage has held relatively steady, fluctuating between 32% and 40%, including a 40% rating in the first two years after the *Town & Country* decision, and 38% last year. NLRB General Counsel Memorandum 04-01 at p. 4 (December 5, 2003) (available at www.nlrb.gov); SIXTY-SIXTH ANNUAL REPORT OF THE NLRB FOR THE FISCAL YEAR ENDED SEPT. 30, 2001 at p. 9, chart 5 (March 18, 2003). Thus, there is no truth to the claim that the NLRB has seen a growing number of frivolous unfair labor practice charges.

Moreover, the sheer number of charges filed with the NLRB has not increased precipitously in the last several years. In fact, the number of charges filed has decreased since salting has allegedly become prevalent in the construction industry. For example, in FY 1994, the year before the Supreme Court issued its decision in *Town & Country Electric*, 34,782 unfair labor practice charges were filed with the NLRB, 26,058 of which were filed against employers. FIFTY-NINTH ANNUAL REPORT OF THE NLRB FOR THE FISCAL YEAR ENDED SEPT. 30, 1994 at p.6 (June 23, 1995). In FY 2001, 28,124 unfair labor charges were filed with the NLRB, 21,512 of which were filed against employers. SIXTY-SIXTH ANNUAL REPORT OF THE NLRB FOR THE FISCAL YEAR ENDED SEPT. 30, 2001 at p. 6-7 (March 18, 2003). Thus, in the six years following the *Town & Country* decision, the overall number of unfair labor practice charges filed has decreased 20% and the number filed against employers has decreased 18%. Accordingly, the assertion that salts are abusing employers and the NLRB process by filing frivolous unfair labor practice charges is completely false.

VII.

America's Unions seek nothing more than good American jobs with the self-respect that is obtained by performing productive work in return for decent wages, benefits, and working conditions, in the context of a healthy American economy. History proves continuously that the establishment of collective bargaining partnerships between employers and Unions is often the best vehicle for the achievement of these objectives. History also proves that Unions must often struggle for the right to organize workers to obtain Union recognition for them so that the level playing field of a collective bargaining partnership can be obtained. Further, throughout American history, employers who are hostile to the legally protected concept of Union organization have often reacted to Union organizing attempts with exaggerated and hysterical claims that are lacking in factual foundation and reality. The legal problems that have beset some employers before the National Labor Relations Board have resulted from nothing more than those employers' unfortunate hostility to workers' legitimately protected rights to organize unions. Far from having any need to change laws so as to lessen the protection of workers' organizing rights, what America and the American economy need is more protection of those rights and more public education about the need for such protection and the salutary advantages to the entire economy of Union organization and collective bargaining.

On behalf of the Texas AFL-CIO and millions of Texas workers, I thank the Committee for its courteous attention to these comments.

Chairman JOHNSON. Thank you, sir, and you may put those in the record, the rest of your comments.

Mr. VAN OS. Thank you.

(Applause.)

Chairman JOHNSON. Normally, in the U.S. Congress we don't allow the audience to respond to comments that are made, but we're in Texas.

Ms. Runyan, you may begin your testimony and if you wish to have your husband make any side remarks, you're welcome to do that.

STATEMENT OF SHELLY RUNYAN, VICE PRESIDENT, TITUS ELECTRICAL CONTRACTING, INC., AUSTIN, TEXAS

Ms. RUNYAN. Thank you very much. I'm Shelly Runyan, Vice President of Titus Electrical Contracting and this is my husband and business partner, Ty Runyan. Ty and I started Titus Electrical with nothing but determination to succeed. Our first work truck, as you said, was a 16-year-old Dodge Satellite. In the beginning, to make ends meet between draws, I held as many as two jobs,

while managing Titus Electrical. Ty worked in the field from daylight to dark, often 7 days a week. On days he needed help pulling wire or building switchgear, I worked alongside him as an electrician's helper. With a lot of hard work and determination, and by the grace of God, we made it through some very tough times.

Today, we own the largest, independent electrical contracting company in Central Texas.

Having started with nothing, it has always been our first priority to take the best possible care of our team mates. As our company grew, we added benefits: medical and dental insurance, life and accident/disability insurance, a 401(k) retirement plan, paid vacations and holidays. Our team mates are paid at the top of the industry, which is often higher than union scale.

Having said that, I'd like to take you back to November 2001 when Ty pulled up at the construction site for the Palmer Events Center in Austin. He was there because the original electrical contractor, an independent contractor who had been unionized through a vicious salting attack and had not bankrupted.

When Ty arrived he was confronted by an IBEW 520 organizer who told him, "This here's a union job. You'd better get out of here." He told Ty he didn't know the trouble he was getting into. That began what the Austin Chronicle dubbed "Battle on Town Lake."

Beginning December 2001 and continuing through November 2003, the IBEW and its agents filed close to 200 ULPs and numerous EEOC charges and civil suits against us.

During construction of the Palmer Events Center, the construction economy in Austin was at its most depressed in years. Between November 2001 and March 2002, we had over 530 applicants for electrical positions. We hired 48 technicians during that time period, meaning that a given applicant had less than a 1 in 10 chance of getting a position with our company. In every instance, we hired the best possible applicant for each position, strictly adhering to our established hiring procedures. Many of the people we hired were known union members. We did not and do not discriminate. Despite this, in almost every instance where a union member submitted their name, the union filed the ULP complaint against us knowing fully that we in fact did hire some of their members knowing we had only a few positions open and hundreds of applicants for those positions. The fact is they were intentionally filing groundless complaints in an effort to bankrupt us for having the audacity to take on a "union job."

We have spent over a half a million dollars in legal fees, not to mention the cost of lost productivity, defending ourselves against the malicious and groundless attacks of the IBEW. Worse yet, they did so with the implicit cooperation and support of the NLRB.

The NLRB, a government agency which is ostensibly an independent arbiter, has been corrupted by the dictates of the AFL-CIO. In one instance, after a review of our confidential files by an NLRB agent, the agent passed confidential information to the IBEW which then filed another lawsuit.

We have also been through the ALJ court, where the IBEW and their attorneys sat with the NLRB's two attorneys and conspired in their attempted prosecution of us and yet we are supposed to be-

lieve that the NLRB is an unbiased arbiter. The union's attorney who sat with the NLRB's attorneys was David Van Os, the same lawyer who represented the union and its members in every one of the close to 200 ULPs filed against us, and who filed seven lawsuits, all of which were financed by the IBEW. He is the same attorney who now sits before you today trying to justify and defend this system.

Having said this, the problem is not the IBEW. The problem is the NLRB and the perverted interpretation and prosecution of archaic labor laws.

Many salts are not legitimate employees. Employees are hired and retained by a business to build a positive and productive team and work toward the mutual benefit of the employee, employer and the customer. Salts have intentionally sabotaged and concealed electrical work, in one case causing an electrical explosion.

We have had salts physically assault our team members. They've been arrested off our job sites and we've lost customers because of them. And yet, when terminated, invariably they would file a ULP and the NLRB would attempt to prosecute charges against us for legitimate terminations.

We've had a death threat, vandalism to employee and company property during pickets, anonymous threatening phone calls to employees' homes at 1 a.m. and intention damage and sabotage to our work sites by these salts.

Legislation should clearly define that an employee is not someone who is paid or encouraged by outside organization to damage or disrupt a company and anyone who does can be terminated or not hired.

The NLRB should not be allowed to be corrupted. Employers should not be guilty until proven innocent.

If our economy is to revitalize, these NLRB endorsed and sanctioned salting attacks must be eradicated from the construction industry and our economy as a whole. In so doing we will allow American business to focus on efficiency and customer service, not problems created by the NLRB at the behest of the AFL-CIO.

Thank you for your time and thank you for taking these bold steps to repair a broken system.

[The prepared statement of Ms. Runyan follows:]

Statement of Shelly Runyan, Vice President, Titus Electrical Contracting, Inc., Austin, TX

Hello, I'm Shelly Runyan, Vice President of Titus Electrical Contracting and this is my husband, and business partner Ty Runyan. In your handout you have "An Introduction to Ty Runyan (Narrative)" and an interview from Austin Construction News and Fortune Small Business. To summarize them Ty is ° Hispanic, ° Irish, grew up in South Texas, left school in 11th grade and started in construction as a ditch digger. With the help of an electrician who he met on a project, he got his first job as an electrician in 1981. In 1987, Ty and I started Titus Electrical Contracting out of the back of a 1971 Dodge Satellite. Today we own the largest, independent electrical contracting company in Central Texas.

Having started with nothing, it has always been our first priority to take the best possible care of our Team Mates. As our company grew we added benefits: Medical & Dental Insurance, Life and Accident / Disability Insurance, a 401(k) Retirement Plan, Paid Vacations and Holidays. Our Team Mates are also paid at the top of the industry, which is often higher than union scale.

Having said that, I'd like to take you back to November 2001 when Ty pulled up at the construction site for the Parmer Events Center, in Austin. He was there because the original electrical contractor, who was unionized, had bankrupted. When

I arrived I was confronted by an IBEW 520 organizer who told us that, "This here's a union job. You'd best get on outta here!" He told Ty he didn't know the trouble he was getting into. That began what the Austin Chronicle dubbed "Battle on Town Lake". Beginning December 2001 and continuing through November 2003 the IBEW and its agents filed close to 200 ULPs and numerous EEOC charges and civil suits.

During construction of the Palmer Events Center, the construction economy in Austin, was at its most depressed, in years. Between November 2001 and March 2002 we had over 530 applicants for electrical positions. We hired 48 technicians during that time period, meaning that a given applicant had less than a 1 in 10 chance of getting a position with our company. In every instance, we hired the best applicant for each position, strictly adhering to our established hiring procedures. Many of the people we hired were known union members. We did not and do not discriminate. Despite this, in almost every instance where a union member submitted their name, the union filed an NLRB unfair labor practices complaint against us, knowing fully that we in fact did hire some of their members, knowing that we had only a few positions open, and hundreds of applicants for those positions. The fact is, they were intentionally filing groundless complaints in an effort to bankrupt Titus Electrical for having the audacity to take over a "union job".

We have spent over HALF A MILLION DOLLARS in legal fees, not to mention the cost of lost productivity, defending ourselves against the malicious and groundless attacks of the IBEW. Worse yet, they did so with the implicit cooperation and support of the NLRB.

The NLRB, a government agency which is ostensibly an independent arbiter, has become a corrupt organization whose agents act with a hidden agenda, directed by the AFL–CIO.

In one instance, after a review of our confidential files by an NLRB agent, a review which we voluntarily agreed to, this agent passed confidential information to the IBEW with which they filed another groundless lawsuit.

We have also been through an ALJ court, where the IBEW and their attorneys sat with the NLRB's 2 attorneys and conspired in their attempted prosecution of us, and yet we are supposed to believe the NLRB is an unbiased arbiter. The Union's attorney who sat with the NLRB's attorneys was David Van Os, the same lawyer who represented the union and its members in every case, and who filed 7 frivolous lawsuits, all of which were financed by the IBEW as part of their assault on us.

Having said this, the problem is not the IBEW; the problem is the NLRB and their perverted interpretation and prosecution of archaic labor laws.

Many salts are not legitimate employees. Employees are hired and retained by businesses to build a positive and productive team and work toward the mutual benefit of the employee, employer and customer. Salts are often intentionally disruptive and combative. While employed by us, we have had Salts physically assault our Team Members, they have been arrested off our jobsites, and we have lost customers because of them. They have intentionally sabotaged and concealed electrical work, in one case causing an electrical explosion. And yet, when terminated, invariably the NLRB would attempt to prosecute charges against us for legitimate terminations.

We have had a death threat, vandalism to employee and company property during pickets (trucks, tires, windows, beer bottles in parking lot at night, anonymous, threatening phone calls to employees homes at 1:00am, and intentional damage and sabotage to our work by these salts (wiring at Braker 3, wiring at Palmer Events center).

We have a "no other work clause", but this cannot apply to a paid union organizer per NLRB.

Legislation should clearly define that an employee is not someone who is paid or encouraged by outside organization to damage or disrupt a company and anyone who does can be terminated or not hired.

The NLRB should not be allowed to be corrupted by AFL–CIO (sit in on trials). The NLRB should not be encouraged to prosecute the agenda of unions but rather to enforce clearly defined law on clear cut violations. Currently the NLRB takes on every case, no matter how ambiguous or obviously frivolous. They then attempt to prosecute us with the hostility and contempt of a zealot, no matter how obviously groundless. In one instance, we had to then defend ourselves for our sprinkler system watering our lawn when picketers arrived at our office.

The way the current labor laws are written employers are "Guilty until proven Innocent." We have to defend ourselves against baseless, false and frivolous accusations. This costs companies in lost productivity and legal fees. In turn, this hurts the legitimate employees and the economy as a whole.

The health of any economy is largely driven by the cost and efficiency of its construction industry. The cost and efficiency of construction are dictated by labor expense and managerial efficiency.

When management's primary job is dealing with labor strife intentionally and maliciously created by SALTS and union plants whose intent is to disrupt, damage or destroy the very companies and industry that employs them, our entire economic foundation destabilized. Construction costs escalate dramatically and in our global economy, manufacturers will look elsewhere to produce the goods that Americans buy. We will become the nation of last choice for any company's expansion.

We are far from alone in this plight. As a member of 2 nation wide electrical contracting associations, by far the number one issue discussed at every meeting is the extreme hardships in hiring that are created by union salting practices and the NLRB support and prosecution of these cases. The hiring strife is designed to choke down the independent contractor so that he cannot acquire needed technicians, cannot compete and will be slowly bled to death. Ultimately, the entire nation picks up the bill with dramatically higher construction and unemployment costs.

If our economy is to revitalize, these NLRB endorsed and sanctioned salting attacks must be eradicated from the construction industry and our economy as a whole. In so doing we will allow American business to focus on efficiency and customer service, not problems created by the NLRB at the behest of the AFL–CIO.

Thank you for your time and thank you for taking these bold steps to repair a broken system.

[Attachments to Ms. Runyan's statement follow:]

Titus Electrical Contracting, Inc. Ty & Shelly Runyan (512) 339-1111

Battle on Town Lake

BY MICHAEL KING

Austin Chronicle, March 8, 2002:

A union-organizing battle over work in progress at the new **Town Lake Community Events Center** has boiled over into a lawsuit. On Feb. 28, Austin's **International Brotherhood of Electrical Workers** (Local 520) sued **Titus Electrical Contracting Inc.** for defamation, libel, and slander. Union spokesman and assistant business manager Michael Murphy charged the contractors with falsely accusing union members of "issuing death threats, attempting burglary, threatening law officers, and breaking laws aimed at organized crime." The company described the lawsuit as "frivolous" and reiterated its charges that the union has engaged in harassment and intimidation of Titus employees, including an alleged death threat against company president **Ty Runyan**.

The dispute dates to last fall, when Guy's Electrical of Marble Falls, a union shop and the original subcontractor on the events center project, declared bankruptcy, effectively laying off about 50 employees. The IBEW says the general contractor, **MW Builders**, is responsible for honoring the union contract, a dispute pending before the National Labor Relations Board. The contractor hired non-union Titus instead -- and union members, hoping to unionize Titus, have been picketing the job site or the company intermittently since January. IBEW says Titus has been discriminating against union members and women in hiring, and harassing its legal picketers. The company denies those allegations, and has charged IBEW with criminal threats and harassment.

Specifically, Murphy said one legal picketer at Titus has been charged with criminal trespass. Immediately following that incident, says Titus vice-president Shelley Runyan, someone phoned her husband Ty at the office and said, "'Hey, you MF, if you're going to have one of our people arrested, you better start wearing a bulletproof vest, because you're going to take a bullet, you MF.' So the person calling in identified himself as part of that group."

IBEW denies that its members have engaged in any threats; following the publication of Runyan's claim and related allegations in the *Austin Business Journal* and company memos, the union filed the defamation lawsuit. "Our picketing of Titus Electrical has been peaceful at all times," said Murphy. "While the picketing may not be comfortable for the company, our action is aimed at exercising our rights under federal law and the First Amendment to organize Titus employees."

Murphy acknowledged that the economic downturn has hurt union members, with many unemployed or working short-term jobs. A publicly-funded project like the events center should be held to high employment standards, he says, "rather than risk the higher likelihood that taxpayers will pay much more later for a job with faults." The labor dispute may not be resolved before the work is done. Titus says it has 28 to 30 workers on the job, and expects to finish on schedule in May.

www.news8austin.com

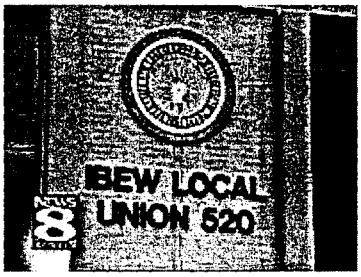
Electric company for city project reports receiving threats, blames union

Updated: 2/18/2002 6:36:23 PM
By: Antonio Castelan and Web Staff

Union picket lines and allegations of threats and arm-twisting. A multi-million dollar public works project. These are the elements of a labor dispute – not in the organized industrial Rust Belt – but right here in Austin.

The current construction on the Palmer Special Events Center, a city public works project, has produced rancor among the electricians contracted for the job – and those who found themselves without work.

The city hired M&W Builders as the primary contractors for the new events center; M&W, in turn, hired a union-affiliated company to do the electrical work. But when that company filed for bankruptcy last November, M&W then contracted Titus, an open shop, to finish the electrical wiring.



Many of the union workers originally contracted are now out of a job, unable to finish the project that they started before their affiliated company went bankrupt. The workers have been seen picketing outside Palmer over the past months, and now Titus claims the union is harassing them directly.

"They can make our lives a living hell, which is what they are trying to do. And they are doing a pretty good job of it right now," said Titus vice president Shelly Runyan, referring to the International Brotherhood of Electrical Workers Local 520.

"The IBEW Local 520 has been terrorizing my employees," Runyan said. "[They have been] reducing the women in my office to tears by harassing them with the picketing. Our contractors have been harassed. Our customers have been harassed. My husband has had a death threat against him."

The threats have included a phone call to the president of Titus Electrical, Ty Runyan, warning him to wear a bullet-proof vest.

In response, Titus has hired Austin police officers to patrol its grounds.

"People don't think things like this happen in Austin, Texas, or in America. [They think] it only happens in the movies," Shelly Runyan said. "It happens in Austin."

She claims this is all in response to winning a bid on the electrical wiring of the new Palmer Special Events Center. She said the harassment started when M&W selected Titus, a non-union business.

IBEW organizers deny the allegations.

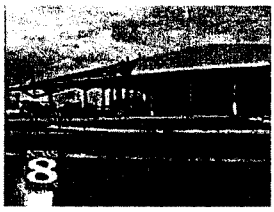
Shelly Runyan outside Titus Electrical with a police officer.

"There has been no one making any threats to Titus Electrical that I am aware of. We absolutely don't condone any threatening activities," said Rick Zerr, an IBEW organizer, gesturing to the signs his union members have used to picket.

He added that if he ever found out if a member of his union had made threats against Titus Electrical, he himself would press for criminal charges. As he put it, "We

are not going down the road of Jimmy Hoffa."

But Zerr did claim Titus Electrical has violated many labor hiring laws, citing "Termination of employees for showing their support of the union. I'd have to get a piece of paper to look at all the charges. We have charges against them for discrimination on sex."



The Palmer Special Events Center

Runyan said, "They say we have unfair labor practices, that we are sex bigots, when our company is top-heavy with women in management, and they are out in front of contractors walking around with lies. And we can't do anything about it."

Zerr maintains that as long as Titus cooperates with fair practices, the picketing will stop.

"I'd like to see Titus Electrical become a union contractor. [Titus] has got a good thing going for him. He also unfortunately breaks the laws in many ways," he said. IBEW Local 520 estimates that about 70 percent of the electricians in Austin licensed to do large projects already fall under union representation.

Neither party would say this on camera, but they are clearly fearful that if this controversy grows, it could slow down the Palmer Special Events Center project. That could cost taxpayers more money.

The Austin Police Department would not comment on its investigation into the threats against Titus Electrical.

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AUSTIN BUSINESS JOURNAL

LATEST NEWS
February 21, 2002

Union members picket event center construction site

Colin Pope and Alicia Pounds
Austin Business Journal Staff

Construction of the Town Lake Community Events Center has spawned a bitter dispute between a local electrical contractor and a labor union.

The quarrel has caught the attention of the FBI, Texas Department of Public Safety, Austin Police Department and some local politicians.

At the heart of the dispute is Austin-based Titus Electrical Contracting Inc. Shelly Runyan, vice president of Titus, says the International Brotherhood of Electrical Workers' Austin chapter, Local 520, has engaged in a campaign to cripple Titus and force it to unionize.

IBEW represents electrical workers in broadcasting, construction and maintenance, government, manufacturing, railroad, telecommunications and utilities, according to the national union's Web site.

For months, Runyan says, members of Local 520 have picketed outside the events center project, at Barton Springs Road and South First Street. The center will serve the same purpose as Palmer Auditorium, which is being replaced by the $89 million Joe R. and Teresa Lozano Long Center for the Performing Arts.

Michael Murphy, Local 520's assistant business manager, says its members are picketing Titus because the company discriminates against hiring women technicians. The organization says it has filed an unfair labor practices complaint with the National Labor Relations Board.

"Titus Electric has committed a lot of unfair labor practices," Murphy says. "We have filed charges with the National Labor Relations Board, and the picketers are protesting those unfair labor practices."

Runyan denies those allegations. She says the squabble goes much deeper, to the point where death threats have been made by phone to her husband, Ty Runyan, president of Titus.

"Threats by organized labor have forced us to have DPS troopers stationed at our offices beginning at dusk each night, and staying until we arrive at the morning," Shelly Runyan says.

Representatives of the FBI and Austin Police Department won't comment on any ongoing investigations, but Runyan says she has requested an APD investigation into possible death threats, and is asking the FBI to look into violations of the Racketeer Influence and Corrupt Organization Act, a federal law set up to thwart organized crime and unlawful labor union practices.

She also is seeking assistance from politicians such as Austin City Councilman Will Wynn and state Sen. Gonzalos Barrientos, D-Austin. Wynn and Barrientos couldn't be reached for comment, but Runyan says they have told her they are unsure how they can get involved, but they will monitor the dispute.

Local 520 denies it has made death threats against Titus' president.

"The union has no knowledge of death threats. I know the union leadership had no part of any kind of death threat and wouldn't engage in that activity. No official agency has made any contact with us about those threats," says Murphy, the Local 520 official.

Murphy acknowledges Local 520 is "attempting to organize Titus" into the union.

Shelly Runyan says Titus, and its employees, want no part in the union.

"If our employees were interested in being part of the union, or it they were not being taken care of, that would be different," she says.

"But we're taking care of our employees and have good benefits and some of the best-trained and hardest-working technicians in the city. Our top technicians would have to take a $6-an-hour pay cut to join the union."

The controversy began in November when Titus was hired to perform electrical work at the new special events center. The City of Austin awarded a $37 million construction contract to Austin-based MW Builders Inc.

In turn, MW Builders hired a union-affiliated electrical company from Marble Falls. That firm, Guys Electrical, is no longer working on the project. MW Builders hired Titus, a nonunion firm, to take its place.

Titus Electrical Contracting, Inc. Ty & Shelly Runyan (512) 339-1111

An MW Builders spokeswoman says Titus was selected because it submitted the most competitive price. She says the selection process was within city guidelines, and MW Builders doesn't discriminate between union or nonunion companies.

Local 520 claims Titus refuses to hire women electricians. Murphy cites a former Guys Electric employee -- a female union member who worked on the special events center -- who was denied employment at Titus.

"She was not hired during the same time period that they hired at least 20 male," Murphy says. "I haven't known them to ever have a female electricians."

Shelly Runyan says Titus, which employs 80 people, received about 900 job applications last year, and only four were from women. She says Titus recently hired a female technician and refused employment to the woman Murphy cites because of problems at a previous employer.

She says: "We don't discriminate against women. The management is top-heavy with women. Our general manager is a woman."

Email COLIN POPE at (cpope@bizjournals.com). Email ALICIA POUNDS at (apounds@bizjournals.com).

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Contractor News -- April 24, 2002

War Breaks Out In Austin: IBEW vs. Non-Union Contractor

IBEW Local 520 has engaged in a campaign to cripple Titus Electrical Contracting and force it to unionize, according to Shelly Runyan, vp of Titus, as quoted in the *Austin Business Journal* (3/15).

What's ensued: Local 520 picketers alleged that Titus "has a sexually discriminatory hiring practice," according to the newspaper. Titus filed a defamation lawsuit in response. In its own response, Local 520 filed suit against Titus, which claimed that union workers "made death threats against Titus' owners," the newspaper reported. The union officially denied making death threats.

According to the report, things initially heated up when MW Builders, which is constructing a new special events center for the city of Austin, removed a union electrical contractor from the project and replaced it with Titus. Titus was selected, MW Builders told the newspaper, "because it submitted the most competitive price."

Local 520's claim is that Titus "refuses to hire women electricians."

A separate report, in the *Austin American Statement* (also 3/15), quoted Police Chief Stan Knee saying, "I've been here for 4 1/2 years, and I've never seen it [union-management battling] rise to this level." The daily newspaper noted that "The level of acrimony is unusual in Texas, where union-related confrontations are rare."

The newspaper quoted Mike Murphy, head organizer for IBEW Local 520: "Contractors like Titus don't usually sign on [with the union] out of the goodness of their heart. They need to be shown that we're a force to be reckoned with."

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Union fight is no 'Waterfront,' but worth watching

BYLINE: Susan Smith, American-Statesman
DATE: March 16, 2002
PUBLICATION: Austin American-Statesman (TX)
SECTION: Metro/State

You'd swear it was a remake of "On The Waterfront."

Titus Electrical Contracting and the International Brotherhood of Electrical Workers Local 520 are going at it over labor practices at the Palmer Community Events Center on Austin's waterfront along Town Lake.

Even missing labor leader Jimmy Hoffa is being dragged into the dispute.
"**Union** people really do have things to offer, but not if this Jimmy Hoffa-style stuff is what you get with it," Titus Runyan, co-owner of the electrical company, told a reporter, exaggerating the situation.
In right-to-work Texas, **union** struggles are news. But while police and the FBI look for a local version of Johnny Friendly, the corrupt **union** boss in the 1954 film, and the National Labor Relations Board looks into **union** allegations of employment discrimination, the City Council should look closely at a $39 million public project.
A few months from a scheduled completion date of June 1, there's only about $67,000 left in city funds for the project, which includes a parking garage and building near Town Lake.
The dwindling dollars in what was once a $1.8 million contingency fund can't be laid at the **union**'s or Titus' feet. But the City Council, which would have to approve more money to finish the project, could have a financial interest in this waterfront battle if it slows things down.
The community center project was awarded to MW Builders, which also worked on Travis County's disastrous Criminal Justice Center, which was completed several years late and millions of dollars over budget.
Since MW Builders got the city contract two years ago, the company has settled a lawsuit with the county.
The builders previously constructed a water treatment plant for Austin that was completed on time.
MW Builders hired Titus, a nonunion company, and all the subcontractors for the project. That includes Guy's Electric, a **union**-organized company that pulled out of the project when it declared bankruptcy. Titus replaced Guy in December.
The city typically sets aside money for cost overruns, known as change orders.
Since construction began last year, the city has approved at least 11 change orders, which amount to more than $1.7 million.
The reasons include "weather, . . . coordination issues, owner-requested changes and bankruptcy" of the original electrical subcontractor, the city staff said.
The number isn't unusual. But the cost overruns are brushing against the city's ceiling for public projects; the city tries to hold additional expenses to 5 percent of a project's budget.
Change orders for the community events center are at about 4.8 percent of its original $37 million budget, according to the city staff.
Fans of "On the Waterfront" remember Marlon Brando as an ex-boxer who had thrown a fight for the labor bosses. But he later led rank-and-file members in taking back the **union** from its leadership.
"I coulda been a contender," he says in a famous line from the film.
When it comes to meeting deadlines and making budget, the question is, "Could the events center project still be a contender?"
Susan Smith's column runs on Wednesdays and Saturdays. Contact her at ssmith@statesman.com or (512) 445-3871.

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Titus Electrical Contracting, Inc. Ty & Shelly Runyan (512) 339-1111

An Open Letter From Shelly Runyan

Dear Customers and Fellow Business Persons;

Many of you are aware of the concerted attack the IBEW has staged against us. While they have resorted to their usual tactics of filing unfair labor practice complaints (ULPs) at the NLRB's San Antonio office, the union has imported some Rust Belt tactics to add to their arsenal: ***Death Threats!***

As you may have witnessed on the news, my husband has been the recipient of an anonymous death threat. This coward called to tell him that he needed to don a bulletproof vest because he was going to stop a bullet. Our home and offices have been cased, there has been an attempted break-in at our home, and a DPS officer guarding our offices was threatened.

The union has conjured up some new tricks as well, such as picketing our projects in Titus uniforms. This made it appear that Titus personnel were picketing our own projects, another malicious lie and attempt to fool the public. Titus Electrical is absolutely committed to the most fair and impartial consideration of every candidate, regardless of race, creed, gender or affiliation. Yet, we have been accused of sex bigotry because we refused to hire a female union member whose former supervisor discharged her for ***ALCOHOL CONSUMPTION DURING THE WORK DAY!***

In the union's efforts to harass our company, the union picketers have paraded in front of the Omni Hotel, as well as many other prominent Austin locations, bandying signs with fraudulent and malicious lies. Regardless of the union's motivations, these vicious and malevolent actions are certainly not something our beleaguered business community needs. The current economic climate demands our absolute and unconditional combined efforts to attract and stimulate business. Being equated with union strife will only hinder the rejuvenation of Austin's economy. Any potential business investors are going to have second thoughts when confronted by this mob outside their hotel. The typical union mentality of trying to strangle the chicken to increase egg production is an outmoded concept that has led the union to its own demise. Today, by Joe Gunn's (state AFL-CIO Director) own estimate, only 3 to 4% of the Texas workforce is unionized. Why so low? Some say their wages and benefits are too high. Not True! Team Titus wages and benefits are at least a match for the IBEW. ***IT'S PRODUCTIVITY!*** We beat 'em in the workplace. Team Titus Members are simply better and faster.

We are Austin residents of 22 years, Texans for all of our years. We live here, we work here, and we're not going anywhere! Our Team will go forward; our Team's success will continue. We are proud and supportive members of our community. I know I speak for every Member of Team Titus when I tell you we value your trust and confidence. The task ahead is great, but we have the boundless support of our Team. Be assured, we will not falter, we will not fail. We will emerge from this challenge stronger still!

With Best Regards,

For Updates, visit our News page at:
http://www.team-titus.com/news.asp

Shelly Runyan

Stand Up For Texas Business Now! You can e-mail local, state and national politicians easily from our website, team-titus.com. Tell our elected representatives that you expect them to support Texas business! While there, check and see which politicians have responded, and what their response has been.

From Every Member of Team Titus,

Thank You!

Titus Electrical Contracting, Inc. Ty & Shelly Runyan (512) 339-1111

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Rulings may not end labor dispute

Palmer Events Center's electrical contractor, union plan appeals

BYLINE: Claire Osborn, AMERICAN-STATESMAN STAFF
DATE: February 10, 2003
PUBLICATION: Austin American-Statesman (TX)
SECTION: Metro/State

In the midst of a labor struggle swirling around work on the Palmer Events Center, a judge has ruled that a subcontractor at the site violated several federal labor rules that protect the rights of union workers.

Titus Electrical Contracting Inc. was faulted on nine of the more than 100 charges lodged against it by the International Brotherhood of Electrical Workers Local 520.

Although most of the charges were dismissed, the co-owner of the company, Ty Runyan, does not plan to back down in the face of union demands. The administrative law judge decided that the company, one of Austin's largest independent electrical contractors, violated the National Labor Relations Act by dismissing some employees because they belonged to a union and should rehire them.

The findings also said the company improperly interrogated employees about their union activities and would not let workers wear union insignia on the job.

"We vigorously disagree with the findings," said Runyan, who plans to appeal the ruling. The recommendations came after the union filed complaints with the National Labor Relations Board.

The union said it is also planning to appeal some of the findings, including those concluding that **Titus** had a right to fire some employees and was not discriminating against them because they belonged to the union.

The board will consider the appeals before making a final ruling.

The National Labor Relations Act protects unions' right to try to organize workers at any company. Texas is known as a "right-to-work" state, which gives employees the choice of whether to join a union.

The dispute in Austin started in December 2001, when **Titus** was awarded a $6.5 million city contract to wire the new Palmer Events Center on Riverside Drive. **Titus** took over the contract from Guy's **Electric**, a unionized company that went out of business.

Titus hired some workers and supervisors from Guy's. Runyan said the union immediately began filing complaints against **Titus** with the labor relations board.

Within weeks, the union was picketing at **Titus** work sites and at its headquarters in North Austin. Runyan said the pickets were harassing his employees, trying to frighten him and his family and trespassing.

One union worker was arrested for trespassing, but the man was later cleared of the charges. Runyan had also spoken with the FBI about investigating the union for racketeering, but no investigation was initiated.

The union's complaints were first considered by an administrative law judge who makes recommendations to the board.

Runyan said the judge's finding that **Titus** violated federal law by refusing to allow employees to wear union insignia on their clothes was wrong.

"We have had a uniform policy in place for many, many years, and we enforced it no differently at that time than we had many years prior," Runyan said.
Mike Murphy, the head organizer for Local 520, said the judge's ruling against **Titus** on the union insignia was a "big win."
"It is one of the key issues in the case," Murphy said.
Runyan said he also disagreed with the judge's ruling that the company illegally dismissed some workers. He said that the workers were passing out fliers at a hotel job and that the hotel not only called the police but asked **Titus** not to let the workers return.
"We have contracts with our customer that say: If for any reason a customer tells us they don't want a technician on a job site, we have to replace that technician," Runyan said.
Among the judge's other findings: that **Titus** illegally called the police or threatened to call officers when union members picketed and that Runyan illegally interrogated employees about the union.
"We felt vindicated in that the judge found in agreement with us that **Titus** used the police to attempt to harass us unlawfully," Murphy said.
Appeals in the case are due by Friday, but the deadline might be extended, officials said.
cosborn@statesman.com;445-3630

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Win For Union
And Titus Responds

Re: March 15 article "Rare union battle rumbling in Austin":

American-Statesman
Tuesday, April 02, 2002

The FBI has now advised us that it does not find sufficient grounds to pursue any further investigation against IBEW Local 520. **The FBI informed us that since no one was dead, the US mail was not used and there was not interstate commerce involving multiple millions of dollars, there was not much they could do. But, if any of this changes, please feel free to call them.**

Furthermore, the general counsel of the National Labor Relations Board has determined that unfair labor practice charges filed by Local 520 are meritorious, and has initiated prosecution against Titus Electric Co. for violation of federal labor laws by interfering with the union's legal right to engage in peaceful picketing and interfering with the rights of Titus employees to wear union insignia. **The NLRB is required by law to investigate all claims no mater how frivolous or untrue. There is a dispute between us and the IBEW about what has happened there has been no finding of unlawful conduct and the complaint is the beginning of litigation to determine who is telling the truth. ("The hearing will be conducted by an administrative law judge on the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law..." from SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE NATIONAL LABOR RELATIONS BOARD IN UNFAIR LABOR PRACTIVE PREECEEDINGS PURSUANT TO SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT)**

The union has filed dozens of allegations of ULP's the majority of which have been dismissed by the NLRB or withdrawn by the union because they have no merit. The most recent complaints include one for harassing picketers by having a sprinkler system installed, *2 years ago*, and maintaing our landscape at the office.

DAVID VAN OS
Attorney for IBEW Local 520
San Antonio

Shelly Runyan
Vice President / Titus Electrical Contracting, Inc.
Austin

A Great Place To Work

Related Article: Rare union battle rumbling in Austin

American-Statesman
Friday, April 05, 2002

Re: Titus Electric/Union dispute.

Weren't unions originally formed to protect employees from unsafe working conditions and poor pay? Titus Electric offers good pay to its employees, good benefits and ongoing education classes to keep their electricians up to date on code changes, safety procedures and improved electrical knowledge.

Titus does have the right to require its employees to wear Titus uniforms on the job, just like any other business. Titus management fosters teamwork in everything they do.

From my experience with this company (five years as the happy wife of an employee), it deserves an award for its outstanding business model. My husband makes more than union base pay, has earned raises based on performance and has always been treated with respect. The union is an outdated organization looking to justify its existence by picking on small companies.

MARY LAWRENCE
Austin

Mary's complete letter follows:

Titus Electrical Contracting, Inc. Ty & Shelly Runyan (512) 339-1111

Show some Support (The other side of the fence)

If my history lessons are remembered correctly, weren't the unions originally formed to protect employees from unsafe working conditions and poor pay? Titus Electric offers good pay to it's employees, good benefits and on-going education classes to keep their electricians up to date on code changes, safety procedures, and improved electrical knowledge. They DO have the right to require their employees to wear Titus uniforms (shirts) on the job, just like any other business. It seems the union mentality of "us against them" (employees vs. management) causes strife between people at ALL levels of an organization. BUT at Titus Electric they foster teamwork in EVERYTHING they do. Employees are asked for their input on everything from performance reviews to improved processes. The owner sits in a cubicle WITH the rest of his office staff. From my experience with this company (5 years as the happy wife of an employee), they deserve a Quality Award for their outstanding business model. My husband makes MORE than union base pay, has been given raises based on performance, and has always been treated with respect. The union is an outdated organization looking to justify its existence by picking on small companies like Titus Electric, the base of the American dream.

Mary Lawrence
ASQC Certified Quality Engineer

Mr. VAN OS. Mr. Chairman, may I respond on a factual matter?

Chairman JOHNSON. After the last man has testified. I'll call on you, yes.

Mr. VAN OS. Thank you.

Chairman JOHNSON. Mr. Nesbitt.

STATEMENT OF TOM NESBITT, ESQ., ATTORNEY, FULBRIGHT & JAWORSKI, LLP, AUSTIN, TEXAS

Mr. NESBITT. My name is Tom Nesbitt. I am employed as an associate attorney with Fulbright & Jaworski in Austin, Texas. However, I testify today as an individual, not on behalf of my firm and not on behalf of any client.

I am not here to bash labor unions. Labor unions have historically fought for important protections we now take for granted: minimum wage laws, overtime laws, job safety regulations, family leave. Nor am I here because of any ideological alignment with opponents of labor unions. I have often supported Democratic candidates for political office and have worked for and supported pro-labor Democratic United States Congressman Chet Edwards, a statesman whose views I commonly share.

However, I have been asked to describe what I observed when one of my clients, Titus Electrical, became the target of an aggressive "salting" campaign by a labor union.

Titus Electrical is a small, family owned construction business. Its roughly 50 employees have never sought to be represented by a labor union. My client had been in operation for about 15 years, and by 2001 it had become large enough to compete with the typically large union contractors for government jobs.

In 2001, the city of Austin was building the Palmer Civic Events Center downtown. My client was not originally the electrical subcontractor on the job. Originally, the subcontract went to another non-union shop, Guy's Electric. During that job, the International Brotherhood of Electrical Workers Local 520 salted the job, went out on strike, filed unfair labor practice charges against Guy's Electrical, threatened to initiate other legal action, and ultimately convinced Guy's Electric to sign the IBEW's collective bargaining agreement. Guy's Electric soon went bankrupt. The electrical subcontract was re-bid, and my client won the bid.

IBEW Local 520 never sought an election of my client's employees to determine whether the employees wanted to be represented by a labor union. To my personal knowledge, IBEW Local 520 never asked my client's existing employees to sign authorization cards. However, IBEW Local 520 did initiate an astounding amount of legal action against my client.

IBEW Local 520 filed somewhere in the range of 200 accusations of unfair labor practice charges with the National Labor Relations Board without, in my view, any apparent regard for the merits of the charges.

The union filed charges alleging that over 40 union electricians were discriminatorily not hired. We believe that the union filed a charge of unfair labor practices for every known union member who applied for a job. The union filed a charge alleging that one union electrician was discriminatorily refused hire when my client had, in fact, hired the union member.

When the union files charges against my client, my client is compelled to engage legal counsel, investigate the matter, conduct legal research in many cases, and file a legal response. This involves substantial investment of money and time. The union often filed charges, waited until my client had undertaken the burden of its defense, and then withdrew the charges. Many of the charges bordered on the ridiculous; but still my client was required to investigate and respond.

Let me describe a few of the charges filed against my client:

A union organizer crashed a private party thrown by my client and was politely asked to leave. The union organizer left. The next day the union filed a charge alleging that expelling the organizer from the private party was an unfair labor practice.

Another charge: on one of the days that the union picketed in front of my client's shop, a paid union organizer set up a video camera and proceeded to film the employees, the customers, and the vendors of my client who came to do business with my client. Believing this to be an attempt to harass and intimidate employees, customers and vendors, my client to document the action, got a camera, stepped out onto the front steps of her own place of business, and took a photograph of the paid union organizer while he made a public display of videotaping her. The union filed an unfair labor practice charge, calling this unlawful surveillance.

The union initiated other legal proceedings without any apparent regard for their merits. The union funded five EEOC charges against my client. Although the union had earlier filed NLRB charges claiming that most of these employees were not hired because of their union support, the union was now claiming that the employees were not hired because of their sex or disability or some other protected status. Again, the apparent goal was not to make accurate accusations, but to simply initiate legal proceedings of any kind.

The union also funded five discrimination lawsuits against my client. The union funded a civil lawsuit against my client for wrongful prosecution. The union funded three civil claims against my client for defamation. The union filed with the city of Austin a third party challenge to the woman-owned business certification of a business owned by one of the co-owners of my client. The union filed a motion for pre-suit depositions as a prelude to a lawsuit attacking my client's apprenticeship program. The union ultimately brought claims attacking my client's apprenticeship program. There is good evidence that an active union organizer called the city of Austin hazardous material department prompting a visit to my client's shop by a city inspector.

In sum, this was the most massive barrage of litigation I have ever witnessed against a small company. I represent companies many times the size of this client who do not experience a fraction of the litigation instigated by the union since late 2001.

Subject to any questions that may seek confidential attorney-client communications, I'd be happy to answer any other questions. And I thank this Committee for its attention to this very serious issue.

[The prepared statement of Mr. Nesbitt follows:]

Statement of Tom Nesbitt, Esq., Attorney, Fulbright & Jaworski, Austin, TX

My name is Tom Nesbitt. I am employed as an associate attorney with the law firm of Fulbright & Jaworski L.L.P. in Austin, Texas. However, I testify today as an individual, not on behalf of my firm or any client of Fulbright & Jaworski.

I am not here to bash labor unions. Labor unions have historically fought for important protections we now take for granted: Minimum wage laws, overtime laws, job safety regulations, family leave. I am not here because of any ideological alignment with traditional opponents of labor unions. I have often supported Democratic candidates for political office and have worked for and supported pro-labor Democratic United States Congressman Chet Edwards, a statesman whose views I commonly share.

However, I have been asked to describe what I observed when one of my clients became the target of an aggressive "salting" campaign by a labor union.

My client is a small, family owned and run construction-industry subcontractor whose roughly 50 employees had never sought and still have never sought to be represented by a labor union. In Austin, the large subcontractors in my client's field are the union contractors. My client has been in operation for about fifteen years, and by 2001 had begun to compete with the large union contractors for major construction projects.

In 2001, the City of Austin was building the Palmer Civic Events Center. My client was not originally the electrical subcontractor on the job. Originally, the subcontract went to another non-union shop, Guy's Electric. During that job, the International Brotherhood of Electrical Workers Local 520 salted the job, went out on strike, filed unfair labor practice charges against Guy's Electrical, threatened to initiate other legal action, and ultimately convinced Guy's Electric to sign the IBEW's collective bargaining agreement. Guy's Electric soon went bankrupt. The electrical subcontract was re-bid, and my client won the bid.

IBEW Local 520 never sought an election of my client's employees to determine whether the employees wanted to be represented by a labor union. To our knowledge, IBEW Local 520 never asked my client's existing employees to sign authorization cards. However, IBEW Local 520 did initiate an astounding amount of legal action against my client.

IBEW Local 520 filed somewhere in the range of 200 accusations of unfair labor practice charges with the National Labor Relations Board without any apparent regard for the merits of the charges.

The Union filed charges alleging that over 40 union electricians were discriminatorily not hired. We believe that the union filed a charge of unfair labor practices for every known union member who applied for a job. The union filed a charge alleging that one union electrician was discriminatorily refused a job when my client had, in fact, hired him.

When the union files charges, my client is compelled to engage legal counsel, investigate the matter, conduct legal research in many cases, and file a legal response. This involves substantial investment of money and time. The union often filed charges, waited until my client had undertaken the burden of its defense, and then withdrew the charges. Many of the charges bordered on the ridiculous; but still my client was required to investigate and respond.

I have not been allotted enough time to catalog the other unmeritorious charges filed by the union. Let me describe a few:

A union organizer crashed a private party thrown by my client and was politely asked to leave. The Union organizer left. The next day the union filed a charge alleging that expelling the organizer from the private party was an unfair labor practice.

On one of the days the union picketed in front of my client's shop, a paid union organizer set up a video camera and proceeded to film employees, customers, and vendors who came to do business with my client. Believing this to be an attempt to intimidate employees, customers and vendors, my client decided to document the paid union organizer's actions. My client got a camera, stepped out onto the front steps of her own place of business, and took a photograph of the paid union organizer while he made a public display of videotaping her. The union filed an unfair labor practice charge, calling this unlawful surveillance. What is even more incredible is that an NLRB administrative law judge found this was unlawful surveillance. This bizarre result is currently on appeal to the National Labor Relations Board.

The union initiated other legal proceedings without any apparent regard for the merits. The union funded five EEOC charges against my client. Although the union had earlier filed NLRB charges claiming that most of these employees were not hired because of their support for the union, the union was now claiming that the employees were not hired because of their sex or disability or some other protected

status. Again, the apparent goal was not to make accurate accusations, but to simply initiate legal proceedings of any kind.

The union also funded five discrimination lawsuits against my client. The union funded a civil lawsuit against my client for wrongful prosecution. The union funded three civil claims against my client for defamation. The union filed with the City of Austin a third party challenge to the woman-owned business certification of a business owned by one of the co-owners of my client. The union filed a motion for pre-suit depositions as a prelude to a lawsuit attacking my client's apprenticeship program. The union ultimately brought claims attacking my client's apprenticeship program. There is good evidence that an active union organizer called the City of Austin hazardous material department prompting a visit to my client's shop by a city inspector.

In sum, this was the most massive barrage of litigation I have ever witnessed against a small company. I represent companies many times the size of this client who do not experience a fraction of the litigation instigated by the union since late 2001.

The legal expense and the administrative burden this created for my client was incredible. Yet the union never sought an election, and never, to our knowledge, genuinely tried to encourage my client's employees to support the union.

In a 2001 NLRB decision, members Liebman and Walsh wrote that they found nothing inherently illegitimate about a union's undertaking to "driv[e] nonunion contractors out of the market, or even out of business, if they did not recognize the Union." Aztech Electric, 335 NLRB 260 (2001). That opinion was issued on August 27, 2001, approximately three months before the IBEW Local 520 turned its sights on my client.

I cannot personally testify that IBEW Local 520's objective was to run my client out of business because I obviously was not able to participate in the Union's organizing strategy meetings. However, what I do know is that my client was subject to massive legal proceedings initiated without any apparent regard for the merits of the claims, and I never saw any evidence of a genuine effort by the union to be certified as the bargaining representative of my client's employees.

Let me conclude by saying that IBEW Local 520 has elected a new Business Manager, David Adamson. It is my belief that Mr. Adamson is an honest and reasonable man who does not intend to use the kind tactics employed by his predecessor. However, the fact that this has happened and is apparently sanctioned by NLRB's interpretation of the law, is something that I am glad has received the attention of this sub-committee.

Subject to any questions that may seek information I am prohibited from disclosing due to attorney-client privilege, I would be glad to answer any questions.

Chairman JOHNSON. Thank you, sir. I appreciate your testimony.

Mr. Van Os, I would like to ask you a question. You may answer if you will. What I'd like to know is you know, you've heard from two people that there is union problems out there and I'd like to know what you think and whether or not the NLRB is doing a good job of controlling this stuff.

Mr. VAN OS. Well, Mr. Chairman, if the NLRB is under the control of the unions——

Chairman JOHNSON. Under the what?

Mr. VAN OS. If the NLRB is under the control of AFL-CIO——

Chairman JOHNSON. Well, nobody said that.

Mr. VAN OS. I believe Ms. Runyan has said that quite stridently. If they are, I'm sure not aware of it. Now what I'd like to say in response to all of this is that throughout our legal system in litigation one party wins and one party loses. And the party that wins usually doesn't win everything they were after and the party that loses is usually unhappy. And every time somebody loses in litigation, whether it's in the State Courts, the Federal Courts, the NLRB or any forum, often the party that loses is unhappy and has got some sour grapes. And I think what the Committee has just heard is a lot of sour grapes from parties who lost.

These charges that Ms. Runyan and Mr. Nesbitt have claimed to be unmeritorious were certainly thought to be meritorious or at least part of them were thought to be meritorious by somebody because an Administrative Law Judge of the NLRB and I might add a very experienced Administrative Law Judge who is the Deputy Chief Administrative Law Judge for the NLRB after extensive hearings found that Titus Electrical Company had committed a number of unfair labor practices, violations of Federal labor law. And I am going to attach a copy of the Administrative Law Judge's decision to my written testimony. This is not the appropriate forum to try to re-litigate things that the legal system itself has taken care of. And is taking care of right now.

Now with regard to EEOC charges that Ms. Runyan and Mr. Nesbitt have chosen to talk about, I am proud, I am very proud that my client, Local 520 of the IBEW, went to lengths of expenditure of its precious resources to fight for the right, the rights of women to obtain employment in skilled construction trades. It is often said that that is a nontraditional area of employment for women and my client, IBEW Local 520, did file and finance EEOC charges on behalf of women who had been turned down for employment by Titus Electrical Company at a time when Titus Electrical Company had zero women working as electricians, in the skilled electrical trade. And I don't know, it seems that unfortunately, the witnesses have inferred or implied that there was something frivolous about those charges. Mr. Chairman, the Titus Electrical Company through its lawyers, one of which was Mr. Nesbitt, filed one motion for summary judgment at a time when five discrimination lawsuits were pending against it. They picked out one that they filed a motion for summary judgment which would mean that if they won the motion for summary judgment that the case was thrown out without a trial.

The District Judge in Travis County denied that motion for summary judgment and I will be glad to provide the Committee a copy of that Court order which by definition means that the District Judge found and ruled that the lawsuit was not frivolous and far to the contrary, was worthy of going to trial and being heard by a jury.

So my response is that the system is working now, Mr. Chairman, and the system now has ample capability to defend employers, if charges are not meritorious. But if they are meritorious——

Chairman JOHNSON. Is any of what they said true, according to you?

Mr. VAN OS. In terms of——

Chairman JOHNSON. Well, for instance, the person that went to a party and filed a lawsuit, is that true or false?

Mr. VAN OS. I have absolutely no knowledge of any such thing.

Chairman JOHNSON. OK, well, I feel like there is some substance of what was said and we'll just have to look into it. I recognize your side of the motion too, and thank you for your comments.

Mr. VAN OS. Thank you.

Chairman JOHNSON. Mr. Grijalva, would you care to question?

Mr. GRIJALVA. A couple of questions and let me follow up with the discussion and the question that you started with, Mr. Chair-

man and maybe direct it at Mr. Nesbitt, since he was counsel for the Runyans in a variety of cases.

In your testimony, you say that those charges that were filed had—were filed with no apparent regard for merit, but I can count 17 charges that had enough merit for a full on trial before an Administrative Law Judge and of those, at least 9 categories of violations of law by Titus Electric.

Isn't winning a case, and I just want to follow up on that and get some clarity on that, isn't winning a case an indication of merit to some extent, counsel?

Mr. NESBITT. I would say in answer to your question it may be. It may be indication of merit in some cases. I don't think it was in this case. First of all, that case is on appeal to the National Labor Relations Board and I would urge the Members of this Subcommittee to review not only the Administrative Law Judge's opinion which is on appeal at the National Labor Relations Board, but the briefs filed in that case and I can provide those if anybody wants them.

The 17 that you're referring to is whittled down from the original approximately and I don't have an exact count on this, approximately 200 allegations.

Mr. GRIJALVA. So your response is some merit, but not maybe a lot of merit?

I'm trying to get some clarity because any one of us can take one example and use that as a cleavage to talk about other charges and then in the process I don't think we should ignore the obvious and the obvious is that 9, although they're on appeal, had merit enough to be adjudicated in that way against your client.

Mr. NESBITT. The cases that were adjudicated in this case did not have merit. That's why we appealed those to the National Labor Relations Board. Let me just give you one other example of the kind of charge that the Administrative Law Judge sustained, if you'll allow me.

Mr. GRIJALVA. I have one question, one other question, so if you would——

Mr. NESBITT. I'll be very brief. The National Labor Relations Act provides that an employer cannot prohibit union members or non-union members from discussing union membership during break times and during lunch. And there are rules set out—we call that a no solicitation policy, what it can say and what it can't say. My client has a written non-solicitation policy. Nobody at this table contends that it violates the National Labor Relations Board. In a meeting with the guys on the work site, Ty Runyan in a conversation that was secretly recorded by a union member, it used the phrase "don't do that on the job, you can do that when you hit the lot" which on that job was a synonym for on your break and on your lunch which they conducted on the lot. But because he didn't use the specific phrase "working hours" he was found to have committed an unfair labor practice, even though in that case he specifically referred to the written policy that all employees sign off on and even though the union salt also said on the audio tape, "yeah, I understand, the guys know better than that" signifying that he understood that what Mr. Runyan was referring to was the lawful written policy. So you've got these laws being interpreted in just an

incredible way. So that's a violation that maybe it is a violation on some technical level, but we don't believe it is. And that's why we appealed.

Mr. GRIJALVA. And last, if I may, Mr. Chairman, and that's—if I may, Mr. Van Os, let's talk about remedies after we go through this process because I——

Chairman JOHNSON. We'll come back a second time.

Mr. GRIJALVA. OK, I'll come back a second time, because those questions are more lengthy. Thank you.

Chairman JOHNSON. Thank you. Mr. Carter, do you intend to question?

Mr. CARTER. A couple of questions. I've got a couple of questions I'd like to know about. First off, Mr. Nesbitt, under current law, what rights do union organizers have and don't have, just on this—as we're talking about this salting issue?

Mr. NESBITT. Union organizers, even if they're taking a paycheck under current law, they're treated just like any other employee that shows up legitimately wanting a job.

Mr. CARTER. So they're treated just like anybody, have a union card or not, you're treated the same way and you're given certain defined ways that you can organize on the job as you just mentioned, the Runyans had a written contract that they put before the workers and they agreed to as to when they could do their organizing?

Mr. NESBITT. Well, they have the same rights. They can do their organizing at lunch. They can organize on break time. They can stand outside the facility and as people come out of the work place, they can hand them fliers, they can hand them leaflets, as long as they're not on company property. They have the ability to look people's names up in the phone book and call them up on the telephone. I mean this idea that they don't have avenues to communicate with the employees is, I don't think that has any merits.

Mr. CARTER. These 17 out of 200 charges that you were just talking about a minute ago, how many of those have reached NLRB on the appeal?

Mr. NESBITT. All of them are on appeal. All of the violations found against my client are on appeal at the NLRB.

Mr. CARTER. Have any of them been ruled on by the NLRB?

Mr. NESBITT. No sir.

Mr. CARTER. Is there a problem with timeliness or getting rulings out of the NLRB?

Mr. NESBITT. I think so. I don't know that even Mr. Van Os would disagree with that. It's going to take them a long time, we believe, to reach the merits of this.

Mr. CARTER. And how costly, in a general sense, would each one of these 17 appeals mean to an employer that's doing it?

Mr. NESBITT. You heard Ms. Runyan testify that she's incurred half a million dollars in legal expense. I didn't check that before I left my office today, but that's—that would include all of the civil litigation.

Mr. CARTER. Have any been ruled on by the NLRB in any that you all have taken up?

Mr. NESBITT. No.

Mr. CARTER. In fact, you haven't gotten appellate relief from anybody there and you have to finish the administrative hearings and the appellate hearings on administrative law before you can reach a courtroom and go to Court?

Mr. NESBITT. Once the NLRB renders its opinion, it's appealable to the Fifth Circuit Court of Appeals.

Mr. CARTER. Well, so you haven't had any EEO—tell me, how many EEOC victories that you had in a case?

Mr. NESBITT. There were either five or six EEOC charges filed. The first one, the EEOC issued a determination. That's what they do. They issue a determination. They determined that the charge, that the evidence did not establish a violation of the statute. They effectively cleared my client.

The union then withdrew or the Charging Parties, all of whom were being funded by and encouraged by the union, then withdrew all of the other charges. They sent a letter to the Commission asking the Commission to cease its investigation and to immediately issue a right to sue. So the EEOC adjudicated one out of those, found in our favor, and then at the request of the Charging Parties, ceased its investigations of the remaining charges.

Mr. CARTER. If you have a victory in that case, you still pay your own attorney's fees?

Mr. NESBITT. Absolutely. There's no fee shifting in that case. If you're victorious in that case, the Charging Party can also file a civil lawsuit which they did in these cases.

Mr. CARTER. Both sides here seem to think they have a position of right here and what would you think about a system in which the—if the Charging Party makes an accusation as a violation in either one of these areas and prevails, then the losing party pays the attorney's fees?

Mr. NESBITT. I haven't studied this in depth and as the Subcommittee has, but I really think that is the answer. I frankly believe that the legislation which seeks to define a salt as a non-employee under the NLRB, it may go too far in some respects, with respect to salts who legitimately who do show up to try to prove their merit, but it certainly does not go far enough in off-setting the legal expenses that my client incurred, for example, in charges that were ultimately unmeritorious.

I mean even if you amend the law to say a salt is not an employee, they can still file the charges. They can still drag my client through costly legal proceedings to prove himself wrong and there's no accountability at the end of the day to whoever files or funds the charges. I think a fee shifting statute would be really what the doctor ordered.

Mr. CARTER. Well, if the argument is that we have competent Administrative Law Judges making rulings at these hearings, then they should be able to make—and we have a competent appellate process, then somewhere in that process we should be able to see whether or not there's a meritorious claim being made and if there's not a meritorious claim being made, then the attorney's fees should be paid by the nonmeritorious party, at least that would be a proposal that I would throw out.

Thank you for your testimony.

Mr. NESBITT. Thank you.

Chairman JOHNSON. Ms. McGee and Ms. Runyan, in your testimony you talk about poor quality work from some of the union salts. Do you have an estimate of how much money you spent to re-do work that might not have been quality?

Mr. RUNYAN. Chairman Johnson, may I address that question, please?

Chairman JOHNSON. Sure.

Mr. RUNYAN. At the Palmer Events Center, we had several instances. One was an electrician that turned out to be what we feel is a union salt that terminated conductors underneath circuit breakers without stripping them out, thus causing a potential electrical fire. Fortunately, we found those before we energized that system.

In another instance, she took and dead shorted several disconnects and in one instance caused an electrical explosion on another project which she was transferred to. The total economic impact with time that we spent in repairs as well as our research was probably somewhere in the neighborhood of $10,000 to $15,000 in labor on those two projects alone.

And this does not begin to address any of the other impact that we had out on the project, labor impact, due to productivity, etcetera.

Chairman JOHNSON. Did you try to get rid of that employee?

Mr. RUNYAN. I did.

Chairman JOHNSON. Did the union come back at you?

Mr. RUNYAN. Yes, we did have a ULP filed against us, after we determined that she had dead shorted and caused this electrical explosion, we did terminate her and the union did file against us.

Chairman JOHNSON. Mr. Van Os, you shook your head, why?

Mr. VAN OS. I do shake my head. Excuse me.

Chairman JOHNSON. That's OK, just leave it on.

Mr. VAN OS. Am I on now? Thank you. The particular individual that Mr. Runyan has been talking about was not a union salt. She had no affiliation with the union at the time that Titus Electrical hired her. After she was discharged, she came to the union and asked the union to assist her because she felt that she had been discriminatorily discharged on the basis of her gender. The union did assist her. That's what unions, the unions do help people who believe they have work place disputes and there is nothing to apologize for in doing that.

After the union discovered and found out about her incompetence as an employee, the union dropped her case like a hot potato.

Chairman JOHNSON. Thank you, sir. Ms. McGee?

Ms. MCGEE. Chairman Johnson, I don't believe that there was anything written, in fact, I'm certain there's nothing written in my testimony, there was never an issue of poor quality work. In my testimony, the individuals that I hired didn't show up for work.

Chairman JOHNSON. OK, thank you very much.

Dr. Grijalva, do you care to question again?

Mr. GRIJALVA. Yes, I have a two part question for Mr. Van Os.

First, and let me do both parts so that you have an opportunity to respond in the timeframe that we have here. The first part having to do with some of the information we've been hearing in terms of relief that the National Labor Relations Board, that the process

takes such a long time, the employer, my colleagues have referenced a cost for litigation. Talk about the remedy process for the employees involved in that process and what's happened to that.

And the second part of it and I'll leave you with the remedy issue so we can get that perspective as well, and then I'll leave you with—the second question is H.R. 1793, what would, if Congress were to pass this legislation, would employees lose any rights they currently have under the National Labor Relations Act, a two-part question.

Mr. VAN OS. The first part of the question, Congressman Grijalva, for employees who were discriminatorily rejected for hiring by Titus Electrical in the fall of 2001, those employees are still waiting for relief. And I think it's unfortunate that there's been kind of a suggestion here from the witness table that there was something, that there's something Mickey Mouse or rinky dink about the Administrative Law Judge hearing process. The Administrative Law Judge trial is conducted by a very experienced Judge, while not an Article 3 Judge, is a very experienced Administrative Judge, experienced in the National Labor Relations Act, with full opportunities for extensive examination and cross examination of witnesses and who is experienced in evaluating the demeanor and credibility of witnesses.

Now for employees who were found by the ALJ to have been discriminatorily because of their union affiliation rejected for hiring, they have been waiting for two and a half years for relief. And they are—they have lost tremendously through this wait. For employees who were discriminatorily discharged by Titus Electrical, because of their union activities, they have been waiting for nearly 2 years for relief. And the remedies of the National Labor Relations Act are almost—the remedies available under the National Labor Relations Act are not meaningful enough at the current time to provide real deterrence, because even if those employees, if those cases, if those findings are ultimately upheld by the NLRB, by the Full Board in Washington and then by the Courts, the most that those employees can obtain in relief is reinstatement and backpay. There are no real compensatory damages to create any real deterrence and often 3 years down the road, after 3 years of litigation, that employee probably has gone to other things and is probably living in another state by then because especially in a depressed economy, he or she is traveling to look for work.

Does that answer your question?

Mr. GRIJALVA. Yes, the second part about the legislation?

Mr. VAN OS. The second part. If the legislation that has been referenced were to pass, it would destroy one of the very core purposes of the National Labor Relations Act which is that applicants for employment cannot be discriminated against on the basis of their union affiliation or union activity. If a law were to pass that allowed an employer to say that this person is a union—is going to organize for the union and therefore I don't—this person does not have the protection of the National Labor Relations Act, that would probably increase the cost burden on the whole system because it would spawn far more litigation than exists now because there would be endless litigation over that issue. And there's no need to do that. There's no need to carve out an exception and say

that certain people are not entitled to the protections of the National Labor Relations Act.

Chairman JOHNSON. OK, we have several ideas here. We're trying to come to a solution, if we can and you know, we can prevent salting totally, which I'm not sure we want to do. We can try to limit the cost by having whoever fails in the process pay the legal charges or maybe we could speed up the process somehow.

Can you tell me how you think we could do that? Any of you? Or how we should address any of those three options? Anybody, feel free.

Mr. NESBITT. I believe that the way to end what I have observed as the problem in the Titus Electrical case is to require that if a Charging Party or a union makes a charge that it later either withdraws which is kind of what happens, the NLRB investigates and if the NLRB isn't going to complaint on it, the Charging Party then withdraws the charge after the employer has incurred a lot of expense to file a response, the Charging Party that files a charge that either does not go to complaint or that goes to complaint and is deemed to be unmeritorious ought to have to pay the legal fees of the responding party.

Chairman JOHNSON. Yes, but what I'm hearing is is that the NLRB and the administrative law system is not very rapid. Do you think we need to try to speed that system up?

Mr. NESBITT. I do think we should.

Chairman JOHNSON. It doesn't take you that long to get the facts of the case, does it?

Mr. NESBITT. No, in fact, the Administrative Law Judge, I think, issued his opinion in this case pretty quickly and now it's really been at the National Labor Relations Board that we have experienced a delay. I don't know the administrative issues that they have up there. I'm not here to criticize the National Labor Relations Board.

Chairman JOHNSON. Do you all have experience with NLRB? Do you know if they have trouble getting a quorum for hearings, any of you?

Mr. RUNYAN. Chairman Johnson, I'd like to respond to your initial question.

Chairman JOHNSON. Sure.

Mr. RUNYAN. And I believe that it would clear the docket substantially if we brought financial accountability to the process. It would eliminate. We had some 200 ULPs initially filed against us and let me clarify this. Only three to 4 percent of those were successfully prosecuted. Three to 4 percent. We're talking 3 to 4 out of 100, close to 200 filed. If we clear that docket by eliminating all of this frivolous litigation, then we will expedite the process tremendously simply by making financial accountability an element of the process.

I'm not saying for 1 second that a salt should be denied legal due process. I'm simply saying that if it is determined to be frivolous or if it is withdrawn, they need to pick up the tab.

Chairman JOHNSON. Yes sir, go ahead.

Mr. VAN OS. Thank you, Mr. Chairman. Two points. First, to mandate fee shifting would burden the constitutional right to petition for redress of grievances, because often and I know that Con-

gressman Carter knows this from having been a Trial Judge, if every party, every litigant to any kind, in any kind of legal forum knew in advance whether they were going to win or lose, then there would be no need for dispute resolution forums. Often a litigant or a Charging Party believes that he has or she has a winning case and then finds out later that he doesn't. So I think there is a difficulty in suggesting an undercutting of the right to petition for redress of grievances to the government which a fee shifting requirement would do.

Secondly, a second point is that, of course, I'm sure that Mr. Nesbitt and Mr. Runyan realize that if you—sometimes you should be careful about what you ask for, because you may get it. Certainly, a fee shifting mechanism would go both ways and the many, many, many resources that the union has expended on these unfair labor practice charges that I'm confident the union is going to end up winning would, of course, with a fee shifting statute the employer would have to do the same thing and reimburse the union and the government for their legal fees. So I think that is kind of a Pandora's Box for many reasons.

Now one thing I will agree with my brother of the bar, Mr. Nesbitt, about and I don't know if you call this a collective bargaining contract or not, or a labor management contract, I would certainly agree that the NLRB process is too slow and one very simple reason for it may be budgetary. I think it probably needs more staff. It probably needs more Administrative Law Judges. It probably needs more resources because it is a very important statute that the Board is charged with enforcing and administering a very important statute. I don't have any magic wand for a solution to suggest except a possibility that it may need more resources. I do agree certainly that the process is too slow and that works to the disadvantage and the detriment of both employers and workers.

Chairman JOHNSON. You're right and we'll look into that.

Mr. Carter, do you care to comment?

Mr. CARTER. Thank you, Mr. Chairman. Mr. Van Os, I agree with you. I don't ever want to deny anybody's right to seek recourse from the justice system, whether it be the administrative justice system or whether it be the justice system of the Courts.

However, we see and you know this and so does every lawyer that practices before the bar and if they deny it, then they're just not shooting straight with folks, that both sides of the docket, when they have the advantage, the economic or the positional advantage, it costs the other guy money, will force an issue, if it costs him enough money to force him, even though he may be right, to force him into a position where he has no other choice. And when I hear 17 out of 200 cases that have been credible, it tends to look like there's been a shotgun approach taken to this particular project, let's fire as many shots as we can fire and one or two of those pellets is bound to hit something.

I am offended by that in the Courts, as are most Trial Judges that I know and I'm offended by it in the administrative law procedure. I think it's the wrong thing to do.

Answer me something, I understand that the NLRB also is not cooperative in bringing up these cases, multiple cases from the

same parties at the same time. In other words, you're making lots of trips to the NLRB. Is that your experience? For instance, if you have 17 cases pending against these folks, you make 17 trips before the NLRB or will they say we're going to hear 9 of your cases today and 8 of your cases tomorrow?

Mr. VAN OS. If part of what Mr. Nesbitt is talking about is failure of the Board to consolidate more when there are multiple cases, I would certainly agree.

Mr. CARTER. One of the complaints I've heard is that you're making multiple trips on basically the same job.

Mr. VAN OS. Well, for example, one of the charges that the IBEW filed in this case was a charge claiming that several applicants for employment with Titus Electrical had been rejected discriminatorily. I don't know whether or not the Board required Titus Electrical and its attorneys to piecemeal the responses to that because it was all in one charge because I'm not, as the union's advocate, I wasn't privy to the other side of the investigation. At the investigative stage it's done ex parte with both sides.

If the Board required Titus Electrical and its attorneys to piecemeal that and make 17 different trips as you've alluded to, I would agree that that's inappropriate. It certainly, for example, the economic——

Mr. CARTER. Let me interrupt you just a minute. I understand where you're coming from. On 200 cases, each one of those cases, from your standpoint, what's the cost of the union to try one of those 200? You had 183 that didn't find—didn't reach that level anyway, so——

Mr. VAN OS. First of all, with all due respect to Mr. Nesbitt who is an honorable lawyer and with all due respect to you, Congressman, I don't necessarily agree with that figure of 200.

Mr. CARTER. Well, then let's make it a hundred. I'll cut it in half. So then if you've won 17 out of 100, you've got 83 cases. Do you have any idea what it's costing the union individually for each one of those cases, those 83 cases that are not going up to the NLRB?

Mr. VAN OS. In some of those cases, the union retained legal counsel which, if they did was my law firm and in some of the cases the union did not retain legal counsel.

Mr. CARTER. I'll address Mr. Nesbitt. What does it cost your client for each one of those cases, roughly?

Mr. NESBITT. For each one that goes to complaint and we put on a case about—I'm just ballparking this, Mr. Carter, but $10,000.

Mr. CARTER. So those 83, that would be $83,000?

Mr. NESBITT. That's probably right. I mean a lot of this——

Mr. CARTER. So it's $130,000. Ms. Runyan, do you have an answer?

Mr. NESBITT. No, the $83,000, it's not $10,000 per allegation, just at the investigative level. It's hard for me to answer your question because you participate in an investigation and that costs money no matter what. That's something that if Mr. Murphy, the organizer sends a charge by fax to the NLRB, that costs him nothing, it costs him the price of a fax to San Antonio. It costs my client, it may be $500, if it's just blatantly ridiculous. It may cost him $3,000 just to respond at the investigative level. And then you go

to a full blown trial if they go to complaint and then it's very hard for me to answer your question because then you've got 15 issues.

Mr. CARTER. Just like any other trial.

Mr. NESBITT. That's right.

Mr. VAN OS. I would have to say, Mr. Carter——

Mr. CARTER. I think Ms. Runyan wishes to respond.

Mr. VAN OS. I'm sorry, excuse me.

Ms. RUNYAN. Let me clarify something for Mr. Van Os and for you all. When Mr. Murphy faxes a deal to San Antonio and there are 20 different names of people that they're claiming we fail to hire, we have to respond why we didn't hire that person, who we hired, what the qualifications were and all of this has to go through our attorney and it's not just once we have to respond. We have to respond on each and every individual listed on that charge. And the time and money involved in that I don't think we've done one of them that's less than $2,000, except for the one where the following month it was the exact same names, minus one and we could pretty much just get Tom to kick out the same information, but we still had to pay for it to be responded to. So each and every individual name that's on there has to be addressed. You can't just say well, they're wrong and let it go at that. It's automatically we are guilty until we prove ourselves innocent.

Mr. CARTER. Thank you. I think my time has expired.

Chairman JOHNSON. I want to thank you all for being with us today. We appreciate your testimony and your valuable time. I've got a letter from the Hispanic Chamber of Commerce that I'd like to enter into the record which thanks us for doing this hearing and without objection it will be entered.

Do you have something you want to enter?

Mr. RUNYAN. Chairman, I wanted to extend thanks to Congressman Carter and extend thanks from Mr. Jerry Gonzales, Chairman of the United States Hispanic Chamber of Commerce, an organization that represents $200 billion in business annually in the United States and Puerto Rico and he thanks you for your gracious hosting of our time there in Washington with you. We thank you for coming down here.

Chairman Johnson, of course, the letter is addressed to yourself and we thank you.

Congressman Grijalva, we appreciate your contribution as well.

Chairman JOHNSON. You got three of the core of the Congress right here.

(Laughter.)

And we thank you all for your attention, your testimony and if there's no further business, the Subcommittee stands adjourned.

[Whereupon, at 3:23 p.m., the Subcommittee hearing was concluded.]

[Additional Material submitted for the record follows:]

Letter from J.R. Gonzales, Acting President and CEO, United States Hispanic Chamber of Commerce

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May 10, 2004

Dear Congressman Sam Johnson,

I am delighted to hear that you are chairing a field hearing on examining union salting. I feel that these practices are highly unethical and should not be allowed to continue. The practice of salting has adversely affected the businesses of many of our chamber members. Competing and fulfilling contracts that have been put out for competitive bid, as you know require companies to keep their profit margins low in order to stay competitive. Practices such as salting increases production and labor costs and is designed to cause the contractor to lose money on the job. Salting is a concern of the United States Hispanic Chamber of Commerce and we are eager to see the report on your field hearings.

Unfortunately, my schedule required me to remain in Washington, DC, otherwise, I would have gladly been present at the field hearings.

The United States Hispanic Chamber of Commerce represents the interests of more than 1.2 million Hispanic-owned businesses in the United States and Puerto Rico, which earn more than $200 billion annually. It serves as the umbrella organization for more than 150 local Hispanic chambers nationwide, and it actively promotes the economic growth and development of Hispanic entrepreneurs.

Thanking you in advance on your consideration on this issue and thank you for your leadership in chairing this field hearing. If you have any questions, please do not hesitate to contact me at 202/842-1212.

Sincerely,

J.R. Gonzales
Acting President and CEO

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Submitted and Placed in Permanent Archive File, Titus Electrical Contracting, Inc. and United Brotherhood of Electrical Workers Local 520, (Case Nos. 16-CA-21010-2 et al.), 2003 WL 159078 (N.L.R.B. Division of Judges) (January 17, 2003)