ISSUE BRIEF

Salting

The Truth in Employment Act effectively would eliminate the practice of salting, by which union organizers obtain jobs with nonunion employers for the purpose of helping their co-workers form a union. Specifically, this legislation would allow employers to fire or refuse to hire workers whose "primary purpose" is union organizing. Congress must oppose the Truth in Employment Act because salting is a legitimate and necessary means for workers to form unions and because allowing employers to discriminate against workers for their organizing activity is inconsistent with the right to organize.

Section 8(a)(3) of the National Labor Relations Act (NLRA) prohibits employers from firing, refusing to hire or otherwise discriminating against workers for their union activity. In *NLRB v. Town and Country,* 516 U.S. 85 (1995), the U.S. Supreme Court held unanimously that workers who take a job with the intention of organizing other workers—even if they are being paid by a union—are entitled to Section 8(a)(3) protection against discrimination. The Truth in Employment Act effectively would overturn *Town and Country* by allowing employers to discriminate against workers whose "primary purpose" in seeking employment is to organize other workers for a union.

The Truth in Employment Act is inconsistent with the right to organize. In *Town and Country*, the Supreme Court stated that protecting union organizers against discrimination "is consistent with several of the [NLRA]'s purposes, such as protecting the right of employees to organize for mutual aid without employer interference…and encouraging and protecting the collective bargaining process." The Truth in Employment Act, which would allow employers to fire or refuse to hire workers solely because of their intention to organize other workers for a union, is plainly inconsistent with the right to organize.

The right to organize is already seriously compromised. U.S. labor law and practice already fall short of requirements under international law to guarantee workers' freedom of association, including their right to organize (see "National Labor Relations Act" and "Employers Block Freedom to Form Unions"). The Truth in Employment Act would further compromise workers' rights.

The Truth in Employment Act would promote blacklisting. This legislation would give employers a legal shield to bar job applicants whom the employer fears may want to organize other workers. As a practical matter, the Truth in Employment Act would invite blacklisting of union members and workers who previously worked for organized employers.

The Truth in Employment Act would prevent communication with workers. Under current law, salting is often the only way for unrepresented workers to receive information about union representation. Unlike employers, unions have limited ability to obtain the names and addresses of employees. Nonemployee union organizers typically cannot obtain access to a worksite to communicate with workers. By contrast, employers can subject workers to intimidating anti-union speeches during work hours in captiveaudience or one-on-one meetings.

Salting is especially necessary in the construction industry. Salting is especially necessary in transient industries such as construction where workers constantly move from one job and one contractor to another. The most effective way for union organizers to communicate with workers in the construction industry is by hiring onto the projects where they work.

Salts are instructed to be model employees. The objective of a salting campaign is for union members to serve as examples to their unrepresented co-workers. Salts therefore are instructed to be model employees, work hard, prove their skills and treat their employers and co-workers with respect.

Current law offers employers adequate protections. As the Supreme Court noted in *Town and Country*, current law offers several alternative remedies to employers concerned about the activities of their employee salts. Under current law, employers are entitled to hire only properly qualified workers and to fire workers who do not perform adequately. The NLRA allows employers to prohibit union-related activity in working areas and during working hours. The NLRA does not protect any worker who improperly disrupts the workplace. Nor does the NLRA protect any employee who fails to carry out his or her regular duties in favor of organizing activities.

Employers bear responsibility for violation of workers' rights. Anti-union employers often argue that salting campaigns result in the filing of too many charges with the National Labor Relations Board (NLRB). The number of NLRB charges may indeed rise during an organizing campaign, but typically this is because antiunion employers commit serious violations of labor law to defeat the campaign.

Salting helps employers, too. Anti-union employers oppose salting because it is an effective organizing tool that results in higher pay and better benefits for workers. Too often these employers fail to recognize the benefits of union representation to their business. Union skill-training programs—universally recognized as among the best in the world—help union employers increase productivity and profitability. Union representation also ensures a more stable workforce.