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MINA' BENTE NUEBI NA LIHESLATURAN GUÅHAN
2007 (FIRST) Regular Session

Bill No. *44 (EC)*

Introduced by:

R.J. Respicio
T.R. Muña Barnes
J.P. Guthertz



AN ACT TO REPEAL AND RE-ENACT CHAPTER 4 OF DIVISION 1, AND TO REPEAL AND RE-ENACT §5201(g) OF CHAPTER 5, DIVISION 1, BOTH OF TITLE 22 OF THE GUAM CODE ANNOTATED, RELATIVE TO ENSURING THAT ALL EMPLOYEES ARE TREATED FAIRLY, HAVE CHOICE IN THE WORKPLACE, AND DO NOT PAY FOR BENEFITS THEY DO NOT RECEIVE.

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Chapter 4 of Division 1 of Title 22 Guam Code**

3 **Annotated is Repealed and Re-enacted to read:**

4 **"CHAPTER 4**

5 **FAIR SHARE**

6 § 4101. Legislative Findings.

7 § 4102. Policy.

8 § 4103. Fair Share Fee Definition.

9 § 4104. Fair Share Fee for Work Permitted.

10 § 4105. Unlawful Act.

11 § 4106. Unlawful Agreements.

12 § 4107. Deductions from Wages.

13 § 4108. Collective Bargaining Agreement Violating Fair Share
14 Provisions.

15 § 4109. Penalties.

16 § 4110. Applicability of Fair Share Provisions.

17 § 4111. Guam Employment Relations Act.

1 §4112. Severability.

2 **§4101. Legislative Findings.** *I Liheslaturan Guåhan* finds that the
3 federal government, under the National Labor Relations Act (NLRA),
4 ensures that workers who are union members, as well as workers
5 who are not members of a union, are protected equally and fairly in
6 their workplace. A right for a worker to become a union member, as
7 well as a right for a worker to decline to join a union are inherent
8 rights of individuals that are guaranteed by federal law.

9 The Supreme Court of the United States has also made several
10 landmark rulings to protect workers:

11 (a) In 1985 in *Pattern Makers v. NLRB*, the Supreme Court ruled
12 that union members have the right to resign their union
13 membership at any time without affecting their employment;
14 and

15 (b) In 1988 in *Communications Workers v. Beck*, The Supreme
16 Court ruled that an employee cannot be required to join a
17 union, and cannot be required to pay union dues.

18 In protecting union members and non-union members alike,
19 Federal law also guarantees the following:

20 (a) employees who are not union members are still fully
21 covered by any collective bargaining agreement negotiated
22 between the employer and the union;

23 (b) any benefits provided to the employee by the employer
24 based on the collective bargaining agreement, including wages,
25 seniority, vacations, pensions and health insurance, are not
26 affected by non-membership; and

27 (c) under *Communications Workers v. Beck*, Federal law also
28 guarantees that, based on a collective bargaining agreement,

1 non-union members can only be required to pay a fee for
2 union-negotiated benefits that equals their fair share of what
3 unions can prove are their costs of collective bargaining,
4 contract administration, and grievance adjustment with
5 employers.

6 **§4102. Policy.** It is hereby declared to be the public policy of
7 Guam:

8 (a) That all employees are treated fairly and have choice in the
9 workplace regarding union membership as guaranteed by
10 federal law.

11 (b) That employees shall not pay for benefits that they do not
12 receive.

13 (c) That employees shall pay a fee for union-negotiated benefits
14 known as "Fair Share," as defined in §4103 of this chapter.

15 **§4103. Fair Share Fee Definition.** A "Fair Share Fee" is a fee
16 paid by an employee who is *not* a member of a union at his
17 workplace, such fee having been determined in the collective
18 bargaining agreement covering the employee to be the fair share of
19 an amount that the labor union can prove are its costs of collective
20 bargaining, contract administration, and grievance adjustment with
21 the employer.

22 **§4104. Fair Share Fee For Work Permitted.** A labor union,
23 organizer, officer, member, agent, or representative of a labor union
24 may collect, receive or demand, directly or indirectly, a "fair share"
25 fee, as defined in §4103 of this chapter, from a person who is *not* a
26 member of the union *provided* the fee has been established by the
27 union and management in the collective bargaining agreement.

28 **§4105. Unlawful Act.** It shall be unlawful for any employer, as

1 a condition of employment, or of continuance of employment, to
2 allow any employee to receive a "fair share" benefit as defined in
3 §4103 of this chapter, for which the employee does not pay their "fair
4 share" fee.

5 **§4106. Unlawful Agreements.** Any agreement or combination
6 between any employer and any labor organization whereby persons
7 *not* members of such labor organization shall receive benefits
8 negotiated by the labor organization for which the employee is not
9 required to pay their "fair share" fee as defined in §4103 of this
10 chapter, is hereby declared to be against public policy, unlawful and
11 an illegal combination or conspiracy.

12 **§4107. Deductions From Wages.** Nothing in this Chapter shall
13 preclude any employer from deducting from the wages of its
14 employees and paying over to any labor union, or its authorized
15 representative, membership dues in a labor organization, or "fair
16 share" fees, as defined in §4103 of this chapter for benefits received
17 by non-members; *provided*, that the employer has received from each
18 employee whose account such deductions are made, a written
19 assignment from the employee.

20 **§4108. Collective Bargaining Agreement Violating Fair Share**
21 **Provisions.** It shall be unlawful for any employer or labor
22 organization to enter into or seek to effect any agreement, contract or
23 arrangement declared to be unlawful by this Act.

24 **§4109. Penalties.** Any employer, labor organization or other
25 person whomsoever who shall violate any provision of this Chapter
26 shall be guilty of a misdemeanor; and upon conviction thereof in any
27 Court of competent jurisdiction, shall be punished by imprisonment
28 for *not less than* ten (10), nor more than thirty (30) days, or by a fine of

1 *not less than* One Hundred Dollars (\$100.00) nor more than Two
2 Thousand Dollars (\$2,000.00), or by both, at the discretion of the
3 Court.

4 **§4110. Applicability Of Fair Share Provisions.** The provisions
5 of this Act shall *not* apply to any contract, otherwise lawful, in force
6 and effect on the effective date of this Act, but they shall apply to all
7 contracts thereafter concluded and to any renewal or extension of
8 existing contracts.

9 **§4111. Guam Employment Relations Act.** The provisions of
10 this Act shall *not* be construed to conflict with provisions of the
11 Guam Employment Relations Act, Chapter 5 of Division 1 of Title 22
12 of the Guam Code Annotated.

13 **§4112. Severability.** *If any provision of this Act or the*
14 *application of any such provision to any person or circumstance*
15 *should be held invalid by a Court of competent jurisdiction, the*
16 *remainder of this Act or the application of its provisions to persons or*
17 *circumstances other than those to which it is held invalid shall not be*
18 *affected thereby."*

19 **Section 2. Section 5201(g) of Article 2, Chapter 5, Division 1 of**
20 **Title 22 of the Guam Code Annotated is repealed and reenacted to read:**

21 "(g) for any employer, labor organization or employment
22 agency to require any person to become or remain a member of any
23 labor union or labor organization as a condition of employment or
24 continuation of employment, or to require a person to abstain or
25 refrain from membership in any labor union or labor organization as
26 a condition of employment or continuation of employment."