

111TH CONGRESS
1ST SESSION

H. R. 1355

To amend the National Labor Relations Act to require employers to provide labor organizations with equal access to employees prior to an election regarding representation, to prevent delays in initial collective bargaining, and to strengthen enforcement against intimidation of employees by employers.

IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 2009

Mr. SESTAK introduced the following bill; which was referred to the
Committee on Education and Labor

A BILL

To amend the National Labor Relations Act to require employers to provide labor organizations with equal access to employees prior to an election regarding representation, to prevent delays in initial collective bargaining, and to strengthen enforcement against intimidation of employees by employers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Labor Rela-
5 tions Modernization Act”.

1 **SEC. 2. PREVENTING EXCESSIVE DELAYS IN INITIAL COL-**
2 **LECTIVE BARGAINING AGREEMENTS.**

3 Section 8 of the National Labor Relations Act (29
4 U.S.C. 158) is amended by adding at the end the fol-
5 lowing:

6 “(h) Whenever collective bargaining is for the pur-
7 pose of establishing an initial agreement following certifi-
8 cation or recognition, the provisions of subsection (d) shall
9 be modified as follows with respect to any employer having
10 20 or more employees:

11 “(1) Not later than 10 days after receiving a
12 written request for collective bargaining from an in-
13 dividual or labor organization that has been newly
14 organized or certified as a representative as defined
15 in section 9(a), or within such further period as the
16 parties agree upon, the parties shall meet and com-
17 mence to bargain collectively and shall make every
18 reasonable effort to conclude and sign a collective
19 bargaining agreement.

20 “(2) If after the expiration of the 120-day pe-
21 riod beginning on the date on which bargaining is
22 commenced, or such other period as the parties may
23 agree upon, the parties have failed to reach an
24 agreement, either party may notify the Federal Me-
25 diation and Conciliation Service of the existence of
26 a dispute and request the appointment of an arbitra-

1 tion panel. Whenever such a request is received, the
2 Service shall promptly appoint an arbitration panel
3 which will use its best efforts, by mediation and con-
4 ciliation, to bring the parties to agreement.

5 “(3) If after the expiration of the 120-day pe-
6 riod beginning on the date on which the request for
7 mediation is made under paragraph (2), or such
8 other period as the parties may agree upon, the arbi-
9 tration panel appointed under paragraph (2) is not
10 able to bring the parties to agreement by mediation
11 and conciliation, the such panel shall then begin to
12 arbitrate the dispute in accordance with such regula-
13 tions as may be prescribed by the Service. Such
14 panel shall render a decision settling the dispute not
15 later than 30 days after commencing arbitration and
16 such decision shall be binding upon the parties for
17 a period of 18 months, unless amended during such
18 period by written consent of the parties.”.

19 **SEC. 3. STRENGTHENING ENFORCEMENT AGAINST INTIMI-**
20 **DATION OF WORKERS.**

21 (a) INJUNCTIONS AGAINST UNFAIR LABOR PRAC-
22 TICES DURING ORGANIZING DRIVES.—

23 (1) IN GENERAL.—Section 10(l) of the National
24 Labor Relations Act (29 U.S.C. 160(l)) is amend-
25 ed—

1 (A) in the second sentence, by striking “If,
2 after such” and inserting the following:

3 “(2) If, after such”; and

4 (B) by striking the first sentence and in-
5 serting the following:

6 “(1) Whenever it is charged—

7 “(A) that any employer—

8 “(i) discharged or otherwise discriminated
9 against an employee in violation of subsection
10 (a)(3) of section 8;

11 “(ii) threatened to discharge or to other-
12 wise discriminate against an employee in viola-
13 tion of subsection (a)(1) of section 8; or

14 “(iii) engaged in any other unfair labor
15 practice within the meaning of subsection (a)(1)
16 that significantly interferes with, restrains, or
17 coerces employees in the exercise of the rights
18 guaranteed in section 7;

19 while employees of that employer were seeking rep-
20 resentation by a labor organization or during the pe-
21 riod after a labor organization was recognized as a
22 representative defined in section 9(a) until the first
23 collective bargaining contract is entered into between
24 the employer and the representative; or

1 “(B) that any person has engaged in an unfair
2 labor practice within the meaning of subparagraph
3 (A), (B) or (C) of section 8(b)(4), section 8(e), or
4 section 8(b)(7);
5 the preliminary investigation of such charge shall be made
6 forthwith and given priority over all other cases except
7 cases of like character in the office where it is filed or
8 to which it is referred.”.

9 (2) CONFORMING AMENDMENT.—Section 10(m)
10 of the National Labor Relations Act (29 U.S.C.
11 160(m)) is amended by inserting “under cir-
12 cumstances not subject to section 10(l)” after “sec-
13 tion 8”.

14 (b) REMEDIES FOR VIOLATIONS.—

15 (1) BACKPAY.—Section 10(c) of the National
16 Labor Relations Act (29 U.S.C. 160(c)) is amended
17 by striking “*And provided further,*” and inserting
18 “*Provided further,* That if the Board finds that an
19 employer has discriminated against an employee in
20 violation of subsection (a)(3) of section 8 while em-
21 ployees of the employer were seeking representation
22 by a labor organization, or during the period after
23 a labor organization was recognized as a representa-
24 tive defined in subsection (a) of section 9 until the
25 first collective bargaining contract was entered into

1 between the employer and the representative, the
2 Board in such order shall award the employee back
3 pay and, in addition, 2 times that amount as liq-
4 uidated damages: *Provided further*,”.

5 (2) CIVIL PENALTIES.—Section 12 of the Na-
6 tional Labor Relations Act (29 U.S.C. 162) is
7 amended—

8 (A) by striking “Any” and inserting “(a)
9 Any”; and

10 (B) by adding at the end the following:

11 “(b) Any employer who willfully or repeatedly com-
12 mits any unfair labor practice within the meaning of sub-
13 sections (a)(1) or (a)(3) of section 8 while employees of
14 the employer are seeking representation by a labor organi-
15 zation or during the period after a labor organization has
16 been recognized as a representative defined in subsection
17 (a) of section 9 until the first collective bargaining con-
18 tract is entered into between the employer and the rep-
19 resentative shall, in addition to any make-whole remedy
20 ordered, be subject to a civil penalty of not to exceed
21 \$20,000 for each violation. In determining the amount of
22 any penalty under this section, the Board shall consider
23 the gravity of the unfair labor practice and the impact
24 of the unfair labor practice on the charging party, on other

1 persons seeking to exercise rights guaranteed by this Act,
2 or on the public interest.”.

3 **SEC. 4. EQUAL ACCESS TO LABOR ORGANIZATIONS PRIOR**
4 **TO ELECTIONS.**

5 (a) EQUAL ACCESS.—Section 9 of the National
6 Labor Relations Act (29 U.S.C. 159) is amended by add-
7 ing at the end the following new subsection:

8 “(f)(1) Not later than 30 days after the Board shall
9 have directed an election, the employer shall notify the
10 representative designated by the employees under sub-
11 section (a) of any activities the employer intends to engage
12 in to campaign in opposition to recognition of the rep-
13 resentative, including any meetings with individual em-
14 ployees or groups of employees, any announcements to em-
15 ployees, any signs to be displayed at the place of employ-
16 ment, and any literature to be distributed to employees,
17 and shall provide the representative with equal access to
18 the place of employment to campaign in favor of recogni-
19 tion of the representative, including the opportunity to
20 hold an equal number of meetings with individual employ-
21 ees or groups of employees, and an opportunity to make
22 announcements, display signs, and distribute literature,
23 under the same terms and conditions that the employer
24 engages in such activities.

1 “(2) As used in this subsection, the term ‘campaign’
2 means any activity undertaken to persuade employees to
3 vote for or against representation in an election directed
4 by the Board, but shall not include any interference with,
5 restraint or coercion of, or discrimination against employ-
6 ees in violation of paragraphs (1) through (3) of section
7 8(a).”.

8 (b) UNFAIR LABOR PRACTICE.—Section 8(a) of the
9 National Labor Relations Act (29 U.S.C. 158(a)) is
10 amended—

11 (1) in paragraph (5), by striking the period and
12 inserting “; or”; and

13 (2) by adding at the end the following:

14 “(6) to fail to provide the notification and equal
15 access to a representative as required by section
16 9(f).”.

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