

112TH CONGRESS
1ST SESSION

H. R. 3094

AN ACT

To amend the National Labor Relations Act with respect to representation hearings and the timing of elections of labor organizations under that Act.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Workforce Democracy
3 and Fairness Act”.

4 **SEC. 2. TIMING OF ELECTIONS.**

5 Section 9 of the National Labor Relations Act (29
6 U.S.C. 159) is amended—

7 (1) in subsection (b), by striking “The Board
8 shall decide” and all that follows through “*Provided,*
9 That the” and inserting: “In each case, prior to an
10 election, the Board shall determine, in order to as-
11 sure to employees the fullest freedom in exercising
12 the rights guaranteed by this Act, the unit appro-
13 priate for the purposes of collective bargaining. Un-
14 less otherwise stated in this Act, and excluding bar-
15 gaining unit determinations promulgated through
16 rulemaking effective before August 26, 2011, the
17 unit appropriate for purposes of collective bargaining
18 shall consist of employees that share a sufficient
19 community of interest. In determining whether em-
20 ployees share a sufficient community of interest, the
21 Board shall consider (1) similarity of wages, bene-
22 fits, and working conditions; (2) similarity of skills
23 and training; (3) centrality of management and com-
24 mon supervision; (4) extent of interchange and fre-
25 quency of contact between employees; (5) integration
26 of the work flow and interrelationship of the produc-

1 tion process; (6) the consistency of the unit with the
2 employer’s organizational structure; (7) similarity of
3 job functions and work; and (8) the bargaining his-
4 tory in the particular unit and the industry. To
5 avoid the proliferation or fragmentation of bar-
6 gaining units, employees shall not be excluded from
7 the unit unless the interests of the group sought are
8 sufficiently distinct from those of other employees to
9 warrant the establishment of a separate unit.
10 Whether additional employees should be included in
11 a proposed unit shall be based on whether such addi-
12 tional employees and proposed unit members share
13 a sufficient community of interest, with the sole ex-
14 ception of proposed accretions to an existing unit, in
15 which the inclusion of additional employees shall be
16 based on whether such additional employees and ex-
17 isting unit members share an overwhelming commu-
18 nity of interest and the additional employees have
19 little or no separate identity. The”;

20 (2) in subsection (c)(1), in the matter following
21 subparagraph (B)—

22 (A) by inserting “, but in no circumstances
23 less than 14 calendar days after the filing of
24 the petition” after “hearing upon due notice”;

1 (B) by inserting before the last sentence
2 the following: “An appropriate hearing shall be
3 one that is non-adversarial with the hearing of-
4 ficer charged, in collaboration with the parties,
5 with the responsibility of identifying any rel-
6 evant and material pre-election issues and
7 thereafter making a full record thereon. Rel-
8 evant and material pre-election issues shall in-
9 clude, in addition to unit appropriateness, the
10 Board’s jurisdiction and any other issue the
11 resolution of which may make an election un-
12 necessary or which may reasonably be expected
13 to impact the election’s outcome. Parties may
14 raise independently any relevant and material
15 pre-election issue or assert any relevant and
16 material position at any time prior to the close
17 of the hearing.”;

18 (C) in the last sentence—

19 (i) by inserting “or consideration of a
20 request for review of a regional director’s
21 decision and direction of election,” after
22 “record of such hearing”; and

23 (ii) by inserting “to be conducted as
24 soon as practicable but not less than 35
25 calendar days following the filing of an

1 election petition” after “election by secret
2 ballot”; and

3 (D) by adding at the end the following:
4 “Not earlier than 7 days after final determina-
5 tion by the Board of the appropriate bargaining
6 unit, the Board shall acquire from the employer
7 a list of all eligible voters to be made available
8 to all parties, which shall include the employee
9 names, and one additional form of personal em-
10 ployee contact information (such as telephone
11 number, email address or mailing address) cho-
12 sen by the employee in writing.”.

Passed the House of Representatives November 30,
2011.

Attest:

Clerk.

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