H. R. 3094

[Report No. 112–276]

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

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 5, 2011

Mr. KLINE (for himself, Mr. McKEON, Mr. WILSON of South Carolina, Ms. FOXX, Mr. HUNTER, Mr. ROE of Tennessee, Mr. THOMPSON of Pennsylvania, Mr. WALBERG, Mr. DESJARLAIS, Mr. ROKITA, Mr. BUOHEN, Mr. GOWDY, Mrs. ROBY, Mr. ROSS of Florida, and Mr. KELLY) introduced the following bill; which was referred to the Committee on Education and the Workforce

NOVEMBER 10, 2011

Additional sponsors: Mr. PLATTS, Mrs. BIGGERT, Mrs. NOEM, Mr. PETRI, Mr. STIVERS, Mr. NUNNELEE, Mr. SCHOCK, Mr. HECK, Mr. AUSTRIA, Mr. PALAZZO, Mr. GINGREY of Georgia, Mr. SCHWEIKERT, Mr. CANSECO, Mr. RIBBLE, Mr. WALSH of Illinois, Mrs. MYRICK, Mrs. SCHMIDT, Mr. DUNCAN of South Carolina, Mr. HARRIS, Mr. PEARCE, Mr. BARTLETT, Mr. CALVERT, and Mr. BACHUS

NOVEMBER 10, 2011

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]
A BILL

To amend the National Labor Relations Act with respect to representation hearings and the timing of elections of labor organizations under that Act.
Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

SEC. 2. TIMING OF ELECTIONS.

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

(1) in subsection (b) by striking the first sen-
tence and inserting the following: “In each case,
prior to an election, the Board shall determine, in
order to assure to employees the fullest freedom in
exercising the rights guaranteed by this Act, the
unit appropriate for the purposes of collective bar-
gaining. Unless otherwise stated in this Act, the unit
appropriate for purposes of collective bargaining
shall consist of employees that share a sufficient
community of interest. In determining whether em-
ployees share a sufficient community of interest, the
Board shall consider (1) similarity of wages, bene-
fits, and working conditions; (2) similarity of skills
and training; (3) centrality of management and com-
mon supervision; (4) extent of interchange and fre-
cuency of contact between employees; (5) integration
of the work flow and interrelationship of the produc-
tion process; (6) the consistency of the unit with the employer’s organizational structure; (7) similarity of job functions and work; and (8) the bargaining history in the particular unit and the industry. To avoid the proliferation or fragmentation of bargaining units, employees shall not be excluded from the unit unless the interests of the group sought are sufficiently distinct from those of other employees to warrant the establishment of a separate unit.

Whether additional employees should be included in a proposed unit shall be based on whether such additional employees and proposed unit members share a sufficient community of interest, with the sole exception of proposed accretions to an existing unit, in which the inclusion of additional employees shall be based on whether such additional employees and existing unit members share an overwhelming community of interest and the additional employees have little or no separate identity.”; and

(2) in subsection (e)(1) in the matter following subparagraph (B)—

(A) by inserting “, but in no circumstances less than 14 calendar days after the filing of the petition” after “hearing upon due notice”;
(B) by inserting before the last sentence the following: "An appropriate hearing shall be one that is non-adversarial with the hearing officer charged, in collaboration with the parties, with the responsibility of identifying any pre-election issues and thereafter making a full record thereon. Pre-election issues shall include, in addition to unit appropriateness, the Board’s jurisdiction and any other issue the resolution of which may make an election unnecessary or which may reasonably be expected to impact the election’s outcome. Parties may raise independently any issue or assert any position at any time prior to the close of the hearing."

(C) in the last sentence—

(i) by inserting "and a review of post-hearing appeals" after "record of such a hearing"; and

(ii) by inserting "to be conducted as soon as practicable but not less than 35 calendar days following the filing of an election petition" after "election by secret ballot"; and

(D) by adding at the end the following:

"Not earlier than 7 days after final determina-
tion by the Board of the appropriate bargaining unit, the Board shall acquire from the employer a list of all eligible voters to be made available to all parties, which shall include the employee names; and one additional form of personal employee contact information (such as telephone number, email address or mailing address) chosen by the employee in writing.”.

SECTION 1. SHORT TITLE.

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

SEC. 2. TIMING OF ELECTIONS.

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

(1) in subsection (b), by striking “The Board shall decide” and all that follows through “Provided, That the” and inserting: “In each case, prior to an election, the Board shall determine, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining. Unless otherwise stated in this Act, and excluding bargaining unit determinations promulgated through rulemaking effective before August 26, 2011, the unit appropriate for purposes of collective bargaining shall consist of
employees that share a sufficient community of interest. In determining whether employees share a sufficient community of interest, the Board shall consider:

1. similarity of wages, benefits, and working conditions;
2. similarity of skills and training;
3. centrality of management and common supervision;
4. extent of interchange and frequency of contact between employees;
5. integration of the work flow and inter-relationship of the production process;
6. the consistency of the unit with the employer’s organizational structure;
7. similarity of job functions and work;
8. and the bargaining history in the particular unit and the industry. To avoid the proliferation or fragmentation of bargaining units, employees shall not be excluded from the unit unless the interests of the group sought are sufficiently distinct from those of other employees to warrant the establishment of a separate unit. Whether additional employees should be included in a proposed unit shall be based on whether such additional employees and proposed unit members share a sufficient community of interest, with the sole exception of proposed accretions to an existing unit, in which the inclusion of additional employees shall be based on whether such additional employees and existing unit members share an overwhelming
community of interest and the additional employees
have little or no separate identity. The”; and

(2) in subsection (c)(1), in the matter following
paragraph (B)—

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

(B) by inserting before the last sentence the
following: “An appropriate hearing shall be one
that is non-adversarial with the hearing officer
charged, in collaboration with the parties, with
the responsibility of identifying any relevant and
material pre-election issues and thereafter mak-
ing a full record thereon. Relevant and material
pre-election issues shall include, in addition to
unit appropriateness, the Board’s jurisdiction
and any other issue the resolution of which may
make an election unnecessary or which may rea-
sonably be expected to impact the election’s out-
come. Parties may raise independently any rel-
evant and material pre-election issue or assert
any relevant and material position at any time
prior to the close of the hearing.”;

(C) in the last sentence—
(i) by inserting “or consideration of a request for review of a regional director’s decision and direction of election,” after “record of such hearing”; and

(ii) by inserting “to be conducted as soon as practicable but not less than 35 calendar days following the filing of an election petition” after “election by secret ballot”; and

(D) by adding at the end the following:

“Not earlier than 7 days after final determination by the Board of the appropriate bargaining unit, the Board shall acquire from the employer a list of all eligible voters to be made available to all parties, which shall include the employee names, and one additional form of personal employee contact information (such as telephone number, email address or mailing address) chosen by the employee in writing.”.
A BILL

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

November 10, 2011

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