

PROVIDING FOR CONSIDERATION OF H.R. 800—
EMPLOYEE FREE CHOICE ACT

FEBRUARY 28, 2007.—Referred to the House Calendar and ordered to be printed

Ms. SUTTON, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 203]

The Committee on Rules, having had under consideration House Resolution 203, by a record vote of 8 to 3, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 800, the Employee Free Choice Act under a structured rule. The rule provides one hour of general debate equally divided and controlled by the chairman and ranking minority member of the Committee on Education and Labor.

The rule waives all points of order against consideration of the bill except clauses 9 and 10 of rule XXI. The rule makes in order the Committee on Education and Labor amendment in the nature of a substitute now printed in the bill as an original bill for the purposes of amendment, which shall be considered as read.

The rule further makes in order only those amendments printed in this report. The amendments made in order may be offered only in the order printed in this report, may be offered only by a Member designated in this report shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for a division of the question in the House or in the Committee of the Whole. All points of order against the amendments are waived except clause 10 of rule XXI. Finally, the rule provides one motion to recommit with or without instructions.

EXPLANATION OF WAIVERS

Although the rule waives all points of order against consideration of the bill (except for clauses 9 and 10 of rule XXI), the Committee is not aware of any points of order against consideration of the bill. The waiver of all points of order against consideration of the bill is prophylactic in nature.

COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 52

Date: February 28, 2007.

Measure: H.R. 800.

Motion by: Mr. Dreier.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Boustany (LA), #10, which makes it an unfair labor practice under the National Labor Relations Act for a union to fail to return a previously signed authorization card within five days of an employee's request.

Results: Defeated 3–8.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Hastings (WA)—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 53

Date: February 28, 2007.

Measure: H.R. 800.

Motion by: Mr. Hastings (WA).

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Kline (MN), #5, which would allow employees to present a majority of signed cards to decertify a union, rather than the required use of secret ballot election under current law (which is unchanged by H.R. 800). Upon a showing of a valid majority of cards seeking decertification, the National Labor Relations Board would be required to decertify a union.

Results: Defeated 3–8.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Hastings (WA)—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 54

Date: February 28, 2007.

Measure: H.R. 800.

Motion by: Mr. Sessions.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Davis, David (TN), #9, to amend section 4 of H.R. 800 to make the bill's civil penalty and liquidated damages provisions (which the bill applies to employers) also apply to unions that coerce an employee during a card check campaign or first contract negotiation.

Results: Defeated 3–8.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Hastings (WA)—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 55

Date: February 28, 2007.

Measure: H.R. 800.

Motion by: Mr. McGovern.

Summary of motion: To report the rule.

Results: Adopted 8–3.

Vote by Members: McGovern—Yea; Hasting (FL)—Yea; Cardoza—Yea; Welch—Yea; Castor—Yea; Arcuri—Yea; Sutton—Yea; Dreier—Nay; Hastings (WA)—Nay; Sessions—Nay; Slaughter—Yea.

SUMMARY OF AMENDMENTS MADE IN ORDER

(Summaries derived from information provided by sponsors.)

1. King, Steve (IA): Adds a section to the bill to amend the National Labor Relations Act to discourage the practice of “salting”. This amendment will change the NLRA to ensure that a company’s workers are employed for the sole benefit of that company. (10 minutes)

2. Foxx (NC): The amendment requires the National Labor Relations Board to promulgate standards and a model notice for an employee to put him- or herself on a “do not call or contact” list to avoid union solicitation. (10 minutes)

3. McKeon (CA): Amendment in the Nature of a Substitute. This amendment in the nature of a substitute would strike the underlying text and insert in its place the text of H.R. 866, the Secret Ballot Protection Act. The amendment would prohibit the recognition of unions via card check, and provide that a union may only be recognized and certified after a secret ballot election conducted by the National Labor Relations Board. (30 minutes)

TEXT OF AMENDMENTS MADE IN ORDER UNDER THE RULE

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE KING OF IOWA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill and insert the following:

SEC. 5. PRESERVATION OF EMPLOYER RIGHTS.

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the tactic of using professional union organizers and agents to infiltrate a targeted employer’s workplace, a practice commonly referred to as “salting”, has evolved into an aggressive form of harassment not contemplated when the National Labor Relations Act was enacted and threatens the balance of rights which is fundamental to our system of collective bargaining;

(2) increasingly, union organizers are seeking employment with nonunion employers not because of a desire to work for such employers but primarily to organize the employees of such employers or to inflict economic harm specifically de-

signed to put nonunion competitors out of business, or to do both; and

(3) while no employer may discriminate against employees based upon the views of employees concerning collective bargaining, an employer should have the right to expect job applicants to be primarily interested in utilizing the skills of the applicants to further the goals of the business of the employer.

(b) **PRESERVATION OF EMPLOYER RIGHTS.**—Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) is amended by adding after and below paragraph (5) the following:

“Nothing in this subsection shall be construed as requiring an employer to employ any person who seeks or has sought employment with the employer in furtherance of such person’s other employment or agency status.”.

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE FOXX OF NORTH CAROLINA, OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 4, line 16, strike “and”.

Page 4, line 19, strike the period, closed quotation mark, and second period at the end and insert “; and”.

Page 4, after line 19, insert the following:

“(C) procedures and a model notice by which an individual can request that the labor organization not recruit or solicit for membership, distribute information or material to (whether by mail, facsimile or electronic mail, in person, or by any other means), communicate with, or attempt to communicate with or influence that individual with respect to any question of representation or the exercise of the individual’s rights under section 7.”.

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MCKEON OF CALIFORNIA, OR HIS DESIGNEE, DEBATABLE FOR 30 MINUTES

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Secret Ballot Protection Act”.

SEC. 2. FINDINGS.

Congress finds that—

(1) the right of employees under the National Labor Relations Act to choose whether to be represented by a labor organization by way of secret ballot election conducted by the National Labor Relations Board is among the most important protections afforded under Federal labor law;

(2) the right of employees to choose by secret ballot is the only method that ensures a choice free of coercion, intimidation, irregularity, or illegality; and

(3) the recognition of a labor organization by using a private agreement, rather than a secret ballot election overseen by the National Labor Relations Board, threatens the freedom of employees to choose whether to be represented by a labor organization, and severely limits the ability of the National Labor Relations Board to ensure the protection of workers.

SEC. 3. NATIONAL LABOR RELATIONS ACT.

(a) **RECOGNITION OF REPRESENTATIVE.**—

(1) IN GENERAL.—Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) is amended by redesignating paragraphs (3) through (5) as paragraphs (4) through (6), respectively and inserting after paragraph (2) the following:

“(3) to recognize or bargain collectively with a labor organization that has not been selected by a majority of such employees in a secret ballot election conducted by the Board in accordance with section 9.”.

(2) APPLICATION.—The amendment made by subsection (a) shall not apply to collective bargaining relationships in which a labor organization with majority support was lawfully recognized before the date of the enactment of this Act.

(b) ELECTION REQUIRED.—

(1) IN GENERAL.—Section 8(b) of the National Labor Relations Act (29 U.S.C. 158(b)), as amended by subsection (c) of this section, is amended—

(A) by striking “and” at the end of paragraph (6);

(B) by striking the period at the end of paragraph (7) and inserting “; and”; and

(C) by adding at the end the following:

“(8) to cause or attempt to cause an employer to recognize or bargain collectively with a representative of a labor organization that has not been selected by a majority of such employees in a secret ballot election conducted by the Board in accordance with section 9.”.

(2) APPLICATION.—The amendment made by paragraph (1) shall not apply to collective bargaining relationships that were recognized before the date of the enactment of this Act.

(c) SECRET BALLOT ELECTION.—

(1) IN GENERAL.—Section 9(a) of the National Labor Relations Act (29 U.S.C. 159(a)), is amended—

(A) by inserting “(1)” after “(a)”; and

(B) by inserting after “designated or selected” the following: “by a secret ballot election conducted by the Board in accordance with this section”; and

(2) APPLICATION.—The secret ballot election requirement of the amendment made by paragraph (1) shall not apply to collective bargaining relationships that were recognized before the date of the enactment of this Act.

SEC. 4. REGULATIONS.

Not later than 6 months after the date of the enactment of this Act, the National Labor Relations Board shall review and revise all regulations promulgated before such date to implement the amendments made by this Act to the National Labor Relations Act.