

108TH CONGRESS
1ST SESSION

H. R. 3619

To amend the National Labor Relations Act to establish an efficient system to enable employees to form, join, or assist labor organizations, to provide for mandatory injunctions for unfair labor practices during organizing efforts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 21, 2003

Mr. GEORGE MILLER of California (for himself, Mr. GEPHARDT, Mr. BISHOP of New York, Mr. KILDEE, Mr. KUCINICH, Mr. OWENS, Mr. GRIJALVA, Mr. DAVIS of Illinois, Ms. WOOLSEY, Mr. PAYNE, Ms. MCCOLLUM, Mr. TIERNEY, Mrs. MCCARTHY of New York, Mr. ANDREWS, Mr. RYAN of Ohio, Mr. VAN HOLLEN, Mr. HOLT, Mr. WU, Mr. HINOJOSA, Mr. KIND, Ms. PELOSI, Mr. HOYER, Mr. MATSUI, Ms. KILPATRICK, Mr. HOLDEN, Ms. CARSON of Indiana, Ms. SCHAKOWSKY, Mr. SABO, Mr. MICHAUD, Mr. DELAHUNT, Mr. PALLONE, Mr. ABERCROMBIE, Mr. PETERSON of Minnesota, Ms. SOLIS, Ms. SLAUGHTER, Mr. BACA, Mr. DOYLE, Mrs. MALONEY, Mr. SHERMAN, Mr. SERRANO, Mr. GUTIERREZ, Mr. HOEFFEL, Mr. McNULTY, Ms. LINDA T. SÁNCHEZ of California, Mr. HINCHEY, Mr. BAIRD, Mr. RUSH, Mr. KING of New York, Mr. LYNCH, Ms. MILLENDER-McDONALD, Mr. LANTOS, Mr. ALLEN, Mr. RODRIGUEZ, Ms. DELAURO, Mr. NADLER, Mr. BROWN of Ohio, Mr. UDALL of New Mexico, Mr. WEXLER, Mr. LEVIN, Mr. WEINER, Mr. CONYERS, Mr. JACKSON of Illinois, Mr. MCGOVERN, Mr. STARK, Mr. EVANS, Mr. SANDERS, Mr. RAHALL, Mr. DEUTSCH, Ms. LEE, Ms. CORRINE BROWN of Florida, Mr. CARDOZA, Mr. MEEHAN, Mr. SIMMONS, Mr. HASTINGS of Florida, Mr. LANGEVIN, Mr. WAXMAN, Mrs. CHRISTENSEN, Mr. PASCRELL, Mrs. JONES of Ohio, Mr. SMITH of New Jersey, Mr. HONDA, and Mr. PASTOR) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend the National Labor Relations Act to establish

an efficient system to enable employees to form, join, or assist labor organizations, to provide for mandatory injunctions for unfair labor practices during organizing efforts, and for other purposes.

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 “Employee Free Choice
 5 Act”.

6 **SEC. 2. STREAMLINING UNION CERTIFICATION.**

7 (a) IN GENERAL.—Section 9(c) of the National
 8 Labor Relations Act (29 U.S.C. 159(c)) is amended by
 9 adding at the end the following:

10 “(6) Notwithstanding any other provision of this sec-
 11 tion, whenever a petition shall have been filed by an em-
 12 ployee or group of employees or any individual or labor
 13 organization acting in their behalf alleging that a majority
 14 of employees in a unit appropriate for the purposes of col-
 15 lective bargaining wish to be represented by an individual
 16 or labor organization for such purposes, the Board shall
 17 investigate the petition. If the Board finds that a majority
 18 of the employees in a unit appropriate for bargaining has
 19 signed authorizations designating the individual or labor
 20 organization specified in the petition as their bargaining
 21 representative and that no other individual or labor orga-
 22 nization is currently certified or recognized as the exclu-

1 sive representative of any of the employees in the unit,
 2 the Board shall not direct an election but shall certify the
 3 individual or labor organization as the representative de-
 4 scribed in subsection (a).

5 “(7) The Board shall develop guidelines and proce-
 6 dures for the designation by employees of a bargaining
 7 representative in the manner described in paragraph (6).
 8 Such guidelines and procedures shall include—

9 “(A) model collective bargaining authorization
 10 language that may be used for purposes of making
 11 the designations described in paragraph (6); and

12 “(B) procedures to be used by the Board to es-
 13 tablish the authenticity of signed authorizations des-
 14 ignating bargaining representatives.”.

15 (b) CONFORMING AMENDMENTS.—

16 (1) NATIONAL LABOR RELATIONS BOARD.—Sec-
 17 tion 3(b) of the National Labor Relations Act (29
 18 U.S.C. 153(b)) is amended, in the second sentence—

19 (A) by striking “and to” and inserting
 20 “to”; and

21 (B) by striking “and certify the results
 22 thereof,” and inserting “, and to issue certifi-
 23 cations as provided for in that section,”.

1 (2) UNFAIR LABOR PRACTICES.—Section 8(b)
 2 of the National Labor Relations Act (29 U.S.C.
 3 158(b)) is amended—

4 (A) in paragraph (7)(B) by striking “, or”
 5 and inserting “or a petition has been filed
 6 under section 9(c)(6), or”; and

7 (B) in paragraph (7)(C) by striking “when
 8 such a petition has been filed” and inserting
 9 “when such a petition other than a petition
 10 under section 9(c)(6) has been filed”.

11 **SEC. 3. FACILITATING INITIAL COLLECTIVE BARGAINING**
 12 **AGREEMENTS.**

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

16 “(h) Whenever collective bargaining is for the pur-
 17 pose of establishing an initial agreement following certifi-
 18 cation or recognition, the provisions of subsection (d) shall
 19 be modified as follows:

20 “(1) Not later than 10 days after receiving a
 21 written request for collective bargaining from an in-
 22 dividual or labor organization that has been newly
 23 organized or certified as a representative as defined
 24 in section 9(a), or within such further period as the
 25 parties agree upon, the parties shall meet and com-

1 mence to bargain collectively and shall make every
2 reasonable effort to conclude and sign a collective
3 bargaining agreement.

4 “(2) If after the expiration of the 90-day period
5 beginning on the date on which bargaining is com-
6 menced, or such additional period as the parties may
7 agree upon, the parties have failed to reach an
8 agreement, either party may notify the Federal Me-
9 diation and Conciliation Service of the existence of
10 a dispute and request mediation. Whenever such a
11 request is received, it shall be the duty of the Service
12 promptly to put itself in communication with the
13 parties and to use its best efforts, by mediation and
14 conciliation, to bring them to agreement.

15 “(3) If after the expiration of the 30-day period
16 beginning on the date on which the request for me-
17 diation is made under paragraph (2), or such addi-
18 tional period as the parties may agree upon, the
19 Service is not able to bring the parties to agreement
20 by conciliation, the Service shall refer the dispute to
21 an arbitration board established in accordance with
22 such regulations as may be prescribed by the Serv-
23 ice. The arbitration panel shall render a decision set-
24 tling the dispute and such decision shall be binding
25 upon the parties for a period of 2 years, unless

1 amended during such period by written consent of
2 the parties.”.

3 **SEC. 4. STRENGTHENING ENFORCEMENT.**

4 (a) INJUNCTIONS AGAINST UNFAIR LABOR PRAC-
5 TICES DURING ORGANIZING DRIVES.—

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

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

11 “(2) If, after such”; and

12 (B) by striking the first sentence and in-
13 serting the following:

14 “(1) Whenever it is charged—

15 “(A) that any employer—

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

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

22 “(iii) engaged in any other unfair labor
23 practice within the meaning of subsection (a)(1)
24 that significantly interferes with, restrains, or

1 coerces employees in the exercise of the rights
2 guaranteed in section 7;

3 while employees of that employer were seeking rep-
4 resentation by a labor organization or during the pe-
5 riod after a labor organization was recognized as a
6 representative defined in section 9(a) until the first
7 collective bargaining contract is entered into between
8 the employer and the representative; or

9 “(B) that any person has engaged in an unfair
10 labor practice within the meaning of subparagraph
11 (A), (B) or (C) of section 8(b)(4), section 8(e), or
12 section 8(b)(7);

13 the preliminary investigation of such charge shall be made
14 forthwith and given priority over all other cases except
15 cases of like character in the office where it is filed or
16 to which it is referred.”.

17 (2) CONFORMING AMENDMENT.—Section 10(m)
18 of the National Labor Relations Act (29 U.S.C.
19 160(m)) is amended by inserting “under cir-
20 cumstances not subject to section 10(l)” after “sec-
21 tion 8”.

22 (b) REMEDIES FOR VIOLATIONS.—

23 (1) BACKPAY.—Section 10(c) of the National
24 Labor Relations Act (29 U.S.C. 160(c)) is amended
25 by striking “*And provided further,*” and inserting

1 *“Provided further,* That if the Board finds that an
 2 employer has discriminated against an employee in
 3 violation of subsection (a)(3) of section 8 while em-
 4 ployees of the employer were seeking representation
 5 by a labor organization, or during the period after
 6 a labor organization was recognized as a representa-
 7 tive defined in subsection (a) of section 9 until the
 8 first collective bargaining contract was entered into
 9 between the employer and the representative, the
 10 Board in such order shall award the employee back
 11 pay and, in addition, 2 times that amount as liq-
 12 uidated damages: *Provided further,*”.

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

16 (A) by striking “Any” and inserting “(a)
 17 Any”; and

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

19 “(b) Any employer who willfully or repeatedly com-
 20 mits any unfair labor practice within the meaning of sub-
 21 sections (a)(1) or (a)(3) of section 8 while employees of
 22 the employer are seeking representation by a labor organi-
 23 zation or during the period after a labor organization has
 24 been recognized as a representative defined in subsection
 25 (a) of section 9 until the first collective bargaining con-

1 tract is entered into between the employer and the rep-
2 resentative shall, in addition to any make-whole remedy
3 ordered, be subject to a civil penalty of not to exceed
4 \$20,000 for each violation. In determining the amount of
5 any penalty under this section, the Board shall consider
6 the gravity of the unfair labor practice and the impact
7 of the unfair labor practice on the charging party, on other
8 persons seeking to exercise rights guaranteed by this Act,
9 or on the public interest.”.

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