

108TH CONGRESS
1ST SESSION

S. 1513

To amend the National Labor Relations Act to establish an efficient system to enable employees to form or become members of labor organizations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 31 (legislative day, JULY 21), 2003

Mr. SCHUMER introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the National Labor Relations Act to establish an efficient system to enable employees to form or become members of labor organizations, 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 Right to

5 Choose Act”.

6 **SEC. 2. STREAMLINING UNIONIZATION PROCESS.**

7 The National Labor Relations Act (29 U.S.C. 151

8 et seq.) is amended—

1 (1) in section 3(b), in the second sentence—

2 (A) by striking “and to” and inserting
3 “to”; and

4 (B) by striking “and certify the results
5 thereof,” and inserting “, and to make the cer-
6 tifications provided for in section 9,”;

7 (2) in section 8—

10 (i) by striking “the provisions of sec-
11 tion 9(c)(1) or”; and

12 (ii) by striking “direct an election in
13 such unit as the Board finds to be appro-
14 priate and shall certify the results thereof”
15 and inserting “process the petition in ac-
16 cordance with section 9(c)(1)”;

17 (B) by striking subsection (d) and insert-
18 ing the following:

19 "(d) COLLECTIVE BARGAINING.—

20 “(1) IN GENERAL.—For the purposes of this
21 section, to bargain collectively is the performance of
22 the mutual obligation of the employer and the rep-
23 resentative of the employees to meet at reasonable
24 times and confer in good faith with respect to wages,
25 hours, and other terms and conditions of employ-

1 ment, or the negotiation of an agreement, or any
2 question arising thereunder, and the execution of a
3 written contract incorporating any agreement
4 reached if requested by either party, but such obliga-
5 tion does not compel either party to agree to a pro-
6 posal or require the making of a concession: *Pro-*
7 *vided*, That where there is in effect a collective-bar-
8 gaining contract covering employees in an industry
9 affecting commerce, the duty to bargain collectively
10 shall also mean that no party to such contract shall
11 terminate or modify such contract, unless the party
12 desiring such termination or modification—

13 “(A) serves a written notice upon the other
14 party to the contract of the proposed termi-
15 nation or modification 60 days prior to the ex-
16 piration date thereof, or in the event such con-
17 tract contains no expiration date, 60 days prior
18 to the time it is proposed to make such termi-
19 nation or modification;

20 “(B) offers to meet and confer with the
21 other party for the purpose of negotiating a
22 new contract or a contract containing the pro-
23 posed modifications;

24 “(C) notifies the Federal Mediation and
25 Conciliation Service within 30 days after such

1 notice of the existence of a dispute, and simul-
2 taneously therewith notifies any State or Terri-
3 torial agency established to mediate and concil-
4 iate disputes within the State or Territory
5 where the dispute occurred, provided no agree-
6 ment has been reached by that time; and

7 “(D) continues in full force and effect,
8 without resorting to strike or lock-out, all the
9 terms and conditions of the existing contract
10 for a period of 60 days after such notice is
11 given or until the expiration date of such con-
12 tract, whichever occurs later:

13 The duties imposed upon employers, employees, and
14 labor organizations by subparagraphs (B), (C), and
15 (D) shall become inapplicable upon an intervening
16 certification of the Board, under which the labor or-
17 ganization or individual, which is a party to the con-
18 tract, has been superseded as or ceased to be the
19 representative of the employees subject to the provi-
20 sions of section 9(a), and the duties so imposed shall
21 not be construed as requiring either party to discuss
22 or agree to any modification of the terms and condi-
23 tions contained in a contract for a fixed period, if
24 such modification is to become effective before such
25 terms and conditions can be reopened under the pro-

1 visions of the contract. Any employee who engages
2 in a strike within any notice period specified in this
3 subsection, or who engages in any strike within the
4 appropriate period specified in subsection (g), shall
5 lose his status as an employee of the employer en-
6 gaged in the particular labor dispute, for the pur-
7 poses of sections 8, 9, and 10 of this Act, as amend-
8 ed, but such loss of status for such employee shall
9 terminate if and when he is reemployed by such em-
10 ployer.

11 “(2) BARGAINING FOR EMPLOYEES OF A
12 HEALTH CARE INSTITUTION.—Whenever the collec-
13 tive bargaining involves employees of a health care
14 institution, the provisions of this subsection shall be
15 modified as follows:

16 “(A) The notice of paragraph (1)(A) shall
17 be 90 days; the notice of paragraph (1)(C) shall
18 be 60 days; and the contract period of para-
19 graph (1)(D) shall be 90 days.

20 “(B) Where the bargaining is for an initial
21 agreement following certification or recognition,
22 at least 30 days' notice of the existence of a
23 dispute shall be given by the labor organization
24 to the agencies set forth in paragraph (1)(C).

1 “(C) After notice is given to the Federal
2 Mediation and Conciliation Service under either
3 clause (A) or (B) of this sentence, the Service
4 shall promptly communicate with the parties
5 and use its best efforts, by mediation and con-
6 ciliation, to bring them to agreement. The par-
7 ties shall participate fully and promptly in such
8 meetings as may be undertaken by the Service
9 for the purpose of aiding in a settlement of the
10 dispute.

11 “(3) BARGAINING FOR AN INITIAL AGREE-
12 MENT.—Whenever the collective bargaining is for an
13 initial agreement following certification or recogni-
14 tion, the provisions of this subsection shall be modi-
15 fied as follows:

16 “(A) Not later than 10 days after receiving
17 a written request for collective bargaining from
18 an individual or labor organization that has
19 been newly recognized or certified as a rep-
20 resentative, as described in section 9(a), or
21 within such further period as the parties agree
22 upon, the parties shall meet and commence to
23 bargain collectively and shall make every rea-
24 sonable effort to conclude and sign a collective
25 bargaining agreement.

1 “(B) If after 180 days from the com-
2 mencement of bargaining, or such further pe-
3 riod as the parties agree upon, the parties have
4 failed to reach an agreement, either party may
5 notify the Federal Mediation and Conciliation
6 Service of the existence of a dispute and re-
7 quest mediation. Whenever such a request is re-
8 ceived, it shall be the duty of the Service
9 promptly to put itself in communication with
10 the parties and to use its best efforts, by medi-
11 ation and conciliation, to bring the parties to
12 agreement.

13 “(C) If after 30 days from the request for
14 mediation, or such further period as the parties
15 agree upon, the Service is not able to bring the
16 parties to agreement by conciliation, the Service
17 shall refer the dispute to an arbitration board
18 established in accordance with such regulations
19 as may be prescribed by the Service. The arbi-
20 tration panel shall render a decision settling the
21 dispute and such decision shall be binding upon
22 the parties for a period of 2 years, unless
23 amended during such period by written consent
24 of the parties.”; and

25 (3) in section 9—

(A) by striking subsection (c) and inserting
the following:

3 "(c) HEARINGS ON QUESTIONS AFFECTING COM-
4 MERCE; RULES AND REGULATIONS.—

5 “(1) IN GENERAL.—Whenever a petition shall
6 have been filed, in accordance with such regulations
7 as may be prescribed by the Board—

8 “(A) by an employee or group of employees
9 or any individual or labor organization acting in
10 their behalf alleging that a substantial number
11 of employees wish to be represented for collec-
12 tive bargaining and that their employer declines
13 to recognize their representative as the rep-
14 resentative described in subsection (a); or

15 “(B) by an employer, alleging that an indi-
16 vidual or labor organization has presented to
17 the employer a claim to be recognized as the
18 representative described in subsection (a),

19 the Board shall investigate such petition and if the
20 Board has reasonable causes to believe that a ques-
21 tion of representation affecting commerce exists,
22 shall provide for an appropriate hearing upon due
23 notice. Such hearing may be conducted by an officer
24 or employee of the regional office, who shall not
25 make any recommendations with respect thereto. If

1 the Board finds upon the record of such hearing
2 that such a question of representation exists, the
3 Board shall direct an election by secret ballot and
4 shall certify the results thereof: *Provided*, That if the
5 Board finds that, as of the date of the filing of the
6 petition or such other date as the Board considers
7 appropriate, a majority of the employees in a unit
8 appropriate for collective bargaining have signed au-
9 thorizations designating the individual or labor orga-
10 nization specified in the petition as their bargaining
11 representative, and there is no other individual or
12 labor organization that has been so designated by
13 30 percent or more of the employees, the Board
14 shall not direct an election but shall certify the indi-
15 vidual or labor organization as the representative de-
16 scribed in subsection (a).

17 “(2) INDIVIDUAL OR LABOR ORGANIZATION NO
18 LONGER REPRESENTATIVE.—Whenever a petition
19 shall have been filed, in accordance with such regu-
20 lations as may be prescribed by the Board by an em-
21 ployee or group of employees or any individual or
22 labor organization acting in their behalf alleging
23 that a substantial number of employees assert that
24 the individual or labor organization, which has been
25 certified or is being currently recognized by their

1 employer as the bargaining representative, is no
2 longer a representative as described in subsection
3 (a), the Board shall investigate such petition and if
4 the Board has reasonable cause to believe that a
5 question of representation affecting commerce exists
6 shall provide for an appropriate hearing upon due
7 notice. Such hearing may be conducted by an officer
8 or employee of the regional office, who shall not
9 make any recommendations with respect thereto. If
10 the Board finds upon the record of such hearing
11 that such a question of representation exists, it shall
12 direct an election by secret ballot and shall certify
13 the results thereof.

14 “(3) REGULATIONS AND RULES OF DECISION.—
15 In determining whether or not a question of rep-
16 resentation affecting commerce exists, the same reg-
17 ulations and rules of decision shall apply irrespective
18 of the identity of the persons filing the petition or
19 the kind of relief sought and in no case shall the
20 Board deny a labor organization a place on the bal-
21 lot by reason of an order with respect to such labor
22 organization or its predecessor not issued in con-
23 formity with section 10.

24 “(4) LIMITATION ON ELECTION.—No election
25 shall be directed in any bargaining unit or any sub-

1 division within which, in the preceding 12-month pe-
2 riod, a valid election shall have been held, and no
3 bargaining representative shall be certified on the
4 basis of a showing of majority support obtained
5 within the 12-month period following such an elec-
6 tion. Employees engaged in an economic strike who
7 are not entitled to reinstatement shall be eligible to
8 vote under such regulations as the Board shall find
9 are consistent with the purposes and provisions of
10 this subchapter in any election conducted within 12
11 months after the commencement of the strike. In
12 any election where none of the choices on the ballot
13 receives a majority, a run-off shall be conducted, the
14 ballot providing for a selection between the 2 choices
15 receiving the largest and second largest number of
16 valid votes cast in the election.

17 “(5) RULE OF CONSTRUCTION.—Nothing in
18 this section shall be construed to prohibit the
19 waiving of hearings by stipulation for the purpose of
20 a consent election in conformity with regulations and
21 rules of decision of the Board.

22 “(6) DETERMINATION OF APPROPRIATE
23 UNIT.—In determining whether a unit is appropriate
24 for the purposes specified in subsection (b), the ex-

1 tent to which the employees have organized shall not
2 be controlling.

3 “(7) GUIDELINES AND PROCEDURES.—The
4 Board shall develop guidelines and procedures for
5 the designation by employees of a bargaining rep-
6 resentative as described in subsection (a). Such
7 guidelines and procedures shall include—

8 “(A) model collective bargaining authoriza-
9 tion language that may be used for purposes of
10 making the designations described in paragraph
11 (1); and

12 “(B) procedures to be used by the Board
13 to establish the authenticity of signed author-
14 izations designating bargaining representa-
15 tives.”; and

16 (B) by striking subsection (e).

17 **SEC. 3. CONFORMING AMENDMENTS.**

18 Section 8 of the National Labor Relations Act (29
19 U.S.C. 158) is amended—

20 (1) in subsection (a)(3)(ii), by striking “section
21 9(e)” and inserting “section 9(c)(1)”; and

22 (2) in subsection (f), by striking “9(e)” and in-
23 serting “9(c)(1)”.

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