

109TH CONGRESS
1ST SESSION

H. R. 1696

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

APRIL 19, 2005

Mr. GEORGE MILLER of California (for himself, Mr. KING of New York, Ms. PELOSI, Mr. OWENS, Mr. MICHAUD, Mr. CROWLEY, Mr. CLAY, Mr. CARNAHAN, Mr. WU, Ms. KAPTUR, Ms. MCKINNEY, Mr. BISHOP of New York, Mr. WAXMAN, Ms. DELAURO, Mr. VAN HOLLEN, Mr. RUPPERSBERGER, Mr. BROWN of Ohio, Mr. WEXLER, Mrs. JONES of Ohio, Mr. BRADY of Pennsylvania, Mr. McDERMOTT, Ms. HOOLEY, Mr. KILDEE, Mr. SHERMAN, Ms. MCCOLLUM of Minnesota, Mr. BACA, Mr. CHANDLER, Mr. WEINER, Mr. GRIJALVA, Mrs. TAUSCHER, Ms. WATERS, Mr. CASE, Mr. NADLER, Mr. COOPER, Ms. MILLENDER-McDONALD, Mr. BERMAN, Mr. KIND, Mr. CAPUANO, Ms. SOLIS, Mr. VISCLOSKEY, Mr. SIMMONS, Mr. DAVIS of Alabama, Mr. LEVIN, Mr. LYNCH, Mr. OLVER, Ms. SCHAKOWSKY, Ms. WOOLSEY, Mr. DAVIS of Illinois, Ms. SLAUGHTER, Mr. McNULTY, Mr. MARKEY, Mr. ACKERMAN, Ms. SCHWARTZ of Pennsylvania, Ms. KILPATRICK of Michigan, Mr. PAYNE, Mr. BERRY, Mr. TIERNEY, Mr. LARSON of Connecticut, Mr. CARDOZA, Mr. LANTOS, Mr. NEAL of Massachusetts, Mr. RAHALL, Mr. ABERCROMBIE, Ms. LINDA T. SÁNCHEZ of California, Mr. CARDIN, Mr. MATHESON, Mr. STUPAK, Mr. ROSS, Mr. HOYER, Mr. STRICKLAND, Mr. KUCINICH, Mr. HOLDEN, Mr. WYNN, Mr. INSLEE, Mr. ALLEN, Ms. VELÁZQUEZ, Ms. MATSUI, Mr. CONYERS, Mr. CUMMINGS, Mr. RYAN of Ohio, Mr. CRAMER, Ms. HARMAN, Mr. DINGELL, Mrs. MALONEY, Mrs. MCCARTHY, Mrs. NAPOLITANO, Mr. SCOTT of Virginia, Mr. FORD, Mr. STARK, Mr. FATTAH, Mr. BOUCHER, Mr. MURTHA, Mr. HIGGINS, Ms. ZOE LOFGREN of California, Mr. BOSWELL, Ms. ROYBAL-ALLARD, Mr. ANDREWS, Mr. McHUGH, Mr. BOEHLERT, Mrs. DAVIS of California, Mr. MENENDEZ, Mr. MOORE of Kansas, Mr. HINCHEY, Mr. OBERSTAR, Mr. SCOTT of Georgia, Mr. DICKS, Mr. HONDA, Ms. ESHOO, Ms. WATSON, Mr. AL GREEN of Texas, Mrs. CHRISTENSEN, Mr. JEFFERSON, Mrs. CAPPS, Mr. MOLLOHAN, Mr. HOLT, Mr. DOYLE, Mr. HINOJOSA, Mr. BECERRA, Ms. LEE, Mr. UDALL of Colorado, Mr. DEFazio, Mr. COSTELLO, and Mr.

KUHL of New York) 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

1 of the employees in a unit appropriate for bargaining has
2 signed authorizations designating the individual or labor
3 organization specified in the petition as their bargaining
4 representative and that no other individual or labor orga-
5 nization is currently certified or recognized as the exclu-
6 sive representative of any of the employees in the unit,
7 the Board shall not direct an election but shall certify the
8 individual or labor organization as the representative de-
9 scribed in subsection (a).

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

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

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

20 (b) CONFORMING AMENDMENTS.—

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

24 (A) by striking “and to” and inserting
25 “to”; and

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

4 (2) UNFAIR LABOR PRACTICES.—Section 8(b)
5 of the National Labor Relations Act (29 U.S.C.
6 158(b)) is amended—

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

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

14 **SEC. 3. FACILITATING INITIAL COLLECTIVE BARGAINING**
15 **AGREEMENTS.**

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

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

23 “(1) Not later than 10 days after receiving a
24 written request for collective bargaining from an in-
25 dividual or labor organization that has been newly

1 organized or certified as a representative as defined
2 in section 9(a), or within such further period as the
3 parties agree upon, the parties shall meet and com-
4 mence to bargain collectively and shall make every
5 reasonable effort to conclude and sign a collective
6 bargaining agreement.

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

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

1 ice. The arbitration panel shall render a decision set-
 2 tling the dispute and such decision shall be binding
 3 upon the parties for a period of 2 years, unless
 4 amended during such period by written consent of
 5 the parties.”.

6 **SEC. 4. STRENGTHENING ENFORCEMENT.**

7 (a) INJUNCTIONS AGAINST UNFAIR LABOR PRAC-
 8 TICES DURING ORGANIZING DRIVES.—

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

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

14 “(2) If, after such”; and

15 (B) by striking the first sentence and in-
 16 serting the following:

17 “(1) Whenever it is charged—

18 “(A) that any employer—

19 “(i) discharged or otherwise discriminated
 20 against an employee in violation of subsection
 21 (a)(3) of section 8;

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

1 “(iii) engaged in any other unfair labor
2 practice within the meaning of subsection (a)(1)
3 that significantly interferes with, restrains, or
4 coerces employees in the exercise of the rights
5 guaranteed in section 7;

6 while employees of that employer were seeking representa-
7 tion by a labor organization or during the period after a
8 labor organization was recognized as a representative de-
9 fined in section 9(a) until the first collective bargaining
10 contract is entered into between the employer and the rep-
11 resentative; or

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

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

20 (2) CONFORMING AMENDMENT.—Section 10(m)
21 of the National Labor Relations Act (29 U.S.C.
22 160(m)) is amended by inserting “under cir-
23 cumstances not subject to section 10(l)” after “sec-
24 tion 8”.

25 (b) REMEDIES FOR VIOLATIONS.—

1 (1) BACKPAY.—Section 10(c) of the National
2 Labor Relations Act (29 U.S.C. 160(c)) is amended
3 by striking “*And provided further,*” and inserting
4 “*Provided further,* That if the Board finds that an
5 employer has discriminated against an employee in
6 violation of subsection (a)(3) of section 8 while em-
7 ployees of the employer were seeking representation
8 by a labor organization, or during the period after
9 a labor organization was recognized as a representa-
10 tive defined in subsection (a) of section 9 until the
11 first collective bargaining contract was entered into
12 between the employer and the representative, the
13 Board in such order shall award the employee back
14 pay and, in addition, 2 times that amount as liq-
15 uidated damages: *Provided further,*”.

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

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

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

22 “(b) Any employer who willfully or repeatedly com-
23 mits any unfair labor practice within the meaning of sub-
24 sections (a)(1) or (a)(3) of section 8 while employees of
25 the employer are seeking representation by a labor organi-

1 zation or during the period after a labor organization has
2 been recognized as a representative defined in subsection
3 (a) of section 9 until the first collective bargaining con-
4 tract is entered into between the employer and the rep-
5 resentative shall, in addition to any make-whole remedy
6 ordered, be subject to a civil penalty of not to exceed
7 \$20,000 for each violation. In determining the amount of
8 any penalty under this section, the Board shall consider
9 the gravity of the unfair labor practice and the impact
10 of the unfair labor practice on the charging party, on other
11 persons seeking to exercise rights guaranteed by this Act,
12 or on the public interest.”.

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