

Union Calendar No. 491

113TH CONGRESS
2^D SESSION

H. R. 4320

[Report No. 113-653]

To amend the National Labor Relations Act with respect to the timing of elections and pre-election hearings and the identification of pre-election issues.

IN THE HOUSE OF REPRESENTATIVES

MARCH 27, 2014

Mr. KLINE (for himself, Mr. McKEON, Mr. WILSON of South Carolina, Mr. PRICE of Georgia, Mr. MARCHANT, Mr. HUNTER, Mr. ROE of Tennessee, Mr. THOMPSON of Pennsylvania, Mr. WALBERG, Mr. SALMON, Mr. DESJARLAIS, Mr. ROKITA, Mr. BUCSHON, Mr. GOWDY, Mrs. BROOKS of Indiana, Mr. HUDSON, Mr. MESSER, Mr. GINGREY of Georgia, Mr. KELLY of Pennsylvania, Mr. RIBBLE, and Mr. SCHWEIKERT) introduced the following bill; which was referred to the Committee on Education and the Workforce

DECEMBER 9, 2014

Additional sponsors: Mr. PETRI, Mr. PEARCE, Mr. GRIFFIN of Arkansas, Mr. HECK of Nevada, Mr. GIBBS, Mr. WOMACK, Mr. GOODLATTE, Mr. STIVERS, Mr. POE of Texas, Mr. COFFMAN, Mr. KING of Iowa, Mr. HARRIS, Mr. HUELSKAMP, Mr. TIPTON, Mr. LATHAM, Mr. CALVERT, and Mr. SCHOCK

DECEMBER 9, 2014

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 the timing of elections and pre-election hearings and the identification of pre-election issues.

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 “Workforce Democracy
5 and Fairness Act”.

6 **SEC. 2. PRE-ELECTION HEARINGS.**

7 Section 9(c)(1)(B) of the National Labor Relations
8 Act (29 U.S.C. 159(c)(1)(B)) is amended—

9 (1) by inserting “, but in no circumstances less
10 than 14 calendar days after the filing of the peti-
11 tion” after “upon due notice”;

12 (2) by inserting after “with respect thereto.”
13 the following: “An appropriate hearing shall be one
14 that is non-adversarial with the hearing officer
15 charged, in collaboration with the parties, with the
16 responsibility of identifying any relevant and mate-
17 rial pre-election issues and thereafter making a full
18 record thereon. Relevant and material pre-election
19 issues shall include, in addition to unit appropriate-
20 ness, the Board’s jurisdiction and any other issue
21 the resolution of which may make an election unnec-
22 essary or which may reasonably be expected to im-
23 pact the outcome of the election. Parties may inde-
24 pendently raise any relevant and material pre-elec-
25 tion issue or assert any relevant and material posi-

1 tion at any time prior to the close of the hearing.”;
 2 and

3 ~~(3) by striking “and shall certify the results~~
 4 ~~thereof” and inserting “to be conducted as soon as~~
 5 ~~practicable but no earlier than 35 calendar days~~
 6 ~~after the filing of an election petition. The Board~~
 7 ~~shall certify the results of the election after it has~~
 8 ~~ruled on each pre-election issue not resolved before~~
 9 ~~the election and any additional issue pertaining to~~
 10 ~~the conduct or results of the election”.~~

11 **SECTION 1. SHORT TITLE.**

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

14 **SEC. 2. PRE-ELECTION HEARINGS.**

15 *Section 9(c)(1) of the National Labor Relations Act*
 16 *(29 U.S.C. 159(c)(1)) is amended in the matter following*
 17 *subparagraph (B)—*

18 *(1) by inserting “, but in no circumstances less*
 19 *than 14 calendar days after the filing of the petition”*
 20 *after “upon due notice”;*

21 *(2) by inserting after “with respect thereto.” the*
 22 *following: “An appropriate hearing shall be one that*
 23 *is non-adversarial with the hearing officer charged, in*
 24 *collaboration with the parties, with the responsibility*
 25 *of identifying any relevant and material pre-election*

1 *issues and thereafter making a full record thereon.*
 2 *Relevant and material pre-election issues shall in-*
 3 *clude, in addition to unit appropriateness, the*
 4 *Board's jurisdiction and any other issue the resolu-*
 5 *tion of which may make an election unnecessary or*
 6 *which may reasonably be expected to impact the out-*
 7 *come of the election. Parties may independently raise*
 8 *any relevant and material pre-election issue or assert*
 9 *any relevant and material position at any time prior*
 10 *to the close of the hearing.”; and*

11 *(3) by striking “and shall certify the results*
 12 *thereof” and inserting “to be conducted as soon as*
 13 *practicable but no earlier than 35 calendar days after*
 14 *the filing of an election petition. The Board shall cer-*
 15 *tify the results of the election after it has ruled on*
 16 *each pre-election issue not resolved before the election*
 17 *and any additional issue pertaining to the conduct or*
 18 *results of the election”.*

19 **SEC. 3. DETERMINATION OF APPROPRIATE UNITS FOR COL-**
 20 **LECTIVE BARGAINING.**

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

23 *(1) by redesignating paragraphs (1) through (3)*
 24 *as subparagraphs (A) through (C), respectively;*

1 (2) by striking “The Board shall decide” and all
2 that follows through “or subdivision thereof:” and in-
3 serting the following: “(1) In each case, prior to an
4 election, the Board shall determine, in order to assure
5 to employees the fullest freedom in exercising the
6 rights guaranteed by this Act, the unit appropriate
7 for the purposes of collective bargaining. Unless other-
8 wise stated in this Act, and excluding any bargaining
9 unit determination promulgated through rulemaking
10 before August 26, 2011, the unit appropriate for pur-
11 poses of collective bargaining shall consist of employ-
12 ees that share a sufficient community of interest. In
13 determining whether employees share a sufficient
14 community of interest, the Board shall consider—

15 “(A) similarity of wages, benefits, and working
16 conditions;

17 “(B) similarity of skills and training;

18 “(C) centrality of management and common su-
19 pervision;

20 “(D) extent of interchange and frequency of con-
21 tact between employees;

22 “(E) integration of the work flow and inter-
23 relationship of the production process;

24 “(F) the consistency of the unit with the employ-
25 er’s organizational structure;

1 “(G) similarity of job functions and work; and

2 “(H) the bargaining history in the particular

3 unit and the industry.

4 To avoid the proliferation or fragmentation of bargaining

5 units, employees shall not be excluded from the unit unless

6 the interests of the group seeking a separate unit are suffi-

7 ciently distinct from those of other employees to warrant

8 the establishment of a separate unit. Whether additional

9 employees should be included in a proposed unit shall be

10 determined based on whether such additional employees and

11 proposed unit members share a sufficient community of in-

12 terest, with the sole exception of proposed accretions to an

13 existing unit, in which the inclusion of additional employ-

14 ees shall be based on whether such additional employees and

15 existing unit members share an overwhelming community

16 of interest and the additional employees have little or no

17 separate identity.”; and

18 (3) by striking “Provided, That the Board” and

19 inserting the following:

20 “(2) The Board”.

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