

# Union Calendar No.

112<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3094

[Report No. 112-]

To amend the National Labor Relations Act with respect to representation hearings and the timing of elections of labor organizations under that Act.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 5, 2011

Mr. KLINE (for himself, Mr. MCKEON, Mr. WILSON of South Carolina, Ms. FOXX, Mr. HUNTER, Mr. ROE of Tennessee, Mr. THOMPSON of Pennsylvania, Mr. WALBERG, Mr. DESJARLAIS, Mr. ROKITA, Mr. BUCSHON, Mr. GOWDY, Mrs. ROBY, Mr. ROSS of Florida, and Mr. KELLY) introduced the following bill; which was referred to the Committee on Education and the Workforce

OCTOBER --, 2011

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 representation hearings and the timing of elections of labor organizations under that Act.

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. TIMING OF ELECTIONS.**

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

9 (1) in subsection (b) by striking the first sen-  
10 tence and inserting the following: “In each case,  
11 prior to an election, the Board shall determine, in  
12 order to assure to employees the fullest freedom in  
13 exercising the rights guaranteed by this Act, the  
14 unit appropriate for the purposes of collective bar-  
15 gaining. Unless otherwise stated in this Act, the unit  
16 appropriate for purposes of collective bargaining  
17 shall consist of employees that share a sufficient  
18 community of interest. In determining whether em-  
19 ployees share a sufficient community of interest, the  
20 Board shall consider (1) similarity of wages, bene-  
21 fits, and working conditions; (2) similarity of skills  
22 and training; (3) centrality of management and com-  
23 mon supervision; (4) extent of interchange and fre-  
24 quency of contact between employees; (5) integration  
25 of the work flow and interrelationship of the produc-

1       tion process; (6) the consistency of the unit with the  
2       employer's organizational structure; (7) similarity of  
3       job functions and work; and (8) the bargaining his-  
4       tory in the particular unit and the industry. To  
5       avoid the proliferation or fragmentation of bar-  
6       gaining units, employees shall not be excluded from  
7       the unit unless the interests of the group sought are  
8       sufficiently distinct from those of other employees to  
9       warrant the establishment of a separate unit.  
10      Whether additional employees should be included in  
11      a proposed unit shall be based on whether such addi-  
12      tional employees and proposed unit members share  
13      a sufficient community of interest, with the sole ex-  
14      ception of proposed accretions to an existing unit, in  
15      which the inclusion of additional employees shall be  
16      based on whether such additional employees and ex-  
17      isting unit members share an overwhelming commu-  
18      nity of interest and the additional employees have  
19      little or no separate identity.”; and

20               (2) in subsection (c)(1) in the matter following  
21      subparagraph (B)—

22                       (A) by inserting “, but in no circumstances  
23                       less than 14 calendar days after the filing of  
24                       the petition” after “hearing upon due notice”;

1           (B) by inserting before the last sentence  
2 the following: “An appropriate hearing shall be  
3 one that is non-adversarial with the hearing of-  
4 ficer charged, in collaboration with the parties,  
5 with the responsibility of identifying any pre-  
6 election issues and thereafter making a full  
7 record thereon. Pre-election issues shall include,  
8 in addition to unit appropriateness, the Board’s  
9 jurisdiction and any other issue the resolution  
10 of which may make an election unnecessary or  
11 which may reasonably be expected to impact the  
12 election’s outcome. Parties may raise independ-  
13 ently any issue or assert any position at any  
14 time prior to the close of the hearing.”;

15           (C) in the last sentence—

16                 (i) by inserting “and a review of post-  
17 hearing appeals” after “record of such a  
18 hearing”; and

19                 (ii) by inserting “to be conducted as  
20 soon as practicable but not less than 35  
21 calendar days following the filing of an  
22 election petition” after “election by secret  
23 ballot”; and

24           (D) by adding at the end the following:  
25 “Not earlier than 7 days after final determina-

1           tion by the Board of the appropriate bargaining  
2           unit, the Board shall acquire from the employer  
3           a list of all eligible voters to be made available  
4           to all parties, which shall include the employee  
5           names, and one additional form of personal em-  
6           ployee contact information (such as telephone  
7           number, email address or mailing address) cho-  
8           sen by the employee in writing.”.

9   **SECTION 1. SHORT TITLE.**

10        *This Act may be cited as the “Workforce Democracy*  
11    *and Fairness Act”.*

12   **SEC. 2. TIMING OF ELECTIONS.**

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

15            (1) *in subsection (b), by striking “The Board*  
16        *shall decide” and all that follows through “Provided,*  
17        *That the” and inserting: “In each case, prior to an*  
18        *election, the Board shall determine, in order to assure*  
19        *to employees the fullest freedom in exercising the*  
20        *rights guaranteed by this Act, the unit appropriate*  
21        *for the purposes of collective bargaining. Unless other-*  
22        *wise stated in this Act, and excluding bargaining*  
23        *unit determinations promulgated through rulemaking*  
24        *effective before August 26, 2011, the unit appropriate*  
25        *for purposes of collective bargaining shall consist of*

1        *employees that share a sufficient community of inter-*  
2        *est. In determining whether employees share a suffi-*  
3        *cient community of interest, the Board shall consider*  
4        *(1) similarity of wages, benefits, and working condi-*  
5        *tions; (2) similarity of skills and training; (3) cen-*  
6        *trality of management and common supervision; (4)*  
7        *extent of interchange and frequency of contact between*  
8        *employees; (5) integration of the work flow and inter-*  
9        *relationship of the production process; (6) the consist-*  
10       *ency of the unit with the employer's organizational*  
11       *structure; (7) similarity of job functions and work;*  
12       *and (8) the bargaining history in the particular unit*  
13       *and the industry. To avoid the proliferation or frag-*  
14       *mentation of bargaining units, employees shall not be*  
15       *excluded from the unit unless the interests of the*  
16       *group sought are sufficiently distinct from those of*  
17       *other employees to warrant the establishment of a sep-*  
18       *arate unit. Whether additional employees should be*  
19       *included in a proposed unit shall be based on whether*  
20       *such additional employees and proposed unit mem-*  
21       *bers share a sufficient community of interest, with the*  
22       *sole exception of proposed accretions to an existing*  
23       *unit, in which the inclusion of additional employees*  
24       *shall be based on whether such additional employees*  
25       *and existing unit members share an overwhelming*

1        *community of interest and the additional employees*  
2        *have little or no separate identity. The”;* and

3            *(2) in subsection (c)(1), in the matter following*  
4        *subparagraph (B)—*

5            *(A) by inserting “, but in no circumstances*  
6        *less than 14 calendar days after the filing of the*  
7        *petition” after “hearing upon due notice”;*

8            *(B) by inserting before the last sentence the*  
9        *following: “An appropriate hearing shall be one*  
10       *that is non-adversarial with the hearing officer*  
11       *charged, in collaboration with the parties, with*  
12       *the responsibility of identifying any relevant and*  
13       *material pre-election issues and thereafter mak-*  
14       *ing a full record thereon. Relevant and material*  
15       *pre-election issues shall include, in addition to*  
16       *unit appropriateness, the Board’s jurisdiction*  
17       *and any other issue the resolution of which may*  
18       *make an election unnecessary or which may rea-*  
19       *sonably be expected to impact the election’s out-*  
20       *come. Parties may raise independently any rel-*  
21       *evant and material pre-election issue or assert*  
22       *any relevant and material position at any time*  
23       *prior to the close of the hearing.”;*

24            *(C) in the last sentence—*

1                   (i) by inserting “or consideration of a  
2                   request for review of a regional director’s  
3                   decision and direction of election,” after  
4                   “record of such hearing”; and

5                   (ii) by inserting “to be conducted as  
6                   soon as practicable but not less than 35 cal-  
7                   endar days following the filing of an elec-  
8                   tion petition” after “election by secret bal-  
9                   lot”; and

10                  (D) by adding at the end the following:  
11                  “Not earlier than 7 days after final determina-  
12                  tion by the Board of the appropriate bargaining  
13                  unit, the Board shall acquire from the employer  
14                  a list of all eligible voters to be made available  
15                  to all parties, which shall include the employee  
16                  names, and one additional form of personal em-  
17                  ployee contact information (such as telephone  
18                  number, email address or mailing address) cho-  
19                  sen by the employee in writing.”.