

108TH CONGRESS
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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 SENATE OF THE UNITED STATES

NOVEMBER 21, 2003

Mr. KENNEDY (for himself, Mr. SCHUMER, Mr. DODD, Mr. HARKIN, Ms. MIKULSKI, Mrs. MURRAY, Mr. EDWARDS, Mrs. CLINTON, Mr. INOUE, Mr. LEAHY, Mr. LEVIN, Mr. KERRY, Mr. BIDEN, Mr. ROCKEFELLER, Mr. LIEBERMAN, Mr. AKAKA, Mrs. BOXER, Mr. FEINGOLD, Mr. DURBIN, Mr. BAYH, Mr. CORZINE, Mr. DAYTON, and Mr. LAUTENBERG) 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, 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”.

1 **SEC. 2. STREAMLINING UNION CERTIFICATION.**

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

5 “(6) Notwithstanding any other provision of this sec-
6 tion, whenever a petition shall have been filed by an em-
7 ployee or group of employees or any individual or labor
8 organization acting in their behalf alleging that a majority
9 of employees in a unit appropriate for the purposes of col-
10 lective bargaining wish to be represented by an individual
11 or labor organization for such purposes, the Board shall
12 investigate the petition. If the Board finds that a majority
13 of the employees in a unit appropriate for bargaining has
14 signed authorizations designating the individual or labor
15 organization specified in the petition as their bargaining
16 representative and that no other individual or labor orga-
17 nization is currently certified or recognized as the exclu-
18 sive representative of any of the employees in the unit,
19 the Board shall not direct an election but shall certify the
20 individual or labor organization as the representative de-
21 scribed in subsection (a).

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

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

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

7 (b) CONFORMING AMENDMENTS.—

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

11 (A) by striking “and to” and inserting
12 “to”; and

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

16 (2) UNFAIR LABOR PRACTICES.—Section 8(b)
17 of the National Labor Relations Act (29 U.S.C.
18 158(b)) is amended—

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

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

1 **SEC. 3. FACILITATING INITIAL COLLECTIVE BARGAINING**
2 **AGREEMENTS.**

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

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

10 “(1) Not later than 10 days after receiving a
11 written request for collective bargaining from an in-
12 dividual or labor organization that has been newly
13 organized or certified as a representative as defined
14 in section 9(a), or within such further period as the
15 parties agree upon, the parties shall meet and com-
16 mence to bargain collectively and shall make every
17 reasonable effort to conclude and sign a collective
18 bargaining agreement.

19 “(2) If after the expiration of the 90-day period
20 beginning on the date on which bargaining is com-
21 menced, or such additional period as the parties may
22 agree upon, the parties have failed to reach an
23 agreement, either party may notify the Federal Me-
24 diation and Conciliation Service of the existence of
25 a dispute and request mediation. Whenever such a
26 request is received, it shall be the duty of the Service

1 promptly to put itself in communication with the
2 parties and to use its best efforts, by mediation and
3 conciliation, to bring them to agreement.

4 “(3) If after the expiration of the 30-day period
5 beginning on the date on which the request for me-
6 diation is made under paragraph (2), or such addi-
7 tional period as the parties may agree upon, the
8 Service is not able to bring the parties to agreement
9 by conciliation, the Service shall refer the dispute to
10 an arbitration board established in accordance with
11 such regulations as may be prescribed by the Serv-
12 ice. The arbitration panel shall render a decision set-
13 tling the dispute and such decision shall be binding
14 upon the parties for a period of 2 years, unless
15 amended during such period by written consent of
16 the parties.”.

17 **SEC. 4. STRENGTHENING ENFORCEMENT.**

18 (a) INJUNCTIONS AGAINST UNFAIR LABOR PRAC-
19 TICES DURING ORGANIZING DRIVES.—

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

23 (1) in the second sentence, by striking “If, after
24 such” and inserting the following:

25 “(2) If, after such”; and

1 (2) by striking the first sentence and inserting
2 the following:

3 “(1) Whenever it is charged—

4 “(A) that any employer—

5 “(i) discharged or otherwise discriminated
6 against an employee in violation of subsection
7 (a)(3) of section 8;

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

11 “(iii) engaged in any other unfair labor
12 practice within the meaning of subsection (a)(1)
13 that significantly interferes with, restrains, or
14 coerces employees in the exercise of the rights
15 guaranteed in section 7;

16 while employees of that employer were seeking rep-
17 resentation by a labor organization or during the pe-
18 riod after a labor organization was recognized as a
19 representative defined in section 9(a) until the first
20 collective bargaining contract is entered into between
21 the employer and the representative; or

22 “(B) that any person has engaged in an unfair
23 labor practice within the meaning of subparagraph
24 (A), (B) or (C) of section 8(b)(4), section 8(e), or
25 section 8(b)(7);

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

5 (2) CONFORMING AMENDMENT.—Section 10(m)
6 of the National Labor Relations (29 U.S.C. 160(m))
7 is amended by inserting “under circumstances not
8 subject to section 10(l)” after “section 8”.

9 (b) REMEDIES FOR VIOLATIONS.—

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

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

4 (A) by striking “Any” and inserting “(a)
5 Any”; and

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

7 “(b) Any employer who willfully or repeatedly com-
8 mits any unfair labor practice within the meaning of sub-
9 sections (a)(1) or (a)(3) of section 8 while employees of
10 the employer are seeking representation by a labor organi-
11 zation or during the period after a labor organization has
12 been recognized as a representative defined in subsection
13 (a) of section 9 until the first collective bargaining con-
14 tract is entered into between the employer and the rep-
15 resentative shall, in addition to any make-whole remedy
16 ordered, be subject to a civil penalty of not to exceed
17 \$20,000 for each violation. In determining the amount of
18 any penalty under this section, the Board shall consider
19 the gravity of the unfair labor practice and the impact
20 of the unfair labor practice on the charging party, on other
21 persons seeking to exercise rights guaranteed by this Act,
22 or on the public interest.”.

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