

Union Calendar No. 8

110TH CONGRESS
1ST SESSION

H. R. 800

[Report No. 110-23]

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

FEBRUARY 5, 2007

Mr. GEORGE MILLER of California (for himself, Mr. KING of New York, Mr. ANDREWS, Mr. PETERSON of Minnesota, Mr. DOYLE, Mr. MURTHA, Mr. OLVER, Ms. MOORE of Wisconsin, Ms. KILPATRICK of Michigan, Mr. BRADY of Pennsylvania, Mr. DINGELL, Mr. KILDEE, Mr. BERMAN, Ms. MATSUI, Mr. WEXLER, Mrs. TAUSCHER, Mr. NADLER, Mr. ROTHMAN, Mr. BOSWELL, Mr. HOLT, Mr. CONYERS, Mr. ENGEL, Ms. BERKLEY, Ms. DELAURO, Mr. HARE, Mr. RYAN of Ohio, Mr. KUCINICH, Mr. CLAY, Mr. ROSS, Mr. BAIRD, Mr. HOYER, Mr. VAN HOLLEN, Ms. CARSON, Mr. HINCHEY, Mr. FARR, Mr. BUTTERFIELD, Ms. MILLENDER-MCDONALD, Ms. BALDWIN, Mr. SHERMAN, Mr. RAHALL, Mrs. MALONEY of New York, Ms. WATERS, Mr. POMEROY, Mr. WU, Mr. PAYNE, Ms. WOOLSEY, Mrs. DAVIS of California, Mr. HINOJOSA, Ms. SCHAKOWSKY, Mr. KIND, Mr. DAVIS of Illinois, Mr. HOLDEN, Ms. LEE, Mr. UDALL of New Mexico, Mr. MCDERMOTT, Ms. MCCOLLUM of Minnesota, Ms. HOOLEY, Mr. HONDA, Mr. MILLER of North Carolina, Mr. FILNER, Mr. GRIJALVA, Mr. JOHNSON of Georgia, Mrs. MCCARTHY of New York, Mr. LEWIS of Georgia, Mr. MORAN of Virginia, Mr. WYNN, Mr. AL GREEN of Texas, Mr. PRICE of North Carolina, Mr. SPACE, Mr. CLEAVER, Mr. HIGGINS, Mr. ABERCROMBIE, Mr. YARMUTH, Mr. GENE GREEN of Texas, Mr. ALTMIRE, Mr. SCHIFF, Mr. CAPUANO, Mr. MOLLOHAN, Mr. STARK, Mr. DONNELLY, Mr. DEFazio, Mr. COOPER, Mr. RUPPERSBERGER, Mr. KAGEN, Mr. BISHOP of New York, Ms. SLAUGHTER, Mr. CHANDLER, Mr. WELCH of Vermont, Ms. BEAN, Mr. OBEY, Ms. SCHWARTZ, Mr. SALAZAR, Mr. BISHOP of Georgia, Mr. BACA, Ms. VELÁZQUEZ, Mr. ALLEN, Mr. GUTIERREZ, Mr. ORTIZ, Ms. LINDA T. SÁNCHEZ of California, Mr. LEVIN, Mr. ISRAEL, Mr. LANGEVIN, Mr. ELLSWORTH, Ms.

SOLIS, Mr. MEEHAN, Mr. HILL, Mrs. JONES of Ohio, Mr. INSLEE, Mr. RUSH, Mr. BOUCHER, Mr. PATRICK J. MURPHY of Pennsylvania, Mr. SHAYS, Mr. BRALEY of Iowa, Mr. LOEBSACK, Mr. JEFFERSON, Mr. WATT, Mr. CUMMINGS, Mr. PALLONE, Ms. JACKSON-LEE of Texas, Mr. PASTOR, Mr. DELAHUNT, Mr. SIRES, Mr. LYNCH, Mr. LARSON of Connecticut, Mr. FALEOMAVAEGA, Ms. SUTTON, Mr. BLUMENAUER, Ms. KAPTUR, Mr. FRANK of Massachusetts, Mr. NEAL of Massachusetts, Mr. LIPINSKI, Mr. MCGOVERN, Mr. MEEK of Florida, Mr. SARBANES, Mr. THOMPSON of Mississippi, Mr. VISCLOSKY, Mr. MARSHALL, Mr. MOORE of Kansas, Mr. BARROW, Mr. CARNAHAN, Mr. SHULER, Ms. CORRINE BROWN of Florida, Mr. WILSON of Ohio, Mr. ARCURI, Mr. RODRIGUEZ, Mrs. CAPPS, Mr. WALZ of Minnesota, Mr. MARKEY, Mr. SMITH of Washington, Mr. PERLMUTTER, Mr. SCOTT of Virginia, Mr. DICKS, Mr. STUPAK, Mr. REYES, Ms. WASSERMAN SCHULTZ, Mr. EDWARDS, Mr. UDALL of Colorado, Mr. KENNEDY, Mr. DAVIS of Alabama, Ms. ZOE LOFGREN of California, Ms. SHEA-PORTER, Mr. CROWLEY, Mr. LANTOS, Mr. CARDOZA, Ms. LORETTA SANCHEZ of California, Mr. COHEN, Mr. CARNEY, Mr. COSTELLO, Mrs. LOWEY, Mr. HODES, Mr. TOWNS, Mr. LINCOLN DAVIS of Tennessee, Mr. WEINER, Ms. HARMAN, Mr. MURPHY of Connecticut, Mr. PASCRELL, Mr. GORDON of Tennessee, Mr. MICHAUD, Mr. ETHERIDGE, Mr. MATHESON, Mr. KLEIN of Florida, Mr. ACKERMAN, Mr. SESTAK, Mr. MCNERNEY, Mr. HALL of New York, Ms. EDDIE BERNICE JOHNSON of Texas, Mrs. GILLIBRAND, Ms. NORTON, Mr. WAXMAN, Mr. LARSEN of Washington, Mr. ELLISON, Mr. HASTINGS of Florida, Ms. ROYBAL-ALLARD, Mr. JACKSON of Illinois, Ms. ESHOO, Mr. OBERSTAR, Mr. SERRANO, Mr. TIERNEY, Mr. LATOURETTE, Mr. BECERRA, Mr. COURTNEY, Mrs. NAPOLITANO, Mr. MEEKS of New York, Mr. GONZALEZ, Mr. SCOTT of Georgia, Ms. HIRONO, Ms. WATSON, Mr. THOMPSON of California, Ms. GIFFORDS, Mr. MCHUGH, Mr. FATTAH, Mr. COSTA, Mr. McNULTY, Mr. SMITH of New Jersey, Mr. KANJORSKI, Ms. DEGETTE, Mr. EMANUEL, Ms. CLARKE, Ms. HERSETH, Mr. CLYBURN, Mr. SKELTON, Mr. FOSSELLA, Mr. RANGEL, Mr. LOBIONDO, Ms. CASTOR, Mr. MELANCON, Mrs. BOYDA of Kansas, Mr. MITCHELL, Mr. LAMPSON, Mrs. CHRISTENSEN, and Mr. DOGGETT) introduced the following bill; which was referred to the Committee on Education and Labor

FEBRUARY 16, 2007

Additional sponsors: Mr. SNYDER, Mr. BERRY, and Mr. CUELLAR

FEBRUARY 16, 2007

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]
 [For text of introduced bill, see copy of bill as introduced on February 5, 2007]

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 of 2007”.*

6 **SEC. 2. STREAMLINING UNION CERTIFICATION.**

7 *(a) IN GENERAL.—Section 9(c) of the National Labor*
 8 *Relations Act (29 U.S.C. 159(c)) is amended by adding at*
 9 *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 in-*
 17 *vestigate the petition. If the Board finds that a majority*

1 *of the employees in a unit appropriate for bargaining has*
2 *signed valid authorizations designating the individual or*
3 *labor organization specified in the petition as their bar-*
4 *gaining representative and that no other individual or*
5 *labor organization is currently certified or recognized as the*
6 *exclusive 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 rep-*
12 *resentative in the manner described in paragraph (6). Such*
13 *guidelines and procedures shall include—*

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

17 *“(B) procedures to be used by the Board to estab-*
18 *lish the validity of signed authorizations designating*
19 *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) of
5 the National Labor Relations Act (29 U.S.C. 158(b))
6 is amended—

7 (A) in paragraph (7)(B) by striking “, or”
8 and inserting “or a petition has been filed under
9 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 following:

18 “(h) Whenever collective bargaining is for the purpose
19 of establishing an initial agreement following certification
20 or recognition, the provisions of subsection (d) shall be
21 modified as follows:

22 “(1) Not later than 10 days after receiving a
23 written request for collective bargaining from an indi-
24 vidual or labor organization that has been newly or-
25 ganized or certified as a representative as defined in

1 *section 9(a), or within such further period as the parties agree upon, the parties shall meet and commence to bargain collectively and shall make every reasonable effort to conclude and sign a collective bargaining agreement.*

2 *“(2) If after the expiration of the 90-day period beginning on the date on which bargaining is commenced, or such additional period as the parties may agree upon, the parties have failed to reach an agreement, either party may notify the Federal Mediation and Conciliation Service of the existence of a dispute and request mediation. Whenever such a request is received, it shall be the duty of the Service promptly to put itself in communication with the parties and to use its best efforts, by mediation and conciliation, to bring them to agreement.*

3 *“(3) If after the expiration of the 30-day period beginning on the date on which the request for mediation is made under paragraph (2), or such additional period as the parties may agree upon, the Service is not able to bring the parties to agreement by conciliation, the Service shall refer the dispute to an arbitration board established in accordance with such regulations as may be prescribed by the Service. The arbitration panel shall render a decision settling*

1 *the dispute and such decision shall be binding upon*
2 *the parties for a period of 2 years, unless amended*
3 *during such period by written consent of the par-*
4 *ties.”.*

5 **SEC. 4. STRENGTHENING ENFORCEMENT.**

6 *(a) INJUNCTIONS AGAINST UNFAIR LABOR PRACTICES*
7 *DURING ORGANIZING DRIVES.—*

8 *(1) IN GENERAL.—Section 10(l) of the National*
9 *Labor Relations Act (29 U.S.C. 160(l)) is amended—*

10 *(A) in the second sentence, by striking “If,*
11 *after such” and inserting the following:*

12 *“(2) If, after such”; and*

13 *(B) by striking the first sentence and insert-*
14 *ing the following:*

15 *“(1) Whenever it is charged—*

16 *“(A) that any employer—*

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

20 *“(ii) threatened to discharge or to otherwise*
21 *discriminate against an employee in violation of*
22 *subsection (a)(1) of section 8; or*

23 *“(iii) engaged in any other unfair labor*
24 *practice within the meaning of subsection (a)(1)*
25 *that significantly interferes with, restrains, or*

1 *coerces employees in the exercise of the rights*
2 *guaranteed in section 7;*

3 *while employees of that employer were seeking rep-*
4 *resentation by a labor organization or during the pe-*
5 *riod after a labor organization was recognized as a*
6 *representative defined in section 9(a) until the first*
7 *collective bargaining contract is entered into between*
8 *the employer and the representative; or*

9 “(B) *that any person has engaged in an unfair*
10 *labor practice within the meaning of subparagraph*
11 *(A), (B) or (C) of section 8(b)(4), section 8(e), or sec-*
12 *tion 8(b)(7);*

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

17 (2) *CONFORMING AMENDMENT.—Section 10(m)*
18 *of the National Labor Relations Act (29 U.S.C.*
19 *160(m)) is amended by inserting “under cir-*
20 *cumstances not subject to section 10(l)” after “section*
21 *8”.*

22 (b) *REMEDIES FOR VIOLATIONS.—*

23 (1) *BACKPAY.—Section 10(c) of the National*
24 *Labor Relations Act (29 U.S.C. 160(c)) is amended*
25 *by striking “And provided further,” and inserting*

1 *“Provided further, That if the Board finds that an*
2 *employer has discriminated against an employee in*
3 *violation of subsection (a)(3) of section 8 while em-*
4 *ployees of the employer were seeking representation by*
5 *a labor organization, or during the period after a*
6 *labor organization was recognized as a representative*
7 *defined in subsection (a) of section 9 until the first*
8 *collective bargaining contract was entered into be-*
9 *tween the employer and the representative, the Board*
10 *in such order shall award the employee back pay and,*
11 *in addition, 2 times that amount as liquidated dam-*
12 *ages: Provided further,”.*

13 (2) *CIVIL PENALTIES.*—*Section 12 of the Na-*
14 *tional Labor Relations Act (29 U.S.C. 162) is amend-*
15 *ed—*

16 (A) *by striking “Any” and inserting “(a)*
17 *Any”;* *and*

18 (B) *by adding at the end the following:*

19 *“(b) Any employer who willfully or repeatedly com-*
20 *mits any unfair labor practice within the meaning of sub-*
21 *sections (a)(1) or (a)(3) of section 8 while employees of the*
22 *employer are seeking representation by a labor organization*
23 *or during the period after a labor organization has been*
24 *recognized as a representative defined in subsection (a) of*
25 *section 9 until the first collective bargaining contract is en-*

1 *tered into between the employer and the representative shall,*
2 *in addition to any make-whole remedy ordered, be subject*
3 *to a civil penalty of not to exceed \$20,000 for each violation.*
4 *In determining the amount of any penalty under this sec-*
5 *tion, the Board shall consider the gravity of the unfair labor*
6 *practice and the impact of the unfair labor practice on the*
7 *charging party, on other persons seeking to exercise rights*
8 *guaranteed by this Act, or on the public interest.”.*

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