

112TH CONGRESS  
1ST SESSION

# H. R. 3094

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## AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Workforce Democracy  
3 and Fairness Act”.

4 **SEC. 2. TIMING OF ELECTIONS.**

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

7 (1) in subsection (b), by striking “The Board  
8 shall decide” and all that follows through “*Provided,*  
9 That the” and inserting: “In each case, prior to an  
10 election, the Board shall determine, in order to as-  
11 sure to employees the fullest freedom in exercising  
12 the rights guaranteed by this Act, the unit appro-  
13 priate for the purposes of collective bargaining. Un-  
14 less otherwise stated in this Act, and excluding bar-  
15 gaining unit determinations promulgated through  
16 rulemaking effective before August 26, 2011, the  
17 unit appropriate for purposes of collective bargaining  
18 shall consist of employees that share a sufficient  
19 community of interest. In determining whether em-  
20 ployees share a sufficient community of interest, the  
21 Board shall consider (1) similarity of wages, bene-  
22 fits, and working conditions; (2) similarity of skills  
23 and training; (3) centrality of management and com-  
24 mon supervision; (4) extent of interchange and fre-  
25 quency of contact between employees; (5) integration  
26 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. The”;

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 rel-  
6 evant and material pre-election issues and  
7 thereafter making a full record thereon. Rel-  
8 evant and material pre-election issues shall in-  
9 clude, in addition to unit appropriateness, the  
10 Board’s jurisdiction and any other issue the  
11 resolution of which may make an election un-  
12 necessary or which may reasonably be expected  
13 to impact the election’s outcome. Parties may  
14 raise independently any relevant and material  
15 pre-election issue or assert any relevant and  
16 material position at any time prior to the close  
17 of the hearing.”;

18 (C) in the last sentence—

19 (i) by inserting “or consideration of a  
20 request for review of a regional director’s  
21 decision and direction of election,” after  
22 “record of such hearing”; and

23 (ii) by inserting “to be conducted as  
24 soon as practicable but not less than 35  
25 calendar days following the filing of an

1 election petition” after “election by secret  
2 ballot”; and

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

Passed the House of Representatives November 30,  
2011.

Attest:

*Clerk.*

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