

Calendar No. 262

112TH CONGRESS
1ST SESSION

H. R. 3094

IN THE SENATE OF THE UNITED STATES

DECEMBER 1, 2011

Received

DECEMBER 15, 2011

Read the first time

DECEMBER 16, 2011

Read the second time and placed on the calendar

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Workforce Democracy
5 and Fairness Act”.

1 **SEC. 2. TIMING OF ELECTIONS.**

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

4 (1) in subsection (b), by striking “The Board
5 shall decide” and all that follows through “*Provided,*
6 That the” and inserting: “In each case, prior to an
7 election, the Board shall determine, in order to as-
8 sure to employees the fullest freedom in exercising
9 the rights guaranteed by this Act, the unit appro-
10 priate for the purposes of collective bargaining. Un-
11 less otherwise stated in this Act, and excluding bar-
12 gaining unit determinations promulgated through
13 rulemaking effective before August 26, 2011, the
14 unit appropriate for purposes of collective bargaining
15 shall consist of employees that share a sufficient
16 community of interest. In determining whether em-
17 ployees share a sufficient community of interest, the
18 Board shall consider (1) similarity of wages, bene-
19 fits, and working conditions; (2) similarity of skills
20 and training; (3) centrality of management and com-
21 mon supervision; (4) extent of interchange and fre-
22 quency of contact between employees; (5) integration
23 of the work flow and interrelationship of the produc-
24 tion process; (6) the consistency of the unit with the
25 employer’s organizational structure; (7) similarity of
26 job functions and work; and (8) the bargaining his-

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

17 (2) in subsection (c)(1), in the matter following
18 subparagraph (B)—

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

22 (B) by inserting before the last sentence
23 the following: “An appropriate hearing shall be
24 one that is non-adversarial with the hearing of-
25 ficer charged, in collaboration with the parties,

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

14 (C) in the last sentence—

15 (i) by inserting “or consideration of a
16 request for review of a regional director's
17 decision and direction of election,” after
18 “record of such 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.”.

Passed the House of Representatives November 30,
2011.

Attest:

KAREN L. HAAS,

Clerk.

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