

H.R.800: EMPLOYEE FREE CHOICE ACT 2007

Purpose: 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.

Change: Currently, when organizers collect signatures from at least 30 percent of employees in a given bargaining unit, an election by secret ballot is held by the National Labor Relations Board to determine whether or not to certify the union. This new bill would streamline that process by certifying the union as soon as a majority of signed authorization cards are collected.

Related Bill: S.1041.

Sponsors: Rep. George Miller [D-CA]/Senator Edward M. Kennedy [MA].

Latest Major Action: 6/26/2007—Passed in the House, but cloture on the motion to proceed not invoked in the Senate.

SUMMARY OF BILL

Section 2—amends Section 9(c) of the National Labor Relations Act (29 U.S.C. 159(c)) to require the National Labor Relations Board (hereafter “the Board”) to certify a bargaining representative without directing an election if a majority of the bargaining unit employees have authorized designation of the representative (card-check) and there is no other individual or labor organization currently certified or recognized as the exclusive representative of any of the employees in the unit. The Board shall also develop guidelines and procedures for the designation of a bargaining representative to include (1) model collective bargaining authorization language and (2) procedures to be used to establish the validity of signed authorizations designating their bargaining representatives.

Section 3—sets forth special procedural requirements for reaching an initial collective bargaining agreement (hereafter “CBA”) following certification or recognition, as spelled out in this section which details how Section 8 of the National Labor Relations Act is to be amended [i.e., the addition of (h)(1)thru(3) below]:

- (1) Not later than 10 days after receiving a written request for collective bargaining from an individual or labor organization that has been newly organized or certified as a representative, the parties shall make every reasonable effort to conclude and sign a CBA.
- (2) If after expiration of a 90-day period, beginning on the date on which bargaining began, the parties cannot reach an agreement, either party may notify the Federal Mediation and Conciliation Service of the dispute and request mediation.
- (3) If after expiration of a 30-day period, beginning on the date on which the request for mediation was made, the Service is not able to bring the parties to agreement by conciliation, the Service shall refer the dispute to an arbitration board. That board shall render a decision settling the dispute, and such decision shall be binding upon the parties for a period of 2 years.

Section 4—provides for injunctions against unfair labor practices (ULPs) during organizing drives by:

- (1) revising enforcement requirements with respect to ULPs during union organizing drives, particularly a preliminary investigation of an alleged ULP which may lead to proceedings for injunctive relief; and
- (2) requiring that priority be given to this preliminary investigation of any charge that, while employees were seeking representation by a labor organization, or during the period after a labor organization was recognized as a representative until the first collective bargaining contract is entered into, an employer: (1) discharged or otherwise discriminated against an employee to encourage or discourage membership in the labor organization; (2) threatened to discharge or to otherwise discriminate against an employee in order to interfere with, restrain, or coerce employees in the exercise of guaranteed self-organization or collective bargaining rights; or (3) engaged in any other related ULP that significantly interferes with, restrains, or coerces employees in the exercise of such guaranteed rights.

Remedies for Violations:

For unfair labor practices committed while the employees were seeking representation by a labor organization or during the period after the labor organization was recognized as a representative, until the first CBA is signed between the employer and that labor representative, the Board shall award the employee **back pay plus two times that amount as liquidated damages** and subject the employer to a **civil penalty of not to exceed \$20,000 for each violation**, in addition to any other whole-made remedy ordered. In determining the amount of any penalty, the Board shall consider the gravity of the unfair labor practice and the impact of the unfair labor practice on the charging party, on other persons seeking to exercise their rights guaranteed by this act, or on the public interest.