

## **National Labor Relations Modernization Act (H.R. 1355) Summary & Text**

*Core Provisions:* This legislation would require employers to provide labor organizations with equal access to employees prior to a representation election. This bill also resembles the controversial Employee Free Choice Act of 2009 (EFCA), which was introduced by Congressional Democrats on March 10, 2009, in several respects. Like the EFCA, the bill contains provisions designed to increase employer penalties for unfair labor practices during organizing campaigns and to expedite the bargaining process surrounding a first collective bargaining agreement. Unlike the EFCA, however, the bill lacks the card check provision that allows a union to become the certified bargaining representative simply by obtaining signed authorization cards from a majority of employees in a proposed bargaining unit.

Under the proposed legislation, within 30 days of the National Labor Relations Board directing an election, the employer must notify the designated union of “any activities the employer intends to engage in to campaign in opposition to recognition of the [union],” including any announcements, meetings, signs, or literature. The employer would be required to provide the union with equal access to the place of employment to campaign in favor of the union. This would mean providing the union with the opportunity to hold an equal number of meetings with individual employees or groups of employees, make announcements, display signs, and distribute literature, under the same terms and conditions that the employer engages in such activities.

The legislation includes provisions similar to those in the EFCA to facilitate an initial collective bargaining agreement, although this bill would apply only to employers with at least 20 employees and allow employers and unions additional time to reach an agreement before a party could initiate interest arbitration. Under this bill and the EFCA, the parties must begin bargaining within 10 days of a written request by a newly-certified union. But under the proposed legislation: (1) the parties would have 120 days to negotiate the terms of a collective bargaining agreement before either party can request mediation before the Federal Mediation and Conciliation Service (FMCS); (2) an additional 120 days to mediate before the parties were forced into mandatory interest arbitration before a panel appointed by the FMCS; and (3) the arbitration panel’s ruling would be effective for 18 months. In contrast, EFCA proposes a 90-day period to negotiate before a party can request mediation; an additional 30 days to mediate before going to mandatory interest arbitration; and an arbitration ruling that is effective for 2 years.

The legislation also includes an anti-retaliation provision and remedies identical to those included in EFCA. The remedies include liquidated damages in the amount of twice the awarded back pay and civil penalties of \$20,000 for each time an employer willfully or repeatedly violates its employees’ right to organize.

*Status:* Rep. Sestak (D-PA) introduced this legislation on March 5, 2009, and it was referred to the House Committee on Education and Labor.

111th CONGRESS

1st Session

**H. R. 1355**

To amend the National Labor Relations Act to require employers to provide labor organizations with equal access to employees prior to an election regarding representation, to prevent delays in initial collective bargaining, and to strengthen enforcement against intimidation of employees by employers.

**IN THE HOUSE OF REPRESENTATIVES**

**March 5, 2009**

Mr. SESTAK introduced the following bill; which was referred to the Committee on Education and Labor

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**A BILL**

To amend the National Labor Relations Act to require employers to provide labor organizations with equal access to employees prior to an election regarding representation, to prevent delays in initial collective bargaining, and to strengthen enforcement against intimidation of employees by employers.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'National Labor Relations Modernization Act'.

## **SEC. 2. PREVENTING EXCESSIVE DELAYS IN INITIAL COLLECTIVE BARGAINING AGREEMENTS.**

Section 8 of the National Labor Relations Act (29 U.S.C. 158) is amended by adding at the end the following:

`(h) Whenever collective bargaining is for the purpose of establishing an initial agreement following certification or recognition, the provisions of subsection (d) shall be modified as follows with respect to any employer having 20 or more employees:

`(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 as defined in 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) If after the expiration of the 120-day period beginning on the date on which bargaining is commenced, or such other 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 the appointment of an arbitration panel. Whenever such a request is received, the Service shall promptly appoint an arbitration panel which will use its best efforts, by mediation and conciliation, to bring the parties to agreement.

`(3) If after the expiration of the 120-day period beginning on the date on which the request for mediation is made under paragraph (2), or such other period as the parties may agree upon, the arbitration panel appointed under paragraph (2) is not able to bring the parties to agreement by mediation and conciliation, the such panel shall then begin to arbitrate the

dispute in accordance with such regulations as may be prescribed by the Service. Such panel shall render a decision settling the dispute not later than 30 days after commencing arbitration and such decision shall be binding upon the parties for a period of 18 months, unless amended during such period by written consent of the parties.'.

### **SEC. 3. STRENGTHENING ENFORCEMENT AGAINST INTIMIDATION OF WORKERS.**

(a) Injunctions Against Unfair Labor Practices During Organizing Drives-

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

(A) in the second sentence, by striking `If, after such' and inserting the following:

`(2) If, after such'; and

(B) by striking the first sentence and inserting the following:

`(1) Whenever it is charged--

`(A) that any employer--

`(i) discharged or otherwise discriminated against an employee in violation of subsection (a)(3) of section 8;

`(ii) threatened to discharge or to otherwise discriminate against an employee in violation of subsection (a)(1) of section 8; or

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

while employees of that employer were seeking representation by a labor organization or during the period after a labor organization was recognized as a representative defined in section 9(a) until the first collective bargaining contract is entered into between the employer and the representative; or  
` (B) that any person has engaged in an unfair labor practice within the meaning of subparagraph (A), (B) or (C) of section 8(b)(4), section 8(e), or section 8(b)(7);

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

(2) CONFORMING AMENDMENT- Section 10(m) of the National Labor Relations Act (29 U.S.C. 160(m)) is amended by inserting `under circumstances not subject to section 10(l)' after `section 8'.

(b) Remedies for Violations-

(1) BACKPAY- Section 10(c) of the National Labor Relations Act (29 U.S.C. 160(c)) is amended by striking `*And provided further,*' and inserting `*Provided further,* That if the Board finds that an employer has discriminated against an employee in violation of subsection (a)(3) of section 8 while employees of the employer were seeking representation by a labor organization, or during the period after a labor organization was recognized as a representative defined in subsection (a) of section 9 until the first collective bargaining contract was entered into between the employer and the representative, the Board in such order shall award the employee back pay and, in addition, 2 times that amount as liquidated damages: *Provided further,*'.

(2) CIVIL PENALTIES- Section 12 of the National Labor Relations Act (29 U.S.C. 162) is amended--

(A) by striking `Any' and inserting `(a) Any'; and

(B) by adding at the end the following:

`(b) Any employer who willfully or repeatedly commits any unfair labor practice within the meaning of subsections (a)(1) or (a)(3) of section 8 while employees of the employer are seeking representation by a labor organization or during the period after a labor organization has been recognized as a representative defined in subsection (a) of section 9 until the first collective bargaining contract is entered into between the employer and the representative shall, in addition to any make-whole remedy ordered, be subject to a civil penalty of not to exceed \$20,000 for each violation. In determining the amount of any penalty under this section, 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 rights guaranteed by this Act, or on the public interest.'

#### **SEC. 4. EQUAL ACCESS TO LABOR ORGANIZATIONS PRIOR TO ELECTIONS.**

(a) Equal Access- Section 9 of the National Labor Relations Act (29 U.S.C. 159) is amended by adding at the end the following new subsection:

`(f)(1) Not later than 30 days after the Board shall have directed an election, the employer shall notify the representative designated by the employees under subsection (a) of any activities the employer intends to engage in to campaign in opposition to recognition of the representative, including any meetings with individual employees or groups of employees, any announcements to employees, any signs to be displayed at the place of employment, and any literature to be distributed to employees, and shall provide the representative with

equal access to the place of employment to campaign in favor of recognition of the representative, including the opportunity to hold an equal number of meetings with individual employees or groups of employees, and an opportunity to make announcements, display signs, and distribute literature, under the same terms and conditions that the employer engages in such activities.

`(2) As used in this subsection, the term `campaign' means any activity undertaken to persuade employees to vote for or against representation in an election directed by the Board, but shall not include any interference with, restraint or coercion of, or discrimination against employees in violation of paragraphs (1) through (3) of section 8(a).'

(b) Unfair Labor Practice- Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) is amended--

(1) in paragraph (5), by striking the period and inserting `; or';  
and

(2) by adding at the end the following:

`(6) to fail to provide the notification and equal access to a representative as required by section 9(f).'