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118TH CONGRESS
1ST SESSION

H. R. 3834

To amend the National Labor Relations Act with respect to the timing of elections and pre-election hearings, identification of pre-election issues, and interpretation of employer rules and policies.

IN THE HOUSE OF REPRESENTATIVES

JUNE 5, 2023

Mr. WALBERG introduced the following bill; which was referred to the Committee on Education and the Workforce

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A BILL

To amend the National Labor Relations Act with respect to the timing of elections and pre-election hearings, identification of pre-election issues, and interpretation of employer rules and policies.

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. PRE-ELECTION HEARING; AMBUSH ELECTION RULE.**

2 Section 9(c)(1) of the National Labor Relations Act
3 (29 U.S.C. 159(c)(1)) is amended in the matter following
4 subparagraph (B)—

5 (1) by inserting ", but in no circumstances ear-
6 lier than 14 calendar days after the filing of the pe-
7 tition" after "upon due notice";

8 (2) by inserting after "with respect thereto."
9 the following: "An appropriate hearing shall be one
10 that is non-adversarial with the hearing officer
11 charged, in collaboration with the parties, with the
12 responsibility of identifying any relevant and mate-
13 rial pre-election issues and thereafter making a full
14 record thereon. Relevant and material pre-election
15 issues shall include, in addition to unit appropriate-
16 ness, the Board's jurisdiction and any other issue
17 the resolution of which may make an election unnec-
18 essary or may reasonably be expected to impact the
19 outcome of the election. Parties may independently
20 raise any relevant and material pre-election issue or
21 assert any relevant and material position at any
22 time prior to the close of the hearing. It shall not
23 constitute or be evidence of an unfair labor practice
24 under any of the provisions of this Act for any party
25 or their counsel to pose any question at the hearing:
26 Provided, That this shall not limit the authority of

1 the hearing officer to rule on objections and other-
2 wise to conduct the hearing consistent with this
3 Act.''; and
4 (3) by striking ''and shall certify the results
5 thereof'' and inserting ''to be conducted as soon as
6 practicable but no earlier than 20 business days
7 after the Board directs that an election be held. The
8 Board shall certify the results of the election after
9 it has ruled on each pre-election issue not resolved
10 before the election and any additional issue per-
11 taining to the conduct or results of the election''.

12 **SEC. 3. APPROPRIATE UNITS FOR COLLECTIVE BAR-**
13 **GAINING.**

14 Section 9(b) of the National Labor Relations Act (29
15 U.S.C. 159(b)) is amended—
16 (1) by redesignating paragraphs (1) through
17 (3) as subparagraphs (A) through (C), respectively;
18 (2) by striking ''The Board shall decide'' and
19 all that follows through ''or subdivision thereof:''
20 and inserting the following: ''(1) In each case, prior
21 to an election, the Board shall determine, in order
22 to assure to employees the fullest freedom in exer-
23 cising the rights guaranteed by this Act, the unit ap-
24 propriate for the purposes of collective bargaining.
25 Unless otherwise stated in this Act, and excluding

1 any bargaining unit determination promulgated
2 through rulemaking before August 26, 2011, the
3 unit appropriate for purposes of collective bargaining
4 shall consist of employees that share a sufficient
5 community of interest. In determining whether em-
6 ployees share a sufficient community of interest, the
7 Board shall consider—
8 ‘‘(A) similarity of wages, benefits, and working
9 conditions;
10 ‘‘(B) similarity of skills and training;
11 ‘‘(C) centrality of management and common su-
12 pervision;
13 ‘‘(D) extent of interchange and frequency of
14 contact between employees;
15 ‘‘(E) integration of the work flow and inter-
16 relationship of the production process;
17 ‘‘(F) the consistency of the unit with the em-
18 ployer’s organizational structure;
19 ‘‘(G) similarity of job functions and work; and
20 ‘‘(H) the bargaining history in the particular
21 unit and the industry.
22 To avoid the proliferation or fragmentation of bargaining
23 units, no employee shall be excluded from the unit unless
24 the interests of the group seeking a separate unit are suffi-
25 ciently distinct from those of other employees to warrant

1 the establishment of a separate unit. Whether additional
2 employees should be included in a proposed unit shall be
3 determined based on whether such additional employees
4 and proposed unit members share a sufficient community
5 of interest, and when considering or deciding to include
6 such additional employees in the proposed unit the Board
7 shall give no consideration to whether they share an over-
8 whelming community of interest with proposed unit mem-
9 bers: *Provided*, That when evaluating proposed accretions
10 to an existing unit the inclusion of additional employees
11 may be based on whether such additional employees and
12 existing unit members share an overwhelming community
13 of interest and the additional employees have little or no
14 separate identity.''; and

15 (3) by striking ''*Provided*, That the Board'' and
16 inserting the following:

17 ''(2) The Board''.

18 **SEC. 4. HANDBOOKS.**

19 Section 8 of the National Labor Relations Act (29
20 U.S.C. 158) is amended by inserting after subsection (g)
21 the following:

22 ''(h)(1) The Board shall find that facially neutral
23 rules, policies and employee handbook provisions adopted
24 or maintained by an employer are lawful under this Act,
25 unless the Board applies the principles and makes findings

1 set forth in paragraphs (2) and (3). For the purposes of
2 this subsection, 'facially neutral' refers to rules, policies,
3 and employee handbook provisions that contain no explicit
4 reference to and prohibition against specific activities
5 mentioned in this Act (such as forming, joining or assist-
6 ing labor organizations, bargaining collectively, or refrain-
7 ing from such activities as provided in section 7). A rule,
8 policy, or employee handbook provision that explicitly up-
9 holds prohibitions on discrimination set forth under title
10 VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et
11 seq.) shall be deemed 'facially neutral'.

12 ''(2) When considering claims that the adoption or
13 maintenance of a facially neutral rule, policy, or employee
14 handbook provision violates this Act, the Board in each
15 case must consider and make findings regarding both—

16 ''(A) the justifications associated with the rule,
17 policy, or handbook provision; and

18 ''(B) the nature and extent of the impact on
19 protected rights, if any.

20 ''(3) The Board shall find that the adoption or main-
21 tenance of a facially neutral rule, policy, or employee
22 handbook provision violates this Act only if the General
23 Counsel 16 shows by clear and convincing evidence that—

1 ''(A) adoption or maintenance of the rule, pol-
2 icy, or employee handbook provision has an adverse
3 impact on the exercise of rights under section 7; and
4 ''(B) the adverse impact described in subpara-
5 graph (A) outweighs the justification associated with
6 the rule, policy, or handbook.
7 ''(4) If a facially neutral rule, policy, or employee
8 handbook provision, which is lawful and consistent with
9 this subsection, is found to have been applied in a case
10 involving the exercise of rights under section 7, and if the
11 Board concludes that said application violates section
12 8(a)(1) or another provision of this Act, the Board's rem-
13 edy shall not include the rescission or modification of such
14 rule, policy, or employee handbook provision.''.

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