



City of Bloomington Common Council

Legislative Packet

Special Session

followed by

Committee of the Whole Discussion

12 September 2007

Office of the Common Council
P.O. Box 100
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Bloomington, Indiana 47402

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To: Council Members
From: Council Office
Re: Weekly Packet Memo
Date: September 7, 2007

Packet Related Material

Memo

Agenda

Calendar

Notices and Agendas:

None

Budget Legislation Ready for Final Action at Special Session on September 12th

- *Please see the [2008 Budget Packet](#) prepared for the September 5th meetings for the budget legislation: two appropriation ordinances, three salary ordinances, the Transit ordinance, and related background material*

For Questions Regarding the:

Civil City Appropriation Ordinances - Please Contact:

*Susan Clark, Controller, at 349-3416 or clarks@bloomington.in.gov
(or reach the appropriate department director)*

Utility Appropriation Ordinance - Please Contact:

Patrick Murphy, Director, at 349-3650 or murphyp@bloomington.in.gov

Salary Ordinances - Please Contact:

*Daniel Grundmann, Director of Employee Services at 349-3578
or grundmad@bloomington.in.gov*

Transit Ordinance

*Lew May, Director of Bloomington Transit at 332-5688
or lmay@kiva.net*

Non-Budget Legislation Ready for Final Action at Special Session on September 12th

- **Res 07-10** Supporting the Employee Free Choice Act
 - Memo from Councilmembers Rollo and Ruff, Co-Sponsors; H.R. 800
 - Contact: Councilmember Rollo or Ruff at 349-3409 or
rollod@bloomington.in.gov
ruffa@bloomington.in.gov

Non-Budget Legislation and Background Material for Discussion at Committee of the Whole on September 12th and Final Action on the 19th:

- **Ord 07-21** To Amend Title 2 of the Bloomington Municipal Code Entitled “Administration and Personnel” (Inserting Chapter 2.23.080 Establishing the Commission on Hispanic and Latino Affairs)
Contact: Pete Giordano at 349-3559 or giordanp@bloomington.in.gov

- **Material Regarding Tax Abatement for The Plaza at Third and Lincoln, a Mixed Use Redevelopment of Leonard’s Laundry at 300 East 3rd Street**
Contact: Danise Alano at 349-3406 at alanod@bloomington.in.gov

- **Res 07-08** To Designate an Economic Revitalization Area, Approve a Statement of Benefits, Authorize a Period of Tax Abatement, and Declare Intent to Waive Certain Statutory Requirements - Re: 300 East Third Street (The Plaza at Third and Lincoln LLC, Petitioner)
- **Ord 07-22** To Designate an Economic Development Target Area (EDTA) -Re: 300 East Third Street (The Plaza at Third and Lincoln LLC, Petitioner)

Please note that Danise Alano is expected to request that the Committee of the Whole recommend tabling these items at the Regular Session on September 19th

- **Ord 07-23** To Vacate a Public Parcel - Re: The Portion of the West 9th Street Right-of-Way Running from North Rogers Street to the B-Line Trail (CFC, Inc., Petitioner)
Contact: Lynne Darland at 349-3529 or darlandl@bloomington.in.gov

Please see the [Non-Budget Related Legislative Packet](#) prepared for the September 5th Regular Session for legislation, summaries, and background materials

Legislation and Background Material for First Reading:

None

Minutes from Regular Session:

None

Memo

The Budget Package and One Resolution are Ready for Final Action at the Special Session

Three Ordinances and One Resolution are Ready for Discussion at the Committee of the Whole

on Wednesday, September 12th

The Council will hold a Special Session immediately followed by a Committee of the Whole on Wednesday, September 12th. During the Special Session, the Council is set to take final action on the 2008 budget package, which can be found in the [*Budget Related Legislative Packet*](#) dated 5 September 2007, and **Res 07-10** (Supporting the Employee Free Choice Act), which is sponsored by Councilmembers Rollo and Ruff and can be found in this packet.

Then, during the Committee of the Whole, the Council will consider three ordinances and a resolution that can be found in the 5 September 2007 [*Non-Budget Related Legislative Packet*](#).

Request to Recommend Tabling Tax Abatement Legislation

Please note that Danise Alano, Director of Economic Development, will be asking the Council to recommend tabling the tax abatement legislation for The Plaza at Third and Lincoln (former Leonard's Linen Service) to allow the Historic Preservation Commission time to review the project for compliance with preservation regulations. Please note that tabled legislation can be taken up any time this year by a vote of the Council.

Res 07-10 – Supporting the Employee Free Choice Act

Res 07-10 is sponsored by Councilmembers Rollo and Ruff and calls upon Congress to pass the *Employee Free Choice Act* (H.R.800, S.1041). The Act was introduced in both the House and Senate during the 108th, 109th, and 110th Congress. It passed the House on March 1, 2007 by a vote of 241-185, but was filibustered by Senate in June 2007. The White House has issued a statement opposing the Act. The text and legislative history of the Act can be accessed at: <http://thomas.loc.gov/cgi-bin/query/D?c110:4:./temp/~c110GxtEGW::>

Supported by a bi-partisan coalition in both the House and Senate, the Act would amend the National Labor Relations Act (NLRA) (29 U.S.C. 159(c)) in three key ways:

Majority Sign Up

First, the Act makes it easier for workers to form a union. Under the terms of the Act, once a majority of employees sign authorization cards designating a union as their bargaining representative, the National Labor Relations Board (NLRB) will recognize that union as the exclusive bargaining representative for that particular bargaining unit. The Act requires the NLRB to develop model authorization language and procedures for establishing the validity of signed authorizations.

Under current law, a company *may* allow its workers to have union representation if a majority of potential members supported unionization. However, such recognition is discretionary on the part of the employer. An employer may lawfully refuse to recognize a union until the union wins a NLRB secret-ballot election. To obtain an election, a union must garner support from 30 percent of employees and file an election petition. A number of studies indicate that this election process is tainted by employer intimidation and coercion during the process wherein employers frequently work to frustrate the efforts of workers to organize: 92 percent of employers illegally force employees to attend mandatory, closed-door meetings against the union and 25 percent of private-sector employers illegally fire at least one worker for union activity during organizing campaigns. (Bronfenbrenner, K. (2000). *Uneasy terrain: The impact of capital mobility on workers, wages, and union organizing* <http://digitalcommons.ilr.cornell.edu/reports/3/> (research done for a bi-partisan Congressional committee).

See also:

- Mehta, Chirag & Theodore, Nik, *Undermining the Right to Organize: Employer Behavior During Union Representation Campaigns* 5 (2005), <http://www.americanrightsatwork.org/docUploads/UROCUEdcompressedfullreport%2Epdf> (analyzing data from sixty-two NLRB-conducted election campaigns in Chicago during 2002 and finding that 30% of the employers fired workers for engaging in union activity).
- Weiler, Paul C., *Hard Times for Unions: Challenging Times for Scholars*, 58 U. Chi. L. Rev. 1015, 1019-24 (1991) (estimating that an employee was unlawfully discharged in one of every three representation elections conducted by the NLRB during the 1980s)
- Fischl, Richard, *Rethinking the Tripartite Division of American Work Law*, 28 Berkeley J. Emp. & Lab L. 163 (2007) (unions tend to steer clear of the NLRB's traditional representation procedures such as the secret-ballot election "having concluded on the basis of years of experience that those procedures are terribly slow and virtually ineffective against the unlawful employer resistance that is typically encountered in a union campaign, both historically and today." *Id.* at 208-209)
- Brudney, James J., *Neutrality Agreements and Card Check Recognition: Prospects for Changing Paradigms*, 90 Iowa L. Rev. 819 (2005).
- Greenhouse, Steven, *Union Takes New Tack in Organizing Effort at Pork-Processing Plant*, N.Y. Times, Feb. 13, 2006 at A16 <http://www.nytimes.com/2006/02/13/national/13labor.html?ex=1297486800&en=3a5773cc0380efae&ei=5090&partner=rssuserland&emc=rss> (describing how union lost NLRB-conducted election in 1997 and secured reversal of the result by the agency seven years later on the basis of employer's unlawful discharges and threats against union supporters).

A recent national survey suggested that workers in NLRB elections were twice as likely (46 percent vs. 23 percent) as those in majority sign-up campaigns to report that management coerced them to oppose the union. Further, less than one in twenty workers (4.6 percent) who signed a card with a union organizer reported that the presence of the organizer made them feel pressured to sign the card. <http://www.americanrightsatwork.org/docUploads/IBFactOverFictFinal2%2Epdf>

Responding to the problems of the election process, some employers, like Cingular Wireless and the health care provider Kaiser Permanente, have voluntarily

embraced the practice of the majority sign-up. But many others, such as the United States Chamber of Commerce and the National Association of Manufacturers, remain rigidly opposed. Opponents of the Act point out that the secret-ballot election allows employees to express their preferences regarding unionization without fear of intimidation. *See, e.g., Hearing Highlights Diverging View on Ballot Process, Need for Card Check Bill*, Daily Labor Report, no.59, A-10 (Mar. 28, 2007). However, proponents of the Act argue that the supervision of these elections by the NLRB does not negate the pressure-filled campaigns leading up to the election. *Id.*

It is important to note that the majority sign-up provision of the Act does not replace the NLRB ballot election process; instead, it adds another procedure for unionization whereby the employer *must* recognize the union.

First Contract Mediation and Arbitration

Secondly, the Act provides that if an employer and a union are engaged in bargaining for their first contract and are unable to reach agreement within 90 days, either party may refer the dispute to the Federal Mediation and Conciliation Service (FMCS) for mediation. If the FMCS has been unable to bring the parties to agreement after 30 days of mediation, the dispute will be referred to arbitration and the results of the arbitration shall be binding on the parties for two years. Time limits may be extended by mutual agreement of the parties. Under current law, employers have a duty to bargain in good faith, but are under no obligation to reach agreement. As a result, scholars point out that 34 percent of union election victories had not resulted in a first contract after a year of bargaining. Indeed, the refusal to bargain is among the most common allegations against employers in filings to the National Labor Relations Board. *See* Bronfenbrenner above.

Stronger Penalties for Violations While Employees are Attempting to Organize or Obtain a First Contract

Third, the Act makes the following new provisions applicable to violations of the NLRA committed by employers against employees during any period while employees are attempting to organize a union or negotiate a first contract with the employer:

- **Mandatory Applications for Injunctions:** Provides that just as the NLRB is required to seek a federal court injunction against a union whenever there

is reasonable cause to believe that the union has violated the secondary boycott prohibitions in the Act, the NLRB must seek a federal court injunction against an employer whenever there is reasonable cause to believe that the employer has discharged or discriminated against employees, threatened to discharge or discriminate against employees, or engaged in conduct that significantly interferes with employee rights during an organizing or first contract drive. The Act authorizes the courts to grant temporary restraining orders or other appropriate injunctive relief.

- **Treble Back Pay:** Increases the amount an employer is required to pay when an employee is discharged or discriminated against during an organizing campaign or first contract drive to three times back pay.
- **Civil Penalties:** Provides for civil fines of up to \$20,000 per violation against employers found to have willfully or repeatedly violated employees' rights during an organizing campaign or first contract drive.

Under current law, remedies are limited solely to “make whole” remedies: back pay and reinstatement. Many employers conclude that, even if caught, it is financially advantageous to violate the law and to pay the penalties rather than comply. Indeed, NLRB statistics show that the number of employees awarded back pay for unfair labor practices has steadily risen over the last four decades: from 7,393 in 1975 to 18,434 in 1985 to 26,197 in 1995 and more than 31,000 in 2005. (as cited in Dale Russakoff, *Bill Easing Organization of Unions Passes House*, Washington Post, (March 2, 2007, p. A04). The stronger penalties provided by the Act are intended to deter more employers from violating workers' rights. See Bronfenbrenner above.

Res 07-10 provides the context for the *Employee Free Choice Act* by pointing out:

- The right to unionize is embedded in federal and international law; and
- The choice to organize is essential to economic opportunity and quality of life; and
- Unions benefit communities by strengthening living standards, stabilizing tax bases, promoting equal treatment and enhancing civic participation; and
- States in which more people are union members are States with higher wages, better benefits and better schools; and

- Union workers receive better wages and benefits: they earn 29 percent more than workers without a union and are 35 percent more likely to have access to health insurance and four times more likely to have access to a guaranteed defined benefit pension; and
- Unions help raise workers' pay and narrow the income gap for minorities and women; and
- Workers are routinely denied the freedom to form unions; and
- 77 percent of the public believes it is important to have strong laws protecting unions; and
- Employers often drag out first contact bargaining for up to two years in 45 percent of cases; and
- When the right to form a union is violated, wages fall, race and gender pay gaps widen, workplace discrimination increases and job safety standards disappear.

Over 21 States and 45 cities have passed resolutions in support of the *Employee Free Choice Act*, including Boston, Massachusetts; Philadelphia, Detroit, Buffalo, Portland and Madison, Wisconsin. A full list can be found at:

http://www.aflcio.org/joinaunion/voiceatwork/efca/city_state.cfm

The Act is also endorsed by a number of organizations, including the: AFL-CIO; Association of Community Organizations for Reform Now; American Federation of State, County and Municipal Employees; American Federation of Teachers; American Public Health Association; Coalition of Labor Union Women; Human Rights Watch; Jobs with Justice; Leadership Conference on Civil Rights; NAACP; National Council of Women's Organizations; National Employment Law Project; National Immigration Law Center and the National Latino Congress.

**NOTICE AND AGENDA
BLOOMINGTON COMMON COUNCIL
SPECIAL SESSION & COMMITTEE OF THE WHOLE
7:30 P.M., WEDNESDAY, SEPTEMBER 12, 2007
COUNCIL CHAMBERS
SHOWERS BUILDING, 401 N. MORTON ST.**

I. ROLL CALL

II. AGENDA SUMMATION

III. LEGISLATION FOR SECOND READING AND RESOLUTIONS

1. Ordinance 07-17 An Ordinance Fixing the Salaries of Officers of the Police and Fire Departments for the City of Bloomington, Indiana, For the Year 2008

Committee Recommendation: Do Pass 7 – 0 – 1

2. Ordinance 07-18 An Ordinance Fixing the Salaries of Appointed Officers, Non-Union and A.F.S.C.M.E. Employees for All the Departments of the City of Bloomington, Monroe County, Indiana, for the Year 2008

Committee Recommendation: Do Pass 7 – 0 – 2

3. Ordinance 07-19 To Fix the Salaries of All Elected City Officials for the City of Bloomington for the Year 2008

Committee Recommendation: Do Pass 7 – 1 – 1

4. Appropriation Ordinance 07-04 An Ordinance for Appropriations and Tax Rates (2008 Civil City Budget for the City of Bloomington)

Committee Recommendation: Do Pass 7 – 0 – 2

5. Appropriation Ordinance 07-05 An Ordinance Adopting a Budget for the Operation, Maintenance, Debt Service, and Capital Improvements for the Water and Wastewater Utility Departments of the City of Bloomington, Indiana, for the Year 2008

Committee Recommendation: Do Pass 7 – 0 – 2

6. Ordinance 07-20 An Ordinance Reviewing and Modifying the Budget of the Bloomington Public Transportation Corporation for the Year 2008

Committee Recommendation: Do Pass 9 – 0 – 0

7. Resolution 07-10 Supporting the Employee Free Choice Act

Committee Recommendation: Not Applicable

IV. ADJOURNMENT

(and immediately reconvene for)

(over)

COMMITTEE OF THE WHOLE

Chair: David Sabbagh

1. Ordinance 07-21 To Amend Title 2 of the Bloomington Municipal Code Entitled “Administration and Personnel” (Inserting Chapter 2.23.080 Establishing the Commission on Hispanic and Latino Affairs)

Asked to Attend: Pete Giordano, Director, Community & Family Resources
Beverly Calender-Anderson, Safe & Civil City Director

* 2. Resolution 07-08 To Designate an Economic Revitalization Area, Approve a Statement of Benefits, Authorize a Period of Tax Abatement, and Declare Intent to Waive Certain Statutory Requirements – Re: 300 East Third Street (The Plaza at Third and Lincoln LLC, Petitioner)

Asked to Attend: Danise Alano, Director of Economic Development

* 3. Ordinance 07-22 To Designate an Economic Development Target Area – Re: 300 E. Third Street (The Plaza at Third and Lincoln, LLC, Petitioner)

Asked to Attend: Danise Alano, Director of Economic Development

4. Ordinance 07-23 To Vacate a Public Parcel – Re: The Portion of the West 9th Street Right-of-Way Running from North Rogers Street to the B-Line Trail (CFC, Inc., Petitioner)

Asked to Attend: Lynne Darland, Zoning & Enforcement Manager
Representative of Petitioner

* *Note: It is expected that Danise Alano will request that the Committee of the Whole recommend tabling these items at Regular Session on September 19th.*

City of
Bloomington
Indiana

City Hall
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Post Office Box 100
Bloomington, Indiana 47402



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To: Council Members
From: Council Office
Re: Calendar for the Week of September 10-15, 2007

Monday, September 10, 2007

4:30 pm Plat Committee, Hooker Room
5:00 pm Redevelopment Commission, McCloskey
5:00 pm Historic Preservation Commission Designation Subcommittee, Kelly
5:30 pm Plan Commission, Council Chambers
6:00 pm *South Central Indiana Plants Series: Rain Gardens* – Learn more about what a rain garden is, how to start one, and where to find more information on native plantings, for ages 14 years and up, Monroe County Highway Garage, 2800 S. Kirby Rd.

Tuesday, September 11, 2007

9:00 am *U.S. Census Local Update of Census Addresses Training*, Council Chambers
11:00 am Bloomington Multicultural Festival Planning Committee, Dunlap
4:00 pm Diversity Film Festival Planning Committee, Hooker Room
5:45 pm Bloomington Community Arts Commission, Kelly
6:00 pm Bloomington Commission on Sustainability, McCloskey
6:00 pm Neighborhood Improvement Grant Meeting, Hooker Room
7:00 pm Public Workshop on Alternative Transportation and Greenways System Plan, Council Chambers

Wednesday, September 12, 2007

9:30 am Emergency Management Meeting, Council Chambers
4:00 pm Board of Housing Quality Appeals, McCloskey
4:15 pm Commission on the Status of Black Males, Hooker Room
7:30 pm Common Council Special Session *immediately followed by* Committee of the Whole, Council Chambers

Thursday, September 13, 2007

12:00 pm Housing Network, McCloskey
3:30 pm Bloomington Historic Preservation Commission, McCloskey

Friday, September 14, 2007

No meetings are scheduled for this date.

Saturday, September 15, 2007

8:00 am Bloomington Community Farmers' Market, Showers Common
9:00 am *Fall Volunteer Fair* – Learn about volunteer opportunities and work being done by area nonprofits, Showers Common

RESOLUTION 07-10

SUPPORTING THE EMPLOYEE FREE CHOICE ACT

- WHEREAS, the right to form or join a union is a fundamental right embedded in federal law and outlined in the international 1948 Universal Declaration of Human Rights; and
- WHEREAS, despite this articulated right, current federal law does not adequately protect the rights of workers to organize nor does it adequately require employers to collectively bargain; and
- WHEREAS, a significant number of workers who attempt to organize unions face substantial barriers and suffer harmful consequences, including unlawful termination, intimidation, and required attendance at company sponsored anti-union presentations; and
- WHEREAS, the Common Council does not believe that this represents a free and fair process to determine whether or not a majority of workers support forming a union; and
- WHEREAS, the ability to organize freely to bargain for better wages and benefits is essential to the health of citizens and the community; and
- WHEREAS, unions benefit our community by strengthening living standards, stabilizing tax bases, promoting equal treatment and enhancing civic participation; and
- WHEREAS, union workers receive better wages and benefits and narrow the income gap for women and minorities; and
- WHEREAS, States in which more people are union members are States with higher wages, better benefits and better schools; and
- WHEREAS, when the right of workers to form a union is violated, wages fall, race and gender pay gaps widen, workplace discrimination increases and job safety standards disappear; and
- WHEREAS, the proposed federal legislation entitled *Employee Free Choice Act*: ensures that when a majority of employees in a workplace decide to form a union they can do so fairly; provides for timely access to bargaining and dispute resolution mechanisms for first collective bargaining agreements; and provides for meaningful penalties for violations; and
- WHEREAS, it is in the best interest of the City to ensure free and fair processes for unionization.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION 1. The Common Council urges the United States Congress to pass the *Employee Free Choice Act*.

SECTION 2. The City Clerk shall send a copy of this resolution, duly adopted, to the Indiana Congressional delegation and the President of the United States.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2007.

DAVE ROLLO, President
Bloomington Common Council

SIGNED and APPROVED by me upon this _____ day of _____, 2007.

MARK KRUZAN, Mayor
City of Bloomington

ATTEST:

REGINA MOORE, Clerk
City of Bloomington

SYNOPSIS

This resolution is co-sponsored by Councilmembers Rollo and Ruff. It recognizes as a fundamental right workers’ ability to unionize, calls upon the United States Congress to pass the *Employee Free Choice Act* and directs the City Clerk to send copies of this resolution to the Indiana Congressional Delegation and the President of the United States.



**City of Bloomington
Common Council**

Memorandum

To: Members of the Common Council
From: Councilmembers Rollo and Ruff
Date: 07 September 2007
Re: Resolution 07-10: Supporting the Employee Free Choice Act

Resolution 07-10 calls upon Congress to pass the Employee Free Choice Act (H.R.800, S.1041). The Act was introduced in both the House and Senate during the 108th, 109th, and 110th Congress. It passed the House on March 1, 2007 by a vote of 241-185, but was filibustered by Senate in June 2007. Supported by a bi-partisan coalition in both the House and Senate, the Act would amend the National Labor Relations Act (NLRA) by strengthening workers' rights in three key ways.

- First, the Act would make it easier for employees to form unions. Under the Act, if the National Labor Relations Board (NLRB) finds that a majority of employees have signed authorization cards designating the union as its bargaining representative, the union would be certified. The Act would require the NLRB to develop authorization language and procedures for establishing the validity of signed authorizations. Under current law, a company may allow its workers to have union representation if a majority of potential members supported unionization. However, an employer may lawfully refuse to recognize a union until the union wins a NLRB secret-ballot election. To obtain an election, a union must garner support from 30 percent of employees and file an election petition. A number of studies indicate that this election process is tainted by employer intimidation and coercion during the process wherein employers frequently work to frustrate the efforts of workers to organize: 92 percent of employers illegally force employees to attend mandatory, closed-door meetings against the union and 25 percent of private-sector employers illegally fire at least one worker for union activity during organizing campaigns. The Act would greatly diminish an employer's coercive force by making employer recognition of majority sign-up mandatory.
- Second, the Act provides that either party in an opening contract negotiation can request mediation or binding arbitration within a reasonable time period. Under current law, employers have a duty to bargain in good faith, but are under no obligation to reach agreement. As a result, scholars point out that 34 percent of union election victories had not resulted in a first contract after a year of bargaining.
- Finally, the Act would stiffen penalties for labor-law violations. Any employer that violates a provision of the NLRA would be subject to:
 - Fines of up to \$20,000 per violation against employers found to have willfully or repeatedly violated employees' rights during an organizing campaign or first-contract drive; and
 - An increase in the amount an employer is required to pay when an employee is discharged or discriminated against during an organizing campaign or first-contract drive to three times back pay; and
 - Mandatory injunctive relief when the NLRB has reasonable cause to believe that an employer has violated the Act during an organizing drive.

Under current law, remedies are limited solely to “make whole” remedies: back pay and reinstatement. Many employers conclude that, even if caught, it is financially advantageous to violate the law and to pay the penalties rather than comply. Indeed, NLRB statistics show that the number of employees awarded back pay for unfair labor practices has steadily risen over the last four decades: from 7,393 in 1975 to 18,434 in 1985 to 26,197 in 1995 and more than 31,000 in 2005. The stronger penalties provided by the Act would deter more employers from violating workers’ rights.

The freedom to form and join a union is a basic human right protected by our constitutional freedom of association, our nation’s labor laws and international human rights laws, including the 1948 Universal Declaration of Human Rights. However, the right to form union has been eroded over the last several years, resulting in increasing employer harassment, discrimination and sometimes termination for workers taking initial steps toward forming a union. The Employee Free Choice Act will protect workers from these abuses, provide for first contract mediation and arbitration, and establish meaningful penalties when employers violate workers’ rights.

Calendar No. 66
110th CONGRESS
1st Session
H. R. 800
IN THE SENATE OF THE UNITED STATES

March 1, 2007

Received and read the first time

March 2, 2007

Read the second time and placed on the calendar

AN ACT

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.

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 'Employee Free Choice Act of 2007'.

SEC. 2. STREAMLINING UNION CERTIFICATION.

(a) In General- Section 9(c) of the National Labor Relations Act (29 U.S.C. 159(c)) is amended by adding at the end the following:

`(6) Notwithstanding any other provision of this section, whenever a petition shall have been filed by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a majority of employees in a unit appropriate for the purposes of collective bargaining wish to be represented by an individual or labor organization for such purposes, the Board shall investigate the petition. If the Board finds that a majority of the employees in a unit appropriate for bargaining has signed valid authorizations designating the individual or labor organization specified in the petition as their bargaining representative and that no other individual or labor organization is currently certified or recognized as the exclusive representative of any of the employees in the unit, the Board shall not direct an election but shall certify the individual or labor organization as the representative described in subsection (a).

`(7) The Board shall develop guidelines and procedures for the designation by employees of a bargaining representative in the manner described in paragraph (6). Such guidelines and procedures shall include--

`(A) model collective bargaining authorization language that may be used for purposes of making the designations described in paragraph (6); and
`(B) procedures to be used by the Board to establish the validity of signed authorizations designating bargaining representatives.'

(b) Conforming Amendments-

(1) NATIONAL LABOR RELATIONS BOARD- Section 3(b) of the National Labor Relations Act (29 U.S.C. 153(b)) is amended, in the second sentence--

(A) by striking `and to' and inserting `to'; and

(B) by striking `and certify the results thereof,' and inserting `, and to issue certifications as provided for in that section,'.

(2) UNFAIR LABOR PRACTICES- Section 8(b) of the National Labor Relations Act (29 U.S.C. 158(b)) is amended--

(A) in paragraph (7)(B) by striking `, or' and inserting `or a petition has been filed under section 9(c)(6), or'; and

(B) in paragraph (7)(C) by striking `when such a petition has been filed' and inserting `when such a petition other than a petition under section 9(c)(6) has been filed'.

SEC. 3. FACILITATING 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:

`(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 90-day period beginning on the date on which bargaining is commenced, or such additional 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 mediation. Whenever such a request is received, it shall be the duty of the Service promptly to put itself in communication with the parties and to use its best efforts, by mediation and conciliation, to bring them to agreement.

`(3) If after the expiration of the 30-day period beginning on the date on which the request for mediation is made under paragraph (2), or such additional period as the parties may agree upon, the Service is not able to bring the parties to agreement by conciliation, the Service shall refer the dispute to an arbitration board established in accordance with such regulations as may be prescribed by the Service. The arbitration panel shall render a decision settling the dispute and such decision shall be binding upon the parties for a period of 2 years, unless amended during such period by written consent of the parties.'

SEC. 4. STRENGTHENING ENFORCEMENT.

(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.'

Passed the House of Representatives March 1, 2007.

Attest:

LORRAINE C. MILLER,

Clerk.

Calendar No. 66

110th CONGRESS
1st Session
H. R. 800
AN ACT

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.

March 2, 2007

Read the second time and placed on the calendar