

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.

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## 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.

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 “National Labor Rela-  
5       tions Modernization Act”.

1 **SEC. 2. PREVENTING EXCESSIVE DELAYS IN INITIAL COL-**  
2 **LECTIVE BARGAINING AGREEMENTS.**

3 Section 8 of the National Labor Relations Act (29  
4 U.S.C. 158) is amended by adding at the end the fol-  
5 lowing:

6 “(h) Whenever collective bargaining is for the pur-  
7 pose of establishing an initial agreement following certifi-  
8 cation or recognition, the provisions of subsection (d) shall  
9 be modified as follows with respect to any employer having  
10 20 or more employees:

11 “(1) Not later than 10 days after receiving a  
12 written request for collective bargaining from an in-  
13 dividual or labor organization that has been newly  
14 organized or certified as a representative as defined  
15 in section 9(a), or within such further period as the  
16 parties agree upon, the parties shall meet and com-  
17 mence to bargain collectively and shall make every  
18 reasonable effort to conclude and sign a collective  
19 bargaining agreement.

20 “(2) If after the expiration of the 120-day pe-  
21 riod beginning on the date on which bargaining is  
22 commenced, or such other period as the parties may  
23 agree upon, the parties have failed to reach an  
24 agreement, either party may notify the Federal Me-  
25 diation and Conciliation Service of the existence of  
26 a dispute and request the appointment of an arbitra-

1       tion panel. Whenever such a request is received, the  
2       Service shall promptly appoint an arbitration panel  
3       which will use its best efforts, by mediation and con-  
4       ciliation, to bring the parties to agreement.

5               “(3) If after the expiration of the 120-day pe-  
6       riod beginning on the date on which the request for  
7       mediation is made under paragraph (2), or such  
8       other period as the parties may agree upon, the arbi-  
9       tration panel appointed under paragraph (2) is not  
10      able to bring the parties to agreement by mediation  
11      and conciliation, the such panel shall then begin to  
12      arbitrate the dispute in accordance with such regula-  
13      tions as may be prescribed by the Service. Such  
14      panel shall render a decision settling the dispute not  
15      later than 30 days after commencing arbitration and  
16      such decision shall be binding upon the parties for  
17      a period of 18 months, unless amended during such  
18      period by written consent of the parties.”.

19 **SEC. 3. STRENGTHENING ENFORCEMENT AGAINST INTIMI-**  
20 **DATION OF WORKERS.**

21       (a) INJUNCTIONS AGAINST UNFAIR LABOR PRAC-  
22      TICES DURING ORGANIZING DRIVES.—

23               (1) IN GENERAL.—Section 10(l) of the National  
24      Labor Relations Act (29 U.S.C. 160(l)) is amend-  
25      ed—

1 (A) in the second sentence, by striking “If,  
2 after such” and inserting the following:

3 “(2) If, after such”; and

4 (B) by striking the first sentence and in-  
5 serting the following:

6 “(1) Whenever it is charged—

7 “(A) that any employer—

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

11 “(ii) threatened to discharge or to other-  
12 wise discriminate against an employee in viola-  
13 tion of subsection (a)(1) of section 8; or

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

19 while employees of that employer were seeking rep-  
20 resentation by a labor organization or during the pe-  
21 riod after a labor organization was recognized as a  
22 representative defined in section 9(a) until the first  
23 collective bargaining contract is entered into between  
24 the employer and the representative; or

1           “(B) that any person has engaged in an unfair  
2           labor practice within the meaning of subparagraph  
3           (A), (B) or (C) of section 8(b)(4), section 8(e), or  
4           section 8(b)(7);  
5           the preliminary investigation of such charge shall be made  
6           forthwith and given priority over all other cases except  
7           cases of like character in the office where it is filed or  
8           to which it is referred.”.

9           (2) CONFORMING AMENDMENT.—Section 10(m)  
10          of the National Labor Relations Act (29 U.S.C.  
11          160(m)) is amended by inserting “under cir-  
12          cumstances not subject to section 10(l)” after “sec-  
13          tion 8”.

14          (b) REMEDIES FOR VIOLATIONS.—

15          (1) BACKPAY.—Section 10(c) of the National  
16          Labor Relations Act (29 U.S.C. 160(c)) is amended  
17          by striking “*And provided further,*” and inserting  
18          “*Provided further,* That if the Board finds that an  
19          employer has discriminated against an employee in  
20          violation of subsection (a)(3) of section 8 while em-  
21          ployees of the employer were seeking representation  
22          by a labor organization, or during the period after  
23          a labor organization was recognized as a representa-  
24          tive defined in subsection (a) of section 9 until the  
25          first collective bargaining contract was entered into

1 between the employer and the representative, the  
2 Board in such order shall award the employee back  
3 pay and, in addition, 2 times that amount as liq-  
4 uidated damages: *Provided further*,”.

5 (2) CIVIL PENALTIES.—Section 12 of the Na-  
6 tional Labor Relations Act (29 U.S.C. 162) is  
7 amended—

8 (A) by striking “Any” and inserting “(a)  
9 Any”; and

10 (B) by adding at the end the following:

11 “(b) Any employer who willfully or repeatedly com-  
12 mits any unfair labor practice within the meaning of sub-  
13 sections (a)(1) or (a)(3) of section 8 while employees of  
14 the employer are seeking representation by a labor organi-  
15 zation or during the period after a labor organization has  
16 been recognized as a representative defined in subsection  
17 (a) of section 9 until the first collective bargaining con-  
18 tract is entered into between the employer and the rep-  
19 resentative shall, in addition to any make-whole remedy  
20 ordered, be subject to a civil penalty of not to exceed  
21 \$20,000 for each violation. In determining the amount of  
22 any penalty under this section, the Board shall consider  
23 the gravity of the unfair labor practice and the impact  
24 of the unfair labor practice on the charging party, on other

1 persons seeking to exercise rights guaranteed by this Act,  
2 or on the public interest.”.

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

5 (a) EQUAL ACCESS.—Section 9 of the National  
6 Labor Relations Act (29 U.S.C. 159) is amended by add-  
7 ing at the end the following new subsection:

8 “(f)(1) Not later than 30 days after the Board shall  
9 have directed an election, the employer shall notify the  
10 representative designated by the employees under sub-  
11 section (a) of any activities the employer intends to engage  
12 in to campaign in opposition to recognition of the rep-  
13 resentative, including any meetings with individual em-  
14 ployees or groups of employees, any announcements to em-  
15 ployees, any signs to be displayed at the place of employ-  
16 ment, and any literature to be distributed to employees,  
17 and shall provide the representative with equal access to  
18 the place of employment to campaign in favor of recogni-  
19 tion of the representative, including the opportunity to  
20 hold an equal number of meetings with individual employ-  
21 ees or groups of employees, and an opportunity to make  
22 announcements, display signs, and distribute literature,  
23 under the same terms and conditions that the employer  
24 engages in such activities.

1       “(2) As used in this subsection, the term ‘campaign’  
2 means any activity undertaken to persuade employees to  
3 vote for or against representation in an election directed  
4 by the Board, but shall not include any interference with,  
5 restraint or coercion of, or discrimination against employ-  
6 ees in violation of paragraphs (1) through (3) of section  
7 8(a).”.

8       (b) UNFAIR LABOR PRACTICE.—Section 8(a) of the  
9 National Labor Relations Act (29 U.S.C. 158(a)) is  
10 amended—

11           (1) in paragraph (5), by striking the period and  
12       inserting “; or”; and

13           (2) by adding at the end the following:

14           “(6) to fail to provide the notification and equal  
15       access to a representative as required by section  
16       9(f).”.

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