

115TH CONGRESS  
1ST SESSION

# H. R. 2776

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

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 6, 2017

Mr. WALBERG (for himself, Ms. FOXX, Mr. ROE of Tennessee, Mr. BYRNE, Mr. GROTHMAN, Mr. ALLEN, and Mr. MITCHELL) 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 and the identification of pre-election issues.

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 HEARINGS.**

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 less  
6 than 14 calendar days after the filing of the peti-  
7 tion” 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 which may reasonably be expected to im-  
19 pact the outcome of the election. Parties may inde-  
20 pendently raise any relevant and material pre-elec-  
21 tion issue or assert any relevant and material posi-  
22 tion at any time prior to the close of the hearing.”;  
23 and

24 (3) by striking “and shall certify the results  
25 thereof” and inserting “to be conducted as soon as  
26 practicable but no earlier than 35 calendar days

1 after the filing of an election petition. The Board  
2 shall certify the results of the election after it has  
3 ruled on each pre-election issue not resolved before  
4 the election and any additional issue pertaining to  
5 the conduct or results of the election”.

6 **SEC. 3. DETERMINATION OF APPROPRIATE UNITS FOR**  
7 **COLLECTIVE BARGAINING.**

8 Section 9(b) of the National Labor Relations Act (29  
9 U.S.C. 159(b)) is amended—

10 (1) by redesignating paragraphs (1) through  
11 (3) as subparagraphs (A) through (C), respectively;  
12 (2) by striking “The Board shall decide” and  
13 all that follows through “or subdivision thereof:”  
14 and inserting the following: “(1) In each case, prior  
15 to an election, the Board shall determine, in order  
16 to assure to employees the fullest freedom in exer-  
17 cising the rights guaranteed by this Act, the unit ap-  
18 propriate for the purposes of collective bargaining.  
19 Unless otherwise stated in this Act, and excluding  
20 any bargaining unit determination promulgated  
21 through rulemaking before August 26, 2011, the  
22 unit appropriate for purposes of collective bargaining  
23 shall consist of employees that share a sufficient  
24 community of interest. In determining whether em-

1        ployees share a sufficient community of interest, the  
2        Board shall consider—

3            “(A) similarity of wages, benefits, and working  
4        conditions;

5            “(B) similarity of skills and training;

6            “(C) centrality of management and common su-  
7        pervision;

8            “(D) extent of interchange and frequency of  
9        contact between employees;

10          “(E) integration of the work flow and inter-  
11       relationship of the production process;

12          “(F) the consistency of the unit with the em-  
13       ployer’s organizational structure;

14          “(G) similarity of job functions and work; and

15          “(H) the bargaining history in the particular  
16       unit and the industry.

17 To avoid the proliferation or fragmentation of bargaining  
18 units, employees shall not be excluded from the unit unless  
19 the interests of the group seeking a separate unit are suffi-  
20 ciently distinct from those of other employees to warrant  
21 the establishment of a separate unit. Whether additional  
22 employees should be included in a proposed unit shall be  
23 determined based on whether such additional employees  
24 and proposed unit members share a sufficient community  
25 of interest, with the sole exception of proposed accretions

1 to an existing unit, in which the inclusion of additional  
2 employees shall be based on whether such additional em-  
3 ployees and existing unit members share an overwhelming  
4 community of interest and the additional employees have  
5 little or no separate identity.”; and

6 (3) by striking “*Provided, That the Board*” and  
7 inserting the following:  
8 “(2) The Board”.

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