



NB-23

Date: July 17, 2007

To: Honorable Mayor and Members of the City Council

From: Councilmember Gerrie Schipske, Fifth District 
Councilmember Tonia Reyes Uranga, Seventh District 

Subject: **AGENDA ITEM: Request a Resolution in Support of HR 800 – Employee Free Choice Act**

The City of Long Beach 2010 Strategic Plan recognized the “Need for Economic Well Being” as one of the six Opportunities and Challenges for the City. The 2010 Plan states,

“While Long Beach suffered tremendous economic hits in the early part of the last decade, strong leadership and an aggressive economic development program have enabled us to rebound. Still, an above average poverty rate continues to affect our community. Partly, this is because the growth in employment has been disproportionately in lower paying jobs. In the future, economic growth needs to be measured not just in the number of new jobs, but also in the quality of those jobs.” (Page 5)

The growth in lower paying jobs, particularly in the service and hospitality sectors, is not strictly a Long Beach phenomenon.

- According the Los Angeles County Economic Development Corporation, the number of manufacturing jobs in Southern California has decreased from approximately 812,000 in 1990 to just over 462,000 in 2006.
- California’s real median hourly wage fell by 2.7 percent between 2003 and 2006, and the share of the population under the age of 65 with employer-provided health insurance fell from 60.1 percent in 1999-2000 to 55.4 percent in 2004-2005, while the number of people with employer-provided health insurance fell by 623,285.
- In 1983, 88 percent of workers in the nation with pension plans had a defined-benefit plan. By 2004, that share had dropped to 37 percent.

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In response to these nationwide trends, the US House of Reps has passed HR 800 (Employee Free Choice Act). HR 800 is a bipartisan resolution that in part cites the need;

“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.”

We are requesting that the City of Long Beach adopt a resolution of support for HR 800.

Recommendation: Request the City Attorney to draft a resolution supporting HR 800.

The Employee Free Choice Act was introduced as bipartisan legislation by Sens. Edward Kennedy (D-Mass.) and Reps. George Miller (D-Calif.) and Peter King (R-N.Y.).

1. Certification on the Basis of Majority Sign-Up

Provides for certification of a union as the bargaining representative if the National Labor Relations Board (NLRB) finds that a majority of employees in an appropriate unit has signed authorizations designating the union as its bargaining representative. Requires the board to develop model authorization language and procedures for establishing the validity of signed authorizations.

2. First-Contract Mediation and Arbitration

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 is 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.

3. Stronger Penalties for Violations While Employees Are Attempting to Form a Union or Attain a First Contract

Makes the following new provisions applicable to violations of the National Labor Relations Act committed by employers against employees during any period while employees are attempting to form a union or negotiate a first contract with the employer:

- a. 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.
- b. 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.
- c. 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 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 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. Authorizes the courts to grant temporary restraining orders or other appropriate injunctive relief.

This fact sheet has been prepared by the AFL-CIO. For more information regarding the Employee Free Choice Act, please call 202-637-5018.

HR 800 EH

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.

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:

Clerk.

110th CONGRESS

1st Session

H. R. 800

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END