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REPORT TO LAW & LEGISLATION COMMITTEE
City of Sacramento

915 I Street, Sacramento, CA 95814-2671

STAFF REPORT
April 7, 2009

Honorable Members of the
Law and Legislation Committee

Title: Proposed Resolution Supporting the Employee Free Choice Act

Location/Council District: Citywide

Recommendation: For consideration and possible action.

Contact: Patti Bisharat, Director of Governmental Affairs, 808-8197
Mark Prestwich, Special Projects Manager, 808-5380

Presenters: Patti Bisharat, Director of Governmental Affairs, 808-8197

Department: City Manager's Office

Description/Analysis

Issue:

At the February 3, 2009 Law and Legislation Committee meeting, Chair Sheedy indicated she received a letter and sample resolution from the Sacramento Central Labor Council requesting City Council support for the Employee Free Choice Act (EFCA). The EFCA, introduced March 10, 2009 into both the House of Representatives and U.S. Senate, proposes changes to the process by which labor organizations are formed and other related amendments to the National Labor Relations Act (NLRA).

Under current law, if a majority of employees in a unit sign authorization cards (card check) indicating they are interested in forming a union, an employer may choose to voluntarily recognize the employee unit or request the National Labor Relations Board (NLRB) conduct a secret ballot election. The secret ballot election may also be requested by

employees when 30 percent or more of employees in a unit sign authorization cards. The election then determines whether an official employee bargaining unit is established.

If enacted, the EFCA would discontinue the secret ballot election procedure and require the NLRB to certify a bargaining unit when a majority of unit employees present signed authorization cards to the employer. The secret ballot procedure would remain in place if more than 30 percent but less than 50 percent of employees sign authorization cards. The proposed EFCA will also implement mandatory binding arbitration by federal arbitrators if collective bargaining and mediation between the employer and represented unit is unsuccessful, and change enforcement rules and penalties related to unfair labor practices.

Policy Considerations:

Proponents of the EFCA contend the bill will improve the standard of living for working families and is necessary because:

- The process for forming unions is skewed in favor of those opposing unions;
- The bill adds fairness to the process by providing a chance to bargain collectively for fair wages and benefits because employers sometimes go years without agreeing to a contract; and
- Too many employers get away with breaking labor laws because the current penalties are too weak.

Opponents contend the secret ballot process protects workers' privacy during organizing drives and that passage of the bill will lead to:

- Employees being intimidated into signing a union card;
- Improper intrusion of government into private business affairs; and
- Reduced American competitiveness in the global marketplace.

Environmental Considerations: None.

Sustainability Considerations: None.

Committee/Commission Action: None.

Rationale for Recommendation:

This report includes a proposed resolution provided by the Sacramento Central Labor Council supporting the EFCA for Committee consideration and possible action.

Financial Considerations: None.

Emerging Small Business Development (ESBD): None.

Respectfully submitted by: Patti Bisharat
Patti Bisharat
Director of Governmental Affairs

Recommendation Approved:

for Patti Bisharat
Ray Kerridge
City Manager

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BACKGROUND

The Employee Free Choice Act (EFCA) proposes amendments to the National Labor Relations Act (NLRA) that will change the process by which labor organizations can be formed. If enacted, the EFCA will also implement mandatory binding arbitration by federal arbitrators if collective bargaining and mediation between the employer and represented unit is unsuccessful, and change enforcement rules and penalties related to unfair labor practices.

Congress established the NLRA in 1935 to protect the rights of employees and employers, to encourage collective bargaining, and to address harmful labor and management practices. The NLRA is administered by the National Labor Relations Board (NLRB). The NLRB is responsible for two primary tasks:

- To prevent and remedy unfair labor practices, whether committed by labor organizations or employers, and;
- To establish whether or not certain groups of employees desire labor organization representation for collective-bargaining purposes, and if so, which union.

Rep. George Miller (D-CA) initially introduced the EFCA on February 5, 2007. On March 1, 2007, the legislation (H.R. 800) passed the U.S. House of Representatives on a 241-185 vote, but failed in the Senate because the bill did not receive the 60 votes necessary to end debate. On March 10, 2009, Rep. Miller again introduced the EFCA along with 222 co-sponsors including Sacramento Rep. Doris Matsui (D-CA). The reintroduced bill, H.R. 1409, is unchanged from the 2007 version and has been referred to the House Committee on Education and Labor. Sen. Edward Kennedy (D-MA) introduced the EFCA in the Senate (S. 560) on March 10, 2009 as well. The bill has been referred to the Senate Committee on Health, Education, Labor and Pensions.

Under current law, if a majority of employees in a unit signs authorization cards (card check) indicating they are interested in forming a union, an employer may choose to voluntarily recognize the employee unit or request the NLRB conduct a secret ballot election. The secret ballot election may also be requested by employees when 30 percent or more of employees in a unit sign authorization cards. The election then determines whether an official employee bargaining unit is established.

If enacted, the EFCA will discontinue the secret ballot election procedure and require the NLRB to certify a bargaining unit when a majority of signed authorization cards are presented to the employer. The secret ballot procedure would remain in place if more than 30 percent but less than 50 percent of employees sign authorization cards. Additionally, the EFCA will establish several procedural requirements for reaching an initial collective bargaining agreement following certification or recognition of the union. These requirements include:

- Initiating collective bargaining between the parties not later than 10 days after receiving a written request.
- If the parties fail to reach an agreement after 90 days, or an additional period agreed upon by the parties, either party may seek federal mediation services to attempt to bring the parties to an agreement.
- If the parties fail to reach an agreement 30 days after the mediation request is made, or an additional bargaining period agreed upon by the parties, the mediation service will refer the dispute to an arbitration panel that shall render a binding decision on the parties for a period of two years, unless amended by the parties.

Finally, the EFCA requires the NLRB to prioritize preliminary investigations related to allegations of unfair labor practices during organizing periods prior to a collective bargaining agreement. If violations are found, the EFCA authorizes civil penalties up to $20,000 per violation against employers and back pay for employees, plus two times back pay as liquidated damages.

Proponents of the EFCA contend the bill will improve the standard of living for working families and is necessary because:

- The process for forming unions is skewed in favor of those opposing unions;
- The bill adds fairness to the process by providing a chance to bargain collectively for fair wages and benefits because employers sometimes go years without agreeing to a contract; and
- Too many employers get away with breaking labor laws because the current penalties are too weak.

Opponents contend the secret ballot process protects workers' privacy during organizing drives and that passage of the bill will lead to:

- Employees being intimidated into signing a union card;
- Improper intrusion of government into private business affairs; and
- Reduced American competitiveness in the global marketplace.

ATTACHMENT 2

SACRAMENTO CENTRAL LABOR COUNCIL AFL - CIO

Embracing Amador, El Dorado, Nevada, Placer, Yolo and Sacramento Counties

2840 El Centro Road, Suite 111 • Sacramento, California 95833
Telephone: (916) 927-9772 • Fax: (916) 927-1643

February 2, 2009

Dear Sacramento City Council,

The Sacramento Central Labor Council/AFL-CIO is requesting that the Sacramento City Council become official supporters of the Employee Free Choice Act, by adopting a Resolution in support of this federal legislation that is critical to working families.

The Employee Free Choice Act would ensure that workers have a free choice and a fair chance to bargain collectively for fair wages and benefits. It would also help workers and employers come together to secure a fair union contract in a reasonable period of time.

During these tough economic times, the Employee Free Choice Act can help restore the balance to our economy. Now more than ever, workers need and deserve the opportunity to bargain collectively for fair wages, health care and benefits. Both employers and employees benefit when workers are happy with their working conditions. And when workers have more money to spend, the entire economy benefits.

Protecting the right to form unions is about maintaining the American middle class. It's no coincidence that as union membership numbers fall there are growing numbers of jobs with low pay, poor benefits, and little to no security. Workers who belong to unions earn 30 percent more than non-union workers, and are 59 percent more likely to have employer-provided health care. It's no surprise that more than half of U.S. workers—60 million—say they would join a union right now if they could.

But the vast majority of companies illegally threaten, coerce, intimidate and even fire workers who try to unionize. The Employee Free Choice Act would instill harsher penalties to these companies who don't play by the rules, which levels the playing field for all employers and workers.

A growing, bipartisan coalition of policymakers, organizations and employers support the Employee Free Choice Act. I hope the Sacramento City Council would join the AFL-CIO in supporting this vital piece of legislation.

If you have any questions, please contact Bill Camp or Greg Larkins at (916) 927-9772.

Sincerely,

Bill Camp

Bill Camp, Executive Secretary

GML:opeiu29/AFL-CIO

EMPLOYEE FREE CHOICE ACT RESOLUTION

WHEREAS, in the National Labor Relations Act of 1935 (29 U.S.C. Sec. 151 et seq.) the United States Congress declared it to be the policy of the United States to encourage the practice of collective bargaining by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection; and

WHEREAS, the freedom to form or join a union is recognized as a fundamental human right; and

WHEREAS, union membership provides workers with better wages, improved benefits, and protection from discrimination and unsafe workplaces; and

WHEREAS, unions benefit communities by moving families out of poverty, creating economic security, strengthening tax bases, promoting equal treatment, and enhancing civic participation; and

WHEREAS, because unions workers are more likely to have healthcare coverage and pensions, union membership also reduces the need for working families to rely on the social safety net; and

WHEREAS, unions helped to build the middle class in this country and to establish basic working standards that benefit all workers, such as the 8-hour day and the right to a lunch break; and

WHEREAS, a worker's fundamental right to join a union is essential to rebuilding our economy and revitalizing our middle class; and

WHEREAS, fifty-seven million United States workers have indicated that they would join a union tomorrow if given the opportunity; and

WHEREAS, while the National Labor Relations Act is supposed to protect and encourage collective bargaining, in reality our laws are so outdated and broken that workers are routinely denied that freedom form and join unions and bargain collectively with their employers for a better life; and

WHEREAS, each year, more than 20,000 American workers are illegally threatened, coerced, or terminated for attempting to form a union; and

WHEREAS, 92 percent of companies respond to union organizing by hiring anti-union consultants; 50 percent threaten to close the plant if workers vote for a union; and 25 percent actually fire workers for trying to organize; and

WHEREAS, even when workers are successful in winning union representation, many companies refuse to bargain in good faith to reach a first contract; and

WHEREAS, current labor law is so toothless that penalties against companies that violate the law are virtually non-existent; and

WHEREAS, when the freedom of workers to form a union is violated, wages decline, race and gender pay gaps widen, workplace discrimination increases, and job safety standards lapse; and

WHEREAS, corporations systematically deny workers' freedom to form and join unions and spend hundreds millions of dollars to frustrate workers' efforts to organize; and

WHEREAS, the current system has failed workers and must be reformed to ensure that all workers have the freedom to choose whether or not to join a union free from management threats and intimidation; and

WHEREAS, nearly four in five (78%) Americans favor legislation that would make it easier for workers to bargain with their employers according to recent research from Peter Hart Associates; and

WHEREAS, federal legislation known as the Employee Free Choice Act will be introduced this year in the United States Congress in order to restore workers' freedom to join unions.

THEREFORE, BE IT RESOLVED that the Sacramento City Council supports the Employee Free Choice Act which would authorize the National Labor Relations Board to certify a union as the bargaining representative when a majority of employees voluntarily sign authorizations designating that union to represent them; provide for first contract mediation and arbitration; and establish meaningful penalties for violations of a worker's freedom to choose a union.

THEREFORE, BE IT RESOLVED that the Sacramento City Council urge Congress to pass the Employee Free Choice Act to protect and preserve for America's workers their freedom to choose for themselves whether or not to form a union.

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

ATTACHMENT 3

111TH CONGRESS
1ST SESSION

H. R. 1409

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.

IN THE HOUSE OF REPRESENTATIVES

MARCH 10, 2009

Mr. GEORGE MILLER of California (for himself, Mr. SCOTT of Georgia, Mr. BRADY of Pennsylvania, Mr. DOYLE, Mr. KILDEE, Mrs. CAPPS, Mr. WALZ, Ms. LEE of California, Ms. SCHAKOWSKY, Mrs. NAPOLITANO, Ms. LINDA T. SÁNCHEZ of California, Ms. DELAURO, Mr. KENNEDY, Mr. DOGGETT, Mr. FILNER, Mr. PATRICK J. MURPHY of Pennsylvania, Mr. GRIJALVA, Ms. MCCOLLUM, Ms. WOOLSEY, Mr. LYNCH, Mr. GUTIERREZ, Mr. YARMUTH, Ms. SUTTON, Mr. MARKEY of Massachusetts, Mr. HARE, Mr. LEVIN, Mr. SARBANES, Mr. BRALEY of Iowa, Ms. HIRONO, Mr. TIERNEY, Mr. MCGOVERN, Ms. EDWARDS of Maryland, Mr. ABERCROMBIE, Mr. JOHNSON of Georgia, Mr. HOLT, Mrs. MALONEY, Mr. NADLER of New York, Mr. CAPUANO, Mr. HIGGINS, Mr. BLUMENAUER, Mr. SMITH of Washington, Mr. ELLISON, Mr. MCDERMOTT, Ms. RICHARDSON, Mr. MCNERNEY, Mr. SCHIFF, Mrs. LOWEY, Mr. OLVER, Ms. ZOE LOFGREN of California, Mr. ACKERMAN, Mr. ENGEL, Mr. LEWIS of Georgia, Mr. WILSON of Ohio, Mr. KUCINICH, Mr. WELCH, Mr. AL GREEN of Texas, Mr. HINOJOSA, Mrs. MCCARTHY of New York, Mr. PAYNE, Mr. DAVIS of Illinois, Ms. CLARKE, Mr. ISRAEL, Mr. CUMMINGS, Mr. COSTELLO, Mr. LANGEVIN, Mr. FARR, Ms. PINGREE of Maine, Ms. CORRINE BROWN of Florida, Mr. BERMAN, Mr. PETERS, Mr. ANDREWS, Ms. SHEA-PORTER, Mr. CARNAHAN, Mr. WU, Mrs. DAVIS of California, Mr. SCOTT of Virginia, Ms. CASTOR of Florida, Mr. SERRANO, Mrs. HALVORSON, Mr. MURPHY of Connecticut, Mr. SHERMAN, Mr. MOORE of Kansas, Mr. CONYERS, Mr. WEINER, Ms. TSONGAS, Mr. BISHOP of New York, Mr. KIND, Mr. PETERSON, Mr. LIPINSKI, Mr. MAFFEI, Mr. DEFAZIO, Mr. WEXLER, Ms. ESHOO, Mr. DINGELL, Mr. MCMAHON, Mr. SCHRADER, Mr. STUPAK, Mr. GENE GREEN of Texas, Mr. LOEBSACK, Mr. CARDOZA, Mr. HALL of New York, Ms. SLAUGHTER, Mr. RAHALL, Mr. FRANK of Massachusetts, Ms. MATSUI, Mr. RUPPERSBERGER, Mr. CLEAVER, Mr. HINCHEY, Mr. ROTHMAN of New Jersey, Mr. GRAYSON, Ms. BALDWIN, Mr. JACKSON of Illinois, Ms. BEAN, Mr. NEAL of Massachusetts, Mrs. TAUSCHER, Mr. WAXMAN, Ms. KILPATRICK of Michigan,

Mr. HASTINGS of Florida, Ms. KAPTUR, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. CARSON of Indiana, Mr. ADLER of New Jersey, Mr. MEEK of Florida, Ms. KILROY, Mr. RYAN of Ohio, Mr. MASSA, Mr. FOSTER, Mr. TOWNS, Mr. ORTIZ, Ms. ROYBAL-ALLARD, Ms. VELÁZQUEZ, Mr. RUSH, Mr. HODES, Mr. CLYBURN, Mr. BOSWELL, Mr. MOLLOHAN, Mr. MICHAUD, Mr. KISSELL, Mr. PASCRELL, Mr. MELANCON, Mr. BECERRA, Mr. DELAHUNT, Ms. WASSERMAN SCHULTZ, Mr. INSLEE, Mr. PALLONE, Mr. BOCCIERI, Mr. MCHUGH, Mr. DRIEHAUS, Mr. HONDA, Mr. CLAY, Mr. OBERSTAR, Mr. TONKO, Ms. WATERS, Mr. SCHAUER, Mr. VISCLOSKY, Mr. MILLER of North Carolina, Mr. RANGEL, Mr. SPACE, Mr. LUJÁN, Mr. CROWLEY, Ms. MOORE of Wisconsin, Mr. STARK, Ms. JACKSON-LEE of Texas, Ms. SCHWARTZ, Mr. BACA, Mr. PASTOR of Arizona, Mr. FATTAH, Mr. HOYER, Mr. LARSON of Connecticut, Ms. WATSON, Ms. LORETTA SANCHEZ of California, Mr. PRICE of North Carolina, Mr. SIRES, Mr. SMITH of New Jersey, Mr. LARSEN of Washington, Ms. FUDGE, Mr. MEEKS of New York, Ms. NORTON, Mr. THOMPSON of Mississippi, Mr. BAIRD, Ms. KOSMAS, Mr. DICKS, Mr. BISHOP of Georgia, Mr. HEINRICH, Mr. COURTNEY, Mr. TEAGUE, Mr. MURTHA, Ms. HARMAN, Mr. VAN HOLLEN, Mr. LOBIONDO, Mr. REYES, Mr. HIMES, Mr. OBEY, Mr. BOUCHER, Mr. KANJORSKI, Mr. HOLDEN, Mr. SALAZAR, Mr. ARCURI, Mrs. DAHLKEMPER, Mr. SKELTON, Mr. ALTMIRE, Mr. CONNOLLY of Virginia, Mr. GONZALEZ, Mr. RODRIGUEZ, Mr. MORAN of Virginia, Mr. KAGEN, Ms. MARKEY of Colorado, Ms. DEGETTE, Mr. PIERLUISI, Ms. HERSETH SANDLIN, Ms. SPEIER, Mr. THOMPSON of California, Mr. DONNELLY of Indiana, Mr. WATT, Mr. SABLAN, Mr. SESTAK, Ms. BERKLEY, Mr. DAVIS of Alabama, Mr. FALEOMAVAEGA, Mr. POLIS of Colorado, Mr. PERLMUTTER, Mr. COSTA, and Ms. TITUS) 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 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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the "Employee Free Choice
3 Act of 2009".

4 **SEC. 2. STREAMLINING UNION CERTIFICATION.**

5 (a) IN GENERAL.—Section 9(c) of the National
6 Labor Relations Act (29 U.S.C. 159(c)) is amended by
7 adding at the end the following:

8 "(6) Notwithstanding any other provision of this sec-
9 tion, whenever a petition shall have been filed by an em-
10 ployee or group of employees or any individual or labor
11 organization acting in their behalf alleging that a majority
12 of employees in a unit appropriate for the purposes of col-
13 lective bargaining wish to be represented by an individual
14 or labor organization for such purposes, the Board shall
15 investigate the petition. If the Board finds that a majority
16 of the employees in a unit appropriate for bargaining has
17 signed valid authorizations designating the individual or
18 labor organization specified in the petition as their bar-
19 gaining representative and that no other individual or
20 labor organization is currently certified or recognized as
21 the exclusive representative of any of the employees in the
22 unit, the Board shall not direct an election but shall certify
23 the individual or labor organization as the representative
24 described in subsection (a).

25 "(7) The Board shall develop guidelines and proce-
26 dures for the designation by employees of a bargaining

1 representative in the manner described in paragraph (6).
2 Such guidelines and procedures shall include—
3 "(A) model collective bargaining authorization
4 language that may be used for purposes of making
5 the designations described in paragraph (6); and
6 "(B) procedures to be used by the Board to es-
7 tablish the validity of signed authorizations desig-
8 nating bargaining representatives.".
9 (b) CONFORMING AMENDMENTS.—
10 (1) NATIONAL LABOR RELATIONS BOARD.—Sec-
11 tion 3(b) of the National Labor Relations Act (29
12 U.S.C. 153(b)) is amended, in the second sentence—
13 (A) by striking "and to" and inserting
14 "to"; and
15 (B) by striking "and certify the results
16 thereof," and inserting ", and to issue certifi-
17 cations as provided for in that section,".
18 (2) UNFAIR LABOR PRACTICES.—Section 8(b)
19 of the National Labor Relations Act (29 U.S.C.
20 158(b)) is amended—
21 (A) in paragraph (7)(B) by striking ", or"
22 and inserting "or a petition has been filed
23 under section 9(c)(6), or"; and
24 (B) in paragraph (7)(C) by striking "when
25 such a petition has been filed" and inserting

1 "when such a petition other than a petition
2 under section 9(c)(6) has been filed".

3 **SEC. 3. FACILITATING INITIAL COLLECTIVE BARGAINING**
4 **AGREEMENTS.**

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

8 "(h) Whenever collective bargaining is for the pur-
9 pose of establishing an initial agreement following certifi-
10 cation or recognition, the provisions of subsection (d) shall
11 be modified as follows:

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

21 "(2) If after the expiration of the 90-day period
22 beginning on the date on which bargaining is com-
23 menced, or such additional period as the parties may
24 agree upon, the parties have failed to reach an
25 agreement, either party may notify the Federal Me-

1 diation and Conciliation Service of the existence of
2 a dispute and request mediation. Whenever such a
3 request is received, it shall be the duty of the Service
4 promptly to put itself in communication with the
5 parties and to use its best efforts, by mediation and
6 conciliation, to bring them to agreement.

7 "(3) If after the expiration of the 30-day period
8 beginning on the date on which the request for me-
9 diation is made under paragraph (2), or such addi-
10 tional period as the parties may agree upon, the
11 Service is not able to bring the parties to agreement
12 by conciliation, the Service shall refer the dispute to
13 an arbitration board established in accordance with
14 such regulations as may be prescribed by the Serv-
15 ice. The arbitration panel shall render a decision set-
16 tling the dispute and such decision shall be binding
17 upon the parties for a period of 2 years, unless
18 amended during such period by written consent of
19 the parties.".

20 **SEC. 4. STRENGTHENING ENFORCEMENT.**

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.".

○