

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2776
OFFERED BY MR. WALBERG**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Workforce Democracy
3 and Fairness Act”.

4 SEC. 2. PRE-ELECTION HEARINGS.

5 Section 9(c)(1) of the National Labor Relations Act
6 (29 U.S.C. 159(c)(1)) is amended in the matter following
7 subparagraph (B)—

8 (1) by inserting “, but in no circumstances less
9 than 14 calendar days after the filing of the peti-
10 tion” after “upon due notice”;

11 (2) by inserting after “with respect thereto.”
12 the following: “An appropriate hearing shall be one
13 that is non-adversarial with the hearing officer
14 charged, in collaboration with the parties, with the
15 responsibility of identifying any relevant and mate-
16 rial pre-election issues and thereafter making a full
17 record thereon. Relevant and material pre-election
18 issues shall include, in addition to unit appropriate-

1 ness, the Board’s jurisdiction and any other issue
2 the resolution of which may make an election unnec-
3 essary or may reasonably be expected to impact the
4 outcome of the election. Parties may independently
5 raise any relevant and material pre-election issue or
6 assert any relevant and material position at any
7 time prior to the close of the hearing.”; and

8 (3) by striking “and shall certify the results
9 thereof” and inserting “to be conducted as soon as
10 practicable but no earlier than 35 calendar days
11 after the filing of an election petition. The Board
12 shall certify the results of the election after it has
13 ruled on each pre-election issue not resolved before
14 the election and any additional issue pertaining to
15 the conduct or results of the election”.

16 **SEC. 3. DETERMINATION OF APPROPRIATE UNITS FOR**
17 **COLLECTIVE BARGAINING.**

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

20 (1) by redesignating paragraphs (1) through
21 (3) as subparagraphs (A) through (C), respectively;

22 (2) by striking “The Board shall decide” and
23 all that follows through “or subdivision thereof:”
24 and inserting the following: “(1) In each case, prior
25 to an election, the Board shall determine, in order

1 to assure to employees the fullest freedom in exer-
2 cising the rights guaranteed by this Act, the unit ap-
3 propriate for the purposes of collective bargaining.
4 Unless otherwise stated in this Act, and excluding
5 any bargaining unit determination promulgated
6 through rulemaking before August 26, 2011, the
7 unit appropriate for purposes of collective bargaining
8 shall consist of employees that share a sufficient
9 community of interest. In determining whether em-
10 ployees share a sufficient community of interest, the
11 Board shall consider—

12 “(A) similarity of wages, benefits, and working
13 conditions;

14 “(B) similarity of skills and training;

15 “(C) centrality of management and common su-
16 pervision;

17 “(D) extent of interchange and frequency of
18 contact between employees;

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

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

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

24 “(H) the bargaining history in the particular
25 unit and the industry.

1 To avoid the proliferation or fragmentation of bargaining
2 units, no employee shall be excluded from the unit unless
3 the interests of the group seeking a separate unit are suffi-
4 ciently distinct from those of other employees to warrant
5 the establishment of a separate unit. Whether additional
6 employees should be included in a proposed unit shall be
7 determined based on whether such additional employees
8 and proposed unit members share a sufficient community
9 of interest, with the sole exception of proposed accretions
10 to an existing unit, in which the inclusion of additional
11 employees shall be based on whether such additional em-
12 ployees and existing unit members share an overwhelming
13 community of interest and the additional employees have
14 little or no separate identity.”; and

15 (3) by striking “*Provided, That the Board*” and
16 inserting the following:
17 “(2) The Board”.

