

H. B. 2265

(By Delegate Caputo)

[Introduced January 12, 2011; referred to the Committee on Energy, Industry and Labor, Economic Development and Small Business then the Judiciary.]

A BILL to amend and reenact §21-1A-4 of the Code of West Virginia, 1931, as amended, relating to making the use of permanent replacements for striking workers an unfair labor practice by employers who have employee stock ownership plans.

Be it enacted by the Legislature of West Virginia:

That §21-1A-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1A. LABOR-MANAGEMENT RELATIONS ACT FOR THE PRIVATE SECTOR.

§21-1A-4. Unfair labor practices.

(a) It ~~shall be~~ is an unfair labor practice for an employer:

(1) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in section three of this article;

(2) To ~~dominate~~ or interfere with the formation or administration of any labor organization or contribute financial or

1 other support to it. ~~Provided, That~~ However, an employer ~~shall~~ may
2 not be prohibited from permitting employees to confer with him or
3 her during working hours without loss of time or pay;

4 (3) By discrimination in regard to hire or tenure of
5 employment or any ~~term or~~ condition of employment, to encourage or
6 discourage membership in any labor organization. ~~Provided,~~
7 However, nothing contained in this article, or in any other statute
8 of this state, shall preclude an employer from making an agreement
9 with a labor organization (not established, maintained or assisted
10 by any action defined in this section as an unfair labor practice)
11 to require as a condition of employment membership therein on or
12 after the thirtieth day following the beginning of such employment
13 or the effective date of such agreement, whichever is the later:

14 (i) If ~~such~~ the labor organization is the representative of the
15 employees as provided in section five of this article, in the
16 appropriate collective-bargaining unit covered by such agreement
17 when made; and (ii) unless following an election held as provided
18 in subsection (d), section five of this article, within one year
19 preceding the effective date of ~~such~~ this agreement, the board
20 shall have certified that at least a majority of the employees
21 eligible to vote in ~~such~~ the election have voted to rescind the
22 authority of ~~such~~ the labor organization to make such an agreement.

23 ~~Provided, further~~ However, no employer shall justify any
24 discrimination against an employee for nonmembership in a labor

1 organization: (A) If he or she has reasonable grounds for
2 believing that ~~such~~ membership was not available to the employee on
3 the same terms and conditions generally applicable to other
4 members; or (B) if he or she has reasonable grounds for believing
5 that membership was denied or terminated for reasons other than the
6 failure of the employee to tender the periodic dues and the
7 initiation fees uniformly required as a condition of acquiring or
8 retaining membership;

9 (4) To discharge or otherwise discriminate against an employee
10 because he or she has filed charges or given testimony under this
11 article; ~~and~~

12 (5) To refuse to bargain collectively with the representatives
13 of his or her employees, subject to ~~the provisions of~~ subsection
14 (a), section five of this article; and

15 (6) In instances where striking workers have established
16 employee stock ownership plans, to employ permanent replacements
17 for striking workers.

18 (b) It ~~shall be~~ is an unfair labor practice for a labor
19 organization or its agents:

20 (1) To restrain or coerce: (A) Employees in the exercise of
21 the rights guaranteed in section three of this article. ~~Provided,~~
22 ~~That~~ However, this subdivision ~~shall~~ may not impair the right of a
23 labor organization to prescribe its own rules with respect to the
24 acquisition or retention of membership therein; or (B) an employer

1 in the selection of his or her representatives for the purposes of
2 collective bargaining or the adjustment of grievances;

3 (2) To cause or attempt to cause an employer to discriminate
4 against an employee in violation of subdivision (3), subsection (a)
5 of this section or to discriminate against an employee with respect
6 to whom membership in such organization has been denied or
7 terminated on some ground other than his or her failure to tender
8 the periodic dues and the initiation fees uniformly required as a
9 condition of acquiring or retaining membership;

10 (3) To refuse to bargain collectively with an employer,
11 provided it is the representative of his or her employees subject
12 to ~~the provisions of~~ subsection (a), section five of this article;

13 (4) (i) To engage in or induce or encourage any individual
14 employed by any person to engage in, a strike or a refusal in the
15 course of employment to use, manufacture, process, transport, or
16 otherwise handle or work on any goods, articles, materials or
17 commodities or to perform any services; or (ii) to threaten,
18 coerce, or restrain any person, where in either case an object
19 thereof is:

20 (A) Forcing or requiring any employer or self-employed person
21 to join any labor or employer organization or to enter into any
22 agreement ~~which is~~ prohibited by subsection (e) of this section;

23 (B) Forcing or requiring any person to cease using, selling,
24 handling, transporting or otherwise dealing in the products of any

1 other producer, processor or manufacturer, or to cease doing
2 business with any other person, or forcing or requiring any other
3 employer to recognize or bargain with a labor organization as the
4 representative of his or her employees unless ~~such~~ the labor
5 organization has been certified as the representative of such
6 employees under the provisions of section five of this article.

7 ~~Provided, That~~ However, nothing contained in this clause (B) shall
8 be construed to make unlawful, where not otherwise unlawful, any
9 primary strike or primary picketing;

10 (C) Forcing or requiring any employer to recognize or bargain
11 with a particular labor organization as the representative of his
12 or her employees if another labor organization has been certified
13 as the representative of such employees under ~~the provisions of~~
14 section five of this article;

15 (D) Forcing or requiring any employer to assign particular
16 work to employees in a particular labor organization or in a
17 particular trade, craft or class rather than to employees in
18 another labor organization or in another trade, craft or class,
19 unless ~~such~~ the employer is failing to conform to an order of
20 certification of the board determining the bargaining
21 representative for employees performing ~~such~~ the work. ~~Provided,~~
22 ~~That~~ However, nothing contained in ~~this~~ subsection (b) shall be
23 construed to make unlawful a refusal by any person to enter upon
24 the premises of any employer (other than his own employer), if the

1 employees of ~~such~~ the employer are engaged in a strike ratified or
2 approved by a representative of ~~such~~ the employees whom ~~such~~ the
3 employer is required by law to recognize;

4 (5) To require of employees covered by an agreement authorized
5 under subdivision (3), subsection (a) of this section, the payment,
6 as a condition precedent to becoming a member of such organization,
7 of a fee in an amount ~~which~~ the board finds excessive or
8 discriminatory under all the circumstances. In making ~~such a~~ this
9 finding, the board shall consider, among other relevant factors,
10 the ~~practices and~~ customs of labor organizations in the particular
11 industry, and the wages currently paid to the employees affected;

12 (6) To cause or attempt to cause an employer to pay or deliver
13 or agree to pay or deliver any money or other thing of value, in
14 the nature of an exaction, for services which are not performed or
15 not to be performed; and

16 (7) To picket or cause to be picketed, or threaten to picket
17 or cause to be picketed, any employer where an object thereof is
18 forcing or requiring an employer to recognize or bargain with a
19 labor organization as the representative of his or her employees,
20 or forcing or requiring the employees of an employer to accept or
21 select ~~such~~ a labor organization as their collective bargaining
22 representative, unless ~~such~~ the labor organization is currently
23 certified as the representative of ~~such~~ the employees:

24 (A) Where the employer has lawfully recognized in accordance

1 with this article any other labor organization and a question
2 concerning representation may not appropriately be raised under
3 subsection (c), section five of this article;

4 (B) Where within the preceding twelve months a valid election
5 under subsection (c), section five of this article has been
6 conducted; or

7 (C) Where ~~such~~ picketing has been conducted without a petition
8 under subsection (c), section five of this article being filed
9 within a reasonable period of time not to exceed fifteen days from
10 the commencement of ~~such~~ the picketing. ~~Provided, That~~ When ~~such~~
11 a petition has been filed the board shall forthwith, without regard
12 to the provisions of said subsection (c), section five or the
13 absence of a showing of a substantial interest on the part of the
14 labor organization, direct an election in such unit as the board
15 finds to be appropriate and shall certify the results thereof.
16 Nothing in this subdivision (7) shall be construed to permit any
17 act which would otherwise be an unfair labor practice under this
18 subsection (b).

19 (c) The expressing of any views, argument or opinion, or the
20 dissemination thereof, whether in written, printed, graphic or
21 visual form, ~~shall~~ may not constitute or be evidence of an unfair
22 labor practice, or be prohibited under this article, if ~~such~~ the
23 expression contains no threat of reprisal or force or promise of
24 benefit.

1 (d) For the purposes of this section, to bargain collectively
2 is the performance of the mutual obligation of the employer and the
3 representative of the employees to meet at reasonable times and
4 confer in good faith with respect to wages, hours and other terms
5 and conditions of employment, or the negotiation of an agreement,
6 or any question arising thereunder, and the execution of a written
7 contract incorporating any agreement reached if requested by either
8 party, but ~~such~~ this obligation does not compel either party to
9 agree to a proposal or require the making of a concession.
10 ~~Provided, That~~ Also, where there is in effect a collective-
11 bargaining contract covering employees, the duty to bargain
12 collectively shall also mean ~~that~~ no party to ~~such~~ the contract
13 shall terminate or modify ~~such~~ the contract, unless the party
14 desiring ~~such~~ the termination or modification:

15 (1) Gives a written notice to the other party of the proposed
16 termination or modification sixty days prior to the expiration date
17 thereof, or in the event ~~such~~ the contract contains no expiration
18 date, sixty days prior to the time it is proposed to make ~~such~~ the
19 termination or modification;

20 (2) Offers to meet and confer with the other party for the
21 purpose of negotiating a new contract or a contract containing the
22 proposed modifications;

23 (3) Notifies the Commissioner of Labor of the existence of a
24 dispute;

1 (4) Continues in full force and effect, without resorting to
2 strike or lockout, all the terms ~~and conditions~~ of the existing
3 contract for a period of sixty days after ~~such~~ the notice is given
4 or until the expiration date of ~~such~~ the contract, whichever occurs
5 later. The duties imposed upon employers, employees, and labor
6 organizations by subdivisions (2), (3) and (4) of this subsection
7 (d) shall become inapplicable upon an intervening certification of
8 the board, under which the labor organization or individual, which
9 is a party to the contract, has been superseded as or ceased to be
10 the representative of the employees subject to ~~the provisions of~~
11 subsection (a), section five of this article, and the duties so
12 imposed ~~shall~~ may not be construed as requiring either party to
13 discuss or agree to any modification of the terms and conditions
14 contained in a contract for a fixed period, if ~~such~~
15 the modification is to become effective before ~~such~~ the terms and
16 conditions can be reopened under ~~the provisions of~~ the contract.
17 Any employee who engages in a strike within the sixty-day period
18 specified in this subsection shall lose his or her status as an
19 employee of the employer engaged in the particular labor dispute,
20 for the purposes of sections three, four and five of this article,
21 but ~~such~~ the loss of status for ~~such~~ the employee shall terminate
22 if, and when, he or she is reemployed by ~~such~~ the employer.

23 (e) It ~~shall be~~ is an unfair labor practice for any labor
24 organization and any employer to enter into any contract or

1 agreement, express or implied, whereby ~~such~~ the employer ceases or
2 refrains or agrees to cease or refrain from handling, using,
3 selling, transporting, or otherwise dealing in any of the products
4 of any other employer, or to cease doing business with any other
5 person and any such contract or agreement entered into ~~heretofore~~
6 ~~or hereafter~~ shall be to such extent unenforceable and void.

NOTE: The purpose of this bill is to make the use of permanent replacements for striking workers an unfair labor practice by employers who have employee stock ownership plans.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.