IN THE SENATE OF THE UNITED STATES

FEBRUARY 10, 2020

Received; read twice and referred to the Committee on Health, Education, Labor, and Pensions

AN ACT

To amend the National Labor Relations Act, the Labor Management Relations Act, 1947, and the Labor-Management Reporting and Disclosure Act of 1959, 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 “Protecting the Right to Organize Act of 2019”.

SEC. 2. AMENDMENTS TO THE NATIONAL LABOR RELATIONS ACT.

(a) DEFINITIONS.—

(1) JOINT EMPLOYER.—Section 2(2) of the National Labor Relations Act (29 U.S.C. 152(2)) is amended by adding at the end the following: “Two or more persons shall be employers with respect to an employee if each such person codetermines or shares control over the employee’s essential terms and conditions of employment. In determining whether such control exists, the Board or a court of competent jurisdiction shall consider as relevant direct control and indirect control over such terms and conditions, reserved authority to control such terms and conditions, and control over such terms and conditions exercised by a person in fact: Provided, That nothing herein precludes a finding that indirect or reserved control standing alone can be sufficient given specific facts and circumstances.”.

(2) EMPLOYEE.—Section 2(3) of the National Labor Relations Act (29 U.S.C. 152(3)) is amended by adding at the end the following: “An individual performing any service shall be considered an em-
ployee (except as provided in the previous sentence) and not an independent contractor, unless—

“(A) the individual is free from control and direction in connection with the performance of the service, both under the contract for the performance of service and in fact;

“(B) the service is performed outside the usual course of the business of the employer; and

“(C) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed.”.

(3) SUPERVISOR.—Section 2(11) of the National Labor Relations Act (29 U.S.C. 152(11)) is amended—

(A) by inserting “and for a majority of the individual’s worktime” after “interest of the employer”;

(B) by striking “assign,”; and

(C) by striking “or responsibly to direct them,”.

(b) REPORTS.—Section 3(e) of the National Labor Relations Act is amended—
(1) by striking “The Board” and inserting “(1) The Board”; and

(2) by adding at the end the following:


“(3) Each report issued under this subsection shall include no less detail than reports issued by the Board prior to the termination of such reports under section 3003 of the Federal Reports Elimination and Sunset Act of 1995 (Public Law 166–44; 31 U.S.C. 1113 note).”.

(c) Appointment.—Section 4(a) of the National Labor Relations Act (29 U.S.C. 154(a)) is amended by striking “, or for economic analysis”.

(d) Unfair Labor Practices.—Section 8 of the National Labor Relations Act (29 U.S.C. 158) is amended—

(1) in subsection (a)—

(A) in paragraph (5), by striking the period and inserting “;”;

(B) by adding at the end the following:

“(6) to promise, threaten, or take any action—

“(A) to permanently replace an employee who participates in a strike as defined by sec-
tion 501(2) of the Labor Management Relations Act, 1947 (29 U.S.C. 142(2));

“(B) to discriminate against an employee who is working or has unconditionally offered to return to work for the employer because the employee supported or participated in such a strike; or

“(C) to lockout, suspend, or otherwise withhold employment from employees in order to influence the position of such employees or the representative of such employees in collective bargaining prior to a strike; and

“(7) to communicate or misrepresent to an employee under section 2(3) that such employee is excluded from the definition of employee under section 2(3).”;

(2) in subsection (b)—

(A) by striking paragraphs (4) and (7); 

(B) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively;

(C) in paragraph (4), as so redesignated, by striking “affected;” and inserting “affected; and”; and

(D) in paragraph (5), as so redesignated, by striking “; and” and inserting a period;
(3) in subsection (c), by striking the period at
the end and inserting the following: “: Provided,
That it shall be an unfair labor practice under sub-
section (a)(1) for any employer to require or coerce
an employee to attend or participate in such employ-
er’s campaign activities unrelated to the employee’s
job duties, including activities that are subject to the
requirements under section 203(b) of the Labor-
Management Reporting and Disclosure Act of 1959
(29 U.S.C. 433(b)).”;

(4) in subsection (d)—

(A) by redesignating paragraphs (1)
through (4) as subparagraphs (A) through (D),
respectively;

(B) by striking “For the purposes of this
section” and inserting “(1) For purposes of this
section”;

(C) by inserting “and to maintain current
wages, hours, and working conditions pending
an agreement” after “arising thereunder”; 

(D) by inserting “: Provided, That an em-
ployer’s duty to collectively bargain shall con-
tinue absent decertification of the labor organi-
zation following an election conducted pursuant
to section 9” after “making of a concession:”;
(E) by inserting “further” before “, That where there is in effect”;

(F) by striking “The duties imposed” and inserting “(2) The duties imposed”;

(G) by striking “by paragraphs (2), (3), and (4)” and inserting “by subparagraphs (B), (C), and (D) of paragraph (1)”;

(H) by striking “section 8(d)(1)” and inserting “paragraph (1)(A)”;

(I) by striking “section 8(d)(3)” and inserting “paragraph (1)(C)” in each place it appears;

(J) by striking “section 8(d)(4)” and inserting “paragraph (1)(D)”; and

(K) by adding at the end the following:

“(3) Whenever collective bargaining is for the purpose of establishing an initial collective bargaining agreement following certification or recognition of a labor organization, the following shall apply:

“(A) Not later than 10 days after receiving a written request for collective bargaining from an individual or labor organization that has been newly recognized 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 com-
mence to bargain collectively and shall make every reasonable effort to conclude and sign a collective bargaining agreement.

“(B) 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.

“(C) If after the expiration of the 30-day period beginning on the date on which the request for mediation is made under subparagraph (B), 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 a tripartite arbitration panel established in accordance with such regulations as may be prescribed by the Service, with one member selected by the labor organization, one member selected by the employer, and one neutral member mutually agreed to by the
parties. The labor organization and employer must each select the members of the tripartite arbitration panel within 14 days of the Service’s referral; if the labor organization or employer fail to do so, the Service shall designate any members not selected by the labor organization or the employer. A majority of the tripartite 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. Such decision shall be based on—

“(i) the employer’s financial status and prospects;
“(ii) the size and type of the employer’s operations and business;
“(iii) the employees’ cost of living;
“(iv) the employees’ ability to sustain themselves, their families, and their dependents on the wages and benefits they earn from the employer; and
“(v) the wages and benefits other employers in the same business provide their employees.”;

(5) by amending subsection (e) to read as follows:
“(e) Notwithstanding chapter 1 of title 9, United States Code (commonly known as the ‘Federal Arbitration Act’), or any other provision of law, it shall be an unfair labor practice under subsection (a)(1) for any employer—

“(1) to enter into or attempt to enforce any agreement, express or implied, whereby prior to a dispute to which the agreement applies, an employee undertakes or promises not to pursue, bring, join, litigate, or support any kind of joint, class, or collective claim arising from or relating to the employment of such employee in any forum that, but for such agreement, is of competent jurisdiction;

“(2) to coerce an employee into undertaking or promising not to pursue, bring, join, litigate, or support any kind of joint, class, or collective claim arising from or relating to the employment of such employee; or

“(3) to retaliate or threaten to retaliate against an employee for refusing to undertake or promise not to pursue, bring, join, litigate, or support any kind of joint, class, or collective claim arising from or relating to the employment of such employee:

Provided, That any agreement that violates this subsection or results from a violation of this subsection shall be to such extent unenforceable and void: Pro-
vided further, That this subsection shall not apply to any agreement embodied in or expressly permitted by a contract between an employer and a labor organization.”;

(6) in subsection (g), by striking “clause (B) of the last sentence of section 8(d) of this Act” and inserting “subsection (d)(2)(B)”; and

(7) by adding at the end the following:

“(h)(1) The Board shall promulgate regulations requiring each employer to post and maintain, in conspicuous places where notices to employees and applicants for employment are customarily posted both physically and electronically, a notice setting forth the rights and protections afforded employees under this Act. The Board shall make available to the public the form and text of such notice. The Board shall promulgate regulations requiring employers to notify each new employee of the information contained in the notice described in the preceding two sentences.

“(2) Whenever the Board directs an election under section 9(c) or approves an election agreement, the employer of employees in the bargaining unit shall, not later than 2 business days after the Board directs such election or approves such election agreement, provide a voter list to a labor organization that has petitioned to represent
such employees. Such voter list shall include the names of all employees in the bargaining unit and such employees’ home addresses, work locations, shifts, job classifications, and, if available to the employer, personal landline and mobile telephone numbers, and work and personal email addresses; the voter list must be provided in a searchable electronic format generally approved by the Board unless the employer certifies that the employer does not possess the capacity to produce the list in the required form. Not later than 9 months after the date of enactment of the Protecting the Right to Organize Act of 2019, the Board shall promulgate regulations implementing the requirements of this paragraph.

“(i) The rights of an employee under section 7 include the right to use electronic communication devices and systems (including computers, laptops, tablets, internet access, email, cellular telephones, or other company equipment) of the employer of such employee to engage in activities protected under section 7 if such employer has given such employee access to such devices and systems in the course of the work of such employee, absent a compelling business rationale.”.

(e) REPRESENTATIVES AND ELECTIONS.—Section 9 of the National Labor Relations Act (29 U.S.C. 159) is amended—
(1) in subsection (c)—

(A) by amending paragraph (1) to read as follows:

“(1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board, by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9(a), or (ii) assert that the individual or labor organization, which has been certified or is being recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9(a), the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof. The Board shall find the labor organization’s proposed unit to be appropriate if the employees
in the proposed unit share a community of interest, and
if the employees outside the unit do not share an over-
whelming community of interest with employees inside. At
the request of the labor organization, the Board shall di-
rect that the election be conducted through certified mail,
electronically, at the work location, or at a location other
than one owned or controlled by the employer. No em-
ployer shall have standing as a party or to intervene in
any representation proceeding under this section.”;

(B) in paragraph (3), by striking “an eco-
nomic strike who are not entitled to reinsta-
tement” and inserting “a strike”;

(C) by redesignating paragraphs (4) and
(5) as paragraphs (6) and (7), respectively;

(D) by inserting after paragraph (3) the
following:

“(4) If the Board finds that, in an election under
paragraph (1), a majority of the valid votes cast in a unit
appropriate for purposes of collective bargaining have been
cast in favor of representation by the labor organization,
the Board shall certify the labor organization as the rep-
resentative of the employees in such unit and shall issue
an order requiring the employer of such employees to col-
lectively bargain with the labor organization in accordance
with section 8(d). This order shall be deemed an order
under section 10(c) of this Act, without need for a determination of an unfair labor practice.

“(5)(A) If the Board finds that, in an election under paragraph (1), a majority of the valid votes cast in a unit appropriate for purposes of collective bargaining have not been cast in favor of representation by the labor organization, the Board shall dismiss the petition, subject to subparagraphs (B) and (C).

“(B) In any case in which a majority of the valid votes cast in a unit appropriate for purposes of collective bargaining have not been cast in favor of representation by the labor organization and the Board determines that the election should be set aside because the employer has committed a violation of this Act or otherwise interfered with a fair election, and the employer has not demonstrated that the violation or other interference is unlikely to have affected the outcome of the election, the Board shall, without ordering a new election, certify the labor organization as the representative of the employees in such unit and issue an order requiring the employer to bargain with the labor organization in accordance with section 8(d) if, at any time during the period beginning 1 year preceding the date of the commencement of the election and ending on the date upon which the Board makes the determination of a violation or other inter-
ference, a majority of the employees in the bargaining unit have signed authorizations designating the labor organization as their collective bargaining representative.

“(C) In any case where the Board determines that an election under this paragraph should be set aside, the Board shall direct a new election with appropriate additional safeguards necessary to ensure a fair election process, except in cases where the Board issues a bargaining order under subparagraph (B).”; and

(E) by inserting after paragraph (7), as so redesignated, the following:

“(8) Except under extraordinary circumstances—

“(A) a pre-election hearing under this subsection shall begin not later than 8 days after a notice of such hearing is served on the labor organization and shall continue from day to day until completed;

“(B) a regional director shall transmit the notice of election at the same time as the direction of election, and shall transmit such notice and such direction electronically (including transmission by email or facsimile) or by overnight mail if electronic transmission is unavailable;

“(C) not later than 2 days after the service of the notice of hearing, the employer shall—
“(i) post the Notice of Petition for Election in conspicuous places, including all places where notices to employees are customarily posted;

“(ii) if the employer customarily communicates with employees electronically, distribute such Notice electronically; and

“(iii) maintain such posting until the petition is dismissed or withdrawn or the Notice of Petition for Election is replaced by the Notice of Election;

“(D) regional directors shall schedule elections for the earliest date practicable, but not later than the 20th business day after the direction of election; and

“(E) a post-election hearing under this subsection shall begin not later than 14 days after the filing of objections, if any.”;

(2) in subsection (d), by striking “(e) or” and inserting “(d) or”; and

(3) by adding at the end the following new subsection:

“(f) The Board shall dismiss any petition for an election with respect to a bargaining unit or any subdivision if, during the preceding 12-month period, the employer
has recognized a labor organization without an election and in accordance with this Act’.

(f) PREVENTION OF UNFAIR LABOR PRACTICES.—

Section 10(c) of the National Labor Relations Act (29 U.S.C. 160(c)) is amended by striking ‘‘suffered by him’’ and inserting ‘‘suffered by such employee: Provided further, That if the Board finds that an employer has discriminated against an employee in violation of paragraph (3) or (4) of section 8(a) or has committed a violation of section 8(a) that results in the discharge of an employee or other serious economic harm to an employee, the Board shall award the employee back pay without any reduction (including any reduction based on the employee’s interim earnings or failure to earn interim earnings), front pay (when appropriate), consequential damages, and an additional amount as liquidated damages equal to two times the amount of damages awarded: Provided further, no relief under this subsection shall be denied on the basis that the employee is, or was during the time of relevant employment or during the back pay period, an unauthorized alien as defined in section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3)) or any other provision of Federal law relating to the unlawful employment of aliens’’.
(g) Enforcing Compliance With Orders of the Board.—

(1) In general.—Section 10 of the National Labor Relations Act (29 U.S.C. 160) is further amended—

(A) by striking subsection (e);

(B) by redesignating subsection (d) as subsection (e);

(C) by inserting after subsection (e) the following:

“(d)(1) Each order of the Board shall take effect upon issuance of such order, unless otherwise directed by the Board, and shall remain in effect unless modified by the Board or unless a court of competent jurisdiction issues a superseding order.

“(2) Any person who fails or neglects to obey an order of the Board shall forfeit and pay to the Board a civil penalty of not more than $10,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the Board to the district court of the United States in which the unfair labor practice or other subject of the order occurred, or in which such person or entity resides or transacts business. No action by the Board under this paragraph may be made until 30 days following the issuance of an order. Each separate
violation of such an order shall be a separate offense, ex-
cept that, in the case of a violation in which a person fails
to obey or neglects to obey a final order of the Board,
each day such failure or neglect continues shall be deemed
a separate offense.

“(3) If, after having provided a person or entity with
notice and an opportunity to be heard regarding a civil
action under subparagraph (2) for the enforcement of an
order, the court determines that the order was regularly
made and duly served, and that the person or entity is
in disobedience of the same, the court shall enforce obedi-
ence to such order by an injunction or other proper proc-
ess, mandatory or otherwise, to—

“(A) restrain such person or entity or the offi-
cers, agents, or representatives of such person or en-
tity, from further disobedience to such order; or

“(B) enjoin such person or entity, officers,
agents, or representatives to obedience to the
same.”;

(D) in subsection (f)—

(i) by striking “proceed in the same
manner as in the case of an application by
the Board under subsection (e) of this sec-
tion,” and inserting “proceed as provided
under paragraph (2) of this subsection”;
(i) by striking “Any” and inserting
the following: “
“(1) Within 30 days of the issuance of an
order, any”; and

(iii) by adding at the end the fol-
lowing:
“(2) No objection that has not been urged before the
Board, its member, agent, or agency shall be considered
by a court, unless the failure or neglect to urge such objec-
tion shall be excused because of extraordinary cir-
cumstances. The findings of the Board with respect to
questions of fact if supported by substantial evidence on
the record considered as a whole shall be conclusive. If
either party shall apply to the court for leave to adduce
additional evidence and shall show to the satisfaction of
the court that such additional evidence is material and
that there were reasonable grounds for the failure to ad-
duce such evidence in the hearing before the Board, its
member, agent, or agency, the court may order such addi-
tional evidence to be taken before the Board, its member,
agent, or agency, and to be made a part of the record.
The Board may modify its findings as to the facts, or
make new findings, by reason of additional evidence so
taken and filed, and it shall file such modified or new find-
ings, which findings with respect to questions of fact if
supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommenda-
tions, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdi-
cion of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sec-
tion 1254 of title 28, United States Code.”; and

(E) in subsection (g), by striking “subsection (e) or (f) of this section” and inserting “subsection (d) or (f)”.

(2) Conforming Amendment.—Section 18 of the National Labor Relations Act (29 U.S.C. 168) is amended by striking “section 10(e) or (f)” and inserting “subsection (d) or (f) of section 10”.

(h) Injunctions Against Unfair Labor Practices Involving Discharge or Other Serious Economic Harm.—Section 10 of the National Labor Relations Act (29 U.S.C. 160) is amended—

(1) in subsection (j)—

(A) by striking “The Board” and inserting “(1) The Board”; and
(B) by adding at the end the following:

“(2) Notwithstanding subsection (m), whenever it is charged that an employer has engaged in an unfair labor practice within the meaning of paragraph (1) or (3) of section 8(a) that significantly interferes with, restrains, or coerces employees in the exercise of the rights guaranteed under section 7, or involves discharge or other serious economic harm to an employee, 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. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, such officer or attorney shall bring a petition for appropriate temporary relief or restraining order as set forth in paragraph (1). The district court shall grant the relief requested unless the court concludes that there is no reasonable likelihood that the Board will succeed on the merits of the Board’s claim.”; and

(2) by repealing subsections (k) and (l).

(i) Penalties.—

(1) In General.—Section 12 of the National Labor Relations Act (29 U.S.C. 162) is amended—
(A) by striking “SEC. 12. Any person” and inserting the following:

“SEC. 12. PENALTIES.

“(a) VIOLATIONS FOR INTERFERENCE WITH BOARD.—Any person”; and

(B) by adding at the end the following:

“(b) VIOLATIONS FOR POSTING REQUIREMENTS AND VOTER LIST.—If the Board, or any agent or agency designated by the Board for such purposes, determines that an employer has violated section 8(h) or regulations issued thereunder, the Board shall—

“(1) state the findings of fact supporting such determination;

“(2) issue and cause to be served on such employer an order requiring that such employer comply with section 8(h) or regulations issued thereunder; and

“(3) impose a civil penalty in an amount determined appropriate by the Board, except that in no case shall the amount of such penalty exceed $500 for each such violation.

“(c) CIVIL PENALTIES FOR VIOLATIONS.—

“(1) IN GENERAL.—Any employer who commits an unfair labor practice within the meaning of section 8(a) shall, in addition to any remedy ordered by
the Board, be subject to a civil penalty in an amount not to exceed $50,000 for each violation, except that, with respect to an unfair labor practice within the meaning of paragraph (3) or (4) of section 8(a) or a violation of section 8(a) that results in the discharge of an employee or other serious economic harm to an employee, the Board shall double the amount of such penalty, to an amount not to exceed $100,000, in any case where the employer has within the preceding 5 years committed another such violation.

“(2) CONSIDERATIONS.—In determining the amount of any civil penalty under this subsection, the Board shall consider—

“(A) the gravity of the unfair labor practice;

“(B) the impact of the unfair labor practice on the charging party, on other persons seeking to exercise rights guaranteed by this Act, and on the public interest; and

“(C) the gross income of the employer.

“(3) DIRECTOR AND OFFICER LIABILITY.—If the Board determines, based on the particular facts and circumstances presented, that a director or officer’s personal liability is warranted, a civil penalty
for a violation described in this subsection may also
be assessed against any director or officer of the em-
ployer who directed or committed the violation, had
established a policy that led to such a violation, or
had actual or constructive knowledge of and the au-
thority to prevent the violation and failed to prevent
the violation.

“(d) RIGHT TO CIVIL ACTION.—

“(1) IN GENERAL.—Any person who is injured
by reason of a violation of paragraph (1) or (3) of
section 8(a) may, after 60 days following the filing
of a charge with the Board alleging an unfair labor
practice, bring a civil action in the appropriate dis-
trict court of the United States against the employer
within 90 days after the expiration of the 60-day pe-
riod or the date the Board notifies the person that
no complaint shall issue, whichever occurs earlier,
provided that the Board has not filed a petition
under section 10(j) of this Act prior to the expira-
tion of the 60-day period. No relief under this sub-
section shall be denied on the basis that the em-
ployee is, or was during the time of relevant employ-
ment or during the back pay period, an unauthor-
ized alien as defined in section 274A(h)(3) of the
Immigration and Nationality Act (8 U.S.C.
1324a(h)(3)) or any other provision of Federal law relating to the unlawful employment of aliens.

“(2) AVAILABLE RELIEF.—Relief granted in an action under paragraph (1) may include—

“(A) back pay without any reduction, including any reduction based on the employee’s interim earnings or failure to earn interim earnings;

“(B) front pay (when appropriate);

“(C) consequential damages;

“(D) an additional amount as liquidated damages equal to two times the cumulative amount of damages awarded under subparagraphs (A) through (C);

“(E) in appropriate cases, punitive damages in accordance with paragraph (4); and

“(F) any other relief authorized by section 706(g) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(g)) or by section 1977A(b) of the Revised Statutes (42 U.S.C. 1981a(b)).

“(3) ATTORNEY’S FEES.—In any civil action under this subsection, the court may allow the prevailing party a reasonable attorney’s fee (including expert fees) and other reasonable costs associated with maintaining the action.
“(4) PUNITIVE DAMAGES.—In awarding punitive damages under paragraph (2)(E), the court shall consider—

“(A) the gravity of the unfair labor practice;

“(B) the impact of the unfair labor practice on the charging party, on other persons seeking to exercise rights guaranteed by this Act, and on the public interest; and

“(C) the gross income of the employer.”.

(2) CONFORMING AMENDMENTS.—Section 10(b) of the National Labor Relations Act (29 U.S.C. 160(b)) is amended—

(A) by striking “six months” and inserting “180 days”; and

(B) by striking “the six-month period” and inserting “the 180-day period”.

(j) LIMITATIONS.—Section 13 of the National Labor Relations Act (29 U.S.C. 163) is amended by striking the period at the end and inserting the following: “: Provided, That the duration, scope, frequency, or intermittence of any strike or strikes shall not render such strike or strikes unprotected or prohibited.”.

(k) FAIR SHARE AGREEMENTS PERMITTED.—Section 14(b) of the National Labor Relations Act (29 U.S.C.
164(b)) is amended by striking the period at the end and
inserting the following: “: Provided, That collective bar-
gaining agreements providing that all employees in a bar-
gaining unit shall contribute fees to a labor organization
for the cost of representation, collective bargaining, con-
tract enforcement, and related expenditures as a condition
of employment shall be valid and enforceable notwith-
standing any State or Territorial law.”.

SEC. 3. CONFORMING AMENDMENTS TO THE LABOR MAN-
AGEMENT RELATIONS ACT, 1947.

The Labor Management Relations Act, 1947 is
amended—

(1) in section 213(a) (29 U.S.C. 183(a)), by
striking “clause (A) of the last sentence of section
8(d) (which is required by clause (3) of such section
8(d)), or within 10 days after the notice under
clause (B)” and inserting “section 8(d)(2)(A) of the
National Labor Relations Act (which is required by
section 8(d)(1)(C) of such Act), or within 10 days
after the notice under section 8(d)(2)(B) of such
Act”; and

(2) by repealing section 303 (29 U.S.C. 187).
SEC. 4. AMENDMENTS TO THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959.

(a) IN GENERAL.—Section 203(c) of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 433(c)) is amended by striking the period at the end and inserting the following "Provided, That this subsection shall not exempt from the requirements of this section any arrangement or part of an arrangement in which a party agrees, for an object described in subsection (b)(1), to plan or conduct employee meetings; train supervisors or employer representatives to conduct meetings; coordinate or direct activities of supervisors or employer representatives; establish or facilitate employee committees; identify employees for disciplinary action, reward, or other targeting; or draft or revise employer personnel policies, speeches, presentations, or other written, recorded, or electronic communications to be delivered or disseminated to employees."

(b) WHISTLEBLOWER PROTECTIONS.—The Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401 et seq.) is further amended—

(1) by redesignating section 611 (29 U.S.C. 531) as section 612; and

(2) by inserting after section 610 (29 U.S.C. 530), the following new section:
WHISTLEBLOWER PROTECTIONS

"Sec. 611. (a) In General.—No employer or labor organization shall terminate or in any other way discriminate against, or cause to be terminated or discriminated against, any applicant, covered employee, or former covered employee, of the employer or the labor organization by reason of the fact that such applicant, covered employee, or former covered employee does, or the employer or labor organization perceives the employee to do, any of the following:

“(1) Provide, cause to be provided, or is about to provide or cause to be provided, information to the labor organization, the Department of Labor, or any other State, local, or Federal Government authority or law enforcement agency relating to any violation of, or any act or omission that such employee reasonably believes to be a violation of, any provision of this Act.

“(2) Testify or plan to testify or otherwise participate in any proceeding resulting from the administration or enforcement of any provision of this Act.

“(3) File, institute, or cause to be filed or instituted, any proceeding under this Act.

“(4) Assist in any activity described in paragraphs (1) through (3).
“(5) Object to, or refuse to participate in, any activity, policy, practice, or assigned task that such covered employee reasonably believes to be in violation of any provision of this Act.

“(b) DEFINITION OF COVERED EMPLOYEE.—For the purposes of this section, the term ‘covered employee’ means any employee or agent of an employer or labor organization, including any person with management responsibilities on behalf of the employer or labor organization.

“(c) PROCEDURES AND TIMETABLES.—

“(1) COMPLAINT.—

“(A) IN GENERAL.—An applicant, covered employee, or former covered employee who believes that he or she has been terminated or in any other way discriminated against by any person in violation of subsection (a) may file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such violation. Such a complaint must be filed not later than either—

“(i) 180 days after the date on which such alleged violation occurs; or

“(ii) 180 days after the date upon which the employee knows or should rea-
sonably have known that such alleged violation in subsection (a) occurred.

“(B) Actions of Secretary of Labor.—Upon receipt of such a complaint, the Secretary of Labor shall notify, in writing, the person named in the complaint who is alleged to have committed the violation, of—

“(i) the filing of the complaint;
“(ii) the allegations contained in the complaint;
“(iii) the substance of evidence supporting the complaint; and
“(iv) opportunities that will be afforded to such person under paragraph (2).

“(2) Investigation by Secretary of Labor.—

“(A) In general.—Not later than 60 days after the date of receipt of a complaint filed under paragraph (1), and after affording the complainant and the person named in the complaint who is alleged to have committed the violation that is the basis for the complaint an opportunity to submit to the Secretary of Labor a written response to the complaint and an op-
portunity to meet with a representative of the Secretary of Labor to present statements from witnesses, the Secretary of Labor shall—

“(i) initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit; and

“(ii) notify the complainant and the person alleged to have committed the violation of subsection (a), in writing, of such determination.

“(B) GROUNDS FOR DETERMINATION OF COMPLAINTS.—The Secretary of Labor shall dismiss a complaint filed under this subsection, and shall not conduct an investigation otherwise required under paragraph (2), unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (5) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

“(3) BURDENS OF PROOF.—

“(A) CRITERIA FOR DETERMINATION.—In making a determination or adjudicating a complaint pursuant to this subsection, the Sec-
retary, an administrative law judge or a court
may determine that a violation of subsection (a)
has occurred only if the complainant dem-
onstrates that any conduct described in sub-
section (a) with respect to the complainant was
a contributing factor in the adverse action al-
leged in the complaint.

“(B) PROHIBITION.—Notwithstanding sub-
paragraph (A), a decision or order that is favor-
able to the complainant shall not be issued in
any administrative or judicial action pursuant
to this subsection if the respondent dem-
onstrates by clear and convincing evidence that
the respondent would have taken the same ad-
verse action in the absence of such conduct.

“(C) NOTICE OF RELIEF AVAILABLE.—If
the Secretary of Labor concludes that there is
reasonable cause to believe that a violation of
subsection (a) has occurred, the Secretary of
Labor shall, together with the notice under sub-
paragraph (A)(ii), issue a preliminary order
providing the relief prescribed by paragraph
(4)(B).

“(D) REQUEST FOR HEARING.—Not later
than 30 days after the date of receipt of notifi-
cation of a determination of the Secretary of Labor under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Any such hearing shall be conducted expeditiously, and if a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

“(E) PROCEDURES.—

“(i) IN GENERAL.—A hearing requested under this paragraph shall be conducted expeditiously and in accordance with rules established by the Secretary for hearings conducted by administrative law judges.

“(ii) SUBPOENAS; PRODUCTION OF EVIDENCE.—In conducting any such hearing, the administrative law judge may issue subpoenas. The respondent or complainant may request the issuance of subpoenas
that require the deposition of, or the attendance and testimony of, witnesses and the production of any evidence (including any books, papers, documents, or recordings) relating to the matter under consideration.

“(4) Issuance of final orders; review procedures.—

“(A) Timing.—Not later than 120 days after the date of conclusion of any hearing under paragraph (2), the Secretary of Labor shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the person alleged to have committed the violation.

“(B) Available relief.—

“(i) Order of Secretary of Labor.—If, in response to a complaint filed under paragraph (1), the Secretary of Labor determines that a violation of subsection (a) has occurred, the Secretary of
Labor shall order the person who committed such violation—

“(I) to take affirmative action to abate the violation;

“(II) to reinstate the complainant to his or her former position, together with compensation (including back pay with interest) and restore the terms, conditions, and privileges associated with his or her employment;

“(III) to provide compensatory damages to the complainant; and

“(IV) expungement of all warnings, reprimands, or derogatory references that have been placed in paper or electronic records or databases of any type relating to the actions by the complainant that gave rise to the unfavorable personnel action, and, at the complainant’s direction, transmission of a copy of the decision on the complaint to any person whom the complainant reasonably be-
lieves may have received such unfavorable information.

“(ii) Costs and expenses.—If an order is issued under clause (i), the Secretary of Labor, at the request of the complainant, shall assess against the person against whom the order is issued, a sum equal to the aggregate amount of all costs and expenses (including attorney fees and expert witness fees) reasonably incurred, as determined by the Secretary of Labor, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

“(C) Frivolous claims.—If the Secretary of Labor finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary of Labor may award to the prevailing employer or labor organization a reasonable attorney fee, not exceeding $1,000, to be paid by the complainant.

“(D) De novo review.—

“(i) Failure of the Secretary to act.—If the Secretary of Labor has not issued a final order within 270 days after
the date of filing of a complaint under this subsection, or within 90 days after the date of receipt of a written determination, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States having jurisdiction, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.

“(ii) PROCEDURES.—A proceeding under clause (i) shall be governed by the same legal burdens of proof specified in paragraph (3). The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including—

“(I) reinstatement with the same seniority status that the employee would have had, but for the discharge or discrimination;
“(II) the amount of back pay, with interest;

“(III) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney fees; and

“(IV) expungement of all warnings, reprimands, or derogatory references that have been placed in paper or electronic records or databases of any type relating to the actions by the complainant that gave rise to the unfavorable personnel action, and, at the complainant’s direction, transmission of a copy of the decision on the complaint to any person whom the complainant reasonably believes may have received such unfavorable information.

“(E) OTHER APPEALS.—Unless the complainant brings an action under subparagraph (D), any person adversely affected or aggrieved by a final order issued under subparagraph (A)
may file a petition for review of the order in the
United States Court of Appeals for the circuit in which the violation with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation, not later than 60 days after the date of the issuance of the final order of the Secretary of Labor under subparagraph (A). Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order. An order of the Secretary of Labor with respect to which review could have been obtained under this subparagraph shall not be subject to judicial review in any criminal or other civil proceeding.

“(5) FAILURE TO COMPLY WITH ORDER.—

“(A) ACTIONS BY THE SECRETARY.—If any person has failed to comply with a final order issued under paragraph (4), the Secretary of Labor may file a civil action in the United States district court for the district in which the violation was found to have occurred, or in the United States district court for the District
of Columbia, to enforce such order. In actions
brought under this paragraph, the district
courts shall have jurisdiction to grant all appro-
priate relief including injunctive relief, compen-
satory and punitive damages.

“(B) CIVIL ACTIONS TO COMPEL COMPLI-
ANCE.—A person on whose behalf an order was
issued under paragraph (4) may commence a
civil action against the person to whom such
order was issued to require compliance with
such order. The appropriate United States dis-
trict court shall have jurisdiction, without re-
gard to the amount in controversy or the citi-
zension of the parties, to enforce such order.

“(C) AWARD OF COSTS AUTHORIZED.—
The court, in issuing any final order under this
paragraph, may award costs of litigation (in-
cluding reasonable attorney and expert witness
fees) to any party, whenever the court deter-
mines such award is appropriate.

“(D) MANDAMUS PROCEEDINGS.—Any
nondiscretionary duty imposed by this section
shall be enforceable in a mandamus proceeding
brought under section 1361 of title 28, United
States Code.
“(d) Unenforceability of Certain Agreements.—Notwithstanding any other provision of law, the rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment, including by any predispute arbitration agreement.

“(e) Savings.—Nothing in this subsection shall be construed to diminish the rights, privileges, or remedies of any employee who exercises rights under any Federal or State law or common law, or under any collective bargaining agreement.”.

SEC. 5. RULE OF CONSTRUCTION.

The amendments made under this Act shall not be construed to amend section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a).

SEC. 6. GAO REPORT ON SECTORAL BARGAINING.

(a) In General.—Not later than 2 years after the date of enactment of this Act, the Comptroller General, in consultation with the persons described in subsection (b), shall prepare and submit to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report, that—

(1) identifies and analyzes the laws, policies, and procedures in countries outside the United
States governing collective bargaining at the level of an industry sector, including the laws, policies, and procedures involved in—

(A) the administrative system facilitating such bargaining;

(B) how collective bargaining agreements are rendered binding on all firms in an industry sector;

(C) defining an industry sector;

(D) the relationship between collective bargaining at the level of an individual employer or group of employers and at the level of an industry sector;

(E) the designation of representatives for collective bargaining at the level of an industry sector;

(F) the scope of collective bargaining and impasses at the level of an industry sector; and

(G) the provision or administration of benefits by labor organizations (such as unemployment insurance), or union security at the firm level or the level of an industry sector, to cover the costs of collective bargaining at the level of an industry sector;
(2) conducts a comparative analysis of the laws, policies, and procedures specified in paragraph (1) that have been enacted in countries outside the United States;

(3) to the extent practicable, identifies the effects of such laws, policies, and procedures on—

(A) the wages and compensation of employees;

(B) the number of employees, disaggregated by full-time and part-time employees;

(C) prices, sales, and revenues;

(D) employee turnover and retention;

(E) hiring and training costs;

(F) productivity and absenteeism; and

(G) the development of emerging industries, including those that engage their workforces through technology; and

(4) describes the methodology used to generate the information in the report.

(b) EXPERT CONSULTATION.—The persons described in this subsection are—

(1) workers and the labor organizations representing such workers;

(2) representatives of businesses;
(3) the National Labor Relations Board;

(4) the International Labor Organization; and

(5) the International Labor Affairs Bureau of
the Department of Labor.

(c) CONGRESSIONAL ASSESSMENT AND RECOMMENDATIONS.—Not later than 60 days after the date
on which the report is submitted under subsection (a), the
Committee on Education and Labor of the House of Rep-
resentatives and the Committee on Health, Education,
Labor, and Pensions of the Senate shall—

(1) assess the findings of such report; and

(2) make recommendations with respect to ac-
tions of Congress to address the findings of such re-
port.

SEC. 7. RULE OF CONSTRUCTION.

The amendments made under this Act shall not be
construed to affect the definitions of “employer” or “em-
ployee” under the laws of any State that govern the wages,
work hours, workers’ compensation, or unemployment in-
surance of employees.

SEC. 8. RULE OF CONSTRUCTION.

The amendments made under this Act shall not be
construed to affect the privacy of employees with respect
to voter lists provided to labor organizations by employers
pursuant to elections directed by the Board.
SEC. 9. RULE OF CONSTRUCTION.

The amendments made by this Act shall not be construed to affect the jurisdictional standards of the National Labor Relations Board, including any standards that measure the size of a business with respect to revenues, that are used to determine whether an industry is affecting commerce for purposes of determining coverage under the National Labor Relations Act (29 U.S.C. 151 et seq.).

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, including any amendments made by this Act.

Passed the House of Representatives February 6, 2020.

Attest: CHERYL L. JOHNSON, Clerk.