

116TH CONGRESS
1ST SESSION

S. 1306

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.

IN THE SENATE OF THE UNITED STATES

MAY 2, 2019

Mrs. MURRAY (for herself, Mr. SCHUMER, Ms. BALDWIN, Mr. BLUMENTHAL, Mr. BOOKER, Mr. BROWN, Ms. CANTWELL, Mr. CARDIN, Mr. CARPER, Mr. CASEY, Mr. COONS, Ms. CORTEZ MASTO, Ms. DUCKWORTH, Mr. DURBIN, Mrs. FEINSTEIN, Mrs. GILLIBRAND, Ms. HARRIS, Ms. HASSAN, Mr. HEINRICH, Ms. HIRONO, Ms. KLOBUCHAR, Mr. LEAHY, Mr. MARKEY, Mr. MENENDEZ, Mr. MERKLEY, Mr. MURPHY, Mr. PETERS, Mr. REED, Ms. ROSEN, Mr. SANDERS, Mr. SCHATZ, Mrs. SHAHEEN, Ms. SMITH, Ms. STABENOW, Mr. TESTER, Mr. UDALL, Mr. VAN HOLLEN, Ms. WARREN, Mr. WHITEHOUSE, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

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.

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 “Protecting the Right
3 to Organize Act of 2019”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) The National Labor Relations Act (29
7 U.S.C. 151 et seq.) was enacted to encourage the
8 practice of collective bargaining and to protect the
9 exercise by workers of full freedom of association in
10 the workplace. Since its enactment in 1935, tens of
11 millions of workers have bargained with their em-
12 ployers over wages, benefits, and other terms and
13 conditions of employment and have raised the stand-
14 ard of living for all workers.

15 (2) According to the Bureau of Labor Statis-
16 tics, union members earn 25.6 percent more than
17 workers who are not covered by a collective bar-
18 gaining agreement. Workers who are represented by
19 a union are 28 percent more likely to be offered
20 health insurance through work and nearly five times
21 more likely to have defined benefit pensions. The
22 wage differential is significant for women and people
23 of color. African-American union members earn 25
24 percent more than African-American workers who
25 are not covered by a collective bargaining agreement,
26 and Latino union members earn 42.6 percent more

1 than Latino workers who are not covered by a collec-
2 tive bargaining agreement. Women union members
3 earn 30 percent more than women who are not cov-
4 ered by a collective bargaining agreement, and the
5 wage gap between men and women is much smaller
6 at workplaces covered by a collective bargaining
7 agreement because collective bargaining agreements
8 ensure the same rate is paid to workers for a par-
9 ticular job without regard to gender. The wage and
10 benefit gains achieved through collective bargaining
11 agreements benefit both workers and their commu-
12 nities.

13 (3) Unions and collective bargaining ensure
14 that productivity gains are shared by working peo-
15 ple. The decline in the percentage of workers covered
16 by collective bargaining has contributed to sky-
17 rocketing income inequality and wage stagnation for
18 the average worker.

19 (4) The National Labor Relations Act protects
20 the right of workers to join together with their co-
21 workers in concerted activities for their mutual aid
22 or protection. This protection applies broadly to all
23 concerted activities by workers aimed at improving
24 the terms and conditions of their employment or aid-
25 ing each other in any way, regardless of whether

1 workers are seeking to form a union or engage in
2 collective bargaining with their employer.

3 (5) The Act protects the right of workers to
4 discuss issues like pay and benefits without retalia-
5 tion or interference by employers. However, the
6 awareness of workers regarding their rights under
7 the Act is lacking, due in part to the absence of any
8 legally required notice informing workers of the
9 rights and responsibilities under the Act. Many em-
10 ployers maintain policies that restrict the ability of
11 workers to discuss workplace issues with each other,
12 directly contravening these rights. Research shows
13 that more than one half of workers report that their
14 employers have policies that prohibit or discourage
15 workers from discussing pay with their coworkers.
16 These policies and practices impede workers from
17 exercising their rights under the Act and impair
18 their freedom of association at work.

19 (6) Retaliation by employers against workers
20 who exercise their rights under the National Labor
21 Relations Act persists at troubling levels. Employers
22 routinely fire workers for trying to form a union at
23 their workplace. In one out of three organizing cam-
24 paigns, one or more workers are discharged for sup-
25 porting or joining a union.

1 (7) The current remedies are inadequate to
2 deter employers from violating the National Labor
3 Relations Act. The remedies and penalties for viola-
4 tions of the Act are far weaker than for other labor
5 and employment laws. Unlike other major labor and
6 employment laws, there are no civil penalties for vio-
7 lations of the National Labor Relations Act. Work-
8 ers cannot go to court to pursue relief on their own
9 and must rely on the National Labor Relations
10 Board to prosecute their case. Should the Board de-
11 cline to prosecute for any reason, aggrieved workers
12 have no other remedy.

13 (8) Unlike orders of other Federal agencies, the
14 orders of the National Labor Relations Board are
15 not enforced until the Board seeks enforcement from
16 a court of appeals. As far back as 1969, the Admin-
17 istrative Conference of the United States recognized
18 that the absence of a self-enforcing agency order im-
19 poses wasteful delays in the enforcement of the Na-
20 tional Labor Relations Act, and recommended that
21 the Board's orders be made self-enforcing like those
22 of other agencies. Congress did not act upon this
23 recommendation, and delays in the Board's enforce-
24 ment remain a problem undermining the effective-
25 ness of the Act.

1 (9) Many workers do not currently enjoy the
2 protections of the National Labor Relations Act be-
3 cause they are excluded from coverage under the Act
4 or interpretations of the Act.

5 (10) Too often, workers who choose to form
6 unions are frustrated when their employers use delay
7 and other tactics to avoid reaching an initial collec-
8 tive bargaining agreement. Estimates are that in as
9 many as half of new organizing campaigns, workers
10 and their employers fail to reach an initial collective
11 bargaining agreement.

12 (11) While the National Labor Relations Act
13 guarantees workers the right to strike, courts have
14 permitted employers to “permanently replace” work-
15 ers who exercise their right to strike. This is con-
16 trary to Congress’s intent in enacting the National
17 Labor Relations Act and has led to confusion among
18 workers regarding their right to strike.

19 (12) Hearings under section 9 of the National
20 Labor Relations Act (29 U.S.C. 159) exist to assure
21 workers the fullest freedom in exercising the rights
22 guaranteed by the Act. However, some employers
23 have abused the representation process of the Na-
24 tional Labor Relations Board to impede workers

1 from freely choosing their own representatives and
2 exercising their rights under the Act.

3 (13) So-called “right-to-work” laws do not give
4 any worker the right to a job. While Federal law re-
5 quires unions to fairly represent all members of a
6 given bargaining unit, and thereby expend resources
7 on all unit members, many States’ so-called “right-
8 to-work” laws prohibit unions from charging all
9 members for the representation and services that the
10 unions are legally obliged to render. Section 14(b) of
11 the National Labor Relations Act (29 U.S.C.
12 164(b)) must be reformed to permit unions and em-
13 ployers to mutually agree that payment of fair share
14 fees shall be a condition of employment following ini-
15 tial hiring.

16 (14) Restrictions on so-called “secondary boy-
17 cotts” and “recognitional picketing” unduly impede
18 workers’ ability to engage in peaceful conduct and
19 expression. Workers must be free to act in solidarity
20 with workers in other workplaces in order to improve
21 labor standards and achieve other lawful ends for
22 mutual aid or protection.

23 (15) In order to make the right to collective
24 bargaining and freedom of association in the work-

1 place a reality for workers, the National Labor Rela-
2 tions Act must be strengthened.

3 **SEC. 3. PURPOSES.**

4 The purposes of this Act are—

5 (1) to strengthen protections for workers en-
6 gaged in collective bargaining to improve their
7 wages, hours, and terms and conditions of employ-
8 ment;

9 (2) to expand coverage under the National
10 Labor Relations Act (29 U.S.C. 151 et seq.) to more
11 workers;

12 (3) to provide a process by which workers and
13 employers can successfully negotiate an initial collec-
14 tive bargaining agreement;

15 (4) to provide a stronger deterrent and fairer
16 remedies for workers who face retaliation, discrimi-
17 nation, or other interference with their legal rights
18 to act concertedly, join a union, or engage in collec-
19 tive bargaining;

20 (5) to broadly protect workers' right to engage
21 in concerted activities for mutual aid or protection;

22 (6) to streamline the enforcement procedures of
23 the National Labor Relations Board to provide for
24 more timely and effective enforcement of the law;

1 (7) to safeguard the right to strike by prohib-
2 iting “permanent replacement” of striking workers;

3 (8) to repeal specific prohibitions on collective
4 action and peaceful expression;

5 (9) to permit fair share fee arrangements in
6 order to promote workers’ freedom of association
7 and encourage the practice of collective bargaining;

8 (10) to improve the purchasing power of wage
9 earners in industry;

10 (11) to promote the stabilization of fair wage
11 rates and humane working conditions within and be-
12 tween industries; and

13 (12) to redress the inequality of bargaining
14 power between workers and employers.

15 **SEC. 4. AMENDMENTS TO THE NATIONAL LABOR RELA-**
16 **TIONS ACT.**

17 (a) DEFINITIONS.—

18 (1) JOINT EMPLOYER.—Section 2(2) of the Na-
19 tional Labor Relations Act (29 U.S.C. 152(2)) is
20 amended by adding at the end the following: “Two
21 or more persons shall be employers with respect to
22 an employee if each such person codetermines or
23 shares control over the employee’s essential terms
24 and conditions of employment. In determining
25 whether such control exists, the Board or a court of

1 competent jurisdiction shall consider as relevant di-
2 rect control and indirect control over such terms and
3 conditions, reserved authority to control such terms
4 and conditions, and control over such terms and con-
5 ditions exercised by a person in fact: *Provided*, That
6 nothing herein precludes a finding that indirect or
7 reserved control standing alone can be sufficient
8 given specific facts and circumstances.”.

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

15 “(A) the individual is free from control and
16 direction in connection with the performance of
17 the service, both under the contract for the per-
18 formance of service and in fact;

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

22 “(C) the individual is customarily engaged
23 in an independently established trade, occupa-
24 tion, profession, or business of the same nature
25 as that involved in the service performed.”.

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

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

7 (B) by striking “assign,”; and

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

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

13 (c) UNFAIR LABOR PRACTICES.—Section 8 of the
14 National Labor Relations Act (29 U.S.C. 158) is amend-
15 ed—

16 (1) in subsection (a)—

17 (A) in paragraph (5), by striking the pe-
18 riod and inserting “; and”; and

19 (B) by adding at the end the following:

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

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

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

6 (2) in subsection (b)—

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

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

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

13 (D) in paragraph (5), as so redesignated,
14 by striking “; and” and inserting a period;

15 (3) in subsection (c), by striking the period at
16 the end and inserting the following: “: *Provided*,
17 That it shall be an unfair labor practice under sub-
18 section (a)(1) for any employer to require or coerce
19 an employee to attend or participate in such employ-
20 er’s campaign activities unrelated to the employee’s
21 job duties, including activities that are subject to the
22 requirements under section 203(b) of the Labor-
23 Management Reporting and Disclosure Act of 1959
24 (29 U.S.C. 433(b)).”;

25 (4) in subsection (d)—

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

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

7 (C) by striking “The duties imposed” and
8 inserting “(2) The duties imposed”;

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

12 (E) by striking “section 8(d)(1)” and in-
13 serting “paragraph (1)(A)”;

14 (F) by striking “section 8(d)(3)” and in-
15 serting “paragraph (1)(C)” in each place it ap-
16 pears;

17 (G) by striking “section 8(d)(4)” and in-
18 serting “paragraph (1)(D)”;

19 (H) by adding at the end the following:

20 “(3) Whenever collective bargaining is for the
21 purpose of establishing an initial collective bar-
22 gaining agreement following certification or recogni-
23 tion of a labor organization, the following shall
24 apply:

1 “(A) Not later than 10 days after receiving
2 a written request for collective bargaining from
3 an individual or labor organization that has
4 been newly recognized or certified as a rep-
5 resentative as defined in section 9(a), or within
6 such further period as the parties agree upon,
7 the parties shall meet and commence to bargain
8 collectively and shall make every reasonable ef-
9 fort to conclude and sign a collective bargaining
10 agreement.

11 “(B) If after the expiration of the 90-day
12 period beginning on the date on which bar-
13 gaining is commenced, or such additional period
14 as the parties may agree upon, the parties have
15 failed to reach an agreement, either party may
16 notify the Federal Mediation and Conciliation
17 Service of the existence of a dispute and re-
18 quest mediation. Whenever such a request is re-
19 ceived, it shall be the duty of the Service
20 promptly to put itself in communication with
21 the parties and to use its best efforts, by medi-
22 ation and conciliation, to bring them to agree-
23 ment.

24 “(C) If after the expiration of the 30-day
25 period beginning on the date on which the re-

1 quest for mediation is made under subpara-
2 graph (B), or such additional period as the par-
3 ties may agree upon, the Service is not able to
4 bring the parties to agreement by conciliation,
5 the Service shall refer the dispute to a tripartite
6 arbitration panel established in accordance with
7 such regulations as may be prescribed by the
8 Service, with one member selected by the labor
9 organization, one member selected by the em-
10 ployer, and one neutral member mutually
11 agreed to by the parties. A majority of the tri-
12 partite arbitration panel shall render a decision
13 settling the dispute and such decision shall be
14 binding upon the parties for a period of two
15 years, unless amended during such period by
16 written consent of the parties. Such decision
17 shall be based on—

18 “(i) the employer’s financial status
19 and prospects;

20 “(ii) the size and type of the employ-
21 er’s operations and business;

22 “(iii) the employees’ cost of living;

23 “(iv) the employees’ ability to sustain
24 themselves, their families, and their de-

1 pendents on the wages and benefits they
2 earn from the employer; and

3 “(v) the wages and benefits other em-
4 ployers in the same business provide their
5 employees.”;

6 (5) by amending subsection (e) to read as fol-
7 lows:

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

12 “(1) to enter into or attempt to enforce any
13 agreement, express or implied, whereby prior to a
14 dispute to which the agreement applies, an employee
15 undertakes or promises not to pursue, bring, join,
16 litigate, or support any kind of joint, class, or collec-
17 tive claim arising from or relating to the employ-
18 ment of such employee in any forum that, but for
19 such agreement, is of competent jurisdiction;

20 “(2) to coerce an employee into undertaking or
21 promising not to pursue, bring, join, litigate, or sup-
22 port any kind of joint, class, or collective claim aris-
23 ing from or relating to the employment of such em-
24 ployee; or

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

6 *Provided*, That any agreement that violates this subsection
7 or results from a violation of this subsection shall be to
8 such extent unenforceable and void: *Provided further*, That
9 this subsection shall not apply to any agreement embodied
10 in or expressly permitted by a contract between an em-
11 ployer and a labor organization.”;

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

15 (7) by adding at the end the following:

16 “(h)(1) The Board shall promulgate regulations re-
17 quiring each employer to post and maintain, in con-
18 spicuous places where notices to employees and applicants
19 for employment are customarily posted both physically and
20 electronically, a notice setting forth the rights and protec-
21 tions afforded employees under this Act. The Board shall
22 make available to the public the form and text of such
23 notice. The Board shall promulgate regulations requiring
24 employers to notify each new employee of the information

1 contained in the notice described in the preceding two sen-
 2 tences.

3 “(2) Whenever the Board directs an election under
 4 section 9(c) or approves an election agreement, the em-
 5 ployer of employees in the bargaining unit shall, not later
 6 than two business days after the Board directs such elec-
 7 tion or approves such election agreement, provide a voter
 8 list to a labor organization that has petitioned to represent
 9 such employees. Such voter list shall include the names
 10 of all employees in the bargaining unit and such employ-
 11 ees’ home addresses, work locations, shifts, job classifica-
 12 tions, and, if available to the employer, personal landline
 13 and mobile telephone numbers, and work and personal
 14 email addresses. Not later than nine months after the date
 15 of enactment of the Protecting the Right to Organize Act
 16 of 2019, the Board shall promulgate regulations imple-
 17 menting the requirements of this paragraph.”.

18 (d) REPRESENTATIVES AND ELECTIONS.—Section 9
 19 of the National Labor Relations Act (29 U.S.C. 159) is
 20 amended—

21 (1) in subsection (c)—

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

24 “(1) Whenever a petition shall have been filed,
 25 in accordance with such regulations as may be pre-

1 scribed by the Board, by an employee or group of
2 employees or any individual or labor organization
3 acting in their behalf alleging that a substantial
4 number of employees (i) wish to be represented for
5 collective bargaining and that their employer de-
6 clines to recognize their representative as the rep-
7 resentative defined in section 9(a), or (ii) assert that
8 the individual or labor organization, which has been
9 certified or is being recognized by their employer as
10 the bargaining representative, is no longer a rep-
11 resentative as defined in section 9(a), the Board
12 shall investigate such petition and if it has reason-
13 able cause to believe that a question of representa-
14 tion affecting commerce exists shall provide for an
15 appropriate hearing upon due notice. Such hearing
16 may be conducted by an officer or employee of the
17 regional office, who shall not make any recommenda-
18 tions with respect thereto. If the Board finds upon
19 the record of such hearing that such a question of
20 representation exists, it shall direct an election by
21 secret ballot and shall certify the results thereof. No
22 employer shall have standing as a party or to inter-
23 vene in any representation proceeding under this
24 section.”;

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

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

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

8 “(4) If the Board finds that, in an election
9 under paragraph (1), a majority of the valid votes
10 cast in a unit appropriate for purposes of collective
11 bargaining have been cast in favor of representation
12 by the labor organization, the Board shall certify the
13 labor organization as the representative of the em-
14 ployees in such unit and shall issue an order requir-
15 ing the employer of such employees to collectively
16 bargain with the labor organization in accordance
17 with section 8(d). This order shall be deemed an
18 order under section 10(c) of this Act, without need
19 for a determination of an unfair labor practice.

20 “(5)(A) If the Board finds that, in an election
21 under paragraph (1), a majority of the valid votes
22 cast in a unit appropriate for purposes of collective
23 bargaining have not been cast in favor of representa-
24 tion by the labor organization, the Board shall dis-

miss 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 one 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 interference, a majority of the employees in the bargaining unit have signed authorizations designating the labor organization as their collective bargaining representative.

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

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

10 “(8) Except under extraordinary cir-
 11 cumstances—

12 “(A) a pre-election hearing under this sub-
 13 section shall begin not later than eight days
 14 after a notice of such hearing is served on the
 15 labor organization; and

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

19 (2) in subsection (d), by striking “(e) or” and
 20 inserting “(d) or”.

21 (e) PREVENTION OF UNFAIR LABOR PRACTICES.—

22 Section 10(c) of the National Labor Relations Act (29
 23 U.S.C. 160(c)) is amended by striking “suffered by him”
 24 and inserting “suffered by such employee: *Provided fur-*
 25 *ther,* That if the Board finds that an employer has dis-

1 criminated against an employee in violation of paragraph
 2 (3) or (4) of section 8(a) or has committed a violation
 3 of section 8(a) that results in the discharge of an employee
 4 or other serious economic harm to an employee, the Board
 5 shall award the employee back pay without any reduction
 6 (including any reduction based on the employee's interim
 7 earnings or failure to earn interim earnings), front pay
 8 (when appropriate), consequential damages, and an addi-
 9 tional amount as liquidated damages equal to two times
 10 the amount of damages awarded: *Provided further*, no re-
 11 lief under this subsection shall be denied on the basis that
 12 the employee is, or was during the time of relevant em-
 13 ployment or during the back pay period, an unauthorized
 14 alien as defined in section 274A(h)(3) of the Immigration
 15 and Nationality Act (8 U.S.C. 1324a(h)(3)) or any other
 16 provision of Federal law relating to the unlawful employ-
 17 ment of aliens''.

18 (f) ENFORCING COMPLIANCE WITH ORDERS OF THE
 19 BOARD.—

20 (1) IN GENERAL.—Section 10 of the National
 21 Labor Relations Act (29 U.S.C. 160) is further
 22 amended—

23 (A) by striking subsection (e);

24 (B) by redesignating subsection (d) as sub-
 25 section (e);

1 (C) by inserting after subsection (c) the
2 following:

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

8 “(2) Any person who fails or neglects to obey an
9 order of the Board shall forfeit and pay to the Board a
10 civil penalty of not more than \$10,000 for each violation,
11 which shall accrue to the Board and may be recovered in
12 a civil action brought by the Board to the district court
13 of the United States in which the unfair labor practice
14 or other subject of the order occurred, or in which such
15 person or entity resides or transacts business. No action
16 by the Board under this paragraph may be made until
17 30 days following the issuance of an order. Each separate
18 violation of such an order shall be a separate offense, ex-
19 cept that, in the case of a violation in which a person fails
20 to obey or neglects to obey a final order of the Board,
21 each day such failure or neglect continues shall be deemed
22 a separate offense.

23 “(3) If, after having provided a person or entity with
24 notice and an opportunity to be heard regarding a civil
25 action under subparagraph (2) for the enforcement of an

1 order, the court determines that the order was regularly
 2 made and duly served, and that the person or entity is
 3 in disobedience of the same, the court shall enforce obedi-
 4 ence to such order by an injunction or other proper proc-
 5 ess, mandatory or otherwise, to—

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

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

12 (D) in subsection (f)—

13 (i) by striking “proceed in the same
 14 manner as in the case of an application by
 15 the Board under subsection (e) of this sec-
 16 tion,” and inserting “proceed as provided
 17 under paragraph (2) of this subsection”;

18 (ii) by striking “Any” and inserting
 19 the following:

20 “(1) Within 30 days of the issuance of an
 21 order, any”; and

22 (iii) by adding at the end the fol-
 23 lowing:

24 “(2) No objection that has not been urged be-
 25 fore the Board, its member, agent, or agency shall

1 be considered by a court, unless the failure or ne-
2 glect to urge such objection shall be excused because
3 of extraordinary circumstances. The findings of the
4 Board with respect to questions of fact if supported
5 by substantial evidence on the record considered as
6 a whole shall be conclusive. If either party shall
7 apply to the court for leave to adduce additional evi-
8 dence and shall show to the satisfaction of the court
9 that such additional evidence is material and that
10 there were reasonable grounds for the failure to ad-
11 duce such evidence in the hearing before the Board,
12 its member, agent, or agency, the court may order
13 such additional evidence to be taken before the
14 Board, its member, agent, or agency, and to be
15 made a part of the record. The Board may modify
16 its findings as to the facts, or make new findings,
17 by reason of additional evidence so taken and filed,
18 and it shall file such modified or new findings, which
19 findings with respect to questions of fact if sup-
20 ported by substantial evidence on the record consid-
21 ered as a whole shall be conclusive, and shall file its
22 recommendations, if any, for the modification or set-
23 ting aside of its original order. Upon the filing of the
24 record with it the jurisdiction of the court shall be
25 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 section 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”.

(g) 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

1 interferes with, restrains, or coerces employees in
 2 the exercise of the rights guaranteed under section
 3 7, or involves discharge or other serious economic
 4 harm to an employee, the preliminary investigation
 5 of such charge shall be made forthwith and given
 6 priority over all other cases except cases of like char-
 7 acter in the office where it is filed or to which it is
 8 referred. If, after such investigation, the officer or
 9 regional attorney to whom the matter may be re-
 10 ferred has reasonable cause to believe such charge is
 11 true and that a complaint should issue, such officer
 12 or attorney shall bring a petition for appropriate
 13 temporary relief or restraining order as set forth in
 14 paragraph (1). The district court shall grant the re-
 15 lief requested unless the court concludes that there
 16 is no reasonable likelihood that the Board will suc-
 17 ceed on the merits of the Board's claim.”; and

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

19 (h) PENALTIES.—

20 (1) IN GENERAL.—Section 12 of the National
 21 Labor Relations Act (29 U.S.C. 162) is amended—

22 (A) by striking “Sec. 12. Any person” and
 23 inserting the following:

1 **“SEC. 12. PENALTIES.**

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

4 (B) by adding at the end the following:

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

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

12 “(2) issue and cause to be served on such em-
13 ployer an order requiring that such employer comply
14 with section 8(h) or regulations issued thereunder;
15 and

16 “(3) impose a civil penalty in an amount deter-
17 mined appropriate by the Board, except that in no
18 case shall the amount of such penalty exceed \$500
19 for each such violation.

20 “(c) VIOLATIONS CAUSING SERIOUS ECONOMIC
21 HARM TO EMPLOYEES.—

22 “(1) IN GENERAL.—Any employer who commits
23 an unfair labor practice within the meaning of para-
24 graph (3) or (4) of section 8(a), or a violation of
25 section 8(a) that results in the discharge of an em-
26 ployee or other serious economic harm to an em-

1 ployee, shall, in addition to any remedy ordered by
 2 the Board, be subject to a civil penalty in an amount
 3 not to exceed \$50,000 for each violation, except that
 4 the Board shall double the amount of such penalty,
 5 to an amount not to exceed \$100,000, in any case
 6 where the employer has within the preceding five
 7 years committed another such violation.

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

11 “(A) the gravity of the unfair labor prac-
 12 tice;

13 “(B) the impact of the unfair labor prac-
 14 tice on the charging party, on other persons
 15 seeking to exercise rights guaranteed by this
 16 Act, and on the public interest; and

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

18 “(3) DIRECTOR AND OFFICER LIABILITY.—If
 19 the Board determines, based on the particular facts
 20 and circumstances presented, that a director or offi-
 21 cer’s personal liability is warranted, a civil penalty
 22 for a violation described in this subsection may also
 23 be assessed against any director or officer of the em-
 24 ployer who directed or committed the violation, had
 25 established a policy that led to such a violation, or

1 had actual or constructive knowledge of and the au-
2 thority to prevent the violation and failed to prevent
3 the violation.

4 “(d) RIGHT TO CIVIL ACTION.—

5 “(1) IN GENERAL.—Any person who is injured
6 by reason of a violation of paragraph (1) or (3) of
7 section 8(a) may, after 60 days following the filing
8 of a charge with the Board alleging an unfair labor
9 practice, bring a civil action in the appropriate dis-
10 trict court of the United States against the employer
11 within 90 days after the expiration of the 60-day pe-
12 riod or the date the Board notifies the person that
13 no complaint shall issue, whichever occurs earlier,
14 provided that the Board has not filed a petition
15 under section 10(j) of this Act prior to the expira-
16 tion of the 60-day period. No relief under this sub-
17 section shall be denied on the basis that the em-
18 ployee is, or was during the time of relevant employ-
19 ment or during the back pay period, an unauthor-
20 ized alien as defined in section 274A(h)(3) of the
21 Immigration and Nationality Act (8 U.S.C.
22 1324a(h)(3)) or any other provision of Federal law
23 relating to the unlawful employment of aliens.

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

1 “(A) back pay without any reduction, in-
2 cluding any reduction based on the employee’s
3 interim earnings or failure to earn interim earn-
4 ings;

5 “(B) front pay (when appropriate);

6 “(C) consequential damages;

7 “(D) an additional amount as liquidated
8 damages equal to two times the cumulative
9 amount of damages awarded under subpara-
10 graphs (A) through (C);

11 “(E) in appropriate cases, punitive dam-
12 ages in accordance with paragraph (4); and

13 “(F) any other relief authorized by section
14 706(g) of the Civil Rights Act of 1964 (42
15 U.S.C. 2000e–5(g)) or by section 1977A(b) of
16 the Revised Statutes (42 U.S.C. 1981a(b)).

17 “(3) ATTORNEY’S FEES.—In any civil action
18 under this subsection, the court may allow the pre-
19 vailing party a reasonable attorney’s fee (including
20 expert fees) and other reasonable costs associated
21 with maintaining the action.

22 “(4) PUNITIVE DAMAGES.—In awarding puni-
23 tive damages under paragraph (2)(E), the court
24 shall consider—

1 “(A) the gravity of the unfair labor prac-
2 tice;

3 “(B) the impact of the unfair labor prac-
4 tice on the charging party, on other persons
5 seeking to exercise rights guaranteed by this
6 Act, and on the public interest; and

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

8 (2) CONFORMING AMENDMENTS.—Section
9 10(b) of the National Labor Relations Act (29
10 U.S.C. 160(b)) is amended—

11 (A) by striking “six months” and inserting
12 “180 days”; and

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

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

21 (j) FAIR SHARE AGREEMENTS PERMITTED.—Section
22 14(b) of the National Labor Relations Act (29 U.S.C.
23 164(b)) is amended by striking the period at the end and
24 inserting the following: “: *Provided*, That collective bar-
25 gaining agreements providing that all employees in a bar-

1 gaining unit shall contribute fees to a labor organization
 2 for the cost of representation, collective bargaining, con-
 3 tract enforcement, and related expenditures as a condition
 4 of employment shall be valid and enforceable notwith-
 5 standing any State or Territorial law.”.

6 **SEC. 5. AMENDMENTS TO THE LABOR MANAGEMENT RELA-**
 7 **TIONS ACT, 1947.**

8 The Labor Management Relations Act, 1947 is
 9 amended—

10 (1) in section 213(a) (29 U.S.C. 183(a)), by
 11 striking “clause (A) of the last sentence of section
 12 8(d) (which is required by clause (3) of such section
 13 8(d)), or within 10 days after the notice under
 14 clause (B)” and inserting “section 8(d)(2)(A) of the
 15 National Labor Relations Act (which is required by
 16 section 8(d)(1)(C) of such Act), or within 10 days
 17 after the notice under section 8(d)(2)(B) of such
 18 Act”; and

19 (2) by repealing section 303 (29 U.S.C. 187).

20 **SEC. 6. AMENDMENTS TO THE LABOR-MANAGEMENT RE-**
 21 **PORTING AND DISCLOSURE ACT OF 1959.**

22 Section 203(c) of the Labor-Management Reporting
 23 and Disclosure Act of 1959 (29 U.S.C. 433(c)) is amended
 24 by striking the period at the end and inserting the fol-
 25 lowing “: *Provided*, That this subsection shall not exempt

1 from the requirements of this section any arrangement or
2 part of an arrangement in which a party agrees, for an
3 object described in subsection (b)(1), to plan or conduct
4 employee meetings; train supervisors or employer rep-
5 resentatives to conduct meetings; coordinate or direct ac-
6 tivities of supervisors or employer representatives; estab-
7 lish or facilitate employee committees; identify employees
8 for disciplinary action, reward, or other targeting; or draft
9 or revise employer personnel policies, speeches, presen-
10 tations, or other written, recorded, or electronic commu-
11 nications to be delivered or disseminated to employees.”.

12 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

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

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