

117TH CONGRESS
1ST SESSION

S. 420

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

FEBRUARY 24, 2021

Mrs. MURRAY (for herself, Mr. SCHUMER, Mr. BLUMENTHAL, Ms. DUCKWORTH, Mr. BOOKER, Ms. WARREN, Mr. WYDEN, Mrs. GILLIBRAND, Ms. CANTWELL, Mr. MURPHY, Ms. HASSAN, Mr. CASEY, Mr. CARDIN, Mr. MERKLEY, Mr. WHITEHOUSE, Mr. REED, Mr. DURBIN, Mr. KAINE, Ms. KLOBUCHAR, Mr. BROWN, Mr. LUJÁN, Mr. MENENDEZ, Ms. BALDWIN, Mr. SANDERS, Ms. CORTEZ MASTO, Mr. VAN HOLLEN, Mr. MARKEY, Mr. HEINRICH, Ms. HIRONO, Mr. SCHATZ, Ms. SMITH, Mr. LEAHY, Mr. CARPER, Mr. BENNET, Ms. STABENOW, Mr. COONS, Ms. ROSEN, Mr. TESTER, Mr. PETERS, Mr. PADILLA, Mrs. SHAHEEN, Mrs. FEINSTEIN, Mr. OSSOFF, Mr. WARNOCK, and Mr. HICKENLOOPER) 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; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Protecting the Right to Organize Act of 2021”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—AMENDMENTS TO THE NATIONAL LABOR RELATIONS
ACT

Sec. 101. Definitions.

Sec. 102. Reports.

Sec. 103. Appointment.

Sec. 104. Unfair labor practices.

Sec. 105. Representatives and elections.

Sec. 106. Damages for unfair labor practices.

Sec. 107. Enforcing compliance with orders of the board.

Sec. 108. Injunctions against unfair labor practices involving discharge or other
serious economic harm.

Sec. 109. Penalties.

Sec. 110. Limitations on the right to strike.

Sec. 111. Fair share agreements permitted.

TITLE II—AMENDMENTS TO THE LABOR MANAGEMENT RELA-
TIONS ACT, 1947 AND THE LABOR-MANAGEMENT REPORTING
AND DISCLOSURE ACT OF 1959

Sec. 201. Conforming amendments to the Labor Management Relations Act,
1947.

Sec. 202. Amendments to the Labor-Management Reporting and Disclosure Act
of 1959.

TITLE III—OTHER MATTERS

Sec. 301. Severability.

Sec. 302. Authorization of appropriations.

6 **TITLE I—AMENDMENTS TO THE**
7 **NATIONAL LABOR RELATIONS**
8 **ACT**

9 **SEC. 101. DEFINITIONS.**

10 (a) JOINT EMPLOYER.—Section 2(2) of the National
11 Labor Relations Act (29 U.S.C. 152(2)) is amended by
12 adding at the end the following: “Two or more persons

1 shall be employers with respect to an employee if each
2 such person codetermines or shares control over the em-
3 ployee’s essential terms and conditions of employment. In
4 determining whether such control exists, the Board or a
5 court of competent jurisdiction shall consider as relevant
6 direct control and indirect control over such terms and
7 conditions, reserved authority to control such terms and
8 conditions, and control over such terms and conditions ex-
9 ercised by a person in fact: *Provided*, That nothing herein
10 precludes a finding that indirect or reserved control stand-
11 ing alone can be sufficient given specific facts and cir-
12 cumstances.”.

13 (b) EMPLOYEE.—Section 2(3) of the National Labor
14 Relations Act (29 U.S.C. 152(3)) is amended by adding
15 at the end the following: “An individual performing any
16 service shall be considered an employee (except as pro-
17 vided in the previous sentence) and not an independent
18 contractor, unless—

19 (A) the individual is free from control and
20 direction in connection with the performance of
21 the service, both under the contract for the per-
22 formance of service and in fact;

23 (B) the service is performed outside the
24 usual course of the business of the employer;
25 and

1 “(C) the individual is customarily engaged
2 in an independently established trade, occupa-
3 tion, profession, or business of the same nature
4 as that involved in the service performed.”.

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

7 (1) by inserting “and for a majority of the indi-
8 vidual’s worktime” after “interest of the employer”;

9 (2) by striking “assign,”; and

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

11 **SEC. 102. REPORTS.**

12 Section 3(c) of the National Labor Relations Act is
13 amended—

14 (1) by striking “The Board” and inserting “(1)
15 The Board”;

16 (2) by adding at the end the following:

17 “(2) Effective January 1, 2023, section 3003 of the
18 Federal Reports Elimination and Sunset Act of 1995
19 (Public Law 166–44; 31 U.S.C. 1113 note) shall not apply
20 with respect to reports required under this subsection.

21 “(3) Each report issued under this subsection shall—

22 “(A) include no less detail than reports issued by the
23 Board prior to the termination of such reports under sec-
24 tion 3003 of the Federal Reports Elimination and Sunset
25 Act of 1995 (Public Law 166–44; 31 U.S.C. 1113 note);

1 “(B) list each case in which the Designated Agency
2 Ethics Official provided advice regarding whether a Mem-
3 ber should be recused from participating in a case or rule-
4 making; and

5 “(C) list each case in which the Designated Agency
6 Ethics Official determined that a Member should be
7 recused from participating in a case or rulemaking.”.

8 **SEC. 103. APPOINTMENT.**

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

12 **SEC. 104. UNFAIR LABOR PRACTICES.**

13 Section 8 of the National Labor Relations Act (29
14 U.S.C. 158) is amended—

15 (1) in subsection (a)—

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

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

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

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

24 “(B) to discriminate against an employee
25 who is working or has unconditionally offered to

1 return to work for the employer because the
2 employee supported or participated in such a
3 strike; or

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

9 “(7) to communicate or misrepresent to an em-
10 ployee under section 2(3) that such employee is ex-
11 cluded from the definition of employee under section
12 2(3).”;

13 (2) in subsection (b)—

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

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

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

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

22 (3) in subsection (c), by striking the period at
23 the end and inserting the following: “: *Provided,*
24 That it shall be an unfair labor practice under sub-
25 section (a)(1) for any employer to require or coerce

1 an employee to attend or participate in such employ-
2 er’s campaign activities unrelated to the employee’s
3 job duties, including activities that are subject to the
4 requirements under section 203(b) of the Labor-
5 Management Reporting and Disclosure Act of 1959
6 (29 U.S.C. 433(b)).”;

7 (4) in subsection (d)—

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

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

14 (C) by inserting “and to maintain current
15 wages, hours, and terms and conditions of em-
16 ployment pending an agreement” after “arising
17 thereunder”;

18 (D) by inserting “: *Provided*, That an em-
19 ployer’s duty to collectively bargain shall con-
20 tinue absent decertification of the labor organi-
21 zation following an election conducted pursuant
22 to section 9” after “making of a concession.”;

23 (E) by inserting “*further*” before “, That
24 where there is in effect”;

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

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

6 (H) by striking “section 8(d)(1)” and in-
7 serting “paragraph (1)(A)”;

8 (I) by striking “section 8(d)(3)” and in-
9 serting “paragraph (1)(C)” in each place it ap-
10 pears;

11 (J) by striking “section 8(d)(4)” and in-
12 serting “paragraph (1)(D)”;

13 (K) by adding at the end the following:

14 “(3) Whenever collective bargaining is for the pur-
15 pose of establishing an initial collective bargaining agree-
16 ment following certification or recognition of a labor orga-
17 nization, the following shall apply:

18 “(A) Not later than 10 days after receiving a
19 written request for collective bargaining from an in-
20 dividual or labor organization that has been newly
21 recognized or certified as a representative as defined
22 in section 9(a), or within such further period as the
23 parties agree upon, the parties shall meet and com-
24 mence to bargain collectively and shall make every

1 reasonable effort to conclude and sign a collective
2 bargaining agreement.

3 “(B) If after the expiration of the 90-day pe-
4 riod beginning on the date on which bargaining is
5 commenced, or such additional period as the parties
6 may agree upon, the parties have failed to reach an
7 agreement, either party may notify the Federal Me-
8 diation and Conciliation Service of the existence of
9 a dispute and request mediation. Whenever such a
10 request is received, it shall be the duty of the Service
11 promptly to put itself in communication with the
12 parties and to use its best efforts, by mediation and
13 conciliation, to bring them to agreement.

14 “(C) If after the expiration of the 30-day period
15 beginning on the date on which the request for me-
16 diation is made under subparagraph (B), or such ad-
17 ditional period as the parties may agree upon, the
18 Service is not able to bring the parties to agreement
19 by conciliation, the Service shall refer the dispute to
20 a tripartite arbitration panel established in accord-
21 ance with such regulations as may be prescribed by
22 the Service, with one member selected by the labor
23 organization, one member selected by the employer,
24 and one neutral member mutually agreed to by the
25 parties. The labor organization and employer must

1 each select the members of the tripartite arbitration
2 panel within 14 days of the Service’s referral; if the
3 labor organization or employer fail to do so, the
4 Service shall designate any members not selected by
5 the labor organization or the employer. A majority
6 of the tripartite arbitration panel shall render a deci-
7 sion settling the dispute and such decision shall be
8 binding upon the parties for a period of 2 years, un-
9 less amended during such period by written consent
10 of the parties. Such decision shall be based on—

11 “(i) the employer’s financial status and
12 prospects;

13 “(ii) the size and type of the employer’s
14 operations and business;

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

16 “(iv) the employees’ ability to sustain
17 themselves, their families, and their dependents
18 on the wages and benefits they earn from the
19 employer; and

20 “(v) the wages and benefits other employ-
21 ers in the same business provide their employ-
22 ees.”;

23 (5) by amending subsection (e) to read as fol-
24 lows:

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

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

13 “(2) to coerce an employee into undertaking or
14 promising not to pursue, bring, join, litigate, or sup-
15 port any kind of joint, class, or collective claim aris-
16 ing from or relating to the employment of such em-
17 ployee; or

18 “(3) to retaliate or threaten to retaliate against
19 an employee for refusing to undertake or promise
20 not to pursue, bring, join, litigate, or support any
21 kind of joint, class, or collective claim arising from
22 or relating to the employment of such employee:
23 *Provided*, That any agreement that violates this sub-
24 section or results from a violation of this subsection
25 shall be to such extent unenforceable and void: *Pro-*

1 *vided further*, That this subsection shall not apply to
2 any agreement embodied in or expressly permitted
3 by a contract between an employer and a labor orga-
4 nization.”;

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

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

9 “(h)(1) The Board shall promulgate regulations re-
10 quiring each employer to post and maintain, in con-
11 spicuous places where notices to employees and applicants
12 for employment are customarily posted both physically and
13 electronically, a notice setting forth the rights and protec-
14 tions afforded employees under this Act. The Board shall
15 make available to the public the form and text of such
16 notice. The Board shall promulgate regulations requiring
17 employers to notify each new employee of the information
18 contained in the notice described in the preceding two sen-
19 tences.

20 “(2) Whenever the Board directs an election under
21 section 9(c) or approves an election agreement, the em-
22 ployer of employees in the bargaining unit shall, not later
23 than 2 business days after the Board directs such election
24 or approves such election agreement, provide a voter list
25 to a labor organization that has petitioned to represent

1 such employees. Such voter list shall include the names
2 of all employees in the bargaining unit and such employ-
3 ees' home addresses, work locations, shifts, job classifica-
4 tions, and, if available to the employer, personal landline
5 and mobile telephone numbers, and work and personal
6 email addresses; the voter list must be provided in a
7 searchable electronic format generally approved by the
8 Board unless the employer certifies that the employer does
9 not possess the capacity to produce the list in the required
10 form. Not later than 9 months after the date of enactment
11 of the Protecting the Right to Organize Act of 2021, the
12 Board shall promulgate regulations implementing the re-
13 quirements of this paragraph.

14 “(i) The rights of an employee under section 7 in-
15 clude the right to use electronic communication devices
16 and systems (including computers, laptops, tablets, inter-
17 net access, email, cellular telephones, or other company
18 equipment) of the employer of such employee to engage
19 in activities protected under section 7 if such employer has
20 given such employee access to such devices and systems
21 in the course of the work of such employee, absent a com-
22 pelling business rationale for denying or limiting such
23 use.”.

1 **SEC. 105. REPRESENTATIVES AND ELECTIONS.**

2 Section 9 of the National Labor Relations Act (29
3 U.S.C. 159) is amended—

4 (1) in subsection (c)—

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

7 “(1) Whenever a petition shall have been filed, in ac-
8 cordance with such regulations as may be prescribed by
9 the Board, by an employee or group of employees or any
10 individual or labor organization acting in their behalf al-
11 leging that a substantial number of employees (i) wish to
12 be represented for collective bargaining and that their em-
13 ployer declines to recognize their representative as the rep-
14 resentative defined in section 9(a), or (ii) assert that the
15 individual or labor organization, which has been certified
16 or is being recognized by their employer as the bargaining
17 representative, is no longer a representative as defined in
18 section 9(a), the Board shall investigate such petition and
19 if it has reasonable cause to believe that a question of rep-
20 resentation affecting commerce exists shall provide for an
21 appropriate hearing upon due notice. Such hearing may
22 be conducted by an officer or employee of the regional of-
23 fice, who shall not make any recommendations with re-
24 spect thereto. If the Board finds upon the record of such
25 hearing that such a question of representation exists, it
26 shall direct an election by secret ballot and shall certify

1 the results thereof. The Board shall find the labor organi-
2 zation's proposed unit to be appropriate if the employees
3 in the proposed unit share a community of interest, and
4 if the employees outside the unit do not share an over-
5 whelming community of interest with employees inside. At
6 the request of the labor organization, the Board shall di-
7 rect that the election be conducted through certified mail,
8 electronically, at the work location, or at a location other
9 than one owned or controlled by the employer. No em-
10 ployer shall have standing as a party or to intervene in
11 any representation proceeding under this section.”;

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

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

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

19 “(4) If the Board finds that, in an election under
20 paragraph (1), a majority of the valid votes cast in a unit
21 appropriate for purposes of collective bargaining have been
22 cast in favor of representation by the labor organization,
23 the Board shall certify the labor organization as the rep-
24 resentative of the employees in such unit and shall issue
25 an order requiring the employer of such employees to col-

1 lectively bargain with the labor organization in accordance
2 with section 8(d). This order shall be deemed an order
3 under section 10(c) of this Act, without need for a deter-
4 mination of an unfair labor practice.

5 “(5)(A) If the Board finds that, in an election under
6 paragraph (1), a majority of the valid votes cast in a unit
7 appropriate for purposes of collective bargaining have not
8 been cast in favor of representation by the labor organiza-
9 tion, the Board shall certify the results of the election,
10 subject to subparagraphs (B) and (C).

11 “(B) In any case in which a majority of the valid
12 votes cast in a unit appropriate for purposes of collective
13 bargaining have not been cast in favor of representation
14 by the labor organization and the Board determines, fol-
15 lowing a post-election hearing, that the employer has com-
16 mitted a violation of this Act or otherwise interfered with
17 a fair election, and the employer has not demonstrated
18 that the violation or other interference is unlikely to have
19 affected the outcome of the election, the Board shall, with-
20 out ordering a new election, set aside the election and cer-
21 tify the labor organization as the representative of the em-
22 ployees in such unit and issue an order requiring the em-
23 ployer to bargain with the labor organization in accord-
24 ance with section 8(d) if, at any time during the period
25 beginning 1 year preceding the date of the commencement

1 of the election and ending on the date upon which the
2 Board makes the determination of a violation or other in-
3 terference, a majority of the employees in the bargaining
4 unit have signed authorizations designating the labor or-
5 ganization as their collective bargaining representative.

6 “(C) In any case where the Board determines that
7 an election under this paragraph should be set aside, the
8 Board shall direct a new election with appropriate addi-
9 tional safeguards necessary to ensure a fair election proc-
10 ess, except in cases where the Board issues a bargaining
11 order under subparagraph (B).”; and

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

14 “(8) Except under extraordinary circumstances—

15 “(A) a pre-election hearing under this sub-
16 section shall begin not later than 8 days after a no-
17 tice of such hearing is served on the labor organiza-
18 tion and shall continue from day to day until com-
19 pleted;

20 “(B) a regional director shall transmit the no-
21 tice of election at the same time as the direction of
22 election, and shall transmit such notice and such di-
23 rection electronically (including transmission by
24 email or facsimile) or by overnight mail if electronic
25 transmission is unavailable;

1 “(C) not later than 2 days after the service of
2 the notice of hearing, the employer shall—

3 “(i) post the Notice of Petition for Elec-
4 tion in conspicuous places, including all places
5 where notices to employees are customarily
6 posted;

7 “(ii) if the employer customarily commu-
8 nicates with employees electronically, distribute
9 such Notice electronically; and

10 “(iii) maintain such posting until the peti-
11 tion is dismissed or withdrawn or the Notice of
12 Petition for Election is replaced by the Notice
13 of Election;

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

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

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

23 (3) by adding at the end the following:

24 “(f) The Board shall dismiss any petition for an elec-
25 tion with respect to a bargaining unit or any subdivision

1 if, during the 12-month period ending on the date on
2 which the petition is filed—

3 “(1) the employer has recognized a labor orga-
4 nization without an election and in accordance with
5 this Act;

6 “(2) the labor organization and employer en-
7 gaged in their first bargaining session following the
8 issuance of a bargaining order by the Board; or

9 “(3) the labor organization and successor em-
10 ployer engaged in their first bargaining session fol-
11 lowing a succession.

12 “(g) The Board shall dismiss any petition for an elec-
13 tion with respect to a bargaining unit or any subdivision
14 if there is in effect a lawful written collective bargaining
15 agreement between the employer and an exclusive rep-
16 resentative covering any employees in the unit specified
17 in the petition, unless the petition is filed—

18 “(1) on or after the date that is 3 years after
19 the date on which the collective bargaining agree-
20 ment took effect; or

21 “(2) during the 30-day period beginning on the
22 date that is 90 days before the date that is 3 years
23 after the date on which the collective bargaining
24 agreement took effect.

1 “(h) The Board shall suspend the processing of any
2 petition for an election with respect to a bargaining unit
3 or any subdivision if a labor organization files an unfair
4 labor practice charge alleging a violation of section 8(a)
5 and requesting the suspension of a pending petition until
6 the unlawful conduct, if any, is remedied or the charge
7 is dismissed unless the Board determines that employees
8 can, under the circumstances, exercise free choice in an
9 election despite the unlawful conduct alleged in the
10 charge.”.

11 **SEC. 106. DAMAGES FOR UNFAIR LABOR PRACTICES.**

12 Section 10(c) of the National Labor Relations Act
13 (29 U.S.C. 160(c)) is amended by striking “suffered by
14 him” and inserting “suffered by such employee: *Provided*
15 *further*, That if the Board finds that an employer has dis-
16 criminated against an employee in violation of paragraph
17 (3) or (4) of section 8(a) or has committed a violation
18 of section 8(a) that results in the discharge of an employee
19 or other serious economic harm to an employee, the Board
20 shall award the employee back pay without any reduction
21 (including any reduction based on the employee’s interim
22 earnings or failure to earn interim earnings), front pay
23 (when appropriate), consequential damages, and an addi-
24 tional amount as liquidated damages equal to two times
25 the amount of damages awarded: *Provided further*, no re-

1 lief under this subsection shall be denied on the basis that
2 the employee is, or was during the time of relevant em-
3 ployment or during the back pay period, an unauthorized
4 alien as defined in section 274A(h)(3) of the Immigration
5 and Nationality Act (8 U.S.C. 1324a(h)(3)) or any other
6 provision of Federal law relating to the unlawful employ-
7 ment of aliens”.

8 **SEC. 107. ENFORCING COMPLIANCE WITH ORDERS OF THE**
9 **BOARD.**

10 (a) IN GENERAL.—Section 10 of the National Labor
11 Relations Act (29 U.S.C. 160) is further amended—

12 (1) by striking subsection (e);

13 (2) by redesignating subsection (d) as sub-
14 section (e);

15 (3) by inserting after subsection (c) the fol-
16 lowing:

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

22 “(2) Any person who fails or neglects to obey an
23 order of the Board shall forfeit and pay to the Board a
24 civil penalty of not more than \$10,000 for each violation,
25 which shall accrue to the United States and may be recov-

1 ered in a civil action brought by the Board to the district
2 court of the United States in which the unfair labor prac-
3 tice or other subject of the order occurred, or in which
4 such person or entity resides or transacts business. No ac-
5 tion by the Board under this paragraph may be made until
6 30 days following the issuance of an order. Each separate
7 violation of such an order shall be a separate offense, ex-
8 cept that, in the case of a violation in which a person fails
9 to obey or neglects to obey a final order of the Board,
10 each day such failure or neglect continues shall be deemed
11 a separate offense.

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

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

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

1 (4) in subsection (f)—

2 (A) by striking “proceed in the same man-
3 ner as in the case of an application by the
4 Board under subsection (e) of this section,” and
5 inserting “proceed as provided under paragraph
6 (2) of this subsection”;

7 (B) by striking “Any” and inserting the
8 following: “

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

11 (C) by adding at the end the following:

12 “(2) No objection that has not been urged before the
13 Board, its member, agent, or agency shall be considered
14 by a court, unless the failure or neglect to urge such objec-
15 tion shall be excused because of extraordinary cir-
16 cumstances. The findings of the Board with respect to
17 questions of fact if supported by substantial evidence on
18 the record considered as a whole shall be conclusive. If
19 either party shall apply to the court for leave to adduce
20 additional evidence and shall show to the satisfaction of
21 the court that such additional evidence is material and
22 that there were reasonable grounds for the failure to ad-
23 duce such evidence in the hearing before the Board, its
24 member, agent, or agency, the court may order such addi-
25 tional evidence to be taken before the Board, its member,

1 agent, or agency, and to be made a part of the record.
2 The Board may modify its findings as to the facts, or
3 make new findings, by reason of additional evidence so
4 taken and filed, and it shall file such modified or new find-
5 ings, which findings with respect to questions of fact if
6 supported by substantial evidence on the record considered
7 as a whole shall be conclusive, and shall file its rec-
8 ommendations, if any, for the modification or setting aside
9 of its original order. Upon the filing of the record with
10 it the jurisdiction of the court shall be exclusive and its
11 judgment and decree shall be final, except that the same
12 shall be subject to review by the appropriate United States
13 court of appeals if application was made to the district
14 court, and by the Supreme Court of the United States
15 upon writ of certiorari or certification as provided in sec-
16 tion 1254 of title 28, United States Code.”; and

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

20 (b) CONFORMING AMENDMENT.—Section 18 of the
21 National Labor Relations Act (29 U.S.C. 168) is amended
22 by striking “ section 10(e) or (f)” and inserting “sub-
23 section (d) or (f) of section 10”.

1 **SEC. 108. INJUNCTIONS AGAINST UNFAIR LABOR PRAC-**
2 **TICES INVOLVING DISCHARGE OR OTHER SE-**
3 **RIOUS ECONOMIC HARM.**

4 Section 10 of the National Labor Relations Act (29
5 U.S.C. 160) is amended—

6 (1) in subsection (j)—

7 (A) by striking “The Board” and inserting

8 “(1) The Board”; and

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

10 “(2) Notwithstanding subsection (m), whenever it is
11 charged that an employer has engaged in an unfair labor
12 practice within the meaning of paragraph (1), (3) or (4)
13 of section 8(a) that significantly interferes with, restrains,
14 or coerces employees in the exercise of the rights guaran-
15 teed under section 7, or involves discharge or other serious
16 economic harm to an employee, the preliminary investiga-
17 tion of such charge shall be made forthwith and given pri-
18 ority over all other cases except cases of like character
19 in the office where it is filed or to which it is referred.
20 If, after such investigation, the officer or regional attorney
21 to whom the matter may be referred has reasonable cause
22 to believe such charge is true and that a complaint should
23 issue, such officer or attorney shall bring a petition for
24 appropriate temporary relief or restraining order as set
25 forth in paragraph (1). The district court shall grant the
26 relief requested unless the court concludes that there is

1 no reasonable likelihood that the Board will succeed on
2 the merits of the Board’s claim.”; and

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

4 **SEC. 109. PENALTIES.**

5 (a) IN GENERAL.—Section 12 of the National Labor
6 Relations Act (29 U.S.C. 162) is amended—

7 (1) by striking “**SEC. 12.** Any person” and in-
8 serting the following:

9 “**SEC. 12. PENALTIES.**

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

12 (2) by adding at the end the following:

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

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

20 “(2) issue and cause to be served on such em-
21 ployer an order requiring that such employer comply
22 with section 8(h) or regulations issued thereunder;
23 and

24 “(3) impose a civil penalty in an amount deter-
25 mined appropriate by the Board, except that in no

1 case shall the amount of such penalty exceed \$500
2 for each such violation.

3 “(c) CIVIL PENALTIES FOR VIOLATIONS.—

4 “(1) IN GENERAL.—Any employer who commits
5 an unfair labor practice within the meaning of sec-
6 tion 8(a) shall, in addition to any remedy ordered by
7 the Board, be subject to a civil penalty in an amount
8 not to exceed \$50,000 for each violation, except
9 that, with respect to an unfair labor practice within
10 the meaning of paragraph (3) or (4) of section 8(a)
11 or a violation of section 8(a) that results in the dis-
12 charge of an employee or other serious economic
13 harm to an employee, the Board shall double the
14 amount of such penalty, to an amount not to exceed
15 \$100,000, in any case where the employer has with-
16 in the preceding 5 years committed another such
17 violation.

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

21 “(A) the gravity of the unfair labor prac-
22 tice;

23 “(B) the impact of the unfair labor prac-
24 tice on the charging party, on other persons

1 seeking to exercise rights guaranteed by this
2 Act, and on the public interest; and

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

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

15 “(d) RIGHT TO CIVIL ACTION.—

16 “(1) IN GENERAL.—Any person who is injured
17 by reason of a violation of paragraph (1), (3), or (4)
18 of section 8(a) may, after 60 days following the fil-
19 ing of a charge with the Board alleging an unfair
20 labor practice, bring a civil action in the appropriate
21 district court of the United States against the em-
22 ployer within 90 days after the expiration of the 60-
23 day period or the date the Board notifies the person
24 that no complaint shall issue, whichever occurs ear-
25 lier, provided that the Board has not filed a petition

1 under section 10(j) of this Act prior to the expira-
2 tion of the 60-day period. No relief under this sub-
3 section shall be denied on the basis that the em-
4 ployee is, or was during the time of relevant employ-
5 ment or during the back pay period, an unauthor-
6 ized alien as defined in section 274A(h)(3) of the
7 Immigration and Nationality Act (8 U.S.C.
8 1324a(h)(3)) or any other provision of Federal law
9 relating to the unlawful employment of aliens.

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

12 “(A) back pay without any reduction, in-
13 cluding any reduction based on the employee’s
14 interim earnings or failure to earn interim earn-
15 ings;

16 “(B) front pay (when appropriate);

17 “(C) consequential damages;

18 “(D) an additional amount as liquidated
19 damages equal to two times the cumulative
20 amount of damages awarded under subpara-
21 graphs (A) through (C);

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

24 “(F) any other relief authorized by section
25 706(g) of the Civil Rights Act of 1964 (42

1 U.S.C. 2000e–5(g)) or by section 1977A(b) of
2 the Revised Statutes (42 U.S.C. 1981a(b)).

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

8 “(4) PUNITIVE DAMAGES.—In awarding puni-
9 tive damages under paragraph (2)(E), the court
10 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 (b) CONFORMING AMENDMENTS.—Section 10(b) of
19 the National Labor Relations Act (29 U.S.C. 160(b)) is
20 amended—

21 (1) by striking “six months” and inserting
22 “180 days”; and

23 (2) by striking “the six-month period” and in-
24 serting “the 180-day period”.

1 **SEC. 110. LIMITATIONS ON THE RIGHT TO STRIKE.**

2 Section 13 of the National Labor Relations Act (29
3 U.S.C. 163) is amended by striking the period at the end
4 and inserting the following: “: *Provided*, That the dura-
5 tion, scope, frequency, or intermittence of any strike or
6 strikes shall not render such strike or strikes unprotected
7 or prohibited.”.

8 **SEC. 111. FAIR SHARE AGREEMENTS PERMITTED.**

9 Section 14(b) of the National Labor Relations Act
10 (29 U.S.C. 164(b)) is amended by striking the period at
11 the end and inserting the following: “: *Provided*, That col-
12 lective bargaining agreements providing that all employees
13 in a bargaining unit shall contribute fees to a labor organi-
14 zation for the cost of representation, collective bargaining,
15 contract enforcement, and related expenditures as a condi-
16 tion of employment shall be valid and enforceable notwith-
17 standing any State or Territorial law.”.

1 **TITLE II—AMENDMENTS TO THE**
2 **LABOR MANAGEMENT RELA-**
3 **TIONS ACT, 1947 AND THE**
4 **LABOR-MANAGEMENT RE-**
5 **PORTING AND DISCLOSURE**
6 **ACT OF 1959**

7 **SEC. 201. CONFORMING AMENDMENTS TO THE LABOR MAN-**
8 **AGEMENT RELATIONS ACT, 1947.**

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

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

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

21 **SEC. 202. AMENDMENTS TO THE LABOR-MANAGEMENT RE-**
22 **PORTING AND DISCLOSURE ACT OF 1959.**

23 Section 203(c) of the Labor-Management Reporting
24 and Disclosure Act of 1959 (29 U.S.C. 433(c)) is amended
25 by striking the period at the end and inserting the fol-

1 lowing “: *Provided*, That this subsection shall not exempt
 2 from the requirements of this section any arrangement or
 3 part of an arrangement in which a party agrees, for an
 4 object described in subsection (b)(1), to plan or conduct
 5 employee meetings; train supervisors or employer rep-
 6 resentatives to conduct meetings; coordinate or direct ac-
 7 tivities of supervisors or employer representatives; estab-
 8 lish or facilitate employee committees; identify employees
 9 for disciplinary action, reward, or other targeting; or draft
 10 or revise employer personnel policies, speeches, presen-
 11 tations, or other written, recorded, or electronic commu-
 12 nications to be delivered or disseminated to employees.”.

13 **TITLE III—OTHER MATTERS**

14 **SEC. 301. SEVERABILITY.**

15 If any provision of this Act or the application thereof
 16 to any person or circumstance is held invalid, the remain-
 17 der of this Act, or the application of that provision to per-
 18 sons or circumstances other than those as to which it is
 19 held invalid, is not affected thereby.

20 **SEC. 302. AUTHORIZATION OF APPROPRIATIONS.**

21 There are authorized to be appropriated such sums
 22 as may be necessary to carry out the provisions of this
 23 Act and the amendments made by this Act.

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