

117TH CONGRESS
1ST SESSION

S. _____

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

_____ introduced the following bill; which was read twice
and referred to the Committee on _____

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,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

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

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 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 RELATIONS 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.

1 **TITLE I—AMENDMENTS TO THE**
 2 **NATIONAL LABOR RELATIONS**
 3 **ACT**

4 **SEC. 101. DEFINITIONS.**

5 (a) JOINT EMPLOYER.—Section 2(2) of the National
 6 Labor Relations Act (29 U.S.C. 152(2)) is amended by
 7 adding at the end the following: “Two or more persons
 8 shall be employers with respect to an employee if each
 9 such person codetermines or shares control over the em-
 10 ployee’s essential terms and conditions of employment. In
 11 determining whether such control exists, the Board or a
 12 court of competent jurisdiction shall consider as relevant

1 direct control and indirect control over such terms and
2 conditions, reserved authority to control such terms and
3 conditions, and control over such terms and conditions ex-
4 ercised by a person in fact: *Provided*, That nothing herein
5 precludes a finding that indirect or reserved control stand-
6 ing alone can be sufficient given specific facts and cir-
7 cumstances.”.

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

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

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

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

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

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

5 (2) by striking “assign,”; and

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

7 **SEC. 102. REPORTS.**

8 Section 3(c) of the National Labor Relations Act is
9 amended—

10 (1) by striking “The Board” and inserting “(1)
11 The Board”; and

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

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

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

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

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

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

4 **SEC. 103. APPOINTMENT.**

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

8 **SEC. 104. UNFAIR LABOR PRACTICES.**

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

11 (1) in subsection (a)—

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

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

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

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

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

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

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

10 (2) in subsection (b)—

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

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

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

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

19 (3) in subsection (c), by striking the period at
20 the end and inserting the following: “: *Provided,*
21 That it shall be an unfair labor practice under sub-
22 section (a)(1) for any employer to require or coerce
23 an employee to attend or participate in such employ-
24 er’s campaign activities unrelated to the employee’s
25 job duties, including activities that are subject to the

1 requirements under section 203(b) of the Labor-
2 Management Reporting and Disclosure Act of 1959
3 (29 U.S.C. 433(b)).”;

4 (4) in subsection (d)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 “(i) the employer’s financial status and
10 prospects;

11 “(ii) the size and type of the employer’s
12 operations and business;

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

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

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

21 (5) by amending subsection (e) to read as fol-
22 lows:

23 “(e) Notwithstanding chapter 1 of title 9, United
24 States Code (commonly known as the ‘Federal Arbitration

1 Act'), or any other provision of law, it shall be an unfair
2 labor practice under subsection (a)(1) for any employer—

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

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

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

1 by a contract between an employer and a labor orga-
2 nization.”;

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

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

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

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

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

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

22 **SEC. 105. REPRESENTATIVES AND ELECTIONS.**

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

25 (1) in subsection (c)—

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

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

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

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

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

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

16 “(4) If the Board finds that, in an election under
17 paragraph (1), a majority of the valid votes cast in a unit
18 appropriate for purposes of collective bargaining have been
19 cast in favor of representation by the labor organization,
20 the Board shall certify the labor organization as the rep-
21 resentative of the employees in such unit and shall issue
22 an order requiring the employer of such employees to col-
23 lectively bargain with the labor organization in accordance
24 with section 8(d). This order shall be deemed an order

1 under section 10(c) of this Act, without need for a deter-
2 mination of an unfair labor practice.

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

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

1 interference, a majority of the employees in the bargaining
2 unit have signed authorizations designating the labor or-
3 ganization as their collective bargaining representative.

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

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

12 “(8) Except under extraordinary circumstances—

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

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

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

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

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

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

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

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

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

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

22 “(f) The Board shall dismiss any petition for an elec-
23 tion with respect to a bargaining unit or any subdivision
24 if, during the 12-month period ending on the date on
25 which the petition is filed—

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

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

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

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

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

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

23 “(h) The Board shall suspend the processing of any
24 petition for an election with respect to a bargaining unit
25 or any subdivision if a labor organization files an unfair

1 labor practice charge alleging a violation of section 8(a)
2 and requesting the suspension of a pending petition until
3 the unlawful conduct, if any, is remedied or the charge
4 is dismissed unless the Board determines that employees
5 can, under the circumstances, exercise free choice in an
6 election despite the unlawful conduct alleged in the
7 charge.”.

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

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

1 alien as defined in section 274A(h)(3) of the Immigration
2 and Nationality Act (8 U.S.C. 1324a(h)(3)) or any other
3 provision of Federal law relating to the unlawful employ-
4 ment of aliens”.

5 **SEC. 107. ENFORCING COMPLIANCE WITH ORDERS OF THE**
6 **BOARD.**

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

9 (1) by striking subsection (e);

10 (2) by redesignating subsection (d) as sub-
11 section (e);

12 (3) by inserting after subsection (c) the fol-
13 lowing:

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

19 “(2) Any person who fails or neglects to obey an
20 order of the Board shall forfeit and pay to the Board a
21 civil penalty of not more than \$10,000 for each violation,
22 which shall accrue to the United States and may be recov-
23 ered in a civil action brought by the Board to the district
24 court of the United States in which the unfair labor prac-
25 tice or other subject of the order occurred, or in which

1 such person or entity resides or transacts business. No ac-
2 tion by the Board under this paragraph may be made until
3 30 days following the issuance of an order. Each separate
4 violation of such an order shall be a separate offense, ex-
5 cept that, in the case of a violation in which a person fails
6 to obey or neglects to obey a final order of the Board,
7 each day such failure or neglect continues shall be deemed
8 a separate offense.

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

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

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

23 (4) in subsection (f)—

24 (A) by striking “proceed in the same man-
25 ner as in the case of an application by the

1 Board under subsection (e) of this section,” and
2 inserting “proceed as provided under paragraph
3 (2) of this subsection”;

4 (B) by striking “Any” and inserting the
5 following: “

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

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

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

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

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

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

21 **SEC. 108. INJUNCTIONS AGAINST UNFAIR LABOR PRAC-**
22 **TICES INVOLVING DISCHARGE OR OTHER SE-**
23 **RIOUS ECONOMIC HARM.**

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

1 (1) in subsection (j)—

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

3 “(1) The Board”; and

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

5 “(2) Notwithstanding subsection (m), whenever it is
6 charged that an employer has engaged in an unfair labor
7 practice within the meaning of paragraph (1), (3) or (4)
8 of section 8(a) that significantly interferes with, restrains,
9 or coerces employees in the exercise of the rights guaran-
10 teed under section 7, or involves discharge or other serious
11 economic harm to an employee, the preliminary investiga-
12 tion of such charge shall be made forthwith and given pri-
13 ority over all other cases except cases of like character
14 in the office where it is filed or to which it is referred.
15 If, after such investigation, the officer or regional attorney
16 to whom the matter may be referred has reasonable cause
17 to believe such charge is true and that a complaint should
18 issue, such officer or attorney shall bring a petition for
19 appropriate temporary relief or restraining order as set
20 forth in paragraph (1). The district court shall grant the
21 relief requested unless the court concludes that there is
22 no reasonable likelihood that the Board will succeed on
23 the merits of the Board’s claim.”; and

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

1 **SEC. 109. PENALTIES.**

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

4 (1) by striking “SEC. 12. Any person” and in-
5 serting the following:

6 **“SEC. 12. PENALTIES.**

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

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

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

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

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

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

25 “(c) CIVIL PENALTIES FOR VIOLATIONS.—

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

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

18 “(A) the gravity of the unfair labor prac-
19 tice;

20 “(B) the impact of the unfair labor prac-
21 tice on the charging party, on other persons
22 seeking to exercise rights guaranteed by this
23 Act, and on the public interest; and

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

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

12 “(d) RIGHT TO CIVIL ACTION.—

13 “(1) IN GENERAL.—Any person who is injured
14 by reason of a violation of paragraph (1), (3), or (4)
15 of section 8(a) may, after 60 days following the fil-
16 ing of a charge with the Board alleging an unfair
17 labor practice, bring a civil action in the appropriate
18 district court of the United States against the em-
19 ployer within 90 days after the expiration of the 60-
20 day period or the date the Board notifies the person
21 that no complaint shall issue, whichever occurs ear-
22 lier, provided that the Board has not filed a petition
23 under section 10(j) of this Act prior to the expira-
24 tion of the 60-day period. No relief under this sub-
25 section shall be denied on the basis that the em-

1 ployee is, or was during the time of relevant employ-
2 ment or during the back pay period, an unauthor-
3 ized alien as defined in section 274A(h)(3) of the
4 Immigration and Nationality Act (8 U.S.C.
5 1324a(h)(3)) or any other provision of Federal law
6 relating to the unlawful employment of aliens.

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

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

13 “(B) front pay (when appropriate);

14 “(C) consequential damages;

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

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

21 “(F) any other relief authorized by section
22 706(g) of the Civil Rights Act of 1964 (42
23 U.S.C. 2000e–5(g)) or by section 1977A(b) of
24 the Revised Statutes (42 U.S.C. 1981a(b)).

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

6 “(4) PUNITIVE DAMAGES.—In awarding puni-
7 tive damages under paragraph (2)(E), the court
8 shall consider—

9 “(A) the gravity of the unfair labor prac-
10 tice;

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

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

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

19 (1) by striking “six months” and inserting
20 “180 days”; and

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

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

24 Section 13 of the National Labor Relations Act (29
25 U.S.C. 163) is amended by striking the period at the end

1 and inserting the following: “: *Provided*, That the dura-
2 tion, scope, frequency, or intermittence of any strike or
3 strikes shall not render such strike or strikes unprotected
4 or prohibited.”.

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

6 Section 14(b) of the National Labor Relations Act
7 (29 U.S.C. 164(b)) is amended by striking the period at
8 the end and inserting the following: “: *Provided*, That col-
9 lective bargaining agreements providing that all employees
10 in a bargaining unit shall contribute fees to a labor organi-
11 zation for the cost of representation, collective bargaining,
12 contract enforcement, and related expenditures as a condi-
13 tion of employment shall be valid and enforceable notwith-
14 standing any State or Territorial law.”.

15 **TITLE II—AMENDMENTS TO THE**
16 **LABOR MANAGEMENT RELA-**
17 **TIONS ACT, 1947 AND THE**
18 **LABOR-MANAGEMENT RE-**
19 **PORTING AND DISCLOSURE**
20 **ACT OF 1959**

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

23 The Labor Management Relations Act, 1947 is
24 amended—

1 (1) in section 213(a) (29 U.S.C. 183(a)), by
2 striking “clause (A) of the last sentence of section
3 8(d) (which is required by clause (3) of such section
4 8(d)), or within 10 days after the notice under
5 clause (B)” and inserting “section 8(d)(2)(A) of the
6 National Labor Relations Act (which is required by
7 section 8(d)(1)(C) of such Act), or within 10 days
8 after the notice under section 8(d)(2)(B) of such
9 Act”; and

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

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

13 Section 203(c) of the Labor-Management Reporting
14 and Disclosure Act of 1959 (29 U.S.C. 433(c)) is amended
15 by striking the period at the end and inserting the fol-
16 lowing “: *Provided*, That this subsection shall not exempt
17 from the requirements of this section any arrangement or
18 part of an arrangement in which a party agrees, for an
19 object described in subsection (b)(1), to plan or conduct
20 employee meetings; train supervisors or employer rep-
21 resentatives to conduct meetings; coordinate or direct ac-
22 tivities of supervisors or employer representatives; estab-
23 lish or facilitate employee committees; identify employees
24 for disciplinary action, reward, or other targeting; or draft
25 or revise employer personnel policies, speeches, presen-

1 tations, or other written, recorded, or electronic commu-
2 nications to be delivered or disseminated to employees.”.

3 **TITLE III—OTHER MATTERS**

4 **SEC. 301. SEVERABILITY.**

5 If any provision of this Act or the application thereof
6 to any person or circumstance is held invalid, the remain-
7 der of this Act, or the application of that provision to per-
8 sons or circumstances other than those as to which it is
9 held invalid, is not affected thereby.

10 **SEC. 302. AUTHORIZATION OF APPROPRIATIONS.**

11 There are authorized to be appropriated such sums
12 as may be necessary to carry out the provisions of this
13 Act and the amendments made by this Act.