

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 658 Session of 2021

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REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, FEBRUARY 26, 2021

AN ACT

1 Amending the act of June 1, 1937 (P.L.1168, No.294), entitled
 2 "An act to protect the right of employes to organize and
 3 bargain collectively; creating the Pennsylvania Labor
 4 Relations Board; conferring powers and imposing duties upon
 5 the Pennsylvania Labor Relations Board, officers of the State
 6 government, and courts; providing for the right of employes
 7 to organize and bargain collectively; declaring certain labor
 8 practices by employers to be unfair; further providing that
 9 representatives of a majority of the employes be the
 10 exclusive representatives of all the employes; authorizing
 11 the board to conduct hearings and elections, and certify as
 12 to representatives of employes for purposes of collective
 13 bargaining; empowering the board to prevent any person from
 14 engaging in any unfair labor practice, and providing a
 15 procedure for such cases, including the issuance of a
 16 complaint, the conducting of a hearing, and the making of an
 17 order; empowering the board to petition a court of common
 18 pleas for the enforcement of its order, and providing a
 19 procedure for such cases; providing for the review of an
 20 order of the board by a court of common pleas on petition of
 21 any person aggrieved by such order, and establishing a
 22 procedure for such cases; providing for an appeal from the
 23 common pleas court to the Supreme Court; providing the board
 24 with investigatory powers, including the power to issue
 25 subpoenas and the compelling of obedience to them through
 26 application to the proper court; providing for service of
 27 papers and process of the board; prescribing certain
 28 penalties," further providing for definitions; providing for
 29 notice and regulations; further providing for unfair labor

1 practices and for representatives and elections; providing
2 for initial collective bargaining agreement; and further
3 providing for prevention of unfair labor practices and for
4 penalties.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Section 3(d) of the act of June 1, 1937
8 (P.L.1168, No.294), known as the Pennsylvania Labor Relations
9 Act, is amended to read:

10 Section 3. Definitions. When used in this act--

11 * * *

12 (d) The term "employee" shall include any employe, and shall
13 not be limited to the employes of a particular employer, unless
14 the act explicitly states otherwise, and shall include any
15 individual whose work has ceased as a consequence of, or in
16 connection with, any current labor dispute, or because of any
17 unfair labor practice, and who has not obtained any other
18 regular and substantially equivalent employment, but shall not
19 include any individual employed as an agricultural laborer, or
20 in the domestic service of any person in the home of such
21 person, or any individual employed by his parent or spouse.

22 An individual performing any service shall be considered an
23 employe and not an independent contractor unless--

24 (1) the individual is free from control and direction in
25 connection with the performance of the service, both under the
26 contract for the performance of service and in fact;

27 (2) the service is performed outside the usual course of the
28 business of the employer; and

29 (3) the individual is customarily engaged in an independently
30 established trade, occupation, profession or business of the
31 same nature as that involved in the service performed.

32 * * *

1 Section 2. The act is amended by adding a section to read:

2 Section 4.1. Notice and Regulations.--(a) The board shall
3 promulgate regulations requiring each employer to post and
4 maintain, in conspicuous places where notices to employes and
5 applicants for employment are customarily posted, both
6 physically and electronically, a notice providing the rights and
7 protections afforded employes under this act. The board shall
8 make available to the public the form and text of the notice.
9 The board shall promulgate regulations requiring employers to
10 notify each new employe of the information contained in the
11 notice described under this subsection.

12 (b) Not later than nine months after the effective date of
13 this paragraph, the board shall promulgate regulations requiring
14 an employer of employes in the bargaining unit to, no later than
15 two business days after the board directs an election or
16 approves an election agreement under section seven, provide a
17 voter list to a labor organization that has petitioned to
18 represent the employes. The voter list shall include the names
19 of all employes in the bargaining unit and such employes' home
20 addresses, work locations, shifts, job classifications, and, if
21 available to the employer, personal landline and mobile
22 telephone numbers, and work and personal email addresses.

23 Section 3. Section 6(1) is amended by adding clauses to
24 read:

25 Section 6. Unfair Labor Practices.--(1) It shall be an
26 unfair labor practice for an employer--

27 * * *

28 (g) To require or coerce an employe to attend or participate
29 in the employer's campaign activities unrelated to the employe's
30 job duties.

1 (h) To enter into or attempt to enforce an agreement,
2 express or implied, whereby prior to a dispute to which the
3 agreement applies, an employe undertakes or promises not to
4 pursue, bring, join, litigate or support any kind of joint,
5 class or collective claim arising from or relating to the
6 employment of the employe in any forum that, but for the
7 agreement, is of competent jurisdiction.

8 (i) To coerce an employe into undertaking or promising not
9 to pursue, bring, join, litigate or support any kind of joint,
10 class or collective claim arising from or relating to the
11 employment of the employe.

12 (j) To retaliate or threaten to retaliate against an employe
13 for refusing to undertake or promise not to pursue, bring, join,
14 litigate or support any kind of joint, class or collective claim
15 arising from or relating to the employment of the employe:
16 Provided, That any agreement that violates this subsection or
17 results from a violation of this subsection shall be to that
18 extent unenforceable and void. This subsection shall not apply
19 to an agreement embodied in or expressly permitted by a contract
20 between an employer and a labor organization.

21 * * *

22 Section 4. Section 7 is amended by adding subsections to
23 read:

24 Section 7. Representatives and Elections.--* * *

25 (e) Whenever a petition has been filed, in accordance with
26 regulations promulgated by the board, by an employe or group of
27 employes or an individual or labor organization acting on the
28 employe's behalf alleging that a substantial number of employes
29 wish to be represented for collective bargaining and that the
30 employer declines to recognize their representative as the

1 representative or assert that the individual or labor
2 organization, which has been certified or is being recognized by
3 the employer as the bargaining representative, is no longer a
4 representative, the board shall investigate the petition and, if
5 the board has reasonable cause to believe that a question of
6 representation affecting commerce exists, shall provide for an
7 appropriate hearing upon due notice. The hearing shall be
8 conducted by an employee of the department appointed by the
9 Secretary of Labor and Industry, who shall not make any
10 recommendations with respect to the petition. If the board finds
11 upon the record of the hearing that a question of representation
12 exists, the board shall direct an election by secret ballot and
13 shall certify the results of the election. No employer shall
14 have standing as a party or to intervene in any representation
15 proceeding under this subsection.

16 (f) If the board finds that, in an election under this
17 section, a majority of the valid votes cast in a unit
18 appropriate for purposes of collective bargaining have been cast
19 in favor of representation by the labor organization, the board
20 shall certify the labor organization as the representative of
21 the employes in the unit and shall issue an order requiring the
22 employer of the employes to collectively bargain with the labor
23 organization.

24 (g) (1) If the board finds that, in an election under this
25 section, a majority of the valid votes cast in a unit
26 appropriate for purposes of collective bargaining have not been
27 cast in favor of representation by the labor organization, the
28 board shall dismiss the petition.

29 (2) In any case in which a majority of the valid votes cast
30 in a unit appropriate for purposes of collective bargaining have

1 not been cast in favor of representation by the labor
2 organization and the board determines that the election should
3 be set aside because the employer has committed a violation of
4 this act or otherwise interfered with a fair election, and the
5 employer has not demonstrated that the violation or other
6 interference is unlikely to have affected the outcome of the
7 election, the board shall, without ordering a new election,
8 certify the labor organization as the representative of the
9 employees in the unit and issue an order requiring the employer
10 to bargain with the labor organization if, at any time during
11 the period beginning one year preceding the date of the
12 commencement of the election and ending on the date upon which
13 the board makes the determination of a violation or other
14 interference, a majority of the employees in the bargaining unit
15 have signed authorizations designating the labor organization as
16 their collective bargaining representative.

17 (h) In any case where the board determines that an election
18 under this section should be set aside, the board shall direct a
19 new election with appropriate additional safeguards necessary to
20 ensure a fair election process, except in cases where the board
21 issues a bargaining order.

22 Section 5. The act is amended by adding a section to read:

23 Section 7.1. Initial Collective Bargaining Agreement.--
24 Whenever collective bargaining is for the purpose of
25 establishing an initial collective bargaining agreement
26 following certification or recognition of a labor organization,
27 the following shall apply--(a) No later than ten days after
28 receiving a written request for collective bargaining from an
29 individual or labor organization that has been newly recognized
30 or certified as a representative, or within a period as the

1 parties agree upon, the parties shall meet and commence to
2 bargain collectively and shall make every reasonable effort to
3 conclude and sign a collective bargaining agreement.

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

13 (c) If, after the expiration of the thirty-day period
14 beginning on the date on which the request for mediation is
15 made, or an additional period as the parties may agree upon, the
16 board is not able to bring the parties to agreement by
17 conciliation, the board shall refer the dispute to a tripartite
18 arbitration panel comprised of one member selected by the labor
19 organization, one member selected by the employer and one
20 neutral member mutually agreed to by the parties. A majority of
21 the tripartite arbitration panel shall render a decision
22 settling the dispute and a decision shall be binding upon the
23 parties for a period of two years, unless amended during that
24 period by written consent of the parties. A decision shall be
25 based on the following--

26 (1) The employer's financial status and prospects.

27 (2) The size and type of the employer's operations and
28 business.

29 (3) The employes' cost of living.

30 (4) The employes' ability to sustain themselves, their

1 families and their dependents on the wages and benefits they
2 earn from the employer.

3 (5) The wages and benefits other employers in the same
4 business provide their employes.

5 Section 6. Section 8 of the act is amended by adding
6 subsections to read:

7 Section 8. Prevention of Unfair Labor Practices.--* * *

8 (g) If the board finds that an employer has discriminated
9 against an employe in violation of this act or has committed a
10 violation of this act which results in the discharge of an
11 employe or other serious economic harm to an employe, the board
12 shall award the employe back pay without any reduction,
13 including any reduction based on the employe's interim earnings
14 or failure to earn interim earnings, front pay, consequential
15 damages and an additional amount as liquidated damages equal to
16 two times the amount of damages awarded. No relief under this
17 subsection shall be denied on the basis that the employe is, or
18 was during the time of relevant employment or during the back
19 pay period, an unauthorized alien as defined in section 274A(h)
20 (3) of the Immigration and Nationality Act (66 Stat. 163, 8
21 U.S.C. § 1324a(h) (3)) or any other provision of Federal law
22 relating to the unlawful employment of aliens.

23 (h) (1) Each order of the board shall take effect upon
24 issuance of the order, unless otherwise directed by the board,
25 and shall remain in effect unless modified by the board or
26 unless a court of competent jurisdiction issues a superseding
27 order.

28 (2) Any person who fails or neglects to obey an order of the
29 board shall forfeit and pay to the board a civil penalty of not
30 more than ten thousand dollars (\$10,000) for each violation,

1 which shall accrue to the board and may be recovered in a civil
2 action brought by the board. No action by the board under this
3 subsection may be made until thirty days following the issuance
4 of an order. Each separate violation of the order shall be a
5 separate offense, except that, in the case of a violation in
6 which a person fails to obey or neglects to obey a final order
7 of the board, each day such failure or neglect continues shall
8 be deemed a separate offense.

9 (3) If, after having provided a person or entity with notice
10 and an opportunity to be heard regarding a civil action under
11 paragraph (2) for the enforcement of an order, the court
12 determines that the order was regularly made and duly served,
13 and that the person or entity is in disobedience of the same,
14 the court shall enforce the order by an injunction or other
15 proper process, mandatory or otherwise, to--(i) restrain the
16 person or entity or the officers, agent or representatives of
17 the person or entity, from further violation of the order; or
18 (ii) enjoin the person or entity, officers, agents or
19 representatives to obey the order.

20 Section 7. Section 11 of the act is amended to read:

21 Section 11. Penalties.--(a) Any person who shall wilfully
22 resist, prevent, impede or interfere with any member of the
23 board, or any of its agents, in the performance of duties
24 pursuant to this act, shall be guilty of a misdemeanor, and,
25 upon conviction thereof, shall be punished by a fine of not more
26 than five thousand dollars (\$5,000), or by imprisonment for not
27 more than one year, or both.

28 (b) If the board, or any agent designated by the board,
29 determines that an employer has violated section 4.1 or
30 regulations issued thereunder, the board shall--

1 (1) State the findings of fact supporting the determination.

2 (2) Issue and cause to be served on the employer an order
3 requiring that the employer comply with section 4.1 or
4 regulations issued thereunder.

5 (3) Impose a civil penalty in an amount determined
6 appropriate by the board, except that in no case shall the
7 amount of the penalty exceed five hundred dollars (\$500) for
8 each violation.

9 (c) (1) An employer who commits an unfair labor practice
10 under section 6 that results in the discharge of an employe or
11 other serious economic harm to an employe, shall, in addition to
12 any remedy ordered by the board, be subject to a civil penalty
13 in an amount not to exceed fifty thousand dollars (\$50,000) for
14 each violation, except that the board shall double the amount of
15 the penalty, to an amount not to exceed one hundred thousand
16 dollars (\$100,000), in any case where the employer has within
17 the preceding five years committed another violation of section
18 6.

19 (2) In determining the amount of a civil penalty under this
20 subsection, the board shall consider the following--

21 (i) The gravity of the unfair labor practice.

22 (ii) The impact of the unfair labor practice on the charging
23 party, on other persons seeking to exercise rights guaranteed by
24 this act and on the public interest.

25 (iii) The gross income of the employer.

26 (3) If the board determines, based on the particular facts
27 and circumstances presented, that a director's or officer's
28 personal liability is warranted, a civil penalty for a violation
29 described under this subsection may be assessed against a
30 director or officer of the employer who directed or committed

1 the violation, had established a policy that led to the
2 violation or had actual or constructive knowledge of and the
3 authority to prevent the violation and failed to prevent the
4 violation.

5 (d) The following shall apply to the right to civil action--

6 (1) Any person who is injured by reason of a violation of
7 section six may, after sixty days following the filing of a
8 charge with the board alleging an unfair labor practice, bring a
9 civil action in the appropriate court against the employer
10 within ninety days after the expiration of the sixty-day period
11 or the date the board notifies the person that no complaint
12 shall issue, whichever occurs earlier, provided that the board
13 has not filed a petition under this act prior to the expiration
14 of the sixty-day period. No relief under this subsection shall
15 be denied on the basis that the employe is, or was during the
16 time of relevant employment or during the back pay period, an
17 unauthorized alien as defined in section 274A(h) (3) of the
18 Immigration and Nationality Act (66 Stat. 163, 8 U.S.C. §
19 1324a(h) (3)) or any other provision of Federal law relating to
20 the unlawful employment of aliens.

21 (2) Relief granted in an action under paragraph (1) may
22 include--(i) back pay without any reduction, including any
23 reduction based on the employe's interim earnings or failure to
24 earn interim earnings; (ii) front pay, when appropriate; (iii)
25 consequential damages; (iv) an additional amount as liquidated
26 damages equal to two times the cumulative amount of damages
27 awarded under subparagraphs (i), (ii) and (iii); (v) in
28 appropriate cases, punitive damages in accordance with paragraph
29 (4); and (vi) any other relief authorized by section 706(g) of
30 the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241)

1 or under 42 U.S.C. § 1981a(b) (relating to damages in cases of
2 intentional discrimination in employment).

3 (3) In any civil action under this subsection, the court may
4 allow the prevailing party reasonable attorney fees, including
5 expert fees, and other reasonable costs associated with
6 maintaining the action.

7 (4) In awarding punitive damages under paragraph (2)(v), the
8 court shall consider the following--(i) the gravity of the
9 unfair labor practice; (ii) the impact of the unfair labor
10 practice on the charging party, on other persons seeking to
11 exercise rights guaranteed by this act and on the public
12 interest; and (iii) the gross income of the employer.

13 Section 8. This act shall take effect in 60 days.