116TH CONGRESS
1ST SESSION

S. 1306

To amend the National Labor Relations Act, the Labor Management Relations Act, 1947, and the Labor-Management Reporting and Disclosure Act of 1959, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 2, 2019

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

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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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Protecting the Right to Organize Act of 2019''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The National Labor Relations Act (29 U.S.C. 151 et seq.) was enacted to encourage the practice of collective bargaining and to protect the exercise by workers of full freedom of association in the workplace. Since its enactment in 1935, tens of millions of workers have bargained with their employers over wages, benefits, and other terms and conditions of employment and have raised the standard of living for all workers.

(2) According to the Bureau of Labor Statistics, union members earn 25.6 percent more than workers who are not covered by a collective bargaining agreement. Workers who are represented by a union are 28 percent more likely to be offered health insurance through work and nearly five times more likely to have defined benefit pensions. The wage differential is significant for women and people of color. African-American union members earn 25 percent more than African-American workers who are not covered by a collective bargaining agreement, and Latino union members earn 42.6 percent more

than Latino workers who are not covered by a collective bargaining agreement. Women union members earn 30 percent more than women who are not covered by a collective bargaining agreement, and the wage gap between men and women is much smaller at workplaces covered by a collective bargaining agreement because collective bargaining agreements ensure the same rate is paid to workers for a particular job without regard to gender. The wage and benefit gains achieved through collective bargaining agreements benefit both workers and their communities.

(3) Unions and collective bargaining ensure that productivity gains are shared by working people. The decline in the percentage of workers covered by collective bargaining has contributed to skyrocketing income inequality and wage stagnation for the average worker.

(4) The National Labor Relations Act protects the right of workers to join together with their coworkers in concerted activities for their mutual aid or protection. This protection applies broadly to all concerted activities by workers aimed at improving the terms and conditions of their employment or aiding each other in any way, regardless of whether

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

(5) The Act protects the right of workers to discuss issues like pay and benefits without retaliation or interference by employers. However, the awareness of workers regarding their rights under the Act is lacking, due in part to the absence of any legally required notice informing workers of the rights and responsibilities under the Act. Many employers maintain policies that restrict the ability of workers to discuss workplace issues with each other, directly contravening these rights. Research shows that more than one half of workers report that their employers have policies that prohibit or discourage workers from discussing pay with their coworkers. These policies and practices impede workers from exercising their rights under the Act and impair their freedom of association at work.

(6) Retaliation by employers against workers who exercise their rights under the National Labor Relations Act persists at troubling levels. Employers routinely fire workers for trying to form a union at their workplace. In one out of three organizing campaigns, one or more workers are discharged for supporting or joining a union.

(7) The current remedies are inadequate to deter employers from violating the National Labor Relations Act. The remedies and penalties for violations of the Act are far weaker than for other labor and employment laws. Unlike other major labor and employment laws, there are no civil penalties for violations of the National Labor Relations Act. Workers cannot go to court to pursue relief on their own and must rely on the National Labor Relations Board to prosecute their case. Should the Board decline to prosecute for any reason, aggrieved workers have no other remedy.

(8) Unlike orders of other Federal agencies, the orders of the National Labor Relations Board are not enforced until the Board seeks enforcement from a court of appeals. As far back as 1969, the Administrative Conference of the United States recognized that the absence of a self-enforcing agency order imposes wasteful delays in the enforcement of the National Labor Relations Act, and recommended that the Board's orders be made self-enforcing like those of other agencies. Congress did not act upon this recommendation, and delays in the Board's enforcement remain a problem undermining the effectiveness of the Act.

(9) Many workers do not currently enjoy the protections of the National Labor Relations Act because they are excluded from coverage under the Act or interpretations of the Act.

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

(11) While the National Labor Relations Act guarantees workers the right to strike, courts have permitted employers to ''permanently replace'' workers who exercise their right to strike. This is contrary to Congress's intent in enacting the National Labor Relations Act and has led to confusion among workers regarding their right to strike.

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

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

(13) So-called ''right-to-work'' laws do not give any worker the right to a job. While Federal law requires unions to fairly represent all members of a given bargaining unit, and thereby expend resources on all unit members, many States' so-called ''right-to-work'' laws prohibit unions from charging all members for the representation and services that the unions are legally obliged to render. Section 14(b) of the National Labor Relations Act (29 U.S.C. 164(b)) must be reformed to permit unions and employers to mutually agree that payment of fair share fees shall be a condition of employment following initial hiring.

(14) Restrictions on so-called ''secondary boycotts'' and ''recognitional picketing'' unduly impede workers' ability to engage in peaceful conduct and expression. Workers must be free to act in solidarity with workers in other workplaces in order to improve labor standards and achieve other lawful ends for mutual aid or protection.

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

place a reality for workers, the National Labor Relations Act must be strengthened.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to strengthen protections for workers engaged in collective bargaining to improve their wages, hours, and terms and conditions of employment;

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

(3) to provide a process by which workers and employers can successfully negotiate an initial collective bargaining agreement;

(4) to provide a stronger deterrent and fairer remedies for workers who face retaliation, discrimination, or other interference with their legal rights to act concertedly, join a union, or engage in collective bargaining;

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

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

(7) to safeguard the right to strike by prohibiting ''permanent replacement'' of striking workers;

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

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

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

(11) to promote the stabilization of fair wage rates and humane working conditions within and between industries; and

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

SEC. 4. AMENDMENTS TO THE NATIONAL LABOR RELATIONS ACT.

(a) DEFINITIONS.—

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

competent jurisdiction shall consider as relevant direct control and indirect control over such terms and conditions, reserved authority to control such terms and conditions, and control over such terms and conditions exercised by a person in fact: *Provided*, That nothing herein precludes a finding that indirect or reserved control standing alone can be sufficient given specific facts and circumstances.''.

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

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

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

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

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

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

(B) by striking ''assign,''; and

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

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

(c) UNFAIR LABOR PRACTICES.—Section 8 of the National Labor Relations Act (29 U.S.C. 158) is amended—

(1) in subsection (a)—

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

(B) by adding at the end the following:

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

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

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

(2) in subsection (b)—

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

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

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

(D) in paragraph (5), as so redesignated, by striking "; and" and inserting a period;

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

(4) in subsection (d)—

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

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

(C) by striking ''The duties imposed'' and inserting ''(2) The duties imposed'';

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

(E) by striking ''section 8(d)(1)'' and inserting ''paragraph (1)(A)'';

(F) by striking ''section 8(d)(3)'' and inserting ''paragraph (1)(C)'' in each place it appears;

(G) by striking ''section 8(d)(4)'' and inserting ''paragraph (1)(D)''; and

(H) by adding at the end the following:

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

"(A) Not later than 10 days after receiving a written request for collective bargaining from an individual or labor organization that has been newly recognized or certified as a representative as defined in section 9(a), or within such further period as the parties agree upon, the parties shall meet and commence to bargain collectively and shall make every reasonable effort to conclude and sign a collective bargaining agreement.

"(B) If after the expiration of the 90-day period beginning on the date on which bargaining is commenced, or such additional period as the parties may agree upon, the parties have failed to reach an agreement, either party may notify the Federal Mediation and Conciliation Service of the existence of a dispute and request mediation. Whenever such a request is received, it shall be the duty of the Service promptly to put itself in communication with the parties and to use its best efforts, by mediation and conciliation, to bring them to agreement.

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

quest for mediation is made under subparagraph (B), or such additional period as the parties may agree upon, the Service is not able to bring the parties to agreement by conciliation, the Service shall refer the dispute to a tripartite arbitration panel established in accordance with such regulations as may be prescribed by the Service, with one member selected by the labor organization, one member selected by the employer, and one neutral member mutually agreed to by the parties. A majority of the tripartite arbitration panel shall render a decision settling the dispute and such decision shall be binding upon the parties for a period of two years, unless amended during such period by written consent of the parties. Such decision shall be based on—

"(i) the employer's financial status and prospects;

"(ii) the size and type of the employer's operations and business;

"(iii) the employees' cost of living;

"(iv) the employees' ability to sustain themselves, their families, and their de-

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

''(v) the wages and benefits other employers in the same business provide their employees.'';

(5) by amending subsection (e) to read as follows:

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

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

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

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

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

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

(7) by adding at the end the following:

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

contained in the notice described in the preceding two sentences.

''(2) Whenever the Board directs an election under section 9(c) or approves an election agreement, the employer of employees in the bargaining unit shall, not later than two business days after the Board directs such election or approves such election agreement, provide a voter list to a labor organization that has petitioned to represent such employees. Such voter list shall include the names of all employees in the bargaining unit and such employees' home addresses, work locations, shifts, job classifications, and, if available to the employer, personal landline and mobile telephone numbers, and work and personal email addresses. Not later than nine months after the date of enactment of the Protecting the Right to Organize Act of 2019, the Board shall promulgate regulations implementing the requirements of this paragraph.''.

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

(1) in subsection (c)—

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

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

scribed by the Board, by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9(a), or (ii) assert that the individual or labor organization, which has been certified or is being recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9(a), the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof. No employer shall have standing as a party or to intervene in any representation proceeding under this section.'';

(B) in paragraph (3), by striking ''an economic strike who are not entitled to reinstatement'' and inserting ''a strike'';

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

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

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

''(5)(A) If the Board finds that, in an election under paragraph (1), a majority of the valid votes cast in a unit appropriate for purposes of collective bargaining have not been cast in favor of representation by the labor organization, the Board shall dis-

miss the petition, subject to subparagraphs (B) and (C).

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

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

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

''(8) Except under extraordinary circumstances—

''(A) a pre-election hearing under this subsection shall begin not later than eight days after a notice of such hearing is served on the labor organization; and

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

(2) in subsection (d), by striking ''(e) or'' and inserting ''(d) or''.

(e) PREVENTION OF UNFAIR LABOR PRACTICES.—Section 10(c) of the National Labor Relations Act (29 U.S.C. 160(c)) is amended by striking ''suffered by him'' and inserting ''suffered by such employee: *Provided further,* That if the Board finds that an employer has dis-

criminated against an employee in violation of paragraph (3) or (4) of section 8(a) or has committed a violation of section 8(a) that results in the discharge of an employee or other serious economic harm to an employee, the Board shall award the employee back pay without any reduction (including any reduction based on the employee's interim earnings or failure to earn interim earnings), front pay (when appropriate), consequential damages, and an additional amount as liquidated damages equal to two times the amount of damages awarded: *Provided further,* no relief under this subsection shall be denied on the basis that the employee is, or was during the time of relevant employment or during the back pay period, an unauthorized alien as defined in section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3)) or any other provision of Federal law relating to the unlawful employment of aliens''.

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

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

(A) by striking subsection (e);

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

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

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

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

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

order, the court determines that the order was regularly made and duly served, and that the person or entity is in disobedience of the same, the court shall enforce obedience to such order by an injunction or other proper process, mandatory or otherwise, to—

''(A) restrain such person or entity or the officers, agents, or representatives of such person or entity, from further disobedience to such order; or

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

(D) in subsection (f)—

(i) by striking ''proceed in the same manner as in the case of an application by the Board under subsection (e) of this section,'' and inserting ''proceed as provided under paragraph (2) of this subsection'';

(ii) by striking ''Any'' and inserting the following:

''(1) Within 30 days of the issuance of an order, any''; and

(iii) by adding at the end the following:

''(2) No objection that has not been urged before the Board, its member, agent, or agency shall

be considered by a court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final,

except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28, United States Code.''; and

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

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

(g) INJUNCTIONS AGAINST UNFAIR LABOR PRACTICES INVOLVING DISCHARGE OR OTHER SERIOUS ECONOMIC HARM.—Section 10 of the National Labor Relations Act (29 U.S.C. 160) is amended—

(1) in subsection (j)—

(A) by striking ''The Board'' and inserting ''(1) The Board''; and

(B) by adding at the end the following:

''(2) Notwithstanding subsection (m), whenever it is charged that an employer has engaged in an unfair labor practice within the meaning of paragraph (1) or (3) of section 8(a) that significantly

interferes with, restrains, or coerces employees in the exercise of the rights guaranteed under section 7, or involves discharge or other serious economic harm to an employee, the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, such officer or attorney shall bring a petition for appropriate temporary relief or restraining order as set forth in paragraph (1). The district court shall grant the relief requested unless the court concludes that there is no reasonable likelihood that the Board will succeed on the merits of the Board's claim.''; and

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

(h) PENALTIES.—

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

(A) by striking ''Sec. 12. Any person'' and inserting the following:

"SEC. 12. PENALTIES.

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

(B) by adding at the end the following:

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

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

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

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

''(c) VIOLATIONS CAUSING SERIOUS ECONOMIC HARM TO EMPLOYEES.—

''(1) IN GENERAL.—Any employer who commits an unfair labor practice within the meaning of paragraph (3) or (4) of section 8(a), or a violation of section 8(a) that results in the discharge of an employee or other serious economic harm to an em-

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

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

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

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

''(C) the gross income of the employer.

''(3) DIRECTOR AND OFFICER LIABILITY.—If the Board determines, based on the particular facts and circumstances presented, that a director or officer's personal liability is warranted, a civil penalty for a violation described in this subsection may also be assessed against any director or officer of the employer who directed or committed the violation, had established a policy that led to such a violation, or

had actual or constructive knowledge of and the authority to prevent the violation and failed to prevent the violation.

''(d) RIGHT TO CIVIL ACTION.—

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

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

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

"(B) front pay (when appropriate);

"(C) consequential damages;

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

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

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

"(3) ATTORNEY'S FEES.—In any civil action under this subsection, the court may allow the prevailing party a reasonable attorney's fee (including expert fees) and other reasonable costs associated with maintaining the action.

"(4) PUNITIVE DAMAGES.—In awarding punitive damages under paragraph (2)(E), the court shall consider—

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

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

''(C) the gross income of the employer.''.

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

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

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

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

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

gaining unit shall contribute fees to a labor organization for the cost of representation, collective bargaining, contract enforcement, and related expenditures as a condition of employment shall be valid and enforceable notwithstanding any State or Territorial law.''.

SEC. 5. AMENDMENTS TO THE LABOR MANAGEMENT RELATIONS ACT, 1947.

The Labor Management Relations Act, 1947 is amended—

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

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

SEC. 6. AMENDMENTS TO THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959.

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

from the requirements of this section any arrangement or part of an arrangement in which a party agrees, for an object described in subsection (b)(1), to plan or conduct employee meetings; train supervisors or employer representatives to conduct meetings; coordinate or direct activities of supervisors or employer representatives; establish or facilitate employee committees; identify employees for disciplinary action, reward, or other targeting; or draft or revise employer personnel policies, speeches, presentations, or other written, recorded, or electronic communications to be delivered or disseminated to employees.''.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

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

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