[DISCUSSION DRAFT]

117th CONGRESS 1st Session

H. R. ______

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 HOUSE OF REPRESENTATIVES

[ ] introduced the following bill; which was 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 “Protecting the Right to Organize Act of 2021”.
5 (b) Table of Contents.—The table of contents for 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.

TITLE III—OTHER MATTERS

Sec. 301. Severability.
Sec. 302. Authorization of appropriations.

1 TITLE I—AMENDMENTS TO THE NATIONAL LABOR RELATIONS ACT

2 SEC. 101. DEFINITIONS.

3 (a) 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 ex-
ercised by a person in fact: Provided, That nothing herein
precludes a finding that indirect or reserved control stand-
ing alone can be sufficient given specific facts and cir-
cumstances.”.

(b) 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 pro-
vided 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 per-
formance 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, occupa-
tion, profession, or business of the same nature
as that involved in the service performed.”.
(c) **SUPERVISOR.**—Section 2(11) of the National Labor Relations Act (29 U.S.C. 152(11)) is amended—

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

(2) by striking “assign,”; and 

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

**SEC. 102. REPORTS.**

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

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

(2) by adding at the end the following:

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

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

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

“(B) list each case in which the Designated Agency Ethics Official provided advice regarding whether a Member should be recused from participating in a case or rule-making; and
“(C) list each case in which the Designated Agency Ethics Official determined that a Member should be recused from participating in a case or rulemaking.”.

SEC. 103. APPOINTMENT.

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

SEC. 104. 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

(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));

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

“(7) to communicate or misrepresent to an employee under section 2(3) that such employee is excluded from the definition of employee under section 2(3).”;

(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”;

(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 inserting “and to maintain current
wages, hours, and terms and conditions of em-
ployment pending an agreement” after “arising
thereunder”;
(D) by inserting “: Provided, That an em-
ployer’s duty to collectively bargain shall con-
tinue absent decertification of the labor organi-
zation following an election conducted pursuant
to section 9” after “making of a concession:”; 
(E) by inserting “further” before “, That
where there is in effect”; 
(F) by striking “The duties imposed” and
inserting “(2) The duties imposed”;
(G) by striking “by paragraphs (2), (3), and (4)” and inserting “by subparagraphs (B), (C), and (D) of paragraph (1)”;

(H) by striking “section 8(d)(1)” and inserting “paragraph (1)(A)”;

(I) by striking “section 8(d)(3)” and inserting “paragraph (1)(C)” in each place it appears;

(J) by striking “section 8(d)(4)” and inserting “paragraph (1)(D)”; and

(K) 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 request 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. The labor organization and employer must each select the members of the tripartite arbitration panel within 14 days of the Service’s referral; if the
labor organization or employer fail to do so, the Service shall designate any members not selected by the labor organization or the employer. 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 2 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 dependents 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 sub-
section or results from a violation of this subsection
shall be to such extent unenforceable and void: Pro-
vided 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)”;

(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 2 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 employ-
ees’ 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; the voter list must be provided in a searchable electronic format generally approved by the Board unless the employer certifies that the employer does not possess the capacity to produce the list in the required form. Not later than 9 months after the date of enactment of the Protecting the Right to Organize Act of 2021, the Board shall promulgate regulations implementing the requirements of this paragraph.

“(i) The rights of an employee under section 7 include the right to use electronic communication devices and systems (including computers, laptops, tablets, internet access, email, cellular telephones, or other company equipment) of the employer of such employee to engage in activities protected under section 7 if such employer has given such employee access to such devices and systems in the course of the work of such employee, absent a compelling business rationale for denying or limiting such use.”

SEC. 105. 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 prescribed 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. The Board shall find the labor organization’s proposed unit to be appropriate if the employees in the proposed unit share a community of interest, and
if the employees outside the unit do not share an over-
whelming community of interest with employees inside. At
the request of the labor organization, the Board shall di-
rect that the election be conducted through certified mail,
electronically, at the work location, or at a location other
than one owned or controlled by the employer. No em-
ployer shall have standing as a party or to intervene in
any representation proceeding under this section.”;

(B) in paragraph (3), by striking “an eco-
nomic strike who are not entitled to reinstate-
ment” 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 rep-
resentative of the employees in such unit and shall issue
an order requiring the employer of such employees to col-
lectively 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 certify the results of the election, 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, following a post-election hearing, that 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, set aside the election and 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 1 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 in-
terference, a majority of the employees in the bargaining
unit have signed authorizations designating the labor or-
ganization 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 addi-
tional safeguards necessary to ensure a fair election proc-
ess, 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 sub-
section shall begin not later than 8 days after a no-
tice of such hearing is served on the labor organiza-
tion and shall continue from day to day until com-
pleted;

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

“(C) not later than 2 days after the service of
the notice of hearing, the employer shall—
“(i) post the Notice of Petition for Election in conspicuous places, including all places where notices to employees are customarily posted;

“(ii) if the employer customarily communicates with employees electronically, distribute such Notice electronically; and

“(iii) maintain such posting until the petition is dismissed or withdrawn or the Notice of Petition for Election is replaced by the Notice of Election;

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

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

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

(3) by adding at the end the following:

“(f) The Board shall dismiss any petition for an election with respect to a bargaining unit or any subdivision if, during the 12-month period ending on the date on which the petition is filed—
“(1) the employer has recognized a labor organization without an election and in accordance with this Act;

“(2) the labor organization and employer engaged in their first bargaining session following the issuance of a bargaining order by the Board; or

“(3) the labor organization and successor employer engaged in their first bargaining session following a succession.

“(g) The Board shall dismiss any petition for an election with respect to a bargaining unit or any subdivision if there is in effect a lawful written collective bargaining agreement between the employer and an exclusive representative covering any employees in the unit specified in the petition, unless the petition is filed—

“(1) on or after the date that is 3 years after the date on which the collective bargaining agreement took effect; or

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

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

SEC. 106. DAMAGES FOR 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 discriminated 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”.

SEC. 107. ENFORCING COMPLIANCE WITH ORDERS OF THE BOARD.

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

(1) by striking subsection (e);

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

(3) by inserting after subsection (e) 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 United States 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 ac-
tion 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, ex-
cept 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 obedi-
ence to such order by an injunction or other proper proc-
ess, mandatory or otherwise, to—

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

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

(4) in subsection (f)—

(A) by striking “proceed in the same man-
ner 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”; (B) by striking “Any” and inserting the following: ““(1) Within 30 days of the issuance of an order, any”; and (C) 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

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

(b) 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”.

SEC. 108. 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), (3) or (4) 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).
SEC. 109. PENALTIES.

(a) In General.—Section 12 of the National Labor Relations Act (29 U.S.C. 162) is amended—

(1) by striking “SEC. 12. Any person” and inserting the following:

“SEC. 12. PENALTIES.

“(a) Violations for Interference With Board.—Any person”; and

(2) 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) Civil Penalties for Violations.—
“(1) IN GENERAL.—Any employer who commits an unfair labor practice within the meaning of section 8(a) 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, with respect to 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 employee, 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 5 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), (3), or (4) 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 em-
ployee is, or was during the time of relevant employ-
ment or during the back pay period, an unauthor-
ized 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, in-
cluding any reduction based on the employee’s
interim earnings or failure to earn interim earn-
ings;

“(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 subpara-
graphs (A) through (C);

“(E) in appropriate cases, punitive dam-
ages 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.”.

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

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

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

SEC. 110. LIMITATIONS ON THE RIGHT TO STRIKE.

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.”.

SEC. 111. 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 bargaining 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.”.

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.

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. 202. AMENDMENTS TO THE LABOR-MANAGEMENT RE-
PORTING 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 fol-
lowing “: 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 rep-
resentatives to conduct meetings; coordinate or direct ac-
tivities of supervisors or employer representatives; estab-
lish or facilitate employee committees; identify employees
for disciplinary action, reward, or other targeting; or draft
or revise employer personnel policies, speeches, presen-
tations, or other written, recorded, or electronic communications to be delivered or disseminated to employees.”

**TITLE III—OTHER MATTERS**

**SEC. 301. SEVERABILITY.**

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act, or the application of that provision to persons or circumstances other than those as to which it is held invalid, is not affected thereby.

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

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