

Union Calendar No. 276

116TH CONGRESS
1ST SESSION

H. R. 2474

[Report No. 116-347]

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

MAY 2, 2019

Mr. SCOTT of Virginia (for himself, Ms. WILSON of Florida, Mr. LEVIN of Michigan, Ms. JAYAPAL, Mr. BRENDAN F. BOYLE of Pennsylvania, Ms. SCHAKOWSKY, Mr. SABLAN, Mr. TAKANO, Mr. CISNEROS, Ms. KAPTUR, Ms. OMAR, Ms. FUDGE, Mr. CARTWRIGHT, Mrs. NAPOLITANO, Ms. NORTON, Ms. MCCOLLUM, Mr. HIGGINS of New York, Mr. POCAN, Mr. KHANNA, Mr. SUOZZI, Ms. ROYBAL-ALLARD, Mr. PALLONE, Ms. HAALAND, Mr. RASKIN, Mr. DESAULNIER, Mr. GARCÍA of Illinois, Mr. RYAN, Mr. ROSE of New York, Ms. DEAN, Mr. BEYER, Mr. DEFazio, Mr. LOWENTHAL, Mr. SIRES, Mr. MCGOVERN, Ms. LEE of California, Mrs. DAVIS of California, Ms. JUDY CHU of California, Mr. SERRANO, Mr. CUMMINGS, Mr. THOMPSON of Mississippi, Mr. ESPAILLAT, Mr. COHEN, Mr. CICILLINE, Mr. LUJÁN, Ms. BONAMICI, Miss RICE of New York, Ms. SHALALA, Mr. NORCROSS, Ms. ADAMS, Mr. TRONE, Mr. HARDER of California, Mr. MICHAEL F. DOYLE of Pennsylvania, Mrs. WATSON COLEMAN, Ms. TLAIB, Mr. MALINOWSKI, Mr. ENGEL, Mr. CASTRO of Texas, Mr. HORSFORD, Mr. GRIJALVA, Ms. MUCARSEL-POWELL, Mr. CARSON of Indiana, Mr. CLAY, Mr. SOTO, Ms. DELAURO, Mr. VEASEY, Mr. GARAMENDI, Mr. COURTNEY, Mr. DELGADO, Mr. KENNEDY, Ms. SÁNCHEZ, Mrs. LAWRENCE, Ms. CLARK of Massachusetts, Ms. WASSERMAN SCHULTZ, Mr. NADLER, Mr. MORELLE, Ms. STEVENS, Ms. PRESSLEY, Mr. RUSH, Mr. GOLDEN, Ms. ESHOO, Ms. VELÁZQUEZ, Mr. GREEN of Texas, Ms. PINGREE, Mr. SMITH of Washington, Mr. LYNCH, Mr. YARMUTH, Mrs. CAROLYN B. MALONEY of New York, Mr. LANGEVIN, Ms. TITUS, Mr. VISCLOSKY, Mr. CLEAVER, Mrs. HAYES, Mr. SHERMAN, Mr. KILDEE, Mrs. CRAIG, Mrs. TRAHAN, Ms. WILD, Mr. LEWIS, Mr. RUIZ, and Mr. NEGUSE) introduced the following bill; which was referred to the Committee on Education and Labor

DECEMBER 16, 2019

Additional sponsors: Mr. HUFFMAN, Ms. FINKENAUER, Mrs. LURIA, Ms. HILL of California, Ms. MOORE, Ms. SCANLON, Mr. SEAN PATRICK MALONEY of New York, Mr. PANETTA, Mrs. BUSTOS, Ms. OCASIO-CORTEZ, Mr. PASCRELL, Mr. TONKO, Mr. CARBAJAL, Mr. MEEKS, Mr. CÁRDENAS, Mr. VELA, Mrs. DEMINGS, Mr. GOMEZ, Ms. MENG, Mr. JOHNSON of Georgia, Mr. JEFFRIES, Mr. GALLEGO, Ms. SCHRIER, Ms. BASS, Ms. JACKSON LEE, Mr. FOSTER, Ms. SLOTKIN, Mr. HECK, Ms. SPANBERGER, Mr. AGUILAR, Mr. KIND, Mr. BLUMENAUER, Mr. VAN DREW, Ms. BROWNLEY of California, Mr. VARGAS, Mr. KIM, Mr. LAMB, Mr. BROWN of Maryland, Ms. UNDERWOOD, Mr. LARSON of Connecticut, Mr. GONZALEZ of Texas, Mr. LARSEN of Washington, Mr. NEAL, Mr. CROW, Ms. CLARKE of New York, Mr. DEUTCH, Mr. TED LIEU of California, Ms. ESCOBAR, Mr. SARBANES, Mrs. LOWEY, Mr. WELCH, Mr. RUPPERSBERGER, Ms. KELLY of Illinois, Mr. EVANS, Mrs. BEATTY, Ms. DEGETTE, Mrs. AXNE, Mr. DAVID SCOTT of Georgia, Mrs. DINGELL, Mr. PAPPAS, Mr. PETERSON, Mrs. KIRKPATRICK, Ms. CASTOR of Florida, Mr. SCHIFF, Mr. LEVIN of California, Mr. LOEBSACK, Mrs. TORRES of California, Ms. PORTER, Mr. THOMPSON of California, Mr. STANTON, Mr. CRIST, Mr. PAYNE, Mr. SCHNEIDER, Ms. SPEIER, Mr. KEATING, Mr. MOULTON, Ms. GARCIA of Texas, Mr. MCEACHIN, Mr. HASTINGS, Mr. QUIGLEY, Mr. DANNY K. DAVIS of Illinois, Ms. DELBENE, Ms. MATSUI, Ms. WATERS, Mr. CONNOLLY, Mr. LIPINSKI, Mr. KILMER, Mr. HOYER, Ms. WEXTON, Ms. BARRAGÁN, Ms. JOHNSON of Texas, Mr. PERLMUTTER, Mr. BRINDISI, Mr. DOGGETT, Mr. CASTEN of Illinois, Ms. GABBARD, Ms. HOULAHAN, Ms. FRANKEL, Mr. KRISHNAMOORTHY, Mr. PRICE of North Carolina, Ms. SHERRILL, Mr. COX of California, Mr. O'HALLERAN, Mr. RICHMOND, Mr. BISHOP of Georgia, Ms. LOFGREN, Ms. KUSTER of New Hampshire, Mr. SWALWELL of California, Mr. HIMES, Mr. GOTTHEIMER, Ms. BLUNT ROCHESTER, Ms. DAVIDS of Kansas, Mr. MCNERNEY, Mr. BUTTERFIELD, Mr. COOPER, Mr. FITZPATRICK, Mr. SMITH of New Jersey, Mr. LAWSON of Florida, and Ms. SEWELL of Alabama

DECEMBER 16, 2019

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on May 2, 2019]

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.**

4 *This Act may be cited as the “Protecting the Right*
5 *to Organize Act of 2019”.*

6 **SEC. 2. AMENDMENTS TO THE NATIONAL LABOR RELA-**
7 **TIONS ACT.**

8 *(a) DEFINITIONS.—*

9 *(1) JOINT EMPLOYER.—Section 2(2) of the Na-*
10 *tional Labor Relations Act (29 U.S.C. 152(2)) is*
11 *amended by adding at the end the following: “Two or*
12 *more persons shall be employers with respect to an*
13 *employee if each such person codetermines or shares*
14 *control over the employee’s essential terms and condi-*
15 *tions of employment. In determining whether such*
16 *control exists, the Board or a court of competent ju-*
17 *risdiction shall consider as relevant direct control and*
18 *indirect control over such terms and conditions, re-*
19 *served authority to control such terms and conditions,*
20 *and control over such terms and conditions exercised*
21 *by a person in fact: Provided, That nothing herein*
22 *precludes a finding that indirect or reserved control*
23 *standing alone can be sufficient given specific facts*
24 *and circumstances.”.*

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

7 “(A) the individual is free from control and
8 direction in connection with the performance of
9 the service, both under the contract for the per-
10 formance of service and in fact;

11 “(B) the service is performed outside the
12 usual course of the business of the employer; and

13 “(C) the individual is customarily engaged
14 in an independently established trade, occupa-
15 tion, profession, or business of the same nature
16 as that involved in the service performed.”.

17 (3) *SUPERVISOR*.—Section 2(11) of the National
18 *Labor Relations Act* (29 U.S.C. 152(11)) is amend-
19 ed—

20 (A) by inserting “and for a majority of the
21 individual’s worktime” after “interest of the em-
22 ployer”;

23 (B) by striking “assign,”; and

24 (C) by striking “or responsibly to direct
25 them,”.

1 (b) *REPORTS.*—Section 3(c) of the National Labor Re-
2 *lations Act is amended—*

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

5 (2) *by adding at the end the following:*

6 “(2) *Effective January 1, 2021, section 3003 of the*
7 *Federal Reports Elimination and Sunset Act of 1995 (Pub-*
8 *lic Law 166–44; 31 U.S.C. 1113 note) shall not apply with*
9 *respect to reports required under this subsection.*

10 “(3) *Each report issued under this subsection shall in-*
11 *clude no less detail than reports issued by the Board prior*
12 *to the termination of such reports under section 3003 of*
13 *the Federal Reports Elimination and Sunset Act of 1995*
14 *(Public Law 166–44; 31 U.S.C. 1113 note).”.*

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

18 (d) *UNFAIR LABOR PRACTICES.*—Section 8 of the Na-
19 *tional Labor Relations Act (29 U.S.C. 158) is amended—*

20 (1) *in subsection (a)—*

21 (A) *in paragraph (5), by striking the period*
22 *and inserting “;”;* and

23 (B) *by adding at the end the following:*

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

1 “(A) to permanently replace an employee
2 who participates in a strike as defined by section
3 501(2) of the Labor Management Relations Act,
4 1947 (29 U.S.C. 142(2));

5 “(B) to discriminate against an employee
6 who is working or has unconditionally offered to
7 return to work for the employer because the em-
8 ployee supported or participated in such a
9 strike; or

10 “(C) to lockout, suspend, or otherwise
11 withhold employment from employees in order to
12 influence the position of such employees or the
13 representative of such employees in collective bar-
14 gaining prior to a strike; and

15 “(7) to communicate or misrepresent to an em-
16 ployee under section 2(3) that such employee is ex-
17 cluded from the definition of employee under section
18 2(3).”;

19 (2) in subsection (b)—

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

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

23 (C) in paragraph (4), as so redesignated, by
24 striking “affected;” and inserting “affected;
25 and”; and

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

3 (3) in subsection (c), by striking the period at
4 the end and inserting the following: “: Provided, That
5 it shall be an unfair labor practice under subsection
6 (a)(1) for any employer to require or coerce an em-
7 ployee to attend or participate in such employer’s
8 campaign activities unrelated to the employee’s job
9 duties, including activities that are subject to the re-
10 quirements under section 203(b) of the Labor-Manage-
11 ment Reporting and Disclosure Act of 1959 (29
12 U.S.C. 433(b)).”;

13 (4) in subsection (d)—

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

17 (B) by striking “For the purposes of this
18 section” and inserting “(1) For purposes of this
19 section”;

20 (C) by inserting “and to maintain current
21 wages, hours, and working conditions pending
22 an agreement” after “arising thereunder”;

23 (D) by inserting “: Provided, That an em-
24 ployer’s duty to collectively bargain shall con-
25 tinue absent decertification of the labor organiza-

1 *tion following an election conducted pursuant to*
2 *section 9” after “making of a concession.”;*

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

5 *(F) by striking “The duties imposed” and*
6 *inserting “(2) The duties imposed”;*

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

10 *(H) by striking “section 8(d)(1)” and in-*
11 *serting “paragraph (1)(A)”;*

12 *(I) by striking “section 8(d)(3)” and insert-*
13 *ing “paragraph (1)(C)” in each place it appears;*

14 *(J) by striking “section 8(d)(4)” and insert-*
15 *ing “paragraph (1)(D)”;* and

16 *(K) by adding at the end the following:*

17 *“(3) Whenever collective bargaining is for the purpose*
18 *of establishing an initial collective bargaining agreement*
19 *following certification or recognition of a labor organiza-*
20 *tion, the following shall apply:*

21 *“(A) Not later than 10 days after receiving a*
22 *written request for collective bargaining from an indi-*
23 *vidual or labor organization that has been newly rec-*
24 *ognized or certified as a representative as defined in*
25 *section 9(a), or within such further period as the par-*

1 *ties agree upon, the parties shall meet and commence*
2 *to bargain collectively and shall make every reason-*
3 *able effort to conclude and sign a collective bar-*
4 *gaining agreement.*

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

16 *“(C) If after the expiration of the 30-day period*
17 *beginning on the date on which the request for medi-*
18 *ation is made under subparagraph (B), or such addi-*
19 *tional period as the parties may agree upon, the*
20 *Service is not able to bring the parties to agreement*
21 *by conciliation, the Service shall refer the dispute to*
22 *a tripartite arbitration panel established in accord-*
23 *ance with such regulations as may be prescribed by*
24 *the Service, with one member selected by the labor or-*
25 *ganization, one member selected by the employer, and*

1 *one neutral member mutually agreed to by the par-*
2 *ties. The labor organization and employer must each*
3 *select the members of the tripartite arbitration panel*
4 *within 14 days of the Service’s referral; if the labor*
5 *organization or employer fail to do so, the Service*
6 *shall designate any members not selected by the labor*
7 *organization or the employer. A majority of the tri-*
8 *partite arbitration panel shall render a decision set-*
9 *tling the dispute and such decision shall be binding*
10 *upon the parties for a period of two years, unless*
11 *amended during such period by written consent of the*
12 *parties. Such decision shall be based on—*

13 *“(i) the employer’s financial status and*
14 *prospects;*

15 *“(ii) the size and type of the employer’s op-*
16 *erations and business;*

17 *“(iii) the employees’ cost of living;*

18 *“(iv) the employees’ ability to sustain them-*
19 *selves, their families, and their dependents on the*
20 *wages and benefits they earn from the employer;*
21 *and*

22 *“(v) the wages and benefits other employers*
23 *in the same business provide their employees.”;*

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

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

5 “(1) to enter into or attempt to enforce any
6 agreement, express or implied, whereby prior to a dis-
7 pute to which the agreement applies, an employee un-
8 dertakes or promises not to pursue, bring, join, liti-
9 gate, or support any kind of joint, class, or collective
10 claim arising from or relating to the employment of
11 such employee in any forum that, but for such agree-
12 ment, is of competent jurisdiction;

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

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

1 *That this subsection shall not apply to any agreement*
2 *embodied in or expressly permitted by a contract be-*
3 *tween an employer and a labor organization.”;*

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

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

8 *“(h)(1) The Board shall promulgate regulations re-*
9 *quiring each employer to post and maintain, in con-*
10 *spicuous places where notices to employees and applicants*
11 *for employment are customarily posted both physically and*
12 *electronically, a notice setting forth the rights and protec-*
13 *tions afforded employees under this Act. The Board shall*
14 *make available to the public the form and text of such no-*
15 *tice. The Board shall promulgate regulations requiring em-*
16 *ployers to notify each new employee of the information con-*
17 *tained in the notice described in the preceding two sen-*
18 *tences.*

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

1 *ployees in the bargaining unit and such employees' home*
2 *addresses, work locations, shifts, job classifications, and, if*
3 *available to the employer, personal landline and mobile tele-*
4 *phone numbers, and work and personal email addresses; the*
5 *voter list must be provided in a searchable electronic format*
6 *generally approved by the Board unless the employer cer-*
7 *tifies that the employer does not possess the capacity to*
8 *produce the list in the required form. Not later than nine*
9 *months after the date of enactment of the Protecting the*
10 *Right to Organize Act of 2019, the Board shall promulgate*
11 *regulations implementing the requirements of this para-*
12 *graph.*

13 “(i) *The rights of an employee under section 7 include*
14 *the right to use electronic communication devices and sys-*
15 *tems (including computers, laptops, tablets, internet access,*
16 *email, cellular telephones, or other company equipment) of*
17 *the employer of such employee to engage in activities pro-*
18 *tected under section 7 if such employer has given such em-*
19 *ployee access to such devices and systems in the course of*
20 *the work of such employee, absent a compelling business ra-*
21 *tionale.”.*

22 (e) *REPRESENTATIVES AND ELECTIONS.—Section 9 of*
23 *the National Labor Relations Act (29 U.S.C. 159) is*
24 *amended—*

25 (1) *in subsection (c)—*

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

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

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

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

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

14 *(D) by inserting after paragraph (3) the fol-*
15 *lowing:*

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

1 *section 10(c) of this Act, without need for a determination*
2 *of an unfair labor practice.*

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

9 “(B) *In any case in which a majority of the valid votes*
10 *cast in a unit appropriate for purposes of collective bar-*
11 *gaining have not been cast in favor of representation by*
12 *the labor organization and the Board determines that the*
13 *election should be set aside because the employer has com-*
14 *mitted a violation of this Act or otherwise interfered with*
15 *a fair election, and the employer has not demonstrated that*
16 *the violation or other interference is unlikely to have af-*
17 *ected the outcome of the election, the Board shall, without*
18 *ordering a new election, certify the labor organization as*
19 *the representative of the employees in such unit and issue*
20 *an order requiring the employer to bargain with the labor*
21 *organization in accordance with section 8(d) if, at any time*
22 *during the period beginning one year preceding the date*
23 *of the commencement of the election and ending on the date*
24 *upon which the Board makes the determination of a viola-*
25 *tion or other interference, a majority of the employees in*

1 *the bargaining unit have signed authorizations designating*
2 *the labor organization as their collective bargaining rep-*
3 *resentative.*

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

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

12 “(8) *Except under extraordinary circumstances—*

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

16 (B) *a post-election hearing under this sub-*
17 *section shall begin not later than 14 days after the fil-*
18 *ing of objections, if any.”*; and

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

21 (f) *PREVENTION OF UNFAIR LABOR PRACTICES.—Sec-*
22 *tion 10(c) of the National Labor Relations Act (29 U.S.C.*
23 *160(c)) is amended by striking “suffered by him” and in-*
24 *serting “suffered by such employee: Provided further, That*
25 *if the Board finds that an employer has discriminated*

1 *against an employee in violation of paragraph (3) or (4)*
2 *of section 8(a) or has committed a violation of section 8(a)*
3 *that results in the discharge of an employee or other serious*
4 *economic harm to an employee, the Board shall award the*
5 *employee back pay without any reduction (including any*
6 *reduction based on the employee's interim earnings or fail-*
7 *ure to earn interim earnings), front pay (when appro-*
8 *priate), consequential damages, and an additional amount*
9 *as liquidated damages equal to two times the amount of*
10 *damages awarded: Provided further, no relief under this*
11 *subsection shall be denied on the basis that the employee*
12 *is, or was during the time of relevant employment or during*
13 *the back pay period, an unauthorized alien as defined in*
14 *section 274A(h)(3) of the Immigration and Nationality Act*
15 *(8 U.S.C. 1324a(h)(3)) or any other provision of Federal*
16 *law relating to the unlawful employment of aliens”.*

17 *(g) ENFORCING COMPLIANCE WITH ORDERS OF THE*
18 *BOARD.—*

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

22 *(A) by striking subsection (e);*

23 *(B) by redesignating subsection (d) as sub-*
24 *section (e);*

1 (C) by inserting after subsection (c) the fol-
2 lowing:

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

8 “(2) Any person who fails or neglects to obey an order
9 of the Board shall forfeit and pay to the Board a civil pen-
10 alty of not more than \$10,000 for each violation, which
11 shall accrue to the United States and may be recovered in
12 a civil action brought by the Board to the district court
13 of the United States in which the unfair labor practice or
14 other subject of the order occurred, or in which such person
15 or entity resides or transacts business. No action by the
16 Board under this paragraph may be made until 30 days
17 following the issuance of an order. Each separate violation
18 of such an order shall be a separate offense, except that,
19 in the case of a violation in which a person fails to obey
20 or neglects to obey a final order of the Board, each day
21 such failure or neglect continues shall be deemed a separate
22 offense.

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

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

6 “(A) *restrain such person or entity or the offi-*
7 *cers, agents, or representatives of such person or enti-*
8 *ty, from further disobedience to such order; or*

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

11 (D) *in subsection (f)—*

12 (i) *by striking “proceed in the same*
13 *manner as in the case of an application by*
14 *the Board under subsection (e) of this sec-*
15 *tion,” and inserting “proceed as provided*
16 *under paragraph (2) of this subsection”;*

17 (ii) *by striking “Any” and inserting*
18 *the following: “*

19 “(1) *Within 30 days of the issuance of an order,*
20 *any”;* and

21 (iii) *by adding at the end the fol-*
22 *lowing:*

23 “(2) *No objection that has not been urged before the*
24 *Board, its member, agent, or agency shall be considered by*
25 *a court, unless the failure or neglect to urge such objection*

1 *shall be excused because of extraordinary circumstances.*
2 *The findings of the Board with respect to questions of fact*
3 *if supported by substantial evidence on the record consid-*
4 *ered as a whole shall be conclusive. If either party shall*
5 *apply to the court for leave to adduce additional evidence*
6 *and shall show to the satisfaction of the court that such*
7 *additional evidence is material and that there were reason-*
8 *able grounds for the failure to adduce such evidence in the*
9 *hearing before the Board, its member, agent, or agency, the*
10 *court may order such additional evidence to be taken before*
11 *the Board, its member, agent, or agency, and to be made*
12 *a part of the record. The Board may modify its findings*
13 *as to the facts, or make new findings, by reason of addi-*
14 *tional evidence so taken and filed, and it shall file such*
15 *modified or new findings, which findings with respect to*
16 *questions of fact if supported by substantial evidence on the*
17 *record considered as a whole shall be conclusive, and shall*
18 *file its recommendations, if any, for the modification or set-*
19 *ting aside of its original order. Upon the filing of the record*
20 *with it the jurisdiction of the court shall be exclusive and*
21 *its judgment and decree shall be final, except that the same*
22 *shall be subject to review by the appropriate United States*
23 *court of appeals if application was made to the district*
24 *court, and by the Supreme Court of the United States upon*

1 *writ of certiorari or certification as provided in section*
2 *1254 of title 28, United States Code.”; and*

3 *(E) in subsection (g), by striking “sub-*
4 *section (e) or (f) of this section” and inserting*
5 *“subsection (d) or (f)”.*

6 *(2) CONFORMING AMENDMENT.—Section 18 of*
7 *the National Labor Relations Act (29 U.S.C. 168) is*
8 *amended by striking “ section 10(e) or (f)” and in-*
9 *serting “subsection (d) or (f) of section 10”.*

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

14 *(1) in subsection (j)—*

15 *(A) by striking “The Board” and inserting*
16 *“(1) The Board”; and*

17 *(B) by adding at the end the following:*

18 *“(2) Notwithstanding subsection (m), whenever it is*
19 *charged that an employer has engaged in an unfair labor*
20 *practice within the meaning of paragraph (1) or (3) of sec-*
21 *tion 8(a) that significantly interferes with, restrains, or co-*
22 *erces employees in the exercise of the rights guaranteed*
23 *under section 7, or involves discharge or other serious eco-*
24 *nomie harm to an employee, the preliminary investigation*
25 *of such charge shall be made forthwith and given priority*

1 *over all other cases except cases of like character in the office*
 2 *where it is filed or to which it is referred. If, after such*
 3 *investigation, the officer or regional attorney to whom the*
 4 *matter may be referred has reasonable cause to believe such*
 5 *charge is true and that a complaint should issue, such offi-*
 6 *cer or attorney shall bring a petition for appropriate tem-*
 7 *porary relief or restraining order as set forth in paragraph*
 8 *(1). The district court shall grant the relief requested unless*
 9 *the court concludes that there is no reasonable likelihood*
 10 *that the Board will succeed on the merits of the Board's*
 11 *claim.”; and*

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

13 *(i) PENALTIES.—*

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

16 *(A) by striking “SEC. 12. Any person” and*
 17 *inserting the following:*

18 **“SEC. 12. PENALTIES.**

19 *“(a) VIOLATIONS FOR INTERFERENCE WITH BOARD.—*
 20 *Any person”;* and

21 *(B) by adding at the end the following:*

22 *“(b) VIOLATIONS FOR POSTING REQUIREMENTS AND*
 23 *VOTER LIST.—If the Board, or any agent or agency des-*
 24 *ignated by the Board for such purposes, determines that an*

1 *employer has violated section 8(h) or regulations issued*
2 *thereunder, the Board shall—*

3 “(1) *state the findings of fact supporting such*
4 *determination;*

5 “(2) *issue and cause to be served on such em-*
6 *ployer an order requiring that such employer comply*
7 *with section 8(h) or regulations issued thereunder;*
8 *and*

9 “(3) *impose a civil penalty in an amount deter-*
10 *mined appropriate by the Board, except that in no*
11 *case shall the amount of such penalty exceed \$500 for*
12 *each such violation.*

13 “(c) *CIVIL PENALTIES FOR VIOLATIONS.—*

14 “(1) *IN GENERAL.—Any employer who commits*
15 *an unfair labor practice within the meaning of sec-*
16 *tion 8(a) shall, in addition to any remedy ordered by*
17 *the Board, be subject to a civil penalty in an amount*
18 *not to exceed \$50,000 for each violation, except that,*
19 *with respect to an unfair labor practice within the*
20 *meaning of paragraph (3) or (4) of section 8(a) or a*
21 *violation of section 8(a) that results in the discharge*
22 *of an employee or other serious economic harm to an*
23 *employee, the Board shall double the amount of such*
24 *penalty, to an amount not to exceed \$100,000, in any*

1 *case where the employer has within the preceding five*
2 *years committed another such violation.*

3 “(2) *CONSIDERATIONS.—In determining the*
4 *amount of any civil penalty under this subsection, the*
5 *Board shall consider—*

6 “(A) *the gravity of the unfair labor prac-*
7 *tice;*

8 “(B) *the impact of the unfair labor practice*
9 *on the charging party, on other persons seeking*
10 *to exercise rights guaranteed by this Act, and on*
11 *the public interest; and*

12 “(C) *the gross income of the employer.*

13 “(3) *DIRECTOR AND OFFICER LIABILITY.—If the*
14 *Board determines, based on the particular facts and*
15 *circumstances presented, that a director or officer’s*
16 *personal liability is warranted, a civil penalty for a*
17 *violation described in this subsection may also be as-*
18 *essed against any director or officer of the employer*
19 *who directed or committed the violation, had estab-*
20 *lished a policy that led to such a violation, or had ac-*
21 *tual or constructive knowledge of and the authority to*
22 *prevent the violation and failed to prevent the viola-*
23 *tion.*

24 “(d) *RIGHT TO CIVIL ACTION.—*

1 “(1) *IN GENERAL.*—Any person who is injured
2 by reason of a violation of paragraph (1) or (3) of
3 section 8(a) may, after 60 days following the filing of
4 a charge with the Board alleging an unfair labor
5 practice, bring a civil action in the appropriate dis-
6 trict court of the United States against the employer
7 within 90 days after the expiration of the 60-day pe-
8 riod or the date the Board notifies the person that no
9 complaint shall issue, whichever occurs earlier, pro-
10 vided that the Board has not filed a petition under
11 section 10(j) of this Act prior to the expiration of the
12 60-day period. No relief under this subsection shall be
13 denied on the basis that the employee is, or was dur-
14 ing the time of relevant employment or during the
15 back pay period, an unauthorized alien as defined in
16 section 274A(h)(3) of the Immigration and Nation-
17 ality Act (8 U.S.C. 1324a(h)(3)) or any other provi-
18 sion of Federal law relating to the unlawful employ-
19 ment of aliens.

20 “(2) *AVAILABLE RELIEF.*—Relief granted in an
21 action under paragraph (1) may include—

22 “(A) back pay without any reduction, in-
23 cluding any reduction based on the employee’s
24 interim earnings or failure to earn interim earn-
25 ings;

1 “(B) front pay (when appropriate);

2 “(C) consequential damages;

3 “(D) an additional amount as liquidated
4 damages equal to two times the cumulative
5 amount of damages awarded under subpara-
6 graphs (A) through (C);

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

9 “(F) any other relief authorized by section
10 706(g) of the Civil Rights Act of 1964 (42 U.S.C.
11 2000e-5(g)) or by section 1977A(b) of the Re-
12 vised Statutes (42 U.S.C. 1981a(b)).

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

18 “(4) PUNITIVE DAMAGES.—In awarding punitive
19 damages under paragraph (2)(E), the court shall con-
20 sider—

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

23 “(B) the impact of the unfair labor practice
24 on the charging party, on other persons seeking

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

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

4 (2) *CONFORMING AMENDMENTS.*—Section 10(b)
5 of the National Labor Relations Act (29 U.S.C.
6 160(b)) is amended—

7 (A) by striking “six months” and inserting
8 “180 days”; and

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

11 (j) *LIMITATIONS.*—Section 13 of the National Labor
12 Relations Act (29 U.S.C. 163) is amended by striking the
13 period at the end and inserting the following: “: Provided,
14 That the duration, scope, frequency, or intermittence of any
15 strike or strikes shall not render such strike or strikes un-
16 protected or prohibited.”.

17 (k) *FAIR SHARE AGREEMENTS PERMITTED.*—Section
18 14(b) of the National Labor Relations Act (29 U.S.C.
19 164(b)) is amended by striking the period at the end and
20 inserting the following: “: Provided, That collective bar-
21 gaining agreements providing that all employees in a bar-
22 gaining unit shall contribute fees to a labor organization
23 for the cost of representation, collective bargaining, contract
24 enforcement, and related expenditures as a condition of em-

1 *ployment shall be valid and enforceable notwithstanding*
2 *any State or Territorial law.”.*

3 **SEC. 3. CONFORMING AMENDMENTS TO THE LABOR MAN-**
4 **AGEMENT RELATIONS ACT, 1947.**

5 *The Labor Management Relations Act, 1947 is amend-*
6 *ed—*

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

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

16 **SEC. 4. AMENDMENTS TO THE LABOR-MANAGEMENT RE-**
17 **PORTING AND DISCLOSURE ACT OF 1959.**

18 *Section 203(c) of the Labor-Management Reporting*
19 *and Disclosure Act of 1959 (29 U.S.C. 433(c)) is amended*
20 *by striking the period at the end and inserting the following*
21 *“: Provided, That this subsection shall not exempt from the*
22 *requirements of this section any arrangement or part of an*
23 *arrangement in which a party agrees, for an object de-*
24 *scribed in subsection (b)(1), to plan or conduct employee*
25 *meetings; train supervisors or employer representatives to*

1 *conduct meetings; coordinate or direct activities of super-*
2 *visors or employer representatives; establish or facilitate*
3 *employee committees; identify employees for disciplinary*
4 *action, reward, or other targeting; or draft or revise em-*
5 *ployer personnel policies, speeches, presentations, or other*
6 *written, recorded, or electronic communications to be deliv-*
7 *ered or disseminated to employees.”.*

8 **SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

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

Union Calendar No. 276

116TH CONGRESS
1ST Session

H. R. 2474

[Report No. 116-347]

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.

DECEMBER 16, 2019

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed