

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 861 Session of 2023

INTRODUCED BY D. WILLIAMS, DELLOSIO, CIRESI, O'MARA, MALAGARI, SANCHEZ, HILL-EVANS, HOHENSTEIN, HANBIDGE, ISAACSON, KINSEY, PIELLI, RABB, MARKOSEK, SIEGEL, GUENST, MERSKI, MADDEN, WARREN, McNEILL, PARKER, HARKINS, SCHLOSSBERG, KINKEAD, SHUSTERMAN, CONKLIN, PASHINSKI, HOWARD, DEASY, KRAJEWSKI, WAXMAN, STURLA, N. NELSON, NEILSON, KHAN, GREEN, KRUEGER, BOROWSKI, KAZEEM, SMITH-WADE-EL, GIRAL, SCHWEYER, DONAHUE, SAMUELSON, PISCIOTTANO, McANDREW, ABNEY, CEPEDA-FREYTIZ, GALLAGHER, PROBST, TAKAC AND HADDOCK, APRIL 10, 2023

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, APRIL 10, 2023

AN ACT

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

1 penalties," further providing for definitions; providing for  
2 notice and regulations; further providing for unfair labor  
3 practices and for representatives and elections; providing  
4 for initial collective bargaining agreement; and further  
5 providing for prevention of unfair labor practices and for  
6 penalties.

7 The General Assembly of the Commonwealth of Pennsylvania  
8 hereby enacts as follows:

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

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

13 \* \* \*

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

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

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

29 (2) the service is performed outside the usual course of the  
30 business of the employer; and

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

1 performed.

2 \* \* \*

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

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

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

25 Section 3. Section 6(1) is amended by adding clauses to  
26 read:

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

29 \* \* \*

30 (g) To require or coerce an employe to attend or participate

1 in the employer's campaign activities unrelated to the employe's  
2 job duties.

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

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

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

23 \* \* \*

24 Section 4. Section 7 is amended by adding subsections to  
25 read:

26 Section 7. Representatives and Elections.--\* \* \*

27 (e) Whenever a petition has been filed, in accordance with  
28 regulations promulgated by the board, by an employe or group of  
29 employes or an individual or labor organization acting on the  
30 employe's behalf alleging that a substantial number of employes

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

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

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

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

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

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

25     Section 7.1. Initial Collective Bargaining Agreement.--  
26 Whenever collective bargaining is for the purpose of  
27 establishing an initial collective bargaining agreement  
28 following certification or recognition of a labor organization,  
29 the following shall apply--(a) No later than ten days after  
30 receiving a written request for collective bargaining from an

1 individual or labor organization that has been newly recognized  
2 or certified as a representative, or within a period as the  
3 parties agree upon, the parties shall meet and commence to  
4 bargain collectively and shall make every reasonable effort to  
5 conclude and sign a collective bargaining agreement.

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

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

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

29 (2) The size and type of the employer's operations and  
30 business.

1     (3) The employes' cost of living.

2     (4) The employes' ability to sustain themselves, their  
3 families and their dependents on the wages and benefits they  
4 earn from the employer.

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

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

9     Section 8. Prevention of Unfair Labor Practices.--\* \* \*

10    (g) If the board finds that an employer has discriminated  
11 against an employe in violation of this act or has committed a  
12 violation of this act which results in the discharge of an  
13 employe or other serious economic harm to an employe, the board  
14 shall award the employe back pay without any reduction,  
15 including any reduction based on the employe's interim earnings  
16 or failure to earn interim earnings, front pay, consequential  
17 damages and an additional amount as liquidated damages equal to  
18 two times the amount of damages awarded. Relief under this  
19 subsection may not be denied on the basis that the employe is,  
20 or was during the time of relevant employment or during the back  
21 pay period, an unauthorized alien as defined in 8 U.S.C. §  
22 1324a(h) (3) (relating to unlawful employment of aliens) or any  
23 other provision of Federal law relating to the unlawful  
24 employment of aliens.

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

30    (2) Any person who fails or neglects to obey an order of the



1 board shall forfeit and pay to the board a civil penalty of not  
2 more than ten thousand dollars (\$10,000) for each violation,  
3 which shall accrue to the board and may be recovered in a civil  
4 action brought by the board. Action by the board under this  
5 subsection may not be made until thirty days following the  
6 issuance of an order. Each separate violation of the order shall  
7 be a separate offense, except that, in the case of a violation  
8 in which a person fails to obey or neglects to obey a final  
9 order of the board, each day such failure or neglect continues  
10 shall be deemed a separate offense.

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

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

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

30 (b) If the board, or any agent designated by the board,

1 determines that an employer has violated section 4.1 or  
2 regulations issued thereunder, the board shall--

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

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

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

11 (c) (1) An employer who commits an unfair labor practice  
12 under section 6 that results in the discharge of an employe or  
13 other serious economic harm to an employe, shall, in addition to  
14 any remedy ordered by the board, be subject to a civil penalty  
15 in an amount not to exceed fifty thousand dollars (\$50,000) for  
16 each violation, except that the board shall double the amount of  
17 the penalty, to an amount not to exceed one hundred thousand  
18 dollars (\$100,000), in any case where the employer has within  
19 the preceding five years committed another violation of section  
20 6.

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

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

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

27 (iii) The gross income of the employer.

28 (3) If the board determines, based on the particular facts  
29 and circumstances presented, that a director's or officer's  
30 personal liability is warranted, a civil penalty for a violation

1 described under this subsection may be assessed against a  
2 director or officer of the employer who directed or committed  
3 the violation, had established a policy that led to the  
4 violation or had actual or constructive knowledge of and the  
5 authority to prevent the violation and failed to prevent the  
6 violation.

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

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

23 (2) Relief granted in an action under paragraph (1) may  
24 include--(i) back pay without any reduction, including any  
25 reduction based on the employe's interim earnings or failure to  
26 earn interim earnings; (ii) front pay, when appropriate; (iii)  
27 consequential damages; (iv) an additional amount as liquidated  
28 damages equal to two times the cumulative amount of damages  
29 awarded under subparagraphs (i), (ii) and (iii); (v) in  
30 appropriate cases, punitive damages in accordance with paragraph

1 (4); and (vi) any other relief authorized under 42 U.S.C. §  
2 2000e-5(g) (relating to enforcement provisions) or under 42  
3 U.S.C. § 1981a(b) (relating to damages in cases of intentional  
4 discrimination in employment).

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

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

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