

Calendar No. 133118TH CONGRESS
1ST SESSION**S. 567**

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 28, 2023

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

JULY 18, 2023

Reported by Mr. SANDERS, without amendment

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
 5 “Richard L. Trumka Protecting the Right to Organize Act
 6 of 2023”.

7 (b) TABLE OF CONTENTS.—The table of contents for
 8 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 RELA-
 TIONS ACT, 1947 AND THE LABOR-MANAGEMENT REPORTING
 AND DISCLOSURE ACT OF 1959

Sec. 201. Conforming amendments to the Labor Management Relations Act,
 1947.

Sec. 202. Amendments to the Labor-Management Reporting and Disclosure Act
 of 1959.

TITLE III—OTHER MATTERS

Sec. 301. Severability.

Sec. 302. Authorization of appropriations.

1 **TITLE I—AMENDMENTS TO THE**
2 **NATIONAL LABOR RELATIONS**
3 **ACT**

4 **SEC. 101. DEFINITIONS.**

5 (a) JOINT EMPLOYER.—Section 2(2) of the National
6 Labor Relations Act (29 U.S.C. 152(2)) is amended by
7 adding at the end the following: “Two or more persons
8 shall be employers with respect to an employee if each
9 such person codetermines or shares control over the em-
10 ployee’s essential terms and conditions of employment. In
11 determining whether such control exists, the Board or a
12 court of competent jurisdiction shall consider as relevant
13 direct control and indirect control over such terms and
14 conditions, reserved authority to control such terms and
15 conditions, and control over such terms and conditions ex-
16 ercised by a person in fact: *Provided*, That nothing herein
17 precludes a finding that indirect or reserved control stand-
18 ing alone can be sufficient given specific facts and cir-
19 cumstances.”.

20 (b) EMPLOYEE.—Section 2(3) of the National Labor
21 Relations Act (29 U.S.C. 152(3)) is amended by adding
22 at the end the following: “An individual performing any
23 service shall be considered an employee (except as pro-
24 vided in the previous sentence) and not an independent
25 contractor, unless—

1 “(A) the individual is free from control and
2 direction in connection with the performance of
3 the service, both under the contract for the per-
4 formance of service and in fact;

5 “(B) the service is performed outside the
6 usual course of the business of the employer;
7 and

8 “(C) the individual is customarily engaged
9 in an independently established trade, occupa-
10 tion, profession, or business of the same nature
11 as that involved in the service performed.”.

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

14 (1) by inserting “and for a majority of the indi-
15 vidual’s worktime” after “interest of the employer”;

16 (2) by striking “assign,”; and

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

18 **SEC. 102. REPORTS.**

19 Section 3(c) of the National Labor Relations Act (29
20 U.S.C. 153(c)) is amended—

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

23 (2) by adding at the end the following:

24 “(2) Effective January 1, 2025, section 3003 of the
25 Federal Reports Elimination and Sunset Act of 1995

1 (Public Law 104–66; 31 U.S.C. 1113 note) shall not apply
2 with respect to reports required under this subsection.

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

4 “(A) include no less detail than reports issued
5 by the Board prior to the termination of such re-
6 ports under section 3003 of the Federal Reports
7 Elimination and Sunset Act of 1995 (Public Law
8 104–66; 31 U.S.C. 1113 note);

9 “(B) list each case in which the Designated
10 Agency Ethics Official provided advice regarding
11 whether a Member should be recused from partici-
12 pating in a case or rulemaking; and

13 “(C) list each case in which the Designated
14 Agency Ethics Official determined that a Member
15 should be recused from participating in a case or
16 rulemaking.”.

17 **SEC. 103. APPOINTMENT.**

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

21 **SEC. 104. UNFAIR LABOR PRACTICES.**

22 Section 8 of the National Labor Relations Act (29
23 U.S.C. 158) is amended—

24 (1) in subsection (a)—

1 (A) in paragraph (5), by striking the pe-
2 riod and inserting “;”; and

3 (B) by adding at the end the following:

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

5 “(A) to permanently replace an employee
6 who participates in a strike as defined by sec-
7 tion 501(2) of the Labor Management Rela-
8 tions Act, 1947 (29 U.S.C. 142(2));

9 “(B) to discriminate against an employee
10 who is working or has unconditionally offered to
11 return to work for the employer because the
12 employee supported or participated in such a
13 strike; or

14 “(C) to lockout, suspend, or otherwise
15 withhold employment from employees in order
16 to influence the position of such employees or
17 the representative of such employees in collec-
18 tive bargaining prior to a strike; and

19 “(7) to communicate or misrepresent to an em-
20 ployee under section 2(3) that such employee is ex-
21 cluded from the definition of employee under section
22 2(3).”;

23 (2) in subsection (b)—

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

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

3 (C) in paragraph (4), as so redesignated,
4 by striking “affected;” and inserting “affected;
5 and”; and

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

8 (3) in subsection (c), by striking the period at
9 the end and inserting the following: “: *Provided,*
10 That it shall be an unfair labor practice under sub-
11 section (a)(1) for any employer to require or coerce
12 an employee to attend or participate in such employ-
13 er’s campaign activities unrelated to the employee’s
14 job duties, including activities that are subject to the
15 requirements under section 203(b) of the Labor-
16 Management Reporting and Disclosure Act of 1959
17 (29 U.S.C. 433(b)).”;

18 (4) in subsection (d)—

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

22 (B) by striking “For the purposes of this
23 section” and inserting “(1) For purposes of this
24 section”;

1 (C) by inserting “and to maintain current
2 wages, hours, and terms and conditions of em-
3 ployment pending an agreement” after “arising
4 thereunder”;

5 (D) by inserting “: *Provided*, That an em-
6 ployer’s duty to collectively bargain shall con-
7 tinue absent decertification of the labor organi-
8 zation following an election conducted pursuant
9 to section 9” after “making of a concession”;

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

12 (F) by striking “The duties imposed” and
13 inserting “(2) The duties imposed”;

14 (G) by striking “by paragraphs (2), (3),
15 and (4)” and inserting “by subparagraphs (B),
16 (C), and (D) of paragraph (1)”;

17 (H) by striking “section 8(d)(1)” and in-
18 serting “paragraph (1)(A)”;

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

21 (J) by striking “section 8(d)(4)” and in-
22 serting “paragraph (1)(D)”;

23 (K) by adding at the end the following:

24 “(3) Whenever collective bargaining is for the pur-
25 pose of establishing an initial collective bargaining agree-

1 ment following certification or recognition of a labor orga-
2 nization, the following shall apply:

3 “(A) Not later than 10 days after receiving a
4 written request for collective bargaining from an in-
5 dividual or labor organization that has been newly
6 recognized or certified as a representative as defined
7 in section 9(a), or within such further period as the
8 parties agree upon, the parties shall meet and com-
9 mence to bargain collectively and shall make every
10 reasonable effort to conclude and sign a collective
11 bargaining agreement.

12 “(B) If after the expiration of the 90-day pe-
13 riod beginning on the date on which bargaining is
14 commenced, or such additional period as the parties
15 may agree upon, the parties have failed to reach an
16 agreement, either party may notify the Federal Me-
17 diation and Conciliation Service of the existence of
18 a dispute and request mediation. Whenever such a
19 request is received, it shall be the duty of the Service
20 promptly to put itself in communication with the
21 parties and to use its best efforts, by mediation and
22 conciliation, to bring them to agreement.

23 “(C) If after the expiration of the 30-day period
24 beginning on the date on which the request for me-
25 diation is made under subparagraph (B), or such ad-

1 ditional period as the parties may agree upon, the
2 Service is not able to bring the parties to agreement
3 by conciliation, the Service shall refer the dispute to
4 a tripartite arbitration panel established in accord-
5 ance with such regulations as may be prescribed by
6 the Service, with one member selected by the labor
7 organization, one member selected by the employer,
8 and one neutral member mutually agreed to by the
9 parties. The labor organization and employer must
10 each select the members of the tripartite arbitration
11 panel within 14 days of the Service’s referral; if the
12 labor organization or employer fail to do so, the
13 Service shall designate any members not selected by
14 the labor organization or the employer. A majority
15 of the tripartite arbitration panel shall render a deci-
16 sion settling the dispute and such decision shall be
17 binding upon the parties for a period of 2 years, un-
18 less amended during such period by written consent
19 of the parties. Such decision shall be based on—

20 “(i) the employer’s financial status and
21 prospects;

22 “(ii) the size and type of the employer’s
23 operations and business;

24 “(iii) the employees’ cost of living;

1 “(iv) the employees’ ability to sustain
2 themselves, their families, and their dependents
3 on the wages and benefits they earn from the
4 employer; and

5 “(v) the wages and benefits other employ-
6 ers in the same business provide their employ-
7 ees.”;

8 (5) by amending subsection (e) to read as fol-
9 lows:

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

14 “(1) to enter into or attempt to enforce any
15 agreement, express or implied, whereby prior to a
16 dispute to which the agreement applies, an employee
17 undertakes or promises not to pursue, bring, join,
18 litigate, or support any kind of joint, class, or collec-
19 tive claim arising from or relating to the employ-
20 ment of such employee in any forum that, but for
21 such agreement, is of competent jurisdiction;

22 “(2) to coerce an employee into undertaking or
23 promising not to pursue, bring, join, litigate, or sup-
24 port any kind of joint, class, or collective claim aris-

1 ing from or relating to the employment of such em-
2 ployee; or

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

8 *Provided*, That any agreement that violates this subsection
9 or results from a violation of this subsection shall be to
10 such extent unenforceable and void: *Provided further*, That
11 this subsection shall not apply to any agreement embodied
12 in or expressly permitted by a contract between an em-
13 ployer and a labor organization.”;

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

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

18 “(h)(1) The Board shall promulgate regulations re-
19 quiring each employer to post and maintain, in con-
20 spicuous places where notices to employees and applicants
21 for employment are customarily posted both physically and
22 electronically, a notice setting forth the rights and protec-
23 tions afforded employees under this Act. The Board shall
24 make available to the public the form and text of such
25 notice. The Board shall promulgate regulations requiring

1 employers to notify each new employee of the information
2 contained in the notice described in the preceding two sen-
3 tences.

4 “(2) Whenever the Board directs an election under
5 section 9(c) or approves an election agreement, the em-
6 ployer of employees in the bargaining unit shall, not later
7 than 2 business days after the Board directs such election
8 or approves such election agreement, provide a voter list
9 to a labor organization that has petitioned to represent
10 such employees. Such voter list shall include the names
11 of all employees in the bargaining unit and such employ-
12 ees’ home addresses, work locations, shifts, job classifica-
13 tions, and, if available to the employer, personal landline
14 and mobile telephone numbers, and work and personal
15 email addresses; such voter list shall be provided in a
16 searchable electronic format generally approved by the
17 Board unless the employer certifies that the employer does
18 not possess the capacity to produce the list in the required
19 form. Not later than 9 months after the date of enactment
20 of the Richard L. Trumka Protecting the Right to Orga-
21 nize Act of 2023, the Board shall promulgate regulations
22 implementing the requirements of this paragraph.

23 “(i) The rights of an employee under section 7 in-
24 clude the right to use electronic communication devices
25 and systems (including computers, laptops, tablets, inter-

1 net access, email, cellular telephones, or other company
2 equipment) of the employer of such employee to engage
3 in activities protected under section 7 if such employer has
4 given such employee access to such devices and systems
5 in the course of the work of such employee, absent a com-
6 pelling business rationale for denying or limiting such
7 use.”.

8 **SEC. 105. REPRESENTATIVES AND ELECTIONS.**

9 Section 9 of the National Labor Relations Act (29
10 U.S.C. 159) is amended—

11 (1) in subsection (c)—

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

14 “(1) Whenever a petition shall have been filed, in ac-
15 cordance with such regulations as may be prescribed by
16 the Board, by an employee or group of employees or any
17 individual or labor organization acting in their behalf al-
18 leging that a substantial number of employees (i) wish to
19 be represented for collective bargaining and that their em-
20 ployer declines to recognize their representative as the rep-
21 resentative defined in section 9(a), or (ii) assert that the
22 individual or labor organization, which has been certified
23 or is being recognized by their employer as the bargaining
24 representative, is no longer a representative as defined in
25 section 9(a), the Board shall investigate such petition and

1 if it has reasonable cause to believe that a question of rep-
2 resentation affecting commerce exists shall provide for an
3 appropriate hearing upon due notice. Such hearing may
4 be conducted by an officer or employee of the regional of-
5 fice, who shall not make any recommendations with re-
6 spect thereto. If the Board finds upon the record of such
7 hearing that such a question of representation exists, it
8 shall direct an election by secret ballot and shall certify
9 the results thereof. The Board shall find the labor organi-
10 zation's proposed unit to be appropriate if the employees
11 in the proposed unit share a community of interest, and
12 if the employees outside the unit do not share an over-
13 whelming community of interest with employees inside. At
14 the request of the labor organization, the Board shall di-
15 rect that the election be conducted through certified mail,
16 electronically, at the work location, or at a location other
17 than one owned or controlled by the employer. No em-
18 ployer shall have standing as a party or to intervene in
19 any representation proceeding under this section.”;

20 (B) in paragraph (3), by striking “an eco-
21 nomic strike who are not entitled to reinstatement”
22 and inserting “a strike”;

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

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

3 “(4) 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 been
6 cast in favor of representation by the labor organization,
7 the Board shall certify the labor organization as the rep-
8 resentative of the employees in such unit and shall issue
9 an order requiring the employer of such employees to col-
10 lectively bargain with the labor organization in accordance
11 with section 8(d). This order shall be deemed an order
12 under section 10(c) of this Act, without need for a deter-
13 mination of an unfair labor practice.

14 “(5)(A) If the Board finds that, in an election under
15 paragraph (1), a majority of the valid votes cast in a unit
16 appropriate for purposes of collective bargaining have not
17 been cast in favor of representation by the labor organiza-
18 tion, the Board shall certify the results of the election,
19 subject to subparagraphs (B) and (C).

20 “(B) In any case in which a majority of the valid
21 votes cast in a unit appropriate for purposes of collective
22 bargaining have not been cast in favor of representation
23 by the labor organization and the Board determines, fol-
24 lowing a post-election hearing, that the employer has com-
25 mitted a violation of this Act or otherwise interfered with

1 a fair election, and the employer has not demonstrated
2 that the violation or other interference is unlikely to have
3 affected the outcome of the election, the Board shall, with-
4 out ordering a new election, set aside the election and cer-
5 tify the labor organization as the representative of the em-
6 ployees in such unit and issue an order requiring the em-
7 ployer to bargain with the labor organization in accord-
8 ance with section 8(d) if, at any time during the period
9 beginning 1 year preceding the date of the commencement
10 of the election and ending on the date upon which the
11 Board makes the determination of a violation or other in-
12 terference, a majority of the employees in the bargaining
13 unit have signed authorizations designating the labor or-
14 ganization as their collective bargaining representative.

15 “(C) In any case where the Board determines that
16 an election under this paragraph should be set aside, the
17 Board shall direct a new election with appropriate addi-
18 tional safeguards necessary to ensure a fair election proc-
19 ess, except in cases where the Board issues a bargaining
20 order under subparagraph (B).”; and

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

23 “(8) Except under extraordinary circumstances—

24 “(A) a pre-election hearing under this sub-
25 section shall begin not later than 8 days after a no-

1 tice of such hearing is served on the labor organiza-
2 tion and shall continue from day to day until com-
3 pleted;

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

10 “(C) not later than 2 days after the service of
11 the notice of hearing, the employer shall—

12 “(i) post the Notice of Petition for Elec-
13 tion in conspicuous places, including all places
14 where notices to employees are customarily
15 posted;

16 “(ii) if the employer customarily commu-
17 nicates with employees electronically, distribute
18 such Notice electronically; and

19 “(iii) maintain such posting until the peti-
20 tion is dismissed or withdrawn or the Notice of
21 Petition for Election is replaced by the Notice
22 of Election;

23 “(D) regional directors shall schedule elections
24 for the earliest date practicable, but not later than

1 the 20th business day after the direction of election;
2 and

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

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

8 (3) by adding at the end the following:

9 “(f) The Board shall dismiss any petition for an elec-
10 tion with respect to a bargaining unit or any subdivision
11 if, during the 12-month period ending on the date on
12 which the petition is filed—

13 “(1) the employer has recognized a labor orga-
14 nization without an election and in accordance with
15 this Act;

16 “(2) the labor organization and employer en-
17 gaged in their first bargaining session following the
18 issuance of a bargaining order by the Board; or

19 “(3) the labor organization and successor em-
20 ployer engaged in their first bargaining session fol-
21 lowing a succession.

22 “(g) The Board shall dismiss any petition for an elec-
23 tion with respect to a bargaining unit or any subdivision
24 if there is in effect a lawful written collective bargaining
25 agreement between the employer and an exclusive rep-

1 representative covering any employees in the unit specified
2 in the petition, unless the petition is filed—

3 “(1) on or after the date that is 3 years after
4 the date on which the collective bargaining agree-
5 ment took effect; or

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

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

20 **SEC. 106. DAMAGES FOR UNFAIR LABOR PRACTICES.**

21 Section 10(c) of the National Labor Relations Act
22 (29 U.S.C. 160(c)) is amended by striking “suffered by
23 him” and inserting “suffered by such employee: *Provided*
24 *further*, That if the Board finds that an employer has dis-
25 criminated against an employee in violation of paragraph

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

17 **SEC. 107. ENFORCING COMPLIANCE WITH ORDERS OF THE**
18 **BOARD.**

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

21 (1) by striking subsection (e);

22 (2) by redesignating subsection (d) as sub-
23 section (e);

24 (3) by inserting after subsection (c) the fol-
25 lowing:

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

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

21 “(3) If, after having provided a person or entity with
22 notice and an opportunity to be heard regarding a civil
23 action under paragraph (2) for the enforcement of an
24 order, the court determines that the order was regularly
25 made and duly served, and that the person or entity is

1 in disobedience of the same, the court shall enforce obedi-
 2 ence to such order by an injunction or other proper proc-
 3 ess, mandatory or otherwise, to—

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

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

10 (4) in subsection (f)—

11 (A) by striking “proceed in the same man-
 12 ner as in the case of an application by the
 13 Board under subsection (e) of this section,” and
 14 inserting “proceed as provided under paragraph
 15 (2) of this subsection”;

16 (B) by striking “Any” and inserting “(1)
 17 Within 30 days of the issuance of an order,
 18 any”; and

19 (C) by adding at the end the following:

20 “(2) No objection that has not been urged before the
 21 Board, its member, agent, or agency shall be considered
 22 by a court, unless the failure or neglect to urge such objec-
 23 tion shall be excused because of extraordinary cir-
 24 cumstances. The findings of the Board with respect to
 25 questions of fact if supported by substantial evidence on

1 the record considered as a whole shall be conclusive. If
2 either party shall apply to the court for leave to adduce
3 additional evidence and shall show to the satisfaction of
4 the court that such additional evidence is material and
5 that there were reasonable grounds for the failure to ad-
6 duce such evidence in the hearing before the Board, its
7 member, agent, or agency, the court may order such addi-
8 tional evidence to be taken before the Board, its member,
9 agent, or agency, and to be made a part of the record.
10 The Board may modify its findings as to the facts, or
11 make new findings, by reason of additional evidence so
12 taken and filed, and it shall file such modified or new find-
13 ings, which findings with respect to questions of fact if
14 supported by substantial evidence on the record considered
15 as a whole shall be conclusive, and shall file its rec-
16 ommendations, if any, for the modification or setting aside
17 of its original order. Upon the filing of the record with
18 it the jurisdiction of the court shall be exclusive and its
19 judgment and decree shall be final, except that the same
20 shall be subject to review by the appropriate United States
21 court of appeals if application was made to the district
22 court, and by the Supreme Court of the United States
23 upon writ of certiorari or certification as provided in sec-
24 tion 1254 of title 28, United States Code.”; and

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

4 (b) CONFORMING AMENDMENT.—Section 18 of the
5 National Labor Relations Act (29 U.S.C. 168) is amended
6 by striking “ section 10(e) or (f)” and inserting “sub-
7 section (d) or (f) of section 10”.

8 **SEC. 108. INJUNCTIONS AGAINST UNFAIR LABOR PRAC-**
9 **TICES INVOLVING DISCHARGE OR OTHER SE-**
10 **RIOUS ECONOMIC HARM.**

11 Section 10 of the National Labor Relations Act (29
12 U.S.C. 160) is amended—

13 (1) in subsection (j)—

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

16 (B) by adding at the end the following:

17 “(2) Notwithstanding subsection (m), whenever it is
18 charged that an employer has engaged in an unfair labor
19 practice within the meaning of paragraph (1), (3), or (4)
20 of section 8(a) that significantly interferes with, restrains,
21 or coerces employees in the exercise of the rights guaran-
22 teed under section 7, or involves discharge or other serious
23 economic harm to an employee, the preliminary investiga-
24 tion of such charge shall be made forthwith and given pri-
25 ority over all other cases except cases of like character

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

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

12 **SEC. 109. PENALTIES.**

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

15 (1) by striking “**SEC. 12.** Any person” and in-
 16 serting the following:

17 **“SEC. 12. PENALTIES.**

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

20 (2) by adding at the end the following:

21 “(b) VIOLATIONS FOR POSTING REQUIREMENTS AND
 22 VOTER LIST.—If the Board, or any agent or agency des-
 23 ignated by the Board for such purposes, determines that
 24 an employer has violated section 8(h) or regulations issued
 25 thereunder, the Board shall—

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

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

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

11 “(c) CIVIL PENALTIES FOR VIOLATIONS.—

12 “(1) IN GENERAL.—Any employer who commits
13 an unfair labor practice within the meaning of sec-
14 tion 8(a) shall, in addition to any remedy ordered by
15 the Board, be subject to a civil penalty in an amount
16 not to exceed \$50,000 for each violation, except
17 that, with respect to an unfair labor practice within
18 the meaning of paragraph (3) or (4) of section 8(a)
19 or a violation of section 8(a) that results in the dis-
20 charge of an employee or other serious economic
21 harm to an employee, the Board shall double the
22 amount of such penalty, to an amount not to exceed
23 \$100,000, in any case where the employer has with-
24 in the preceding 5 years committed another such
25 violation.

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

4 “(A) the gravity of the unfair labor prac-
5 tice;

6 “(B) the impact of the unfair labor prac-
7 tice on the charging party, on other persons
8 seeking to exercise rights guaranteed by this
9 Act, and on the public interest; and

10 “(C) the gross income of the employer.

11 “(3) DIRECTOR AND OFFICER LIABILITY.—If
12 the Board determines, based on the particular facts
13 and circumstances presented, that a director or offi-
14 cer’s personal liability is warranted, a civil penalty
15 for a violation described in this subsection may also
16 be assessed against any director or officer of the em-
17 ployer who directed or committed the violation, had
18 established a policy that led to such a violation, or
19 had actual or constructive knowledge of and the au-
20 thority to prevent the violation and failed to prevent
21 the violation.

22 “(d) RIGHT TO CIVIL ACTION.—

23 “(1) IN GENERAL.—Any person who is injured
24 by reason of a violation of paragraph (1), (3), or (4)
25 of section 8(a) may, after 60 days following the fil-

1 ing of a charge with the Board alleging an unfair
2 labor practice, bring a civil action in the appropriate
3 district court of the United States against the em-
4 ployer within 90 days after the expiration of the 60-
5 day period or the date the Board notifies the person
6 that no complaint shall issue, whichever occurs ear-
7 lier, provided that the Board has not filed a petition
8 under section 10(j) of this Act prior to the expira-
9 tion of the 60-day period. No relief under this sub-
10 section shall be denied on the basis that the em-
11 ployee is, or was during the time of relevant employ-
12 ment or during the back pay period, an unauthor-
13 ized alien as defined in section 274A(h)(3) of the
14 Immigration and Nationality Act (8 U.S.C.
15 1324a(h)(3)) or any other provision of Federal law
16 relating to the unlawful employment of aliens.

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

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

23 “(B) front pay (when appropriate);

24 “(C) consequential damages;

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

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

7 “(F) any other relief authorized by section
8 706(g) of the Civil Rights Act of 1964 (42
9 U.S.C. 2000e-5(g)) or by section 1977A(b) of
10 the Revised Statutes (42 U.S.C. 1981a(b)).

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

16 “(4) PUNITIVE DAMAGES.—In awarding puni-
17 tive damages under paragraph (2)(E), the court
18 shall consider—

19 “(A) the gravity of the unfair labor prac-
20 tice;

21 “(B) the impact of the unfair labor prac-
22 tice on the charging party, on other persons
23 seeking to exercise rights guaranteed by this
24 Act, and on the public interest; and

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

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

4 (1) by striking “six months” and inserting
5 “180 days”; and

6 (2) by striking “the six-month period” and in-
7 serting “the 180-day period”.

8 **SEC. 110. LIMITATIONS ON THE RIGHT TO STRIKE.**

9 Section 13 of the National Labor Relations Act (29
10 U.S.C. 163) is amended by striking the period at the end
11 and inserting the following: “: *Provided*, That the dura-
12 tion, scope, frequency, or intermittence of any strike or
13 strikes shall not render such strike or strikes unprotected
14 or prohibited.”.

15 **SEC. 111. FAIR SHARE AGREEMENTS PERMITTED.**

16 Section 14(b) of the National Labor Relations Act
17 (29 U.S.C. 164(b)) is amended by striking the period at
18 the end and inserting the following: “: *Provided*, That col-
19 lective bargaining agreements providing that all employees
20 in a bargaining unit shall contribute fees to a labor organi-
21 zation for the cost of representation, collective bargaining,
22 contract enforcement, and related expenditures as a condi-
23 tion of employment shall be valid and enforceable notwith-
24 standing any State or Territorial law.”.

1 **TITLE II—AMENDMENTS TO THE**
2 **LABOR MANAGEMENT RELA-**
3 **TIONS ACT, 1947 AND THE**
4 **LABOR-MANAGEMENT RE-**
5 **PORTING AND DISCLOSURE**
6 **ACT OF 1959**

7 **SEC. 201. CONFORMING AMENDMENTS TO THE LABOR MAN-**
8 **AGEMENT RELATIONS ACT, 1947.**

9 The Labor Management Relations Act, 1947 is
10 amended—

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

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

21 **SEC. 202. AMENDMENTS TO THE LABOR-MANAGEMENT RE-**
22 **PORTING AND DISCLOSURE ACT OF 1959.**

23 Section 203(c) of the Labor-Management Reporting
24 and Disclosure Act of 1959 (29 U.S.C. 433(c)) is amended
25 by striking the period at the end and inserting the fol-

1 lowing “: *Provided*, That this subsection shall not exempt
2 from the requirements of this section any arrangement or
3 part of an arrangement in which a party agrees, for an
4 object described in subsection (b)(1), to plan or conduct
5 employee meetings; train supervisors or employer rep-
6 resentatives to conduct meetings; coordinate or direct ac-
7 tivities of supervisors or employer representatives; estab-
8 lish or facilitate employee committees; identify employees
9 for disciplinary action, reward, or other targeting; or draft
10 or revise employer personnel policies, speeches, presen-
11 tations, or other written, recorded, or electronic commu-
12 nications to be delivered or disseminated to employees.”.

13 **TITLE III—OTHER MATTERS**

14 **SEC. 301. SEVERABILITY.**

15 If any provision of this Act or the application thereof
16 to any person or circumstance is held invalid, the remain-
17 der of this Act, or the application of that provision to per-
18 sons or circumstances other than those as to which it is
19 held invalid, is not affected thereby.

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

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

Calendar No. 133

118TH CONGRESS
1ST Session
S. 567

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.

JULY 18, 2023

Reported without amendment