

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2289 Session of 2020

INTRODUCED BY WILLIAMS, DELLOSO, CIRESI, O'MARA, MALAGARI, KINSEY, HARKINS, SCHLOSSBERG, MADDEN, MARKOSEK, ISAACSON, KENYATTA, SAPPEY, McNEILL, HOHENSTEIN, OTTEN, ULLMAN, SHUSTERMAN, READSHAW, HILL-EVANS, DeLUCA, DEASY, NEILSON, DONATUCCI, ROEBUCK, BURGOS, KORTZ, A. DAVIS, HOWARD, DRISCOLL AND RAVENSTAHL, FEBRUARY 18, 2020

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, FEBRUARY 18, 2020

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
28 penalties," further providing for definitions; providing for
29 notice and regulations; further providing for unfair labor
30 practices and for representatives and elections; providing

1 for initial collective bargaining agreement; and further
2 providing for prevention of unfair labor practices and for
3 penalties.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

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

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

10 * * *

11 (d) The term "employee" shall include [any]--

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

22 (2) An individual performing any service shall be considered
23 an employe and not an independent contractor, unless--(i) the
24 individual is free from control and direction in connection with
25 the performance of the service, both under the contract for the
26 performance of service and in fact; (ii) the service is
27 performed outside the usual course of the business of the
28 employer; and (iii) the individual is customarily engaged in an
29 independently established trade, occupation, profession or
30 business of the same nature as that involved in the service
31 performed.

1 * * *

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

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

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

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

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

28 * * *

29 (g) To require or coerce an employe to attend or participate
30 in the employer's campaign activities unrelated to the employe's

1 job duties.

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

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

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

22 * * *

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

25 Section 7. Representatives and Elections.--* * *

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

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

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

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

30 (2) In any case in which a majority of the valid votes cast

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

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

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

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

1 or certified as a representative, or within a period as the
2 parties agree upon, the parties shall meet and commence to
3 bargain collectively and shall make every reasonable effort to
4 conclude and sign a collective bargaining agreement.

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

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

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

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

30 (3) The employes' cost of living.

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

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

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

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

9 (g) If the board finds that an employer has discriminated
10 against an employe in violation of this act or has committed a
11 violation of this act which results in the discharge of an
12 employe or other serious economic harm to an employe, the board
13 shall award the employe back pay without any reduction,
14 including any reduction based on the employe's interim earnings
15 or failure to earn interim earnings, front pay, consequential
16 damages and an additional amount as liquidated damages equal to
17 two times the amount of damages awarded. No relief under this
18 subsection shall be denied on the basis that the employe is, or
19 was during the time of relevant employment or during the back
20 pay period, an unauthorized alien as defined in section 274A(h)
21 (3) of the Immigration and Nationality Act (66 Stat. 163, 8
22 U.S.C. § 1324a(h)(3)) or any other provision of Federal law
23 relating to the unlawful employment of aliens.

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

29 (2) Any person who fails or neglects to obey an order of the
30 board shall forfeit and pay to the board a civil penalty of not

1 more than ten thousand dollars (\$10,000) for each violation,
2 which shall accrue to the board and may be recovered in a civil
3 action brought by the board. No action by the board under this
4 subsection may be made until thirty days following the issuance
5 of an order. Each separate violation of the order shall be a
6 separate offense, except that, in the case of a violation in
7 which a person fails to obey or neglects to obey a final order
8 of the board, each day such failure or neglect continues shall
9 be deemed a separate offense.

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

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

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

29 (b) If the board, or any agent designated by the board,
30 determines that an employer has violated section 4.1 or

1 regulations issued thereunder, the board shall--

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

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

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

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

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

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

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

26 (iii) The gross income of the employer.

27 (3) If the board determines, based on the particular facts
28 and circumstances presented, that a director's or officer's
29 personal liability is warranted, a civil penalty for a violation
30 described under this subsection may be assessed against a

1 director or officer of the employer who directed or committed
2 the violation, had established a policy that led to the
3 violation or had actual or constructive knowledge of and the
4 authority to prevent the violation and failed to prevent the
5 violation.

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

7 (1) Any person who is injured by reason of a violation of
8 section six may, after sixty days following the filing of a
9 charge with the board alleging an unfair labor practice, bring a
10 civil action in the appropriate court against the employer
11 within ninety days after the expiration of the sixty-day period
12 or the date the board notifies the person that no complaint
13 shall issue, whichever occurs earlier, provided that the board
14 has not filed a petition under this act prior to the expiration
15 of the sixty-day period. No relief under this subsection shall
16 be denied on the basis that the employe is, or was during the
17 time of relevant employment or during the back pay period, an
18 unauthorized alien as defined in section 274A(h) (3) of the
19 Immigration and Nationality Act (66 Stat. 163, 8 U.S.C. §
20 1324a(h) (3)) or any other provision of Federal law relating to
21 the unlawful employment of aliens.

22 (2) Relief granted in an action under paragraph (1) may
23 include--(i) back pay without any reduction, including any
24 reduction based on the employe's interim earnings or failure to
25 earn interim earnings; (ii) front pay, when appropriate; (iii)
26 consequential damages; (iv) an additional amount as liquidated
27 damages equal to two times the cumulative amount of damages
28 awarded under subparagraphs (i), (ii) and (iii); (v) in
29 appropriate cases, punitive damages in accordance with paragraph
30 (4); and (vi) any other relief authorized by section 706(g) of

1 the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241)
2 or under 42 U.S.C. § 1981a(b) (relating to damages in cases of
3 intentional discrimination in employment).

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

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

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