COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT
No. SJC-13572

PAUL D. CRANEY, KRISTEN ARUTE, and MICHAEL HRUBY,

Plaintiffs-Appellants

v.

ANDREA J. CAMPBELL, in her official capacity as the Attorney General

and

WILLIAM F. GALVIN, in his official capacity as the Secretary of State of the Commonwealth,

Defendants-Appellees.

On Reservation and Report from the Supreme Judicial Court for Suffolk County

OPENING BRIEF OF PLAINTIFFS-APPELLANTS

Kevin M. McGinty BBO #556780
kmmcginty@mintz.com
(617) 348-1688
Daniel J. Goodrich BBO #692624
djgoodrich@mintz.com
(617) 348-3010
MINTZ, LEVIN, COHN, FERRIS, GLOVSKY and POPEO, P.C.
One Financial Center
Boston, MA 02111

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Federal Cases

State Cases

Federal Statutes

State Statutes

Constitutional Provisions

Other Authorities

STATEMENT OF ISSUES

Whether the Attorney General erred in certifying Initiative Petition 23-35 for inclusion on the State election ballot in November 2024 because the Petition contains multiple subjects that are not "mutually dependent," that do not share a common purpose, and do not present voters with a unified statement of public policy, and thus are not "related" within the meaning of Article 48 of the Massachusetts Constitution. Specifically, whether the Petition's provision establishing a new class of workers as having the right to establish the terms of their relationship to the companies for which they work through collective bargaining is related to or mutually dependent on the provision granting the government the power to dictate and control rates of compensation and benefits that were the supposed object of the collective bargaining conducted by those workers and companies.

STATEMENT OF THE CASE

In 2023, proponents of a proposed initiative petition, titled "An Act Giving Transportation Network Drivers the Option to Form a Union and Bargain Collectively," submitted the signed petition to the Attorney General for certification. Record Appendix ("R.A.") 69, ¶3. The Attorney General numbered the proposed Initiative Petition as No. 23-35 (the "Petition"). *Id*. On or about September 6, 2023, the Attorney General certified that the Petition complied with Article 48 of the Massachusetts Constitution (R.A. 70, ¶4), and prepared a summary of the Petition. *Id*. at ¶5. Proponents of the Petition filed the Petition and Summary of the Petition with the Secretary of the Commonwealth, along with the requisite number of signatures. R.A. 70-71, ¶6, 8.

On January 3, 2024, the Secretary transmitted the Petition to the Clerk for the House of Representatives. R.A. 71, ¶9. If the proponents of the Petition timely submit sufficient additional signatures to the Secretary, the Secretary intends to include the proposed law in the Information for Voters Guide to be printed in summer 2024, and to print the Petition on the ballot for presentation to the people in November 2024. *Id*. at ¶10.

Plaintiffs, all of whom are registered voters in Massachusetts (R.A. 69, ¶1), filed an Amended Complaint on February 20, 2024, with the Supreme Judicial Court for Suffolk County. R.A. 7. The Amended Complaint sought writs of mandamus and

certiorari and a declaratory judgment requesting that the Court invalidate the Petition and quash the Attorney General's certification of the Petition. R.A. 21. On March 6, 2024, the parties filed, among other documents, a Joint Motion to Report the Case, requesting that the Single Justice of the Supreme Judicial Court for Suffolk County reserve and report the case to the Supreme Judicial Court for the Commonwealth to resolve all issues presented by the Complaint. R.A. 63. On March 7, 2024, the Single Justice (Georges, Jr., J.) reserved and reported the case for determination by the Supreme Judicial Court for the Commonwealth. R.A. 5.

STATEMENT OF THE FACTS

I. Introduction

This Petition advances a lengthy, detailed, complex, but ultimately self-contradictory scheme for extending collective bargaining rights to a specific class of independent contractors. It spans 32-pages and encompasses 12 sections, 27 subsections, 35 sub-subsections, and dozens of paragraphs inside each of those sub-subsections. Most of the Petition establishes a unique class of independent contractors—so-called "Transportation Network Drivers ("TNDs")—and then devises a detailed scheme for union organizing and collective bargaining activity that drastically departs from existing understandings of how collective bargaining functions. But the objective of allowing independent contractors to engage in collective bargaining is forbidden under existing state and federal antitrust and labor law. Accordingly, the Petition attempts to situate this scheme within antitrust exemptions for governmental action. It does so by treating the result of that elaborate collective bargaining regime as a mere "recommendation," and instead vests the Commonwealth with the authority to control the compensation[1] and benefits of

[1/] Although the Petition uses the term "wages" to refer to compensation paid to TNDs, TNDs are, by definition, not "employees," so they are not paid "wages." Instead, in practice, they are paid an "average hourly earnings" rate based on the TND's earnings divided by the total hours of engaged time worked by the TND on the Transportation Network Companies' online-enabled application during that period.

TNDs. The grant of state authority in the Petition is necessary to evade federal and state antitrust scrutiny. This ultimately results in the presentation of two separate and distinct policies to voters: (1) a policy advancing workers' rights to collectively bargain over rates of compensation, benefits, and working conditions; and (2) a policy giving the government the power to dictate and control workers' compensation and benefits. The presentation of these distinct and contradictory policy choices within a single petition violates Article 48 of the Massachusetts Constitution, which requires that initiative petitions contain only "subjects . . . which are related or which are mutually dependent." Art. 48, The Initiative, II, § 3. Failing that requirement, the Petition should not have been certified to be presented to the voters of the Commonwealth.

II. Legal Background

The Petition's incoherence stems from the longstanding prohibition on collective bargaining by independent contractors. To understand the Petition, it is first necessary to understand the laws it seeks to circumvent.

Under existing labor and antitrust law, the right to engage in collective bargaining extends only to employees. *See Mars Home for Youth v. NLRB*, 666 F.3d 850, 853 (3d Cir. 2011) ("To be entitled to the [National Labor Rrelations] Act's protections and includable in a bargaining unit, one must be an 'employee' as defined by the Act"). Ordinarily, a horizontal agreement to fix prices among market

participants is a per se violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. However, federal antitrust and labor laws establish statutory and non-statutory exemptions from antitrust scrutiny for collective bargaining between employees and employers. *See*, *e.g*., 15 U.S.C. § 17 and 29 U.S.C. § 52 (antitrust exemption under the Clayton Act); 29 U.S.C. §§ 104, 105, and 113 (antitrust exemption under the Norris LaGuardia Act); *Local Union No. 189 Amalgamated Meat Cutters v. Jewel Tea Co.*, 381 U.S. 676, 689-90 (1965) (establishing non-statutory exemption for agreements between unions and non-union actors). These exemptions do not apply to independent contractors. *See Mars Home for Youth, supra.* Any agreement among independent contractors to fix the prices paid for their services therefore constitutes a per se violation of the antitrust laws. *See United States v. McKesson & Robbins, Inc*., 351 U.S. 305, 309-10 (1956). Without some other applicable antitrust exemption, a state statute purporting to authorize independent contractors to engage in collective bargaining would be preempted by federal antitrust law. *See, e.g., Chamber of Commerce of the United States v. City of Seattle*, 890 F.3d 769, 777, 780 (9th Cir. 2018).

One possible exemption is the state action immunity doctrine. Established by the United States Supreme Court in *Parker v. Brown*, 317 U.S. 341 (1943), this doctrine holds that the Sherman Act does not apply to restraints established under a state's sovereign authority. *Id*. at 352; *see Tober Foreign Motors, Inc. v. Reiter*

Oldsmobile, Inc., 376 Mass. 313, 326-330 (1987) (the *Parker* doctrine applies state-action immunity to plaintiff's antitrust challenge to the constitutionality of G.L. c. 93B). If an enactment of the Commonwealth can be deemed to constitute state action, it will be exempt from antitrust scrutiny.

III. The Petition

Against this legal background, the Petition nominally seeks to create collective bargaining rights for TNDs, but only if they are not considered to be employees. The Petition expressly defines the term TND to exclude "any individual who . . . is an employee within the meaning of 29 U.S.C. § 152(3))." Petition, Section 2(F). This definition appears calculated to permit immediate organizing activity by TNDs, by tacitly acknowledging their status as independent contractors. Alternatively, it is written to take effect if the independent contractor status of TNDs could ultimately be confirmed through adoption of other petitions that are pending before this Court, *see Martin El Koussa & others* vs. *Attorney General & another*, SJC-13559, or by the outcome of litigation pending in the Superior Court. *See Healey v. Uber Techs*., No. 20-1519-BLS1 (Mass. Super. Ct.). In any of these circumstances, the Petition attempts to advance a mechanism by which TNDs may nonetheless organize and engage in collective bargaining, supposedly under the protection of state action antitrust immunity.

Sections 1(A) and (B) of the Petition lay out the policy and intent of the Petition. Section 1(A) declares "that the best interests of the commonwealth are served by providing transportation network drivers the opportunity to self-organize . . . , and to bargain collectively . . . , **subject to approval and ongoing supervision by the commonwealth.**" (Emphasis added). Section 1(A) thus would establish as policy of the Commonwealth that TNDs, uniquely among workers entitled to enter into collective bargaining agreements, would not actually have any control over their compensation, benefits, and working conditions, but would be subject to whatever compensation or conditions the Commonwealth were to deem appropriate.

Sections 1(B)(1) and (2) of the Petition then grant TNDs and Transportation Network Companies ("TNCs") the right to organize and bargain with each other. Section 1(B)(3) further states that the "intent and policy of the commonwealth is for the statutory and non-statutory labor exemptions from the federal antitrust laws and analogous commonwealth laws, to apply to [TNDs] who choose to form, join or assist labor organizations in labor activity in Massachusetts permitted hereby." Section 1(B)(4) then elaborates that the "commonwealth intends in authorizing and regulating [TNCs] and [TNDs] engaging in labor activity permitted hereby that state action immunity apply to this statute, and that such companies and drivers be immune from the federal and commonwealth antitrust laws to the fullest extent

possible in their conduct pursuant to this statute." Consistent with this statement of policy, the substantive provisions of the Petition establish a scheme for government control of rates, compensation, benefits, and working conditions that sits behind the façade of an arrangement for workers to organize and engage in collective bargaining on those very same issues.

The provisions for organizing TNDs appear in Section 5 of the Petition. There, beginning on page 18, the Petition establishes a detailed and complex process for designating a TND organization—i.e., a union—to serve as the collective bargaining representative of TNDs. Several provisions are of particular significance. The Petition first disenfranchises the least active half of all drivers with respect to the threshold question whether to organize. Specifically, the Commonwealth Employment Relations Board will determine, based on data provided by TNCs, the median number of drives completed by all TNDs in Massachusetts and then classify only those TNDs who have completed more than the median number of drives as "active TNDs." *See id*. § 2(A). To determine whether to certify a TND organization as the bargaining representative for all TNDs, only the votes of these active TNDs are counted. *See id*., § 5(D)(3). This means that the votes of TNDs who drove fewer than the median number of drives—or, in simpler terms, one-half of all TNDs—do not count. Among the half of TNDs who are not disenfranchised, designation by only five percent of them–meaning just two-and-half percent of all TNDs–suffices

to require an election to designate a TND organization as the exclusive bargaining entity. *See id*. The vote of only twenty-five percent of the active TNDs—or just 12.5% of all TNDs—is sufficient to appoint the TND organization as the exclusive bargaining representative. *See id*. Thus, even without the support of 87.5 percent of all TNDs, an entity so elected can ostensibly bargain terms for compensation, benefits, and working conditions for all drivers. The resulting terms will bind all TNDs, including those disenfranchised at the outset. In contrast, the NLRB requires at least thirty percent of workers to sign a petition stating that the workers want to establish a union before the board will even hold an election.[2/]

Section 6, starting on page 24, governs bargaining, impasse, and the Commonwealth's ultimate authority to control wages and working conditions, notwithstanding the collective bargaining process. Five of six subsections—Sections 6(A) through 6(E)—establish a detailed and elaborate process for TND organizations and TNCs to arrive at collectively bargained understandings. It is the sixth subsection, Section 6(F), which is buried on page 29 of the 32-page Petition, that gives the Secretary of Labor the power to approve or reject any collectively bargained agreement between TND organizations and TNCs, or any determination

---

2/ *See* National Labor Relations Board, Representation Petitions – RC, https://www.nlrb.gov/reports/nlrb-case-activity-reports/representation-cases/intake/representation-petitions-rc#:~:text=Employees%20or%20a%20union%20may,of%20votes%20decides%20the%20outcome (last visited Mar. 5, 2024).

reached by an arbitrator. Specifically, "Any recommendations agreed upon between TNCs and a TND organization acting as exclusive bargaining representative of TNDs in the bargaining unit and/or any determination reached by an arbitrator under this chapter shall be subject to review and approval by the Secretary of Labor" *Id*., § 6(F). Section 6(F) further states that "[i]n deciding whether to grant approval to the arbitrator's recommendations, the Secretary of Labor's decision shall be based on the factors specified in paragraph E(3)(f), above, and the policies set forth in section 1." *Id*. "In the event of disapproval," the Petition elaborates, "the Secretary of Labor may make recommendations for amendments to the agreement or determination that would cause the Secretary of Labor to approve and afford the parties an opportunity to respond to those recommendations." *Id*. The ultimate decision of the Secretary of Labor will be final and apply for a term to be decided by the Secretary of Labor (not to exceed three years). *Id*. But the government's control of compensation and benefits does not stop there. At any time during that specified term, the Secretary of Labor has authority, *sua sponte*, to require changes in the terms that it previously dictated:

> If during the three year period (or any lesser period that the Secretary of Labor sets as a duration for the final determination), the Secretary of Labor determines that market conditions have changed, the Secretary of Labor shall give the exclusive bargaining representative, all TNCs, and TNDs the opportunity to submit comments and arguments concerning whether the final determination should be modified, and after receiving those comments, the Secretary of Labor may modify the final determination.

Id. Under Section 6(F), not only is the government not bound by the results of the collective bargaining process, but it retains plenary authority to revise the compensation and benefits of TNDs whenever and however it sees fit, subject only to the policy guidelines set forth in Section 6(E)(3)(f).

By making every collective bargaining agreement under the Petition subject to these specific criteria, the Petition dictates the terms of agreements between TNCs and TND organizations, eliminates any right of TNCs and TND organizations to place greater weight or value on other conditions, and establishes a comprehensive and continuous system of governmental control in place of the collective bargaining regime that the Petition is purportedly intended to enact.

SUMMARY OF THE ARGUMENT

The Petition ostensibly presents the voters with a single issue: whether to permit TNDs to form a union and bargain collectively. But buried within the Petition are requirements for compensation and benefits that must be addressed in the collective bargaining process, and which are subject to government approval. As a result, the Petition violates Article 48 of the Massachusetts Constitution by presenting two separate issues to be decided by voters of the Commonwealth: (1) Should a new class of workers (TNDs) have the right to establish the terms of their relationship to the companies for which they work through collective bargaining; and (2) should the government have the power to dictate and control compensation and benefits that were the supposed object of the collective bargaining conducted by those workers and companies?

Under Article 48 of the Constitution, petitions presented to the voters of the Commonwealth may only contain subjects that are related or are mutually dependent. The Petition satisfies neither requirement, advancing instead two unrelated policies: establishment of collective bargaining for drivers, and government control of rates, compensation, and benefits for those same drivers. The Petition does this through a lengthy and complex enactment that has the effect, if not purpose, of engendering voter confusion about what they are being asked to approve. For these reasons, it should not have been certified under Article 48.

ARGUMENT

I. Standard of Review

When a new law is proposed by initiative petition, before it can be presented to the Legislature and then to the voters for their consideration, the Attorney General must review it and certify that it meets the requirements of Article 48. *Oberlies v. Attorney General*, 479 Mass. 823, 829 (2018). Among other things, Article 48 requires that initiative petitions "contain only subjects . . . which are related or which are mutually dependent." *El Koussa v. Attorney General*, 489 Mass. 823, 827 (2022). These requirements arise "from a recognition that a voter, unlike a legislator, has no opportunity to modify, amend, or negotiate the sections of a law proposed by popular initiative." *Id*. "Because a voter cannot sever the unobjectionable from the objectionable and must vote to approve or reject an initiative petition in its entirety, the related subjects requirement serves to ensure that voters are not placed in the untenable position of casting a single vote on two or more dissimilar subjects" (quotations and citations omitted). *Id.* "Under art. 48, the Attorney General serves as the first line of defense against confusing, misleading, or otherwise invalid initiative provisions," *Carney v. Attorney General*, 447 Mass. 218, 225 (2006) ("*Carney I*"), but this Court, when exercising its constitutional authority, subjects the Attorney General's certification decisions to *de novo* review. *See Abdow v. Attorney General*, 468 Mass. 478, 487 (2014).

II. The Petition does not comply with Article 48 because its separate provisions establishing collective bargaining and government control of compensation and benefits are neither related to nor mutually dependent on one another.

A. The subjects of the Petition are not "mutually dependent" because collective bargaining and governmental compensation and benefit control can exist independently of each other.

Article 48's requirement that separate subjects be mutually dependent tests whether those subjects are so interrelated that they cannot stand on their own. "'[M]utually dependent' subjects are those that, if separated from one another, would no longer convey the meaning or purpose of the proposition." *Anderson v. Attorney General*, 479 Mass. 780, 807 (2018) (Budd, CJ., dissenting). Thus, the Court has "held that two provisions that 'exist independently' of each other are not mutually dependent." *Oberlies*, 479 Mass. at 829 (quoting *Gray v. Attorney General*, 474 Mass. 638, 648 (2016)). Put another way, provisions that are "mutually dependent" are those which, if severed, would "mean[] something different from the provisions together." *Anderson, 479 Mass.* at 810.

Such is not the case here. The Petition advances two provisions that can readily exist independently: (1) the provision for unionization and collective bargaining; and (2) the provision requiring government control of compensation and benefits in accordance with established statutory criteria. Collective bargaining occurs between workers and the businesses for which they work. It does not call for or require government involvement. Similarly, the government can and does regulate

relations between parties without either collective bargaining or any other predicate. Neither provision requires the other to have meaning or to be put into use.

In this way the Petition is like that in *Gray*. There, provisions "redefining the contents of the academic standards and curriculum frameworks for the Commonwealth's public schools" and requiring annual publication of mandatory diagnostic assessment tests from the prior year were not mutually dependent because they could "exist independently." *Gray*, 474 Mass. at 647-648. A standalone provision for testing transparency did not operationalize the underlying curriculum change, which likewise could take effect without the latter provision.

Like *Gray*, the Petition's tagalong provision for government approval of compensation and benefits (subject to criteria specified in the Petition) could easily exist without the collective bargaining activity that is the supposed object of the Petition. Regulatory acts subject to delegated authority are fundamental and well-known functions of the modern administrative state. *See generally* G. L. c. 30A; *see also Armstrong v. Secretary of Energy & Envtl Affairs*, 490 Mass. 243, 247 (2022) (agencies have authority to act within the scope of their statutory authorization).[3/] Likewise, workers and businesses conduct collective bargaining in the ordinary course without government involvement and can address any workplace issue they

[3/] Because the Commonwealth could feasibly exercise the wage and benefit-setting authority delegated in the Petition without the occurrence of any collective bargaining, it is unclear what purpose the latter serves.

wish to negotiate. *See* G. L. c. 150A, § 3 ("Employees, or a single employee in a one-man unit, shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection"). Parties may collectively bargain about compensation and benefits but need not do so. Employees can collectively bargain for workplace safety, job security, grievance procedures, seniority and promotion, disciplinary procedures, and training, to name a few. Such collective bargaining activity is the everyday province of organized labor and can easily stand alone in the absence of any government oversight.

The fact that the provision for government control is necessary to attempt to establish "state action" and avoid federal preemption does not establish mutual dependence for purposes of Section 48. The Court's cases addressing mutual dependence have concerned operational dependence rather than legal dependence. *See, e.g., Weiner v. Attorney General*, 484 Mass. 687, 691-95 (2020) (provisions broadly enhancing liquor enforcement, including as to underage drinking, addressed operational consequences of creating new license class for sale of beer and wine, making the provisions mutually dependent). But even if legal dependence were a valid frame of analysis that cannot pertain here, where the crux of the legal relationship is for the follow-on provision for government control to obliterate the

provision for collective bargaining. It would be perverse to find mutual dependence where the relationship between the two provisions is one of opposition rather than facilitation.

As to collective bargaining and government compensation and benefit control, the interrelationship required to establish mutual dependence simply does not exist. Standing in opposition to each other, neither provision is necessary to give the other effect. Nor are they rendered meaningless if separated. As a result, these separate and distinct policies are not mutually dependent within the meaning of Article 48.

B. The subjects of the Petition are not "related" under Article 48

To constitute related subjects for purposes of Article 48, the Court must be able to "identify a common purpose to which each subject of an initiative petition can reasonably be said to be germane." *Abdow*, 468 Mass. at 499-500 (quoting *Massachusetts Teachers Ass'n v. Secretary of Commonwealth*, 384 Mass. 209, 219-220 (1981)). The common purpose "may not be so broad as to render the relatedness limitation meaningless" (quotation and citation omitted). *Carney I*, 447 Mass. at 225. It "is not enough that the provisions in an initiative petition all 'relate' to some same broad topic at some conceivable level of abstraction." *Anderson*, 479 Mass. at 796 (quoting *Carney I*, 447 Mass. at 230). Instead, "to avoid 'abuse' of the process and confusion among voters, while an initiative petition may contain numerous subjects, it must embody one purpose. . . ." *Id*. at 786. Each subpart "must express an

operational relatedness among its substantive parts that would permit a reasonable voter to affirm or reject the entire petition as a unified statement of public policy." *Carney I*, 447 Mass. at 230-231.

The Court addresses the relatedness requirement by engaging in two inquiries. First, the Court asks whether "the similarities of an initiative's provisions dominate what each segment provides separately so that the petition is sufficiently coherent to be voted on 'yes' or 'no' by the voters?" *Oberlies*, 479 Mass. at 830. The similarities of an initiative petition dominate where one provision "is triggered by the implementation" of the other or where one provision "dictates how [the other provision] may be maintained." *Id.* at 831-832.

Second, the Court asks whether the initiative petition "express[es] an operational relatedness among its substantive parts that would permit a reasonable voter to affirm or reject the entire petition as a unified statement of public policy?" *Id*. at 830-31. An initiative petition's provisions are operationally related where one provision "anticipates and addresses a potential consequence" of another. *Id*. at 832. Both questions must be answered affirmatively to satisfy Article 48.

1. Collective bargaining, which empowers workers to negotiate all workplace issues, does not share a common purpose with government rate setting.

The supposed purpose of the Petition is evident from the title – to allow TNDs to "Form a Union and Bargain Collectively." Petition at 1; *see Opinion of the Justices to the House of Representatives*, 422 Mass. 1212, 1220 (1996) (noting that

party's statement of common purpose "finds support in the title of the petition"). That purpose, however, is not congruent with the provision vesting the government with the ultimate authority to control compensation and benefits for TNDs. While collective bargaining and government compensation and benefit control both generally relate to working conditions for TNDs, the two provisions address that general concern in inconsistent and ultimately contradictory ways. The total authority that the Petition grants the government to displace, disregard, and supplant collectively bargained outcomes places those two provisions substantially in conflict with each other. Where a petition takes away with one hand what it confers with the other, it self-evidently lacks any coherent, unifying purpose.

The decisions of the Court establish that discrete provisions advancing unrelated policy objectives, even where not so plainly at war with each other, will be found to lack a common purpose. In *Gray*, the Court held that the supposed common purpose of imposing "new procedural requirements on . . . educational standards" was too conceptual to unify the distinct operational impacts of the petition's subsections. 474 Mass. at 648-49. The Court identified two distinct sub-purposes within that broad purpose statement: (1) "redefining the contents of the academic standards and curriculum frameworks for the Commonwealth's public schools" and (2) requiring annual publication of mandatory diagnostic assessment tests from the prior year. *Id.* at 647. Even though all sections broadly addressed

educational matters, the petition still failed the relatedness test because it lacked an "operational connection to be 'related' within the meaning of art. 48" *Id*. at 648 (citation omitted). In other words, where the two provisions advance two separate public policy issues, having a common objective was not sufficient to knit them together. *Id*. at 648-649.

Similarly, the proponents of *Carney I* proposed to (1) amend certain criminal statutes to punish those who abused or neglected dogs and (2) ban parimutuel dog racing. 447 Mass. at 219-220 & n.7. The Court rejected the Attorney General's argument that these provisions were sufficiently related subjects based on a mutual connection to the purpose of promoting more humane treatment of dogs. It concluded that these provisions lacked a sufficient "operational relationship" between them to permit a reasoned vote on a uniform public policy question. The Court reasoned that:

> The voter who favors increasing criminal penalties for animal abuse should be permitted to register that clear preference without also being required to favor eliminating parimutuel dog racing. Conversely, the voter who thinks that the criminal penalties for animal abuse statutes are strong enough should not be required to vote in favor of extending the reach of our criminal laws because he favors abolishing parimutuel dog racing.

Id. at 231.

A similar logic pertains here, where the Petition bundles two disparate policy provisions—one establishing collective bargaining, the other mandating government

compensation and benefit control—that lack a coherent purpose. As reflected by the legislative history of the National Labor Relations Act of 1935, Pub. L. No. 74-198, 49 Stat. 449 (codified as amended at 29 U.S.C. §§ 151-169), the purpose of collective bargaining is to empower workers to negotiate a broad list of issues of their choosing in the way they choose. *See* S. Rep. No. 573, 74th Cong., 1st Sess., 2 (1935) ("Disputes about wages, hours of work, and other working conditions should continue to be resolved by the play of competitive forces . . . . This bill in no respect regulates or even provides for supervision of wages or hours . . . ."). Conversely, the provision of the Petition granting the Commonwealth the final word on compensation and benefits advances a policy of vesting control of those matters with the government. These are distinct policies, even if they are directed toward the same object. The voter who favors workers' rights and their ability to form unions to collectively bargain with companies should be able to "register that clear preference without also being required to favor" government control of compensation and benefits. *See Carney I*, 447 Mass. at 231. The same should be true for the voter who prefers government control of compensation rates and benefits over determining those things through collective bargaining. The discordant packaging of those two opposed regimes for ordering workplace relations deprives voters of the ability to choose only the option they prefer, requiring instead that they swallow the Petition

whole to advance whichever objective they truly favor. As a result, voters are improperly presented with distinct policy issues, which is prohibited by Article 48.

2. The provisions for collective bargaining and government control of compensation and benefits are not operationally related.

Determining whether two provisions within a petition are operationally related "is not susceptible to bright-line analysis." *Carney I*, 447 Mass. at 226. But the Court's jurisprudence teaches that petitions that pass judicial muster usually fall into one of two categories: (1) those in which a "primary" provision directly served the petition's purpose, and a "secondary" term anticipated and mitigated a potential (and potentially objectionable) consequence of the primary provision's operation; or (2) those in which the various provisions all supported an integrated statutory scheme. This Petition falls into neither category.

a. Neither provision anticipates and addresses a potential consequence of the other.

In *Oberlies*, the Court considered an initiative petition that sought to limit the number of patients assigned to each nurse in different hospital settings, but also prescribed that hospitals were forbidden to pay for the cost of any required increases in nursing staffing levels by reducing staffing levels of other health care workers at the facility. The Court concluded that these two provisions were operationally related because the non-nursing staffing provision anticipated and addressed a potential consequence of the petition's nurse staffing requirement. *See Oberlies*, 479 Mass. at 831-832. As the Court later explained in *Colpack v. Attorney General*, 489

Mass. 817 (2022), the workforce reduction restriction at issue in *Oberlies* was "simply one piece of the proposed integrated scheme" and operationally related to the rest of the proposal "because it anticipated and addressed a potential consequence of the nurse-patient staffing ratios, namely that if hospitals were economically burdened by hiring more registered nurses, they might attempt to compensate by reducing the numbers of other staff." 489 Mass. at 817 (citation omitted). *See also*, 484 Mass. at 692 (2020) (the provision in *Oberlies* prohibiting facilities from reducing their non-nursing staff "sought to mitigate this objectionable consequence and thus was operationally related to the patient assignment limits"). This Court has applied the same analysis in other cases where one provision in a petition addresses

potential consequences of another.[4/] In *Weiner*, for example, this Court reviewed an initiative petition that would have created a new type of license for the sale of beer and wine by retail food stores for off-premises consumption, gradually increased and eventually eliminated the per-retailer limit on licenses for the retail sale of alcohol for off-premises consumption, required certain forms of identification as proof of age for all off-premises consumption sales, and provided additional resources for the enforcement of laws regulating the sale of alcoholic beverages. *See id.* at 689-690. The Court concluded that the secondary provisions that imposed new procedures for preventing the sale of alcohol to minors "anticipate[d] and mitigate[d] the

---

[4/] *Dunn v. Attorney General*, 474 Mass. 675, 681 (2016) (secondary provision that prohibited sale in Massachusetts of meat and eggs from inhumanely-raised animals "complemented" primary provision that prohibited Massachusetts farmers from treating their animals inhumanely; "sales" provision prevented out-of-state farmers from exploiting potential competitive advantage gained by additional regulations imposed on Massachusetts farmers by "farm" provision); *Colpack*, 489 Mass. at 818-819 (2022) (secondary provisions that tightened procedures for alcohol sales and enhanced fines for violations were related to primary provisions intended to make alcohol purchases more convenient because the secondary provisions "arguably serve to moderate the effect of these changes"); *Clark v. Attorney General*, 489 Mass. 840, 845-847 (2022) (secondary provision that required insurers to disclose financial information about all lines of insurance were related to primary provisions that established regulatory structure for dental insurance based on "medical loss ratio" (MLR); secondary provision "anticipates and mitigates a foreseeable consequence of prescribing a minimum MLR for dental benefit plan carriers with other lines of business" by enabling regulators to detect efforts to manipulate MLR by, e.g., hiding expenses of dental plans in financial statement of other business lines).

foreseeable consequences of lifting restrictions on licenses" and were therefore operationally related. *Id.* at 692.

The common thread binding these cases is that there would be no reason for the secondary provisions but for the primary purpose. The Petition here is distinct from those cases because collective bargaining can and does determine compensation and benefits without any need for government intervention. The insertion of the government control of compensation and benefits provision into the Petition is not meant to correct some potential occurrence that would prevent the fulfillment collective bargaining goals. There is no suggestion that TNDs and TND organizations, uniquely among all workers and unions, are incapable of governing their own affairs, or that their efforts to bargain collectively would likely result in outcomes that warrant correction by the Secretary of Labor. Instead, vesting compensation and benefit control with the government reflects an entirely different policy choice that is separate and distinct from collective bargaining. There is no operational relatedness between the primary and secondary provisions because the government control component is unnecessary to mitigate any objectionable consequence of the collective bargaining scheme. *See Weiner*, 484 Mass. at 692.

Here again this case resembles *Gray*. There, while most of the petition sought to regulate the curriculum frameworks in Massachusetts public schools, the petition also would have required the annual release of standardized test questions and

answers from the previous year. 474 Mass. at 641-643. The apparent goal of the releasing standardized test questions was "to make more transparent the standardized diagnostic assessment tests and testing process." *Id*. at 647. Although the Attorney General argued in *Gray* that the "twin educational facets of curriculum and assessment are inextricably coupled," the Court held that such a relation was insufficient under Article 48. *Id*. at 648. Instead, the Court concluded that the petition lacked operational relatedness because the "proposed policy of increasing transparency" operated "regardless of the content of the curriculum standards used." *Id*. at 648-649.

Likewise, the Petition here lacks an operational relatedness because the collective bargaining scheme can operate regardless of the government control provision. They are two distinct public policy issues that can exist separately. The Petition thus fails the most basic inquiry into relatedness by preventing voters from "affirm[ing] or reject[ing] the entire petition as a unified statement of public policy[.]" *Oberlies*, 479 Mass. at 830-831.

b. Because collective bargaining and government control provisions are mutually contradictory, they are not supporting elements of an integrated scheme.

When petitions advance distinct policies, sometimes as part of a lengthy, complex, and detailed enactment, the relatedness of the disparate provisions is sometimes justified on the ground that they are part of an integrated implementation scheme to advance the primary purpose of the petition. The Court has addressed

these "implementation scheme" cases by considering whether the similarities of an initiative petition dominate where one provision "is triggered by the implementation" of the other or where one provision "dictates how [the other provision] may be maintained." *Oberlies*, 479 Mass. at 831-832.

Hensley v. Attorney General, 474 Mass. 651 (2016), illustrates how the Court applies this relatedness inquiry. There, the petitioners sought to legalize adult use marijuana, regulate the commercial distribution of marijuana, and tax the retail sale of marijuana. As part of that petition, together with lengthy and detailed provisions governing retail sales, the proposed law would have permitted existing medical marijuana treatment centers already operating under preexisting state law to begin to operate adult use facilities in the same location.

The *Hensley* plaintiffs argued that the petition contained two unrelated subjects – "the legalization of marijuana for adult use and a change in the restrictions on medical marijuana treatment centers." *Hensley*, 474 Mass. at 656. The Court rejected that argument: the participation of medical marijuana treatment centers in the commercial distribution of marijuana was one piece of the "proposed integrated scheme" with a common purpose to "legalize marijuana (with limits) for adult use and to create a system that would license and regulate the businesses involved . . . ." *Id*. at 658-659.

The Court held that while drafters of the *Hensley* petition could have chosen to prohibit existing medical marijuana treatment centers from also obtaining an adult use license, that drafting choice did "not affect the coherence of the proposal as a unified statement of public policy that is a proper subject for a 'yes' or 'no' vote." *Id*. at 659. Voters who favored the legalization of marijuana but not the participation in the retail market of entities registered as medical marijuana treatment centers were free to vote "no" if they thought that the dangers of mixing medical marijuana distribution with retail distribution outweighed the benefits of the proposal, but the proposed act placed no one "in the untenable position of casting a single vote on two or more dissimilar subjects." *Id*. at 657 (quoting *Abdow*, 469 Mass. at 499). Thus, the petition "easily satisfie[d] the related subjects requirement." *Id*. at 658. *See also Abdow*, 468 Mass. at 502 (provisions that exempted horse racing, lotteries, and charity events from general prohibition of gambling were related elements of a plan "to redefine (and limit) the scope of permissible gambling in the Commonwealth"); *Massachusetts Teachers Ass'n v. Secretary of Commonwealth*, 384 Mass. 209 (1981) (provisions enacting various fiscal mechanisms were related as elements of a broad plan to reduce State and local taxation).

This Petition is not an "integrated scheme" case and is clearly distinguishable from *Hensley*. Unlike *Hensley*, the government control provision does not create a comprehensive regulatory mechanism to control the enforcement of the collective

bargaining provision. Nor does the government control provision dictate how the collective bargaining provision may be maintained. The two provisions are two distinct concepts—which would not permit a reasonable voter to affirm or reject the entire provision as a unified statement of public policy. *Carney I*, 447 Mass. at 230-31. Article 48 requires that voters have a right to make decisions at the polls without also being forced to render simultaneous judgments. In this case, the dueling provisions are unrelated, do not further the purpose of the other, and can exist entirely on their own. Applying the *Carney* and *Abdow* standards in the context here, a reasonable voter will be placed in the "untenable position of casting a single vote on two or more dissimilar subjects." *Abdow*, 468 Mass. at 499.

III. By combining disparate issues such as collective bargaining, compensation and benefit regulation, and other esoteric policy choices into a single lengthy enactment, the Petition creates a serious risk of voter confusion.

Buried within the Petition's 8810 words and 32 double-spaced pages lurk disparate policy questions that proponents have yoked to the simple question of whether TNDs should be permitted to bargain collectively. Not only does this include the unprecedented scheme that makes the Commonwealth the final arbiter of TNDs' compensation and benefits, but also provisions that would mean that TNDs, uniquely among workers allowed to form unions, would have a diminished say in the organization process, and the creation of a new worker classification that permits independent contractors to engage in collective bargaining. The length and

complexity of this Petition, combined with the incorporation of unrelated policy choices, increases the substantial risk of confusion that weighs against permitting this enactment to be presented to the voters of the Commonwealth.

The Court has repeatedly cautioned that one purpose of the relatedness requirement of Article 48 is to avoid voter confusion, most recently in *El Koussa v. Attorney General*, 489 Mass. 823 (2022). There, the Court struck down on relatedness grounds two similar initiative petitions regarding ride-share companies. Both petitions sought to define and regulate the contract-based relationship between ride-share companies and app-based drivers. In rejecting the petitions, the Court focused on "vaguely worded provisions placed in a separate section near the end of the laws" that classified app-based drivers as independent contractors for purposes of third-party lawsuits. *Id*. at 829. The Court held that including these provisions presented voters with a "substantively distinct policy decision." *Id*. at 830. The necessary sensitivity to the risk of voter confusion has salience for this Petition, where voters will be asked to wade through a bewildering set of changes to standard collective bargaining practice before even getting to the presentation of the distinct policy for government control of compensation and benefits. The effect, if not purpose, is to obscure the forest for the trees, frustrating voter understanding of what exactly they are being asked to approve.

A. The Petition dilutes the requirements for TNDs to force an election and to unionize.

Section 5 of the Petition, beginning on page 18, establishes a detailed and complex process for designating a TND organization to serve as the collective bargaining representative of TNDs. Yet the right to decide that issue does not extend to all TNDs. Only the votes of "active TNDs" count. To understand what that means requires returning to the definitions in Section 2, which specify that active TNDs are only those who drove more than the median number of rides in the prior year. Petition, § 2(A). This limitation immediately slices the electorate in half.

Section 5 then further pares down the thresholds for unionization, stating that only five percent of those active TNDs—or two-and-a-half percent of all TNDs—can vote to force an election, giving them the power to affect the fate of the other 97.5% of TNDs. Then, at the election stage, the vote of only twenty-five percent of the active TNDs (or 12.5% of all TNDs) is sufficient to appoint the union as the exclusive bargaining representative. Consequently, even without the support of 87.5 percent of all TNDs, an entity so elected can ostensibly bargain terms for compensation, benefits, and working conditions for all drivers. This scheme starkly contrasts Federal law, where the NLRB requires at least thirty percent of workers to sign a petition stating that the workers want to establish a union before the board will even hold a democratic election.

Many voters will have a difficult time parsing this provision. Some will not understand that a proposed statute that nominally advances worker empowerment disenfranchises half or more of all TNDs. Still others might misapprehend the import of Section 5, and mistakenly believe that the low interest and appointment thresholds foster worker control of compensation and benefits, not understanding that Section 6(F) takes that power away from workers and gives it to the government instead. The result is to increase the likelihood of voter confusion about the choices being presented to them in the Petition.

B. The Petition creates a new class of workers who can collectively bargain.

TNDs are not "employees," and independent contractors cannot form unions. To skirt this dilemma, the Petition establishes TNDs as a new class of workers permitted to organize in the Commonwealth. It attempts to situate this scheme within antitrust exemptions for governmental action. What remains is a comprehensive collective bargaining scheme with no teeth—the final arbiter of any collectively bargained decision is the government. As a result, voters would be hard-pressed to understand that they were being asked to adopt both collective bargaining and create a new class of independent contractors empowered to engage in collective bargaining.

C. The Petition styles itself as a law enabling TNDs to form unions, but it is instead an exercise in logrolling.

"Logrolling" refers to the bundling of multiple provisions such that they all gain approval, even if one or more of them would, standing alone, be rejected. *Carney I*, at 219 n.4. Logrolling is of particular concern when an unpopular provision could be hidden or made less apparent by a more attractive proposal that catches voters' attention. *Oberlies*, 479 Mass. at 830.

Here, an attractive provision (unionization) hides an unpopular provision (government control). The Petition's title, "An Act Giving Transportation Network Drivers the Option to Form a Union and Bargain Collectively," is itself misleading, because the workers' supposedly collectively bargained compensation and benefits are ultimately controlled by the government. The length of the Petition and the placement of its most controversial provision—buried on page 29 of the 32 page Petition—creates a substantial likelihood that voters will be drawn to the title of the Petition and its lengthy initial sections on collective bargaining, but not fully understand the scheme of government control that it really aims to accomplish. *El Koussa*, 489 Mass. at 829 ("Concealing controversial provisions in murky language" it not permitted under Article 48).

CONCLUSION

The incongruous pairing of collective bargaining with government control bespeaks a conviction that the only way to salvage collective bargaining rights for independent contractors is to render them nugatory. This awkward conceit yields a convoluted statutory scheme that summons the full panoply of evils that the relatedness requirement of Article 48 was meant to avoid. The Petition bundles contradictory provisions that are neither mutually dependent nor operationally related, denying voters a meaningful choice to express a uniform public policy. It obscures the grant of government authority, creating the risk that voters will unintentionally adopt that policy in the mistaken belief that the Petition's only purpose was to establish collective bargaining for TNDs. For all these reasons, plaintiffs respectfully ask the Court to quash the Attorney General's certification of Petition 23-35, and to enjoin the Secretary of the Commonwealth from placing the Petition on next November's ballot.

Dated: March 13, 2024

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C.

By: */s/ Kevin M. McGinty*

Kevin M. McGinty
BBO #556780
kmmcginty@mintz.com
(617) 348-1688
Daniel J. Goodrich
BBO #692624
djgoodrich@mintz.com
(617) 348-3010
One Financial Center
Boston, MA 02111

Attorneys for Plaintiffs-Appellants
PAUL D. CRANEY, KRISTEN ARUTE, and MICHAEL HRUBY

ADDENDUM

Addendum Table of Contents

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: SJ-2024-0059

PAUL D. CRANEY, KRISTEN ARUTE, and MICHAEL HRUBY

v.

ANDREA J. CAMPBELL, IN HER OFFICIAL CAPACITY AS THE ATTORNEY GENERAL, and WILLIAM F. GALVIN, IN HIS OFFICIAL CAPACITY AS THE SECRETARY OF THE COMMONWEALTH

v.

MARCELO CORDOBA, JUAN GARCIA, MARTIN PITNEY, and ROXANA LORENA RIVERA

RESERVATION AND REPORT

This matter came before the court, Georges, J., on a complaint for declaratory relief, relief in the nature of mandamus, and a writ of certiorari concerning whether an initiative petition may appear on the 2024 statewide ballot. The parties have requested a decision by July 1, 2024, in order to meet the applicable printing deadlines for the Information for Voters Guide disseminated to registered voters in the Commonwealth.

Upon consideration of the parties' submissions, I hereby reserve and report this case, for determination by the Supreme Judicial Court for the Commonwealth. The record before the full court shall consist of the following:

(1) all papers filed in SJ-2024-0059;

(2) the docket sheets for SJ-2024-0059; and

(3) this court's reservation and report.

The clerk of the county court shall assemble and transmit the record to the full court forthwith.

The plaintiffs shall be designated the appellants, and the defendants and intervenors shall be designated the appellees. The parties shall jointly prepare and file a statement of agreed facts in the full court. The plaintiffs' brief shall be filed no later than March 13, 2024. The defendants' and intervenors' briefs shall be filed no later than April 12, 2024. The plaintiffs' reply brief, if any, and any amicus briefs, shall be filed no later than April 19, 2024. Enlargements of time should not be anticipated. Oral argument shall take place in May 2024, or such other time as the full court may order. The matter shall proceed in all respects in conformance with the Massachusetts Rules of Appellate Procedure.

By the Court,

/s/ Serge Georges, Jr.
Serge Georges, Jr.
Associate Justice

Entered: March 7, 2024

INITIATIVE PETITION FOR A LAW

Be it enacted by the People, and by their authority:

An Act Giving Transportation Network Drivers the Option to Form a Union and Bargain Collectively

This Act, which adds Chapter 150F to the General Laws, creates the opportunity for workers in the digital transportation industry to form transportation network driver organizations and to negotiate on an industry-wide basis with companies in this industry on recommendations to the commonwealth that raise standards for the terms and conditions of work in this industry.

There shall be a new Chapter 150F that shall provide as follows:

Section 1. Findings and policy.

A. The commonwealth of Massachusetts recognizes that technological advancement has generated new "digital marketplaces" in the transportation sector, in which companies connect, through electronic media, customers seeking passenger transportation services to persons willing to supply that transportation service. These persons often suffer poor pay, inadequate health coverage, and irregular or inadequate working hours. It is hereby declared that the best interests of the commonwealth are served by providing transportation network drivers the opportunity to self-organize and designate representatives of their own choosing, and to bargain collectively in order to obtain sustainable wages, benefits and working conditions, subject to approval and ongoing supervision by the commonwealth. It is further declared that the best interests of the

An Act Giving Transportation Network Drivers the Option to Form a Union and Bargain Collectively

1. DV 2. AT 3. BA 4. PL 5. CR 6. MN 7. DC 8. OE 9. MY 10. KM

11. DN 12. mo 13. EH 14. BR 15. OFD 16. JB 17. FS 18. AML 19. ____

20. ____

commonwealth are served by the prevention or prompt resolution of disputes between rideshare network companies and the persons who supply the labor to effectuate those services. This chapter shall be deemed an exercise of the police power of the commonwealth, and shall be liberally construed for the accomplishment of its purposes.

B. For the reasons set forth in subdivision A, it is the public policy of the commonwealth to displace competition with regulation of the terms and conditions of work for transportation network drivers set forth herein; and, consistent with this policy, to exempt from federal and commonwealth antitrust laws, the formation of transportation network driver organizations and multi-company associations for the purposes of collective bargaining between transportation network companies and transportation network drivers on an industry-wide basis, and to supervise, evaluate, and if approved, implement the resulting negotiated recommendations concerning the terms and conditions of work for all transportation network drivers in an industry when those recommendations are found by the Secretary of Labor to advance the public purposes stated in this section and are then made binding, regardless of the competitive consequences thereof.

1. The commonwealth intends that transportation network drivers have the right to form, join, or assist labor organizations, to be represented through representatives of their own choosing, and to engage in other concerted activities for the purpose of bargaining with

An Act Giving Transportation Network Drivers the Option to Form a Union and Bargain Collectively

1.DV 2.AT 3.BA 4.AR 5.CR 6.MN 7.2C 8.OE 9.MY 10.KM
11.DN 12.MO 13.EH 14.BR 15.OFD 16.JB 17.FS 18.AM 19.____
20.____

transportation network companies and create negotiated recommendations, which shall form the basis for industry regulations.

2. The commonwealth intends transportation network companies have the right to form multi-company associations to represent them while bargaining with a transportation network driver organization to create negotiated recommendations, which shall form the basis for industry regulations.

3. The intent and policy of the commonwealth is for the statutory and non-statutory labor exemptions from the federal antitrust laws and analogous commonwealth laws, to apply to transportation network drivers who choose to form, join or assist labor organizations in labor activity in Massachusetts permitted hereby.

4. The commonwealth intends in authorizing and regulating transportation network companies and transportation network drivers engaging in labor activity permitted hereby that state action immunity apply to this statute, and that such companies and drivers be immune from the federal and commonwealth antitrust laws to the fullest extent possible in their conduct pursuant to this statute.

5. The commonwealth will actively supervise the labor activity permitted hereby conducted by transportation network companies and transportation network drivers pursuant to this statute to ensure that the conduct permitted by the statute protects the rights of workers and

1. DV 2. AT 3. 4. 5. 6. MN 7. DC 8. OE 9. MY 10. KM
11. DN 12. mo 13. EH 14. BR 15. OFD 16. JB 17. FS 18. 19. ____
20. ____

companies, encourages collective negotiation and labor peace, and otherwise advances the purposes of this Act.

Section 2. Definitions.

A. "Active transportation network driver" or "active TND" means a transportation network driver so designated pursuant to the following process: Upon request by the board, and at the completion of each calendar quarter thereafter, each transportation network company ("TNC") shall provide the board with information that identifies all transportation network drivers ("TND") who completed five or more rides that originated in the commonwealth of Massachusetts on the TNC's platform in the previous six months. Each TNC shall provide this information within two weeks after the end of each calendar quarter (March 31st, June 30th, September 30th, December 31st). Such information shall include only the name of the TND, the TND driver's license number, and the number of rides the TND completed through the TNC's platform in the previous six months. The board shall combine the data provided by all TNCs to determine the distribution of the number of rides completed by all TNDs for which data has been submitted, and then shall determine the median number of rides across TNDs for whom data has been submitted in the previous six months. Any TND who completed more than the median number of rides shall be considered an active transportation network driver in the rideshare industry.

1.DV 2.AT 3.AA 4.AR 5.CE 6.MW 7.DC 8.OE 9.MY 10.KM

11.DN 12.MO 13.EH 14.BR 15.OFD 16.JB 17.ES 18.PM 19.____

20.____

B. "Board" means the commonwealth employment relations board created by section 9R of Chapter 23 of the General Laws.

C. "Company union" means any committee, employee representation plan, or association of workers or others that exists for the purpose, in whole or in part, of dealing with TNCs concerning grievances or terms and conditions of work for TNDs, which (1) a TNC has initiated or created or whose initiation or creation it has suggested, participated in or in the formulation of whose governing rules or policies or the conducting of whose management, operations or elections the TNC participates in or supervises; or (2) which the TNC maintains, finances, controls, dominates, or assists in maintaining or financing unless required to do so by this chapter or any regulations implementing this chapter, whether by compensating anyone for services performed in its behalf or by donating free services, equipment, materials, office or meeting space or anything else of value, or by any other means. A TND organization shall not be deemed a company union only because it has negotiated or been granted the right to designate workers to be released with pay for the purpose of providing representational services in labor-management affairs on behalf of workers represented by the TND organization, or where, in the course of providing representational services to workers for whom it is the exclusive bargaining representative, a TNC allows agents of the TND organization to meet with workers at the TNC's premises.

1. DV 2. AT 3. RA 4. RC 5. ER 6. MV 7. JC 8. OE 9. MY 10. KM

11. DN 12. mo 13. EH 14. BR 15. OFD 16. SB 17. FS 18. AMC 19. _____

20. _____

D. "Exclusive bargaining representative" means a TND organization certified by the board, in accordance with this chapter, as the representative of TNDs in a bargaining unit.

E. "Network company" means a TNC, except that a business entity that maintains an online-enabled application or platform that meets all three of the following tests is not a network company: (1) it is used to facilitate primarily non-rideshare services within the commonwealth of Massachusetts, (2) less than seven and one-half percent of service requests fulfilled through the platform on an annual basis are for rideshare services, and (3) fewer than ten thousand service requests fulfilled through the platform in any year are for rideshare services. For purposes of this paragraph, all applications or platforms used by corporate entities under common control shall be considered a single application or platform.

F. "Transportation network driver" or "TND" means a transportation network driver as described by § 1 of Chapter 159A1/2 of the General Laws. TND shall not include any individual who, with respect to the provision of services through a TNC's online enabled-application or platform, is an employee within the meaning of section 29 U.S.C. § 152(3).

G. "Transportation network driver organization" or "TND organization" means any organization in which network drivers participate, and which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with network

1.DV 2.KT 3.AA 4.RR 5.CR 6.MN 7.DC 8.OE 9.MY 10.KM

11.DN 12.MO 13.EH 14.BR 15.OFD 16.JB 17.FS 18.PML 19.____

20.____

companies concerning grievances, terms or conditions of work, or of other mutual aid or protection and which is not a company union as defined herein.

H. "Transportation network company" or "TNC" means a transportation network company as described by § 1 of Chapter 159A1/2 of the General Laws.

I. "Unfair work practices" means only those unfair work practices listed in section 4, below.

Section 3. Rights of TNDs.

TNDs shall have the right of self-organization, to form, join, or assist TND organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection free from interference, restraint, or coercion by TNCs, and shall also have the right to refrain from any of these activities. Nothing contained in this chapter shall be interpreted to prohibit TNDs from exercising the right to confer with TNCs at any time, provided that during such conference there is no attempt by such TNC, directly or indirectly, to interfere with, restrain or coerce such workers in the exercise of the rights guaranteed by this section.

Section 4. Unfair work practices.

A. It shall be an unfair work practice for a TNC to:

1. fail or refuse to provide the board with an accurate list of the names, trips made, and contact information for TNDs, as required by this chapter;

2. refuse to negotiate in good faith with a certified or recognized TND organization representing TNDs engaged with such TNC concerning wages, hours, or terms and conditions of work. Since the obligation to negotiate in good faith includes an obligation to provide requested information that has a bearing on the bargaining process, it is also an unfair work practice for a TNC to refuse to provide a certified or recognized TND organization with relevant information requested by the TND organization for the performance of its duties as the TND's bargaining representative;

3. refuse to provide a TND organization with a list of the names, addresses and telephone numbers of TNDs where the provision of such list is required by this chapter;

4. refuse to continue all the terms of a determination of terms and conditions of work prescribed by the Secretary of Labor pursuant to this chapter until a new determination is prescribed;

5. lockout TNDs. The term "lockout" shall mean, for the purposes of this section, a refusal by a TNC to permit a TND normal access to the TNC's means of connecting TNDs to individuals seeking transportation service as a result of a dispute with such workers or a TND organization representing such workers that affects wages, hours and other terms and conditions of work of such workers, provided, however, that a lockout shall not include a termination of engagement of a worker for good cause that does not involve such worker exercising any rights guaranteed by this chapter.

1.DV 2.AT 3.AA 4.RR 5.ER 6.MN 7.DC 8.OE 9.MY 10.KM

11.DN 12.mo 13.EH 14.BR 15.OFD 16.JB 17.ES 18.PWL 19.____

20.____

6. To spy upon or keep under surveillance, whether directly or through agents or any other person, any activities of TNDs, those workers' representatives, or any other person, or any activities of such workers or those workers' representatives in the exercise of the rights guaranteed by this chapter.

7. To dominate or interfere with the formation, existence, or administration of any TND organization, or to contribute financial or other support to any such organization, directly or indirectly, unless required to by this chapter or by any regulations implementing this chapter, including but not limited to the following:

(a) by participating or assisting in, supervising, or controlling (i) the initiation or creation of any such organization or (ii) the meetings, management, operation, elections, formulation or amendment of constitution, rules or policies, of any such organization

(b) by offering incentives to TNDs to join any such organization;

(c) by donating free services, equipment, materials, office or meeting space or anything else of value for the use of any such organization; provided that a TNC shall not be prohibited from permitting workers to perform representational work protected under this chapter during working hours without loss of time or pay or from allowing agents of a TND organization that is the exclusive representative of its network workers from meeting with workers on its premises.

1. DV 2. AT 3. MA 4. RR 5. CR 6. MN 7. DC 8. OE 9. MX 10. KM

11. DN 12. MO 13. EH 14. BR 15. OA 16. JB 17. ES 18. PM 19. ____

20. ____

8. To require a TND to join any company union or TND organization or to require a TND to refrain from forming, or joining or assisting a TND organization of their own choosing.

9. To encourage membership in any company union or discourage membership in any TND organization, by discrimination in regard to hire, tenure, or in any term or condition of employment or engagement.

10. To discharge or otherwise discriminate against a TND because they have signed or filed any affidavit, petition or complaint or given any information or testimony under this chapter.

11. To distribute or circulate any blacklist of individuals exercising any right created or confirmed by this chapter or of members of a TND organization, or to inform any person of the exercise by any individual of such right, or of the membership of any individual in a TND organization for the purpose of preventing individuals so blacklisted or so named from obtaining or retaining opportunities for remuneration.

l2. To do any acts, other than those already enumerated in this section, which interfere with, restrain or coerce TNDs in the exercise of the rights guaranteed by this chapter.

B. It shall be an unfair work practice for a TND organization to:

1.DV 2.AT 3.BA 4.RR 5.CR 6.MN 7.DC 8.OE 9.MY 10.KM

11.DN 12.MO 13.EH 14.BR 15.DFD 16.JB 17.FS 18.PML 19.____

20.____

1. refuse to collectively bargain in good faith with a TNC, provided it is the certified or recognized representative of the company's workers. Since the obligation to negotiate in good faith includes an obligation to provide requested information that relates to the bargaining process, it is also an unfair work practice for a certified or recognized TND to refuse to provide information requested by a TNC organization that is relevant to the bargaining process;

2. restrain or coerce TNDs in the exercise of the rights guaranteed by this chapter; provided, however, that this paragraph shall not impair the right of a TND organization to prescribe its own rules with respect to the acquisition or retention of membership in the organization;

3. fail to fulfill its duty of fair representation toward TNDs where it is the exclusive bargaining representative by acts or omissions that are arbitrary, discriminatory, or in bad faith.

4. restrain or coerce a TNC in the selection of its representatives for the purpose of bargaining or the adjustment of grievances.

C. Prevention of unfair work practices.

1. The board is empowered and directed, as hereinafter provided, to prevent any TNC and any TND organization, from engaging in any unfair work practice described in this chapter. This power shall not be affected or impaired by any means of adjustment,

1. DV 2. AT 3. AA 4. AR 5. CR 6. MN 7. DC 8. OE 9. MY 10. KM

11. DN 12. MO 13. EH 14. BR 15. OD 16. JB 17. ES 18. AML 19. ____

20. ____

mediation or conciliation in labor disputes that have been or may hereafter be established by law or by the determination provided for in section 6(F), below. To prevent unfair work practices, each TNC shall, at least once each year, send a text message and an e-mail to each of its active TNDs in a form determined by the board notifying the TNDs of their rights under this chapter, and the procedure for filing an unfair work practice charge. The board shall also post a copy of this notice on its website.

2. Whenever it is charged that any TNC or TND organization has engaged in or is engaging in any such unfair work practice, the board, or any agent or agency designated by the board for such purposes, shall have power to issue and cause to be served upon such TNC or TND organization, a complaint stating the charges in that respect, and containing a notice of hearing before the board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after service of said complaint. Any such complaint may be amended by the member, agent or agency conducting the hearing or the board in its discretion at any time prior to the issuance of an order based thereon. The TNC or TND organization so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the board, any other person may be allowed to intervene in the said proceeding and to present testimony. In

1. DV 2. AT 3. MA 4. RR 5. CR 6. MN 7. DC 8. OE 9. MY 10. KM
11. DN 12. MO 13. EH 14. BR 15. OFD 16. JB 17. FS 18. PWL 19. ____
20. ____

any such proceeding, the rules of evidence prevailing in courts of law or equity shall not be controlling.

3. If, upon the record before them such member, agent, or agency shall determine that an unfair work practice has been committed by a TNC or TND organization named in the complaint, they shall issue and cause to be served upon the person committing the unfair work practice an order requiring such person to cease and desist from such unfair work practice, and to take such further affirmative action as will effectuate the provisions of this chapter including, but not limited to (a) withdrawal of recognition from and refraining from bargaining collectively with any organization or association, agency or plan that is either defined in this chapter as a company union, or established, maintained or assisted by any action defined in this chapter as an unfair work practice; (b) awarding back pay or other restoration of compensation, without any reduction based on the TND's interim earnings or failure to earn interim earnings, consequential damages, and an additional amount as liquidated damages equal to two times the amount of damages awarded; (c) requiring reengagement or reestablishment of the TNC's preexisting relationship with improperly, adversely affected TNDs, with or without compensation, or maintenance of a preferential list from which such worker shall be re-engaged or the relationship reestablished, and such order may further require such respondent to make reports from time to time showing the extent to which the order has been complied with;

1.DV 2.AT 3.MA 4.RR 5.CR 6.MN 7.DC 8.OF 9.MX 10.KM

11.DN 12.MO 13.EH 14.BR 15.OTD 16.JB 17.FS 18.PML 19.____

20.____

(d) requiring respondent to provide the complainant with a list of all TNDs, together with those workers' physical and e-mail addresses and known telephone numbers; and (e) requiring the TNC to recognize and bargain with a TND organization if the board determines that the unfair work practice interfered with the TND's right to form or join a TND organization. If the member, agent, or agency determines that an unfair work practice has not been committed, they shall issue an order dismissing the complaint. An order issued pursuant to this subsection shall become final and binding unless, within ten days after notice thereof, any party requests review by the full board. A review may be made upon a written statement of the case by the member, agent, or agency agreed to by the parties, or upon written statements furnished by the parties, or, if any party or the board requests, upon a transcript of the testimony taken at the hearing, if any, together with such other testimony as the board may require.

If, upon the record before it, the board determines that an unfair practice has been committed it shall state its findings of fact and issue and cause to be served on the TNC or TND organization an order requiring such company or organization to cease and desist from such unfair work practice, and to take such further affirmative action as will effectuate the provisions of this chapter. If, upon the record before it, the board determines that an unfair work practice has not been committed, it shall state its findings of fact and shall issue an order dismissing this complaint.

1.DN 2.AT 3.RA 4.PK 5.CR 6.MN 7.DC 8.OF 9.MY 10.KM

11.DN 12.mo 13.EH 14.BR 15.OFD 16.JB 17.FS 18.PML 19.____

20.____

4. Until the record in a case shall have been filed in a court, as hereinafter provided, the board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

5. The board may institute appropriate proceedings in the appeals court for enforcement of its final orders.

6. Any party aggrieved by a final order of the board may institute proceedings for judicial review in the appeals court within thirty days after receipt of said order. The proceedings in the appeals court shall, insofar as applicable, be governed by the provisions of section fourteen of chapter thirty A.

7. Injunctive relief.

(a) A party filing an unfair work practice charge under this section may petition the board to obtain injunctive relief, pending a decision on the merits of said charge by the board, upon a showing that: (i) there is reasonable cause to believe an unfair work practice has occurred, and (ii) it appears that immediate and irreparable injury, loss or damage will result thereby rendering a resulting judgment on the merits ineffectual necessitating the maintenance of, or return to, the status quo to provide meaningful relief. Such immediate and irreparable harm may include the chilling of workers in the exercise of rights provided by this chapter.

1. DV 2. AT 3. MA 4. RR 5. CR 6. MN 7. DC 8. OE 9. MY 10. KM
11. DN 12. MO 13. EH 14. BR 15. OD 16. JB 17. FS 18. PML 19. _____
20. _____

(b) Within ten days of the receipt by the board of such petition, if the board determines that a charging party has made a sufficient showing both that there is reasonable cause to believe an unfair work practice has occurred and it appears that immediate and irreparable injury, loss or damage will result therefrom, rendering a resulting judgment on the merits ineffectual necessitating maintenance of, or return to, the status quo to provide meaningful relief, the board shall petition the superior court in any county where the unfair work practice occurred upon notice to all parties for the necessary injunctive relief or, if the board determines not to seek injunctive relief, the charging party may seek injunctive relief by petition to the superior court, in which case the board must be joined as a necessary party. The board or, where applicable, the charging party, shall not be required to give any undertakings or bond and shall not be liable for any damages or costs that may have been sustained by reason of any injunctive relief ordered. If the board fails to act within ten days as provided herein, the board, for purposes of review, shall be deemed to have made a final order determining not to seek injunctive relief. In the case of a TNC's failure to provide an accurate list of names and addresses of TNDs, immediate and irreparable injury, loss, or damage shall be presumed.

1.DV 2.AT 3.DA 4.AR 5.CR 6.MN 7.DC 8.OE 9.MY 10.KM
11.DN 12.MO 13.EH 14.BR 15.OFB 16.JB 17.TS 18.PMR 19.____
20.____

(c) Injunctive relief may be granted by the court, after hearing all parties, if it determines that there is reasonable cause to believe an unfair work practice has occurred and that it appears that immediate and irreparable injury, loss, or damage will result thereby rendering a resulting judgment on the merits ineffectual necessitating maintenance of, or return to, the status quo to provide meaningful relief. Such relief shall expire on decision by the board finding no unfair work practice to have occurred, successful appeal of the grant of injunction relief, or motion by respondent to vacate or modify the injunction pursuant to the provisions of the rules of civil procedure. The board shall conclude the hearing process and issue a decision on the merits within one hundred eighty days after the imposition of such injunctive relief unless mutually agreed by the respondent and charging party.

(d) A decision on the merits of the unfair work practice charge by the board finding an unfair work practice to have occurred shall continue the injunctive relief until either: (i) the respondent implements the remedy, or (ii) the respondent successfully moves in court to set aside the board's order, pursuant to provisions of Chapter 30A of the General Laws.

(e) Any injunctive relief in effect pending a decision by the board (i) shall expire upon a decision by the board finding no unfair work practice to have

1.DV 2.AT 3.BA 4.RR 5.CR 6.MN 7.DC 8.OE 9.MY 10.KM
11.DN 12.MO 13.EH 14.BR 15.OD 16.JB 17.FS 18.AML 19.____
20.____

occurred, of which the board shall notify the court within two business days, or (ii) shall remain in effect only to the extent it implements any remedial order issued by the board in its decision, of which the board shall notify the court within two business days.

(f) The appeal of any order granting, denying, modifying, or vacating injunctive relief ordered by the court pursuant to this subdivision shall be made in accordance with the rules of appellate procedure.

(g) Except as provided in this section, judicial review of the orders of the board shall be as provided for section 9, below.

Section 5. Representatives.

A. After receiving the information identified in Section 2(A) from each TNC at the conclusion of each calendar quarter (March 31, June 30, September 30, December 31), the board shall provide each TNC with the names of the active TNDs who have driven for that TNC, and each TNC shall have 30 days to submit to the board, in an electronic format to be determined by the board, the phone numbers, mailing addresses, and email addresses for each active TND. These records shall not be subject to disclosure pursuant to Chapter 66 of the General Laws.

B. Bargaining unit. For purposes of this chapter, each TND shall be included in an industry-wide bargaining unit of all TNDs.

1.DV 2.AT 3.AA 4.RR 5.CR 6.MN 7.DC 8.OE 9.MY 10.KM

11.ON 12.MO 13.EH 14.BR 15.VD 16.JB 17.ES 18.PMC 19.____

20.____

C. Showing of designation of representative. A TND organization may demonstrate that it has been designated as a bargaining representative by presenting to the board cards, petitions, or other evidence, which may be in electronic form, sufficient to show the TND has authorized the TND organization to act as the worker's exclusive bargaining representative. To be valid, such card, petition, or other evidence must have been executed by the worker within one year of the date the TND organization submits the evidence to the board. Execution may be electronic.

D. Representative status.

1. Upon the request of a TND organization, the board shall make a determination that such organization has been designated as bargaining representative by at least five percent of active TNDs in the bargaining unit.
2. Once the board determines that the TND organization has been designated as the bargaining representative of at least five percent of active TNDs in the bargaining unit, the board shall (a) require each TNC to send a notice, in a form determined by the board, that the TND organization is seeking to represent TNDs for the purpose of initiating a bargaining process in order to establish terms and conditions for the industry; and (b) provide the TND organization with a complete list of names, phone numbers, mailing address, and electronic mail address for all active TNDs in the bargaining unit. The board will provide the TND organization with an updated list each quarter for the next year. For six months from the date

1. DV 2. AT 3. RA 4. RR 5. CR 6. MN 7. DC 8. OE 9. MY 10. KM
11. DN 12. mo 13. EH 14. BR 15. OB 16. JB 17. FS 18. PM 19. _____
20. _____

of the board's determination that a TND organization has met the five percent threshold in a bargaining unit, no other TND organization may be certified as the exclusive bargaining representative of those workers without an election.

3. Exclusive representative status. A TND organization that provides evidence to the board that it has been designated as bargaining representative by twenty-five percent of active TNDs in the bargaining unit shall be certified as the exclusive bargaining representative of all TNDs in the bargaining unit. In the alternative, a TND organization that has been designated as the bargaining representative of at least five percent of active TNDs in the bargaining unit may petition the board to conduct an election. The election shall be conducted as expeditiously as possible, and if the TND organization receives a majority of valid votes cast it shall be certified as the exclusive bargaining representative.

4. Determination of Exclusive Representative Status in the Event of a Dispute among TND organizations.

    (a) If a TND organization seeking certification as the exclusive bargaining representative provides evidence that shows that less than a majority of active TNDs have designated the TND organization as their bargaining representative, the board shall wait seven days before certifying the TND organization as exclusive bargaining representative. If, during those seven

1.DV 2.__ 3.__ 4.RR 5.ER 6.MN 7.DC 8.OF 9.MY 10.KM
11.DN 12.MO 13.EH 14.BR 15.__ 16.JB 17.__ 18.PMK 19.____
20.____

days, another TND organization provides evidence that at least 25 percent of active TNDs in the bargaining unit have designated it as their bargaining representative, or a TND provides evidence that at least 25 percent of active TNDs in the bargaining unit do not wish to be represented by any TND organization, then the board shall hold an election among all active TNDs in the bargaining unit. Such election shall be conducted as expeditiously as possible. A TND organization receiving a majority of the valid votes cast shall be certified as the exclusive bargaining representative of all TNDs in the bargaining unit. When two or more TND organizations are on the ballot and none of the choices (the TND organizations or "no worker organization") receives a majority of the valid votes cast, there shall be a run-off election between the two choices receiving the largest and second largest number of votes. A TND organization receiving a majority of the valid votes cast in the run-off shall be certified as the exclusive bargaining representative of all TNDs in the bargaining unit, and it shall owe a duty to fairly represent all such workers. If a majority of the valid votes cast are for "no worker organization," then the board will not certify any worker organization as the exclusive bargaining representative. For purposes of this provision,

An Act Giving Transportation Network Drivers the Option to Form a Union and Bargain Collectively

1.DV 2.AT 3.AA 4.RR 5.CR 6.MN 7.JC 8.OE 9.MY 10.KM

11.DN 12.mo 13.EH 14.BR 15.DFD 16.JB 17.FS 18.BML 19.____

20.____

the operative list of active TNDs shall be based on the most recent quarterly list provided by the TNCs in accordance with section 5(A).

(b) A TND organization certified as the exclusive bargaining representative shall have the exclusive authority to represent the TNDs in the bargaining unit, without challenge by another TND organization, for the greater of (i) one year following certification; or (ii) the length of time that a final determination rendered by the Secretary of Labor under section 6(F) is in effect, provided that such period shall not be longer than three years following the date of issuance of such final determination. During the times when an exclusive bargaining representative is subject to challenge, TNDs may file for a decertification election upon a showing that at least twenty-five percent of the active TNDs in the bargaining unit have demonstrated support for the decertification. The board will then schedule an election to determine whether the TND organization has retained its status as exclusive bargaining representative. The TND organization shall retain its status as exclusive bargaining representative if it receives a majority of valid votes cast by active TNDs in the bargaining unit.

1.DV 2.AT 3.BB 4.RR 5.CR 6.MN 7.DC 8.OE 9.MY 10.KM

11.DN 12.MO 13.EH 14.BR 15.DTD 16.JB 17.FS 18.AWL 19.____

20.____

(c) If a TND organization has been designated the exclusive bargaining representative with respect to a bargaining unit, only that TND organization shall be entitled to (i) receive from the TNCs a list of all of their TNDs, together with phone numbers, mailing addresses, and electronic mail addresses; and (ii) shall be entitled to engage in bargaining with the TNCs for recommendations to the Secretary of Labor concerning wages, benefits and terms and conditions of work of the TNDs.

(d) Dues Deduction. A TND organization that has been designated as the exclusive bargaining representative with respect to the bargaining unit shall have a right to voluntary membership dues deduction upon presentation of dues deduction authorization cards signed by individual TNDs, which may be in electronic form. A TNC shall commence making such deductions as soon as practicable, but in no case later than thirty days after receiving proof of a signed dues deduction authorization card, and such dues shall be submitted to the TND organization within thirty days of the deduction. A TNC shall accept a signed authorization to deduct dues in any format permitted by Chapter 110G of the General Laws. The right to such membership dues deduction shall remain in full force and effect

1. DV 2. [illegible] 3. MA 4. RR 5. CR 6. MV 7. JC 8. OE 9. M / 10. KM

11. DN 12. mo 13. EH 14. BR 15. [illegible] 16. JB 17. JS 18. PMM 19. _____

20. _____

until an individual revokes membership in the TND organization in writing in accordance with the terms of the signed authorization.

Section 6. Bargaining, Impasse resolution procedures, and final determination by the Secretary of Labor.

A. Once the board determines that a TND organization is the exclusive bargaining representative for the bargaining unit, the board shall notify all TNCs, and all TNCs shall be required to bargain with the exclusive bargaining representative concerning wages, benefits, and terms and conditions of work. The terms and conditions to be bargained include, but are not limited to, the criteria for deactivating a TND and a dispute resolution procedure for resolving claims alleging unjust deactivation. To facilitate negotiations, the TNCs may form an industry association to negotiate on their behalf. If the TNCs choose not to form an association, any recommended agreement must be approved by (i) at least two industry member TNCs and (ii) member TNCs representing at least eighty percent of the market share of that industry in Massachusetts, with votes determined in proportion to the number of rides completed by TNDs contracting directly with the TNC in the two calendar quarters preceding the recognition of the certified representative.

B. Once the TND organization and the TNCs have reached a set of negotiated recommendations for the industry, the negotiated recommendations shall be submitted by the TND organization to a vote by all TNDs in the industry who have completed at least one

1.DV 2.AT 3.RK 4.RL 5.CR 6.MN 7.DC 8.OF 9.MY 10.KM
11.DN 12.MO 13.EH 14.BR 15.DFD 16.JB 17.FS 18.PWL 19.____
20.____

hundred trips in the previous quarter. If approved by a majority of TNDs who vote, the negotiated recommendations shall be submitted to the Secretary of Labor for approval. If a majority of valid votes cast by the TNDs are not in favor of the negotiated recommendations, the transportation network worker organization and the TNCs will resume bargaining.

C. For purposes of this section, an impasse may be deemed to exist if the TNCs and exclusive bargaining representative fail to achieve agreement by the end of a one hundred eighty-day period from the date a TND organization has been designated as the exclusive bargaining representative or from the expiration date of a prior determination by the Secretary of Labor as provided for in paragraph F, below.

D. Upon impasse, any of the affected TNCs or the exclusive bargaining representative may request the board to render assistance as provided in this section.

E. Upon receiving a timely request from an exclusive bargaining representative for commencement of an impasse proceeding, the board shall aid the parties as follows:

1. To assist the parties to effect a voluntary resolution of the dispute, the board shall appoint a mediator from a list of qualified persons maintained by the board; the parties shall be free to select a mediator satisfactory to them or to decline such selection.
2. If the mediator is unable to achieve agreement between the parties concerning an appropriate resolution within thirty days after the board has provided the parties

1. DV 2. AT 3. RA 4. RR 5. CR 6. MN 7. DC 8. OE 9. MX 10. KM
11. DN 12. MO 13. EH 14. BR 15. OFD 16. JB 17. FS 18. PMM 19. _____
20. _____

the list of mediators, any party may petition the board to refer the dispute to an arbitrator.

3. Upon timely petition of either party, the board shall refer the dispute to an arbitrator as hereinafter provided.

(a) Prior to submitting the dispute to an arbitrator, the board shall conduct an election among all TNDs in the industry who have completed at least one hundred trips in the previous quarter. The TNDs will choose between submitting the dispute to the arbitrator or decertifying the exclusive bargaining representative. If the majority of eligible votes cast are for decertification the exclusive bargaining representative shall be decertified and any existing regulations shall remain in place until they expire as provided in paragraph F below.

(b). If a majority of TNDs who vote choose to have an arbitrator appointed, the exclusive bargaining representative shall notify the board of the need to appoint an arbitrator, and the board shall notify the TNCs of this request. Each of the two groups of affected parties (affected TNCs being one group, and the exclusive bargaining representative being the other group) shall have an equal say in the selection of the arbitrator and each of the two groups shall share equally the cost of the arbitrator. If the parties are unable to agree upon the arbitrator within seven days after the board notifies the TNCs of the need to appoint an arbitrator, the

1.DV 2.AT 3.BA 4.RR 5.CR 6.MN 7.2 C 8.OE 9.MY 10.KM
11.DN 12.MO 13.EH 14.BR 15.DTD 16.JB 17.FS 18.PM 19.____
20.____

board shall submit to the parties a list of qualified, disinterested persons for the selection of an arbitrator. A representative of each of the two groups shall alternately strike from the list one of the names with the order of striking determined by lot, until the remaining one person shall be designated as the arbitrator. Each group shall select its representative for this purpose as it sees fit. A group's failure to agree upon the designation of its representative shall result in the failure of the striking procedure, but shall not impede the board's appointment of the arbitrator upon such failure. The striking process shall be completed within five days of receipt of the board's list. The representatives who undertake the striking shall notify the board of the designated arbitrator. In the event the parties are unable to select the arbitrator within five days following receipt of this list, the board shall appoint the arbitrator.

(c) The arbitrator shall hold hearings on all matters related to the dispute. The parties may be heard either in person, by counsel, or by other representatives, as they may respectively designate. The arbitrator shall determine the order of presentation by the parties, and shall have discretion and authority to decide all procedural issues that may be raised;

(d) The parties, including all TNCs engaging at least fifty TNDs in the bargaining unit and the exclusive bargaining representative affected, may present, either

1.DV 2.NT 3.BA 4.RL 5.CR 6.MN 7.DC 8.OE 9.MV 10.KM
11.ON 12.MO 13.EH 14.BR 15.OFD 16.JB 17.FS 18.PM 19.____
20.____

orally or in writing, or both, statements of fact, supporting witnesses and other evidence, and argument of their respective positions with respect to each case. The arbitrator shall have authority to require the production of such additional evidence, either oral or written as she or he may desire from the parties and shall provide at the request of either group of parties that a full and complete record be kept of any such hearings, the cost of such record to be borne by the requesting party. If such record is created, it shall be shared with all parties regardless of which party paid for it.

(e) Any TNC engaging less than fifty TNDs in the bargaining unit shall have the opportunity to make a written submission to the arbitrator.

(f) The arbitrator shall make a just and reasonable determination of the matters in dispute, and shall issue a determination that shall apply to all TNCs and the exclusive bargaining representative. In arriving at such determination, the arbitrator shall specify the basis for his or her findings, taking into consideration, in addition to any factors recommended by the parties that the arbitrator finds to be consistent with this chapter, including the following:

i. whether the wages, benefits, hours, and conditions of work of the TNDs achieve the policy goals set forth subdivision A of Section 1. This amount must take into account the real cost of living, it may substantially

1.DV 2.AT 3.BA 4.RR 5.CR 6.MN 7.DC 8.OE 9.MY 10.KM

11.DN 12.mo 13.EH 14.BR 15.BTO 16.JB 17.ES 18.PM 19.____

20.____

exceed any statutory minimum wage, and should be a sufficient amount such that the TNDs do not need to rely upon any public benefits;

ii. whether the most efficient way to provide benefits is through a portable benefits fund, and if so, how to best assess each TNC a portion of the costs of providing those benefits;

iii. the financial ability of the affected TNCs to pay for the compensation and benefits in question and the impact on the delivery of services provided by the companies;

iv. the establishment of reasonable dispute resolution mechanisms that will allow TNDs a reasonable expectation of uninterrupted work and permit TNCs to alter or terminate their relationships with workers if there is just cause for such; and

v. comparison of peculiarities in regard to other trades or professions, including specifically, (a) hazards of work; (b) physical qualifications; (c) educational qualifications; (d) mental qualifications; and (e) job training and skills.

F. Any recommendations agreed upon between TNCs and a TND organization acting as exclusive bargaining representative of TNDs in the bargaining unit and/or any determination reached by an arbitrator under this chapter shall be subject to review and approval by the

1.DV 2.AT 3.BB 4.AR 5.CR 6.MN 7.JC 8.OE 9.MY 10.KM
11.DN 12.MO 13.EH 14.BR 15.DPD 16.JB 17.FS 18.PMR 19.____
20.____

Secretary of Labor. In deciding whether to grant approval to the arbitrator's recommendations, the Secretary of Labor's decision shall be based on the factors specified in paragraph E(3)(f), above, and the policies set forth in section 1. In deciding whether to approve such agreement or determination, the Secretary of Labor shall afford the exclusive representative, all TNCs, and TNDs no more than thirty days to submit comments and arguments concerning whether approval is warranted. Within sixty days of the deadline for submitting comments, the Secretary of Labor shall approve or disapprove the agreement or determination. In the event of disapproval, the Secretary of Labor may make recommendations for amendments to the agreement or determination that would cause the Secretary of Labor to approve and afford the parties an opportunity to respond to those recommendations. The final determination by the Secretary of Labor shall include a date following which new terms may be set for the bargaining unit which date shall not be more than three years following the date of the issuance of the determination. If during the three year period (or any lesser period that the Secretary of Labor sets as a duration for the final determination), the Secretary of Labor determines that market conditions have changed, the Secretary of Labor shall give the exclusive bargaining representative, all TNCs, and TNDs the opportunity to submit comments and arguments concerning whether the final determination should be modified, and after receiving those comments, the Secretary of Labor may modify the final determination.

1.DV 2.AT 3.DH 4.RR 5.CL 6.MN 7.DC 8.OE 9.MV 10.KM

11.DN 12.MO 13.EH 14.BK 15.OFD 16.JB 17.FS 18.PMK 19.____

20.____

Section 7. Minimum Labor Standards. No agreement or determination made pursuant to this chapter shall diminish or erode any minimum labor standard that would otherwise apply to a TND.

Section 8. Preemption. This law shall not preempt any commonwealth enactment which provides greater benefits or protection to a TND.

Section 9. Judicial Review.

A. Final orders of the board made pursuant to this chapter shall be conclusive against all parties to its proceedings and persons who have had an opportunity to be parties to its proceedings unless reversed or modified in proceedings for enforcement or judicial review as herein provided. Final orders of the board shall be subject to review as provided in section 6 of Chapter 150A of the General Laws, provided that a final order of the board under section 5 of this chapter concerning the scope of bargaining units or the designation of a TND organization as an exclusive bargaining representative or as entitled to the production of lists of TNDs shall be overturned only if it is found to be arbitrary and capricious.

B. Final orders of the Secretary of Labor pursuant to section 6(F) of this chapter shall be conclusive against all affected TND organizations and all TNCs in the industry unless reversed or modified in proceedings for enforcement or judicial review as herein provided. Such final orders shall be subject to review in accordance with the provisions of section fourteen of

1. DV 2. AT 3. [illegible] 4. RR 5. CC 6. MN 7. DC 8. OF 9. MY 10. KM
11. DN 12. MO 13. EH 14. BR 15. OFD 16. JB 17. FS 18. PM 19.____
20.____

chapter 30A of the General Laws, provided, however, that the determination of the Secretary of Labor shall only be overturned if it is found to be arbitrary and capricious.

(C) Except in a proceeding brought to challenge a final order of the Secretary of Labor, the determination of an arbitrator shall not be subject to judicial review.

Section 10. Rules and Regulations.

The board shall make such rules and regulations as may be appropriate to effectuate the purposes and provisions of this chapter.

Section 11. Conflict of Laws.

In the event of any conflict with Chapter 150A of the General Laws, the provisions of this Chapter shall prevail.

Section 12. Severability.

The provisions of this act shall be severable and if any phrase, clause, sentence or provision of this article or the applicability thereof to any person, entity, or circumstance shall be held invalid, the remainder of this act and the application thereof shall not be affected.

1.DV 2.AT 3.MM 4.RR 5.CR 6.MN 7.DC 8.OE 9.MY 10.KM

11.DN 12.MO 13.EH 14.BR 15.OFD 16.JB 17.ES 18.PMR 19.____

20.____

The undersigned qualified voters of the Commonwealth of Massachusetts have personally reviewed the final text of this initiative petition, fully subscribe to its contents, agree to be one of its original signers and have signaled that agreement by initialing each page and signing the last, and hereby submit the measure for approval by the people pursuant to Article 48 of the articles of amendment of the Constitution of the Commonwealth of Massachusetts, as amended by Article 74 of said articles of amendment.

1. Daniel A. Valenzuela
2. [illegible]
3. Rahim Ahmed Abani
4. [illegible]
5. CESAR RAMIREZ
6. Miguel Luiz Pina Neto
7. Domingos Cal
8. Omer Ettom
9. Yassir Marei
10. KHALD MOHAMED
11. [illegible]
12. Mahad A Omar
13. Ehab Hanna
14. Bethany Renner
15. Otoniel Figueroa-Dur
16. João Baptista
17. [illegible]
18. Pablo M Ruiz
19.
20.

An Act Giving Transportation Network Drivers the Option to Form a Union and Bargain Collectively

1. DV 2. [illegible] 3. [illegible] 4. RL 5. CR 6. MN 7. DC 8. OE 9. MY 10. KM

11. DN 12. mo 13. EH 14. BR 15. [illegible] 16. JB 17. FS 18. ____ 19. ____

20. ____

SUMMARY OF NO. 23-35

This proposed law would provide Transportation Network Drivers ("Drivers") with the right to form unions ("Driver Organizations") to collectively bargain with Transportation Network Companies ("Companies")—which are companies that use a digital network to connect riders to drivers for pre-arranged transportation—to create negotiated recommendations concerning wages, benefits and terms and conditions of work. Drivers would not be required to engage in any union activities. Companies would be allowed to form multi-Company associations to represent them when negotiating with Driver Organizations. The state would supervise the labor activities permitted by the proposed law and would have responsibility for approving or disapproving the negotiated recommendations.

The proposed law would define certain activities by a Company or a Driver Organization to be unfair work practices. The proposed law would establish a hearing process for the state Employment Relations Board ("Board") to follow when a Company or Driver Organization is charged with an unfair work practice. The proposed law would permit the Board to take action, including awarding compensation to adversely affected Drivers, if it found that an unfair work practice had been committed. The proposed law would provide for an appeal of a Board decision to the state Appeals Court.

This proposed law also would establish a procedure for determining which Drivers are Active Drivers, meaning that they completed more than the median number of rides in the previous six months. The proposed law would establish procedures for the Board to determine that a Driver Organization has signed authorizations from at least five percent of Active Drivers, entitling the Driver Organization to a list of Active Drivers; to designate a Driver Organization as the exclusive bargaining representative for all Drivers based on signed authorizations from at least twenty-five percent of Active Drivers; to resolve disputes over exclusive bargaining status, including through elections; and to decertify a Driver Organization from exclusive bargaining status. A Driver Organization that has been designated the exclusive bargaining representative would have the exclusive right to represent the Drivers and to receive voluntary membership dues deductions.

Once the Board determined that a Driver Organization was the exclusive bargaining representative for all Drivers, the Companies would be required to bargain with that Driver Organization concerning wages, benefits and terms and conditions of work. Once the Driver Organization and Companies reached agreement on wages, benefits, and the terms and conditions of work, that agreement would be voted upon by all Drivers who had completed at least 100 trips the previous quarter. If approved

by a majority of votes cast, the recommendations would be submitted to the state Secretary of Labor for approval and if approved, would be effective for three years. The proposed law would establish procedures for mediation and arbitration if the Driver Organization and Companies failed to reach agreement within a certain period of time. An arbitrator would consider factors set forth in the proposed law, including whether the wages for Drivers would be enough so that Drivers would not need to rely upon any public benefits. The proposed law also sets out procedures for the Secretary of Labor's review and approval of recommendations negotiated by a Driver Organization and the Companies and for judicial review of the Secretary's decision.

The proposed law states that neither its provisions, an agreement nor a determination by the Secretary would be able lessen labor standards established by other laws. If there were any conflict between the proposed law and existing Massachusetts labor relations law, the proposed law would prevail.

The Board would make rules and regulations as appropriate to effectuate the proposed law.

The proposed law states that, if any of its parts were declared invalid, the other parts would stay in effect.

15 USCS § 1, Part 1 of 5

Current through Public Law 118-40, approved March 1, 2024.

United States Code Service > TITLE 15. COMMERCE AND TRADE (Chs. 1 — 122) > CHAPTER 1. MONOPOLIES AND COMBINATIONS IN RESTRAINT OF TRADE (§§ 1 — 38)

§ 1. Trusts, etc., in restraint of trade illegal; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

History

HISTORY:

July 2, 1890, ch 647, § 1, 26 Stat. 209; Aug. 17, 1937, ch 690, Title VIII, § 1, 50 Stat. 693; July 7, 1955, ch 281, 69 Stat. 282; Dec. 21, 1974, P. L. 93-528, § 3, 88 Stat. 1708; Dec. 12, 1975, P. L. 94-145, § 2, 89 Stat. 801; Nov. 16, 1990, P. L. 101-588, § 4(a), 104 Stat. 2880; June 22, 2004, P. L. 108-237, Title II, Subtitle A, § 215(a), 118 Stat. 668.

End of Document

29 USCS § 52

Current through Public Law 118-40, approved March 1, 2024.

United States Code Service > TITLE 29. LABOR (Chs. 1 — 32) > CHAPTER 5. LABOR DISPUTES; MEDIATION AND INJUNCTIVE RELIEF (§§ 51 — 53)

§ 52. Statutory restriction of injunctive relief

No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

History

HISTORY:

Oct. 15, 1914, ch 323, § 20, 38 Stat. 738.

End of Document

29 USCS § 104

Current through Public Law 118-40, approved March 1, 2024.

United States Code Service > TITLE 29. LABOR (Chs. 1 — 32) > CHAPTER 6. JURISDICTION OF COURTS IN MATTERS AFFECTING EMPLOYER AND EMPLOYEE (§§ 101 — 115)

§ 104. Enumeration of specific acts not subject to restraining orders or injunctions

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act [29 USCS § 103];

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act [29 USCS § 103].

History

HISTORY:

March 23, 1932, ch 90, § 4, 47 Stat. 70.

End of Document

29 USCS § 105

Current through Public Law 118-40, approved March 1, 2024.

United States Code Service > TITLE 29. LABOR (Chs. 1 — 32) > CHAPTER 6. JURISDICTION OF COURTS IN MATTERS AFFECTING EMPLOYER AND EMPLOYEE (§§ 101 — 115)

§ 105. Doing in concert of certain acts as constituting unlawful combination or conspiracy subjecting person to injunctive remedies

No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 4 of this Act [29 USCS § 104].

History

HISTORY:

March 23, 1932, ch 90, § 5, 47 Stat. 71.

End of Document

29 USCS § 113

Current through Public Law 118-40, approved March 1, 2024.

United States Code Service > TITLE 29. LABOR (Chs. 1 — 32) > CHAPTER 6. JURISDICTION OF COURTS IN MATTERS AFFECTING EMPLOYER AND EMPLOYEE (§§ 101 — 115)

§ 113. Definitions of terms and words used in Act

When used in this Act [29 USCS §§ 101 et seq.], and for the purposes of this Act [29 USCS §§ 101 et seq.]—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

History

HISTORY:

March 23, 1932, ch 90, § 13, 47 Stat. 73.

End of Document

29 USCS § 151

Current through Public Law 118-40, approved March 1, 2024.

United States Code Service > TITLE 29. LABOR (Chs. 1 — 32) > CHAPTER 7. LABOR-MANAGEMENT RELATIONS (§§ 141 — 197) > NATIONAL LABOR RELATIONS (§§ 151 — 169)

§ 151. Findings and declaration of policy

The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages is such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

History

HISTORY:

July 5, 1935, ch 372, § 1, 49 Stat. 449; June 23, 1947, ch 120, Title I, § 101, 61 Stat. 136.

End of Document

29 USCS § 152, Part 1 of 2

Current through Public Law 118-40, approved March 1, 2024.

United States Code Service > TITLE 29. LABOR (Chs. 1 — 32) > CHAPTER 7. LABOR-MANAGEMENT RELATIONS (§§ 141 — 197) > NATIONAL LABOR RELATIONS (§§ 151 — 169)

§ 152. Definitions

When used in this Act [29 USCS §§ 151–158, 159–168]—

(1) The term "person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in cases under title 11 of the United States Code, or receivers.

(2) The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8 [29 USCS § 158].

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board provided for in section 3 of this Act [29 USCS § 153].

(11) The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(12) The term "professional employee" means—

(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

(13) In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

(14) The term "health care institution" shall include any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility, or other institution devoted to the care of sick, infirm, or aged person.

History

HISTORY:

July 5, 1935, ch 372, § 2, 49 Stat. 450; June 23, 1947, ch 120, Title I, § 101, 61 Stat. 137; July 26, 1974, P. L. 93-360, § 1(a),(b), 88 Stat. 395; Nov. 6, 1978, P. L. 95-598, Title III, § 319, 92 Stat. 2678.

End of Document

29 USCS § 153

Current through Public Law 118-40, approved March 1, 2024.

United States Code Service > TITLE 29. LABOR (Chs. 1 — 32) > CHAPTER 7. LABOR-MANAGEMENT RELATIONS (§§ 141 — 197) > NATIONAL LABOR RELATIONS (§§ 151 — 169)

§ 153. National Labor Relations Board

(a) Creation, composition, appointment, and tenure; Chairman; removal of members. The National Labor Relations Board (hereinafter called the "Board") created by this Act prior to its amendment by the Labor Management Relations Act, 1947, is hereby continued as an agency of the United States, except that the Board shall consist of five instead of three members, appointed by the President by and with the advice and consent of the Senate. Of the two additional members so provided for, one shall be appointed for a term of five years and the other for a term of two years. Their successors, and the successors of other members, shall be appointed for terms of five years each, excepting that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) Delegation of powers to members and regional directors; review and stay of actions of regional directors; quorum; seal. The Board is authorized to delegate to any group of three or more members any or all of the powers which it may itself exercise. The Board is also authorized to delegate to its regional directors its powers under section 9 [29 USCS § 159] to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, and determine whether a question of representation exists, and to direct and election or take a secret ballot under subsection (c) or (e) of section 9 [29 USCS § 159] and certify the results thereof, except that upon the filing of a request therefor with the Board by any interested person, the Board may review any action of a regional director delegated to him under this paragraph, but such a review shall not, unless specifically ordered by the Board, operate as a stay of any action taken by the regional director. A vacancy in the Board shall not impair the right of the remaining members to exercise all of the powers of the Board, and three members of the Board shall, at all times, constitute a quorum of the Board, except that two members shall constitute a quorum of any group designated pursuant to the first sentence hereof. The Board shall have an official seal which shall be judicially noticed.

(c) Annual reports to Congress and the President. The Board shall at the close of each fiscal year make a report in writing to Congress and to the President summarizing significant case activities and operations for that fiscal year

(d) General Counsel; appointment and tenure; powers and duties; vacancy. There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other than trial examiners [administrative law judges] and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section

10 [29 USCS § 160], and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law. In case of vacancy in the office of the General Counsel the President is authorized to designate the officer or employee who shall act as General Counsel during such vacancy, but no person or persons so designated shall so act (1) for more than forty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted.

History

HISTORY:

July 5, 1935, ch 372, § 3, 49 Stat. 451; June 23, 1947, ch 120, Title I, § 101, 61 Stat. 139; Sept. 14, 1959, P. L. 86-257, Title VII, §§ 701(b), 703, 73 Stat. 542; Jan. 2, 1975, P. L. 93-608, § 3(3), 88 Stat. 1972; Dec. 21, 1982, P. L. 97-375, Title II, § 213, 96 Stat. 1826.

End of Document

29 USCS § 154

Current through Public Law 118-40, approved March 1, 2024.

United States Code Service > TITLE 29. LABOR (Chs. 1 — 32) > CHAPTER 7. LABOR-MANAGEMENT RELATIONS (§§ 141 — 197) > NATIONAL LABOR RELATIONS (§§ 151 — 169)

§ 154. National Labor Relations Board; eligibility for reappointment; officers and employees; payment of expenses

(a) Each member of the Board and the General Counsel of the Board [shall receive a salary of $12,000 a year,] shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint an executive secretary, and such attorneys, examiners , and regional directors, and such other employees as it may from time to time find necessary for the proper performance of its duties. The Board may not employ any attorneys for the purpose of reviewing transcripts of hearings or preparing drafts of opinions except that any attorney employed for assignment as a legal assistant to any Board member may for such Board member review such transcripts and prepare such drafts. No trial examiner's [administrative law judge's] report shall be reviewed, either before or after its publication, by any person other than a member of the Board or his legal assistant, and no trial examiner [administrative law judge] shall advise or consult with the Board with respect to exceptions taken to his findings, rulings, or recommendations. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation, or for economic analysis.

(b) All of expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers, therefor approved by the Board or by any individual it designates for that purpose.

History

HISTORY:

July 5, 1935, ch 372, § 4, 49 Stat. 451; June 23, 1947, ch 120, Title I, § 101, 61 Stat. 139.

End of Document

29 USCS § 155

Current through Public Law 118-40, approved March 1, 2024.

United States Code Service > TITLE 29. LABOR (Chs. 1 — 32) > CHAPTER 7. LABOR-MANAGEMENT RELATIONS (§§ 141 — 197) > NATIONAL LABOR RELATIONS (§§ 151 — 169)

§ 155. National Labor Relations Board; principal office, conducting inquiries thoughout country; participation in decisions or inquiries conducted by member

The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

History

HISTORY:

July 5, 1935, ch 372, § 5, 49 Stat. 452; June 23, 1947, ch 120, Title I, § 101, 61 Stat. 140.

End of Document

29 USCS § 156

Current through Public Law 118-40, approved March 1, 2024.

United States Code Service > TITLE 29. LABOR (Chs. 1 — 32) > CHAPTER 7. LABOR-MANAGEMENT RELATIONS (§§ 141 — 197) > NATIONAL LABOR RELATIONS (§§ 151 — 169)

§ 156. Rules and regulations

The Board shall have authority from time to time to make, amend, and rescind, in the manner prescribed by the Administrative Procedure Act [5 USCS §§ 551 et seq.], such rules and regulations as may be necessary to carry out the provisions of this Act [29 USCS §§ 151–158, 159–168].

History

HISTORY:

July 5, 1935, ch 372, § 6, 49 Stat. 452; June 23, 1947, ch 120, Title I, § 101, 61 Stat. 140.

End of Document

29 USCS § 157

Current through Public Law 118-40, approved March 1, 2024.

United States Code Service > TITLE 29. LABOR (Chs. 1 — 32) > CHAPTER 7. LABOR-MANAGEMENT RELATIONS (§§ 141 — 197) > NATIONAL LABOR RELATIONS (§§ 151 — 169)

§ 157. Rights of employees as to organization, collective bargaining, etc.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3) [29 USCS § 158(a)(3)].

History

HISTORY:

July 5, 1935, ch 372, § 7, 49 Stat. 452; June 23, 1947, ch 120, Title I, § 101, 61 Stat. 140.

End of Document

29 USCS § 158, Part 1 of 12

Current through Public Law 118-40, approved March 1, 2024.

United States Code Service > TITLE 29. LABOR (Chs. 1 — 32) > CHAPTER 7. LABOR-MANAGEMENT RELATIONS (§§ 141 — 197) > NATIONAL LABOR RELATIONS (§§ 151 — 169)

§ 158. Unfair labor practices

(a) Unfair labor practices by employer. It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 [29 USCS § 157];

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6 [29 USCS § 156], an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by an action defined in section 8(a) of this Act [this subsection] as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a) [29 USCS § 159(a)], in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 9(e) [29 USCS § 159(e)] within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further,* That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act;

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a) [29 USCS § 159(a)].

(b) Unfair labor practices by labor organization. It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7 [29 USCS § 157]: *Provided,* That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9(a) [29 USCS § 159(a)];

(4)

(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by section 8(e) [subsec. (e) of this section];

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 [29 USCS § 159]: *Provided,* That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9 [29 USCS § 159];

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

Provided, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act: *Provided, further,* That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer

with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution;

(5) to require of employees covered by an agreement authorized under subsection (a)(3) the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances. In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected;

(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed; and

(7) to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees:

(A) where the employer has lawfully recognized in accordance with this Act any other labor organization and a question concerning representation may not appropriately be raised under section 9(c) of this Act [29 USCS § 159(c)],

(B) where within the preceding twelve months a valid election under section 9(c) of this Act [29 USCS § 159(c)] has been conducted, or

(C) where such picketing has been conducted without a petition under section 9(c) [29 USCS § 159(c)] being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing: *Provided,* That when such a petition has been filed the Board shall forthwith, without regard to the provisions of section 9(c)(1) [29 USCS § 159(c)(1)] or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof: *Provided further,* That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services.

Nothing in this paragraph (7) shall be construed to permit any act which would otherwise be an unfair labor practice under this section 8(b) [this subsection].

(c) Expression of views without threat of reprisal or force or promise of benefit. The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

(d) Obligation to bargain collectively. For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of

an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided,* That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

The duties imposed upon employers, employees, and labor organizations by paragraphs (2), (3), and (4) shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9(a) [29 USCS § 159(a)], and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within any notice period specified in this subsection, or who engages in any strike within the appropriate period specified in subsection (g) of this section, shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of this Act, as amended [29 USCS §§ 158, 159, 160], but such loss of status for such employee shall terminate if and when he is reemployed by such employer. Whenever the collective bargaining involves employees of a health care institution, the provisions of this section 8(d) [this subsection] shall be modified as follows:

(A) The notice of section 8(d)(1) [para. (1) of this subsection] shall be ninety days; the notice of section 8(d)(3) [para. (3) of this subsection] shall be sixty days; and the contract period of section 8(d)(4) [para. (4) of this subsection] shall be ninety days.

(B) Where the bargaining is for an initial agreement following certification or recognition, at least thirty days' notice of the existence of a dispute shall be given by the labor organization to the agencies set forth in section 8(d)(3) [para. (3) of this subsection].

(C) After notice is given to the Federal Mediation and Conciliation Service under either clause (A) or (B) of this sentence, the Service shall promptly communicate with the parties and use its best efforts, by mediation and conciliation, to bring them to agreement. The parties shall participate fully and promptly in such meetings as may be undertaken by the Service for the purpose of aiding in a settlement of the dispute.

(e) Enforceability of contract or agreement to boycott any other employer; exception. It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforcible [unenforceable] and void: *Provided,* That nothing in this subsection (e) shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work: *Provided further,* That for the purposes of this subsection (e) and section 8(b)(4)(B) [subsec. (b)(4)(B) of this section] the terms "any employer", "any person engaged in commerce or an industry affecting commerce", and "any person" when used in relation to the terms "any other producer, processor, or manufacturer", "any other employer", or "any other person" shall not include persons in the relation of a jobber, manufacturer, contractor, or subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production in the apparel and clothing industry: *Provided further,* That nothing in this Act shall prohibit the enforcement of any agreement which is within the foregoing exception.

(f) Agreement covering employees in the building and construction industry. It shall not be an unfair labor practice under subsections (a) and (b) of this section for an employer engaged primarily in the building and construction industry to make an agreement covering employees engaged (or who, upon their employment, will be engaged) in the building and construction industry with a labor organization of which building and construction employees are members (not established, maintained, or assisted by any action defined in section 8(a) of this Act [subsec. (a) of this section] as an unfair labor practice) because (1) the majority status of such labor organization has not been established under the provisions of section 9 of this Act [29 USCS § 159] prior to the making of such agreement, or (2) such agreement requires as a condition of employment, membership in such labor organization after the seventh day following the beginning of such employment or the effective date of the agreement, whichever is later, or (3) such agreement requires the employer to notify such labor organization of opportunities for employment with such employer, or gives such labor organization an opportunity to refer qualified applicants for such employment, or (4) such agreement specifies minimum training or experience qualifications for employment or provides for priority in opportunities for employment based upon length of service with such employer, in the industry or in the particular geographical area: *Provided,* That nothing in this subsection shall set aside the final proviso to section 8(a)(3) of this Act [subsec. (a)(3) of this section]: *Provided further,* That any agreement which would be invalid, but for clause (1) of this subsection, shall not be a bar to a petition filed pursuant to section 9(c) or 9(e) [29 USCS § 159(c) or (e)].

(g) Notification of intention to strike or picket at any health care institution. A labor organization before engaging in any strike, picketing, or other concerted refusal to work at any health care institution shall, not less than ten days prior to such action, notify the institution in writing and the Federal Mediation and Conciliation Service of that intention, except that in the case of bargaining for an initial agreement following certification or recognition the notice required by this subsection shall not be given until the expiration of the period specified in clause (B) of the last sentence of section 8(d) of this Act [subsec. (d) of this section]. The notice shall state the date and time that such action will commence. The notice, once given, may be extended by the written agreement of both parties.

History

HISTORY:

July 5, 1935, ch 372, § 8, 49 Stat. 452; June 23, 1947, ch 120, Title I, § 101, 61 Stat. 140; Oct. 22, 1951, ch 534, § 1(b), 65 Stat. 601; Sept. 14, 1959, P. L. 86-257, Title II, § 201(e), Title VII, §§ 704(a)–(c), 705(a), 73 Stat. 525, 542, 545; July 26, 1974, P. L. 93-360, § 1(c)–(e), 88 Stat. 395, 396.

End of Document

29 USCS § 158a

Current through Public Law 118-40, approved March 1, 2024.

United States Code Service > TITLE 29. LABOR (Chs. 1 — 32) > CHAPTER 7. LABOR-MANAGEMENT RELATIONS (§§ 141 — 197) > NATIONAL LABOR RELATIONS (§§ 151 — 169)

§ 158a. Providing facilities for operations of Federal Credit Unions

Provision by an employer of facilities for the operations of a Federal Credit Union on the premises of such employer shall not be deemed to be intimidation, coercion, interference, restraint or discrimination within the provisions of Sections 7 and 8 of the National Labor Relations Act [29 USCS §§ 157, 158], approved July 5, 1935, or acts amendatory thereof.

History

HISTORY:

Dec. 6, 1937, ch 3, § 5, 51 Stat. 5.

End of Document

29 USCS § 159, Part 1 of 3

Current through Public Law 118-40, approved March 1, 2024.

United States Code Service > TITLE 29. LABOR (Chs. 1 — 32) > CHAPTER 7. LABOR-MANAGEMENT RELATIONS (§§ 141 — 197) > NATIONAL LABOR RELATIONS (§§ 151 — 169)

§ 159. Representatives and elections

(a) Exclusive representatives; employees' adjustment of grievances directly with employer. Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: Provided further, That the bargaining representative has been given opportunity to be present at such adjustment.

(b) Determination of bargaining unit by Board. The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act [29 USCS §§ 151–158, 159–169], the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: Provided, That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

(c) Hearings on questions affecting commerce; rules and regulations.

(1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9(a) [subsec. (a) of this section], or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining

representative, is no longer a representative as defined in section 9(a) [subsec. (a) of this section]; or

(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9(a) [subsec. (a) of this section];

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

(2) In determining whether or not a question of representation affecting commerce exists, the same regulations and rules of decision shall apply irrespective of the identity of the persons filing the petition or the kind of relief sought and in no case shall the Board deny a labor organization a place on the ballot by reason of an order with respect to such labor organization or its predecessor not issued in conformity with section 10(c) [29 USCS § 160(c)].

(3) No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held. Employees engaged in an economic strike who are not entitled to reinstatement shall be eligible to vote under such regulations as the Board shall find are consistent with the purposes and provisions of this Act [29 USCS §§ 151–158, 159–169] in any election conducted within twleve months after the commencement of the strike. In any election where none of the choices on the ballots receives a majority, a runoff shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(4) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the Board.

(5) In determining whether a unit is appropriate for the purposes specified in subsection (b) the extent to which the employees have organized shall not be controlling.

(d) Petition for enforcement or review; transcript. Whenever an order of the Board made pursuant to section 10(c) [29 USCS § 160(c)], is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under section 10(e) or 10(f) [29 USCS § 160(e) or (f)], and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part of the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

(e) Secret ballot; limitation of elections.

(1) Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to section 8(a)(3) [29 USCS § 158(a)(3)], of a petition alleging they desire that such authority be rescinded, the Board shall take a secret ballot of the employees in such unit and certify the results thereof to such labor organization and to the employer.

(2) No election shall be conducted pursuant to this subsection in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.

History

HISTORY:

July 5, 1935, ch 372, § 9, 49 Stat. 453; June 23, 1947, ch 120, Title I, § 101, 61 Stat. 143; Oct. 22, 1951, ch 534, § 1(c), (d), 65 Stat. 601; Sept. 14, 1959, P. L. 86-257, Title II, § 201(d), Title VII, § 702, 73 Stat. 525, 542.

End of Document

29 USCS § 160, Part 1 of 6

Current through Public Law 118-40, approved March 1, 2024.

United States Code Service > TITLE 29. LABOR (Chs. 1 — 32) > CHAPTER 7. LABOR-MANAGEMENT RELATIONS (§§ 141 — 197) > NATIONAL LABOR RELATIONS (§§ 151 — 169)

§ 160. Prevention of unfair labor practices

(a) Powers of Board generally. The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8 [29 USCS § 158]) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act [29 USCS §§ 151–158, 159–169] or has received a construction inconsistent therewith.

(b) Complaint and notice of hearing; answer; court rules of evidence inapplicable. Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: Provided, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States [28 USCS Appx] under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to the Act of June 19, 1934 (U. S. C., title 28, secs. 723-B, 723-C) [28 USCS § 2072].

(c) Reduction of testimony to writing; findings and orders of Board. The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging

in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act [29 USCS §§ 151–158, 159–169]: Provided, That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: And provided further, That in determining whether a complaint shall issue alleging a violation of section 8(a)(1) or section 8(a)(2) [29 USCS § 158(a)(1), or (2)], and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and order dismissing the said complaint. No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an examiner or examiners [administrative law judge or judges] thereof, such member, or such examiner or examiners [judge or judges], as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed.

(d) Modification of findings or orders prior to filing record in court. Until the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) Petition to court for enforcement of order; proceedings; review of judgment. The Board shall have power to petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which

findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(f) Review of final order of Board on petition to court. Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the Board, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

(g) Institution of court proceedings as stay of Board's order. The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) Jurisdiction of courts unaffected by limitations prescribed in 29 USCS §§ 101–110, 113–115. When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101–115).

(i) [Repealed]

(j) Injunctions. The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the United States District Court for the District of Columbia) [United States district court], within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

(k) Hearings on jurisdictional strikes. Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 8(b) [29 USCS § 158(b)(4)(D)], the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary

adjustment of the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

(l) Boycotts and strikes to force recognition of uncertified labor organizations; injunctions; notice; service of process. Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(A), (B), or (C) of section 8(b) or section 8(e) or section 8(b)(7) [29 USCS § 158(b)(4)(A), (B), or (C), or (e), or (b)(7)], the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the United States District Court for the District of Columbia) [United States district court] within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: Provided further, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period: Provided further, That such officer or regional attorney shall not apply for any restraining order under section 8(b)(7) [29 USCS § 158(b)(7)] if a charge against the employer under section 8(a)(2) [29 USCS § 158(a)(2)] has been filed and after the preliminary investigation, he has reasonable cause to believe that such charge is true and that a complaint should issue. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: Provided further, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8(b)(4)(D) [29 USCS § 158(b)(4)(D)].

(m) Priority of cases. Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of subsection (a)(3) or (b)(2) of section 8 [29 USCS § 158(a)(3) or (b)(2)], such charge shall be given priority over all other cases except cases of like character in the office where it is filed or to which it is referred and cases given priority under subsection (l).

History

HISTORY:

July 5, 1935, ch 372, § 10, 49 Stat. 453; June 23, 1947, ch 120, Title I, § 101, 61 Stat. 146; June 25, 1948, ch 646, § 32(a), (b), 62 Stat. 991; May 24, 1949, ch 139, § 127, 63 Stat. 107; Aug. 28, 1958, P. L. 85-791, § 13, 72 Stat. 945; Sept. 14, 1959, P. L. 86-257, Title VII, §§ 704(d), 706, 73 Stat. 544, 545; Nov. 8, 1984, P. L. 98-620, Title IV, Subtitle A, § 402(31), 98 Stat. 3360.

End of Document

29 USCS § 161

Current through Public Law 118-40, approved March 1, 2024.

United States Code Service > TITLE 29. LABOR (Chs. 1 — 32) > CHAPTER 7. LABOR-MANAGEMENT RELATIONS (§§ 141 — 197) > NATIONAL LABOR RELATIONS (§§ 151 — 169)

§ 161. Investigatory powers of Board

For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10 [29 USCS §§ 159 and 160]—

(1) Documentary evidence; summoning witnesses and taking testimony. The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. The Board, or any member thereof, shall upon application of any party to such proceedings, forthwith issue to such party subpenas requiring the attendance and testimony of witnesses or the production of any evidence in such proceeding or investigation requested in such application. Within five days after the service of a subpena on any person requiring the production of any evidence in his possession or under his control, such person may petition the Board to revoke, and the Board shall revoke, such subpena if in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpena does not describe with sufficient particularity the evidence whose production is required. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) Court aid in compelling production of evidence and attendance of witnesses. In case of contumacy or refusal to obey a subpena issued to any person, any district court of the United States or the United States courts to any Territory or possession, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) [Repealed]

(4) Process, service and return; fees of witnesses. Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered or certified mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when

registered or certified and mailed or when telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) Process, where served. All process of any court to which application may be made under this Act [29 USCS §§ 151–158, 159–169] may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) Information and assistance from departments. The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

History

HISTORY:

July 5, 1935, ch 372, § 11, 49 Stat. 455; June 23, 1947, ch 120, Title I, § 101 in part, 61 Stat. 150; Oct. 15, 1970, P. L. 91-452, Title II, § 234, 84 Stat. 930; June 11, 1960, P. L. 86-509, § 1(57), as added May 21, 1980, P. L. 96-245, 94 Stat 347.

End of Document

29 USCS § 162

Current through Public Law 118-40, approved March 1, 2024.

United States Code Service > TITLE 29. LABOR (Chs. 1 — 32) > CHAPTER 7. LABOR-MANAGEMENT RELATIONS (§§ 141 — 197) > NATIONAL LABOR RELATIONS (§§ 151 — 169)

§ 162. Offenses and penalties

Any person who shall wilfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act [29 USCS §§ 151–158, 159–169] shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

History

HISTORY:

July 5, 1935, ch 372, § 12, 49 Stat. 456; June 23, 1947, ch 120, Title I, § 101 in part, 61 Stat. 151.

End of Document

29 USCS § 163

Current through Public Law 118-40, approved March 1, 2024.

United States Code Service > TITLE 29. LABOR (Chs. 1 — 32) > CHAPTER 7. LABOR-MANAGEMENT RELATIONS (§§ 141 — 197) > NATIONAL LABOR RELATIONS (§§ 151 — 169)

§ 163. Right to strike preserved

Nothing in this Act [29 USCS §§ 151–158, 159–169], except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

History

HISTORY:

July 5, 1935, ch 372, § 13, 49 Stat. 457; June 23, 1947, ch 120, Title I, § 101 in part, 61 Stat. 151.

End of Document

29 USCS § 164

Current through Public Law 118-40, approved March 1, 2024.

United States Code Service > TITLE 29. LABOR (Chs. 1 — 32) > CHAPTER 7. LABOR-MANAGEMENT RELATIONS (§§ 141 — 197) > NATIONAL LABOR RELATIONS (§§ 151 — 169)

§ 164. Construction of provisions

(a) Supervisors as union members. Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act [29 USCS §§ 151–158, 159–169] shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.

(b) Agreements requiring union membership in violation of State law. Nothing in this Act [29 USCS §§ 151–158, 159–169] shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

(c) Power of Board to decline jurisdiction of labor disputes; assertion of jurisdiction by State and Territorial courts.

(1) The Board, in its discretion, may, by rule of decision or by published rules adopted pursuant to the Administrative Procedure Act [5 USCS §§ 551 et seq.], decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: Provided, That the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.

(2) Nothing in this Act [29 USCS §§ 151–158, 159–169] shall be deemed to prevent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction.

History

HISTORY:

July 5, 1935, ch 372, § 14, 49 Stat. 457; June 23, 1947, ch 120, Title I, § 101 in part, 61 Stat. 151; Sept. 14, 1959, P. L. 86-257, Title VII, § 701(a), 73 Stat. 541.

End of Document

29 USCS § 165

Current through Public Law 118-40, approved March 1, 2024.

United States Code Service > TITLE 29. LABOR (Chs. 1 — 32) > CHAPTER 7. LABOR-MANAGEMENT RELATIONS (§§ 141 — 197) > NATIONAL LABOR RELATIONS (§§ 151 — 169)

§ 165. Conflict of laws

Wherever the application of the provisions of section 272 of chapter 10 of the Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, and Acts amendatory thereof and supplementary thereto (U. S. C., title 11 sec. 672), conflicts with the application of the provisions of this Act [29 USCS §§ 151–158, 159–169], this Act shall prevail: Provided, That in any situation where the provisions of this Act [29 USCS §§ 151–158, 159–169] can not be validly enforced, the provisions of such other Acts shall remain in full force and effect.

History

HISTORY:

July 5, 1935, ch 372, § 15, 49 Stat. 457; June 23, 1947, ch 120, Title I, § 101 in part, 61 Stat. 151.

End of Document

29 USCS § 166

Current through Public Law 118-40, approved March 1, 2024.

United States Code Service > TITLE 29. LABOR (Chs. 1 — 32) > CHAPTER 7. LABOR-MANAGEMENT RELATIONS (§§ 141 — 197) > NATIONAL LABOR RELATIONS (§§ 151 — 169)

§ 166. Separability

If any provision of this Act [29 USCS §§ 151–158, 159–169], or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this Act [29 USCS §§ 151–158, 159–169], or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

History

HISTORY:

July 5, 1935, ch 372, § 16, 49 Stat. 457; June 23, 1947, ch 120, Title I, § 101 in part, 61 Stat. 151.

End of Document

29 USCS § 167

Current through Public Law 118-40, approved March 1, 2024.

United States Code Service > TITLE 29. LABOR (Chs. 1 — 32) > CHAPTER 7. LABOR-MANAGEMENT RELATIONS (§§ 141 — 197) > NATIONAL LABOR RELATIONS (§§ 151 — 169)

§ 167. Short title

This Act [29 USCS §§ 151–158, 159–169] may be cited as the "National Labor Relations Act."

History

HISTORY:

July 5, 1935, ch 372, § 17, as added June 23, 1947, ch 120, Title I, § 101 in part, 61 Stat. 152.

End of Document

29 USCS § 168

Current through Public Law 118-40, approved March 1, 2024.

United States Code Service > TITLE 29. LABOR (Chs. 1 — 32) > CHAPTER 7. LABOR-MANAGEMENT RELATIONS (§§ 141 — 197) > NATIONAL LABOR RELATIONS (§§ 151 — 169)

§ 168. Validation of certificates and other Board actions

No petition entertained, no investigation made, no election held, and no certification issued by the National Labor Relations Board, under any of the provisions of section 9 of the National Labor Relations Act, as amended [29 USCS § 159], shall be invalid by reason of the failure of the Congress of Industrial Organizations to have complied with the requirements of section 9(f), (g), or (h) of the aforesaid Act prior to December 22, 1949, or by reason of the failure of the American Federation of Labor to have complied with the provisions of section 9(f), (g), or (h) of the aforesaid Act prior to November 7, 1947: Provided, That no liability shall be imposed under any provision of this Act [29 USCS § 151–158, 159–169] upon any person for failure to honor any election or certificate referred to above, prior to the effective date of this amendment [Oct. 22, 1951]: Provided, however, That this proviso shall not have the effect of setting aside or in anyway affecting judgments or decrees heretofore entered under section 10(e) or (f) [29 USCS § 160(e) or (f)] and which have become final.

History

HISTORY:

July 5, 1935, ch 372, § 18, as added Oct. 22, 1951, ch 534, § 1(a), 65 Stat. 601.

End of Document

29 USCS § 169

Current through Public Law 118-40, approved March 1, 2024.

United States Code Service > TITLE 29. LABOR (Chs. 1 — 32) > CHAPTER 7. LABOR-MANAGEMENT RELATIONS (§§ 141 — 197) > NATIONAL LABOR RELATIONS (§§ 151 — 169)

§ 169. Employees with religious convictions; payment of dues and fees

Any employee who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting labor organizations shall not be required to join or financially support any labor organization as a condition of employment; except that such employee may be required in a contract between such employees' employer and a labor organization in lieu of periodic dues and initiation fees, to pay sums equal to such dues and initiation fees to a nonreligious, nonlabor organization charitable fund exempt from taxation under section 501(c)(3) of title 26 of the Internal Revenue Code [26 USCS § 501(c)(3)], chosen by such employee from a list of at least three such funds, designated in such contract or if the contract fails to designate such funds, then to any such fund chosen by the employee. If such employee who holds conscientious objections pursuant to this section requests the labor organization to use the grievance-arbitration procedure on the employee's behalf, the labor organization is authorized to charge the employee for the reasonable cost of using such procedure.

History

HISTORY:

July 5, 1935, ch 372, § 19, as added July 26, 1974, P. L. 93-360, § 3, 88 Stat. 397; Dec. 24, 1980, P. L. 96-593, § 1, 94 Stat. 3452.

End of Document

ALM GL ch. 150A, § 3

Current through Chapter 29 of the 2024 Legislative Session of the 193rd General Court

Annotated Laws of Massachusetts > PART I ADMINISTRATION OF THE GOVERNMENT (Chs. 1 - 182) > TITLE XXI LABOR AND INDUSTRIES (Chs. 149 - 154) > TITLE XXI LABOR AND INDUSTRIES (Chs. 149 — 154) > Chapter 150A Labor Relations (§§ 1 — 12)

§ 3. Right to Organize.

Employees, or a single employee in a one–man unit, shall have the right to self–organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection. An employee shall also have the right to refrain from any such activities, except to the extent of making payment of service fees to an exclusive representative.

History

1937, 436, § 7; 1938, 345, § 2; 1951, 615, § 2; 2007, 120, § 1A.

End of Document

ALM Constitution Amend. Art. XLVIII, c. II, § 3

Constitution text current through the November 2023 Election

Annotated Constitution of Massachusetts > A CONSTITUTION OR FORM OF GOVERNMENT > ARTICLES OF AMENDMENT > Art. XLVIII. Initiative and Referendum > The Initiative > II. Initiative Petitions

Section 3. Mode of Originating.

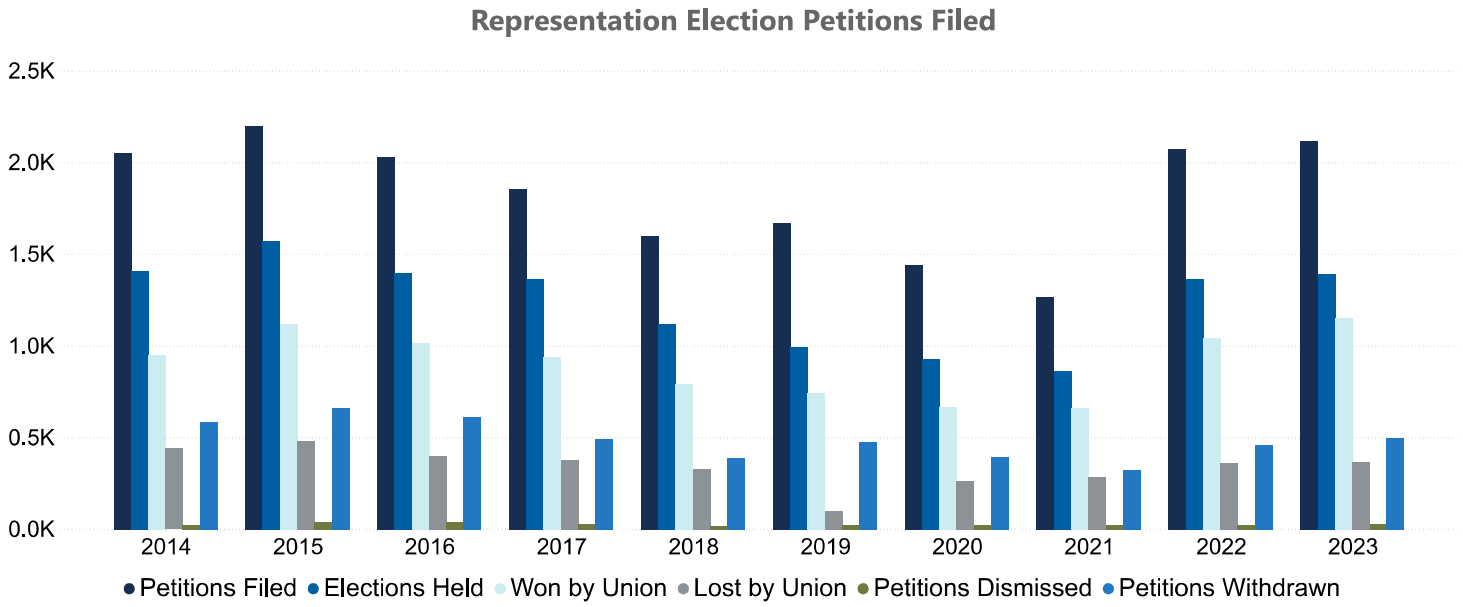
Such petition shall first be signed by ten qualified voters of the commonwealth and shall be submitted to the attorney general not later than the first Wednesday of the August before the assembling of the general court into which it is to be introduced, and if he shall certify that the measure and the title thereof are in proper form for submission to the people, and that the measure is not, either affirmatively or negatively, substantially the same as any measure which has been qualified for submission or submitted to the people at either of the two preceding biennial state elections, and that is contains only subjects not excluded from the popular initiative and which are related or which are mutually dependent, it may then be filed with the secretary of the commonwealth. The secretary of the commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a fair, concise summary, as determined by the attorney general, of the proposed measure as such summary will appear on the ballot together with the names and residences of the first ten signers. All initiative petitions, with the first ten signatures attached, shall be filed with the secretary of the commonwealth not earlier than the first Wednesday of the September before the assembling of the general court into which they are to be introduced, and the remainder of the required signatures shall be filed not later than the first Wednesday of the following December.

End of Document

Reports

Representation Petitions - RC

Employees or a union may file a petition for a representation election (RC) after collecting signatures from at least 30% of workers in the potential bargaining unit. Petitions that are not withdrawn or dismissed result in an NLRB-conducted election. A majority of votes decides the outcome. Please note: Some petitions filed in a given year may not have an election until a subsequent year. Thus, the number of petitions may not equal the total number of dispositions in a given year.



Fiscal Year	Petitions Filed	Elections Held	Won by Union	Lost by Union	Petitions Dismissed	Petitions Withdrawn
2023	2115	1391	1152	365	27	499
2022	2072	1363	1041	362	24	457
2021	1269	862	663	288	23	324
2020	1440	927	665	263	23	393
2019	1673	995	745	98	23	476
2018	1597	1120	790	330	17	386
2017	1854	1366	940	375	29	493
2016	2029	1396	1014	401	38	610
2015	2198	1574	1120	480	39	663
2014	2053	1407	952	440	24	586

Microsoft Power BI

Most Popular Pages

Who We Are
National Labor Relations Act
Cases & Decisions
Recent Charges & Petitions Filings
The Law
The Right to Strike
Case Search
Contact Us
Frequently Asked Questions

Other Language Publications

Español - Spanish
العربية - Arabic
中文 (繁體中文) - Chinese (Traditional)
中文 (简体中文) - Chinese (Simplified)
Français - French
Kreyòl ayisyen - Haitian Creole
हिंदी - Hindi
Hmong - Hmong
한국어 - Korean
Polski - Polish
Português - Portuguese
ਪੰਜਾਬੀ - Punjabi
Русский - Russian
Somali - Somali
Tagalog - Tagalog
اردو - Urdu
Tiếng Việt - Vietnamese

Connect With NLRB

NLRB Subscription Updates **Download NLRB Mobile App**

National Labor Relations Board

Calender No. 595

74TH CONGRESS, *1st Session* | SENATE | REPORT No. 573

NATIONAL LABOR RELATIONS BOARD

MAY 1 (Calendar day, MAY 2), 1935.—Ordered to be printed

Mr. WALSH, from the Committee on Education and Labor, submitted the following

REPORT

[To accompany S. 1958]

The Committee on Education and Labor, to whom was referred the bill (S. 1958) to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes, after holding hearings and giving consideration to the bill, report the same with amendments and recommend the passage of the bill as amended.

In view of the impending expiration on June 16, 1935, of the National Industrial Recovery Act, with its fair promise in section 7 (a) of promoting industrial peace by the recognition of the rights of employees to organize and bargain collectively, and of Public Resolution 44, Seventy-third Congress, under which the present National Labor Relations Board was created, the time has come for a clean decision either to withdraw that promise or to implement it by effective legislation. Under the conditions existing a year ago the Congress was perhaps justified in passing Public Resolution 44 in lieu of a comprehensive dealing with the problem. But the compelling force of another year's experience, demonstrating that the Government's promise in section 7 (a) stands largely unfulfilled, makes unacceptable any further temporizing measures. In the committee's judgment the present bill is a logical development of a philosophy and a consistent policy manifest in many acts of Congress dealing over a period of years with labor relations.

GENERAL OBJECTIVES OF THE BILL

(1) *Industrial peace.*—The first objective of the bill is to promote industrial peace. The challenge of economic unrest is not new. During the period from 1915 through 1921 there were on the average 3,043 strikes per year, involving the vacating of 1,745,000 jobs and

the loss of 50,242,000 working days every 12 months. From 1922 through 1926 the annual average totaled 1,050 strikes, 775,000 strikers, and 17,050,000 working-days lost. From 1927 through 1931 the yearly average for disputes was 763, for employees leaving their work 275,000, and for days lost 5,665,000. In 1933 over 812,137 workers were drawn into strikes, and in 1934 the number rose to 1,277,344. In this 2-year period over 32,000,000 working-days were lost because of labor controversies. While exactitude is impossible, reliable authority has it that over a long range of time the losses due to strikes in this country has amounted to at least $1,000,000,000 per year. And no one can count the cost in bitterness of feeling, in inefficiency, and in permanent industrial dislocation.

Prudence forbids any attempt by the Government to remove all the causes of labor disputes. Disputes about wages, hours of work, and other working conditions should continue to be resolved by the play of competitive forces, so far as the provisions of codes of fair competition are not controlling. This bill in no respect regulates or even provides for supervision of wages or hours, nor does it establish any form of compulsory arbitration.

But many of the most fertile sources of industrial discontent can be segregated into a single category susceptible to legislative treatment. Competent students of industrial relations have estimated that at least 25 percent of all strikes have sprung from failure to recognize and utilize the theory and practices of collective bargaining, under which are subsumed the rights of employees to organize freely and to deal with employers through representatives of their own choosing. Figures compiled by the Bureau of Labor statistics of the United States Department of Labor confirm this estimate. And of the 6,355 new cases received by the regional agencies of the present National Labor Relations Board during the second half of 1934, the issue of collective bargaining was paramount in 2,330, or about 74 percent.

It is thus believed feasible to remove the provocation to a large proportion of the bitterest industrial outbreaks by giving definite legal status to the procedure of collective bargaining and by setting up machinery to facilitate it. Furthermore by establishing the only process through which friendly negotiations or conferences can operate in modern large-scale industry, there should be a tremendous lessening of the strife that has resulted from failure to adjust wage and hour disputes.

This opinion is substantiated by experience in the United States. For over half a century, beginning with the act of October 1, 1888 (25 Stat. 501), and culminating in the 1934 amendments to the Railway Labor Act (48 Stat. 1185), Congress has constantly elaborated and perfected its protection of collective bargaining in the railroad industry. Largely in consequence, our main artieries of commerce have been remarkably free from the paralyzing effect of industrial disputes since the great strike of 1894. During the World War, when it became imperative that production should be maintained without interruption, the Government set up the War Labor Board and without hesitation applied to industry generally the principles

that had been tested upon the railroads. Not until after the armis tice was a single award of the War Labor Board violated, and our country remained singularly free from the industrial strife that har-

3

assed the other belligerent nations. Only after the war, when the Government withdrew its support of the practice of collective bargaining, was the country faced with a rising tide of labor disputes. And in this connection it must not be overlooked that the present National Labor Relations Board and its predecessor, the National Labor Board, despite the handicaps under which they have operated, handicaps which the present bill is designed to remove, have succeeded in keeping over 1,000,000 men at work upon terms satisfactory to all.

For these reasons, the committee believes that the present bill, by promoting peace in industry, will confer mutual benefits upon employers, workers, and the general public.

(2) *Economic adjustment.*—The second major objective of the bill is to encourage, by developing the procedure of collective bargaining, that equality of bargaining power which is a prerequisite to equality of opportunity and freedom of contract. The relative weakness of the isolated wage earner caught in the complex of modern industrialism has become such a commonplace of our economic literature and political vocabulary that it needs no exposition. This relative weakness of position has been intensified by the technological forces driving us toward greater concentration of business, by the tendency of the courts to narrow the application of the antitrust laws, and more recently by the policy of the Government in encouraging cooperative activity among trade and industrial groups.

Congress long ago recognized that it must play some part in redressing this inequality of bargaining power. A ready example has been the extensive role played by the Federal Government in the railroad industry, to which this report has referred. Another instance is the Norris-La Guardia Act (U. S. C., title 29, secs. 101–115). And a marked enlargement of Federal activity in the field of labor relations was one of the consequences of the Nation-wide depression beginning in 1929.

Between 1929 and February 1933, the index of industrial production dropped from 119 to 63, while construction activities fell from 117 to 19, and commodity prices from 95.3 to 59.8. Pay rolls receded from 107 to 40. In the 3 years following 1929, the income received by individuals in the United States shrunk from 81 billion dollars to 49, a reduction of 40 percent. At the height of the crisis, from 12 to 16 million people were unemployed.

While neither economists nor statesmen agreed entirely as to the causes or remedies for the depression, the overwhelming preponderance acknowledged that the disregard of economic forces for State lines, the interpenetration of various industries throughout the country, and the Nation-wide character of the prolonged calamity made national action essential. To speed business revival Congress therefore abetted Nation-wide cooperation among businessmen to outlaw unfair trade practices, to rationalize production, and to coordinate the distribution of goods. Supplementary to this, Congress accepted and acted upon the tested hypothesis that the depression

had been provoked and accentuated by a long-continued and increasing disparity between production and consumption; that this disparity had resulted from a level of wages that did not permit the masses of consumers to relieve the market of an ever-increasing flow of goods; and that even businessmen who recognized these evils—and very many of them did—were powerless to act because of the uncontrolled

4

competition in regard to wages and other working conditions. Having in mind both the temporary expediency of priming the pump of business and the permanent objective of crystallizing antidepressive forces for the future, Congress commenced the regulation of minimum wages and maximum hours to stabilize competitive conditions and to spread adequate consumer purchasing power throughout the Nation at large.

Congress recognized at the outset, however, that governmental regulation of wages and working conditions was not a complete solution, and that far from being a substitute for self-help by industry and labor, it was merely a bedrock upon which both might build. In order that industry might help itself, there was some relaxation of the antitrust laws; in order that labor might help itself, the prospectus of collective bargaining was set forth in section 7 (a) of the National Industrial Recovery Act (48 Stat. 198), supplemented in June 1934 by Public Resolution 44 (48 Stat. 1183), providing for governmentally supervised elections of representatives of employees.

Whatever divergence of opinion there may be as to the validity of some of the steps in the program above discussed, the committee believes that the desirability of collective bargaining, as it bears upon industrial peace and equality of bargaining power, is sufficiently well established and sufficiently divorced from the temporary aspects of the present economic situation to justify its affirmance in adequate and permanent Federal law.

WEAKNESSES IN EXISTING LAW

It is not necessary to cite extensive evidence of the break-down of section 7 (a) of the National Industrial Recovery Act and of Public Resolution 44. That fact is not only a matter of common knowledge, but has been admitted publicly by officials of the National Recovery Administration, by those connected with the National Labor Relations Board, and by many others whose experience merits attention.

A recital of the weaknesses in these laws, however, will indicate that the defects are neither intrinsic nor irremediable, but may be cured by the corrective steps taken in the present bill.

(1) *Ambiguity.*—The language of section 7 (a) has been subjected to a variety of interpretation by persons whose opinions weighed heavily with public opinion, either because they were specifically charged with the administration of that law or because they were intimately connected with some other phase of the Government's program. It is clear that both employers and employees are entitled to and will benefit by a greater precision and certainty in the law.

(2) *Excessive generality.*—While section 7 (a) states the principles of collective bargaining in general terms, it contains no particularities as to what practices are contrary to its purposes. This has greatly

hampered not only administrative and enforcing agencies, but also all those subject to the law who wish to obey it.

(3) *Excessive diffusion of administrative responsibility.*—Today a wide variety of independent industrial boards, from 13 to 15 in number, are entrusted with the administration of section 7 (a). The present National Labor Relations Board has no appellate jurisdiction over any board established pursuant to an industrial code, either in respect to findings of fact or interpretations of law. And as there are now over a hundred codes which make some provisions for the

5

creation of such boards, it could be only a matter of time until this diffusion of authority would reach extraordinary proportions.

None of these boards has any actual power within itself to enforce section 7 (a). And even if such power could be granted wisely to a multitude of agencies, these boards are unsuited to the purpose. Largely bipartisan in character, they live in an atmosphere of conciliation and compromise that may be admirably suited to the settlement of wage and hour disputes where shifting standards must be applied to variegated local needs. But section 7 (a) is a uniform national policy established by law of Congress. As such it must receive uniform interpretation everywhere; it must be enforced by a judicial process rather than broken by compromise; and its enforcement must reside with governmental rather than with quasi-private agencies.

(4) *Disadvantages of tie-up with codes of fair competition.*—The incorporation of section 7 (a) in codes of fair competition entrusts the enforcement of that section largely to the National Recovery Administration. For example, even after the National Labor Relations Board decides that 7 (a) has been violated, ultimate decision as to whether the Blue Eagle shall be removed and Government contracts canceled rests with the Recovery Administration.

This arrangement is undesirable because policies admirably suited to the administration of canons of fair competition that have been written largely with the advice and consent of industry are not suited at all to the enforcement of section 7 (a), which is a law of Congress that becomes of moment precisely when it is defied. The tendency is to force the Recovery Administration upon the horns of a dilemma where it must decide either to speak softly about 7 (a) or disturb the amicable atmosphere in which the cooperative formation and execution of codes of fair competition thrives.

This evil is accentuated because section 7 (a) is now applicable only to codified industries. Thus recalcitrants are in a strategic position to threaten constantly the abandonment of their code if 7 (a) is invoked against them.

(5) *No power vested in National Labor Relations Board.*—The present National Labor Relations Board, which is the primary agency entrusted with the safeguarding of section 7 (a), has no quasi-judicial power. It must seek enforcement through reference to the Department of Justice. Since the Board has no power of subpena, except in connection with elections, the records which it builds up are based in many cases upon the testimony of complainants alone, supplemented at best by the testimony of such witnesses as the defendants volun-

tarily present. This makes it necessary for the Department of Justice, in any event, to make further investigations before bringing suit in court, and if suit is brought at all, it must commence entirely *de novo* in court, with the defendant having 30 days to answer, or moving to dismiss, or applying for a bill of particulars. Thus is defeated the very purpose of an administrative agency, which is to provide specialized treatment of the factual aspects of a specialized type of controversy.

(6) *Obstacles to elections.*—Under Public Resolution 44, any attempt by the Government to conduct an election of representatives may be contested *ab initio* in the courts, although such election is in reality merely a preliminary determination of fact. This means that

6

the Government can be delayed indefinitely before it takes the first step toward industrial peace. After almost a year not a single case, in which a company has chosen to contest an election order of the Board, has reached decision in any circuit court of appeals.

This break-down of the law is breeding the very evil which the law was designed to prevent. During the past year and a half the country has lived under the constant shadow of actual or impending warfare in factory and in mine. A large portion of this strife, which falls so heavily upon the general public, may be attributed to the evils enumerated above.

ANALYSIS OF THE BILL

Section 1. Findings and declaration of policy.—This section states the dual objective of Congress to promote industrial peace and equality of bargaining power by encouraging the practice of collective bargaining and protecting the rights upon which it is based.

Section 2. Definitions.—It will be sufficient to discuss the more important definitions.

The term "employer" excludes labor organizations, their officers, and agents (except in the extreme case when they are acting as employers in relation to their own employees). Otherwise the provisions of the bill which prevent employers from participating in the organizational activities of workers would extend to labor unions as well, and thus would deprive unions of one of their normal functions.

The term "employee" is not limited to the employees of a particular employer. The reasons for this are as follows: Under modern conditions employees at times organize along craft or industrial lines and form labor organizations that extend beyond the limits of a single-employer unit. These organizations at times make agreements or bargain collectively with employers, or with an association of employers. Through such business dealings, employees are at times brought into an economic relationship with employers who are not their employers. In the course of this relationship, controversies involving unfair labor practices may arise. If this bill did not permit the Government to exercise complete jurisdiction over such controversies (arising from unfair labor practices), the Government would be rendered partially powerless, and could not act to promote peace in those very wide-spread controversies where the establishment of peace is most essential to the public welfare.

699925—49—vol. II——44

The term "employee" also includes any individual whose work has ceased as a consequence of or in connection with any current labor dispute or because of any unfair labor practice, who has not attained any other regular or substantially equivalent employment. The bill thus observes the principle that men do not lose their right only to be considered as employees for the purposes of this bill merely by collectively refraining from work during the course of a labor controversy. Recognition that strikers may retain their status as employees has frequently occurred in judicial decisions. (See, for example, *Michaelson* v. *United States* (291 Fed. 940), reversed on other grounds in 266 U. S. 42.) To hold otherwise for the purposes of this bill would be to withdraw the Government from the field at the very point where the process of collective bargaining has reached a critical stage and where the general public interest has mounted to its highest point. And to hold that a worker who because of an unfair labor practice

7

has been discharged or locked out or gone on strike is no longer an employee, would be to give legal sanction to an illegal act and to deny redress to the individual injured thereby.

For administrative reasons, the committee deemed it wise not to include under the bill agricultural laborers, persons in domestic service of any family or person in his home, or any individual employed by his parent or spouse. But after deliberation, the committee decided not to exclude employees working for very small employer units. The rights of employees should not be denied because of the size of the plant in which they work. Section 7 (a) imposes no such limitation. And in cases where the organization of workers is along craft or industrial lines, very large associations of workers fraught with great public significance may exist, although all the members therein work in very small establishments. Furthermore, it is clear that the limitation of this bill to events affecting interstate commerce is sufficient to prevent intervention by the Federal Government in controversies of purely local significance.

The term "labor organization" is phrased very broadly in order that the independence of action guaranteed by section 7 of the bill and protected by section 8 shall extend to all organizations of employees that deal with employers in regard to "grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." This definition includes employee-representation committees and plans in order that the employers' activities in connection therewith shall be equally subject to the application of section 8.

The term "affecting commerce" is inserted as a short cut to prevent the repetition of lengthy jurisdictional phraseology throughout the bill. The bill limits Federal action to areas sanctioned by the commerce clause. The bill does not project the Federal Government into matters of purely intrastate concern. It applies only in matters which burden or affect or obstruct interstate commerce, or which have led or tend to lead to a labor dispute that might have such effect upon interstate commerce. (The more general discussion of constitutional questions is deferred until the last section of this report).

The term "labor dispute" includes cases where the disputants do not stand in the proximate relation of employer and employee. An identical provision is contained in section 13 (c) of the Norris-LaGuardia Act (U. S. C., title 29, secs. 101–115), and in most recent labor legislation dealing with disputes. This definition does not mean that the Government could intervene in a "dispute" between an employer and, let us say, a critical college professor; for jurisdiction under this bill depends upon the charge of an unfair labor practice affecting commerce, and there could be no such practice involving the employer and the college professor. But unfair labor practices may, by provoking a symptahetic strike for example, create a dispute affecting commerce between an employer and employees between whom there is no proximate relationship. Liberal courts and Congress have already recognized that employers and employees not in proximate relationship may be drawn into common controversies by economic forces. There is no reason why this bill should adopt a narrower view, or prevent action by the Government when such a controversy occurs.

8

Section 3. National Labor Relations Board.—This section creates as an independent agency in the executive branch of the Government, a board to be known as the National Labor Relations Board. The Board shall be composed of three members, appointed for 5-year terms by the President by and with the advice and consent of the Senate.

Section 4. Organization of the Board.—This section provides that members of the Board shall receive salaries of $10,000 a year each. It also provides for the appointment of employees, for the transfer to the Board of the cases, records, and employees of the present National Labor Relations Board, and for the method of paying the expenses of the Board. These provisions are all in accordance with commonly accepted practice in setting up administrative agencies.

It is of special import that the National Labor Relations Board is not empowered to engage in conciliation of wage and hour disputes insofar as that activity can be carried on by the Department of Labor. Duplication of services is thus avoided, and in addition the Board is left free to engage in quasi-judicial work that is essentially different from conciliation or mediation of wage and hour controversies. And of course the binding effect of the provisions of this bill forbidding unfair labor practices are not subjects for mediation or conciliation.

The committee does not believe that the Board should serve as an arbitration agency. Such work, like conciliation, might impair its standing as an interpreter of the law. In addition, there is at present no dearth of arbitration agencies in this country. If arbitration lags, it is only because parties are not ready to submit to it. And compulsory arbitration has not received the sanction of the American people.

Section 5. Prosecution of inquiry.—This section follows the customary policy of allowing the Board or its agencies to move to the scene of action, rather than compelling all parties at all times to come to Washington.

Section 6. Rules and regulations.—This section follows the customary policy of giving the Board the power to make and amend rules

and regulations. Such rules and regulations become effective only upon publication and there are no criminal penalties attached to their breach.

RIGHTS OF EMPLOYEES—UNFAIR LABOR PRACTICES

Sections 7 and 8. Rights of employees—Unfair labor practices.—These sections are designed to establish and protect the basic rights incidental to the practice of collective bargaining. At this juncture the committee wishes to emphasize two points. In the first place, the unfair labor practices under the purview of this bill are strictly limited to those enumerated in section 8. This is made clear by paragraph 8 of section 2, which provides that "The term 'unfair labor practice' means any unfair labor practice listed in Section 8," and by Section 10 (a) empowering the Board to prevent any unfair labor practice "listed in Section 8." Unlike the Federal Trade Commission Act, which deals somewhat analagously with unfair trade practices, this bill is specific in its terms. Neither the National Labor Relations Board nor the courts are given any blanket authority to prohibit whatever labor practices that in their judgment are deemed to be unfair. Secondly, as will be shown directly, the unfair labor

9

practices listed in this bill are supported by a wealth of precedent in prior Federal law.

employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

In conjunction with section 7, the first unfair labor practice enumerated in section 8 makes it illegal for an employer—

to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

This familiar statement calls to mind the language of section 7 (a) of the National Industrial Recovery Act (48 Stat. 198, U. S. C., title 15, sec. 707 (a)), which provides that—

Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

Similarly section 2 of the Railway Labor Act of 1934 (48 Stat. 1185) provides:

The purposes of the Act are * * * (3) to provide for the complete independence of carriers and of employees in the matter of self-organization * * *. Employees shall have the right to organize and bargain collectively through representatives of their own choosing * * *. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice * * *.

Similar statements will be found in section 2 of the Railway Labor Act of 1926 (44 Stat. 577, U. S. C., title 45, sec. 152); section 2 of the Norris-La Guardia Act (47 Stat. 70, U. S. C., title 29, sec. 102); section 77 (p) and (q) of the 1933 amendments to the Bankruptcy Act (47 Stat. 1481, U. S. C., title 11, sec. 205 (p) and (q)); and section

7 (e) of the act creating the office of the Federal Coordinator of Transportation (48 Stat. 214, U. S. C., title 49, sec. 257 (e)).

The four succeeding unfair-labor practices are designed not to impose limitations or restrictions upon the general guaranties of the first, but rather to spell out with particularity some of the practices that have been most prevalent and most troublesome.

THE COMPANY-UNION PROBLEM

The second unfair labor practice deals with the so-called "company-union problem." It forbids an employer—

> to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it.

(The proviso will be discussed subsequently.)

With identical objectives in view, section 2 of the Railway Labor Act of 1934 provides:

> The purposes of the Act are * * * (3) * * * it shall be unlawful for any carrier to interfere in any way with the organization of its employees. * * * (4) It shall be unlawful for any carrier * * * to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor.

10

To the same effect are the provisions of the Bankruptcy Act as amended in 1933 and 1934, and section 7 (e) of the Emergency Railroad Transportation Act of 1933. Under these sections it is unlawful for a carrier (whether under control of a judge, trustee, receiver, or private management) or for a judge, trustee, or receiver in a corporate reorganization under the Bankruptcy Act—

> * * * to interfere in any way with the organizations of employees or to use the funds of the (property) under his jurisdiction in maintaining so-called "company unions."

This bill does nothing to outlaw free and independent organizations of workers who by their own choice limit their cooperative activities to the limits of one company. Nor does anything in the bill interfere with the freedom of employers to establish pension benefits, outing clubs, recreational societies, and the like, so long as such organizations do not extend their functions to the field of collective bargaining, and so long as they are not used as a covert means of discriminating against or in favor of membership in any labor organization. Such agencies, confined to their proper sphere, have promoted amicable relationships between employers and employees and the committee earnestly hopes that they will continue to function.

The so-called "company-union" features of the bill are designed to prevent interference by employers with organizations of their workers that serve or might serve as collective bargaining agencies. Such interference exists when employers actively participate in framing the constitution or bylaws of labor organizations; or when, by provisions in the constitution or by laws, changes in the structure of the organization cannot be made without the consent of the employer. It exists when they participate in the internal management or elections of a labor organization or when they supervise the agenda or procedure of meetings. It is impossible to catalog all the practices that might

constitute interference, which may rest upon subtle but conscious economic pressure exerted by virtue of the employment relationship. The question is one of fact in each case. And where several of these interferences exist in combination, the employer may be said to dominate the labor organization by overriding the will of employees.

The committee feels justified, particularly in view of statutory precedents, in outlawing financial or other support as a form of unfair pressure. It seems clear that an organization or a representative or agent paid by the employer for representing employees cannot command, even if deserving it, the full confidence of such employees. And friendly labor relations depend upon absolute confidence on the part of each side in those who represent it.

But the committee has been extremely careful not to work injustice by carrying these strictures too far. To deny absolutely by law the right of employees to confer with management during working hours without loss of time or pay would interrupt the very negotiations which it is the object of this bill to promote. For these reason, there is attached to the second unfair labor practice the following proviso:

> That, subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

This proviso is surrounded by adequate safeguards. Where the right to receive normal pay while conferring is bestowed upon favored employees or organizations rather than equally upon all, it will run

up against many of the prohibitions of section 8. In addition, the proviso in entirety is made subject to the rules and regulations of the Board, thus enabling the Board to confine it to whatever extent may be necessary to effectuate the purposes of the bill.

The committee's decision to prevent company interference with employee organizations has been influenced by recent events.

Practically 70 percent of the employer-promoted unions have sprung up since the passage of section 7 (a) of the National Industrial Recovery Act. The testimony before the committee has indicated that the active entry of some employers into a vigorous competitive race for the organization of workers is not conducive to peace in industry. It is the wish of the committee to prevent insofar as possible the perpetuation of bitterness or strife.

The third unfair labor practice forbids an employer—

> by discrinination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.

(The proviso will be discussed subsequently.)

This provision rounds out the idea expressed in section 7 (a) of the National Industrial Recovery Act to the effect that—

> No employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing * * *.

Of course nothing in the bill prevents an employer from discharging a man for incompetence; from advancing him for special aptitude;

or from demoting him for failure to perform. But if the right to be free from employer interference in self organization or to join or refrain from joining a labor organization is to have any practical meaning, it must be accompanied by assurance that its exercise will not result in discriminatory treatment or loss of the opportunity for work.

PROBLEM OF THE CLOSED SHOP

The proviso attached to the third unfair-labor practice deals with the question of the closed shop. Propaganda has been wide-spread that this proviso attaches special legal sanctions to the closed shop or seeks to impose it upon all industry. This propaganda is absolutely false. The reason for the insertion of the proviso is as follows: According to some interpretations; the provision of section 7 (a) of the National Industrial Recovery Act, assuring the freedom of employees "to organize and bargain collectively through representatives of their own choosing", was deemed to illegalize the closed shop. The committee feels that this was not the intent of Congress when it wrote section 7 (a); that it is not the intent of Congress today; and that it is not desirable to interfere in this drastic way with the laws of the several States on this subject.

But to prevent similar misconceptions of this bill, the proviso in question states that nothing in this bill, or in any other law of the United States, or in any code or agreement approved or prescribed thereunder, shall be held to prevent the making of closed-shop agreements between employers and employees. In other words, the bill does nothing to facilitate closed-shop agreements to or make them legal in any State where they may be illegal; it does not interfere with

the *status quo* on this debatable subject but leaves the way open to such agreements as might now legally be consummated, with two exceptions about to be noted.

The assertion that the bill favors the closed shop is particularly misleading in view of the fact that the proviso in two respects actually narrows the now existent law regarding closed-shop agreements. While today an employer may negotiate such an agreement even with a minority union, the bill provides that an employer shall be allowed to make a closed-shop contract only with a labor organization that represents the majority of employees in the appropriate collective-bargaining unit covered by such agreement when made.

Secondly, the bill is extremely careful to forestall the making of closed-shop agreements with organizations that have been "established, maintained, or assisted" by any action defined in the bill as an unfair labor practice. And of course it is clear that no agreement heretofore made could give validity to the practices herein prohibited by section 8.

The fourth unfair labor practice, which prohibits the discharge of or discrimination against an employee for filing charges or giving testimony under the bill, is self-explanatory.

DUTY TO BARGAIN COLLECTIVELY

The fifth unfair labor practice makes it illegal for an employer—

to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

The committee wishes to dispel any possible false impression that this bill is designed to compel the making of agreements or to permit governmental supervision of their terms. It must be stressed that the duty to bargain collectively does not carry with it the duty to reach an agreement, because the essence of collective bargaining is that either party shall be free to decide whether proposals made to it are satisfactory.

But, after deliberation, the committee has concluded that this fifth unfair labor practice should be inserted in the bill. It seems clear that a guarantee of the right of employees to bargain collectively through representatives of their own choosing is a mere delusion if it is not accompanied by the correlative duty on the part of the other party to recognize such representatives as they have been designated (whether as individuals or labor organizations) and to negotiate with them in a bona fide effort to arrive at a collective bargaining agreement. Furthermore, the procedure of holding governmentally supervised elections to determine the choice of representatives of employees becomes of little worth if after the election its results are for all practical purposes ignored. Experience has proved that neither obedience to law nor respect for law is encouraged by holding forth a right unaccompanied by fulfillment. Such a course provokes constant strife, not peace.

Subsequently, in this report the committee adverts to proposals for including in the bill prohibitions against practices by employees.

13

THE MAJORITY RULE

Section 9. Selection of representatives.—Section 9 (a) sets forth the majority rule. It provides that—

Representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

(The proviso will be discussed later.)

The principle of majority rule has been applied successfully by governmental agencies and embodied in laws of Congress. It was promulgated by the National War Labor Board created by President Wilson in the spring of 1918. It has been followed without deviation by the Railway Labor Board, created by the Transportation Act of 1920. Public Resolution No. 44, approved June 1934, contemplated majority rule in that it provided for secret elections. The 1934 amendments to the Railway Labor Act provided:

The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this act.

And the rule is sanctioned by our governmental practices, by business procedure, and by the whole philosophy of democratic institutions.

The object of collective bargaining is the making of agreements that will stabilize business conditions and fix fair standards of working conditions. Since it is wellnigh universally recognized that it is practically impossible to apply two or more sets of agreements to one unit of workers at the same time, or to apply the terms of one agreement to only a portion of the workers in a single unit, the making of agreements is impracticable in the absence of majority rule. And by long experience, majority rule has been discovered best for employers as well as employees. Workers have found it impossible to approach their employers in a friendly spirit if they remained divided among themselves. Employers likewise, where majority rule has been given a trial of reasonable duration, have found it more conductive to harmonious labor relations to negotiate with representatives chosen by the majority than with numerous warring factions.

Majority rule carries the clear implication that employers shall not interfere with the practical application of the right of employees to bargain collectively through chosen representatives by bargaining with individuals or minority groups in their own behalf, after representatives have been picked by the majority to represent all. But majority rule, it must be noted, does not imply that any employee can be required to join a union, except through the traditional method of a closed-shop agreement, made with the assent of the employer. And since in the absence of such an agreement the bill specifically prevents discrimination against anyone either for belonging or for not belonging to a union, the representatives selected by the majority will be quite powerless to make agreements more favorable to the majority than to the minority. In addition, the bill preserves at all times the right of any individual employee or group of employees to present grievances to their employer.

14

Another protection for minorities is that the right of a majority group through its representatives to bargain for all is confined by the bill to cases where the majority is actually organized "for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment." An organization which is not constructed to practice genuine collective bargaining cannot be the representative of all employees under this bill.

Section 9 (b) empowers the National Labor Relations Board to decide whether the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit. Obviously, there can be no choice of representatives and no bargaining unless units for such purposes are first determined. And employees themselves cannot choose these units, because the units must be determined before it can be known what employees are eligible to participate in a choice of any kind.

This provision is similar to section 2 of 1934 amendments to the Railway Labor Act (48 Stat. 1185), which states that—

> In the conduct of any election for the purpose herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election.

ELECTIONS

Section 9 (c) empowers the National Labor Relations Board, whenever a question affecting commerce arises concerning the representation of employees, to conduct an investigation either by secret ballot or otherwise to determine such representatives. In any such investigation, an appropriate hearing must be held.

Section 9 (d) makes it absolutely clear that there shall be no right to court review anterior to the holding of an election. An election is the mere determination of a preliminary fact, and in itself has no substantial effect upon the rights of either employers or employees. There is no more reason for court review prior to an election than for court review prior to a hearing. But if subsequently the Board makes an order predicated upon the election, such as an order to bargain collectively with elected representatives, then the entire election procedure becomes part of the record upon which the order of the Board is based, and is fully reviewable by any aggrieved party in the Federal courts in the manner provided in section 10. And this review would include within its scope the action of the Board in determining the appropriate unit for purposes of the election. This provides a complete guarantee against arbitrary action by the Board.

PREVENTION OF UNFAIR LABOR PRACTICES

Section 10. Procedure before the Board.—This is the most important procedural section. Despite the wide-spread charges that the bill invokes novel procedure and vests unusual powers in an administrative agency, the bill is modeled closely upon numerous Federal Statutes setting up administrative regulatory bodies of a quasi-judicial character. The common procedure is so well known that the committee deems it unnecessary in substantiation of this statement to refer to any analogous statutes save the Federal Trade Commission Act, section 5.

The bill empowers the National Labor Relations Board to hold hearings, either itself or through its agents, upon charges of unfair

labor practices. After such hearings the Board, and the Board alone, may issue orders requiring the person complained of to cease and desist from the unfair labor practice and to take such affirmative action, including reinstatement with or without back pay, as may be necessary to effectuate the policies of the bill. If no sufficient case is made out, the Board shall issue an order dismissing the complaint.

If an order of the Board is disobeyed, the Board may petition for enforcement in any circuit court of appeals of the United States in any circuit wherein the unfair labor practice in question occurred or wherein the disobedient person resides or transacts business or in the appropriate district court if all circuit courts are in vacation. In such instances, the court shall have power to grant temporary relief or a restraining order, and to make and file a decree enforcing, modifying, or setting aside in whole or in part the order of the Board. Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may likewise obtain review in the appropriate court.

Section 10 (a) gives the National Labor Relations Board exclusive jurisdiction to prevent and redress unfair labor practices, and, taken in conjunction with section 14, establishes clearly that this bill is paramount over other laws that might touch upon similar subject matters. Thus it is intended to dispel the confusion resulting from dispersion of authority and to establish a single paramount administrative or quasi-judicial authority in connection with the development of the Federal American law regarding collective bargaining.

INVESTIGATORY POWERS

Section 11. Investigation.—This section confers upon the Board the usual investigatory powers vested in administrative agencies, but these powers are limited to the functions imposed in sections 9 and 10.

Section 12. Protection of Federal officials.—This section imposes a criminal penalty, not exceeding imprisonment for more than 1 year, or a fine not exceeding $5,000, or both, upon any person who willfully interferes with any member or agent of the Board in the performance of duties pursuant to the bill. Neither this nor any other section of the bill provides any criminal penalty (other than the usual penalty for contempt) for engaging in an unfair labor practice, even after a court had ordered its cessation.

LIMITATIONS

Section 13. The right to strike.—This section provides that "nothing in this act shall be construed so as to interfere with or impede or diminish in any way the right to strike." It is taken in substance from section 6 of Public Resolution No. 44, Seventy-third Congress.

Section 14. Relationship to other legislation.—This section is designed to resolve conflicts between this bill and other laws.

Section 15. Separability.—This section contains the standard provision for separability in the event that the application of some part of the bill might be invalid.

Section 16. Title.—This section provides that the bill may be cited as the "National Labor Relations Act."

16

REASONS FOR CONFINING THE BILL TO UNFAIR LABOR PRACTICES BY EMPLOYERS

One suggestion in regard to this bill has been advanced so frequently that the committee deems it advisable to set forth its reason for rejecting it. This proposal is that employees and labor organizations, as well as employers, should be prohibited from interfering with, restraining, or coercing employees in their organization activities or their choice of representatives.

The argument most frequently made for this proposal is the abstract one that it is necessary in order to provide fair and equal treatment of employers and employees. The bill prohibits employers from interfering with the right of employees to organize. The corresponding right of employers is that they should be free to organize without interference on the part of employees; no showing has been made that

this right of employers to organize needs Federal protection as against employees. Regulation of the activities of employees and labor organizations in regard to the organization of employees is no more germane to the purposes of this bill than would be regulation of activities of employers and employer associations in connection with the organization of employers in trade associations.

This erroneously conceived mutuality argument is that since employers are to be prohibited from interfering with the organization of workers, employees and labor orgaizations should also be prohibited from engaging in such activities. To say that employees and labor organizations should be no more active than employers in the organization of employees is untenable; this would defeat the very objects of the bill.

There is an even more important reason why there should be no insertion in the bill of any provision against coercion of employees by employees or labor organizations. Courts have held a great variety of activities to constitute "coercion": A threat to strike, a refusal to work on material of nonunion manufacture, circularization of banners and publications, picketing, even peaceful persuasion. In some courts, closed-shop agreements or strikes for such agreements are condemned as "coercive." Thus to prohibit employees from "coercing" their own side would not merely outlaw the undesirable activities which the word connotes to the layman, but would raise in Federal law the ghosts of many much-criticized injunctions issued by courts of equity against activities of labor organizations, ghosts which it was supposed Congress had laid low in the Norris-LaGuardia Act.

Nor can the committee sanction the suggestion that the bill should prohibit fraud or violence by employees or labor unions. The bill is not a mere police court measure. The remedies against such acts in the State and Federal courts and by the invocation of local police authorities are now adequate, as arrests and labor injunctions in industrial disputes throughout the country will attest. The Norris-LaGuardia Act does not deny to employers relief in the Federal courts against fraud, violence or threats of violence. See 29 U. S. C. § 104 (e) and (i).

Racketeering under the guise of labor-union activity has been successfully enjoined under the antitrust laws when it affected interstate commerce. The latest case along these lines is *United States* v. *Local No. 167 et al.* (291 U. S. 293).

17

In addition, the procedure set up in this bill is not nearly so well suited as is existing law to the prevention of such fraud and violence. Deliberations and hearings by the Board, followed by orders that must be referred to the Federal courts for enforcement, are methods of procedure that could never be sufficiently expeditious to be effective in this connection.

The only results of introducing proposals of this sort into the bill, in the opinion of the committee, would be to overwhelm the Board in every case with countercharges and recriminations that would prevent it from doing the task that needs to be done. There is hardly a labor controversy in which during the heat of excitement statements

are not made on both sides which, in the hands of hostile or unsympathetic courts, might be construed to come under the common-law definition of fraud, which in some States extends even to misstatements innocently made, but without reasonable investigation. And if the Board should decide to dismiss such charges, its order of dismissal would be subject to review in the Federal courts.

Proposals such as these under discussion are not new. They were suggested when section 7 (a) of the National Industrial Recovery Act was up for discussion, and when the 1934 amendments to the Railway Labor Act were before Congress. In neither instance did they command the support of Congress.

CONSTITUTIONALITY

The committee is convinced that this proposal keeps within the confines of the constitutional power of Congress. The two main questions involved are: (1) Are the regulations of the employer-employee relationship herein contemplated within the boundaries of due process of law and (2) can Federal jurisdiction be sustained under the commerce clause.

On the due-process point, the case of *Texas & New Orleans Railroad* v. *Brotherhood* (281 U. S. 548) completely sustained the authority of Congress to protect full freedom of organization and to prevent employer domination of employee organizations. This was a suit by a railway brotherhood to restrain the railroad from interfering with the right of its employees to self-organization and the designation of representatives in violation of the Railway Labor Act of 1926. The decree of the lower court, which was sustained in full by the Supreme Court, compelled the company (1) to completely disestablish its company union as representative of its employees; (2) to reinstate the brotherhood (which was the recognized representative chosen by the majority before the company began its unlawful interference) as the representative of all employees until they should make another free choice; (3) to restore to service and to stated privileges certain employees who had been discharged for activities in behalf of the brotherhood. The opinion of a unanimous Court was written by the present Chief Justice.

Turning to the question of interstate commerce, the figures cited earlier in this report can leave no doubt that widespread industrial disturbances burden the flow of commerce. That fact has received recognition by our highest tribunal in such well-known cases as *In re Debs* (158 U. S. 564), *Duplex Printing Press Co.* v. *Deering* (254 U. S. 443), *American Steel Foundries* v. *Tri-City Central Trades*

Council (257 U. S. 184); *Coronado Coal Co.* v. *United Mine Workers* (268 U. S. 295), and *Bedford Cut Stone Co.* v. *Stone Cutters Association* (274 U. S. 37). Equally true it is that failure to accept the procedure of collective bargaining has been the cause of some of the most violent of these industrial disputes. That issue was paramount in the *Debs case, the Coronado case,* and *International Organization* v. *Red Jacket C. C. & C. Co.* (18 Fed. (2d) 839, cert. den. 275 U. S. 536). And the remedy has been as well recognized as the cause. Whenever

given a fair trial, machinery for facilitating collective bargaining has promoted industrial peace.

It is clear, in addition, that unfair labor practices which tend to promote strife may be enjoined before the strife occurs. Civilized law is preventive as well as punitive. As Chief Justice Taft said in the first *Coronado case* (259 U. S. 344):

> If Congress deems certain recurring practices, though not really part of interstate commerce, likely to obstruct, restrain, or burden it, it has the power to subject them to national supervision or restraint.

See also *Wilson* v. *New*, 243 U. S. 322; *United States* v. *Ferger* (250 U. S. 199); *Stafford* v. *Wallace* (258 U. S. 495); *Chicago Board of Trade* v. *Olson* (262 U. S. 1); *Texas & New Orleans Railroad* v. *Brotherhood, supra.*

Cases under the antitrust laws, cited for the proposition that the Federal Government cannot deal with the employer-employee relationship, are not in point. They turned not on any question of constitutional limitations, but upon statutory construction of the extent of equity jurisdiction over labor activities under the antitrust laws. But the Federal Government has power to prevent burdens upon interstate commerce that reached beyond the intent of those laws in regard to labor disputes, and it is intended in this bill to exercise the full constitutional power of Congress to prevent the described unfair labor practices, which have no extenuating social values operating in their favor.

The committee is further of the opinion that congressional power to prevent these unfair labor practices exists and should be exercised even where the threat of strife is not immiment. In line with modern economic developments, the courts have recognized that unsound economic practices have a marked effect upon the volume and stability of commerce. This is illustrated in the cases prohibiting unfair methods of competition under the Federal Trade Commission Act. Again, the general proposition is aptly stated in *Chicago Board of Trade* v. *Olsen* (262 U. S. 1), upholding Federal regulation of future sales on grain exchanges, an activity in itself purely local. The court said:

> The question of price dominates trade between the States. Sales of an article which affect the country-wide price of the article directly affect the country-wide commerce in it. For this reason, Congress has the power to provide the appropriate means adopted in this act by which this abuse may be restrained and avoided.

In effect upon commerce, wage levels are as significant as price levels, for the exchange of goods depends as much upon the consumer's income as upon the price which he must pay. Income and cost of living must be indexed in terms of each other. An analysis of the effect of a decline in mass purchasing power upon all commercial transactions forces the conclusion that the protection of Nation-wide

commerce depends as much upon a floor for wages as upon a ceiling for prices. And in stabilizing wages, no factor plays a more important role than collective bargaining.

In the case of *Appalachian Coals, Inc.*, v. *United States* (288 U. S. 344), Chief Justice Hughes wrote:

> The interests of producers and consumers are interlinked. When industry is grievously hurt, when producing concerns fail, when unemployment mounts, and communities dependent upon profitable production are prostrated, the wells of commerce go dry.

This statement is a landmark of contemporary realism in regard to the commerce power. While this bill of course does not intend to go beyond the consitutional power of Congress, as that power may be marked out by the courts, it seeks the full limit of that power in preventing these unfair labor practices. It seeks to prevent them, whether they burden interstate commerce by causing strikes, or by occurring in the stream of interstate commerce, or by overturning the balance of economic forces upon which the full flow of commerce depends.

PROPOSED AMENDMENTS TO S. 1958

CONGRESSIONAL RECORD, SENATE—MAY 7, 1935

(79 Cong. Rec. 7042–7043)

NATIONAL LABOR RELATIONS BOARD—AMENDMENT

MR. ROBINSON submitted an amendment intended to be proposed by him to the bill (S. 1958) to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes, which was ordered to lie on the table and to be printed.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 16(k) of the
Massachusetts Rules of Appellate Procedure

I, Daniel J. Goodrich, hereby certify that this brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to:

Mass. R. A. P. 16 (a)(13) (addendum);
Mass. R. A. P. 16 (e) (references to the record);
Mass. R. A. P. 18 (appendix to the briefs);
Mass. R. A. P. 20 (form and length of briefs, appendices, and other documents); and
Mass. R. A. P. 21 (redaction).

Use only if producing brief in a proportional font/word limit: I further certify that the foregoing brief complies with the applicable length limitation in Mass. R. A. P. 20 because it is produced in the proportional font New Times Roman at size 14 and contains 7768, total non-excluded words as counted using the word count feature of Microsoft Word.

/s/ Daniel J. Goodrich
Daniel J. Goodrich

CERTIFICATE OF SERVICE

Pursuant to Mass.R.A.P. 13(d), I hereby certify, under the penalties of perjury, that on March 13, 2024, I have made service of this Brief and Record Appendix upon the attorney of record for each party by the Court's Electronic Filing System.

/s/ Daniel J. Goodrich
Daniel J. Goodrich