

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5126

To amend the National Labor Relations Act, to establish the National Public Employment Relations Commission, and to amend title I of the Employment Retirement Income Security Act of 1974 to provide for joint trusteeship of single-employer pension plans.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 28, 1994

Mr. SANDERS (for himself and Mr. OWENS) introduced the following bill;  
which was referred to the Committee on Education and Labor

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## A BILL

To amend the National Labor Relations Act, to establish the National Public Employment Relations Commission, and to amend title I of the Employment Retirement Income Security Act of 1974 to provide for joint trusteeship of single-employer pension plans.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Workplace Democracy Act of 1992”.

6 (b) TABLE OF CONTENTS.—The table of contents for  
7 this Act is as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. Declaration of purpose and policy.
- Sec. 3. Application of Act.

TITLE I—GENERAL PROVISIONS REGARDING RIGHTS OF EMPLOYEES AND ENFORCEMENT AUTHORITY OF THE NATIONAL LABOR RELATIONS BOARD.

- Sec. 101. Right to first contract.
- Sec. 102. Strikes, boycotts, and hot cargo agreements.
- Sec. 103. Treatment of guards.
- Sec. 104. Card recognition for collective bargaining units.
- Sec. 105. Enforcement and authority of National Labor Relations Board.
- Sec. 106. Repealing prohibition authority.

TITLE II—GENERAL PROVISIONS REGARDING RIGHTS OF EMPLOYEES AND ENFORCEMENT AUTHORITY FOR THE NATIONAL LABOR RELATIONS BOARD

- Sec. 201. Definitions.
- Sec. 202. National Public Employment Relations Commission.
- Sec. 203. Rights of employees and employee organizations.
- Sec. 204. Representatives and collective-bargaining units.
- Sec. 205. Impasse in collective bargaining over the terms and conditions of employment and other matters of mutual concern relating thereto.
- Sec. 206. Disputes over the interpretation or application of agreements.
- Sec. 207. Strikes.
- Sec. 208. Impasse procedures for firefighters and public safety officers.
- Sec. 209. Strikes and firefighters and public safety officers.
- Sec. 210. Unlawful acts.
- Sec. 211. Prevention of unlawful acts.
- Sec. 212. Applicability of this Act.
- Sec. 213. Miscellaneous.
- Sec. 214. Effective date.

TITLE III—GENERAL PROVISIONS REGARDING PENSION PLANS

- Sec. 301. Requirements relating to trusteeship of single-employer plans.
- Sec. 302. Effective date.

**1 SEC. 2. DECLARATION OF PURPOSE AND POLICY.**

- 2 (a) STATUTORY PROTECTION.—Experience in both  
 3 private and public employment indicates that the statutory  
 4 protection of the right of employees to organize and bar-  
 5 gain collectively safeguards the public interest and pro-  
 6 motes economic stability and prosperity. Such protection  
 7 facilitates and encourages the amicable settlement of dis-

1 putes between employees and their employers involving the  
2 terms and conditions of employment and other matters of  
3 mutual concern.

4 (b) RESTORE INTENT.—It is the purpose of this Act  
5 to amend the National Labor Relations Act, the law which  
6 governs the rights of workers to organize and to bargain  
7 collectively, to reestablish its original intent, to give work-  
8 ers the power to protect their interests in the workplace,  
9 restore democracy, and promote the free and unobstructed  
10 flow of commerce.

11 (c) PUBLIC EMPLOYMENT.—This Act prescribes cer-  
12 tain rights and obligations of the employees of the States,  
13 territories and possessions of the United States, and the  
14 political subdivisions thereof, to establish procedures gov-  
15 erning the relationship between such employees and their  
16 employers which are designed to meet the special require-  
17 ments and needs of public employment.

18 **SEC. 3. APPLICATION OF ACT.**

19 The provisions of the National Labor Relations Act  
20 shall apply to United States companies and their subsidi-  
21 aries operating in any country that is a signatory to a  
22 Free Trade Agreement. Workers of such companies and  
23 subsidiaries shall have the right to file unfair labor prac-  
24 tice complaints against the United States parent company

1 under this Act and under the laws of the signatory coun-  
2 try.

3 TITLE I—GENERAL PROVISIONS REGARDING  
4 RIGHTS OF EMPLOYEES AND ENFORCE-  
5 MENT AUTHORITY OF THE NATIONAL  
6 LABOR RELATIONS BOARD.

7 **SEC. 101. RIGHT TO FIRST CONTRACT.**

8 Section 8(d) of the National Labor Relations Act (29  
9 U.S.C. 158) is amended by inserting the following after  
10 the word “*Provided*,” the first time it appears:

11 “If not later than 45 days after certification, a collec-  
12 tive bargaining agreement has not been reached, the union  
13 shall have the option of sending the contract dispute to  
14 compulsory and binding arbitration.”.

15 **SEC. 102. STRIKES, BOYCOTTS, AND HOT CARGO AGREE-**  
16 **MENTS.**

17 Section 8(b)(4) and subsection (e) of the National  
18 Labor Relations Act are repealed.

19 **SEC. 103. TREATMENT OF GUARDS.**

20 Section 9(b) of the National Labor Relations Act is  
21 repealed.

1 **SEC. 104. CARD RECOGNITION FOR COLLECTIVE BARGAIN-**  
2 **ING UNITS.**

3 Section 9 of the National Labor Relations Act is  
4 amended by inserting at the end the following new sub-  
5 sections:

6 “(f) The National Labor Relations Board shall pro-  
7 mulgate rules which plainly define the characteristics of  
8 employee units appropriate for collective bargaining  
9 groups. Appropriate units include groups of employees (of  
10 an employer) who have a community of interests that  
11 should be included in the same collective bargaining unit.

12 “(g) The National Labor Relations Board, upon re-  
13 ceipt of a majority of signed union recognition cards of  
14 employees in an appropriate bargaining unit (as deter-  
15 mined by the workers themselves within the guidelines es-  
16 tablished by the Board as specified in subsection (f)) shall  
17 certify such labor organizations as the exclusive represent-  
18 atives of all the employees in such unit for the purposes  
19 of collective bargaining and mutual aid.”.

20 **SEC. 105. ENFORCEMENT AND AUTHORITY OF NATIONAL**  
21 **LABOR RELATIONS BOARD.**

22 (a) Section 10(c) of the National Labor Relations Act  
23 is amended by—

24 (1) inserting “(1)” after “(e)”;

1           (2) striking out the fifth sentence of paragraph  
2           (1) (as redesignated by this section) and inserting in  
3           lieu thereof the following:

4           “If upon the preponderance of the testimony taken  
5 the Board shall not be of the opinion that the person  
6 named in the complaint has engaged in or is engaging in  
7 any such unfair labor practice, or has willfully violated or  
8 is willfully violating a final order as specified in subsection  
9 (b) of this section, then the Board shall state its findings  
10 of fact and shall issue an order dismissing the said com-  
11 plaint.”;

12           (3) by adding at the end thereof the following  
13           new paragraph:

14           “(2) If upon the preponderance of testimony taken  
15 the Board shall be of the opinion that the allegation in  
16 the complaint that a person has willfully violated or is will-  
17 fully violating a final order as specified in subsection (b)  
18 of this section has been sustained, then the Board shall  
19 state its findings of fact and shall issue and cause to be  
20 served on such person an order certifying the identifica-  
21 tion of that person to the Secretary of Labor. Notwith-  
22 standing any other law, unless the Secretary of Labor de-  
23 termines that because of unusual circumstances the na-  
24 tional interest requires otherwise, the Secretary shall cer-  
25 tify the identity of such person to the Comptroller General.

1 The Comptroller General shall distribute a list to all agen-  
2 cies of the United States containing the names of persons  
3 certified by the Secretary of Labor pursuant to this sub-  
4 section. Unless the agency of the United States concerned,  
5 after notice and opportunity for hearing to all interested  
6 parties, certifies to the Secretary of Labor that there is  
7 no other source of material or services furnished by the  
8 person affected by the Board order, no contracts shall be  
9 awarded to such person for a reasonable, definitely stated  
10 period of time commensurate with the seriousness of the  
11 violation, as determined by the Secretary of Labor, but  
12 such period shall not exceed three years. A debarment may  
13 be removed or the period may be reduced by the Secretary  
14 of Labor upon the submission of an application, supported  
15 by documentary evidence, setting forth appropriate  
16 grounds for the granting of relief, including without limi-  
17 tation compliance with the final order found to have been  
18 willfully violated, bona fide change of ownership or man-  
19 agement, a fraud or misrepresentation of the charging  
20 party: *Provided*, That this subparagraph shall restrict the  
21 award of contracts solely to the products or service per-  
22 formed at the particular facility or facilities where the will-  
23 ful violation occurs or of the business entity legally respon-  
24 sible for the willful violation or to the local, intermediate,

1 national or international labor organization legally respon-  
2 sible for the willful violation.”.

3 (b) ADDITIONAL REMEDIES.—The third sentence of  
4 section 10(c) of the National Labor Relations Act is  
5 amended—

6 (1) by striking “and” immediately before “to  
7 take such affirmative action”; and

8 (2) by inserting after “with or without back  
9 pay” the following: “and including making employ-  
10 ees whole for the loss of economic benefits resulting  
11 from a violation of section 8(a)(5) and to provide  
12 such other remedial relief”.

13 (c) INJUNCTIVE RELIEF AND DAMAGES.—Section 10  
14 of the National Labor Relations Act is amended by adding  
15 at the end the following subsection:

16 “(n) Notwithstanding the provisions of subsection (j),  
17 the National Labor Relations Board shall use the injunc-  
18 tion power provided under such subsection whenever the  
19 Board determines that an employer has engaged in a will-  
20 ful violation of the unfair labor practice provisions under  
21 section 8.

22 “(o) The National Labor Relations Board will assess  
23 civil money penalties of not less than \$10,000 against em-  
24 ployers for each willful violation of the Act.

1       “(p) Upon issuance of a complaint which alleges an  
2 unfair labor practice under section 8 of the National  
3 Labor Relations Act, an employer shall reinstate a dis-  
4 charged employee pending adjudication and final review  
5 of such complaint.”.

6       (d) **TREBLE DAMAGES.**—Section 303 of the Manage-  
7 ment Relations Act of 1947 is amended by adding at the  
8 end the following new subsection:

9       “(c) Any person who suffers financial injury by rea-  
10 son of any violation of section 8(a)(3) of the National  
11 Labor Relations Act may bring an action in any district  
12 court of the United States in the district in which the de-  
13 fendant resides or is found or has an agent, without re-  
14 spect to the amount in controversy, and shall recover an  
15 amount equal to 300 percent of the damages sustained  
16 by him, and the cost of the action, including reasonable  
17 attorneys’ fees. A final judgment or decree rendered by  
18 the Board to the effect that a defendant has violated sec-  
19 tion 8(a)(3) shall be prima facie evidence against such de-  
20 fendant in any action brought by any person under this  
21 subsection.”.

22 **SEC. 106. REPEALING PROHIBITION AUTHORITY.**

23       Subsection (b) of section 14 of the National Labor  
24 Relations Act is repealed.

1 **TITLE II—GENERAL PROVISIONS**  
2 **REGARDING RIGHTS OF EM-**  
3 **PLOYEES AND ENFORCEMENT**  
4 **AUTHORITY FOR THE NA-**  
5 **TIONAL LABOR RELATIONS**  
6 **BOARD**

7 **SEC. 201. DEFINITIONS.**

8 As used in this Act:

9 (1) The term “person” includes one or more in-  
10 dividuals, organizations, unions, associations, part-  
11 nerships, corporations, boards, committees, commis-  
12 sions, agencies, or other entity, or their representa-  
13 tives.

14 (2) The term “employer” includes any State,  
15 territory, or possession of the United States, or any  
16 political subdivision thereof, including, without limi-  
17 tation, any town, city, county, borough, district,  
18 school board, board of regents, social service or wel-  
19 fare agency, public or quasi-public corporations,  
20 housing authority or other entity which is tax sup-  
21 ported, and any person acting as an agent thereof.

22 (3) The term “employee” includes any person  
23 employed by an employer, whether or not in the clas-  
24 sified service of the employer, except the chief execu-  
25 tive officer of the employer and other officers of the

1 employer appointed or elected pursuant to statute to  
2 policymaking positions. The term shall not be lim-  
3 ited to the employees of a particular employer, and  
4 shall include any person whose work has ceased as  
5 a consequence of, or in connection with, any unlaw-  
6 ful act as defined in section 210 of this Act.

7 (4) The term “employee organization” includes  
8 any organization, union, association, committee,  
9 council, or group of any kind in which employees  
10 participate, and which exists for the purpose, in  
11 whole or in part, of bargaining collectively with em-  
12 ployers over the terms and conditions of employment  
13 and other matters of mutual concerns relating there-  
14 to.

15 (5) The term “exclusive representative” in-  
16 cludes any employee organization which has been—

17 (A) selected or designated pursuant to the  
18 provisions of section 204 of this Act as the rep-  
19 resentative of the employees in an appropriate  
20 collective bargaining unit; or

21 (B) recognized by an employer prior to the  
22 effective date of this Act as the exclusive rep-  
23 resentative of the employees in an appropriate  
24 collective bargaining unit.

1           (6) The term “supervisor” includes any em-  
2           ployee having authority in the interest of an em-  
3           ployer to hire, direct, assign, promote, reward, trans-  
4           fer, layoff, recall, suspend, discipline, or discharge  
5           other employees, or to adjust their grievances, or to  
6           effectively recommend such action if in connection  
7           with the foregoing the exercise of such authority is  
8           not merely routine or clerical in nature but calls for  
9           the consistent exercise of independent judgment:  
10          *Provided*, That with respect to firefighters, the term  
11          “supervisor” shall include only those employees who  
12          perform a preponderance of the above-specified acts  
13          of authority.

14           (7) The term “professional” includes any em-  
15          ployee whose work—

16                   (A) is predominantly intellectual and var-  
17                   ied in character;

18                   (B) requires the consistent exercise of  
19                   independent judgment;

20                   (C) requires knowledge of an advanced na-  
21                   ture in a field of learning customarily acquired  
22                   by specialized study in an institution of higher  
23                   education or its equivalent; and

1 (D) is of such character that the output or  
2 result accomplished cannot be standardized in  
3 relation to a given period of time.

4 (8) The term “public safety officer” includes  
5 any employee engaged in—

6 (A) the enforcement of the criminal laws,  
7 including highway patrol;

8 (B) a correctional program, facility, or in-  
9 stitution where the activity is potentially dan-  
10 gerous because of contact with criminal sus-  
11 pects, defendants, prisoners, probationers, or  
12 parolees; or

13 (C) a court having criminal or juvenile de-  
14 linquent jurisdiction where the activity is poten-  
15 tially dangerous because of contact with crimi-  
16 nal suspects, defendants, prisoners, probation-  
17 ers, or parolees.

18 (9) The term “firefighter” includes any em-  
19 ployee engaged in the performance of work directly  
20 connected with the control and extinguishment of  
21 fires or the maintenance and use of firefighting ap-  
22 paratus and equipment.

23 (10) The term “educational employee” includes  
24 any employee of a school system, college or univer-  
25 sity who—

1 (A) has regular contact with students;

2 (B) participates in the development, imple-  
3 mentation, or evaluation of an educational pro-  
4 gram; or

5 (C) is otherwise involved in the educational  
6 process.

7 (11) The term “Commission” means the Na-  
8 tional Public Employment Relations Commission es-  
9 tablished by section 202 of this Act.

10 (12) The term “Service” means the Federal  
11 Mediation and Conciliation Service established by  
12 chapter 29 of title 172, United States Code.

13 (13) The term “collective bargaining” or “bar-  
14 gaining” means the performance of the mutual obli-  
15 gation of the representatives of the employer and the  
16 exclusive representative to meet at reasonable times,  
17 in light of the budgetmaking process and other rel-  
18 evant factors, and to confer, consult, and bargain in  
19 a good faith effort to reach agreement with respect  
20 to the terms and conditions of employment and  
21 other matters of mutual concern relating thereto,  
22 and to execute, if requested by either party, a writ-  
23 ten document incorporating any agreements reached,  
24 but such obligation does not compel either party to  
25 agree to a proposal or to make a concession. The

1 duty to negotiate shall extend to matters which are  
2 or may be the subject of a statute, ordinance, regu-  
3 lation, or other enactment by a State, territory, or  
4 possession of the United States, or a political sub-  
5 division thereof, and if legislative action is necessary  
6 to implement any agreement reached, shall include  
7 the obligation of the employer to submit such agree-  
8 ment to the appropriate governmental body for ac-  
9 tion.

10 (14) The term “labor dispute” means any con-  
11 troversy concerning terms and conditions of employ-  
12 ment or other matters of mutual concerns relating  
13 thereto, or concerning the representation of employ-  
14 ees for the purpose of collective bargaining, regard-  
15 less of whether the disputants stand in the proxi-  
16 mate relation of employer and employee.

17 (15) In determining whether any person is act-  
18 ing as an “agent” of another person so as to make  
19 such other person responsible for his acts, the ques-  
20 tion of whether the specific acts performed were ac-  
21 tually authorized or subsequently ratified shall not  
22 be controlling.

1 **SEC. 202. NATIONAL PUBLIC EMPLOYMENT RELATIONS**  
2 **COMMISSION.**

3 (a) There is hereby created the “National Public Em-  
4 ployment Relations Commission”, which shall consist of  
5 five members who shall be appointed by the President by  
6 and with the advice and consent of the Senate. One of  
7 the original members shall be appointed for a term of one  
8 year, one for a term of two years, one for a term of three  
9 years, one for a term of four years, and one for a term  
10 of five years. Their successors shall be appointed for terms  
11 of five years each, except that any person chosen to fill  
12 a vacancy shall be appointed only for the unexpired term  
13 of the member whom he/she succeeds. Commission mem-  
14 bers shall be eligible for reappointment. The President  
15 shall designate one member to serve as Chair of the Com-  
16 mission. Any member of the Commission may be removed  
17 by the President; upon notice and hearing, for neglect of  
18 duty or malfeasance in office, but for no other cause.

19 (b) A vacancy in the Commission shall not impair the  
20 right of the remaining members to exercise all the powers  
21 of the Commission, and three members of the Commission  
22 shall, at all times, constitute a quorum. The Commission  
23 shall have an official seal which shall be judicially noticed.

24 (c) Members of the Commission shall not engage in  
25 any other business, vocation, or employment. The Com-  
26 mission shall appoint an Executive Director and may ap-

1 point State or regional directors, attorneys, and such other  
2 persons as it may from time to time find necessary for  
3 the proper performance of its functions and as may from  
4 time to time be appropriated for by the Congress. Attor-  
5 neys appointed under this section may, at the direction  
6 of the Commission, appear for and represent the Commis-  
7 sion in any case in court.

8 (d) There shall be a General Counsel of the Commis-  
9 sion who shall be appointed by the President, by and with  
10 the advice and consent of the Senate, for a term of five  
11 years. The General Counsel shall be authorized to inves-  
12 tigate alleged violations of the Act, to file and prosecute  
13 complaints filed under the Act, and to exercise such other  
14 powers as the Commission may prescribe. If a vacancy oc-  
15 curs in the Office of General Counsel, the President shall  
16 promptly designate an Acting General Counsel, and shall  
17 submit a nomination for a replacement to Congress within  
18 forty days after the vacancy has occurred, unless Congress  
19 shall have adjourned before the expiration of said forty-  
20 day period, in which event the President shall submit a  
21 nomination not later than 10 days after Congress recon-  
22 venes.

23 (e) All of the expenses of the Commission, including  
24 all necessary traveling and subsistence expenses outside  
25 the District of Columbia incurred by the members, em-

1 ployees, or agents of the Commission under its orders, shall  
2 be allowed and paid on the presentation of itemized vouch-  
3 ers therefor approved by the Commission or by any indi-  
4 vidual it designates for that purpose.

5 (f) The principal office of the Commission shall be  
6 in the District of Columbia, but it may meet and exercise  
7 any or all of its powers at any other place, and may estab-  
8 lish and operate State and regional offices. The Commis-  
9 sion may, by one or more of its members or by such agents  
10 or agencies as it may designate, prosecute any inquiry nec-  
11 essary to its functions in any part of the United States.  
12 Members who participate in such an inquiry shall not be  
13 disqualified from subsequently participating in a decision  
14 of the Commission in the same case.

15 (g) The Commission is authorized to issue, amend,  
16 and rescind, in the manner prescribed by subchapter II  
17 of chapter 5 of title 5, United States Code, such rules and  
18 regulations as may be necessary to carry out the provi-  
19 sions of this Act and is expressly empowered and directed  
20 to prevent any person from engaging in conduct in viola-  
21 tion of this Act. In order to carry out its functions under  
22 this Act, the Commission is authorized to hold hearings,  
23 subpoena witnesses, administer oaths and take the testi-  
24 mony or deposition of any person under oath, and in con-  
25 nection therewith, to issue subpoenas requiring the pro-

1 duction and examination of any books or papers, including  
2 those of the Federal Government or any employer, relating  
3 to any matter pending before it and to take such other  
4 action as may be necessary.

5 (h)(1) Section 5314 of title 5, United States Code,  
6 is amended by adding at the end thereof the following new  
7 paragraph:

8 “(54) Chair, National Public Employment Rela-  
9 tions Commission.”.

10 (2) Section 5315 of title 5, United States Code, is  
11 amended by adding at the end thereof the following new  
12 paragraph:

13 “(92) Members, National Public Employment  
14 Relations Commission.”.

15 **SEC. 203. RIGHTS OF EMPLOYEES AND EMPLOYEE ORGANI-**  
16 **ZATIONS.**

17 (a) Employees shall have the right to form, join, or  
18 assist employee organizations, to participate in collective  
19 bargaining with employers through representatives of their  
20 own choosing and to engage in other activities, individually  
21 or in concert, for the purpose of establishing, maintaining,  
22 or improving terms and conditions of employment and  
23 other matters of mutual concern relating thereto.

24 (b) Employee organizations shall have—

1           (1) access at reasonable times to areas in which  
2 employees work, the right to use the employer's bul-  
3 letin boards, mailboxes, and other communication  
4 media, subject to reasonable regulation, and the  
5 right to use the employer's facilities at reasonable  
6 times for the purpose of meetings concerned with  
7 the exercise of the rights guaranteed by this Act:  
8 *Provided*, That if an exclusive representative has  
9 been recognized, an employer shall deny such access  
10 and usage to any employee organization other than  
11 such representative until such time as a lawful and  
12 timely challenge to the majority status of the rep-  
13 resentative is raised pursuant to the provisions of  
14 section 6 of this Act; and

15           (2) the right to have deducted from the salary  
16 of employees, upon receipt of an appropriate author-  
17 ization form which shall not be irrevocable for a pe-  
18 riod of more than one year, an amount equal to the  
19 fees and dues required for membership: *Provided*,  
20 That if an exclusive representative has been recog-  
21 nized, an employer shall deny such deduction to any  
22 employee organization other than such representa-  
23 tive.

24           (c) If an exclusive representative has been recognized  
25 for the employees in an appropriate collective bargaining

1 unit, each employee in such a unit who is not a member  
2 of the recognized organization shall be required, as condi-  
3 tion of continued employment, to pay to such organization  
4 for the period that it is the exclusive representative, an  
5 amount equal to the dues, fees, and assessments that a  
6 member is charged. Such payments shall be made in ac-  
7 cordance with rules and regulations prescribed for such  
8 purpose by the Commission.

9 **SEC. 204. REPRESENTATIVES AND COLLECTIVE-BARGAIN-**  
10 **ING UNITS.**

11 (a) The employee organization designated or selected  
12 for the purpose of collective bargaining by the majority  
13 of the employees in an appropriate collective-bargaining  
14 unit shall be the exclusive representative of all the employ-  
15 ees in such a unit for such purpose, and an employer shall  
16 not bargain in regard to matters covered by this Act with  
17 any employee, group of employees, or other employee orga-  
18 nization: *Provided*, That nothing contained in this sub-  
19 section shall prevent employees, individually or as a group,  
20 from presenting complaints informally to an employer, and  
21 from having such complaints adjusted without the inter-  
22 vention of the exclusive representative for the collective-  
23 bargaining unit of which they are a part, as long as such  
24 representative is given an opportunity to be present at said  
25 adjustment and to make its views known, and as long as

1 the adjustment is not inconsistent with the terms of an  
2 agreement between the employer and the exclusive rep-  
3 resentative which is then in effect: *Provided further*, That  
4 such employer or employees shall not be represented by  
5 an officer or agent of any employee organization other  
6 than the exclusive representative.

7 (b) Any employee organization may file a request for  
8 recognition as the exclusive representative under sub-  
9 section (a) of this section with an employer and the Com-  
10 mission. Such request shall allege that a majority of the  
11 employees in an appropriate collective-bargaining unit  
12 wish to be represented for the purpose of collective bar-  
13 gaining by such organization, shall describe the grouping  
14 of jobs or positions which constitute the unit claimed to  
15 be appropriate, shall be supported by credible evidence in  
16 accordance with rules prescribed by the Commission dem-  
17 onstrating that a majority of the employees in the appro-  
18 priate unit desire the organization requesting recognition  
19 as their exclusive representative, and shall indicate the  
20 name, address, and telephone number of any other inter-  
21 ested employee organization, if known to the requesting  
22 organization. The employer shall, at the direction of the  
23 Commission, post a copy of such request on a bulletin  
24 board at each facility in which members of the unit  
25 claimed to be appropriate are employed. The request shall

1 remain posted for a period of 21 days from the date on  
2 which the Commission directs that it be posted. The Com-  
3 mission shall maintain a public docket of all requests filed  
4 under this section. Such docket shall contain a copy of  
5 the request but shall not include any accompanying evi-  
6 dence of support. The request shall remain on the public  
7 docket until the case is closed. Such request for recogni-  
8 tion shall be granted by the employer unless—

9           (1) the employer has a good faith doubt as to  
10          the accuracy or validity of the evidence demonstrat-  
11          ing majority support in an appropriate unit or as to  
12          the appropriateness of the claimed unit;

13          (2) there is currently in effect a lawful written  
14          collective-bargaining agreement between the em-  
15          ployer and another employee organization covering  
16          any employees included in the unit described in the  
17          request for recognition;

18          (3) within the previous 12 months another em-  
19          ployee organization has been lawfully recognized or  
20          certified as the exclusive representative of any em-  
21          ployees included in the unit described in the request  
22          for recognition; or

23          (4) the Commission has, within the previous 12  
24          months, conducted a secret ballot election involving  
25          any employees included in the unit described in the

1 request for recognition in which a majority of the  
2 valid ballots cast chose not to be represented by any  
3 employee organization: *Provided*, That an employer  
4 shall not grant a request for recognition filed pursu-  
5 ant to this subsection (c)(2) below if another em-  
6 ployee organization files with the employer a compet-  
7 ing request for recognition within 21 days after the  
8 posting or notice of the original request, which com-  
9 peting request is supported by credible evidence  
10 demonstrating that at least 10 percent of the em-  
11 ployees in the appropriate collective-bargaining unit  
12 desire such organization as their exclusive represent-  
13 ative.

14 (c) A petition may be filed with the Commission in  
15 accordance with rules and regulations prescribed by it for  
16 such dealings, asking it to investigate and decide the ques-  
17 tion of whether employees have selected or designated an  
18 exclusive representative under subsection (a) of this sec-  
19 tion by—

20 (1) an employee organization alleging that 30  
21 percent of the employees in an appropriate collective-  
22 bargaining unit wish to be represented for the pur-  
23 pose of collective bargaining by such organization,  
24 which petition shall describe the grouping of jobs or  
25 positions which constitute the unit claimed to be ap-

1       appropriate, shall be supported by credible evidence in  
2       accordance with rules prescribed by the Commission  
3       demonstrating the claimed employee support, and  
4       shall indicate the name, address, and telephone  
5       number of any other interested employee organiza-  
6       tion, if known to the requesting organization. The  
7       employer shall, at the direction of the Commission,  
8       post a copy of such request on a bulletin board at  
9       each facility in which members of the unit claimed  
10      to be appropriate are employed. The request shall  
11      remain posted for a period of 21 days from the date  
12      on which the Commission directs that it be posted.  
13      The Commission shall maintain a public docket of  
14      all requests filed under this section. Such docket  
15      shall contain a copy of the request but shall not in-  
16      clude any accompanying evidence of support. The re-  
17      quest shall remain on the public docket until the  
18      case is closed;

19               (2) an employer alleging that it has received a  
20      request for exclusive recognition from one or more  
21      employee organizations; or

22               (3) by one or more employees in an appropriate  
23      collective-bargaining unit asserting that the employ-  
24      ees in an appropriate unit no longer desire a par-  
25      ticular employee organization as their exclusive rep-

1       representative: *Provided*, That such petition is sup-  
2       ported by signed statements to that effect from at  
3       least 30 percent of the employees in the appropriate  
4       collective-bargaining unit.

5       (d) Upon receipt of such a petition, the Commission  
6       or its agents shall conduct such inquiries and investiga-  
7       tions or hold such hearings as it shall deem necessary in  
8       order to decide the question raised by the petition. The  
9       Commission's determination may be based upon the evi-  
10      dence adduced in such inquires, investigations, or hearings  
11      as it or its agents shall make or hold or upon the results  
12      of a secret ballot election as it shall direct and conduct  
13      if deemed necessary: *Provided*, That employee organiza-  
14      tion shall appear on a ballot unless it submits credible evi-  
15      dence demonstrating that at least 10 percent of the em-  
16      ployees in the appropriate collective-bargaining unit desire  
17      it as their exclusive representative: *Provided further*, That  
18      whenever one or more additional employee organizations  
19      has filed a timely request to intervene in the proceedings,  
20      which request is supported by credible evidence dem-  
21      onstrating that at least 10 percent of the employees in  
22      the appropriate collective-bargaining unit desire it as their  
23      exclusive representative, the Commission shall direct an  
24      election by secret ballot and shall certify the results there-  
25      of: *Provided further*, That the Commission shall dismiss

1 without determining the questions raised therein any peti-  
2 tion filed pursuant to subsection (c) of this section if—

3 (1) the petition is filed pursuant to subsection  
4 (c)(1) and is not supported by credible evidence  
5 demonstrating that at least 30 percent of the em-  
6 ployees in the collective-bargaining unit described  
7 therein wish to be represented for the purpose of col-  
8 lective bargaining by the organization seeking rec-  
9 ognition;

10 (2) there is currently in effect a lawful written  
11 collective-bargaining agreement between such em-  
12 ployer and employee organization other than the pe-  
13 titioner covering any employees included in the unit  
14 described in the petition, unless such agreement has  
15 been in effect for more than three years, or unless  
16 the request for recognition if filed less than sixty  
17 days prior to the said expiration date as the Com-  
18 mission may determine is reasonable because of the  
19 budget-making procedure of the employer;

20 (3) within the previous 12 months an employee  
21 organization other than the petitioner, or other than  
22 the employee organization challenged if the petition  
23 if filed pursuant to subsection (c)(3), has been law-  
24 fully recognized or certified as the exclusive rep-

1 representative of any employees included in the unit de-  
2 scribed in the petition; or

3 (4) the Commission has, within the previous 12  
4 months, conducted a secret ballot election involving  
5 any employee included in the unit described in the  
6 petition in which a majority of the valid ballot cast  
7 chose not to be represented by any employee organi-  
8 zation.

9 (e) The Commission shall certify an employee organi-  
10 zation as the exclusive representative of the employee in  
11 an appropriate collective-bargaining unit if—

12 (1) the organization receives a majority of the  
13 valid ballots cast in an election conducted pursuant  
14 to subsection (d) of this section;

15 (2) the Commission determines, as provided in  
16 subsection (d) of this section, without an election  
17 that the organization represents an uncoerced ma-  
18 jority of the employees in such unit and that such  
19 majority status was achieved without the benefit of  
20 unlawful employer assistance as defined in section  
21 10(a) of this Act or that the organization would rep-  
22 resent such an uncoerced majority if the employer  
23 had not engaged in unlawful acts as defined in sec-  
24 tion 10(a) of this Act; or

1           (3) upon request of an employee's organization  
2           that has been recognized by an employer pursuant  
3           to subsection (b) of this section, the Commission is  
4           satisfied that the organization represents an  
5           uncoerced majority of employees in such unit and  
6           that such majority status was achieved without the  
7           benefit of unlawful employer assistance as defined in  
8           section 10(a) of this Act.

9           (f) In each case where the appropriateness of the  
10          claimed unit is in issue, the Commission shall decide the  
11          question on the basis of the community of interest among  
12          the public employees; wages, hours and other working con-  
13          ditions of the public employees involved; the history of col-  
14          lective bargaining; the efficiency of the operations and the  
15          administrative structure of the public employer; and the  
16          adverse effect of overfragmentation: *Provided, That—*

17                 (1) except in regard to firefighters and public  
18                 safety officers, a unit shall not be considered appro-  
19                 priate if it includes both supervisors and  
20                 nonsupervisors; in regard to firefighters, a unit that  
21                 includes both supervisors and nonsupervisors may be  
22                 considered appropriate; and in regard to public safe-  
23                 ty officers, a unit that includes both supervisors and  
24                 nonsupervisors may be considered appropriate if a  
25                 majority of the employees in each category indicate

1 by vote or other credible evidence that they desire to  
2 be included in such unit; and

3 (2) a unit including both professionals and non-  
4 professionals shall not be appropriate unless a ma-  
5 jority of the employees in each category indicate by  
6 vote or other credible evidence that they desire to be  
7 included in such unit.

8 (g) A determination by the Commission that an em-  
9 ployee organization has been selected as the exclusive rep-  
10 resentative for the employees in an appropriate unit shall  
11 not be subject to judicial review or other collateral attack.

12 **SEC. 205. IMPASSE IN COLLECTIVE BARGAINING OVER THE**  
13 **TERMS AND CONDITIONS OF EMPLOYMENT**  
14 **AND OTHER MATTERS OF MUTUAL CONCERN**  
15 **RELATING THERETO.**

16 (a) Either an employer or an exclusive representative  
17 may declare that an impasse has been reached between  
18 them in collective bargaining over the terms and condi-  
19 tions of employment and other matters of mutual concern  
20 relating thereto, and may request the Service to appoint  
21 a mediator for the purpose of assisting them in reconciling  
22 their differences and resolving the controversy on terms  
23 which are mutually acceptable. If the Service determines  
24 that an impasse exists, it shall, in no event later than five  
25 days after the receipt of a request, appoint a mediator in

1 accordance with rules and regulations for such appoint-  
2 ment prescribed by the Service. The Service may, on its  
3 own volition, declare impasse has been reached in collec-  
4 tive bargaining over the terms and conditions of employ-  
5 ment and other matters of mutual concern relating thereto  
6 and appoint a mediator. The mediator shall meet with the  
7 parties or their representatives, or both, forthwith, either  
8 jointly or separately, and shall take such other steps as  
9 he or she may deem appropriate in order to persuade the  
10 parties to resolve their differences and effect a mutually  
11 acceptable agreement: *Provided*, That the mediator shall  
12 not, without the consent of both parties, make findings  
13 of fact or recommend terms of settlement. The services  
14 of the mediator, including, if any, per diem expenses, shall  
15 be provided by the Service without cost to the parties.  
16 Nothing in this subsection shall be construed to prevent  
17 the parties from mutually agreeing upon their own medi-  
18 ation procedure and in the event of such agreement, the  
19 Service shall not appoint its own mediator unless failure  
20 to do so would be inconsistent with the effectuation of the  
21 purpose and policy of this Act. Representatives of the em-  
22 ployer and the exclusive representative have a mutual obli-  
23 gation to meet for negotiations at reasonable times in light  
24 of the budgetmaking process.

1           (b)(1) If the mediator is unable to effect settlement  
2 of the controversy within 15 days after his or her appoint-  
3 ment, either party may, by written notification to the  
4 other, request that their differences be submitted to fact-  
5 finding with recommendations. Such recommendations  
6 shall be advisory only, unless within 5 days after giving  
7 or receiving the aforesaid written request, the exclusive  
8 representative notifies the employer, in writing, that it de-  
9 sires the recommendations of the fact finder to be binding.  
10 Within 10 days after receipt of the aforesaid written re-  
11 quest for factfinding, the parties shall select a person to  
12 serve as fact finder and obtain a commitment from said  
13 person to serve. If they are unable to agree upon a fact  
14 finder or to obtain such a commitment within said time,  
15 either party may request the Service to designate a fact  
16 finder. The Service shall, within 5 days after receipt of  
17 such a request, designate a fact finder in accordance with  
18 rules and regulations for such designation prescribed by  
19 the Service. The fact finder so designated shall not, with-  
20 out the consent of both parties, be the same person who  
21 was appointed mediator pursuant to subsection (a) of this  
22 section.

23           (2) The fact finder shall, within 10 days after his or  
24 her appointment, meet with the parties of their represent-  
25 atives, or both, forthwith, either jointly or separately, and

1 may make inquiries and investigations, hold hearings, and  
2 take such other steps as he or she may deem appropriate.  
3 For the purpose of such hearings, investigations, and in-  
4 quires, the fact finder shall have the power to issue sub-  
5 poenas requiring the attendance and testimony of wit-  
6 nesses and the production of evidence. The several depart-  
7 ments, commissions, divisions, authorities, boards, bu-  
8 reaus, agencies, and officers of the United States or of  
9 the State, territory, or possession affected, or any political  
10 subdivision thereof, shall furnish the fact finder, upon his  
11 or her request, with all records, papers, and information  
12 in their possession relating to any matter under investiga-  
13 tion by or in issue before the fact finder. If the dispute  
14 is not settled within thirty days after his or her appoint-  
15 ment, the fact finder shall make findings of fact and rec-  
16 ommend terms of settlement, which recommendations  
17 shall be advisory only, unless the exclusive representative  
18 has previously notified the employer that such rec-  
19 ommendations are to be binding in which case they shall  
20 be binding.

21 (c) If the recommendations of the fact finder are  
22 binding—

23 (1) the exclusive representative shall be prohib-  
24 ited from engaging and employees shall be prohib-  
25 ited from participating in a strike for the purpose of

1 resolving a dispute which has been submitted to the  
2 fact finder and in regard to which he or she has rec-  
3 ommended terms of settlement and nothing con-  
4 tained in this Act or in any other law of the United  
5 States shall prevent a court from granting a re-  
6 straining order or temporary or permanent injunc-  
7 tion in a case involving a strike for such purpose;  
8 and

9 (2) the parties shall comply with the rec-  
10 ommendations of the fact finder: *Provided*, That if  
11 the employer does not have the legal authority to  
12 comply with such recommendations or any part  
13 thereof, it shall take such actions as may be nec-  
14 essary to enable it to comply, including the submis-  
15 sion of requests to appropriate legislative bodies.

16 (d) If the recommendations of the fact finder are ad-  
17 visory only, they shall, together with the findings of fact,  
18 be submitted in writing to the parties and the Service pri-  
19 vately before they are made public. Either the Service, the  
20 fact finder, the employer, or the exclusive representative  
21 may make such findings and recommendations public if  
22 the dispute is not settled within 10 days after their receipt  
23 from the fact finder.

24 (e) The costs for the services of the fact finder, in-  
25 cluding, if any, per diem expenses and actual and nec-

1 essary travel and subsistence expenses, and any other mu-  
2 tually incurred costs, shall be borne equally by the em-  
3 ployer and the exclusive representative. Any individually  
4 incurred costs shall be borne by the party incurring them.

5 (f) Nothing in this section shall be construed to pro-  
6 hibit an employer and an exclusive representative from  
7 agreeing to substitute their own procedure for resolving  
8 impasse in collective bargaining for that provided herein  
9 or from agreeing to utilize for the purposes of this section  
10 any other governmental or other agency or person in lieu  
11 of the Service.

12 **SEC. 206. DISPUTES OVER THE INTERPRETATION OR AP-**  
13 **PLICATION OF AGREEMENTS.**

14 (a) An employer and an exclusive representative who  
15 enter into an agreement covering terms and conditions of  
16 employment and other matters of mutual concern relating  
17 thereto may include in such agreement procedures for  
18 binding arbitration of such disputes as may arise involving  
19 the interpretation or application of such agreement or of  
20 established policies or practices of such employer affecting  
21 terms and conditions of employment and other matters of  
22 mutual concern relating thereto.

23 (b) If such agreement does not include procedures of  
24 the type provided for in subsection (a) of this section, ei-  
25 ther party to the agreement may submit such disputes to

1 binding arbitration pursuant to rules and regulations pre-  
2 scribed for such purpose by the Commission.

3 (c) Where a party to such agreement is aggrieved by  
4 the failure, neglect, or refusal of the other party to proceed  
5 to arbitration pursuant to the procedures provided there-  
6 for in such agreement or pursuant to subsection (b) of  
7 this section, such aggrieved party may file a complaint in  
8 the appropriate district court of the United States or the  
9 appropriate court of the affected State, territory, or pos-  
10 session of the United States for a summary action without  
11 jury seeking an order directing that the arbitration pro-  
12 ceed pursuant to the procedures provided therefor in such  
13 agreement or pursuant to subsection (b) of this section.

14 (d) Unless the award of the arbitrator is deficient be-  
15 cause—

16 (1) it was procured by corruption, fraud, or  
17 other misconduct;

18 (2) of partiality of the arbitrator; or

19 (3) the arbitrator exceeded his or her powers or  
20 so imperfectly executed them that a final and defi-  
21 nite award upon the subject matter was not made,  
22 such award shall be final and binding upon the par-  
23 ties and may be enforced by the appropriate district  
24 court of the United States or the appropriate court

1 of the affected State, territory, or possession of the  
2 United States.

3 **SEC. 207. STRIKES.**

4 (a) Except as otherwise expressly provided in sub-  
5 sections (b) and (c) of this section and in Section 209 and  
6 in subsection (c) of section 7, nothing in this Act or in  
7 any other law or enactment of the United States, or of  
8 any State, territory, or possession of the United States,  
9 or any political subdivision thereof, shall be construed to  
10 interfere with, impede, or diminish the right of an exclu-  
11 sive representative to engage or of an employee to partici-  
12 pate in a strike arising out of or in connection with a labor  
13 dispute.

14 (b) A restraining order or temporary or permanent  
15 injunction may be granted in a case involving a strike by  
16 an exclusive representative arising out of or in connection  
17 with a labor dispute, only on the basis of findings of fact  
18 made by the appropriate district court of the United  
19 States after due notice and hearing prior to the issuance  
20 of such restraining order or injunction that—

21 (1) the commencement or continuance of such  
22 strike poses a clear and present danger to the public  
23 health or safety which in light of all relevant cir-  
24 cumstances it is in the best public interest to pre-  
25 vent: *Provided*, That any restraining order or injunc-

1       tion issued by a court for this reason shall prohibit  
2       only such specific act or acts as shall be expressly  
3       determined in said findings of fact to pose such clear  
4       and present danger and shall remain in effect only  
5       for so long as such clear and present danger contin-  
6       ues to exist; or

7               (2) the exclusive representative has failed to  
8       make a reasonable effort to utilize the procedures  
9       provided in section 7 of this Act for the resolution  
10      of impasse in collective bargaining: *Provided*, That  
11      any restraining order or injunction issued by a court  
12      for this reason shall indicate the specific act or acts  
13      which the representative has failed to perform and  
14      shall remain in effect only until said act or acts shall  
15      have been performed.

16      (c) Nothing contained in this Act shall prevent a  
17      court from granting a restraining order or temporary or  
18      permanent injunction in a case involving a strike in viola-  
19      tion of any lawful provision of an agreement covering  
20      terms and conditions of employment and other matters of  
21      mutual concern relating thereto.

22      **SEC. 208. IMPASSE PROCEDURES FOR FIREFIGHTERS AND**  
23                                      **PUBLIC SAFETY OFFICERS.**

24      (a) ARBITRATION PANEL.—

1           (1) If an employer or an exclusive representa-  
2           tive declares that an impasse exists on any issue  
3           later than 60 days after the date on which collective  
4           bargaining proceedings begin, the issue of dispute  
5           shall be brought before an arbitration panel for a  
6           final and binding resolution. Such panel shall be  
7           comprised of 3 arbitrators—

8                   (A) one appointed by the employer and one  
9                   appointed by the exclusive representative within  
10                  15 days after the date of request by the party  
11                  declaring impasse; and

12                  (B) an impartial arbitrator (who shall  
13                  serve as chair) selected by the arbitrators ap-  
14                  pointed under subparagraph (A) within 5 days  
15                  after the date of their appointment.

16           (2) In the event that the arbitrators appointed  
17           under paragraph (1)(A) are unable to agree on the  
18           selection of the impartial arbitrator, such arbitrators  
19           shall immediately request a panel of arbitrators from  
20           the Federal Mediation and Conciliation Service.  
21           Each such arbitrator shall advise the Service of his  
22           or her order of preference within 5 days after receipt  
23           of the names on the panel and appointment of the  
24           third arbitrator shall then be made in accordance

1 with the procedure outlined in section 1401.13(b)(2)  
2 of title 29, Code of Federal Regulations.

3 (3) The arbitration panel shall conduct a hear-  
4 ing, within 14 days after the date of appointment of  
5 its chair, at a place within the locality of the municipi-  
6 pal government involved, where feasible. The chair  
7 shall notify the representatives of the employer and  
8 the exclusive representative as to date and place of  
9 such hearing not less than 7 days before the date on  
10 which the hearing is to be conducted.

11 (b) HEARING BEFORE ARBITRATION PANEL.—

12 (1) The chair shall preside over the hearing and  
13 shall take testimony. Upon application and for good  
14 cause shown, a person, labor organization or govern-  
15 mental unit having substantial interest in the pro-  
16 ceedings may be granted leave to intervene by the  
17 arbitration panel. The proceedings shall be informal.  
18 Any oral or documentary evidence and other data  
19 deemed relevant by the arbitration panel may be re-  
20 ceived into evidence.

21 (2) The arbitrators shall have the power to ad-  
22 minister oaths and to require by subpoenas the at-  
23 tendance and testimony of witnesses, the production  
24 of books, records, and other evidence relative to or

1       pertinent to the issues presented to them for deter-  
2       mination.

3               (3) If any person refuses to obey a subpoena,  
4       or refuses to be sworn or to testify, or if any wit-  
5       ness, party or attorney is guilty of any contempt  
6       while in attendance at any hearing, the arbitration  
7       panel shall invoke the aid of the district court of the  
8       United States within the jurisdiction in which the  
9       hearing is being held. Such court shall issue an ap-  
10      propriate order.

11      (c) RECORD AND TRANSCRIPTS; DECISION.—

12              (1) A record of the proceedings shall be kept,  
13      and the chair shall arrange for the necessary record-  
14      ing service. Transcripts may be ordered at the ex-  
15      pense of the party ordering them, but the transcripts  
16      shall not be necessary for an award by the panel.  
17      The hearing may be continued at the discretion of  
18      the panel, but shall be concluded within 30 days  
19      after the time of commencement. At the conclusion  
20      of the hearing, each party shall submit a written  
21      statement containing its final position with respect  
22      to each of the issues in dispute to the panel, which  
23      shall take such statements under advisement.

24              (2) Within 10 days after conclusion of the hear-  
25      ing, a majority of the panel shall issue a statement

1 of its findings and conclusions and shall give written  
2 notice of the panel's decision of the issue or issues  
3 at impasse. The decision of the panel shall be final  
4 and binding upon the parties and upon the appro-  
5 priate legislative body.

6 (d) AWARDS; ENFORCEMENT.—Any award of the ar-  
7 bitration panel may be retroactive to the expiration date  
8 of the last contract. If an employer or an exclusive rep-  
9 resentative willfully disobeys a lawful decision of the arbi-  
10 tration panel or willfully encourages or offers resistance  
11 to such order, the other party may seek enforcement of  
12 the order in the district court of the United States within  
13 the jurisdiction in which the hearing is held.

14 (e) ARBITRATION COSTS.—The costs of arbitration  
15 shall be shared equally by the parties, including any inter-  
16 venor.

17 **SEC. 209. STRIKES AND FIREFIGHTERS AND PUBLIC SAFE-**  
18 **TY OFFICERS.**

19 No firefighter or public safety officer or exclusive rep-  
20 resentative thereof shall engage in a strike or induce, en-  
21 courage or condone any strike, work stoppage, slowdown,  
22 or withholding of service by fire fighters or public safety  
23 officers.

24 **SEC. 210. UNLAWFUL ACTS.**

25 (a) It shall be unlawful for an employer to—

1           (1) impose or threaten to impose reprisals on  
2 any employee, discriminate, or threaten to discrimi-  
3 nate against any employee or otherwise interfere  
4 with, restrain, or coerce any employee because of his  
5 or her exercise of rights guaranteed by this Act;

6           (2) dominate, interfere with, or assist in the  
7 formation or administration of any employee organi-  
8 zation;

9           (3) encourage or discourage membership in any  
10 employee organization by discrimination in regard to  
11 hire, tenure of employment, or any term or condition  
12 of employment: *Provided*, That nothing contained in  
13 this subsection shall prevent an employer from re-  
14 quiring, as a condition of continued employment,  
15 payment to or membership in an exclusive represent-  
16 ative pursuant to section 5(c) and section 5(d) of  
17 this Act, respectively: *Provided further*, That no em-  
18 ployer shall justify any discrimination against any  
19 employee for non-membership in any employee orga-  
20 nization if he or she has reasonable grounds for be-  
21 lieving such membership was—

22           (A) not available to the employee on the  
23 same terms and conditions generally applicable  
24 to other members; or

1 (B) denied or terminated for reasons other  
2 than the failure of the employee to tender the  
3 dues, fees, and assessments uniformly required  
4 as a condition of acquiring or retaining mem-  
5 bership;

6 (4) deny to any employee organization the  
7 rights guaranteed to it by this Act;

8 (5) refuse to bargain in good faith with an ex-  
9 clusive representative if requested to do so; or

10 (6) fail to comply with any provision of this  
11 Act.

12 (b) It shall be unlawful for—

13 (1) an employee organization to restrain or co-  
14 erce any employee in the exercise of the rights guar-  
15 anteed to him or her by this Act: *Provided*, That  
16 this subsection shall not impair the right of an em-  
17 ployee organization to prescribe its own rules with  
18 respect to the acquisition or retention of membership  
19 therein;

20 (2) an employee organization to restrain or co-  
21 erce an employer in the selection of its representa-  
22 tive for the purpose of collective bargaining or the  
23 adjustment of grievances; or

1           (3) an exclusive representative to refuse or fail  
2           to bargain in good faith with an employer if re-  
3           quested to do so.

4 **SEC. 211. PREVENTION OF UNLAWFUL ACTS.**

5           (a) The Commission is empowered, as hereinafter  
6           provided, to prevent any person from engaging in any un-  
7           lawful act as defined in section 10 of this Act. This power  
8           shall not be affected by any other means of adjustment  
9           or prevention that has been or may be established by  
10          agreement, law, or otherwise.

11          (b) Whenever it is charged that any person has en-  
12          gaged in or is engaging in any such unlawful act, the Com-  
13          mission or any agent or agency designated by the Commis-  
14          sion for such purpose, shall have the power to issue and  
15          cause to be served upon such person a complaint stating  
16          the charges in that respect, and containing a notice of  
17          hearing before the Commission or a member thereof, or  
18          before a designated agent or agency, at a place therein  
19          fixed, not less than five days after the serving of said com-  
20          plaint: *Provided*, That no complaint shall issue based upon  
21          any unlawful act occurring more than 6 months prior to  
22          the filing of the charge with the Commission and the serv-  
23          ice of a copy thereof upon the person against whom such  
24          charge is made, unless the person aggrieved thereby was  
25          prevented from filing such a charge by reason of service

1 in the Armed Forces, in which event the 6-month period  
2 shall be computed from the date of his or her discharge.  
3 Any such complaint may be amended by the member,  
4 agent, or agency conducting the hearing or the Commis-  
5 sion in its discretion at any time prior to the issuance of  
6 an order based thereon: *Provided*, That the person com-  
7 plained of is not unfairly prejudiced by such amendment.  
8 The person so complained of shall have the right to file  
9 an answer to the original or amended complaint and to  
10 appear in person or otherwise and give testimony at the  
11 time and place fixed in the complaint. In the discretion  
12 of the member, agent, or agency conducting the hearing  
13 or the Commission, any other person may be allowed to  
14 intervene in the said proceeding and to present testimony.  
15 Any such proceeding shall, so far as practicable, be con-  
16 ducted in accordance with the provisions of subchapter II  
17 of chapter 5 of title 5, United States Code: *Provided fur-*  
18 *ther*, That the rules of evidence, whether statutory, com-  
19 mon law, or adopted by rules of court, shall not be control-  
20 ling.

21 (c) The testimony taken by such member, agent, or  
22 agency of the Commission shall be reduced to writing and  
23 filed with the Commission. Thereafter, in its discretion,  
24 the Commission, upon notice, may take further testimony  
25 or hear argument. If upon the preponderance of the testi-

1 mony taken, the Commission shall be of the opinion that  
2 any person named in the complaint has engaged in or is  
3 engaging in any such unlawful act, then the Commission  
4 shall state its findings of fact and shall issue and cause  
5 to be served upon such person, an order requiring such  
6 person to cease and desist from such unlawful act, and  
7 to take such affirmative action as will effectuate the pur-  
8 pose and policy of this Act, including the payment of dam-  
9 ages and/or the reinstatement of employees: *Provided,*  
10 That where an order directs reinstatement of an employee,  
11 back pay may be required of the employer and/or the em-  
12 ployee organization, as the case may be, responsible for  
13 the discrimination suffered by him or her. Such order may  
14 further require such person to make reports from time to  
15 time showing the extent to which it has complied with the  
16 order. If upon the preponderance of the testimony taken  
17 the Commission shall not be of the opinion that the person  
18 named in the complaint has engaged in or is engaging in  
19 any such unlawful act, then the Commission shall state  
20 its findings of fact and shall issue an order dismissing the  
21 said complaint. No order of the Commission shall require  
22 the reinstatement of any individual as an employee who  
23 has been suspended or discharged, or the payment to him  
24 or her of any back pay, if such individual was suspended  
25 or discharged for cause. In case the evidence is presented

1 before a member of the Commission, or before an agent  
2 or agency thereof, as the case may be, shall issue and  
3 cause to be served upon the parties to the proceeding a  
4 proposed report, together with a recommended order,  
5 which shall be filed with the Commission and if no excep-  
6 tions are filed within twenty days after service thereof  
7 upon such parties, or with such further period as the Com-  
8 mission may authorize, such recommended order shall be-  
9 come the order of the Commission and become effective  
10 as therein prescribed.

11 (d) If exceptions are filed to the proposed report and  
12 recommended order, the Commission shall determine  
13 whether such exceptions raise substantial issues of fact or  
14 law. If it determines that the exceptions do raise such is-  
15 sues, it shall grant a review. If the Commission determines  
16 that the exceptions do not raise such issues, it shall refuse  
17 to grant a review, and such recommended order shall be-  
18 come the order of the Commission, and become effective  
19 as therein provided.

20 (e) Until the record in a case shall have been filed  
21 in a court, as hereinafter provided, the Commission may  
22 at any time, upon reasonable notice and in such manner  
23 as it shall deem proper, modify, or set aside, in whole or  
24 in part, any finding or order made or issued by it.

1 (f) The Commission or the charging party shall have  
2 power to petition any court of appeals of the United States  
3 in the circuit, wherein the unlawful act in question oc-  
4 curred or wherein the person named in the complaint re-  
5 sides or transacts business, for the enforcement of such  
6 order and for appropriate temporary relief or restraining  
7 order, and shall file in the court the record in the proceed-  
8 ings, as provided in section 2112 of title 28, United States  
9 Code. Upon the filing of such petition, the court shall  
10 cause notice thereof to be served upon such person, and  
11 thereupon shall have jurisdiction of the proceeding and of  
12 the question determined therein, and shall have power to  
13 grant such temporary relief or restraining order as it  
14 deems just and proper, and to make and enter a decree  
15 enforcing, modifying, and enforcing as so modified, or set-  
16 ting aside in whole or in part the order of the Commission.  
17 No objection that has not been urged before the Commis-  
18 sion, or its member, agent, or agency, shall be considered  
19 by the court, unless the failure of neglect to urge such  
20 objection shall be excused because of extraordinary cir-  
21 cumstances. The findings of the Commission with respect  
22 to questions of fact, if supported by substantial evidence  
23 on the record considered as a whole shall be conclusive.  
24 If any person shall apply to the court for leave to adduce  
25 additional evidence, and shall show to the satisfaction of

1 the court that such additional evidence is material, and  
2 that there were reasonable grounds for the failure to ad-  
3 duce such evidence in the hearing before the Commission,  
4 or its member, agent, or agency, the court may order such  
5 additional evidence to be taken before the Commission, or  
6 its member, agent, or agency, and to be made a part of  
7 the record. The Commission may modify its findings as  
8 to the facts, or make new findings by reason of additional  
9 evidence so taken and filed, and it shall file such modified  
10 or new findings, which findings with respect to questions  
11 of fact if supported by substantial evidence on the record  
12 considered as a whole shall be conclusive, and shall file  
13 its recommendations, if any, for the modification or set-  
14 ting aside of its original order. Upon the filing of the  
15 record with it, the jurisdiction of the court shall be exclu-  
16 sive and its judgment and decree shall be final, except that  
17 the same shall be subject to review by the Supreme Court  
18 of the United States upon writ of certiorari or certification  
19 as provided in section 1254 of title 28, United States  
20 Code.

21 (g) Any person aggrieved by a final order of the Com-  
22 mission granting or denying, in whole or in part, the relief  
23 sought may obtain a review of such order in any circuit  
24 court of appeals of the United States in the circuit wherein  
25 the unlawful act in question was alleged to have occurred

1 or wherein such person resides or transacts business, or  
2 in the United States Court of Appeals for the District of  
3 Columbia, by filing in such court within 60 days, a written  
4 petition praying that the order of the Commission be  
5 modified or set aside. A copy of such petition shall be  
6 forthwith transmitted by the clerk of the court to the Com-  
7 mission, and thereupon the aggrieved person shall file in  
8 the court the record of the proceeding, certified by the  
9 Commission, as provided in section 2112 of title 28,  
10 United States Code. Upon the filing of such petition, the  
11 court shall proceed in the same manner as in the case of  
12 an application by the Commission under subsection (e) of  
13 this section, and shall have the same jurisdiction to grant  
14 to the Commission such temporary relief or restraining  
15 order as it deems just and proper, and in like manner to  
16 make and enter a decree enforcing, modifying, and enforc-  
17 ing as so modified, or setting aside, in whole or in part,  
18 the order of the Commission. The findings of the Commis-  
19 sion with respect to questions of fact, if supported by sub-  
20 stantial evidence on the record considered as a whole, shall  
21 in like manner be conclusive.

22 (h) In any proceeding for enforcement or review of  
23 a Commission order held pursuant to this section, evidence  
24 adduced during a representation proceeding held pursuant  
25 to section 6 of the Act shall not be included in the record

1 required to be filed under section 11(f) and (g) of the Act,  
2 nor shall the court consider the record of such proceeding.

3 (i) The commencement of proceedings under sub-  
4 section (e) or (f) of this section shall not, unless specifi-  
5 cally ordered by the court, operate as a stay of the Com-  
6 mission's order.

7 (j) When granting temporary relief or restraining  
8 order, or making and entering a decree enforcing, modify-  
9 ing, and enforcing as so modified, or setting aside in whole  
10 or in part, an order of the Commission, as provided in  
11 this section, the jurisdiction of courts sitting in equity  
12 shall not be limited by the provisions of section 20 of the  
13 Act entitled "An Act to supplement existing laws against  
14 unlawful restraints and monopolies and for other pur-  
15 poses", approved October 15, 1914, as amended (29  
16 U.S.C. 52), or the provisions of the Act entitled "An Act  
17 to amend the Judicial Code and to define and limit the  
18 jurisdiction of courts sitting in equity, and for other pur-  
19 poses", approved March 23, 1932 (29 U.S.C. 101-115).

20 (k) Petitions filed under this Act shall be heard expe-  
21 ditiously, and if possible within 10 days after they have  
22 been docketed.

23 (l) The Commission shall have power, upon issuance  
24 of a complaint as provided in subsection (b) of this section  
25 charging that any person has engaged in or is engaging

1 in an unlawful act as defined in section 10 of this Act,  
2 to petition any district court of the United States (includ-  
3 ing the District Court of the United States for the District  
4 of Columbia), within any district wherein the unlawful act  
5 in question is alleged to have occurred or wherein such  
6 person resides or transacts business, for appropriate tem-  
7 porary relief or restraining order. Upon the filing of any  
8 such petition the court shall cause notice thereof to be  
9 served upon such person, and thereupon shall have juris-  
10 diction to grant to the Commission such temporary relief  
11 or restraining order as it deems just and proper.

12 (m)(1) For the purpose of all hearings and investiga-  
13 tions which the Commission determines are necessary and  
14 proper for the exercise of its powers under this Act, the  
15 Commission or its duly authorized agent or agency shall  
16 at all reasonable times have access to, for the purpose of  
17 examination, and the right to copy any evidence of any  
18 person being investigated or proceeded against that relates  
19 to any matter under investigation or in question. The  
20 Commission, or any member thereof, shall upon applica-  
21 tion of any party to such proceeding, forthwith issue to  
22 such party subpoenas requiring the attendance and testi-  
23 mony of witnesses or the production of any evidence in  
24 such proceeding or investigation requested in such applica-  
25 tion. Within 5 days after the service of a subpoena upon

1 any person requiring the production of any evidence in his  
2 or her possession or under his or her control, such person  
3 may petition the Commission to revoke, and the Commis-  
4 sion shall revoke, such subpoena if in its opinion the evi-  
5 dence whose production is required does not relate to any  
6 matter under investigation, or any matter in question in  
7 such proceeding, or if in its opinion such subpoena does  
8 not describe with sufficient particularity the evidence  
9 whose production is required. Any member of the Commis-  
10 sion, or any agent or agency designated by the Commis-  
11 sion for such purposes, may administer oaths and affirma-  
12 tions, examine witnesses, and receive evidence. Such at-  
13 tendance of witnesses and the production of such evidence  
14 may be required from any place in any State, territory,  
15 or possession of the United States, at any designated place  
16 of hearing.

17 (2) In case of contumacy or refusal to obey a sub-  
18 poena issued to any person, any district court of the Unit-  
19 ed States, including the District Court of the United  
20 States for the District of Columbia, or the United States  
21 courts of any territory or possession, within the jurisdic-  
22 tion of which the inquiry is carried on or within the juris-  
23 diction of which said person guilty of contumacy or refusal  
24 to obey is found or resides or transacts business, upon  
25 application by the Commission shall have jurisdiction to

1 issue to such person an order requiring such person to  
2 appear before the Commission, its member, agent, or  
3 agency, there to produce evidence if so ordered, or there  
4 to give testimony touching the matter under investigation  
5 or in question; and any failure to obey such order of the  
6 court may be punished by said court as a contempt there-  
7 of.

8       (3) Nor person shall be excused from attending and  
9 testifying or from producing books, records, correspond-  
10 ence, documents, or other evidence in obedience to sub-  
11 poena of the Commission, on the ground that the testi-  
12 mony or evidence required of him or her may tend to in-  
13 criminate him or her or subject him or her to a penalty  
14 of forfeiture; but no individual shall be prosecuted or sub-  
15 jected to any penalty or forfeiture for or on account of  
16 any transaction, matter, or thing concerning which he or  
17 she is compelled, after having claimed his or her privilege  
18 against self-incrimination, to testify or produce evidence,  
19 except that such individual so testifying shall not be ex-  
20 empt from prosecution and punishment for perjury com-  
21 mitted in so testifying.

22       (4) Complaints, orders, and other process and papers  
23 of the Commission, its member, agent, or agency, may be  
24 served either personally, by registered mail, by telegraph,  
25 or by leaving a copy thereof at a the principal office or

1 place of business of the person required to be served. The  
2 verified return by the individual so serving the same set-  
3 ting forth the manner of such service shall be proof of  
4 the same, and the return post office receipt or telegraph  
5 receipt therefor when registered and mailed or telegraphed  
6 as aforesaid shall be proof of service of the same. Wit-  
7 nesses summoned before the Commission, its members,  
8 agent, or agency shall be paid the same fees and mileage  
9 that are paid witnesses in the courts of the United States,  
10 and witnesses whose depositions are taken and the persons  
11 taking the same shall be entitled to the same fees as are  
12 paid for like services in the courts of the United States.

13 (5) All process of any court to which application may  
14 be made under this Act may be served in the judicial dis-  
15 trict wherein the defendant or other person required to  
16 be served resides or may be found.

17 (6) Any person who shall willfully resist, prevent, im-  
18 pede, or interfere with any member of the Commission of  
19 a member, agent, or agency thereof in the performance  
20 of duties pursuant to this Act shall be punished by a fine  
21 of not more than \$5,000 or by imprisonment for not more  
22 than one year, or both.

1 **SEC. 212. APPLICABILITY OF THIS ACT.**

2 Nothing in this law shall preclude or limit any State  
3 from adopting rules by law or regulation that give employ-  
4 ees additional rights than those required by this Act.

5 **SEC. 213. MISCELLANEOUS.**

6 (a) Except as otherwise expressly provided herein,  
7 nothing in this Act shall be construed to annul, modify,  
8 or preclude the renewal or continuation of any lawful  
9 agreement entered into prior to the effective date of this  
10 Act between an employer and an employee organization  
11 covering terms and conditions of employment and other  
12 matters of mutual concern relating thereto.

13 (b) All laws or parts of laws of the United States  
14 inconsistent with the provisions of this Act are modified  
15 or repealed as necessary to remove such inconsistency, and  
16 this Act shall take precedence over all ordinances, rules,  
17 regulations, or other enactments of any State, territory,  
18 or possession of the United States or any political subdivi-  
19 sion thereof. Except as otherwise expressly provided here-  
20 in, nothing contained in this Act shall be construed to  
21 deny or otherwise abridge any rights, privileges, or bene-  
22 fits granted by law to employees.

23 (c) If any provision of this Act shall be held invalid,  
24 other provisions of this Act shall not be affected thereby.

1 **SEC. 214. EFFECTIVE DATE.**

2 The Act shall take effect 120 days following its enact-  
3 ment.

4 **TITLE III—GENERAL PROVI-**  
5 **SIONS REGARDING PENSION**  
6 **PLANS**

7 **SEC. 301. REQUIREMENTS RELATING TO TRUSTEESHIP OF**  
8 **SINGLE-EMPLOYER PLANS.**

9 (a) IN GENERAL.—Section 403(a) of the Employee  
10 Retirement Income Security Act of 1974 (29 U.S.C.  
11 1103(a)) is amended—

12 (1) by redesignating paragraphs (1) and (2) as  
13 subparagraphs (A) and (B), respectively;

14 (2) by inserting “(1)” after “(a)”; and

15 (3) by adding at the end the following new  
16 paragraph:

17 “(2)(A) The assets of a single-employer plan  
18 shall be held in trust by a joint board of trustees,  
19 which shall consist of 2 or more trustees represent-  
20 ing on an equal basis the interests of the employer  
21 or employers maintaining the plan and the interests  
22 of the participants and their beneficiaries.

23 “(B)(i) Except as provided in clause (ii), in any  
24 case in which the plan is maintained pursuant to one  
25 or more collective bargaining agreements between  
26 one or more employee organizations and one or more

1 employers, the trustees representing the interests of  
2 the participants and their beneficiaries shall be des-  
3 ignated by such employee organizations.

4 “(ii) Clause (i) shall not apply with respect to  
5 a plan described in such clause if the employee orga-  
6 nization (or all employee organizations, if more than  
7 one) referred to in such clause file with the Sec-  
8 retary, in such form and manner as shall be pre-  
9 scribed in regulations of the Secretary, a written  
10 waiver of their rights under clause (i).

11 “(iii) In any case in which clause (i) does not  
12 apply with respect to a single-employer plan because  
13 the plan is not described in clause (i) or because of  
14 a waiver filed pursuant to clause (ii), the trustee or  
15 trustees representing the interests of the partici-  
16 pants and their beneficiaries shall consist of 1 or  
17 more participants under the plan elected to serve as  
18 such in accordance with this clause. The Secretary  
19 shall provide by regulation for a secret ballot of the  
20 participants under the plan for the purposes of such  
21 election, and for certification of the results thereof  
22 to the participants (and any employee organization  
23 referred to in clause (ii)) and to the employer.”.

1 **SEC. 302. EFFECTIVE DATE.**

2       The amendments made by section 1 shall apply with  
3 respect to plan years beginning after 180 days after the  
4 date of the enactment of this Act. The Secretary of Labor  
5 shall prescribe the initial regulations necessary to carry  
6 out the provisions of such amendments not later than 90  
7 days after the date of the enactment of this Act.

○

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