

**SUBSTITUTE AMENDMENT TO THE AMENDMENT IN
THE NATURE OF A SUBSTITUTE TO H.R. 3459
OFFERED BY MR. POCAN**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Workplace Action for
3 a Growing Economy Act” or the “WAGE Act”.

4 SEC. 2. FINDINGS.

5 Congress finds the following:

6 (1) The National Labor Relations Act (29
7 U.S.C. 151 et seq.) was enacted to encourage the
8 practice of collective bargaining and to protect the
9 exercise by workers of full freedom of association in
10 the workplace. Since its enactment in 1935, tens of
11 millions of workers have bargained with their em-
12 ployers over wages, benefits, and other terms and
13 conditions of employment and have raised the stand-
14 ard of living for all workers.

15 (2) Through acting collectively and bargaining
16 with their employers, workers who are unionized
17 earn 21.3 percent more than workers who are not
18 covered by a collective bargaining agreement. They

1 are 28.4 percent more likely to be covered by em-
2 ployer-provided health insurance and 30.9 percent
3 more likely to have employer-provided pensions. The
4 wage differential is even more pronounced for
5 women and people of color. Unionized African-Amer-
6 ican workers earn 24.6 percent more than African-
7 American workers who are not unionized, and union-
8 ized Latino workers earn 29.3 percent more than
9 their peers who are not unionized. Unionized women
10 earn 24 percent more than women who are not
11 unionized, and the wage gap between men and
12 women is much smaller at unionized workplaces.
13 The wage gains achieved through collective bar-
14 gaining benefit workers and their communities.

15 (3) Unions and collective bargaining ensure
16 that productivity gains are shared by working peo-
17 ple. The decline in the percentage of workers covered
18 by collective bargaining has contributed significantly
19 to skyrocketing income inequality and flat wages.

20 (4) As enacted in 1935, the National Labor Re-
21 lations Act (29 U.S.C. 151 et seq.) protects the
22 right of all workers to join together with their co-
23 workers to advocate for improvements in their pay,
24 benefits, and working conditions, regardless of
25 whether they seek representation by a union. The

1 law protects the right of workers to discuss issues
2 like pay and benefits without retaliation or inter-
3 ference by employers. However, the awareness of
4 workers regarding their rights under the law is lack-
5 ing, and many employers maintain policies that re-
6 strict the ability of workers to discuss workplace
7 issues with each other, directly contravening these
8 rights. Research shows that more than one-half of
9 workers report that their employers have policies
10 that prohibit or discourage workers from discussing
11 pay with their co-workers. These policies and prac-
12 tices impede workers from exercising their rights
13 under the law and impair their freedom of associa-
14 tion at work.

15 (5) Retaliation by employers against workers
16 who exercise their rights under the National Labor
17 Relations Act (29 U.S.C. 151 et seq.) persists at
18 troubling levels. Employers routinely fire workers for
19 trying to form a union at their workplace. In one out
20 of 3 organizing campaigns, one or more workers are
21 discharged for supporting joining a union. In fiscal
22 year 2014, the National Labor Relations Board ob-
23 tained reinstatement orders for 3,240 workers and
24 obtained backpay awards totaling \$43,800,000 for
25 workers who faced illegal retaliation for exercising

1 their rights. Discrimination for organizing hurts all
2 workers, but minorities in particular, as minorities
3 are more likely than Whites to seek to organize and
4 receive a larger wage premium from collective bar-
5 gaining.

6 (6) The current remedies are inadequate to
7 deter employers from violating the National Labor
8 Relations Act (29 U.S.C. 151 et seq.). The remedies
9 and penalties for violations of the National Labor
10 Relations Act (29 U.S.C. 151 et seq.) are far weaker
11 than for other labor and employment laws, including
12 the Civil Rights Act of 1964 (42 U.S.C. 2000a et
13 seq.). Unlike other major labor and employment
14 laws, there are no civil penalties for violations of the
15 law. Workers cannot go to court to pursue relief on
16 their own; they must rely on the National Labor Re-
17 lations Board to prosecute their case.

18 (7) In order to make the right to collective bar-
19 gaining and freedom of association in the workplace
20 a reality for workers, the National Labor Relations
21 Act (29 U.S.C. 151 et seq.) must be strengthened.

22 **SEC. 3. PURPOSES.**

23 The purposes of this Act are—

1 (1) to strengthen protections for employees en-
2 gaged in collective action to improve their wages,
3 hours, and terms and conditions of employment;

4 (2) to provide for stronger remedies for employ-
5 ees who face retaliation, discrimination, or other in-
6 terference with the legal right of the employees to
7 engage in collective action;

8 (3) to provide for penalties against employers
9 who violate the rights of employees to engage in col-
10 lective action, in order to act as a meaningful deter-
11 rent against violating the law; and

12 (4) to streamline the enforcement procedures of
13 the National Labor Relations Board to provide for
14 more timely and effective enforcement of the law.

15 **SEC. 4. STRENGTHENING REMEDIES AND ENFORCEMENT**
16 **FOR EMPLOYEES EXERCISING THEIR RIGHTS**
17 **AT WORK.**

18 (a) **BACKPAY.**—Section 10(c) of the National Labor
19 Relations Act (29 U.S.C. 160(c)) is amended by striking
20 “*And provided further,*” and inserting “*Provided further,*
21 That if the Board finds that an employer has discrimi-
22 nated against an employee in violation of paragraph (3)
23 or (4) of section 8(a) or has committed a violation of sec-
24 tion 8(a) that results in the discharge of an employee or
25 other serious economic loss to an employee, the Board

1 shall award the employee back pay and an additional
2 amount as liquidated damages equal to 2 times the
3 amount of such back pay, without any reduction (includ-
4 ing any reduction based on the employee's interim earn-
5 ings or failure to earn interim earnings): *Provided fur-*
6 *ther,*".

7 (b) CIVIL PENALTIES.—Section 12 of the National
8 Labor Relations Act (29 U.S.C. 162) is amended—

9 (1) by striking “SEC. 12. Any person” and in-
10 sserting the following:

11 **“SEC. 12. CIVIL PENALTIES.**

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

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

15 “(b) VIOLATIONS OF POSTING REQUIREMENTS.—If
16 the Board, or any agent or agency designated by the
17 Board for such purposes, determines that an employer has
18 willfully violated section 8(h), the Board shall—

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

21 “(2) issue and cause to be served on such em-
22 ployer an order requiring that such employer post
23 the notice described in such section and provide the
24 information to new employees described in such sec-
25 tion; and

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

5 “(c) VIOLATIONS CAUSING SERIOUS ECONOMIC LOSS
6 TO EMPLOYEES.—

7 “(1) IN GENERAL.—Any employer who commits
8 an unfair labor practice within the meaning of para-
9 graph (3) or (4) of section 8(a) or a violation of sec-
10 tion 8(a) that results in the discharge of an em-
11 ployee or other serious economic loss to an employee
12 shall, in addition to any remedy ordered by the
13 Board, be subject to a civil penalty. Such penalty
14 shall be in an amount not to exceed \$50,000 for
15 each violation, except that the Board shall double
16 the amount of such penalty, to an amount not to ex-
17 ceed \$100,000, in any case where the employer has
18 within the preceding 5 years committed another
19 such violation.

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

23 “(A) the gravity of the unfair labor prac-
24 tice;

1 “(B) the impact of the unfair labor prac-
2 tice on the charging party, on other persons
3 seeking to exercise rights guaranteed by this
4 Act, and on the public interest; and

5 “(C) the size of the employer.

6 “(3) PERSONAL LIABILITY.—If the Board de-
7 termines, based on the particular facts and cir-
8 cumstances presented, that personal liability is war-
9 ranted, a civil penalty for a violation described in
10 this subsection may also be assessed against any of-
11 ficer or director of the employer who committed the
12 violation or had the authority to prevent the viola-
13 tion.

14 “(d) JOINT AND SEVERAL LIABILITY.—An employer
15 shall be jointly and severally liable under this Act for any
16 violations of this Act involving one or more employees sup-
17 plied by another employer to perform labor within the em-
18 ployer’s usual course of business, except for purposes of
19 subsection (e).”.

20 (c) INJUNCTIONS AGAINST UNFAIR LABOR PRAC-
21 TICES INVOLVING DISCHARGE OR OTHER SERIOUS ECO-
22 NOMIC LOSS.—

23 (1) IN GENERAL.—Section 10(l) of the National
24 Labor Relations Act (29 U.S.C. 160(l)) is amend-
25 ed—

1 (A) by inserting after “charged that” the
2 following: “an employer has engaged in an un-
3 fair labor practice within the meaning of section
4 8(a) that significantly interferes with, restrains,
5 or coerces employees in the exercise of the
6 rights guaranteed under section 7 and involves
7 discharge or other serious economic harm to an
8 employee or”; and

9 (B) by striking “as it deems just and prop-
10 er, notwithstanding any other provision of law:”
11 and inserting the following: “to protect the
12 rights guaranteed by section 7, notwithstanding
13 any other provision of law. The district court
14 shall grant the relief requested unless the court
15 concludes that there is no reasonable likelihood
16 that the Board will succeed on the merits of the
17 Board’s claim.”.

18 (2) CONFORMING AMENDMENT.—Section 10(m)
19 of the National Labor Relations Act (29 U.S.C.
20 160(m)) is amended by inserting “under cir-
21 cumstances not subject to subsection (l)” after “sec-
22 tion 8”.

23 (d) PRIVATE ENFORCEMENT.—Section 12 of the Na-
24 tional Labor Relations Act (29 U.S.C. 162), as amended

1 by subsection (b), is further amended by adding at the
2 end the following:

3 “(e) RIGHT TO CIVIL ACTION.—

4 “(1) IN GENERAL.—Any person who is injured
5 by reason of any violation of paragraph (1) or (3)
6 of section 8(a) may, in addition to or in lieu of filing
7 a charge alleging such unfair labor practice with the
8 Board in accordance with this Act, bring a civil ac-
9 tion in the appropriate district court of the United
10 States against the employer within 180 days of the
11 violation.

12 “(2) AVAILABLE RELIEF.—Relief granted in an
13 action under paragraph (1) may include any relief
14 authorized by section 706(g) of the Civil Rights Act
15 of 1965 (42 U.S.C. 2000e-5(g)) or by section
16 1977A(b) of the Revised Statutes (42 U.S.C.
17 1981a(b)).

18 “(3) ATTORNEY’S FEE.—In any action or pro-
19 ceeding under this subsection, the court may allow
20 the prevailing party a reasonable attorney’s fee (in-
21 cluding expert fees) as part of the costs.”.

22 (e) ENSURING FAIR REMEDIES FOR ALL WORK-
23 ERS.—Section 10(c) of the National Labor Relations Act
24 (29 U.S.C. 160(c)) is amended by striking “suffered by
25 him:” and inserting “suffered by such employee: *Provided*

1 *further*, That back pay shall not be denied on the basis
2 that the employee is, or was during the time of relevant
3 employment or during the back pay period, an unauthor-
4 ized alien as defined in section 274A(h)(3) of the Immi-
5 gration and Nationality Act (8 U.S.C. 1324a(h)(3)) or any
6 other provision of Federal law relating to the unlawful em-
7 ployment of aliens:”.

8 (f) REMEDYING ELECTION INTERFERENCE.—Section
9 9(c) of the National Labor Relations Act (29 U.S.C.
10 159(c)) is amended—

11 (1) by redesignating paragraphs (4) and (5) as
12 paragraphs (6) and (7), respectively; and

13 (2) by inserting after paragraph (3) the fol-
14 lowing:

15 “(4) BARGAINING ORDER BASED ON MAJORITY OF
16 VOTES.—If the Board finds that, in an election under
17 paragraph (1), a majority of the valid votes cast in a unit
18 appropriate for purposes of collective bargaining have been
19 cast in favor of representation by the labor organization,
20 the Board shall issue an order requiring the employer to
21 collectively bargain with the labor organization in accord-
22 ance with section 8(d).

23 “(5) DISMISSAL; BARGAINING ORDERS IN OTHER
24 SITUATIONS.—

1 “(A) DISMISSAL.—If the Board finds that, in
2 an election under paragraph (1), a majority of the
3 valid votes cast in a unit appropriate for purposes
4 of collective bargaining have not been cast in favor
5 of representation by the labor organization, the
6 Board shall dismiss the petition, subject to subpara-
7 graphs (B) and (C).

8 “(B) SPECIAL RULES FOR EMPLOYER VIOLA-
9 TIONS OR INTERFERENCE.—In any case where a
10 majority of the valid votes cast in a unit appropriate
11 for purposes of collective bargaining have not been
12 cast in favor of representation by the labor organiza-
13 tion and the Board determines that the election
14 should be set aside because the employer has com-
15 mitted a violation of this Act, or otherwise interfered
16 with a fair election, and has not demonstrated that
17 the violation or other interference is unlikely to have
18 affected the outcome of the election, the Board shall,
19 without ordering a new or rerun election, issue an
20 order requiring the employer to bargain with the
21 labor organization in accordance with section 8(d) if,
22 at any time during the period beginning 1 year pre-
23 ceding the date of the commencement of the election
24 and ending on the date upon which the Board makes
25 the determination of a violation or other interference

1 under subparagraph (A), a majority of the employ-
2 ees in the bargaining unit have signed authorizations
3 designating the labor organization as their collective
4 bargaining representative.

5 “(C) OTHER ELECTION INTERFERENCE.—In
6 any case where the Board determines that an elec-
7 tion under this paragraph should be set aside, the
8 Board shall direct a rerun election with appropriate
9 additional safeguards necessary to ensure a fair elec-
10 tion process, except in cases where the Board issues
11 a bargaining order under subparagraph (B).”.

12 **SEC. 5. MODERNIZATION.**

13 (a) PREVENTION OF UNFAIR LABOR PRACTICES.—
14 Section 8 of the National Labor Relations Act (29 U.S.C.
15 158) is amended by adding at the end the following:

16 “(h) POSTINGS OF NOTICE.—

17 “(1) IN GENERAL.—The Board shall promul-
18 gate regulations requiring each employer to post and
19 maintain, in conspicuous places where notices to em-
20 ployees and applicants for employment are custom-
21 arily posted both physically and electronically, a no-
22 tice setting forth the rights and protections afforded
23 employees under this Act. The Board shall provide
24 to employers the form and text of such notice.

1 “(2) NOTIFICATION OF NEW EMPLOYEES.—The
2 Board shall promulgate regulations requiring em-
3 ployers to notify each new employee of the informa-
4 tion contained in the notice described in paragraph
5 (1).”.

6 (b) ENFORCING COMPLIANCE WITH ORDERS OF THE
7 BOARD.—

8 (1) IN GENERAL.—Section 10 of the National
9 Labor Relations Act (29 U.S.C. 160) is amended—

10 (A) by striking subsection (e);

11 (B) by redesignating subsection (d) as sub-
12 section (e); and

13 (C) by inserting after subsection (c) the
14 following:

15 “(d) ENFORCING COMPLIANCE WITH ORDERS OF
16 THE BOARD.—

17 “(1) IN GENERAL.—Each order of the Board
18 shall take effect 30 days from the date upon which
19 notice of the order is given, unless otherwise directed
20 by the Board. Each such orders shall continue in
21 force indefinitely or for the period of time specified
22 in the order, or until the Board or a court of com-
23 petent jurisdiction issues a superseding order.

24 “(2) APPLICATION OF THE BOARD.—If any per-
25 son or entity fails or neglects to obey any order of

1 the Board while such order is in effect, the Board
2 shall apply to the district court of the United States
3 in which the unfair labor practice or other subject
4 of the order occurred, or in which such person or en-
5 tity resides or transacts business, for the enforce-
6 ment of such order. The Board shall file in the court
7 the record in the proceedings, as provided in section
8 2112 of title 28, United States Code. Any person
9 that was a party to the underlying Board proceeding
10 may join in the proceeding initiated by the Board.

11 “(3) PROCEDURE.—If, after having provided a
12 person or entity with notice and an opportunity to
13 be heard regarding a request under paragraph (2)
14 for the enforcement of an order, the court deter-
15 mines that the order was regularly made and duly
16 served, and that the person or entity is in disobe-
17 dience of the same, the court shall enforce obedience
18 to such order by a writ of injunction or other proper
19 process, mandatory or otherwise, to—

20 “(A) restrain such person or entity or the
21 officers, agents, or representatives of such per-
22 son or entity, from further disobedience of such
23 order; or

1 “(B) enjoin upon such person or entity, of-
2 ficers, agents, or representatives obedience to
3 the same.

4 “(4) VIOLATIONS OF ORDERS BY THE BOARD.—
5 Any person or entity who willfully and knowingly
6 violates any rule, regulation, restriction, condition,
7 or order made or imposed by the Board under au-
8 thority of this Act shall, in addition to any other
9 penalties provided by law, be subject to a civil pen-
10 alty of not to exceed \$10,000 for each and every day
11 during which such violation occurs, commencing with
12 the effective date of any such rule, regulation, re-
13 striction, condition, or order. Such civil penalty may
14 be imposed by the Board or by a court in a pro-
15 ceeding initiated by the Board under this sub-
16 section.”.

17 (2) CONFORMING AMENDMENTS.—The National
18 Labor Relations Act (29 U.S.C. 151 et seq.) is
19 amended—

20 (A) in section 9(d), by striking “section
21 10(e) or 10(f)” and inserting “subsection (d) or
22 (f) of section 10”; and

23 (B) in section 10—

1 (i) in subsection (f), by striking “sub-
2 section (e) of this section” and inserting
3 “subsection (d)”; and

4 (ii) in subsection (g), by striking
5 “subsection (e) or (f) of this section” and
6 inserting “subsection (d) or (f)”.

