PRO ACT FAQS

Protecting the Right to Organize (PRO) Act
H.R. 842 | S. 420

GENERAL QUESTIONS

Q: Why is the PRO Act necessary?

A: Workers in America today are not getting a fair shake. Our basic labor law, which is supposed to protect the rights of workers to form a union and bargain collectively, is broken. In recent decades, employers have been able to violate the National Labor Relations Act (NLRA) with impunity. An entire union-busting industry now works nonstop to block working people from exercising our rights. Today, in more than 40% of all union organizing elections, employers are charged with breaking the law. They lie. They threaten and coerce. And they routinely fire union supporters. Workers are forced to attend mandatory meetings with one item on the agenda: union-bashing. These messages of fear and intimidation come from the very people who control our paychecks, how much time we can spend with our families and whether we will have a job tomorrow. And the penalties for employers who engage in this illegal behavior are inconsequential.

Q: Who will benefit from the PRO Act?

A: All workers. We need the PRO Act to ensure good jobs for all working people. Historically, unions have turned bad jobs into good jobs in one industry after another. All working people need and deserve the collective power of a union to help achieve decent pay, secure benefits, flexible schedules, fair treatment, and basic respect and dignity at work.

We also need the PRO Act to address inequality. The latest research shows that the rapid growth of unions in the 20th century dramatically reduced inequality by extending the union advantage to more workers, particularly lower-income workers and Black workers, while at the same time raising standards for nonunion workers across entire industries. Growing today's labor movement is the only policy that has the scale necessary to take us off our current trajectory of ever-growing inequality. Without it, achieving broadly shared prosperity that extends to most working people has virtually no chance.

Working people who come together in a union can bargain for higher wages (11.2% more than what nonunion workers make). Union members also are more likely to have employer-provided health insurance (94% compared to 68%); access to paid sick days (91% compared to 73%); retirement benefits through private employers (82% to 48%); and guaranteed pensions through private employers (54% to 8%).

Q: Will the PRO Act lead to fewer jobs and reduce productivity?

A: No, just the opposite. The PRO Act would make it easier for workers who want to form or join a union to do so, and the latest economic research shows that higher union density raises wages, reduces inequality, increases productivity and stimulates economic growth. We urgently need to grow the labor movement to rebalance our unequal economy, which would be good for economic growth because economists are increasingly recognizing that inequality stunts economic growth. Unions were instrumental in creating the American Dream, and the decline of union density has made financial security and upward mobility less achievable for working people.

THE FIGHT FOR RACIAL AND GENDER EQUALITY

Q: How will the PRO Act help women and workers of color?

A: The PRO Act will help promote racial justice and eradicate all kinds of discrimination. A union contract is the single best tool we have to close racial and gender wage gaps, and to ensure dignity and fair treatment for all workers, regardless of where we were born, who we are, or what industry we work in. More than 65% of union members are either women or people of color, and Black workers are the most likely of any demographic group to be union members (13.5%). The decline of unionization has played a significant role in the expansion of the racial wage gap over the past four decades, and an increase in unionization would help reverse this trend.

The union advantage is greater for Black, Latino, women, immigrant, LGBTQ+ and other workers who have experienced workplace discrimination. Black, Latino and women workers are paid 13.7%, 20.1% and 5.8% more, respectively, when they belong to a union. Union contracts pay women and men the same for doing the same job. You cannot be fired for your sexual orientation or gender identity under a union contract.

Q: Will the PRO Act help reduce racial tensions?

A: Yes. The latest research shows that gaining union membership reduces racial resentment among White workers and that, among White workers, union members have lower racial resentment and show more support for policies that benefit Black workers.

RIGHT TO WORK

Q: Would the PRO Act override state "right to work" laws?

A: Yes. The PRO Act would give unions and employers the freedom to negotiate "fair share agreements," which right to work laws prohibit. Fair share agreements make sure that everyone who benefits from union representation—higher wages, better benefits and job protections—pays their fair share to cover the costs of representation, collective bargaining, contract enforcement and related costs. Unions are required by law to represent nonmembers and members alike, and this representation costs money.

Q: What is the history of the right to work laws?

A: Right to work laws have a dark history. They are the product of extreme white supremacist and pro-segregationist elements in the 1940s South. At that time, not only were unions expanding their bargaining power—and therefore improving the wages and working conditions for all workers, including workers of color—but many were also fighting to end Jim Crow and segregation. Advocates of right to work laws warned that if their efforts failed, "white women and white men will be forced into organizations [labor unions] with black African[s] whom they will have to call 'brother' or lose their jobs."

Indeed, civil rights leaders like Dr. Martin Luther King Jr. acknowledged the racist and anti-worker goals behind right to work laws. Dr. King saw the fight for civil rights and economic justice as inherently connected. In 1961, he explained that:

> "In our glorious fight for civil rights, we must guard against being fooled by false slogans, such as 'right to work.' It is a law to rob us of our civil rights and job rights. Its purpose is to destroy labor unions and the freedom of collective bargaining by which unions have improved wages and working conditions of everyone....Wherever these laws have been passed, wages are lower, job opportunities are fewer and there are no civil rights."

Q: Are right to work laws good for the economy?

A: No. Right to work laws have had the effect of lowering wages and eroding pensions and health care coverage in states where they have been adopted. The argument that this is good for the economy is a relic of discredited "trickle down" economic theory, which has never worked, as President Biden recently observed.

Q: Would the PRO Act force employees to become union members?

A: No, the PRO Act would not force anybody to become a union member. As explained above, the PRO Act would allow employers and unions the freedom to negotiate fair share agreements. The purpose of these agreements is to avoid the free-rider problem that arises when nonmembers who receive all the benefits of being in the union do not pay their fair share of the costs of collective bargaining, thereby weakening union power.

Q: Would the PRO Act force workers to pay union dues to keep their jobs?

A: No. "Fair share fees" are not union dues and no employee would be required to join the union. If the employer and the union do choose to negotiate a "fair share agreement," and the employee authorizes the employer to deduct those fees, the employer would be required to comply by deducting fair share fees from the paychecks of employees who are not members of the union.

Q: Is allowing the negotiation of fair share agreements a violation of states' rights because it overrides state right to work laws?

A: No. There is nothing unusual about enacting labor legislation at the federal level. On the contrary, federal labor law generally pre-empts state labor legislation. In fact, state right to work laws are only permitted because of a federal labor law enacted in 1947.

Q: Is allowing the negotiation of fair share agreements anti-democratic?

A: No. There is nothing anti-democratic about giving employers and unions the freedom to negotiate fair share agreements to address the free-rider problem. Twenty-three states already allow the negotiation of such agreements. On the contrary, it is right to work laws that are the antithesis of democracy. Not only were they originally created to keep Black and White workers apart, but since then they have been promoted by a network of billionaires and special-interest groups to weaken workers' collective voice on the job and give more power to corporations. More generally, union representation is a form of democracy in the workplace. The PRO Act would make it easier for employees who want to form or join a union to do so, and higher union density has been shown to reduce economic inequality, which corrodes democracy.

THE ABC TEST

Q: Would the PRO Act outlaw independent contracting or gig work, or make freelancing illegal?

A: No, absolutely not. Nothing in the PRO Act outlaws any kind of work arrangement.

Q: Would the PRO Act force companies to hire their independent contractors as employees?

A: No. The PRO Act does not affect any of the laws that typically determine whether someone is hired as a W-2 employee, most notably tax law, but also minimum wage, overtime, unemployment insurance, workers' compensation, etc.

Q: The PRO Act uses the ABC test to determine who is an employee for purposes of the National Labor Relations Act (NLRA). Isn't this the same thing as California's A.B. 5?

A: No. California's A.B. 5 law uses the ABC test to define who is an employee for purposes of a broad range of state employment laws. The PRO Act does not touch any of those laws. An amendment to H.R. 842, offered by Rep. Lucy McBath (Ga.) and passed by the U.S. House of Representatives,

provides that nothing in the PRO Act shall affect the definitions of employer and employee under any state law for wage and hour, workers' compensation or unemployment insurance. The PRO Act only affects the NLRA: It uses the ABC test to determine who enjoys bargaining rights under the NLRA.

Q: Would the ABC test in the PRO Act cause freelance journalists and creative professionals to lose work?

A: No. The only way the PRO Act could possibly affect freelance journalists or creative professionals is that it might allow them to join a union and engage in collective bargaining, but only if they choose to. Those not wanting to organize a union or engage in collective action would be unaffected. The PRO Act would not stop freelance journalists or creative professionals from continuing to do freelance work.

SECONDARY BOYCOTTS

Q: How does the PRO Act make it easier for workers to stand in solidarity with each other to address labor issues?

A: The PRO Act amends labor law to make sure workers can exercise our First Amendment rights. Before 1947, it was common for unions to engage in activity—including picketing, strikes and boycotts—directed at companies that could influence the direct employer but were not the direct employer itself. Then, in 1947, Congress passed the Taft–Hartley Act, which prohibited such secondary activity. This ban on secondary activity does not reflect the realities of today's business structures, which typically include subcontracting and other similar relationships where the company with the power to improve working conditions for workers is not the direct employer. The PRO Act will empower workers by lifting the ban on secondary activity.

Q: Would lifting the ban on secondary activity disrupt the economy?

A: No. Most developed countries already allow secondary activity, and none of the nightmare scenarios predicted by corporate opponents of the PRO Act have materialized there. But workers in those countries do tend to have more bargaining power than workers in America. The problem in the United States today is that workers have too little bargaining power, not too much. Lifting the ban on secondary activity is urgently necessary to increase worker voice in a global economy that is very different from what it was in 1947—one in which businesses have come up with all sorts of business strategies to evade any responsibility to the workers who help them create wealth, thereby concentrating wealth in the hands of a few.

JOINT EMPLOYMENT

Q: Would the PRO Act make the employees of a franchisee (e.g., a McDonald's franchise) the employees of the franchisor (e.g., McDonald's Corporation)?

A: Not necessarily. The question of joint-employer status is fact-intensive; it depends on the unique facts of each employment relationship. The National Labor Relations Board (NLRB) does not make blanket determinations. Instead, it considers employee and employer status on a case-by-case basis.

However, the PRO Act may well result in the employees of a franchisee being treated also as employees of the franchisor if the franchisor exerts control over the employees' terms and conditions of employment. But even in that situation, the employees would be considered employees of the franchisor only *for purposes of the NLRA and collective bargaining.* This means that if workers choose to form or join a union, the franchisor would have a duty to bargain with them. It would still be up to the employees whether they want to organize a union and bargain with their employer or employers.

Q: Is the PRO Act going to put an end to franchising, subcontracting or other business structures?

A: No. Franchising and subcontracting are not going away. What the PRO Act will do is make sure that the businesses that can change workers' hours, wages and working conditions are actually at the bargaining table. The right to organize and collectively bargain is hardly meaningful if the only people who can actually meet workers' demands are not even part of the conversation.

For example, recent reports explain that Amazon dictates various aspects of employment for drivers who deliver its packages but does not consider those workers to be its employees. Instead, Amazon claims the drivers are solely employees of the individual small businesses with whom Amazon contracts for package delivery.

Yet through these contracts, Amazon controls important parts of drivers' jobs, including things like personal grooming and body odor standards, necessary training, drug testing, and the reasons for which workers can be fired. Amazon requires its contractors to maintain "employment at-will" policies, meaning that employees can be fired for no reason at all. Under current law, if these delivery drivers wanted to organize a union and bargain over these policies, they may be unable to do so because the small contracting companies who are considered their sole employers are unable to alter the policies under their contract with Amazon. So unless Amazon is considered a joint employer, the only business that controls those policies will not be at the bargaining table. The workers would be left without anyone to bargain with over these important work issues.

Instead of hiring its own employees, companies engage in this type of contracting out to skirt their responsibilities as employers. The PRO Act ensures this type of employee-avoidance scheme does not render workers powerless in collective bargaining, and that the business that controls the work issue in question is actually at the bargaining table.

WORKER COMMUNICATION AND PRIVACY

Q: Why is it so important that workers be able to communicate about organizing and other workplace issues through employer communication devices?

A: Ensuring that workers can communicate at work electronically—which is the 21st century equivalent of the "water cooler"—is critically important. Employers routinely use company email to broadcast anti-union messages in the workplace while prohibiting workers from communicating over company email in an effort to stamp out union organizing before it starts, even where they allow employees to use email for other nonwork-related communications. The PRO Act will require employers to allow workers to use company email for organizing purposes, unless there are compelling business reasons not to.

Q: Would the PRO Act violate employee privacy rights by giving unions access to employees' private information?

A: No. Nothing in the PRO Act compromises workers' private data or subjects workers to unsolicited political outreach. For the past 55 years, when workers came together to form a union, employers were required to turn over a voter list with the names and addresses of employees to make sure workers had access to information both for and against unionization, and the Supreme Court upheld this requirement in 1969.

In 2014, the NLRB issued a regulation to update this voter list requirement to include email addresses and cell phone numbers, and the PRO Act codifies the NLRB's 2014 regulation. An amendment to H.R. 842, offered by Rep. Sharice Davids (Kan.) and passed by the U.S. House of Representatives, provides that the PRO Act shall not affect the privacy of employees with respect to voter lists provided to labor organizations pursuant to elections directed by the NLRB.

Q: Is it true that there is no restriction on how union organizers can use the information on voter lists, and they could conceivably even sell this information to third parties?

A: No. NLRB rules prohibit the use of employee information for any purpose other than the election for which the employer provided the list. Employee information cannot be shared or stored for later use. Unions have received this information since 2014 during union elections, and there is no evidence that unions have misused the information in that time.

CARD-CHECK OR MAJORITY SIGN-UP

Q: Does the PRO Act end secret ballot elections or workers' ability to keep their vote private?

A: No. Corporations are pushing misinformation on various aspects of the PRO Act, including the claim that the bill replaces secret ballot elections with card-check (also called "majority sign-up"). The claim that the PRO Act ends secret ballot voting or eliminates voting privacy is false. The PRO Act

does not change the way employees choose whether to join a union, nor does it adopt card-check procedures—the common term for certifying a union based on signed union authorization cards rather than a secret ballot election.

Under current law, the NLRB may order that an employer bargain with a union, after an election in which a majority of voters voted against union representation, where the board finds that the employer's unlawful interference with the election has tainted the electoral environment such that a fair election cannot reasonably be held. The Supreme Court approved this remedy in *NLRB v. Gissel Packing Co.,* 395 U.S. 575 (1969). The board can only issue a "Gissel" order following a full federal hearing on the alleged unlawful conduct, and only if a majority of the eligible voters had signed cards authorizing the union to be the collective bargaining representative prior to the election.

The PRO Act strengthens this remedy by making it the ordinary remedy for employer conduct that interferes with a free election. Under the PRO Act, the NLRB may issue a bargaining order where a union alleges that the employer unfairly interfered with a free election, but only after it has held a hearing and allowed the employer an opportunity to contest the allegations against it. Even then, the board cannot issue a bargaining order under the PRO Act if the employer can show that its violation would not have changed the outcome of the vote. Only where requirements for a bargaining order are satisfied may the board issue an order to bargain, but only if a majority of eligible voters had signed authorization cards within a year prior to the election.

This makes sense: The employer's unlawful conduct made it impossible for a free election to take place. Thus, in this situation, the NLRB may rely on the only untainted evidence of majority support for the union—the authorization cards—to certify the union.