

## House Passes Sweeping Pro-Union Bill

By **Andrew Kragie**

*Law360, Washington (February 6, 2020, 10:37 PM EST)* -- The House voted largely along party lines Thursday to approve a broad labor bill meant to bolster unions by making it easier for workers to organize and get a first contract, to the dismay of business groups who warn of a one-sided process that will hurt the economy.

The Protecting the Right to Organize Act passed on a 224-194 vote, with five Republicans joining all but seven Democrats. The Pro Act would limit independent-contractor classification, penalize employers for interfering in unionization, roll back "right-to-work" laws and override business-friendly decisions by courts and agencies. Its sponsor is Rep. Bobby Scott, the Virginia Democrat who chairs the House Education and Labor Committee.

"The sustained, decades-long attacks on labor have driven union membership to historic lows and revealed that current labor laws are too weak to defend workers' basic right to join a union and collectively bargain with their employer," Scott said in a statement after the final vote Thursday night. "Under the Pro Act, workers will have greater power to stand together and join a union, companies will be held accountable for violating the law and workers will be able to decide whether to form a union without interference."

A Republican on the committee sharply disagreed about the causes and consequences of lower union participation.

"My colleagues on the left will claim that economic inequality has resulted because of declining union membership, but we know this isn't true," Rep. Lloyd Smucker of Pennsylvania said during floor debate Thursday. "Rather than innovating to become more attractive to employees so they want to join, unions are trying to change federal law to stack the deck."

Democrats argued that the bill actually restores balance to labor relations. Speaker Nancy Pelosi promoted it at a news conference with union leaders on Wednesday.

"This is about stemming the assault that the Republicans are making on the rights of working men and women in our country," she said. "It holds companies that violate workers' rights accountable, strengthens workers' sacred collective bargaining rights and protects access to fair union elections."

Also on Wednesday, the White House issued a veto threat: "The administration is willing to work with

Congress to strengthen protections for union members. Unfortunately, [this bill] contains provisions that would kill jobs, violate workers' privacy, restrict freedom of association and roll back the administration's successful deregulatory agenda."

The veto threat warned that the independent-contractor rules resemble California's AB 5 law, which it said "is actively threatening the existence of both the franchise business sector and the gig economy." It also argued against the provision that let either party force the inaugural contract negotiation into binding arbitration after as little as four months of bargaining.

Though the Pro Act has little chance of becoming law in 2020, it shows the direction Democrats might take if they gained more power in Washington.

The 34-page proposal would make the biggest changes to U.S. labor law since Congress passed the National Labor Relations Act in 1935, according to Philip A. Miscimarra, a seven-year NLRB veteran who now represents employers as a Morgan Lewis & Bockius LLP partner.

The Pro Act is "much more expansive and extreme" than the proposals that circulated in 2009, when Democrats controlled the White House and both chambers of Congress, Miscimarra told Law360 on Wednesday.

Miscimarra argued the bill would unfairly eliminate employers from the equation through its myriad provisions, including a prohibition on lockouts and permission for unions to organize secondary boycotts to pressure companies through suppliers and other avenues.

Labor disputes traditionally go to the NLRB, but the Pro Act would allow workers to go to federal courts. Miscimarra said lawyers would expect to see a surge in litigation along parallel tracks, before both commissioners and judges.

Democrats argued that it's fair and consistent to allow lawsuits.

"If your civil rights are violated based on race, based on gender, you have a right to go to court to sue for enforcement of your rights and for compensation for violation of those rights," Rep. Jamie Raskin, D-Md., said during floor debate. "This Pro Act will give the same right for workers to go to court to enforce their labor-organizing rights."

In addition to the bill's existing provisions, the House on Thursday adopted Democratic amendments to require a one-year waiting period after voluntary recognition before the NLRB could consider a petition for election, mandate elections within 20 business days after they're directed, prohibit employer or union retaliation against whistleblowers, and require employers to post signs and notify workers about election petitions.

The chamber voted down six Republican amendments. Though excluded from the bill, they may indicate the party's goals in labor law and the elements they most oppose.

Amendments sought to strip provisions that would override "right-to-work" state laws, allow "intermittent strikes," prohibit permanently replacing workers on strike and require companies to quickly hand over worker contact information.

Rep. Francis Rooney, R-Fla., wanted to let unionized workers seek a new certification election when a

majority of their unit were not members during the original election. Rep. Phil Roe, R-Tenn., sought to strike the expansion of the card-check certification process and require secret ballots for all certifications.

The five Republicans who voted for the bill were Reps. Brian Fitzpatrick of Pennsylvania, John Katko of New York, Chris Smith and Jeff Van Drew of New Jersey, and Don Young of Alaska.

The Democrats who opposed the bill were Reps. Henry Cuellar of Texas, Joe Cunningham of South Carolina, Kendra Horn of Oklahoma, Ben McAdams of Utah, Lucy McBath of Georgia, Stephanie Murphy of Florida and Kurt Schrader of Oregon.

Although the bill is not expected to advance in the GOP-led Senate, business and labor advocates say they went all-out because the Pro Act sets the parameters for future debates and may foreshadow Democrats' approach if they regain power in Washington.

"This is a live-fire exercise for us," Glenn Spencer, U.S. Chamber of Commerce vice president of employment policy, previously told Law360. "We are not giving members of Congress a free pass on this just because they can be comfortable in the knowledge the Senate is not going to pass the bill."

During the Wednesday news conference with Pelosi, AFL-CIO President Richard Trumka had his own warning for lawmakers who might oppose the measure.

"Do not ask the labor movement for a dollar or a door knock," Trumka said. "We won't be coming."

--Additional reporting by Braden Campbell. Editing by Emily Kokoll.