



IMPACT OF PRO ACT ON OPEN-SHOP CONTRACTORS

The Protect the Right to Organize (PRO) Act is the AFL-CIO's ambitious attempt to overturn decades of federal labor policy. It seeks to arm unions with practically every legal and tactical advantage available to increase their likelihood of gaining recognition and to ensure that, once recognized, they get the most favorable terms possible. Following is a summary of provisions of the bill that particularly affect open-shop contractors.

- 1. THE PRO ACT WOULD BOLSTER UNION-FRIENDLY ELECTION PROCEDURES.** The PRO Act would codify the controversial “quickie” or “ambush” election rule, which expedites union election timeframes and makes other procedural changes that limit employee opportunities to be fully informed and disadvantage employers seeking to remain open shop.
- 2. THE PRO ACT WOULD SET ASIDE MORE UNION ELECTION LOSSES.** In an expansion of current law, the PRO Act directs the National Labor Relations Board to set aside a union election loss, certify the union, and order the employer to bargain if the Board finds the employer violated the NLRA or “otherwise interfered with a fair election” and if a majority of the employees signed union authorization cards within one year of the finding.
- 3. THE PRO ACT WOULD HINDER CONTRACTORS' ABILITY TO GET ADVICE.** The PRO Act would codify the failed “persuader rule” – an invalidated regulation that imposed invasive and burdensome reporting requirements when an employer obtains advice from attorneys, consultants, and possibly even AGC chapter staff during a union organizing drive. This is expected to have a chilling effect on the seeking and receiving of expert advice, resulting in less-informed employers and employees and a higher incidence of inadvertent employer unfair labor practices.
- 4. THE PRO ACT WOULD SPAWN MORE PICKETING.** The PRO ACT eliminates all union unfair labor practices for unlawful picketing. It legalizes picketing in all respects at all times, including unlimited picketing for recognition and picketing against even neutral employers. No more separate gates to contain picketing. Jobsite disruptions would flourish, and targeted contractors would have no recourse short of surrendering to union demands.
- 5. THE PRO ACT WOULD FORCE MEDIATION AND ARBITRATION IN CONTRACT NEGOTIATIONS.** Once a union wins an election – which becomes much more likely under the PRO Act given the above-described union advantages – the previously open-shop employer must begin bargaining. If negotiations break down, the PRO Act requires mediation and interest arbitration, allowing an outsider to set wages, benefits, work rules, and other terms and conditions of employment.
- 6. THE PRO ACT WOULD NULLIFY RIGHT-TO-WORK LAWS.** Twenty-seven states currently have “right-to-work” laws banning agreements between unions and employers that require employees to pay union dues or fees as a condition of employment. The PRO Act would effectively invalidate those laws, diminishing employee choice and bolstering union coffers.
- 7. THE PRO ACT WOULD EXPAND UNION-ONLY SUBCONTRACTING RESTRICTIONS.** The bill would eliminate restrictions on “hot cargo” agreements under which an employer promises to a union that it won't do business with another employer. In construction, this means authorizing subcontracting clauses that extend to off-site work and strikes to get the clauses. This could lead to a loss of business opportunity for open-shop contractors that might otherwise perform off-site work for union general contractors or higher-tier subcontractors.
- 8. THE PRO ACT WOULD INCREASE EMPLOYER PENALTIES.** The PRO Act would impose statutory remedies for employer unfair labor practices, including back pay, front pay, consequential damages, and an additional amount of liquidated damages equal to two times the amount of damages awarded. Also, directors and officers could be held personally liable.
- 9. THE PRO ACT WOULD BROADEN JOINT-EMPLOYER LIABILITY.** The PRO Act would expand the concept of “joint employer” to put an employer at risk of liability for another employer's unfair labor practices or bargaining obligations when it has asserted only indirect control of the other employer's workers or even just reserved the right to control them.
- 10. THE PRO ACT WOULD NARROW INDEPENDENT CONTRACTOR STATUS.** The bill adopts the strict “ABC” test for determining if a worker is an independent contractor rather than an employee. By requiring that independent contractors are free from the employer's control, perform work outside the employer's typical course of business, and customarily engage in their trade or business, the test will result in the reclassification of many independent contractors as NLRA-covered employees.

For more information about the potential impact of the PRO Act on open-shop contractors, see AGC's white paper [The PRO Act: What Open-Shop Contractors Need to Know](#). For additional information on the PRO Act, visit AGC's [PRO Act web page](#).