



IMPACT OF PRO ACT ON UNION CONTRACTORS

The Protect the Right to Organize (PRO) Act is the AFL-CIO's ambitious attempt to overturn decades of federal policy. Despite its name, the PRO Act does much more than protect an employee's right to organize and engage in collective bargaining. In fact, the PRO Act would expand the economic weapons available to unions at the bargaining table, at the workplace, and beyond. The proposed legislation contains provisions, discussed below, that are of particular concern to union contractors.

1. **THE PRO ACT WOULD EXPAND PICKETING.** The PRO ACT eliminates all union unfair labor practices (ULP's) for unlawful picketing. If enacted, unions would be able to picket secondary neutral employers to encourage them to cease doing business with the employer engaged in a dispute with the union. In doing so, general contractors would no longer be able to utilize a reserved gate to minimize project disruptions. Moreover, unions would be able to picket neutral employers at their home offices.
2. **THE PRO ACT WOULD PERMIT PICKETING OVER JURISDICTIONAL DISPUTES.** By making all picketing permissible, the PRO Act would sanction picketing to pressure an employer to utilize the services of one trade rather than the trade assigned to perform the work. Additionally, the bill would eliminate the NLRB's Section 10(k) process for resolving jurisdictional disputes.
3. **THE PRO ACT WOULD PREVENT AN EMPLOYER FROM IMPLEMENTING FINAL OFFER AT IMPASSE.** Current law permits an employer to implement its best and final offer upon reaching impasse with the union. Under the PRO Act, if the parties reach impasse in bargaining, the employer must maintain the terms and conditions that were in effect at the time negotiations stall. This provision removes any incentive for the union to negotiate any terms not favorable to the union.
4. **THE PRO ACT WOULD REPEAL "HOT CARGO" PROHIBITIONS.** Section 8(e) of the National Labor Relations Act prohibits so-called "hot cargo" agreements that seek to compel an employer not to do business with another. In doing so, union-only subcontracting clauses could be expanded to cover off-site work.
5. **THE PRO ACT WOULD PERMIT STRIKES AT ANY TIME FOR ANY REASON.** The PRO Act would empower unions to strike for any reason that advances their interests, including partial, slowdown, and intermittent strikes.
6. **THE PRO ACT WOULD PROHIBIT LOCKOUTS AND REPLACING STRIKERS.** Although rarely used in the construction industry, employers would be prohibited from engaging in offensive lockouts and permanently replacing economic strikers.
7. **THE PRO ACT WOULD UNDERMINE LOCAL BARGAINING.** Newly organized construction employers would likely seek more favorable terms than exist in area-wide agreements. Provisions in the PRO Act that would force arbitration if the parties cannot agree on a contract within 90 days would give those employers the ability to press for favorable terms from sympathetic arbitrators, including defined contribution pension arrangements in order to avoid pension withdrawal liability.
8. **THE PRO ACT WOULD INCREASE PENALTIES FOR EMPLOYERS.** The PRO Act would require statutory remedies for employer ULP's, including back pay, front pay, consequential damages and an additional amount of liquidated damages equal to two times the amount of damages awarded. Additionally, directors and officers could be held personally liable for damages.
9. **THE PRO ACT WOULD EXPAND JOINT-EMPLOYER LIABILITY.** The PRO Act would expand the concept of "joint employer" to mean that one employer may be liable for another employer's ULP's and/or their bargaining obligations just for asserting indirect control of the other employer's workers or even just reserving the right to control them.

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