# [ND21] Dith NC

#### I negate “Resolved: A just government ought to recognize an unconditional right of workers to strike.”

#### As defined by Merriam Webster, unconditional means “Not conditional, or limited, absolute.”

#### I value morality because the word ought in the resolution implies a moral question.

#### The standard is maximizing expected utility. Prefer this for two reasons:

#### First, utilitarianism is the only theory relevant to morality since consequences are the only form of value we can experience. Harris 10:

**Harris, Sam [CEO of Project Reason]. “The Moral Landscape: How Science Can Determine Human Values,” 2010.**

Here is my (consequentialist) starting point: **all questions of value** (right and wrong, good and evil, etc.) **depend upon the possibility of experiencing such value. Without** potential **consequences at the level of experience**—happiness, suffering, joy, despair, etc.—**all** talk of **value is empty. Therefore, to say that an act is morally necessary,** or evil, or blameless, **is to make (tacit) claims about its consequences** in the lives of conscious creatures (whether actual or potential). I am unaware of any interesting exception to this rule. Needless to say, **if one is worried about pleasing God** or His angels, **this assumes that** such invisible entities are conscious (in some sense) and cognizant of human behavior. It also generally assumes [and] that **it is possible to suffer their wrath** or enjoy their approval, either in this world or the world to come. Even within religion, therefore, consequences and conscious states remain the foundation of all values.

#### Second, the uncertainty inherent to governing necessitates utilitarianism. Goodin 90:

**Robert Goodin [Fellow in philosophy, Australian National Defense University]. THE UTILITARIAN RESPONSE, 1990, p. 141-2.**

My larger argument turns on the proposition that there is something special about the situation of public officials that makes utilitarianism more probable for them than private individuals. Before proceeding with the large argument, I must therefore say what **it is** that makes it so special about public officials and their situations that make it **both** more **necessary and** more **desirable for** them **to adopt a more credible form of utilitarianism.** Consider, first, the argument from necessity. Public officials are obliged to make their choices under uncertainty[.], and uncertainty of a very special sort at that. All choices – public and private alike – are made under some degree of uncertainty, of course. But in the nature of things, [P]rivate individuals will usually have more complete information on the peculiarities of their own circumstances and on the ramifications that alternative possible choices might have for them. **Public officials**, in contrast, **are** relatively **poorly informed as to the effects that their choices** will **have on individuals**, one by one. What they typically do know are generalities: averages and aggregates. **They know what will happen most often to most people as a result of their various possible choices**, but that is all. **That is enough to allow public policy-makers to use the utilitarian calculus.**

## Contention: Restrictions on the Right to Strike

#### There are many reasonable conditions on the right to strike, like a prohibition on essential workers striking during a national emergency. Servais 09:

**Servais, Jean-Michel [Visiting Professor at the Universities of**

**Liege (Belgium) and Gerona (Spain); former Director of the International Labour**

**Organization; Honorary President, International Society for Labour Law and**

**Social Security]. "ILO Law and the Right to Strike." Canadian Lab.**

**& Emp. LJ 15 (2009): 147. CR**

**A general prohibition of**

**collective action can be justified only in the event of an acute national emergency**, and then only for a limited time. That is true whether the emergency is **of an economic nature or one which relates to national** **security or public health.** Responsibility for suspending a strike on the grounds of national security or public health should, in the view of the CFA, not lie with the government but with an independent body which has the confidence of all parties concerned. A number of recent cases before the ILO supervisory bodies relating to Canadian provinces concern the denial or restriction of collective bargaining and the right to strike in the public sector and in other related services. 12 While a detailed analysis of each of those cases is beyond the scope of this paper, the general principles they enunciate are discussed below. **Limitations on collective action, and on the right to strike in particular, are accepted in three types of situation. Firstly,** recognition of public servants' trade union freedom does not necessarily imply **the right to** take any form of **collective action**. Such action **may be restricted or prohibited for public servants who exercise authority in the name of** **the state - for example, customs officers or those employed in the** **administration of justice and the judiciary.** In contrast, public servants in state-owned commercial or industrial enterprises should enjoy the right to strike, unless (as discussed immediately below) they provide essential services. **Second, limitations may apply to employees working** **in public or private services that are considered essential.** What is an **essential service has been interpreted** strictly by the ILO supervisory bodies, **to cover only services the absence of** **which will bring a clear and imminent threat to the life, personal safety or health of all or part of the population.** The highly controversial issue of the extent of the concept of essential services has been vigorously debated at meetings of ILO representative bodies, including the Conference Committee on the Application of Standards. Employer and worker representatives usually come to these meetings with totally different views, and solutions have been found on a case-by-case basis. This means in practice that the ILO definition of essential services depends largely on the circumstances prevailing in the country in question. Moreover, **the concept is not** **absolute, in that a non-essential service maybecome essential if the freezing of operations lasts beyond a certain time or** **extends beyond a certain scope. In the event that a total and prolonged strike in a vital sector of the economy might endanger the life,** **health or personal safety of the population, and only in that event, a back-to-work order will be acceptable if it applies to the specific categories of staff whose**

**refusal to work could cause such a danger.**13 **The ILO** supervisory bodies have **deemed the following to be essential services: police and** **armed forces; hospital and health sectors; firefighting services; public or private prison services; water and electricity services; the telephone service; the provision of food to pupils of**

**school age; the cleaning of schools; and air traffic control services.** Even within essential services, certain classes of personnel, such as labourers and gardeners, should not be deprived of the right to strike, because the interruption of their functions does not in practice affect life, personal safety or health. 14 The following have been considered not to constitute essential services: radio and television broadcasting; the education sector (except for functions carried out by principals and vice-principals); the petroleum sector; airlines; ports, railways, metropolitan transport, and transport generally; garbage collection, unless the stoppage exceeds a certain duration or scope; fuel production and distribution; postal services; computer services for collecting excise duties and taxes; banking; refrigeration enterprises; department stores; hotel services; agriculture; food and alcohol supply; and pleasure parks and casinos. The possible long-term consequences of a strike in the teaching sector have been considered not to justify a prohibition on essential services grounds."5 Employees deprived of the right to strike because they perform essential services must have appropriate guarantees to safeguard their interests. These guarantees should include a corresponding denial of the right to lock out. They should also include the provision of joint conciliation or mediation proceedings, and only where those proceedings fail, joint arbitration machinery. Suc9h proceedings should meet certain requirements, which will be examined below. **Third, in public utilities, the authorities may establish minimum service requirements in order to avoid damage that is irreversible or out of all proportion to the occupational interests**

**of the parties to the dispute, as well as to avoid damage to third parties.** 16 **Such requirements may be put into place in essential services and fundamental public services. They may also be used in the event of an acute national crisis endangering**

**the normal living conditions of the population, but they must be confined to operations that are** **strictly necessary to avoid the danger.**

#### Another example is medical union strikes, which harm individual & public health, hurt economic growth, and worsen socioeconomic inequality – especially in countries already struggling. Essien 18:

Eissen, Madara Joseph [Department of Economics, University of Uyo, Akwa Ibom State, Nigeria]. *The Socio-Economic Effects of Medical Unions Strikes on the Health Sector of Akwa Ibom State of Nigeria*, Asian Business Review, 2018, https://hcommons.org/deposits/download/hc:26406/CONTENT/20.6.pdf/

The study indicates that the positive socioeconomic effective of medical unions’ strikes include: increment of salaries, provision of medical equipment, improved welfare package for health workers and improved performance of health workers. This study seems to set the pace in this direction, in the sense that the researcher could not find literature that studied positive socioeconomic effects of medical unions’ strikes. It seems that previous studies were focused on negative socioeconomic effects of medical unions’ strikes. On the causes of medical union strike, the study also struck accord with previous studies. It indicates that the fundamental causes of medical union strike in Akwa Ibom included unpaid salaries, denial to salary review, unpaid leave grant and other entitlements, poor workings environment and dearth equipment, and default of MoU by government. Earlier studies by researchers have also identified these factors as the fundamental causes of medical workers strike (Kelly and Nicholson 1980; Adalsteinsson 2007; Chima 2013). In particular, this study corroborates recent cross-sectional descriptive study carried out by Obinna Oleribe and co-researchers about the causes of medical union strike in Nigeria between 2013-2015. In their findings, it was shown that the main cause of medical union's strike in Nigeria was demand for salaries review at 82%. In this study, demand for higher salary was the second most important cause of medical union strike in Akwa Ibom State at 22.7% following unpaid salaries which was identified as the most important cause if medical Union strikes in Akwa Ibom State at 40%. These findings are in line with what Maslow thesis that strike will always disrupt the flow of services if the basic physiological needs of the services providers are not adequately met while the reverse would be the case if such basic needs are met. Finally, on the measures that could be adopted to curb the negative effects of medical union strikes, the study shows the various measures that could help curb the negative effects of strikes if adopted. These included: timely payment of health workers salaries and other entitlement, adequate review of health workers salaries, A&E department should not retrieve medical serves, health care providers in private hospitals should operate at reduced cost, NGOs, CBOs, and CSOs should provide skeletal services (Figure 2). In this study, Figure 2 indicate that the two most important/useful measures to curb negative effects of strike are timely payment of health worker's Salaries/ other entitlements and adequate sales review which ranked 42% and 26% respectively. The result **of this study has serious social and economic implications for the society in terms of its effects on microeconomic and macro-economic indices of the country**. The impact is usually higher in developing economies. In other words, **in less developed economies, medical unions’ strikes further worsens already worse socioeconomic circumstances to the extent that citizens lack or have little options to turn to.** From the study, **20%** of the respondents **reported that medical union strike worsen patients’ health conditions, 14.7% the cdc reported that it leads to spreading of disease, and 6.7% indicated that medical union strike increases social inequality** (Figure 1). **In Nigeria about 70% of the population** **is reported to** **live [in] below poverty line,** this means that **the little money individuals and household have is used to purchase essential services such as food, shelter, clothing and healthcare**. Yet, **healthcare is cheaper in government managed facilities. However, when the health workers within such facilities down tools, this decreases the ability of many individuals and households to obtain healthcare because they usually lack the wherewithal to finance such alternatives**. **This leads to worsening of the conditions of both inpatients and outpatients and also leads to spreading of diseases in the case of contagious diseases**. This also means that the affected population would be less productive in terms of their involvement in pursuit of economic productive ends achieve through exerting labour**. At the macro-economic level, the aggregate productivity of the national economy will be negatively affected.** From **the study,** it was **reported that medical Union strike leads to increased social inequality**. **This means** that **during strike the gap between the poor and the rich as well as between the male and female gender becomes increasingly obvious. Many rich people could obtain medical services at private clinics during which fewer poor could do same. In the same vein, fewer female than their male counterparts could obtain medical services at private healthcare facility. The impact of worsening social inequality implies that, most of the disadvantaged group could not contribute to economic growth** at per capita level. **This would also have negative effects on national aggregates. 12.7% of respondents indicated that medical union strike increases mortality** rate (Figure 1); **particularly** that **of children** who are known to be more vulnerable to disease (Todaro and Smith 2012) **Studies have indicated that healthier people earn higher wages. In Cote d' Ivoire** it was reported **that unhealthy people, that is people who were likely to lose a day of work per month due to illness earned 19% lower than healthy people** (Todaro and Smith 2012). This further means that, **a healthy population is a prerequisite for successful economic development**. This study indicates that **medical unions’ strike worsens outpatients' health and reduces the opportunity of the population to obtain healthcare services** (Figure 1). Good health standard in a population is unimportant to achieve goals of poverty reduction. As Todaro and Smith (2012) note, "if parents are two weak, unhealthy, and unskilled to be productive enough to support their family, the children have to work. But if the children work, they cannot get the education they need, so when they grow up, they will have to send their own children to work "(p.403). Thus, the cycle of poverty and low productivity extend across generations. **Health and education are pivotal to economic development** (Todaro and Smith 2012). **Strike itself is based on microeconomic self-interest**. Umo (1993) noted that “the economic world draws its dynamism from the self-interest motivation of individuals, firms and governments in response to some desirable incentives” (p.3). Umo (1993) also noted that every economic activity is a response to a reward or loss system. The existence of appropriate incentives elicits appropriate (correct) economic behavior. The level of efficiency in public institutions depends on the structure of positive and or negative incentives facing the operators (Umo 1993). People work to earn a living. Health workers also work to earn a living. Their motivation to work is the reward that they get. However, when the incentive is distorted, they are bound to react. A restoration of these incentives means restoration of efficiency to the system. We can say that strike is an economic corrective mechanism necessary for the effective functioning of the work environment in terms of protecting the reward system of the economy thereby, ensuring efficiency and productivity. From the findings of the study, **it can be concluded that strikes interrupt the smooth flow of medical services to citizens and it is slowly and irredeemably destroying the public health system**. This is a result of incompatible demand of the employers and her employees. Also, the study also reveal that denial of salary review and accumulated salary arrears were identified as major causes of medical union strikes. It is noteworthy that the impact of industrial conflict is felt in the productive sector of the economy, both at microeconomic and macroeconomic levels. **When people’s health conditions get worsened or there is high mortality rate due to strikes, they become unable to shoulder their responsibilities effectively and hence cannot make progress that will contribute to the growth of the society**. This will also reduce labour force drastically both currently and in the future and will in turn affect aggregate production and income negatively. **Poor health and negative economic growth are inextricably linked. Improving the health of a nation’s citizens can directly result in economic growth**. When human capital is deteriorated, economic productivity is at stake. Health workers have been seen as valuable assets to the society. Their intrinsic value, in terms of human capital, should be respected rather than focusing on economic productivity that may be derived from it. Whenever that is ignored, labour unions utilize the threat of strike (Owoye, 1994). Poorly paid health workers are consistently searching for greener pastures, and may in turn resign from their current services to take up greener opporxtunities in foreign countries. When this happens, the health sector faces the problem of brain drain which results in the reduction of both internally generated income and foreign reserves. **Effective public health systems are essential** for providing care for the sick and for instituting measures that promote wellness. **It breeds healthy citizens that make up a healthy labour force that determines the growth of the state and the country at large.**

#### And: even the credible threat of a strike causes debilitating fiscal and reputational costs- that wrecks healthcare quality. Masterson 17:

**Masterson, Les. “Nursing strikes can cause harm well beyond labor relations.”***Healthcaredive*, 15 August 2017, <https://www.healthcaredive.com/news/nursing-strikes-can-cause-harm-well-beyond-labor-relations/447627/>

Hospitals also take a financial hit during strikes. **Even** **the threat of a one- or two-day nurse strike can cost a hospital millions.**

**Bringing in hundreds or thousands of temporary nurses from across the country is costly for hospitals. They need to advertise the positions, pay for travel and often give bonuses** to lure temporary nurses.

The most expensive recent nurse strike was when[about **4,800 nurses**](https://www.healthcaredive.com/news/4800-striking-nurses-cost-allina-health-104-million/430523/) **went on strike at Allina Health in Minnesota two times** last year**. The two strikes of seven days and 41 days cost the health system $104 million. The hospital also saw a $67.74 million operating loss during the quarter of those strikes.** **To find temporary replacements,** [Allina needed to include enticing offers](https://www.healthcaredive.com/news/allina-to-search-for-1400-nurses-in-face-of-possible-strike/421079/)**, such as free travel and a $400 bonus to temporary nurses.** **Even the threat of a strike can cost millions. Brigham and Women’s Hospital in Boston** [**spent more than $8 million and lost $16 million** in revenue](http://www.beckershospitalreview.com/finance/strike-or-no-strike-labor-disputes-can-take-a-toll-on-hospital-finances.html) **preparing** **for a strike in 2016.** The 3,300-nurse union threatened to walk out for a day and much like Tufts Medical Center, Brigham & Women’s said the hospital would lock out nurses for four additional days if nurses took action. At that time, **Dr. Ron Walls, executive vice president and chief operating officer at Brigham and Women’s Hospital, said** **the hospital** [spent more than $5 million](https://www.bizjournals.com/boston/blog/health-care/2016/06/brigham-nurses-strike-already-costing-hospital.html) **on contracting with the U.S. Nursing Corp. to bring on 700 temporary nurses licensed in Massachusetts. The hospital also planned to cut capacity to 60% during the possible strike and moved hundreds of patients to other hospitals. They also canceled procedures and appointments in preparation of a strike.** **The Massachusetts Nurses Association and Brigham & Women’s were able to reach a three-year agreement before a strike, but the damage was already done to the hospital’s finances.** Richard L. Gundling, senior vice president of healthcare financial practices at Healthcare Financial Management Association, told Healthcare Dive that healthcare organizations need to plan for business continuity in case of an event, such as a labor strike, natural disaster or cyberattack.“Business continuity is directly related to the CFO’s responsibility for maintaining business functions. The plan should include having business continuity insurance in place to replace the loss associated with diminished revenue and increased expenses during the event,” Gundling said.These plans should provide adequate staffing, training, materials, supplies, equipment and communications in case of a strike. Hospitals should also keep payers, financial agencies and other important stakeholders informed of potential issues.“It’s also key to keep financial stakeholders well informed; this includes insurance companies, bond rating agencies, banks, other investors, suppliers and Medicare/Medicaid contractors,” he said.

#### Finally, at their most extreme, strikes can devolve to violence and even murder, subverting the public order

Senior Lecturer Mlungisi Tenza reported last year that:

Mlungisi Tenza (Senior Lecturer, University of KwaZulu-Natal). “The effects of violent strikes on the economy of a developing country: a case of South Africa.” Obiter vol.41 n.3 Port Elizabeth 2020. JDN. <http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1682-58532020000300004>

Even though the right to strike and the right to participate in the activities of a trade union that often flow from a strike 17 are guaranteed in the Constitution and specifically regulated by the LRA, it sometimes happens that the right to strike is exercised for purposes not intended by the Constitution and the LRA, generally.18 For example, it was not the intention of the Constitutional Assembly and the legislature that violence should be used during strikes or pickets. As the Constitution provides, pickets are meant to be peaceful.19 Contrary to section 17 of the Constitution, the conduct of workers participating in a strike or picket has changed in recent years with workers trying to emphasise their grievances by **causing disharmony and chaos in public.** A media report by the South African Institute of Race Relations pointed out that between the years 1999 and 2012 there were **181 strike-related deaths**, 313 injuries and 3,058 people were arrested for public violence associated with strikes.20 The question is whether employers succumb easily to workers' demands if a strike is accompanied by violence? In response to this question, one worker remarked as follows:

"[T]here is no sweet strike, there is no Christian strike ... A strike is a strike. [Y]ou want to get back what belongs to you ... you won't win a strike with a Bible. You do not wear high heels and carry an umbrella and say '1992 was under apartheid, 2007 is under ANC'. You won't win a strike like that."21

The use of violence during industrial action affects not only the strikers or picketers, the employer and his or her business but it also affects **innocent members of the public,** non-striking employees, the environment and the economy at large. In addition, striking workers visit non-striking workers' homes, often at night, threaten them and in some cases, assault or even **murder** workers who are acting as replacement labour.22 This points to the fact that for many workers and their families' living conditions remain unsafe and vulnerable to damage due to violence. In Security Services Employers Organisation v SA Transport & Allied Workers Union (SATAWU),23 it was reported that about **20 people were thrown out of moving trains** in the Gauteng province; most of them were security guards who were not on strike and who were believed to be targeted by their striking colleagues. Two of them died, while others were admitted to hospitals with serious injuries.24In SA Chemical Catering & Allied Workers Union v Check One (Pty) Ltd,25striking employees were carrying various weapons ranging from sticks, pipes, planks and bottles. One of the strikers Mr Nqoko was alleged to have threatened to cut the throats of those employees who had been brought from other branches of the employer's business to help in the branch where employees were on strike. Such conduct was held not to be in line with good conduct of striking.26