## 1 – Violence PIC

#### Text: A just government ought to recognize a right of workers to strike, conditioned only on propensity for violence.

#### The counterplan establishes a proportional balancing test allowing courts to restrict strikes if violence reaches a level that subverts the function of collective bargaining.

Tenza 20

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>

4 1 Strikes should only be allowed to continue if they are lawful

The definition of "strike" lends itself any obstruction of work that is lawful.51So, if workers refuse to undertake "work" that is illegal and unlawful, this will not constitute a strike.52 Where employees refuse to work in support of an unlawful demand (for example the removal of a supervisor without following due process), this will also not constitute a strike.53 Therefore, where the action involved does not constitute a strike, participants do not enjoy the protection offered by section 67(1) of the LRA.54 If the means used by strikers to obstruct work constitute unlawful conduct such as violence,55then the conduct will not qualify as a strike, and will thus not be protected.55 **If a strike becomes violent** and no longer pursues legitimate or lawful demands, **the court should intervene** as violent and unruly conduct is the antithesis of the aim of a strike, which is to persuade the employer through peaceful withholding of work to agree to the union's demands.56 For a court to intervene, Rycroft argues that the following question needs to be asked: "has the misconduct taken place to an extent that the strike no longer promotes functional to collective bargaining, and is therefore no longer deserving of its protected status."57 The Labour Court in National Union of Food Beverage Wine Spirits & Allied Workers v Universal Product Network (Pty) Ltd58adopted Rycroft's functionality test which entails that the Labour Court could assume the power to alter the59protected status of a strike to unprotected action on the basis of violence.59 This entails the weighing up of the level of violence against the efforts of the trade union to curb it in order for a court to determine whether a strike's protected status is still functional to collective bargaining.60

Rycroft further argues that there is an inseparable link between strikes and functional collective bargaining and justifies this on three grounds. First, the Interim Constitution of South Africa 200 of 1993 provided that "workers have the right to strike for the purposes of collective bargaining."61 Secondly, strikes must be orderly. And lastly, the strike must not involve misconduct. This he infers from the fact that employees engaged in misconduct can be dismissed irrespective of whether the strike is protected or not.62 Informed by the decision of Afrox Ltd v SACWU 2,63Rycroft argues that **a strike can lose its protection** if it is no longer functional to collective bargaining. So if a strike is no longer functional to collective bargaining, it is bound to lose protection, and those who participate in such activities will face dismissal or an action for damages can be instituted against those responsible.

#### It competes—proportional balancing tests legally constitute a condition

Fabbrini 2012

Federico Fabbrini (PhD Researcher in the Law Department at the European University Institute) “Europe in Need of a New Deal: On Federalism, Free Market, and the Right to Strike.” Georgetown Journal of International Law, Vol. 43, 2012. JDN. https://www.iuscommune.eu/html/activities/2012/2012-11-29/workshop5\_Fabbrini.pdf

The most characteristic feature of the German regulatory model, however, is represented by the so-called principle of ultima ratio. This principle represents the application in the field of labor law of the general constitutional principle of Verhaltnismaßigkeit, or **proportionality.**70 According to this principle, “a strike is only legal if it is necessary and the ultimate measure to solve the industrial conflict.”71 As a consequence, trade unions **do not enjoy an unconditional right** to pursue collective action, even when, in their view, a strike would be the most effective tool to strengthen their bargaining position. “In keeping with the principle of last resort, all possibilities of a peaceful negotiation for settlement must have been exhausted” before a trade union can go on strike.72 Labor courts are therefore empowered to assess the proportionality of the industrial action undertaken by the trade unions and can sanction illegal strikes by requiring offending trade unions to pay damages. Historically, industrial relations between employees’ unions and employers’ associations have been very cooperative in Germany, and this has kept industrial action to a minimum.73 Yet by permitting strikes only when they are proportionate, German law designs a rather **restrictive** model of **regulation of the right to strike**, which ensures wide protection for other constitutional values, such as the right to property and freedom of commerce.74

#### If unrestricted, strikes can lead to mass violence that destroys public order

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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

#### Violent strikes uniquely turn the economy

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The relationship between the business of the employer and its customers is based on **loyalty and confidence**. The employer is expected to keep this relationship going by supplying goods or deliver services to clients when needed. It is expected that this would take place without disturbance. However, during strikes or conduct in furtherance of a strike, this relationship gets affected since the level of production or service delivery is reduced or does not take place.

It is **well known** that the continued existence of a business relies on customers' satisfaction with services or goods provided. A business that does not have customers can hardly survive as they are the backbone of the business. **If a strike is violent** and takes long to resolve, this may chase away customers or clients as the possibility of not getting what they want is high if less or no production takes place. The possibility that customers could shift loyalty to other businesses doing the same business as the employer is high. The end result is that **a prolonged strike has the potential of chasing away customers** or clients as they may not want to associate themselves with a business environment that poses a risk to their lives. In addition, customers may want to share solidarity with employees and refuse to associate with a business whose employees are on strike. To stop this from taking place, the employer and the union need to speed up the process of resolving their dispute through **a non-violent mechanism** such as a collective bargaining process.

## 2 - Protectionism DA

#### Brink - Trade is stable and growing---governments are avoiding protectionism, the key threat

Gros 21

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Global supply chains have weathered the pandemic intact, and the deep recession has not unleashed a wave of protectionism. That is good for global trade, and probably for foreign direct investment, too, and suggests that predictions of globalization’s demise were premature. Trade is recovering robustly alongside the upticks in growth in major economies. This good news deserves more attention. Less than 12 months ago, many observers were predicting an end to globalization. The pandemic disrupted supply chains, and governments, suddenly confronted with the resulting vulnerabilities and dependencies, encouraged “reshoring” production of critical goods. Today, the outlook is much brighter. There is little indication of a sustained movement away from global supply chains. And many governments have realized that trade is more of an opportunity than a threat to national sovereignty. As a result, the World Trade Organization expects the volume of global trade to increase by 8% in 2021, more than offsetting last year’s 5.3% decline. True, foreign direct investment (FDI) still lags, having plummeted 42% in 2020. Europe actually recorded a negative flow. But the pandemic’s differential impact on trade and investment is not surprising. Transporting goods around the world requires little physical human interaction. Giant cranes, often remotely operated, load and unload containers, and supertankers pump oil ashore. In contrast, acquiring a firm or establishing a new production facility in another country requires travel to meet potential partners, and in many cases close contact with foreign governments to obtain permits. Pandemic-induced border closures and travel restrictions obviously made this much more difficult. But FDI is notoriously volatile, often plunging one year and recovering the next, so it could still bounce back strongly in 2021. In fact, the OECD has already detected signs of a recovery. Moreover, global supply chains have proved to be less vulnerable than many had feared. The notion of a “supply chain” conjures up an image of a fragile arrangement, with each enterprise depending on inputs from the adjacent link. And a chain is only as strong as its weakest link. The global trading system’s vulnerability to choke points seemed to be driven home in March, when a single large freighter blocked the Suez Canal, after sandstorms restricted visibility and transformed the huge stack of containers on board into sails. But this incident, which was resolved relatively quickly, is not representative of how global trade works. It is more accurate to talk of interrelated networks of suppliers than supply chains. Most enterprises have more than one supplier of key components, and multinational companies with operations in many countries source supplies from many other countries. The pandemic has reinforced multi-sourcing, rather than triggering a retrenchment from the division of labor. Yes, governments almost everywhere have interfered with trade during the pandemic to address acute shortages of key products, such as personal protective equipment in 2020 and COVID-19 vaccines during the first few months of 2021. But both of these products, while vital in the context of the pandemic, play only a marginal role in the wider economy. The rich countries could vaccinate the entire world for less than a dollar a week from each citizen. The main danger is that governments, fearing similar dependence on foreign suppliers for many other key products, introduce protectionist measures. Prompted by the EU’s concern that such dependence could leave the bloc vulnerable to political pressures from hostile governments, the European Commission has recently completed a fascinating study of strategic dependencies and capacities.

#### Growth of unions cause protectionism – that slows growth and causes tariffs and trade wars

Epstein 16 [Richard A. Epstein Peter and Kirsten Bedford Senior Fellow @ the Hoover Institution. "The Rise of American Protectionism." https://www.hoover.org/research/rise-american-protectionism]

This point explains why the American labor movement has historically opposed free trade. The essence of unionism is, and always will be, the acquisition of monopoly power. There is no way for a union to obtain that monopoly power in the marketplace. It can only secure it through legislation. The first step in that process was the exemption of unions from the antitrust laws under Section 6 of the Clayton Act of 1914. The second major step was the legitimation of collective bargaining under the National Labor Relations Act of 1935, which gave the union the exclusive bargaining rights against the firm once it was successful in a union election. These major statutory benefits strengthened private sector unions and imposed inefficiencies on unionized firms. This, in turn, opened the field for new firms, like the Japanese automobile companies, to organize outside the union envelope. In response, labor’s strategy went one step further. It pushed hard on trade and tariff barriers to keep out foreign imports, and exerted political influence to encourage local zoning boards to exclude new businesses that do not use union labor. Add to these issues the aggressive rise of minimum wage laws and other mandates like Obamacare and family leave statutes, and you construct a regulatory fortress that defeats the corrective forces of free trade and renders the nation less economically resilient and productive than before.

It is easy to say that people are “screwed” by free trade if you only look at the stories of those individuals who lose their jobs. It is much more difficult to make that case after taking into account the simple but powerful truth that overall levels of profitability and wealth increase under free trade. The short-term relief that targeted groups get from protectionist measures mask the larger inefficiencies that slow down the rate of growth. Despite what the Democrats think, transfer programs are no substitute for growth. Indeed, the imposition of new taxes without return benefits on the firms taxed only depresses the rate of return on investment further, which will necessarily compound the problem.

#### New trade conflicts cause global war and undermine cooperation on collective action problems

#### Cross-apply their 1AC Oppenheimer