# Rawls AFF

#### I AFFIRM the resolution Resolved: A just government ought to recognize the unconditional right of workers to strike.

**There are TWO key concepts that I will DEFINE for the round:**

**The unconditional right to strike is defined as**

**Gwisai et al, 09**

​​Munyaradzi Gwisai et al., Rogers Matsikidze, Shingirai Ushewekunze, Kiven Ushewekunze. 2009. “An outline of fundamental labour rights under international laws, national constitutions and Zimbabwean constitutional norms.” ZIMBABWE LABOUR CENTRE AND KEMPTON MAKAMURE LABOUR LECTURE SERIES BOARD. ISBN 978 0 797437 791. <https://opendocs.ids.ac.uk/opendocs/handle/20.500.12413/7045> (lectures in Labour Law and Labour Relations at the University of Zimbabwe and Briggs Zano Working Peoples College) Footnote(s) may be inserted at end, empty line(s) may be removed, and bracket(s) may be used to change offensive language. This material may be behind a paywall.  Please email jacksondeconcini@gmail.com for information about access.  // JAD 2021/07/10

♦ The NCA Draft Constitution Section 28 (3) **provides an explicit and unconditional right to strike** providing - “Every worker has the right to strike, sit-in or stayaway, or such other concerted action.”

**Second, governments restrict the right to strike in at least three ways.  If an employee violates any one of these restrictions, they risk discipline or dismissal from their employer.  National Labor Relations Board no date explains:**

National Labor Relations Board. no date. “The Right to Strike” https://www.nlrb.gov/strikes

**[First ]Strikes [can be ]unlawful because of purpose. A strike may be unlawful because an object, or purpose, of the strike is unlawful. A strike in support of a union unfair labor practice, or one that would cause an employer to commit an unfair labor practice, may be a strike for an unlawful object.** For example, it is an unfair labor practice for an employer to discharge an employee for failure to make certain lawful payments to the union when there is no union-security agreement in effect (Section 8(a)(3). **A strike to compel an employer to do this would be a strike for an unlawful object and, therefore, an unlawful strike**. Strikes of this nature will be discussed in connection with the various unfair labor practices in a later section of this guide.  **Furthermore, Section 8(b)(4) of the Act [the law] prohibits strikes for certain objects even though the objects are not necessarily unlawful if achieved by other means. An example of this would be a strike to compel Employer A to cease doing business with Employer B. It is not unlawful for Employer A voluntarily to stop doing business with Employer B, nor is it unlawful for a union merely to request that it do so. It is, however, unlawful for the union to strike with an object of forcing the employer to do so. These points will be covered in more detail in the explanation of Section 8(b)(4). In any event, employees who participate in an unlawful strike may be discharged and are not entitled to reinstatement.**

**[Second] Strikes [can be ]unlawful because of timing—Effect of no-strike contract.  A strike that violates a no-strike provision of a contract is not protected by the Act, and the striking employees can be discharged or otherwise disciplined, unless the strike is called to protest certain kinds of unfair labor practices committed by the employer.** It should be noted that not all refusals to work are considered strikes and thus violations of no-strike provisions. A walkout because of conditions abnormally dangerous to health, such as a defective ventilation system in a spray-painting shop, has been held not to violate a no-strike provision. Same—Strikes at end of contract period.Section 8(d) provides that when either party desires to terminate or change an existing contract, it must comply with certain conditions. If these requirements are not met, **a strike to terminate or change a contract is unlawful and participating strikers lose their status as employees of the employer engaged in the labor dispute.** If the strike was caused by the unfair labor practice of the employer, however, the strikers are classified as unfair labor practice strikers and their status is not affected by failure to follow the required procedure. Strikes unlawful because of misconduct of strikers. Strikers who engage in serious misconduct in the course of a strike may be refused reinstatement to their former jobs. This applies to both economic strikers and unfair labor practice strikers. Serious misconduct has been held to include, among other things, violence and threats of violence. **The U.S. Supreme Court has ruled that [Fourth] a “sitdown” strike, when employees simply stay in the plant and refuse to work, thus depriving the owner of property, is not protected by the law.** Examples of serious misconduct that could cause the employees involved to lose their right to reinstatement are:Strikers physically blocking persons from entering or leaving a struck plant. Strikers threatening violence against nonstriking employees. Strikers attacking management representatives.  **[Third] Section 8(g)—Striking or Picketing a Health Care Institution Without Notice. Section 8(g)[the law] prohibits a labor organization from engaging in a strike, picketing, or other concerted refusal to work at any health care institution without first giving at least 10 days’ notice in writing to the institution and the Federal Mediation and Conciliation Service.**For more information please see the  [Basic Guide to the National Labor Relations Act](https://www.nlrb.gov/sites/default/files/attachments/pages/node-235/basicguide.pdf).

**Next, I have ONE observation about the resolution:**

**The word UNCONDITIONAL means the removal of restrictions that directly limit striking.  It does not mean that the government would recognize strikes that break OTHER laws, like security from violence or protections for property.  Instead, the affirmative ONLY removes ALL of the restrictions for workers that ALREADY have the right to strike.**

**Now, my FRAMEWORK.**

#### I VALUE JUSTICE because it is the constitutive obligation of a just government.

#### Justice is best realized behind the VEIL OF IGNORANCE.  The veil of ignorance simply means that true justice can only be determined if people are UNAWARE of their social position. PhD professor John Rawls further explains in 1971:

[John Rawls, “A Theory of Justice” 1971]

Now the reasons for the veil of ignorance go beyond mere simplicity. We want to define the original position so that we get the desired solution**. If** a **knowledge of particulars is allowed, then the outcome is biased by arbitrary contingencies**. As already observed, to each according to his threat advantage is not a principle of justice. **If the original position is to yield[s] agreements that are just, the parties must be[are] fairly situated and treated equally as moral persons**. **The arbitrariness of the world must be corrected for by adjusting the circumstances of the initial contractual situation**. Moreover, if in choosing principles we required unanimity even when there is full information, only a few rather obvious cases could be decided. A conception of justice based on unanimity in these circumstances would indeed be weak and trivial. **But once knowledge[ of ones position in society is] excluded, the requirement of unanimity is not out of place and the fact that it can be satisfied is of great importance. It enables us to say of the preferred conception of justice that it represents[ is] a genuine reconciliation of interests.**

**The Rawls analysis explains two ethical truths:**

**1. Justice requires IMPARTIALITY. Ethical norms that only apply to certain social positions cannot be just. The veil of ignorance requires we choose norms acceptable to ANY social position.**

**2. A just government exists only on the WILL of its citizens. Therefore, government differs from individuals since government must make policies that are acceptable to ALL social positions.**

**Thus, the best STANDARD is consistency with the VEIL OF IGNORANCE.**

#### Contention one: Protection for Workers

**My first contention is that the unconditional right to strike protects both a worker’s ownership of their own labor and protects the worker’s freedom from forced labour. PhD professor Richard Croucher et al. explains in 2012:**

Croucher, Richard ORCID: https://orcid.org/0000-0002-9617-734X, Kelly, Mark G. E. and Miles, Lilian ORCID: https://orcid.org/0000-0001-7224-757X (2012) A Rawlsian basis for core labour rights. Comparative Labor Law and Policy Journal, 33 (2) . pp. 297-320. ISSN 1095-6654

**The right to strike** appears as a special and controversial case, then, but we argue that from a rights perspective it **is a simple, fundamental freedom. The right to conduct industrial action is in effect that to withdraw their labour in some way (quitting, striking, going slow) unless collective demands are met**. **As individuals, every worker**, if they are not a slave (and slavery is explicitly not permitted under Rawls’s first principle) **has a right to withdraw their own labour,** and might of course threaten this in individual negotiations with their employer. Effectively, what occurs in **industrial action is a pooling of individual rights into collective rights, via the individual freedom to**

**associate with our peers,** and in this respect we may still discuss these collective rights qua individual rights under Rawls’s first principle of justice. That is, **individuals may be said to have an individual right to join in collective industrial action to improve**

**their conditions.** Of course, it will be argued that there is no right to strike if it involves a breach of contract. However, **no contract can literally force labour – if it did that, it would breach the right to freedom from slavery.** Rather, it can only schedule penalties, typically financial, where labour is not performed.In effect, **as long as the freedom to contract is limited by the right to freedom from slavery, there is an implied freedom to strike.** Thus, it is because of the very lack of complete freedom to make contracts that prevents us having a primary right to bargain that we do have a primary freedom to strike. **We cannot, according to Rawls, sign away our basic freedom to refuse to do any particular job.40**

**In order to protect the worker’s right, the right to strike must be unconditional.  There are two reasons why this is true:**

#### 1] Precedence: any restriction sets continuous precedence

#### 2] Necessity: It is necessary for them to be GUARANTEED the ability to ensure they are free from forced labor, and under no circumstance can it happen.

#### Contention 2: Exploited workers

**My second contention is that the unconditional right to strike is necessary to prevent the structural exploitation of the working class. PhD professor Alexander Gourevitch explains in 2016:**

Gourevitch, A.. “Quitting Work but Not the Job: Liberty and the Right to Strike.” Perspectives on

Politics 14 (2016): 307 - 323. //L

**The commodification of labor I: structural domination and exploitation So long as we view the labor market as a series of voluntary agreements, to which workers and employers freely consent, we cannot make adequate sense of the right to strike.** There are two interconnected forms of compulsion to which workers are subject that undermine any such view. The first is a form of structural domination that renders workers vulnerable to exploitation,the second is a form of legal authority that gives employers arbitrary power in the workplace itself. I**f we recognize these as ineliminable features of the market for labor, then the right to strike [is]makes sense not as a relic of feudal guild privileges nor just as an economically rational effort by some to maximize wages, but as a form of resistance to the modern labor market itself. Let us begin with structural domination and the problem of exploitation. Though most closely associated with the Marxian tradition, thethought that desperate workers are exploited is a familiar one**. Even those not so sympathetic to the complaints of modern wage-laborers can be found saying, as David Hume famously did, that “the fear of punishment will never draw so much labour from a slave, as the dread of being turned off and not getting another service, will from a freeman” (Hume [1742] 1987, II.XI.16fn39). Adam Smith gave this fact a turn in favor of workers: It is not, however, difficult to foresee which of the two parties must, upon all ordinary occasions, have the advantage in the dispute, and force the other into a compliance with their terms… In all such disputes the masters can hold out much longer… Many workmen could not subsist a week, few could subsist a month, and scarce any a year without employment. In the long-run the workman may be as necessary to his master as his master is to him, but the necessity is not so immediate. (Smith [1776] 1982, I.8.12) On top of which, as Smith noted, “Masters are always and every where in a sort of tacit, but constant and uniform combination.” **In a world in which economic necessity couples with employer collusion, workers have little choice**: “Such combinations [by employers], however, are frequently resisted by a contrary defensive combination of the workmen; who sometimes too, without any provocation of this kind, combine of their own accord to raise the price of their labour” (Smith [1776] 1982, I.8.12). For this reason Smith thought it was wrong to treat trade unions as criminal conspiracies.9 **The view of unions and strikes as defensive, aimed at lessening employers’ ability to take advantage of workers’ need, persisted throughout the industrial age. By the time Hobhouse wrote Liberalism, it was possible for a liberal to argue that strikes might even be connected to human freedom**: The emancipation of trade unions, however, extending over the period from 1824 to 1906, and perhaps not yet complete, was in the main a liberating movement, because combination was necessary to place the workman on something approaching terms of equality with the employer, and because tacit combinations of employers could never, in fact, be prevented by law. (Hobhouse 1944, 18) We must note, however, that nearly all of these arguments remain within a form of social theory that attempts to make capitalist practice more like its theoretical selfimage. **These thinkers tended to defend unions and their right to strike as a way of achieving ‘real freedom of contract’ in the face of economic necessity.** Hobhouse was updating Smith and Mill when arguing, “In the matter of contract true freedom postulates substantial equality between the parties. In proportion as on party is in a position of vantage, he is able to dictate his terms. In proportion as the other party is in a weak position, he must accept unfavourable terms” (Hobhouse 1944, 37). On this account, **the right to strike** is defensible only insofar as it helps maintain a position of relative equality among bargaining parties. It thereby **secures contracts that are not just voluntary but truly free** - Mill’s “necessary instrumentality of that free market.” **This basic idea reappears in any number of twentieth century acts of labor legislation and jurisprudence, perhaps most notably in the 1935 law granting American workers the right to strike**.10 The problem with the ‘real freedom of contract’ view is that it is based on faulty social analysis. The labor market is not justanother commodity market in which property-owners are, or can be made, free to participate or not participate. Here some Marxist social theory is inescapable.**Workers who have no other consistent source of income than a wage [and]have no reasonable alternative to selling their labor-power.** That is because, at least in highly capitalist societies where most goods are only legally accessible if you can buy them, thereis no other way of reliably acquiring necessary goods. The only way for most workers to get enoughmoney to buy what they need is by selling their labor-power. Their only alternatives are to steal, hope for charity, or rely on inadequate welfareprovision. These are generally speaking unreasonable alternatives to seeking income through wages. If workers have no reasonable alternative to selling theirlabor-power they are therefore forced to sell that labor-power to some employer or another (Ezorsky 2007; Cohen 1988,239-254, 255-285). This forcing exists even when workers earn relatively high wages, since they still lack reasonablealternatives, though the forcing is more immediate the closer one gets to poverty wages. The key feature of this forcing is that it is consistent with voluntary exchange but it is not someoccasional or accidental feature of this or that worker’s circumstances. It is a product of the distribution of property in society. People are forced to selltheir labor when, on the one hand, **everyone has property rights in their own capacity to labor and, on the other hand,some group of individuals monopolize all or nearly all of the productive assets** in that society. These are the necessary conditions to create a labormarket sufficiently robust to organize production. That is to say, a society in which the primary way of organizing production is through labor market is one in which most people are forced into that labor market. Or, put another way, a society in which most people were truly free to enter or not enter the labor market would be one in which labor is so radically de-commodified that the mere formal possibility of a labor market could not serve, on its own, to guarantee social reproduction. Relations among workers and employers would be truly free and thus truly contingent. It is only when there is a sufficiently large population of individuals who have nothing but their labor-power to sell that the mechanism ofsocial forcing guarantees a constant supply of labor through the labor market itself. But this means that, in a society based on the commodification of labor, the conditions that would make the buying and selling of labor-powera truly free set of exchanges would require utterly transforming that market-based production relationship itself. It would require giving workers areasonable alternative to selling their labor – say through a sizable, unconditional basic income and universal public goods, or through giving all workers the possibility ofowning or cooperatively owning their own enterprise. Such measures would amount to a radical de-commodification oflabor-power, an overcoming of the very social conditions that give rise to the labor market’s self-imageas a site of free exchange. As Ira Steward, a nineteenth century American labor reformer, once said, “if laborers were sufficiently free to make contracts…they would be too free to need contracts”(quoted in Stanley 1998, 96). The foregoing social analysis is familiar enough, but its implications for the right to strike are rarely considered. The right to strike begins to make more sense if we reflect upon the fact tha workers who are forced to sell their labor are vulnerable to exploitation. Exploitation just is the word for structural domination in thedomain of economic production (Vrousalis 2013; Roberts, n.d., Chap. three). Some workers will accept jobs at going wage rates and hours, others will beunable to bargain for what they need, and most can be made to work longer hours, at lower pay, under worseconditions than they would otherwise accept. Many employers know this and will take advantage of it (Greenhouse 2009; Krugman, New York Times, December 23, 2013).Even if employers do not intentionally take advantage of it, they do so tacitly by making numerous economic decisions about hiring, firing, wages and hours that assume this steady supply of economically dependent labor. So itis not just the force of necessity, but the fact that this forcing leaves workers vulnerable to exploitation and the further fact that this is a class condition that is relevant to our thinking. It explains whyworkers might seek collective solutions to their structural domination and why they might refuse to believe that they can overcome their exploitation through purely individual efforts.

**In order to protect the workers from domination, the right to strike must be unconditional:**

#### 1] Having conditions warrants exploitation under some circumstances.

#### 2] Conditions prevent access to the ability to solve the root issues.

#### Contention 3 is the teachers right to strike

#### The unconditional right to strike ensures that teachers continue to work

**Carpenter 21** Jennifer Carpenter., 05-17-21, "Opinion: Protect local control for schools," Burlington Free Press, <https://www.burlingtonfreepress.com/story/opinion/my-turn/2017/05/17/opinion-protect-local-control-schools/101726614/>

The most crucial part of the proposal put forward by House Speaker Mitzi Johnson and President Pro Tem Tim Ashe is that it protects local control of schools. Statewide health insurance negotiations for teachers is the first step towards a statewide teachers’ contract, kneecapping school boards and paving the way towards a single, statewide school district. That is unacceptable, but it is the hill Gov. Scott and his Republican allies have decided to make their stand on. It is telling that Sen. Degree, one of Gov. Scott’s strongest supporters, included in his proposed amendment a clause that would have removed teachers’ right to strike. That shows their true intentions. When teachers’ needs are not met, students’ needs will not be met, and we will be unable to retain and attract a workforce of young families which is critical to the revitalization of our state’s economy. There will be no incentive for the teaching profession to attract and retain new teachers to the field if our state government teaches our community that teachers have no say over their working conditionsand therefore are not valued. Schools need teachers and we need enrollment of students. Teachers and families of school age children will simply uproot and go elsewhereto have their needs met, jeopardizing our educational system, our school-age population and workforce. A “one-size-fits-all” approach from our state government cannot possibly work across the board for every school. Having worked in four different school districts in the state, I have been exposed to potential consequences of centralized control. I recall an emergency meeting at one of those districts in 2016 between administration and teachers where there were very tense discussions on what the initial proposal of Act 46 per-pupil spending cap would have meant for the school.

#### The right being unconditional and available for them ensures that they will continue to work in the long run

#### For all of the reasons I have presented, I urge an affirmative ballot.

## Additional

#### Only a right to strike can solve inequality

Rhomberg 12 [Chris Rhomberg, Professor of Sociology at Fordham University with a PhD from UC Berkley, 2012, “The Return of Judicial Repression: What Has Happened to the Strike?,” The Forum, https://www.fordham.edu/download/downloads/id/1129/the\_return\_of\_judicial\_repression\_what\_has\_happened\_to\_the\_strike.pdf]

The consequences of this regime go well beyond the fate of unionized workers, and are damaging for American society. In the last several decades economic inequality has risen sharply in the United States, as both academics and journalists have noted. During the middle of the 20th Century the distance between rich and poor in America steadily declined, but in the last quarter of the century the pattern was reversed. In the private sector labor market, wage inequality increased by 40 percent between 1973 and 2007, with declining unionization accounting for a fifth to a third of the increase (Western and Rosenfeld 2011). For more than a generation, the benefits of economic growth have gone disproportionately to corporate profits and to the top fifth of households, while incomes for the middle and bottom fifths have remained stagnant and fallen behind.For many political theorists, modern mass democracy requires multiple institutional spaces for dialogue and decision-making among plural collective actors, including the actors in the workplace. Decades of economic re-structuring have now radically altered the spaces for such dialogue, on the job, in the com munity, and in the public sphere. The result highlights the historic dedemocratization of the institutional regulation of labor in the United States, from the scope of collective bargaining in the workplace, to the civic spaces for group mediation, to the protection for workers’ and citizens’ rights to protest under the law. What’s Next? Recovering the Right to Collective Action The right to strike is essential to any discussion of the future of the labor movement in the United States. The renewal of American labor does not require the restoration of all the elements of the New Deal order, even if that were possible. It does, however, imply a challenge to the logic and legal mechanisms that reproduce the anti-union regime, including the practices of impasse and implementation, permanent replacement of strikers, and other limits on collective action. The current regime radically reduces the scope for public engagement and dialogue between the parties in the employment relationship. We need to restore the integrity of the collective bargaining process which rests, ultimately, on a genuine right to strike. This need not take the form of the institutional channeling established during the postwar accord. Rather, widening the scope of collective action could enlarge the spaces for public engagement and civic mediation among employers, unions, and community actors. That could encourage more flexibility, communication and innovation in negotiations between management and unions. It could also allow for the development of broader partnerships in support of the firm, its workers, and the local area. There is no a priori reason to credit company managers with exclusive wisdom to control the enterprise on behalf of all stakeholders. In the Detroit strike, the newspapers pursued a scorched-earth policy toward the strikers in a community that placed a high value on unionism. The newspapers lost a third of their circulation and at least $130 million and forced the dispute to go through years of litigation. It is not obvious that these actions benefitted the workplace, the community, or even the shareholders in the long run. Admittedly, reforming the law will be no easy task. Political forces in the United States make even modest labor law reform extremely difficult, and the record of union efforts to pass legislation in Congress is not encouraging. The labor movement may have to find its own ways to take back the right to collective action. As labor scholars have shown, union growth or revitalization in American history has frequently occurred in episodic bursts or “upsurges” (Freeman 1998; Clawson 2003). Strike mobilization is a key driver of these upsurges, especially in a liberal market economy with decentralized labor market institutions (like the U.S.). Such periods often coincide with the growth of new forms of organization or outreach to previously unorganized groups of workers. In the 1890s, nativeborn and Northern European immigrant skilled workers built the craft unions that came together in the American Federation of Labor. During the 1930s, Southern and Eastern European ethnic factory workers joined the new wave of industrial unionism in the Congress of Industrial Organizations. Similarly, African American workers organized into public sector unions in conjunction with the civil rights movement the 1960s, and immigrant Hispanic and Asian workers form the base for union growth in low-wage service sectors today. The return of judicial repression underlines the extent of labor’s deinstitutionalization under the current regime. In response, unions have increasingly turned to innovative organizing tactics and mobilizing grassroots allies in the community. Yet, community coalitions are not a magic solution, and civil society is a competitive field no less than the economy and the state. In Detroit, the newspapers deployed tremendous resources to override the power of the NLRB and pressure from an alliance of unions, local civic leaders, and members of the reading public. The outcomes for future struggles will depend on the conjuncture of forces in the economy and the state as well as in civil society. In areas where labor and other structural inequalities coincide, where new immigrant or minority working-class communities combine with local cultures of union militancy, or where organizational and framing strategies re-define previously divided group identities, there may be greater possibilities for collective action. Moreover, the boundaries of mobilization are no longer strictly local. As corporations become larger and more globally integrated, unions have learned to use new leverage, from the strategic location of jobs in worldwide commodity chains, from regulations under national and international law, and from access to global media and civil society. Such changes may prefigure a new path of opposition to the now dominant anti-union regime.