I negate **Resolved: A just government ought to recognize the unconditional right of workers to strike.**

I offer the following definitions:

Ought is defined as "used to express duty or moral obligation"

Just is defined as "based on or behaving according to what is morally right and fair"

Government is defined as "the governing body of a nation, state, or community"

Unconditional is defined as "without restriction by conditions or qualifications"

Strike is defined as "a refusal to work organized by a body of employees as a form of protest"

The value for the round is **morality**, as implied by the wording of the resolution. The criterion is **Utilitarianism**. Reasons to prefer:

1) The avoidance of pain is an objective good that we should maximize, requiring utilitarianism.

Nagel 86 Thomas Nagel. "The View From Nowhere." HUP. 1986. 156-168. I shall defend the unsurprising claim that sensory pleasure is good and pain bad, no matter whose they are. The point of the exercise is to see how the pressures of objectification operate in a simple case. Physical pleasure and pain do not usually depend on activities or desires which themselves raise questions of justification and value. They are just sensory experiences in relation to which we are fairly passive, but toward which we feel involuntary desire or aversion. Almost everyone takes the avoidance of his own pain and the promotion of his own pleasure as subjective reasons for action in a fairly simple way; they are not back up by any further reasons. On the other hand if someone pursues pain or avoids pleasure, either it as a means to some end or it is backed up by dark reasons like guilt or sexual masochism. What sort of general value, if any, ought to be assigned to pleasure and pain when we consider these facts from an objective standpoint? What kind of judgment can we reasonably make about these things when we view them in abstraction from who we are? We can begin by asking why there is no plausibility in the zero position, that pleasure and pain have no value of any kind that can be objectively recognized. That would mean that I have no reason to take aspirin for a severe headache, however I may in fact be motivated; and that looking at it from outside, you couldn't even say that someone had a reason not to put his hand on a hot

stove, just because of the pain. Try looking at it from the outside and see whether you can manage to withhold that judgment. If the idea of objective practical reason makes any sense at all, so that there is some judgment to withhold, it does not seem possible. If the general arguments against the reality of objective reasons are no good, then it is at least possible that I have a reason, and not just an inclination, to refrain from putting my hand on a hot stove. But given the possibility, it seems meaningless to deny that this is so. Oddly enough, however, we can think of a story that would go with such a denial. It might be suggested that the aversion to pain is a useful phobia—having nothing to do with the intrinsic undesirability of pain itself—which helps us avoid or escape the injuries that are signaled by pain. (The same type of purely instrumental value might be ascribed to sensory pleasure: the pleasures of food, drink, and sex might be regarded as having no value in themselves, though our natural attraction to them assists survival and reproduction.) There would then be nothing wrong with pain in itself, and someone who was never motivated deliberately to do anything just because he knew it would reduce or avoid pain would have nothing the matter with him. He would still have involuntary avoidance reactions, otherwise it would be hard to say that he felt pain at all. And he would be motivated to reduce pain for other reasons—because it was an effective way to avoid the danger being signaled, or because interfered with some physical or mental activity that was important to him. He just wouldn't regard the pain as itself something he had any reason to avoid, even though he hated the feeling just as much as the rest of us. (And of course he wouldn't be able to justify the avoidance of pain in the way that we customarily justify avoiding what we hate without reason—that is, on the ground that even an irrational hatred makes its object very unpleasant!) There is nothing self-contradictory in this proposal, but it seems nevertheless insane. Without some positive reason to think there is nothing in itself good or bad about having an experience you intensely like or dislike, we can't seriously regard the common impression to the contrary as a collective illusion. Such things are at least good or bad for us, if anything is. What seems to be going on here is that we cannot from an objective standpoint withhold a certain kind of endorsement of the most direct and immediate subjective value judgments we make concerning the contents of our own consciousness. We regard ourselves as too close to those things to be mistaken in our immediate, nonideological evaluative impressions. No objective view we can attain could possibly overrule our subjective authority in such cases. There can be no reason to reject the appearances here.

2) Morality must consider the consequences of action.
   All moral theories must begin from a source of value since questions of morality are about what is good or bad to do and thus are necessarily judgments which require answers grounded in value. Even arguments about rights or respect assume that these things have some intrinsic worth which everyone accepts as good. This means consequences are the only way to weigh impacts in the round because if something has value, it is irrational to only consider that value in the short term.
3) The intrinsic value of persons is best respected through utilitarian calculation of costs and benefits. **Cummiskey 60** David Cummiskey (Associate Philosophy Professor at Bates College). "Kantian Consequentialism." Ethics, Vol. 100, No. 3. 1990. http://www.jstor.org/stable/2381810. We must not obscure the issue by characterizing this type of case as the sacrifice of individuals for some abstract "social entity." It is not a question of some persons having to bear the cost for some elusive "overall social good." Instead, the question is whether some persons must bear the inescapable cost for the sake of other persons. Robert Nozick, for example, argues that "to use a person in this way does not sufficiently respect and take account of the fact that he is a separate person, that his is the only life he has." But why is this not equally true of all those whom we do not save through our failure to act? By emphasizing solely the one who must bear the cost if we act, we fail to sufficiently respect and take account of the many other separate persons, each with only one life, who will bear the cost of our inaction. In such a situation, what would a conscientious Kantian agent, an agent motivated by the unconditional value of rational beings, choose? A morally good agent recognizes that the basis of all particular duties is the principle that "rational nature exists as an end in itself". Rational nature as such is the supreme objective end of all conduct. If one truly believes that all rational beings have an equal value, then the rational solution to such a dilemma involves maximally promoting the lives and liberties of as many rational beings as possible. In order to avoid this

conclusion, the non-consequentialist Kantian needs to justify agent-centered constraints. As we saw in chapter 1, however, even most Kantian deontologists recognize that agent-centered constraints require a non- value-based rationale. But we have seen that Kant's normative theory is based on an unconditionally valuable end. How can a concern for the value of rational beings lead to a refusal to sacrifice rational beings even when this would prevent other more extensive losses of rational beings? If the moral law is based on the value of rational beings and their ends, then what is the rationale for prohibiting a moral agent from maximally promoting these two tiers of value? If I sacrifice some for the sake of others, I do not use them arbitrarily, and I do not deny the unconditional value of rational beings. Persons may have "dignity, that is, an unconditional and incomparable worth" that transcends any market value, but persons also have a fundamental equality that dictates that some must sometimes give way for the sake of others. The concept of the end-in-itself does not support the view that we may never force another to bear some cost in order to benefit others.

Observations:

1) The actor in the resolution is a just government, not any existing government or a government that wants to be just sometimes.

2) Because of the use of the word "unconditional" in the resolution, the aff must prove there is not a single scenario in which the right to strike shouldn't be recognized in order to win, therefore

3) All the neg must do in order to win is prove there is one scenario in which the right to strike is not justified.

Contention 1: A just government wouldn't need to recognize the unconditional right to strike

Workers go on strike to protest poor wages, benefits, or conditions

Britannica https://www.britannica.com/topic/strike-industrial-relations strike, collective refusal by employees to work under the conditions required by employers. Strikes arise for a number of reasons, though principally in response to economic conditions (defined as an *economic strike* and meant to improve wages and benefits) or labour practices (intended to improve work conditions). Other strikes can stem from sympathy with other striking unions or from jurisdictional disputes between two unions. Illegal strikes include sit-down strikes, wildcat strikes, and partial strikes (such as slowdowns or sick-ins). Strikes may also be called for purely political reasons (as in the general strike). In most industrialized countries, the right to strike is granted in principle to private-sector workers. Some countries, however, require that specific efforts toward settlement be made before a strike can be called, while other countries forbid purely political strikes or strikes by public employees. Most strikes and threats of strikes are intended to inflict a cost on the employer for failing to agree to specific wages, benefits, or other conditions demanded by the union. Strikes by Japanese unions are not intended to halt production for long periods of time; instead, they are seen as demonstrations of solidarity. Occasionally, strikes have been politically motivated, and they sometimes have been directed against governments and their policies, as was the case with the Polish union Solidarity in the 1980s. Strikes not authorized by the central union body may be directed against the union leadership as well as the employer. The decision to call a strike does not come easily, because union workers risk a loss of income for long periods of time. They also risk the permanent loss of their jobs, especially when replacement workers hired to continue operations during the strike stay on as permanent employees. In the United States, this strike-breaking tactic was seldom used on a large scale before the Professional Air Traffic Controllers Organization (PATCO) strike of 1981, when Pres. Ronald Reagan ordered the hiring of permanent replacement controllers. Most federal, state, and municipal unions in the United States are, by law, denied the right to strike, and the air traffic controllers' strike was thus illegal. Laws administered by the National Labor Relations Board (NLRB) govern the replacement of workers who go on strike, permitting the permanent replacement of workers only when an economic strike is called during contract negotiations. In other words, employers cannot lawfully hire permanent replacement workers during a strike over unfair labour practices. Nonetheless, the threat of job loss has created a sharp decline in the number and length of economic strikes in the United States. American unions have responded by devising new tactics that include selective strikes, which target the sites that will cause the company the greatest economic harm, and rolling strikes, which target a succession of employer sites, making it difficult for the employer to hire replacements because the strike's location is always changing.

A just government would guarantee living wages, benefits and other root causes of strikes

Clary 09 Betsy Jane Clary is a Professor of Economics and Director of the Honors Program in the School of Business and Economics at the College of Charleston. Smith and Living Wages: Arguments in Support of a Mandated Living Wage. The American Journal of Economics and Sociology , Nov., 2009, Vol. 68, No. 5 (Nov., 2009), pp. 1063-1084 While the call for a living wage is, indeed, about money, it is also a moral issue concerned with the ethics of work. In almost all cases, the local grassroots campaigns have been organized by coalitions of community, labor, and religious groups, resulting in the unification of ethical and economic concerns leading to a call for social justice and the recognition of the role of labor in human identity (Figart 2001).3 A concept of wages that measures the wage, not merely as the price of labor but instead as a means of securing a living, leads to public policy that addresses both the level[,] of the wage as well as the fairness, adequacy, and decency of the wage. A living wage has been defined in most living wage campaigns as a wage equivalent to the poverty line for a family of four, or the amount of income generated by such a wage that would allow such a family to secure the food, shelter, clothing, health care, transporta tion, and other necessities of living in modern society. Such a social definition of wages and income leads to an evaluation of wages that includes the absolute level of the wage, as well as an evaluation of wages relative to both acceptable standards of living and acceptable standards of distribution. Smith adhered to such a social definition of wages, analyzing the position of the poor relative to others and to acceptable standards. Smith criticized the policies of China specifically because these poli cies resulted in low wages for labor and for the "poverty of the lower ranks of people in China [that] far surpasses that of the most beggarly nation in Europe" (Smith WN: I.viii.24). Smith criticized mercantilist policies specifically because of low wages in countries in which these policies were in effect. Wages were high in the British colonies in America, thought Smith, in large part because of "the genius of the British constitution which protects and governs North America," just as wages were low in Bengal and other colonies in the East Indies because of the policies of the "mercantile company which oppresses and domineers in the East Indies" (Smith WN, I.viii.26). Smith recog nized that rising real wages resulted in "luxury" being extended "even to the lowest ranks of the people" so that "the labouring poor will not now be contented with the same food, clothing and lodging which satisfied them in former times" (Smith WN, I.viii. 35). More impor tantly, Smith thought that "this improvement in the circumstances of the lower ranks of the people" was an advantage to society (Smith WN, I.viii.36). Political institutions and government policies have an effect on growth and on wages, and Smith advocated a system of perfect liberty precisely because such a system leads to a growing economy and to rising wages. Because "the liberal reward for labor" is both the "necessary effect" and the "natural symptom of increasing national wealth," Smith advocated for growth. Because a system of "perfect liberty" was "the only effectual expedient for rendering this annual reproduction the greatest possible" (Smith WN, IV.ix.38), Smith adhered to such a system. Growth and a system of liberty were the means by which the laboring poor were able to secure high wages and an acceptable standard of living. By stating that wages must be sufficient to maintain labor, Smith made the case for a living wage. By stating that wages are the means by which man lives, Smith made the case for wages as a living. Man must live by his work, especially if he has no property, and man's wages must be enough to maintain labor as labor (Smith WN, I.viii.l6, 24). Both concepts are central to the arguments of the living wage movement. Attempts to legislat[ing]e a living wage are largely attempts to guarantee that wages are sufficient to allow a family to live beyond the poverty level. Thus, acceptable standards of living and acceptable standards of distribution become the measure of equity by which wages are measured. High and rising wages, to Smith, were advantageous, and they were advantageous for reasons of growth, as well as for reasons of fairness. Smith explained that: Servants, labourers and workmen of different kinds, make up the far greater part of every great political society. But what improves the circum stances of the greater part can never be regarded as an inconveniency to the whole. No society can surely be flourishing and happy, of which the far greater part of the members are poor and miserable. It is but equity, besides, that they who feed, cloath and lodge the whole body of the people, should have such a share of the produce of their own labour as to be themselves tolerably well fed, cloathed and lodged. (Smith WN, I.viii.36) By comparing the rewards of labor to those of the whole body of society, Smith made the measure of equity a relative, social measure that requires a "tolerable" provisioning of goods, or an income that would purchase such a provision. The price of these provisions influences the wage rate, for "[t]he money price of labour is neces sarily regulated by two circumstances; the demand for labour, and the price of the necessaries and conveniences of life" (Smith WN, I.viii.52). These necessaries and conveniences are: not only commodities which are indispensably necessary for the support of life, but whatever the custom of the country renders it indecent for creditable people, even of the lowest order, to be without. A linen shirt, for example, is, strictly speaking, not a necessary of life. The Greeks and Romans lived, I suppose, veiy comfortably, though they had no linen. But in the present times, through the greater part of Europe, a creditable day-labourer would be ashamed to appear in publick without a linen shirt, the want of which would be supposed to denote that disgraceful degree of poverty, which, it is presumed no body can well fall into without extreme bad conduct. Custom, in the same manner, has rendered leather shoes a necessary of life in England. The poorest creditable person of either sex would be ashamed to appear in publick without them. (Smith WN,V.ii.k.3) Smith thus adhered, as well, to a social measure of subsistence. Social subsistence requires that labor should be able to purchase with comfortable life and a relatively comfortable life. Smith recognized that wages were the means by which most people must live, and thus that wages must be sufficient to maintain the worker and his family. Smith advocated that labor should receive an equitable share of what labor produces. This share is measured both absolutely, in terms of what labor needs to survive, and relatively, in terms of what labor needs to be creditable in society. Relative income deprivation can deprive people of social functioning and social participation, such as appearing in public without being ashamed. Smith's social definition of wages is very similar to the modern concept of the living wage. In discussing the wage contract, Smith understood that the bargain ing positions of the masters and the workers were by no means equal, and that the masters almost always have the advantage, for several reasons (Smith WN, I.viii). Smith discussed government regulations aimed at affecting wages in particular trades and in particular places, and he clearly made distinctions among those regulations that were beneficial to labor and those that benefited the masters. Smith pointed out that: Whenever the legislature attempts to regulate the differences between masters and their workmen, its counselors are always the masters. When ever the regulation, therefore, is in favour of the workmen, it is always just and equitable; but it is sometimes otherwise when in favour of the masters. (Smith WN, I.X.C.61) Smith thus disapproved of those regulations that established a maximum rate of wages and that were legislated at the counsel of the masters. Smith disapproved that there were no acts of Parliament that kept masters from combining to lower wages, while there were many acts against workers combining to raise wages, resulting in very uneven wage negotiations (Smith WN, I.viii.84). Smith disapproved of the law of the 8th of George III, passed in 1768, which limited the wages that masters could offer and that workmen could accept, for it "is in favor of the masters" and "puts the ablest and most industrious upon the same footing with an ordinary workman" (Smith WN, I.X.C.61). But Smith did not disapprove of all regulations affecting wages, and he explicitly did approve of those regulations that sup ported labor. For example, the law that required workers to be paid in money and not in goods "is quite just and equitable," for "it imposes no real hardship upon the masters," and "this law is in favour of the workmen" (Smith WN, Lx.c.61). Smith's social evaluation of wages appraised wages relative to profits4 and to output prices. While high wages are a cause of growth, high profits, not wages, resulted in increasing prices and a reallocation of capital (Smith WN, IV.vii.c.29-31). Smith thus criticized "merchants and master-manufacturers" who "complain much of the bad effects of high wages in raising the price, and thereby lessening the sale of their goods," while these same merchants "say nothing concerning the bad effects of high profits," and "are silent with regard to the pernicious effects of their own gains" (Smith WN, Fix.24). Smith recognized that "high profits tend much more to raise the price of work than high wages" (Smith WN, Fix.24). Thus, not only does Smith judge wages relative to profits, he further explains how arguments against raising wages because of the effect of such action on output prices are faulty, harmful and "pernicious."5 Smith recognized that the interests of labor and the interests of land are the same as the interests of society, for wages and rents rise as the wealth of society increases as growth occurs. However, the interest of employers, those who live by profit, are contrary to the interests of society, for profit rates fall with prosperity, and the rate of profit "is naturally low in rich, and high in poor countries, and it is always highest in the countries which are going fastest to ruin" (Smith WN, I.xi.p.10). Since the interests of merchants and manufacturers are "directly opposite to that of the great body of the people" (Smith WN, IV.iii.c.lO), Smith tied the wealth of a nation to the productive powers of land and of labor. I Smith's description of political economy as "a branch of the science of a statesman or legislator" was an accurate description of Smith's intentions and achievements, although this description has proven troublesome for those historians of economic thought who believe that Smith adhered to a policy of economic liberalism (Winch 1983: 501). Winch also emphasizes that Smith's advice to the legislator "depends on considerations that do not flow from economic rea soning alone" (Winch 1983: 502). The modern legislator, according to Winch's interpretation of Smith, "should seek to remove disabilities, curb excessive powers and accommodate legislation to existing states of opinion, while seeking to change those states of opinion, where pathological, through education and example" (Winch 1983: 504), a view consistent with that of the Scottish Enlightenment. The purpose, for Smith, of political economy was "to provide a plentiful revenue or subsistence for the people, or more properly to enable them to provide such a revenue or subsistence for themselves" (Smith WN, IV, Intro, [1391,1). Smith's advice to the legislator in designing policy toward achieving that goal was based on many considerations, including economic reasoning, but also including the existing state of legislation, public opinion, and

concerns of justice (Winch 1983). In Smith's scheme, policy is designed in response to existing conditions and to existing responses to those conditions. Knud Haakonssen has argued that the laws of justice are central to Smith's jurisprudence and that all other laws, including those of police, revenue, and arms, depend on the centrality of the laws of justice (Haakonssen 1981). According to Haakonssen, Smith provides, in the Lectures, a systematic normative foundation for the formation of general rules of conduct, based on sympathy and the impartial spec tator. General rules are worked out and become law, mandated by the sovereign. According to Haakonssen, Smith distinguished between natural rights and acquired rights; and property law, family law, and public law were all concerned with acquired rights. Since acquired rights depend on governmental authority for their existence in a society, they must be understood in historical context. As such, reasonable expectations about acquired rights depend on the circum stances under which the impartial spectator tries to be impartial, and This content downloaded from 204.73.55.75 on Fri, 05 Nov 2021 15:55:50 UTC All use subject to ht Smith and Living Wages 1071 questions about these expectations must be answered differently for different periods in history (Haaksonssen 1981).

Because of this, affirming the resolution becomes obsolete. An unconditional right to strike doesn't give any additional benefits, but could result in harms from workers striking for unreasonable demands

Contention 2: Some strikes result in more harm than good, thus conditions are justified

Subpoint A: Notices

Lack of notice harms schools, teachers and students

Malin '13 Martin H. Malin is Professor of Law Emeritus at Chicago-Kent College of Law, Published: 1/14/13, "Two Models of Interest Arbitration" Ohio State Journal on Dispute Resolution, https://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=1741&context=fac_schol] /Triumph Debate For example, In Illinois, public employee strikes occur predominantly in public education. A large majority of those strikes are resolved in ten or fewer days, with less than 10 percent taking more than 20 days to resolve. Nevertheless, there are outliers which can cause major damage to the public welfare. Since education employees in Illinois gained the right to strike effective January 1, 1984, there has been one such outlier; a strike by thirty teachers against the Homer School District in rural Champaign County in 1986. The strike began on October 17, 1986, and did not end until after the end of the school year. The resulting contract did not resolve two of the issues that precipitated the strike. The students lost essentially a year of schooling, the school district lost considerable state aid and ultimately had to merge with another district, and most of the striking teachers never returned to their jobs. Policy makers choosing between a right to strike and interest arbitration must determine whether to run the risk of an outlier strike such as Homer.

Giving a notice of the strike ahead of time solves

Masterson '16 - Matt Masterson is a reporter on education and criminal justice for WTTW News, Published: 9/29/16, "As Teacher Strike Looms, Parents Make Plans for Kids Missing School " WTTW News, https://news.wttw.com/2016/09/29/teacher-strike-looms-parents-make-plans-kids-missing-school] /Triumph Debate Parents of Chicago Public Schools students have already begun taking steps to ensure their children are taken care of if they are forced to miss class time next month. Parents at Skinner North Elementary in Old Town say they hope a strike can be averted, but with no deal in place between CPS and the Chicago Teachers Union, they are making arrangements to keep their kids busy if teachers do walk the picket line for the second time in four years. Nicolle Heller, a parent of two CPS children and head of Skinner North's local school council, said families worked together to watch each other's kids during the 2021 teacher's strike, which cost the students seven days of classes. "We said 'Ok, you watch them Monday, Wednesday, Friday, and I'll watch them Tuesday, Thursday,'" she said. "We lost a lot of sick time and PTO at work." CTU members have worked without a contract for nearly 500 days, and parents have known for months that a work stoppage could occur at the start of this school year. This time around, (one of the parents)Heller started saving PTO at the start of the year so she would have time to watch her kids if another strike does indeed take place. "Starting in January I stopped being sick," she said. "I stopped taking days off to go to my kids' events because I needed to stockpile them for October." On Wednesday, Hours before the C[hicago]T[eachers]U[nion] officially announced its strike date, the Chicago Board of Education approved district spending up to $15 million for a contingency plan to keep facilities open for students in the event of a prolonged work stoppage. That money allows CPS and other sister agencies across the city to develop and implement an emergency plan, provide food and shelter, and keep additional non-instructional services available to students. According to the board resolution, those funds will be spent only as needed after the union turns over its 10-day notice of intent to strike. That notice went out Thursday, officially starting the countdown to Oct. 11 – the first day the work stoppage can legally begin. "How do I keep my kids occupied?" said Liz Krebs, a parent of two CPS students. "They're in sixth and eighth grade and just got started with school. They've got projects and plans, and to have a disruption like this

really kind of messes up the whole family." During the union's one day strike in April, CPS offered free rides on CTA lines for students and opened 250 schools, park district and safe haven sites for children to spend the day at, offering online learning programs, physical education, arts and crafts classes, and other activities to keep them busy. The board authorized $25 million in contingency spending when teachers went on strike in 2012. That money was spent keeping 145 school sites open for half-days, providing daily meals for students and extending dozens of Chicago Park District summer camps. CPS CEO Forrest Claypool said the specifics of that contingency plan will be announced to principals and families sometime next week. He joined Mayor Rahm Emanuel and CPS Chief Education Officer Janice Jackson at Skinner North on Thursday to celebrate the school's recognition as one of 329 National Blue Ribbon Schools for 2016.

And, notices are crucial for medical facilities to arrange patient care

King et al., '03 [Roger King is a Partner of the law firm Jones Day, Jeffrey Winchester is an Associate of Jones Day, Michael Rossman is an Associate of Jones Day, Published: July 2003, "When 10 Days Is Not 10 Days – The National Labor Relations Act's Strike Notice Requirement in the Health Care Industry " IRI Consultants to Management, https://www.jonesday.com/files/Publication/c1e2bc35-4acf-42c5-b59d-ee992a60ca4c/Presentation/PublicationAttachment/ddf68290-9515-44f7-ac1d-d3c87b790418/10.Days.Not.10.Days_7-03.pdf] /Triumph Debate

In short, Section 8(g) requires a "labor organization [must]" to provide a "healthcare institution" with "not less than ten days prior" notice before engaging in any "strike, picketing, or other concerted refusal to work" against the institution. This notice must include "the date and time" that the labor action will begin. The term "healthcare institution" for purposes of this section of the Act is defined as "any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility, or other institution devoted to the care of sick, infirm, or aged persons." 29 U.S.C. § 152 (14). Congress' stated purpose for Section 8(g) was to provide healthcare institutions with sufficient notice prior to a strike or picketing to allow them to make "appropriate arrangements . . . for the continuance of patient care in the event of a work stoppage."4 Putting teeth into this requirement, the National Labor Relations Board ("Board") and the Courts5 hold that where a union fails to provide notice as required by Section 8(g), a union's strike is unlawful and unprotected by the Act. This is extremely serious because, generally speaking, employees who participate in an unprotected strike may lawfully be subject to discipline up to and including termination. 6 Section 8(g) is thus a highly valuable tool for healthcare employers -one that greatly [this] aids their ability to maintain continuity of patient care in the event of labor unrest. It is not, however, without limits. Indeed, its reach, while broad, may not be as expansive as many employers would wish and, under current Board case law, sometime 10 days is just not 10 days. This paper is designed to answer some basic questions healthcare employers often pose about Section 8(g) and to provide such employers with a general understanding of the reach and limits of the provision.

Subpoint B: Preventing harm to unrelated targets

The Institute of Employment Rights, '09 [The Institute of Employment Rights is a think tank for the trade union movement which publishes an annual conference of reports from various presentations regarding the status of labor rights, Published: 4/4/09, "The Right to Strike: A Comparative Perspective. A study of national law in six EU states " IER, http://old.adapt.it/adapt-indice-a-z/wp-content/uploads/2013/09/strike_2008.pdf] /Triumph Debate

Judges primarily have to decide whether they can classify a form of collective action as falling within the actions protected by Article 6(4) of the European Social Charter. This will be the case when the strike is what might be called a 'normal type of strike'. The Supreme Court understands this to mean a complete stoppage of work in the framework of collective negotiations on employment conditions as covered by Article 6(4) ESC. Even where strike actions seem to be directed against government policy, as in the NS case where the management argued they had no actual competence or power to negotiate by themselves with the trade unions about wages, since they were set by the government, the legality of the strike action was regarded as falling within the 'normal type' because it was about employment conditions. The directors could not be permitted to hide behind the government otherwise this could result in a denial of the right to strike recognised by Article 6(4) ESC. The Supreme Court has chosen this approach because the right to strike in the Dutch legal order has to be based on Article 6(4) ESC. The right to strike is based on the main principle in Article 6(4) ESC which concerns collective negotiations on conditions of employment. The right to strike constitutes the full suspension of labour to support negotiations in relation to conditions of employment. In the words of the Supreme Court, the antithesis of this is a strike based on political grounds which is directed against government policy. The Court's reasoning in the NS case recognised that the Dutch railway company was a 'semi-government' body because it was funded by the government from public resources. The strike action was therefore aimed against the government, however it also concerned employment conditions, and the latter type of strike action is protected by Article 6(4) ESC. Subsequently, the Supreme Court stated that a strike which is legitimate under Article 6(4) ESC can nevertheless be illegal in two situations, in addition to the situation where a strike is prohibited due to the presence of a so-called 'peace obligation', or obligation not to strike, in the collective labour agreement. Firstly a strike is always illegal when 'major procedural rules' have been disregarded.9 There are two sorts of procedural rules which have to be complied with; the strike has to be announced in a timely fashion, and a strike organized before any substantial bargaining has taken place or whilst substantial negotiations are ongoing can be illegal for not being an 'ultimum remedium'. The strike may be premature and it is up to the court to decide when or in which situations a strike has been called too early. This second procedural rule is particularly developed in Dutch case law. In general terms a strike is not considered as 'ultimum remedium' if ongoing negotiations are possible, or at least not impossible, and could lead to a compromise solution between the bargaining parties. The judge has to decide whether this is the case or not. A trade union cannot therefore legitimately exercise the right to strike at a preliminary stage. A second ground for the evaluation of the legitimacy of a strike was added by the Supreme Court in the NS case of 1986. A strike is also illegal where, after evaluating all specific conditions and circumstances taking into account their interconnectivity and interdependence, the conclusion must be that the unions should not reasonably have taken such action. In its reasoning the Supreme Court referred to Article 31 ESC. In this article possible restrictions to the exercise of the right to strike are listed. The Supreme Court has applied this provision in an expansive manner by introducing several norms that could restrict

the exercise of the right to collective action. In this regard, the Dutch case law has been criticised by the Council of Europe's European Committee of Social Rights. In the case law since the decision of the Supreme Court in the NS case, judges have elaborated on the kinds of circumstances which could lead to a prohibition of collective actions more or less in accordance with Article G of the 10 Revised European Social Charter (Rev ESC). later in the report. This will be explained more fully An example can be seen in relation to the question of financial loss to employers. The fact that an employer suffers an economic loss due to a strike does not in itself render the strike illegal. However, there could be a legitimate restriction of the right to strike where the expected amount of damage is excessive, and the employer is not the main target of the strike. This is particularly the case where, by virtue of Article 6:162 of the Dutch Civil Code, which lays down the general principles of tort, it is established that the strike is a serious violation of the protected rights of third parties or of the public interest as mentioned in Article G Rev ESC. In the view of the Dutch courts a restriction could be necessary and therefore legitimate in such cases. The second procedural rule is only considered when the strike meets the requirements of the first rule.

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The right to strike is a fundamental social right. However, it is not absolute but is limited by the subjective rights of others insofar as such limitations are prescribed by law and necessary in a democratic society for the protection of the rights and freedoms of others, or for the protection of the public interest, national security, public health or morals. 17 The right to work is guaranteed by Article 23(3) of the Constitution, and provides the right of the employee to execute the agreed labour contract. Picketing falls within the scope of the right to strike, provided it is used normally and not accompanied by acts of violence ('feitelijkheden', voies de fait)18 towards persons and property. Picketing therefore becomes illegal when accompanied by acts of violence that affect the subjective rights of other persons, for example, the right to work, which can be affected when non-strikers are denied access to the company, the freedom to conduct business and property rights which can be affected when the employer is denied access to his company. It is generally agreed, and confirmed by summary procedures by means of ex-parte proceedings, that workers who participate in a strike cannot use acts of violence that affect an employers' freedom of commerce. It is therefore illegal for strikers to take control of the company. The principle of freedom of commerce was adopted in the French Decree D'Allarde of 1791. This provision of law was preserved in Belgian legislation after the end of the French occupation. At European level, the freedom of commerce is guaranteed by the aforementioned Charter of Fundamental Rights of the European Union which contains the "freedom to conduct a business" in Article 16. Furthermore, freedom of commerce can be derived from WTO regulations and from provisions regarding freedom of establishment in the EC Treaty. 19 The right to strike is also limited by provisions of a penal nature. It goes without saying, for example, that strikers cannot take their employers hostage during a strike. 20

These restrictions on strikes are necessary for minimizing harm and thus we should negate