## Case

### Case---1AR

Try or die to effectively transition from capital. Only CBR prevents extinction and successfully transitions. That’s Harvey.

### Circumvention---1AR

No circumvention.

1. Durable Fiat: We get faithful implementation of the plan text.

#### The resolution says should.

Court of Appeals of Arizona, Division 1, Department D. 02. IN RE: the Marriage of Vanessa A. McNUTT, Petitioner-Appellee, v. Shane M. McNUTT, Respondent-Appellant. No. 1 CA-CV 01-0255. Decided: June 27, 2002 https://caselaw.findlaw.com/az-court-of-appeals/1315322.html

¶ 26 The word “should” is most commonly used to express obligation or duty.   See The American Heritage Dictionary 1670 (3d ed.1992).   We conclude that, based on the intent of the Guidelines and the interest of parents in the allocation of the federal tax exemption, the word “should” as used in § 25 of the Guidelines is mandatory rather than discretionary.   See Lincoln v. Lincoln, 155 Ariz. 272, 276, 746 P.2d 13, 17 (App.1987) (holding that the trial court abused its discretion by refusing to allocate the dependency exemption).   Thus, the trial court abused its discretion by failing to allocate the federal tax exemption, and we direct the trial court to allocate the exemption on remand.

#### And strengthen.

Marian B. Horn 03, JD, Judge, United States Court of Federal Claims, Blue Cross & Blue Shield United of Wisconsin & Subsidiaries v. United States, United States Court of Federal Claims, No. 98–727T, 06/12/2003, Westlaw. [italics in original]

On the basis of this regulation, the Supreme Court concluded that: “In short, any net additions to reserves (with two exceptions not here at issue, § 1.846–3(c)(3)(ii)) constitute ‘reserve strengthening[.]’ ”17 *Atl. Mut. Ins. Co. v. Comm'r*, 523 U.S. at 386, 118 S.Ct. 1413. The Court held that the Treasury regulation “represents a reasonable interpretation of the term ‘reserve strengthening[.]’ ” *Id*. at 391, 118 S.Ct. 1413.

Therefore, the ambiguity in the term “reserve strengthening” has been resolved by the Supreme Court, which found that “reserve strengthening” is defined as any net additions to reserves. The words of § 1.846–3 indicate that reserve weakening is merely the converse of reserve strengthening; when strengthening is mentioned in the regulation, it is immediately followed by the word, “weakening,” in parentheses. The term, “reserve weakening,” therefore, logically refers to any net reductions in reserves.

The plaintiff, however, argues that the term, “reserve strengthening,” at issue in *Atlantic Mutual Insurance Company v. Commissioner of Internal Revenue* actually referred to a different provision, TRA § 1023(e)(3)(B), not the reserve weakening provision at issue here, TRA § 1012(c)(3)(C): “[d]efendant's argument is based on the definition of the term ‘reserve strengthening’ in TRA § 1023(e)(3)(B), as implemented by Treas. Reg. § 1.846–3(c). Defendant assumes, without analysis, that Treas. Reg. § 1.846–3(c) can be used to interpret the term ‘reserve weakening’ under TRA § 1012(c)(3)(C).” While it is true that § 1.846–3(c) does not explicitly refer to TRA § 1012(c)(3)(C), there is no evidence to suggest that the IRS intended reserve weakening to mean one thing in one part of the statute (TRA § 1023(e)(3)(B)), and something else in another part of the same statute (TRA § 1012(c)(3)(C)).18

\*710 This court, therefore, concludes that, in the context of TRA § 1012(c)(3)(C), “reserve weakening” is defined as a decrease in reserves. The Supreme Court's decision in *Atlantic Mutual Insurance Company v. Commissioner of Internal Revenue*, the words of § 1.846–3, and logic dictate that reserve weakening is defined as any net reductions in loss reserves.

Given the definition of reserve weakening as any net reductions in reserves, the next question to be addressed is, whether reserve weakening actually occurred in this case, so as to require resort to TRA § 1012(c)(3)(C) in the first place. The defendant contends that BCW's unpaid loss reserve was “strengthened,” not weakened, in the amount of $2,833,129.00 by the end of 1986. Indeed, the “Addendum to the Report of the Examination of Blue Cross & Blue Shield United of Wisconsin, Milwaukee, Wisconsin, As of June 30, 1986, by Office of the Commissioner of Insurance, State of Wisconsin,” supports defendant's position. The Addendum is entitled: “Statement Of Assets, Liabilities, Reserves and Unasigned [sic] Funds per the December 31, 1986 Annual Statement.” The first entry under “Liabilities” is “Claims unpaid,” which refers to the loss reserve for incurred-but-not-paid claims. According to the statement, the claims unpaid as of December 31, 1985 was $75,588,265.00, while the claims unpaid as of December 31, 1986 was $78,421,394.00. The claims unpaid figure for 1986 was larger than that for 1985; BCW reported “reserve strengthening,” as opposed to reserve weakening, in the amount of $2,833,129.00 at the end of 1986.19

#### And rights.

Laurence R. Helfer & Dr. Karen J. Alter 14, JD, Professor, Law, Duke University; PhD, Professor, Political Science & Law, Northwestern University. #gocats, "The Influence of the Andean Intellectual Property Regime on Access to Medicines in Latin America," in Balancing Wealth & Health: Global Administrative Law & the Battle Over Intellectual Property & Access to Medicines in Latin America, Chapter 9, pg. 1-13, 03/13/2014, Brill.

In response, domestic generic drug producers successfully lobbied lawyers at the Andean General Secretariat to file a noncompliance suit against Ecuador alleging that the pipeline decree violated the absolute novelty requirement Andean Decision 344, which regulated patents and trademarks. Ecuador defended the domestic decree as consistent with a provision of the Decision authorizing members to adopt domestic legislation or international agreements that “strengthen the industrial property rights” (Andean Decision 344, Article 143 (1993)). The General Secretariat countered that the decree contradicted an unambiguous restriction in Andean patent rules and created an incentive for foreign firms to seek pharmaceutical patents in Ecuador but not in other member states. In a judgment issued in 1996, the ATJ sided with the Secretariat. The Tribunal interpreted the word “strengthen” in a teleological fashion, reasoning that national laws and treaties must complement the regional IP system, not contradict it. Ecuador had thus violated Andean IP law “by establishing an exceptional regime . . . granting advantages to patenting in its own country, in a manner that was unfair under the common regime applied in the other Andean countries” (Manrique, 1998, at 217). The ATK also categorically rejected Ecuador’s claim that “an international commitment [could] be invoked as a reason to validate noncompliance with a prior Community obligation” (Case 1–AI–96 (Oct. 30, 1996), at 30).

Anything else makes being aff impossible under the Trump administration which wrecks fairness and clash by disincentivizing substantive research.

But it’s self-limiting because we only get the plan text AND it’s reciprocal since they get PICs.

Neg ground is wrong. Dropped you have cap K, employment, states, localism and more. ALSO you get unions as a form fail while we get optimal implenetation.

No limits. Extra-T solves PLUS they can always PIC out of it.

Durable fiat is good. Encourages debaters to actually use fiat and compare true policies.

I’ll answer their warrants.

Mandatory bargaining works. 1AC first solvency card says works to ensure democratically planned by. Binding employers or force to table.

Lack of ‘marxist’ definition deosn’t undermine it. Xia says speaks to worker power theory and scholars interpret different way but MUST REDUCE alienation. McFerran is about congress representatives not court or NLRB enforcement.

Yes enforcement. Stansbury about lower incentives BUT does not assume breakdown of capital meaning employers must bargain over automation.

Yes funding. They can still issue decisions, albeit less. Plan pushes it to top. Also no rollback means we get to fiat funding.

No bias. Its squo-descriptive and not assume automation occurring inevitably. Strikes doesn’t prove their argument because it’s the threat. Even if some bias, its inevitable at states + plan can solve.

## CP

New affs. We meet wasn’t new. But good to test research

### Movements Bad---1AR

Mass movements are bad – they cause MAGA 2028 which obviously links to every 1AC impact about state surveillance AND it proves the CP results in rollback. ONLY THE PLAN gets durable fiat because the CP only fiats eliminating CBR, NOT the end result of any movements.

### No Solve---1AR

The CP doesn’t solve! The 2NC was the first time they made a solvency argument. Saying “labor innovation and state fill in” in your 1NC tag isn’t even a sentence so obviously we get to answer the first warranted argument Kansas has made.

#### State laws can’t solve.

Elmore 24 – Professor of Labor Law and Barreca Labor Relations Scholar at Boston University, J.D. from the University of California, Los Angeles.

Andrew Elmore, “Confronting Structural Inequality in State Labor Law,” Maryland Law Review, https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=4008&context=mlr

While companies have substantial labor market power to unilaterally impose terms and conditions in the workplace, most individual workers require affirmative state support to collectively press their workplace demands.1 But employers can often mobilize private capital and property, with judicial deference, to fend off government intrusions into the workplace.2 This structural inequality is reproduced in labor law, especially in the deference that courts give to employers to fire employees at will and to exclude union organizers from the workplace.3

The New Deal architects of the National Labor Relations Act (“NLRA”) understood this structural problem as “inequality of bargaining power,” and sought to reduce it through economic democracy, by protecting the rights of workers to join unions, strike, and bargain collectively.4 As its New Deal champions understood, labor rights can also strengthen political democracy.5 But, despite historic, recent collective bargaining agreements in union-dense industries, the NLRA insufficiently protects collective efforts by low-wage workers to improve their workplace standards through unionism.6 Most workers in the United States report that they would join a union or similar form of organization if they could.7 But the NLRA is stunted by its weak enforcement powers, lengthy delays, inability to impose penalties, and other judicially-imposed weaknesses.8 The NLRA also excludes many low-wage workers, including agricultural and domestic workers and workers classified as independent contractors, from its protections.9 Despite recent, successful union organizing campaigns by low-wage employees in the workplaces of corporate titans like Amazon and Starbucks, few of these historic victories for organized labor have (so far) led to collective bargaining agreements.10 Meanwhile, private-sector union density in the United States remains at an historic low, and unions are virtually absent in many low-wage sectors.11

Observers, instead, look for signs of labor renewal from below, exemplified by the Fight for $15 legal mobilization12 strategy of lifting wages and other working conditions through state and local labor lawmaking to build collective power for fast-food workers.13 These economic and racial justice campaigns seek to overcome weaknesses in federal labor law by leveraging state and local law, instead of or in addition to the NLRA, to build political power and extend the reach of these labor contests beyond the single-workplace campaigns contemplated by labor law.14

State and local legal mobilization by organized labor to build political and workplace power is not new.15 But the use of the direct democracy tools of state law—state grants of home rule authority to cities and state voter ballot initiatives in particular—has figured more prominently in recent efforts by organized labor to organize low-wage workers who cannot effectively access federal labor rights. The turn to state and local legal mobilization strategies has fueled important pro-worker policy innovations, such as state and local minimum wage laws and negotiated sectoral standard-setting, in which state and local agencies convene negotiations between worker and employer representatives for minimum work standards in a sector and adopt them as regulations. By diffusing and scaling up these innovations across political boundaries, unions and worker centers have enabled many low-wage workers, from home health care and fast-food workers to app-based drivers, to participate in labor policymaking notwithstanding NLRA weaknesses and exclusions.16

But this turn to state and local labor policymaking has not resolved the structural problem of successful employer mobilization of private capital and property to fend off government intrusions into the workplace. Instead, employer countermobilization reproduces structural inequality in state law in order to prevail in these labor contests, often by using the same state direct democracy tools as unions and worker centers, or by capturing administrative agencies or countermajoritarian state legislatures. States, to be sure, suffer from many of the same democratic deficits as the federal government, and vary in the extent to which state law and politics can reduce or reproduce structural inequality. But state politics are more polarized, and more vulnerable to capture by private interests, than previously understood. As federal legislative paralysis has shifted major policymaking to state and local governments, the national political parties and their constituent groups have shifted their resources to state and local policymaking.17 Political parties with minority voter support increasingly maintain majority control of state legislatures through partisan gerrymandering and voting restrictions.18 Countermajoritarian legislatures facilitate employer mobilization to advance anti-worker policies that lack popular support since these legislators are not electorally accountable for unpopular policymaking.19

These general trends have profound effects on state labor contests. Businesses can reproduce structural inequality by capturing state legislatures in order to nullify democratically enacted labor legislation sought by unions and worker centers.20 Companies can also reproduce structural inequality by capturing the process of state voter ballot initiatives.21 Employers in many recent state labor contests have leveraged state law and politics to (1) dismantle the power of state-regulated unions in right-to-work legislation; (2) nullify democratically enacted labor lawmaking by misleading voters in state initiatives and through gerrymandered state legislatures; (3) establish company-dominated sectoral standard-setting administrative regimes; and (4) block worker access to local lawmaking through state-law preemption.22 These strategies share the common goal of dismantling affirmative state support for collective worker access to state and local labor policymaking. While these strategies are most common in politically conservative states, business interests can capture or coopt legislative and initiative processes in politically liberal states, while unions and worker centers have built considerable countervailing power23 to engage in labor policymaking by state initiative despite politically conservative, countermajoritarian legislatures.

#### They obstruct local progress via Death Star bills.

Sherer et al. 25 – Director of the State Worker Power Initiative and Deputy Director of Economic Analysis at the Economic Policy Institute, PhD from the University of Iowa; Researcher at the Economic Policy Institute; Researcher at the Economic Policy Institute.

Jennifer Sherer, Emma Cohn, and Ruby Ahdoot, “Updated EPI tracker shows more states obstructing progress on workers’ rights,” Economic Policy Institute, 03-06-2025, https://www.epi.org/blog/updated-epi-preemption-tracker/

At the same time, the ability of local policymakers to innovate and address local economic conditions has increasingly faced obstruction from state legislatures through the abusive use of preemption—state laws that block, override, or limit local ordinances on workers’ rights.

For nearly a decade, the Economic Policy Institute has tracked the spread of state laws that preempt workers’ rights and limit local democracy. New updates to EPI’s workers’ rights preemption tracker document the most recent legislative changes and point to both troubling and promising developments:

Following a significant wave of copycat laws enacted in the early to mid-2010s, harmful state preemption laws have continued to spread to new geographies and issues. Though the pace of legislatures adopting new laws preempting local worker rights policies has slowed, the spread of preemption to other areas of local policymaking has only accelerated.

A longstanding trend of lawmakers in majority-white state legislatures obstructing local policymaking in majority-Black-and-brown communities has intensified in a few states, with sweeping “Death Star” bills that attempt to strip local control across a stunningly broad array of policy areas.

In a few recent instances, advocates have succeeded in reversing or resisting harmful state preemption laws, and recent workers’ rights ballot initiative victories continue to demonstrate that preemption laws blocking popular labor rights policies are counter to the democratic will of voters.

Abusive state preemption continues to deepen inequality for all workers, and especially widens racial and gender wage and wealth gaps

As EPI’s tracking map shows, abusive preemption of workers’ rights is most prevalent in the South followed by the Midwest, in states where conservative lawmakers have long used preemption to stifle local government action, often under pressure from corporate interests and right-wing groups like the American Legislative Exchange Council.

### No Follow On---1AR

#### No follow on! It’s extremely controversial.

Corbett 11 – Professor of Labor and Employment Law at LSU

William R. Corbett, J.D. from the University of Alabama, Professor of Torts at LSU, “The More Things Change: Reflections on the Stasis of Labor Law in the United States” Villanova Law Review, Vol. 56, Issue 2, 2011, https://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?article=1006&context=vlr

First, union density has declined in this nation since the 1950s and even more precipitously since the 1970s, to the point that only about seven percent of the private sector is unionized.7 2 Perhaps politicians do not believe that collective bargaining law covers enough of the workforce to be worth the effort and political capital it takes to pass such laws.73 In exchange for the number of votes that organized labor can deliver, the political price of labor law reform is relatively high. It takes much effort and political capital to enact representation and collective bargaining laws because business interests concentrate their resources and lobbying efforts on killing such laws.7 4 Consider, for example, the fierce opposition of business organizations during the failure of the WFA75 and the EFCA.7 6 In contrast, employment laws do not attract the same level or intensity of opposition. Several employment discrimination laws were enacted at approximately the time the WFA and the EFCA were failing: the Americans with Disabilities Act of 1990; the Civil Rights Act of 1991; the ADA Amendments Act of 2008; and the Genetic Information Nondiscrimination Act of 2008. Moreover, two different Republican presidents named George Bush signed all four of those bills into law.77

### Strikes Fail---1AR

No mass movement. Even if they ban CBR, that doesn’t spill up.

#### People are risk averse.

Calnitsky 22 – Professor in the Department of Sociology at Western University. Ph.D. in Sociology from the University of Wisconsin-Madison.

David Calnitsky, “The Policy Road to Socialism,” Critical Sociology, Volume 48, Issue 3, May 2022, pp. 397-422, https://journals.sagepub.com/doi/epub/10.1177/08969205211031624

Why exactly is this true and what are the mechanisms to explain it? Why is the revolutionary strategy impossible for a country like the US? There are, at bottom, three reasons, each of which stands alone as a sufficient condition to snap the last threads of one’s revolutionary faith.23 The first two suggest that revolution is unachievable, and the last suggests that even if it is achievable, socialism by revolutionary means is unachievable. The revolutionary road is closed on the following grounds:

(1) Workers do not want it

(2) Capitalists would sooner grant reforms

(3) A smashed state is more likely to result in tyranny than deep democracy

Not only has there never been a successful revolution in a developed democracy, there has never been a working class that has wanted one (e.g. Erikson and Tedin, 2015; Sassoon, 1996).24 There are no clear cases where the dominant inclination of the working class in a developed democracy was revolutionary. Recall that the above graph also includes attempts and unsuccessful cases. It is self-evident that workers have not joined revolutionary groups en masse at any point in the context of a rich democracy. Nor were their aspirations to join such groups thwarted by violence or ideology. When gains inside a capitalist democracy are available—either individual or collective ones, and this has been true even through the neoliberal period, where median living standards have continued to (slowly) go up and not down—it is not worth risking everything for an uncertain future (Thewissen et al., 2015).25 More important than the dynamic point is the static one: When standards of living are moderately high, as shown in Figure 9, the modal worker has more to lose than her chains. This is not an argument against socialism; but to revise Werner Sombart, the life raft of revolution really was shipwrecked on shoals of roast beef and apple pie.

Therefore, the reasons workers are not revolutionary are materialist in character. Explaining their reformist politics does not require appeal to venal trade union leaders or false consciousness. Most people wish to minimize risk in their lives, and revolution involves taking on colossal risks. For example, home-ownership in the developed world hovers around 70%; this means that a lot of people have a lot to lose.

By contrast, the materialist case for revolution proposes that people favor it when their expected post-revolutionary standards of living are greater than their current standard (Roemer, 1985). But when we add moderate risk- and loss-aversion the calculation changes (Kahneman and Tversky, 1991). Say you have a low income, but own a few assets, maybe a house, a car, and perhaps you also have a child; what risk profile would you require to gamble your modest holdings for an uncertain future which might be better but might be worse? Even if you are certain that the probability of better is greater than the probability of worse, you have to envision workers as a class of inveterate gamblers to take the bet. Moderately cautious people who prefer a bird in the hand will still view the downside risk as too great. Equal gains and losses are not experienced equally. This is the loss aversion phenomenon. But the assumption of a population confident about improved standards of living—and a willingness to take risky strategies to achieve them—is itself unwarranted. This is the risk aversion phenomenon. The modal worker is of course correct to suspect that her post-revolutionary welfare is uncertain; socialists after all do not have satisfactory answers to the problems of coordination, motivation, and innovation under socialism (for attempted answers that are provocative and oftentimes brilliant, see Albert, 2004; Cottrell and Cockshott, 1992; Corneo, 2017; Roemer, 1994; and Wright and Hahnel, 2016). When one compares the status quo to a future where both heaven and hell are seemingly plausible, it is perfectly rational that people everywhere would abandon the barricades. And abandon them they did.

#### BUT, if it does, it bankrupt unions and workers.

Velazquez 25. [Alven Velazquez is Associate Professor of Law, Indiana University Maurer School of Law. “Bankrupting Labor Power” 78 STAN. L. REV, forthcoming 2026. https://papers.ssrn.com/sol3/cf\_dev/AbsByAuth.cfm?per\_id=6971537]

The doctrinal point this Article makes about dischargeability of union torts in labor management relations has massive implications for the future of the currently ossified labor law framework, insurgent worker movements, and the aggressiveness of the organizing strategies that they undertake.24 Even though unions previously represented over a third of the work force, today only six percent of the workforce is represented by a union, but according to a 2022 White House Report on Worker Organizing, over fifty-two percent of non-union workers (sixty million) would vote for a union if they could.” 25 To combat this decline, unions have explored a number of different organizing strategies26 including engaging in corporate responsibility campaigns,27 bottom-up campaigns using civil disobedience,28 innovative strike tactics such as the stand-up strikes, 29 and insurgent tactics such as engaging in illegal strikes as many teachers did during the Red for Ed campaign. 30 Workers have struck at the docks31, at universities,32 and/or by walking off the job during the middle of the workday while the machines were running. In all cases their unions were on the receiving end of a lawsuit.33 In today’s legal and regulatory climate, all these campaign styles bring significant legal risks that could bankrupt labor organizations and the workers who went on strike personally. 34 If unions are not allowed to go bankrupt and restructure because the economic damage that these actions bring is not dischargeable, then that reduces the campaigning tactics available to unions to only those that are most anodyne and agreeable to employers. The problem for those who care about collective worker power is that labor power in the United States has been built on the back of strife. As William Forbath,35 Desirée LeClercq, 36 Michael Duff,37 and other labor scholars have argued, conflict is a key part of labor law and has been a key part of organized labor’ growth. How does bankruptcy law accommodate the conflict that is inherent in labor law as part of its regime? How can it accommodate and incentivize labor organizing in the same way that the Code incentivizes businesses to take risks and fail?

#### Decades of crackdown and no public support means legal labor organization is a pre-requisite.

Tucker 25 – Professor at Osgoode Hall Law School.

Eric Tucker, “Labour Against the Law? Contesting the Restrictive Norms of Industrial Legality through Unlawful Strikes” *Comparative Labor Law & Policy Journal*, vol. 45, issue 2. https://doi.org/10.60082/2819-2567.1039

These case studies indicate that even when Canadian workers have evinced a willingness to engage in unlawful political strikes when outraged by government legislation attacking what they view as fundamental rights, union leaders are not prepared to go beyond organizing limited protests. This reluctance is, no doubt, partially rooted in a prudential calculation of the serious penalties that might be imposed on the union and its leadership for engaging in a full-blown political strike, but it also likely reflects a discomfort with extra-parliamentary political opposition more generally.

5. Conclusion: whither labour against the law?

This article began with what at first glance appears to be an outstanding example of the potential for unlawful strikes to challenge repressive regimes of industrial legality that sharply limit the freedom to strike. Ontario education workers struck in defiance of pre-emptive back-to-work legislation and the government backed down. But the strike was not without its ironies. Perhaps the most significant was that in many ways it was a strike to defend the existing, very restrictive regime of industrial legality, not change it. Arguably, the most offensive aspect of the government’s bill was its invocation of the notwithstanding clause to preclude the union from challenging its constitutionality. Thus, not only did the law violate norms of industrial legality, but it also transgressed a constitutional norm by denying workers the opportunity to vindicate their Charter rights. Second, the legislation was exceptional even by the recent standards because it imposed a contract rather than referring outstanding matters to binding interest arbitration. Had the law been enacted after the strike commenced, referred outstanding matters to binding interest arbitration, and not invoked the notwithstanding clause it is unlikely that, even if education workers had continued to strike illegally, they would not have enjoyed massive public and labour support. Nevertheless, a successful unlawful strike, even one defending a highly restrictive regime of industrial legality from further attacks, still demonstrates that, in the right circumstances, unlawful strikes can be a potent weapon in labour’s repertoire and contribute to a revitalization of labour militancy. The very fact that workers defied the law and won is likely to build confidence that militant action can succeed.

It is impossible to prescribe the right circumstances for unlawful strikes given the variety of regimes of industrial legality, the forms of illegal action and the different historical practices of labour movements and states. 24 Perhaps the most general lesson is that the decision to engage in unlawful action should be treated as a tactical choice rather than ruled out entirely or limited to being a safety valve, as now seems to be the predominant attitude of most labour leaders. No doubt the regime’s highly coercive framework for enforcing restrictions on the freedom to strike explains much of the leadership’s reticence. Not only may they be punished personally, so too may the union as an institution. However, that reticence is also reinforced by the fact that todays unions have been shaped by the legal frameworks that gave them legitimacy and facilitated their recognition as bargaining agents. As Offe and Wiesenthal (1980, 106-09) argued, while union power derives initially from the demonstrated willingness of workers to strike, concessions are premised on the ability, and sometime the legal obligation, of unions to restrain that militancy. The resulting commitment to industrial legality is perhaps reinforced by a belief that playing strictly by the rules and being responsible trade unionists, pays material dividends, a belief reinforced by faith that workers’ interests will be adequately protected by the election of socialdemocratic or liberal leaning governments. Building a militant labour movement with a transformative vision, therefore, is not a goal and unlawful strikes are to be opposed.

However, if the compromise with capital begins to unravel and external support from liberal and social democratic governments becomes attenuated, as arguably has happened in recent decades, then rebuilding grassroots militancy may become a strategic priority, and breaking out of the bounds of industrial legality, including by engaging in unlawful strikes, a tactic. But militancy and a willingness to defy the law cannot be turned on like a switch; it must be built from the ground up, based on the lived experience of workers. Successful unlawful action requires unions to have tapped into workers’ discontent and built a culture of solidarity (Fantasia 1988) that will help withstand the pressure that employers and the state will likely bring to bear. But while internal preparedness and broad participation are necessary, they may not be sufficient as demonstrated by the PATCO strike. Unions must also seek strong public support for their action, as well as support from the broader labour movement. Public sector workers, particularly education and health care workers, have been quite successful in linking their collective bargaining demands to the protection of public services. Private sector unions face bigger challenges in defeating the mainstream media image of them as self-interested organizations benefitting their members at the expense of others, but the recent lawful strike by the UAW provides an example of how unions can explain their fight as one for fairness for all workers. Re-building support within the North American labour movement for sympathy strikes, particularly in the private sector, is perhaps even more challenging than convincing the broader public of the justness of union demands, but the experience of seeing that even threat of a general strike helped force the Ontario government to back down might contribute to labour’s reorientation.

In sum, unlawful strikes are hardly a panacea for a labour movement whose militancy has been eroded by decades of neo-liberal and neo-authoritarian assaults on labour rights and collective bargaining. Nevertheless, historically strikes, both legal and illegal, have been the crucible in which the labour movement was built. Rebuilding the capacity to strike and reviving unlawful strikes as a tactical choice should be part of an iterative process in which action and changing consciousness of what is possible can be mutually reinforcing.

### Perm + Theory

Dropped perm do aff and ban all rights except plan. Solves net beenftit by spurring localism but keeps fed law.

Perms don’t need to be net T. Causes offset which is bad.

Everything else irrelevant since doesn’t sever plan OR link since bunch of rights banned.

Also woops! Dropped process cp’s are bad and a reason to reject the argument. Takes out the CP since artificially generates solvency and competition and moots aff ground.

### AT: Circumvention on CP

Velazquez says a ruling that invalidates NLRA would cause a vacuum BUT that’s not the plan.

Yes solvency. The first solvency card establishes that mandatory bargaining over automation forces them onto the table which is good.

## T

### We Meet---1AR

We meet Kansas’s interp.

They do not have a basis for exlucding the aff as per THEIR INTERP of strengthen. Ask yourself: what does it mean to esabltish a right SUPERSEDES if not the AFF?

The plan establishes that workers rights to COLLECTIVELY BAGRAIN supersede management’s interest in controlling automation. That clearly meets

#### The strength of CBR is determined according to which subjects are mandatory.

McManemin 62 – Associate Director of Industrial Relations, American Home Products Corporation

Joseph P. McManemin, “Subject Matter of Collective Bargaining,” 13 LAB. L.J. 985 (Dec. 1962)

Generally speaking, management's inherent right to operate a business in any legal manner it so desires, has been impaired by Section 8(d) of the NLRA within the area of "wages, hours and other terms and conditions of employment." Despite the broad interpretation given to this terminology as to what are mandatory subjects of bargaining, one would generally still assume that subjects such as the make-up of the business, products manufactured, distribution and sales techniques and methods, make or buy decisions, are the type of subjects on which management would not have to bargain. Within this framework, they are permissive subjects of bargaining. Since management usually has attempted to maintain its right to manage, it has generally refrained from discussing during contract negotiations most permissive subjects of bargaining, no less incorporating any of these subjects in the agreement.

Since no rule or method has been established to readily identify a permissive subject of bargaining, this section will examine court decisions and Board rulings relative to subjects declared permissive for purposes of good faith bargaining under Sections 8(a)(5) and 8(b)(3) of the Act.

#### Whether a given issue is a mandatory subject of bargaining is fundamentally a question of whether bargaining rights or managerial interests *supersede*.

Massachusetts Teacher Association 23 – Public education union for professional staff in Massachusetts

“A Guide to Subjects of Bargaining,” Massachusetts Teacher Association, 04-02-2023, https://nbeducators.org/wp-content/uploads/sites/2/2023/04/A-Guide-to-Subjects-of-Bargaining-from-MTA.pdf

Determining whether an issue is a mandatory subject of bargaining can be difficult. Bargaining subjects often conflict with managerial rights that “exclusively” belong to the public employer as a matter of law or public policy. Bargaining rights and managerial rights are often inextricably linked, raising questions of whether you have the right to bargain a management decision or only the “impacts” of the decision.

#### We make currently existing permissible rights to bargain mandatory.

Schwartz and Safko 23 – Partner at Skadden, Arps, Slate, Meagher & Flom LLP focused on Labor and Employment Law and Artificial Intelligence.

David E. Schwartz, Emily D. Safko, Labor & Employment Associate at Skadden, Arps, Slate, Meagher & Flom LLP, “Uncharted Territories: Unions Versus AI in The Workplace—a Legal Battle for the Future,” New York Law Journal, 6/12/23, https://www.skadden.com/-/media/files/publications/2023/06/uncharted\_territories\_unions\_versus\_ai\_in\_the\_workplace\_a\_legal\_battle\_for\_the\_future.pdf?rev=3bd91ff998b34c1aa297a2152ceba507

Bargaining Obligations

Although AI in its current form is far from devel- oped or sophisticated enough to replace writers at this stage, the expiration of the WGA’s contract with the AMPTP is the impetus for the current debate. As a general matter, the scope and duty of an employer’s obligation to bargain with the union depends on whether the negotiations are taking place during the term of a contract or otherwise, and whether the matter is a “mandatory” or “per- missive” subject of bargaining under applicable law.

Under the National Labor Relations Act (NLRA), unions and employers are required to bargain in good faith about “wages, hours, and other condi- tions of employment,” otherwise referred to as “mandatory” subjects of bargaining. With respect to these matters, an employer must bargain with the union about the decision to take a particu- lar action. This type of bargaining is commonly referred to as “decision bargaining.”

By contrast, employers are generally not required to bargain prior to making core managerial deci- sions pertaining to the operation of the business. These types of matters are generally referred to as “permissive” subjects of bargaining. Nonethe- less, employers are required to bargain about the effects of major operation changes that will affect the terms and conditions of employment. This type of bargaining is commonly referred to as “effects bargaining.”

During the term of a collective bargaining agreement, an employer cannot unilaterally change the terms and conditions of employment or the terms of the collective bargaining agree- ment without first negotiating with the union, and neither party is required to negotiate with respect to matters covered by the agreement. If a matter is not covered by the agreement, employers must negotiate with the union over mandatory subjects of bargaining and the effects of any permissive subjects of bargaining. Notably, employers may reserve the right within a collective bargaining agreement to make certain decisions related to the operation of the business during the term of the collective bargaining agreement without first negotiating with the union. These clauses are typically referred to as “management rights” clauses. Once a contract expires, employers must honor the terms of the expired agreement while negotiating with the union over the terms of a new agreement until the parties reach impasse.

An employer’s decision to introduce new technology in the workplace has typically been considered a permissive subject of bargaining. Therefore, absent a provision in the applicable collective bargaining agreement, employers are generally not required to bargain with unions over the decision to introduce new technology in the workplace. Nonetheless, because of the potential of AI to change the dynamics of work, its use in the workplace could require an employer to engage in effects bargaining, which could—depending on the circumstances— involve discussions on issues like job security, opportunities for retraining and job displacement caused by the implementation of new technology. Because use of AI is likely a permissive subject of bargaining, the WGA is cur- rently looking to add language to the applicable collective bargaining agreement to limit the use of AI.

#### The defining feature of collective bargaining rights is which subjects are mandatory. Making new subjects required necessarily strengthens.

Fick 13 – Associate Professor of Law, University of Notre Dame Law School

Barbara J. Fick, “Collective Representation of Workers in The United States: Evolution of Legal Regimes Concerning Collective Autonomy and Freedom Of Association,” 2013, https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=2233&context=law\_faculty\_scholarship

Collective Bargaining

Both the NLRA and the RLA, as well as state laws regulating collective bargaining, impose on both the employer and trade union the mutual obligation to bargain in good faith in attempting to arrive at a collectively bargained agreement. This duty attaches, however, only when a union has been selected by a majority of the employees in the appropriate bargaining unit. In fact, an employer which bargains with a minority union will generally be viewed as having violated the NLRA.48 In the absence of a designated union, employers generally unilaterally impose terms and conditions of employment or, in some instances, engage in bargaining with individual employees concerning their specific terms of employment -- usually related to salary and benefit issues.

Most collective bargaining takes place at the plant level between the employer and the union representing a bargaining unit at the plant.49 There is no system for extending the terms of a collectively bargained agreement to other employers in the same industry. Employers and unions can voluntarily create multi-employer bargaining agreements whose terms will cover the group of employers in an industry who have voluntarily agreed to be bound by the terms of the contract; this is, however, not the norm and is relatively rare.

Under the NLRA and the RLA, the duty to bargain in good faith applies only to those issues which are considered mandatory subjects of bargaining related directly to wages, hours, terms and conditions of employment. As to these issues the employer is required to negotiate solely with the union; it cannot bypass the union and deal directly with employees.50 Moreover, an employer is prohibited from making any unilateral changes to mandatory subjects until it has exhausted its duty to bargain and the parties have reached an impasse.

A second group of issues, designated as permissive subjects of bargaining, involve issues seen as only indirectly effecting employee terms of employment and more directly relating to managerial prerogatives. For example, industry promotion funds, performance bonds, and interest arbitration clauses are permissive subjects. There is no obligation imposed on either party to negotiate over permissive subjects although they may voluntarily agree to do so. Employers may make unilateral decisions regarding such issues and may even negotiate directly with employees.

### Aff Ground---1AR

They overlimit the topic. CONNNELLLLY

That outweighs. It’s structurally harder to be aff, they get the block and condo, plus the Cap K, Process CP, States CP, etc. are all easier.

#### They bracket out the core of the topic.

Block & Sachs 18 – Professor of Practice and the Executive Director of the Center for Labor and a Just Economy, Harvard Law School; Kestnbaum Professor of Labor and Industry, Harvard Law School, and a leading expert in the field of labor law

Sharon Block and Benjamin Sachs, “Clean Slate Update,” Dec. 2018, https://onlabor.org/clean-slate-update/

In January, we will convene again and explore how to adapt the scope of collective bargaining to meet the challenges of a changing economy. We will do a deep dive into sectoral bargaining, drawing on a range of international experts as well as historians and labor leaders who will speak to the U.S. experience with multi-employer bargaining. Also on the agenda for January is the question of how to expand the range of workers with access to collective bargaining rights and the scope of subjects that are part of the collective bargaining obligation.

### Precision---1AR

PREDICTABILITY:

Excluding the aff is arbitrary AND is not in the rights context. Cherrypicking definitions makes being aff impossible since they can shift goalposts.

Predictability outweighs and turns. It determines which debates we’re prepared to have.

Risk-averse is wrong. It’s a question of arbitrariness AND lawyers different from a violation.

### Func Limits---1AR

Functional limits solve.

The Cap K has clocked every team here! “Framework” loses to technical debating OR the functionally competitive worker boards alt.

States and Employment eliminate affs without fed or CBR key warrants. Any risk of NB checks and all new subjects are deleted.

Labor localism, Court politics, labor power bad is a guaranteed link. Adds more to unions which solves. Justified cuz new violations.

Block, condo, and ironclad link UQ guarantee the neg can cope with anything left over.

BUT They can’t solve limits. All of their examples are EITHER solved by substantial and others OR inevitably via stronger enforcement.

NO bidirectionality. Neg gets to say that its capitalist AND it doesn’t strengthen FOR WORKERS which does matter because they’ve said workers are not employers on Cap.

Underlimiting is better. Teams reward strong generics and encourages research breadth.

WE don’t need a full vision. Burdne on Neg to prove impossible.

### Reasonability---1AR

Prefer Reasonability. Competing interps causes a race to the bottom that crowds out substance.

Judge intervention is inevitable AND no different for competing interps.

You aren’t voting to combine all interps; just adopt this one.

T is obviously not substance; and it’s divorced from topic lit.