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STRIKING THE WRONG NOTE: IS MANDATORY ARBITRATION MORE EFFECTIVE THAN THE
TRADITIONAL STRIKE SYSTEM?

By
Taylor Washington *

I. INTRODUCTION

Rethinking Labour-Management Relations: The Case for Arbitration by Christopher Bruce and Jo Carby-Hall explores how the modern labor relations system developed and discusses alternatives to current systems.¹ *Rethinking Labour-Management Relations* analyzes three systems of industrial relations: the compulsory arbitration system; the strike-based system of collective bargaining; and the freely operating market for labor where workers bargain individually with employers.²

The authors propose “that binding arbitration represents a viable alternative to the strike-threat system of industrial relations.”³ However, the authors fail to consider the cultural and contextual aspects of eliminating a strike-based industrial relations system.⁴ In the abstract universe created within this book, the presented arguments seem plausible and even logical. Yet, *Rethinking Labour-Management Relations* ignores the nuances that race, economics, and history play in shaping the systems we have today. Bruce and Carby-Hall's proposal falls flat when considering the effects of replacing the current strike-threat system with mandatory arbitration and how that will affect race, class, and industries.

This article will discuss the proposal of a mandatory arbitration system as the ideal labor-management tool and the removal of the strike-based system through a historical and socio-cultural lens.⁵ While the authors analyze labor-management relations in North America and Britain in forming their thesis, this article will focus on their proposal's impacts on the United States and its laborers.

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1. *See generally*, CHRISTOPHER J. BRUCE & JO CARBY-HALL, *RETHINKING LABOUR-MANAGEMENT RELATIONS: THE CASE FOR ARBITRATION* (1st ed. 2021).

2. *See id.* at 10-11.

3. *Id.* at 153.

4. The terms labor-management systems and industrial relations systems will be used interchangeably.

5. While *Rethinking Labour-Management Relations* includes a very detailed walkthrough of what a ‘perfect’ collective bargaining system would look like, this article will not analyze this evaluation. Nor will this article touch on the authors’ discussion of wage councils. Both topics are helpful to support their proposal of mandatory arbitration as the ideal industry relation system, however, they fall outside the scope of the historical and socio-cultural topics presented in this paper.

II. BOOK SUMMARY

Rethinking Labour-Management Relations begins with an analysis of the rise of the strike-based system.⁶ Trade unionism formed because workplaces became depersonalized, guilds disappeared, and many processes that were done by tradespeople became automated.⁷ A strike-based system is defined as “any system of collective bargaining in which a group of workers induces its employer(s) to bargain over the terms of employment by threatening a collective withdrawal of labo[ur].”⁸ With the onset of the industrial revolution, collective bargaining became an essential staple in labor intensive industries.⁹ Specifically, factory systems and large-scale mining operations were crucial to the evolution of collective bargaining.¹⁰ During this intense industrialization, while workers began to desire control over their work lives, their ability to obtain this power as individual people decreased.¹¹ The authors argue that a successful industrial relations system must provide workers with a collective voice; be implemented in a way that employers, governments, and employees can agree on; and unite large cross-sections of laborers.¹²

The authors present four reasons why the strike-based system became the primary industrial relations system. First, workers banded together to present a united front against their employers to meet the demand for collective action.¹³ Second, workers found that the only way to get employers to the bargaining table was the threat of a strike.¹⁴ In other words, workers discovered their most potent bargaining tool “was the use of collective withdrawal of labor.”¹⁵ Third, because unions were made up of similarly situated workers, laborers would be more inclined to help each other as they shared common experiences and could gain advantages for themselves when similarly situated

6. See BRUCE, *supra* note 1, at 1.

7. See *id.* at 2 (Guilds are an association of craftsmen or merchants).

8. *Id.* at 41.

9. See *id.*

10. See *id.*

11. See BRUCE, *supra* note 1, at 41.

12. See *id.* at 8.

13. See *id.* at 9.

14. See *id.*

15. *Id.*

workers earned benefits.¹⁶ Fourth, because unions were able to work within the structure of capitalism.¹⁷

However, the strike-based system is not ideal for women, part-time workers, and other workers who are not unionized or underrepresented in union membership.¹⁸ The authors argue that strike-based systems undermine horizontal equity by giving some workers more bargaining power than others.¹⁹ It also erodes vertical equity by ignoring the views of workers in the minority in favor of prioritizing the opinions of union members in the majority.²⁰ Because the strike-based system offers unequal bargaining power to workers, unions with little bargaining power will have a more challenging time obtaining legal representation and the costs of organizing cannot be justified.²¹ Further, the failure of trade unions to have inclusive membership is a symptom of relying on the threat of striking because strikes are not guaranteed to be successful and can turn out to be a hollow threat by unions.²² The strike-based system is also inefficient because it causes significant reductions in gross national production.²³

The authors conclude that the best way to keep the most important parts of the strike-based system while avoiding the worst aspects would be to implement a system of compulsory arbitration.²⁴ Compulsory arbitration would be successful and attractive because arbitrators are supposed to be impartial, and government regulations can limit the scope of arbitration proceedings.²⁵ After analyzing arbitration under the same four criteria used to critique the strike-based system, the authors assert that where the strike-based system discourages workers from organizing in fear that the strike will be unsuccessful, arbitration provides more workers with a collective voice as workers can sanction their employers without fear of being replaced.²⁶

16. *See* BRUCE, *supra* note 1, at 9.

17. *See id.* at 10.

18. *See id.* at 51.

19. *See id.* at 66 (Horizontal equity is the measurement of equity between individuals that are in similar circumstances).

20. *See id.*

21. *See* BRUCE, *supra* note 1, at 65.

22. *See id.* 51

23. *See id.* at 52.

24. *See id.* at 74.

25. *See id.*

26. *See* BRUCE, *supra* note 1, at 93.

The authors argue that arbitration can provide greater equity than the strike-based system for the following four reasons. First, it is easier for workers to obtain representation within arbitration than for workers to hold a successful strike.²⁷ Second, arbitration distributes bargaining power more equally between employees and employers.²⁸ Third, because smaller coalitions of workers could arbitrate, it is more likely that all workers' preferences can be reflected in a union's demands.²⁹ Fourth, arbitration is better suited to provide all workers with an equal ability to raise their issues in front of a legislature.³⁰ Arbitration allows more workers to be represented during common and statutory law determination.³¹

Rethinking Labour-Management Relations concludes with a discussion on how to implement binding arbitration.³² There are three main difficulties in introducing an arbitration system. First, parties may refuse to submit their disputes to arbitration as arbitrators may not be perceived as impartial.³³ Second, bargaining in good faith may be discouraged by arbitration because union officials are incentivized to defer to a third party making an ultimate decision.³⁴ Third, parties may refuse to accept unfavorable arbitration decisions because the decisions are not binding.³⁵ These issues can be easily solved with solutions like professional arbitration organizations and government bodies passing legislation to address these issues.³⁶

After discussing how to implement a new arbitration system and the challenges with implementation, the authors hone in on implementing compulsory arbitration. The introduction of binding arbitration necessitates some form of government complicity since very few bargaining units will choose to shift from strike-based negotiations to arbitration on their own.³⁷ Compulsory arbitration would be beneficial for industries and trades where unions have had historic difficulties organizing or have had little bargaining

27. *See id.* at 102.

28. *See id.*

29. *See id.*

30. *See id.*

31. *See* BRUCE, *supra* note 1, at 102.

32. *See id.*

33. *See id.* at 103.

34. *See id.* at 104.

35. *See id.* at 106.

36. *See* BRUCE, *supra* note 1, at 103-07.

37. *See id.* at 111.

power.³⁸ This system would also benefit industries and trades where striking negatively impacts relevant communities.³⁹ Workers who do not fall within these two categories should opt out of participating in the arbitration system.⁴⁰ The best arbitration system has minimal government intervention and allows parties to exercise maximum agency over choosing their own arbitrators and arbitration process.⁴¹ Both parties must see penalties as fair for a compulsory arbitration system to operate effectively.⁴² A way to guarantee this fairness is for a legislature to outline significant criteria for an arbitrator to consider when calculating penalties and tasks the courts or professional tribunals with determining how the rules should apply to a specific situation.⁴³

Government legislation would be necessary to implement a system of compulsory arbitration.⁴⁴ The bill must outline procedures on five elements to be effective, (1) selection of dispute-resolution procedure, (2) special dispute-resolution procedures, (3) selection between strike and arbitration, (4) penalties, and (5) roles of professional arbitration councils and committees.⁴⁵ Conventional arbitration is recommended over final offer arbitration to avoid forcing arbitrators to “choose between two unacceptable offers.”⁴⁶

The authors also propose that arbitration is the best industrial relations system for the following reasons. One, it encourages communication between parties and voluntary resolution of disputes.⁴⁷ Two, arbitration also provides both labor and management sides with a sense of responsibility for the outcome of an arbitration proceeding.⁴⁸ Three, arbitration is a flexible system that allows parties to tailor procedures to their situations.⁴⁹ Four, arbitration equalizes the bargaining power amongst workers and between the labor

38. *See id.*

39. *See id.*

40. *See id.* at 112.

41. *See* BRUCE, *supra* note 1, at 131.

42. *See id.*

43. *See id.*

44. *See id.* at 162.

45. *See id.* at 162-65.

46. *See* BRUCE, *supra* note 1, at 167.

47. *See id.*

48. *See id.*

49. *See id.*

force and management.⁵⁰ Five, arbitration can reduce the hostility between labor and management by being encouraged to settle disputes through cooperation instead of confrontation.⁵¹ Six, compulsory arbitration minimizes transactional frictions by limiting its application to the sectors that would benefit from arbitration.⁵² Bruce and Carby-Hall conclude *Rethinking Labour-Management Relations* by accepting that transitioning from a strike-based system to a compulsory arbitration system will be turbulent.⁵³ However, they believe the turbulence is necessary as the long-term gains from switching systems would far outweigh the temporary discomfort.⁵⁴

A. The Strike-Based System Is Inherent and Effective in The United States

1. The Strike-Based System is Inherent

Strikes are inherent to the fabric of the United States. The United States of America was birthed from a strike. In 1773 the British Parliament passed the Tea Act.⁵⁵ The bill imposed a tax on tea when it reached the shores of colonial America.⁵⁶ In response, the colonists not only refused to pay the tea tax, but they also refused to unload, store, sell, or use the tea in the colonies.⁵⁷ The striking of the tea tax led to the Boston Tea Party.⁵⁸ The First Continental Congress was convened in Philadelphia in response to the Boston Tea Party.⁵⁹ That meeting resulted in the Declaration and Resolves of the First

50. *See id.* at 167-68

51. *See* BRUCE, *supra* note 1, at 167-68.

52. *See id.*

53. *See id.*

54. *See id.*

55. *See Revolutionary War*, HISTORY (Dec. 16, 2021), <https://www.history.com/topics/american-revolution/american-revolution-history> (In the 1760s, when America was still a British colony, the British imposed a series of taxes on American colonists to help England get out of debt from the various wars it had fought. Many of the colonists were upset as they found it unfair to be taxed without having representation in the British Parliament).

56. *See The Boston Tea Party*, HISTORY (Dec. 14, 2021), <https://www.history.com/this-day-in-history/the-boston-tea-party>.

57. *See id.*

58. *See id.*

59. *See id.*

Continental Congress being sent to Britain in 1774.⁶⁰ Britain's lack of response to the articles and disdain for the tax strike led to mounting tensions resulting in the Revolutionary War.⁶¹ The American Revolutionary War can be seen as one big strike against British rule.

In addition to the strike serving as a catalyst for the Revolutionary War, other American wars can also be characterized as strikes. W.E.B. DuBois has described the Civil War as a "General Strike" for enslaved people.⁶² DuBois believed this characterization was proper because he saw enslaved Black people as workers in a labor system.⁶³ DuBois writes, "It was a strike on a wide basis against the conditions of work. It was a general strike that involved directly in the end perhaps a half million people. They wanted to stop the economy of the plantation system, and to do that they left the plantations."⁶⁴ While enslaved peoples were not paid for their services, it is not hard to understand why DuBois saw them as laborers. By refusing to work and leaving plantations, enslaved Black people disrupted entire industries and economies. This disruption is similar to what happens when factory workers strike and picket. Because plantation owners and those dependent on the raw materials harvested on plantations did not have a reliable method of replacing the labor enslaved Black workers provided, Black laborers momentarily yielded a large amount of power for a highly effective strike.⁶⁵

The Revolutionary War and the Civil War were the two most significant and pivotal wars in this nation's history; they too began as strikes. Without strikes, the United States's modern economy would not exist. Furthermore, these strikes turned wars demonstrate that the lines between social movements and labor strikes are blurred. Often, a social strike is a labor strike, which can be a part of a larger social movement. Bruce and Carby-Hall fail to discuss the historical and cultural origins of the strike-based system.⁶⁶ By not considering the cultural significance of strikes to the culture of America, *Rethinking Labour-Management Relations* comes across as unrealistic and obtuse.

60. See *The Boston Tea Party*, *supra* note 56.

61. See *id.*

62. W.E.B. DUBOIS, *The General Strike*, in *BLACK RECONSTRUCTION* 3, 55-83 (1935).

63. See *id.* at 55.

64. *Id.* at 67.

65. *Id.* at 80.

66. See generally, BRUCE, *supra* note 1.

2. *The Strike-Based System is Effective*

a. *Social Strikes*

In addition to the successful strike that sparked the Revolutionary War and the “General Strike,” the Civil Rights Movement was also an effective social strike. A prominent piece of the Civil Rights Movement was the Memphis Sanitation Workers' Strike. On February 1, 1968, two Memphians, Echol Cole and Robert Walker were crushed by a faulty garbage truck.⁶⁷ This incident, coupled with the long-standing pattern of abuse and neglect the city of Memphis exhibited towards Black workers, resulted in 1,300 Black men from the Memphis Department of Public Works going on strike.⁶⁸ The sanitation workers demanded a reasonable wage and better safety standards.⁶⁹ Under the leadership of Memphis Mayor Henry Loeb, dilapidated garbage trucks were not taken out of service, overtime was not paid to men who were forced to work late-night shifts, and workers earned meager wages.⁷⁰ As the strike moved into April, Reverend Dr. Martin Luther King, Jr. came to Memphis to speak with the striking workers and the fellow protestors.⁷¹ After the assassination of Dr. King, Mayor Loeb refused to work with the laborers to find a viable solution.⁷² However, the striker's hard work and sacrifice paid off when President Lyndon B. Johnson sent the Undersecretary of Labor to negotiate a solution and effectively end the strike.⁷³

Another successful social strike was the 1970 Women's Strike for Peace and Equality. There, Betty Friedan organized the Women's Strike for Equality March.⁷⁴ The goal of the strike was to organize “a national work stoppage, in which women would cease cooking and cleaning in order to draw attention to the unequal distribution of domestic labor . . .”⁷⁵. Even though the exact number of women who went on strike was

67. See *Memphis Sanitation Workers' Strike*, STANFORD: MARTIN LUTHER KING, JR. RESEARCH & EDUC. INST., <https://kinginstitute.stanford.edu/encyclopedia/memphis-sanitation-workers-strike> (last visited Mar. 13, 2022).

68. See *id.*

69. See *id.*

70. See *id.*

71. See *id.* (On April 4, 1968, Martin Luther King, Jr. was shot and killed on the balcony of his hotel while visiting Memphis to support the sanitation strike).

72. See *Memphis Sanitation Workers' Strike*, *supra* note 67.

73. See *id.*

74. See Sascha Cohen, *The Day Women Went on Strike*, TIME: HISTORY (Aug. 26, 2015, 9:30 AM), <https://time.com/4008060/women-strike-equality-1970/>.

75. *Id.*

unreported, demonstrations took place in various cities, including New York City, Detroit, Indianapolis, Boston, and New Orleans.⁷⁶ Activists participated in confrontation tactics, including infiltrating “all-male” establishments and facilitating teach-ins and sit-ins.⁷⁷ The organizers of the strike agreed on three goals: 1) free on-demand abortion, 2) “equal opportunity in employment and education,” and 3) instituting twenty-four hour, seven days a week childcare centers.⁷⁸ The strike was most successful in obtaining some gender equality in employment and education.⁷⁹ The success of the strikers manifested in the passage of Title IX in 1972.⁸⁰ Title IX made sex discrimination illegal for education programs that received federal funds.⁸¹ Further, the strike was successful in expanding abortion rights.⁸² Though the strike did not achieve free, on-demand abortions, the strike was influential in the 1973 landmark Supreme Court decision that legalized abortion.⁸³

Often, the lines between social movements and labor movements are blurred. Social movements usually include a labor strike, like the Memphis Sanitation Strike being a large part of the Civil Rights Movement.⁸⁴ In comparison, labor movements are typically attached to a larger societal goal. For example, when teachers strike, they seek better wages and bring attention to the fault in the American education system.⁸⁵ Many of the demands from teacher strikes across the United States include reducing class sizes, providing adequate learning resources to students, and ensuring every school has a nurse and social worker.⁸⁶ In *Rethinking Labour-Management Relations*, the authors also fail to make this connection.⁸⁷ Compulsory arbitration makes sense to Bruce and Carby-Hall because they failed to consider the impact of labor strikes on society.⁸⁸ If they understood

76. See Cohen, *supra* note 74.

77. See *id.*

78. *Id.*

79. See *id.*

80. See *id.*

81. See Cohen, *supra* note 74.

82. See *id.*

83. See *id.*; see generally, *Roe v. Wade*, 410 U.S. 113 (1973).

84. See *Memphis Sanitation Workers' Strike*, *supra* note 67.

85. See Kelsey Vlamis, *Why U.S. Teachers Have Been Walking Out of Schools Nationwide*, BBC (Oct. 31, 2019), <https://www.bbc.com/news/world-us-canada-50233474>.

86. See *id.*

87. See generally, BRUCE, *supra* note 1.

88. See *id.*

how labor strikes are used to expose the social flaws in our community and how they are used to promote progress, they would be less eager to dismiss the strike-based system since they would understand its importance to society.

b. Labor Strikes

Besides the past success of U.S. labor strikes discussed above, the culture of striking in this country still prevails. In October of 2021, over 100,000 workers participated in strike-related activities.⁸⁹ In what has come to be known as “Striketober,” healthcare workers, John Deere workers, members of the International Alliance of Theatrical Stage Employees (IATSE), Kellogg workers, and many other laborers instituted strike measures “to demand fair treatment or to protest terrible terms of employment.”⁹⁰

The John Deere strike began when United Auto Workers (UAW) members went on strike on October 14th, 2021.⁹¹ More than 10,000 workers in Illinois, Iowa, and Kansas participated in the strike for nearly six weeks.⁹² In mid-November, with a 61% vote of approval, the UAW union members voted to end the strike by approving a six-year deal that included a “\$8,400 signing bonus”, “20% increase in wages over the lifetime of the contract with 10% this year”, “[r]eturn of the cost of living adjustments”, “[e]nhanced retirement options”, and “[e]nhanced CIPP performance benefits”.⁹³

89. Rithika Ramamurthy, *Why Striketober Matters: The Lasting Significance of This Fall’s Strike Wave*, NONPROFIT QUARTERLY (Dec. 22, 2021), <https://nonprofitquarterly.org/why-striketober-matters-the-lasting-significance-of-this-falls-strike-wave/>.

90. *Id.*

91. See Tyne Morgan, *John Deere and UAW Reach New 6-Year Deal, Ending Month-Long Strike*, FARM JOURNAL AG WEB: NEW MACH. (Nov. 17, 2021), [https://www.agweb.com/news/machinery/new-machinery/breaking-john-deere-and-uaw-reach-new-6-year-deal-ending-month-long#:~:text=New%20Machinery-,BREAKING%3A%20John%20Deere%20and%20UAW%20Reach%20New%206%20Year,Deal%2C%20Ending%20Month%20Long%20Strike&text=Members%20of%20the%20United%20Auto%20Workers%20\(UAW\)%20Union%20approved%20a,voted%20against%20the%20new%20contract.](https://www.agweb.com/news/machinery/new-machinery/breaking-john-deere-and-uaw-reach-new-6-year-deal-ending-month-long#:~:text=New%20Machinery-,BREAKING%3A%20John%20Deere%20and%20UAW%20Reach%20New%206%20Year,Deal%2C%20Ending%20Month%20Long%20Strike&text=Members%20of%20the%20United%20Auto%20Workers%20(UAW)%20Union%20approved%20a,voted%20against%20the%20new%20contract.)

92. Abhijith Ganapavaram, *Deere Strike to End as Workers Vote to Approve Contract*, REUTERS (Nov. 18, 2021, 1:31 PM), <https://www.reuters.com/business/striking-workers-set-crucial-vote-deere-mulls-options-2021-11-17/>.

93. Morgan, *supra* note 91; see also Marcus Day, “Modest modifications” to Deere-UAW deal mean more speedup, sweatshop conditions, WORLD SOCIALIST WEB SITE (Nov. 14, 2021), <https://www.wsws.org/en/articles/2021/11/15/cipp-n15.html> (“Continuous Improvement Pay Plan or CIPP . . . is an incentive pay scheme . . . In return for teams meeting or exceeding company-defined production goals, workers are paid an additional amount, with both the maximum incentive pay and performance goals raised by five percentage points under the new contract terms.”).

The International Alliance of Theatrical Stage Employees (“IATSE”), a union representing film and television workers, also participated in Striketober.⁹⁴ IATSE negotiated a new agreement with “the Alliance of Motion Picture and Television Producers (AMPTP) for The Basic and Videotape Agreements which affects 40,000 film and television workers” by threatening to strike.⁹⁵ In early October, IATSE members voted to grant the union’s president the ability to call a nationwide strike if a new agreement was not decided upon.⁹⁶ When faced with the possibility of a strike, AMPTP representatives worked quickly to negotiate a deal that would satisfy the IATSE members.⁹⁷ In the accepted proposal, the following terms were included: “[a]chievement of a living wage for the lowest-paid earners”, “[i]mproved wages and working conditions for streaming”, “[r]etroactive wage Increases of 3 percent annually”, “[i]ncreased meal period penalties”, “[d]aily rest periods of 10 hours without exclusions”, “[w]eekend rest periods of 54 hours”, etc.⁹⁸

On October 5th, 2021, Kellogg’s workers in Michigan, Pennsylvania, Nebraska, and Tennessee began to strike.⁹⁹ After striking for seventy-seven days, the Kellogg workers ended their strike in December of 2021 when workers “voted to accept a new collective bargaining agreement (CBA).”¹⁰⁰ Workers called for a contract that would adjust the two-tier wage system, allowing longer-term legacy workers to have higher pay and benefits.¹⁰¹ The agreed-upon CBA “will ‘graduate’ those lower-tier employees — called ‘transitional’ employees — with four years of experience into the legacy

94. See *Landmark tentative agreement reached for IATSE West Coast Film and Television Workers before Strike Deadline*, IATSE: PUBL’NS (Oct. 16, 2021), <https://iatse.net/landmark-tentative-agreement-reached-for-iatse-west-coast-film-and-television-workers-before-strike-deadline/> (“IATSE’s below-the-line workers include camera operators, grips, prop makers, set dressers, makeup artists, editors, script coordinators, publicists, [etc.]”).

95. *Landmark tentative agreement reached for IATSE West Coast Film and Television Workers before Strike Deadline*, *supra* note 94 (“The AMPTP is a trade association that represents major employers and producers of television and film including Walt Disney Studios, Warner Bros., Paramount Pictures, Apple, Netflix, and Amazon, among others.”).

96. *See id.*

97. *See id.* (The agreement was for West Coast workers, negotiations continue for IATSE local unions in New Mexico, New York, Illinois, Georgia, and Louisiana.).

98. *Id.*

99. See Juliana Kaplan, *Kellogg’s Workers End Their Nearly 3 Month Strike and Agree to a New Contract*, BUS. INSIDER: ECON. (Dec. 21, 2021, 11:34 AM), <https://www.businessinsider.com/kelloggs-workers-strike-ends-get-new-contract-raises-labor-2021-12>.

100. *Id.*

101. *See id.*

program.”¹⁰² Negotiations also resulted in wage increases for transitional employees from \$19.92 to \$24.11 an hour.¹⁰³

It is evident by the success of the John Deere workers, IATSE, and Kellogg’s workers that strikes are not obsolete. In fact, the overall success of the workers who participated in “Striketober” indicates that striking and the threat of striking are still very effective.¹⁰⁴ Today, the narrative that strikes are ineffective exists because it is challenging to convince consumers to support strikers by boycotting companies because of the boycott’s inconvenience. However, social media has created a platform for striking workers to share their individual stories to allow more people to empathize.¹⁰⁵ On the other hand, social media also allows employers to spy on the organizers of strikes and keep tabs on the public’s reaction to the strike.¹⁰⁶

B. Mandatory Arbitration Is Not The Ideal Labor-Management Relation System

Before addressing why mandatory arbitration would not work practically, it is essential to note that the courts have recognized arbitration as a valid and enforceable collective bargaining tool. The utility and validity of arbitration were solidified by the Courts in what is known as the Steelworkers Trilogy. The first case in the trilogy is *United Steelworkers v. American Mfg. Co.*, 363 U.S. 564 (1960).¹⁰⁷ In *United Steelworkers v. American Mfg. Co.*, the Supreme Court of the United States (SCOTUS) found that when a CBA stipulates that all grievances must be submitted to arbitration, it is not the Court’s role to decide if the claim is meritorious for the arbitrator to decide.¹⁰⁸

Further, the Court held that when there is no exception written into a ‘no strike’ clause, none “should be read into the grievance clause” of a CBA.¹⁰⁹ Overall, the Court found that “[a]rbitration is a stabilizing influence only as it serves as a vehicle for

102. *Id.*

103. *Id.*

104. *See generally*, Jacob Bogage, *Strikes are Sweeping the Labor Market as Workers Wield New Leverage*, THE WASH. POST: ECON. (Oct. 17, 2021, 8:00 AM), <https://www.washingtonpost.com/business/2021/10/17/strikes-great-resignation/>.

105. *See generally*, Eric Blanc, *Yes, Social Media Can Help With Real-World Organizing*, JACOBIN: MEDIA/STRATEGY (Dec. 5, 2021), <https://jacobinmag.com/2021/12/social-media-labor-organizing-teachers-strikes-red-for-ed-arizona-oklahoma>.

106. *See generally*, ANALYTICS PRO, *SOCIALBAKERS: THE RECIPE FOR SOCIAL MARKETING SUCCESS*, <https://cdn.socialbakers.com/www/archive/storage/www/the-role-of-social-media-during-a-strike.pdf> (last visited Apr. 24, 2022).

107. *See generally*, *United Steelworkers v. American Mfg. Co.*, 363 U.S. 564 (1960).

108. *See id.* at 567.

109. *Id.*

handling any and all disputes that arise under the agreement.”¹¹⁰ Next in the Steelworkers Trilogy is *United Steelworkers v. Warrior Gulf & Navigation Co.*, 363 U.S. 574 (1960).¹¹¹ In this case, the Supreme Court ruled that a question of interpretation of a CBA was for the arbitrator to decide, not a court.¹¹² Rounding out the trilogy was *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).¹¹³ There, the Supreme Court determined that it was improper for courts to engage in judicial review or overrule an arbitrator’s decision when the decision drew its essence from the parties CBA.¹¹⁴ As a whole, the Steelworkers Trilogy creates a favorable legal space for arbitration. Even so, arbitration has been incorporated as a labor-management relations tool without threatening strikes’ sanctity. A system encompassing both arbitration and strikes is the grey area that the authors fail to consider.

1. Mandatory Arbitration Will Not Solve The Issues Presented By Business Unions

The authors propose that arbitration is the best tool for labor-management relations because it “provides greater equality of bargaining power across unions.”¹¹⁵ Their theory, however, does not address the large power gap between many unions nor the discrepancies in participation between private and public sector unions.¹¹⁶ While Bruce and Carby-Hall propose that arbitration would help smaller unions have greater access to power, they fail to recognize social power discrepancies even among large unions.¹¹⁷ The U.S. labor market follows the theory of business unionism.¹¹⁸ In business unionism, unions are run like businesses and are only concerned with the success of their union.¹¹⁹ They are transactional. The best example of power discrepancies between unions is the immense power that police unions hold compared to the power other unions have historically wielded.

110. *Id.*

111. *See generally*, *United Steelworkers v. Warrior Gulf & Navigation Co.*, 363 U.S. 574 (1960).

112. *See id.* at 585.

113. *See generally*, *United Steelworkers v. Enter. Wheel & Car Corp.*, 363 U.S. 593 (1960).

114. *See id.* at 597-99.

115. BRUCE, *supra* note 1, at 99.

116. *See id.* at 97-99.

117. *See id.*

118. *See* MICHAEL GOLDFIELD, *THE DECLINE OF ORGANIZED LABOR IN THE UNITED STATES* 49 (1987).

119. *See id.*

Police unions are notorious for achieving their agenda. Because police officers are the “arm” of executive branches and are authorized to use force to keep the peace, they are uniquely powerful.¹²⁰ These unions are often successful in bargaining for raises in pay and increase overtime pay.¹²¹ Police unions are also known to “aggressively protect the rights of members accused of misconduct, often in arbitration hearings that they have battled to keep behind closed doors.”¹²² Police unions are heavily focused on managing the behavior of their members.¹²³ Other labor unions are primarily focused on improving their workplace.¹²⁴ Because of this, while police unions are more in favor of keeping arbitration proceedings confidential to protect the misconduct of their members, other unions may find the secrecy of arbitration harmful as publicity may be helpful for unions to expose the wrongdoings of their employers.

Further, the power of police unions primarily lies in their vast political influence.¹²⁵ Very few politicians dare to oppose police unions directly. They fear being portrayed as being soft on crime, dealing with police officers harassing them, or responding slowly to 911 calls in the geographical area where the candidate is running.¹²⁶ Because police unions are regarded with suspicion by other labor unions, police unions see themselves as distinct from the labor movement more broadly.¹²⁷ Police unions can

120. See Marcia L. McCormick, *Our Uneasiness with Police Unions: Power and Voice for the Powerful?*, 35 ST. LOUIS L. REV. 47, 52 (2015).

122. See Laurie Woods, *Defund the Police? Actually, Police Salaries Are Rising in Departments Across the U.S.*; U.S. NEWS (by June 29, 2021), <https://www.usnews.com/news/cities/articles/2021-06-29/police-salaries-are-rising-in-departments-across-the-us>

(“The Los Angeles Police Department currently advertises a starting salary of \$70,804 a year. That’s up from the 2015 starting annual salary of \$59,717 – an 18.5% increase over just six years. Seattle officers earn \$83,600 once they’ve completed their basic academy training...not including overtime. Seattle even agreed to pay its officers an extra 2% for wearing body cameras...Most union agreements also stipulate higher pay for other work deemed “overtime,” such as off-duty court appearances. They also stipulate other after-hours pay boosts, such as a minimum of four hours’ pay for officers called back to duty for any reason”).

122. Noam Scheiber et. al., *How Police Unions Became Such Powerful Opponents to Reform Efforts*, N.Y. TIMES (Apr. 2, 2021), <https://www.nytimes.com/2020/06/06/us/police-unions-minneapolis-kroll.html>.

123. See McCormick, *supra* note 120, at 61.

124. See Josh Bivens et. al., *How Today’s Unions Help Working People*, ECON. POLICY INST. (Aug. 24, 2017), <https://www.epi.org/publication/how-todays-unions-help-working-people-giving-workers-the-power-to-improve-their-jobs-and-unrig-the-economy/>.

125. See Scheiber, *supra* note 121.

126. See *id.* (“When Steve Fletcher, a Minneapolis city councilman, and frequent Police Department critic, sought to divert money away from hiring officers and toward a newly created office of violence prevention, he said, the police stopped responding as quickly to 911 calls placed by his constituents.”).

127. See *id.*

exercise extreme power because their high social and political status stems from their ability to burden or ease the lives of the residents they have sworn to protect.

Given the evidence, arbitration is unlikely to fix this socio-political imbalance. Implementing mandatory arbitration will not absolve the social rift between police union members and labor unions more broadly. As long as police unions continue their lack of support and punish other labor unions fighting for their rights in the form of strikes, solidarity between police unions and the greater pool of laborers will not exist. Consequently, no laborer solidarity exists between police and other laborers. Arbitration will not fix this problem if police unions continue to have the most favorable position and vastly different values and goals. Moreover, if an implied hierarchy of unions exists, favorable arbitration outcomes for one union will not equal favorable results for other unions engaging in arbitration.

2. *Strikes Are The Strongest Tool For The Most Powerless Workers*

In *Rethinking Labour-Management Relations*, the authors write from a position that assumes workers want to strike.¹²⁸ They fail to consider that laborers see strikes as the very last option.¹²⁹ People want to work; strikes are risky as they can affect a worker's reliance on a steady paycheck and come with the risk of retaliation. As noted by the United Electrical, Radio and Machine Workers of America (UE), "[a] strike — or the threat of one — remains the single most powerful inducement to force employers to deal with the demands of workers."¹³⁰ Not every union has gone on strike, but most unions will use the threat of strikes to enforce the terms of their contracts or leverage their negotiating power for better contracts.

Strikes are not decided overnight. According to the UE, preparations for strikes should be built up over months.¹³¹ Strikes require a majority of a union's membership to buy-in. To be sure, many unions require a strike vote well in excess of fifty percent plus one because there is a greater likelihood of management employing a decertification vote if the outcome is less than a total victory.¹³² Further, strikes allow other workers to see

128. See BRUCE, *supra* note 1, at 1-10.

129. See *Preparing for and Conducting a Strike: A UE Guide*, UNITED ELEC., RADIO & MACH. WORKERS OF AM., <https://www.ueunion.org/strikes> (last visited Apr. 12, 2022) (UE is a national union representing thousands of manufacturing workers public sector, and private service-sector jobs).

130. *Id.*

131. See *id.*

132. See *Strike Vote*, THE FREE DICTIONARY, <https://financial-dictionary.thefreedictionary.com/Strike+Vote> (last visited Apr. 12, 2022) (Strike Vote is defined as “[a] referendum by union members deciding whether or not to go on strike . . . An affirmative strike vote authorizes union leadership to give strike notice and to take other steps necessary for the strike to occur. A strike vote is always on a secret ballot.”); see also *Strikes*, UFCW 1500, <https://www.ufcw1500.org/get-educated/strikes> (last visited Apr. 12, 2022) (provides a strike vote policy for a local chapter under the United Food and Commercial Workers union).

the struggles of their peers. For unions, it is crucial that laborers' struggles are public in order to encourage for other unions on strike.¹³³ By engaging other unions with a strike, the non-striking workers can compare their current situation to the people on strike and determine if they also need to strike or what to ask for in contract negotiations. Additionally, strikes put other employers on notice. A strike in a similar industry or organization can signal to an employer that they may need to work harder to find a common solution before their employees, who might be similarly situated to those on strike, also decide to strike.

Moreover, Bruce and Carby-Hall fail to consider the importance of strikes to Americans, given that the United States subscribes to the concept of at-will employment.¹³⁴ Because the U.S. is an at-will employment country, employees can be fired for little to no reason if that firing does not hinge on the rights of a protected class.¹³⁵ However, the right to work concept makes it extremely difficult for laborers to practice collective bargaining as it can be minimal or non-existent. Not every type of union is allowed to engage in collective bargaining, and the rules are different in every state.¹³⁶ Further, not every kind of strike is legal.¹³⁷ These restrictions further the understanding that striking is never the first option. Strikes are the last option, where every pro and con has been weighed before union members determine that the potential benefits are greater than the risks involved.

Therefore, arbitration is ineffective because it would hide the struggles that various labor forces are fighting from society. Although some strikes do not result in the targeted goal being achieved, at least the employer can be tried in the court of public opinion. According to the UE, "winning community sympathy and support can put powerful pressure on the Company to meet the strikers' demands."¹³⁸ With a compulsory

133. See *Preparing for and Conducting a Strike: A UE Guide*, *supra* note 129.

134. See generally, BRUCE, *supra* note 1; see *At-Will Employment Overview*, THE NAT'L CONFERENCE OF STATE LEGISLATURES (Apr. 15, 2008), <https://www.ncsl.org/research/labor-and-employment/at-will-employment-overview.aspx>.

135. See *At-Will Employment Overview*, *supra* note 133.

136. See *Employer/Union Rights and Obligations*, NAT'L LABOR RELATIONS BD. (NLRB): YOUR RIGHTS <https://www.nlr.gov/about-nlr/rights-we-protect/your-rights/employer-union-rights-and-obligations> (last visited Apr. 24, 2022); See also *Collective Bargaining Laws*, NAT'L COUNCIL ON TEACHER QUALITY (Some states like Georgia have a harsh ban on collective bargaining. "Ga. Code Ann. § 20-2-989.10: 'Nothing in this part shall be construed to permit or foster collective bargaining as part of the state rules or local unit of administration policies.'" On the other hand, states like Massachusetts are very friendly to collective bargaining. "Mass. Gen. Laws ch. 150E §6 'The employer and the exclusive representative shall meet at reasonable times...and shall negotiate in good faith with respect to wages, hours, standards of productivity and performance, and any other terms and conditions of employment. . .'").

137. See *Employer/Union Rights and Obligations*, *supra* note 136.

138. *Preparing for and Conducting a Strike: A UE Guide*, *supra* note 129.

arbitration system, the same type of public accountability and social penalties born out of strikes would be more challenging to achieve.

Overall, the authors fail to see how valuable strikes are to those who are socially and economically vulnerable. An example of socially vulnerable strikers are the Black laborers who went on strike during the Civil Rights Movement. An excellent example of economically vulnerable strikers are those who participated in ‘Striketober.’ Many people were afraid to lose their jobs because no one was hiring at the beginning of the COVID-19 pandemic.¹³⁹ Now, further into the pandemic, workers are harder to replace and they have an increase in bargaining leverage over their employers.¹⁴⁰ Nevertheless, many workers still believe that strikes were their only option because their employers only care about profits and not the employee’s well-being.¹⁴¹

III. CONCLUSION

Overall, *Rethinking Labour-Management Relations* fails to consider that various systems of labor-management relations treat groups of people differently. The authors failed to discuss the lack of equity or equality in these systems for different races and classes of laborers.¹⁴² However, this book has been republished at a pivotal time in America’s labor history. As discussed, the U.S. labor market is reevaluating its values.¹⁴³

Inherently, strikes are cultural by nature. Bruce and Carby-Hall produce a proposal that would only work in a sanitized world by discussing strikes outside their cultural and social contexts. Further, the idea that mandatory arbitration is the best industry relation system eliminates the relationship factor of a collective bargaining process by introducing arbitrators in place of union representatives and company representatives working together to form a satisfactory solution.

Strikes are a part of the fabric of American culture. To remove striking as a tool for disadvantaged workers is to leave them without effective contract enforcement. As the world continues to feel the effects of COVID-19 and workers find themselves in

139. See U.S. BUREAU OF LABOR STATISTICS, COVID-19 ENDS LONGEST EMPLOYMENT RECOVERY AND EXPANSION IN CES HISTORY, CAUSING UNPRECEDENTED JOB LOSSES IN 2020(2021), <https://www.bls.gov/opub/mlr/2021/article/covid-19-ends-longest-employment-expansion-in-ces-history.htm>.

140. See Bogage, *supra* note 104.

141. See Bogage, *supra* note 104.

142. See generally, BRUCE, *supra* note 1.

143. See *Remarks by AFT President Randi Weingarten: The American Labor Movement at a Crossroads: New Thinking, New Organizing, New Strategies*, AM. FED’N OF TEACHERS (Jan. 15, 2015), <https://www.aft.org/american-labor-movement-crossroads> (“[W]e can’t just be service providers, a model that defined industrial unionism. The relationship between a union and its members can’t be transactional or contractual. It should be transformational, a real movement. We must adopt an organizing model that focuses on activating and empowering members through collective action.”).

vulnerable situations for socio-economic reasons, strikes will continue to pave a way for those who yield little political and economic power to demand their voices be heard.

The purpose of this article was not to propose the perfect collective bargaining format. Other articles may discuss what mechanisms before striking look like, i.e. do union representatives use negotiation, arbitration, or mediation. Instead, the goal was to emphasize the importance of keeping strikes within the toolbox of all laborers. Because of this ideology, the best labor-management relations system may not be perfect. The United State's system of unions having to vote to strike and only striking as a very last resort is effective.

As the literature around the best labor-management relation system grows, researchers should not look at the labor industry in a vacuum. Researchers should include broader societal perspectives inherent in labor-management relation systems as labor, and social movements are intrinsically tied together.