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BOOK REVIEW

TO STRIKE OR NOT TO STRIKE

JAMES J. BRUDNEY*

JULIUS GETMAN, *THE BETRAYAL OF LOCAL 14: PAPERWORKERS, POLITICS, AND PERMANENT REPLACEMENTS* (1998).

This book tells a dramatic and tragic story about a labor strike against the International Paper Company. The strike's primary focus was a large mill in Jay, Maine, where 1200 employees walked off the job. The strikers were permanently replaced, the positions they advocated at the bargaining table were never adopted, the union was subsequently decertified,¹ and ten years later many former strikers remain unemployed or underemployed. Professor Getman² recounts the facts and circumstances leading up to the 1987-1988 strike, chronicles the highs and lows during the actual sixteen month struggle, and relates aftershock events that continue to affect the economic and psychic well-being of his books' principal protagonists.

I refer to "protagonists" because every tragedy involves both protagonist and antagonist perspectives. This tragedy is recounted largely through the eyes of the rank-and-file workers—employees of the Androscoggin mill in Jay and leaders of Local Union 14, the local that oversaw the strike. From their perspective, and Getman's, they faced three distinct antagonists: the company, the National Labor Relations Act (NLRA or Act)³—in particular its much-maligned permanent replacement doctrine—and the International Paperworkers Union. The first two

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1. Decertification of a union under the National Labor Relations Act results when a majority of the bargaining unit vote that they no longer want to be represented by that union. *See* 29 U.S.C. § 159(e)(1) (1994).

2. Professor Getman is Earl E. Sheffield Regent's Chair at the University of Texas School of Law. He previously taught at Yale, Stanford, and Indiana (Bloomington) law schools, among others.

3. Pub. L. No. 74-198, 49 Stat. 449 (1935) (codified as amended at 29 U.S.C. §§ 151-169 (1994)). I use "NLRA" to refer to the 1935 statute as amended in 1947, 1959, and at other later times.

antagonists, the company and the law, essentially play the role of important supporting actors. The most interesting and complex struggle related here involves an ongoing push-pull relationship between the local union and the International with which it is affiliated. Using powerful selections from taped interviews and a tersely informative prose style, Getman tells a tale in which the doomed ending is pre-ordained but the pathways traveled are full of gray areas: competing strategic priorities, subtly misplaced faith in leaders or followers, opportunities unpursued, and challenges unmet.

In addition to its tragic motif, the book is also a war story. A strike may be analogized to a limited, conventional war in the pre-nuclear age. The workers' army must march forward and win battles. It also must be well supplied, it needs a positive fighting spirit, and it must try to maintain public interest and support over the long haul. Getman gives us a strong flavor of how it feels to be waging this war from the inside, including a lively sense of not being in control of the events themselves.

The bleak results associated with the union effort at International Paper are hardly unique. Since the early 1980s, a number of high profile strikes against major corporations have ended in failure.⁴ These outcomes give rise to hard questions about the future of organized labor's fundamental economic weapon. This Review explores two such questions. The first is whether, under today's social and legal conditions, a union can "win" a strike against a large national or multinational corporation⁵ that is prepared to use all options lawfully at its disposal. The provisional answer that emerges from the saga of Local 14 is no, at least not when "winning" is understood in conventional engagement-specific terms. Getman contends the strike could have been won if certain strategies had been followed. I come away from his narrative unable to share even this guarded optimism. For me, his greater contribution is to illustrate how, in an era characterized by decentralized bargaining and the use of permanent replacements, strikes almost inevitably succumb to internal contradictions. The second question is

4. See, e.g., AARON BERNSTEIN, *GROUNDING: FRANK LORENZO AND THE DESTRUCTION OF EASTERN AIRLINES* (1990) (describing machinists' and pilots' 1989-1990 strike against Eastern Airlines); DAVID HAGE & PAUL KLAUDA, *NO RETREAT NO SURRENDER* (1989) (describing Minnesota meatpackers' 1985-1986 strike against Hormel & Co.); JONATHAN D. ROSENBLUM, *COPPER CRUCIBLE* (1995) (describing Arizona miners' 1983-1984 strike against Phelps-Dodge Corporation); Steven Greenhouse, *Steel Union Uses Indy 500 to Press its Boycott*, N.Y. TIMES, May 26, 1996, § 1, at 19 (describing rubber workers' 1994-1995 strike against Bridgestone).

5. As Getman tells us, International Paper at the time was the richest paper company in the world and the largest private landowner in the United States. See JULIUS GETMAN, *THE BETRAYAL OF LOCAL 14: PAPERWORKERS, POLITICS, AND PERMANENT REPLACEMENTS* 41 (1998).

whether *something else* qualifies as “winning” or “prevailing” in such desperate circumstances. The workers at the Jay, Maine, plant bloomed as individuals and coalesced as a community because of the strike. Individually, they used energy and creativity many did not know they had. Collectively, they came to understand and rely upon one another for strength. An implicit message of the book is that, although these triumphs of individual and collective spirit were inextricably linked to the experience of crushing economic defeat, the victories must somehow transcend the loss if the union movement is ever again to have creative and redistributive force in our country.

I first offer an overview of Getman’s narrative itself—what happened to the members of Local 14. In presenting this story, I amplify the role played by the permanent replacement doctrine. I then examine the two questions I found especially intriguing about the plight of Local 14 and its members. In considering whether contemporary strikes are winnable, and, if not, whether workers can find suitably empowering alternative measures, I attempt to situate the strike at International Paper in the broader context of challenges facing organized labor.

I. THE PATHWAYS TO DEFEAT

The book is an outgrowth of Getman’s testimony in the spring of 1990, as a labor law scholar reviewing a Senate bill that proposed to ban the use of permanent replacements during an economic strike.⁶ At the Senate hearing, Getman met Tom Pratt, a former International Paper striker who also was testifying before the Senate Committee.⁷ He conducted preliminary interviews with Pratt and former Local 14 President Dick Meserve in Maine that spring. He followed up with scores of other interviews over the next four years, talking with strikers, replacement workers, town officials, and representatives from the company and the International Union as well.⁸ One of the author’s true gifts is his ability to let these voices come through unembellished. In reading of their joy and their pain, we get an almost audible and visual sense of what they experienced.

The background events leading up to the strike are a microcosm for the decline of labor-management relations in the industrial sector. Jay,

6. See *Preventing Replacement of Economic Strikers: Hearing on S. 2112 Before the Subcomm. on Labor of the Senate Comm. on Labor & Human Resources*, 101st Cong., 2d Sess. 106 (1990) [hereinafter *Senate Hearing*]. I served at the time as chief counsel and staff director for the Senate Subcommittee on Labor, and on behalf of the Subcommittee I invited Professor Getman to testify.

7. See *id.* at 13.

8. See GETMAN, *supra* note 5, at xii-xiii.

Maine is a small town in the western part of the state. The lives of its residents had revolved for decades around papermaking. International Paper was unionized in the 1930s, when the company voluntarily recognized the Paperworkers' Union to avoid having to deal with a more radical CIO union.⁹

The mill in Jay opened in the early 1960s. The initial two decades of collective bargaining agreements resulted in unions securing steadily improved wages and benefits and greater control over job classifications. Because U.S. paper manufacturers occupied a strong position in world markets, labor costs were passed along to consumers.¹⁰ Local 14 in Jay was honest but had no grass roots tradition. A minority of bargaining unit members were active in the union, and meetings were sparsely attended except around contract negotiation time.¹¹ Although the International grouped a number of locals together into "multiples" in order to increase bargaining leverage, the Jay local opted out of the multiples. Bargaining on their own, local union leaders used the multiple agreements as a floor and usually secured three percent above that for their members.

By the 1980s, International Paper, like many other large U.S. corporations, was no longer satisfied with the traditional collective bargaining model. Having lost its price and cost advantages to foreign competition, International Paper sought major concessions in labor negotiations. At the same time, International Union officers perceived the new generation of corporate executives at International Paper as not just pushing for concessions but hoping to oust the union.¹² The 1983 negotiations at Jay were long and arduous. Over the next three years, management sought greater control over job rules and work assignments, and the union filed more grievances and took more of them to arbitration.¹³

In the Spring of 1987, International Paper submitted tough contract proposals at Jay: elimination of the Sunday premium and the Christmas holiday shutdown, the right to subcontract maintenance work (putting 350 jobs at risk), and a new program requiring employees to work outside their job categories.¹⁴ During bargaining, management was inflexible and refused to explain or justify its positions.¹⁵ Workers and their union leaders became more militant in response to this refusal to talk. The Jay

9. *See id.* at 12.

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

11. *See id.* at 12.

12. *See id.* at 16.

13. *See id.* at 22.

14. *See id.* at 32.

15. *See id.* at 35.

local for the first time entered into a joint pool arrangement with locals at mills in three other states that were negotiating with International Paper; workers also voted to authorize a strike. After a resounding ninety-two percent “No” vote on the Company’s final offer at the June 12 local union meeting, the strike began in Jay on June 15, 1987.

International Paper, anticipating and perhaps even desiring a strike, had begun advertising for replacement workers in Maine newspapers one week before the June 12 rejection vote. Also prior to the strike’s commencement, the Company brought in thirty large trailers to house replacements and built a barbed wire fence around the mill.¹⁶ International Paper actually began employing permanent replacements on June 29, two weeks after the strike began.¹⁷

For those unfamiliar with the intricacies of labor law, the permanent replacement doctrine needs a bit of unpacking. Although the right to strike in support of economic demands is a protected activity under the NLRA,¹⁸ the Supreme Court, in the 1938 case of *NLRB v. Mackay Radio & Telegraph Co.*,¹⁹ stated in dicta that an employer had the right to fill the places left vacant by strikers in order to “protect and continue his business,” and that the employer could treat those replacements as permanent employees so as to displace workers who had participated in the strike.²⁰ Permanent replacement is not quite the same thing as discharge: a permanently replaced striker in a unionized setting remains a member of the bargaining unit for an extended period, eligible for recall to fill job vacancies and also eligible to vote on union matters.²¹ Still, the fact that a twenty year employee who exercises his protected right to strike can lawfully lose his job on a permanent basis is widely regarded as the single biggest anomaly in the NLRA.

For decades after it was announced by the Supreme Court, the *Mackay* doctrine prompted considerable scholarly criticism,²² but

16. See *id.* at 36.

17. See *Senate Hearing, supra* note 6, at 129.

18. See 29 U.S.C. § 163 (1994).

19. *NLRB v. Mackay Radio & Tel. Co.*, 304 U.S. 333 (1938).

20. *Id.* at 345-46.

21. See *Laidlaw Corp.*, 171 N.L.R.B. 1366 (1968) (holding that economic striker is entitled to reinstatement to vacant position); 29 U.S.C. § 159(c)(3) (1994) (stating that economic strikers remain eligible to vote on bargaining unit matters for 12 months after commencement of strike).

22. See, e.g., Leonard B. Boudin, *The Rights of Strikers*, 35 ILL. L. REV. 817, 830-32 (1941); Karl E. Klare, *Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937-1941*, 62 MINN. L. REV. 265, 301-02 (1978); George Schatzki, *Some Observations and Suggestions Concerning a Misnomer—“Protected” Concerted Activities*, 47 TEX. L. REV. 378, 383 (1969); Note, *Replacement of Workers During Strikes*, 75 YALE L.J. 630, 634, 639-41 (1966).

empirical studies indicate it had little practical effect.²³ Employers were reluctant to use the permanent replacement approach for a number of reasons. In the early days of the NLRA, unions were able to exert secondary economic pressures by picketing, boycotting, or striking the struck employer's suppliers and customers.²⁴ Thus the employer who hired permanent replacements ran a substantial risk of becoming economically isolated. Even after Congress enacted the Taft-Hartley amendments in 1947,²⁵ management tended to view productivity as linked to having an experienced workforce that featured both stable tenure and high morale. Employers were reluctant to jeopardize those assets by relying on a strategy as confrontational as the hiring of permanent replacements.²⁶ Employers also feared that they would be unable to secure outside replacement labor.²⁷ Further, employers had an incentive to maintain an image as corporate "good citizens." Unions were perceived by the general public as beneficial institutions until the late 1970s.²⁸ Managers generally had long-term ties to their communities, and most employers saw it as socially unacceptable to banish employees who had spent years contributing to the company over a temporary, albeit intense, economic dispute.²⁹

23. See CHARLES R. PERRY ET AL., OPERATING DURING STRIKES: COMPANY EXPERIENCE, NLRB POLICIES, AND GOVERNMENTAL REGULATIONS at iii, 38, 64, 123 (1982) (identifying use of permanent replacements during strikes as "a relatively new phenomenon," and explaining that firms studied were reluctant to resort to the use of outside replacements); see also William Serrin, *Industries, in Shift, Aren't Letting Strike Stop Them*, N.Y. TIMES, Sept. 30, 1986, at A18 (quoting management and union representatives as agreeing that use of permanent replacements was a rarity before 1980s).

24. Under the Wagner Act, only employer labor practices were regulated; it was not until nine years after *Mackay Radio* that Congress outlawed secondary pressure by unions. See 29 U.S.C. § 158(b)(4) (1994).

25. Labor-Management Relations Act of 1947, Pub. L. No. 80-101, 61 Stat. 136 (codified as amended at 29 U.S.C. §§ 141-187 (1994)).

26. See PERRY ET AL., *supra* note 23, at 38, 64 (discussing employers' fear of antagonizing unions and workers).

27. See *id.* (discussing employers' fear of failure as a constraint on efforts to hire replacement workers).

28. Gallup Poll results indicate that the general public's confidence in organized labor has declined steadily since 1977. See Leslie McAneny & David W. Moore, *American Confidence in Public Institutions Rises*, GALLUP POLL MONTHLY, May 1995, at 11-13 (reporting that percentage of public expressing "great deal of confidence" or "quite a lot of confidence" in labor unions has declined from 39% in 1977 to 30% in 1984, and to 26% in 1995); Frank Newport, *Confidence in Institutions: Small Business and the Military Generate Most Confidence in Americans*, GALLUP POLL MONTHLY, Aug. 1997, at 33 (reporting public's confidence in organized labor has further eroded to 23%).

29. See Serrin, *supra* note 23 (reporting that from the 1950s through the 1970s, managers did not view hiring replacements as socially acceptable). See generally S. REP. NO. 103-110, at 6-8 (1993) (discussing the limited use of permanent replacements prior

Since 1980, employers have substantially increased their resort to permanent replacements during economic strikes.³⁰ Again, a number of different factors come into play. President Reagan's permanent replacement of 12,000 striking air traffic controllers in 1981 dramatically affected the way the American public and many American employers viewed strikes.³¹ Although that strike by federal employees was illegal, a new generation of corporate managers regarded the President's action, and the popular support it received, as an invitation to pursue more aggressive responses to lawful strikes. Perhaps equally important, the 1980s witnessed major changes in the structure and mobility of corporate capital. Faced with high debts or saddled with inefficient enterprises, new management at times seemed to treat newly acquired workers as mere assets to be jettisoned or abandoned.³² Corporate managers may

to 1980).

30. See U.S. Gen. Accounting Office, *Labor-Management Relations: Strikes and the Use of Strike Replacements in the 1970s and 1980s*, GAO HRD-91-2 (1991) (reporting that employers hired permanent replacements in 17% of strikes in 1985 and 1989; that 4% of all striking workers were permanently replaced in those years; and that employers threatened to hire permanent replacements before or during 33% of strikes in those two years); Cynthia L. Gramm, *Empirical Evidence on Political Arguments Relating to Replacement Worker Legislation*, 42 LAB. L.J. 491, 492 (1991) (reporting that for strikes covering 1000 or more workers between 1984 and 1988, 15.6% of national firms and 23.8% of New York firms used permanent replacements); see also BNA Special Report: 1999 Employer Bargaining Objectives (BNA) 4-5 (1998) (reporting that roughly half of manufacturing businesses in 1998 were very likely or somewhat likely to hire replacements if firm were struck; of employers "very likely" to hire replacements, 55% would make them permanent).

31. See, e.g., *Harris Poll Finds Most Oppose the Air Strike*, N.Y. TIMES, Aug. 21, 1981, at A18 (reporting Harris Survey results that majority of adults contacted, 69%, percent, felt that the Reagan Administration "had a right to dismiss the controllers"); Serrin, *supra* note 23 (describing President Reagan's action as "[a]n important signal to employers that hiring replacements could not only be effective but could be widely viewed as acceptable conduct"); see also Helen Thomas, *Reagan: Standing Firm Against PATCO*, U.P.I. Sept. 2, 1981 (reporting that White House chief of staff expressed the President's "concern[] that the message might be lost on other unions" if striking air traffic controllers were allowed to return to their jobs).

32. See, e.g., BERNSTEIN, *supra* note 4, at 71-78 (describing how Frank Lorenzo in 1987 and 1988 initiated a series of sales and spinoffs at Eastern Airlines, stripping money and resources from the company and eliminating large numbers of union jobs); Bridget O'Brian & Thomas Petzinger Jr., *Going for Broke: Bankruptcy Strategy for Eastern Airlines Could Fail Lorenzo*, WALL ST. J., Mar. 10, 1989, at 1 (discussing how Lorenzo thrust Continental Airlines into bankruptcy in 1983 and broke the unions, and reporting on his plans to pursue a similar strategy with Eastern six years later); see also RICHARD VIGILANTE, STRIKE: THE DAILY NEWS WAR AND THE FUTURE OF AMERICAN LABOR 16, 25, 258-64 (1994) (describing unsuccessful efforts by the Tribune Company in the 1980s to extract major concessions from unions at the *New York Daily News*, and company's inability during the same period to sell the *News* because prospective buyers

well have perceived ongoing relationships with a recently acquired workforce or a local community as less important than short-run economic returns.³³ Finally, the fact that Congress in the Taft-Hartley and Landrum-Griffin³⁴ amendments had restricted unions in their use of secondary economic weapons meant that employers were not only permitted to hire permanent replacements, they were legally insulated from responsive economic pressure tactics formerly available to organized workers.³⁵

When a company hires permanent replacements, as International Paper did almost immediately in Jay, the stakes are raised considerably. A strike that began as a limited dispute about working conditions becomes a broader confrontation about the right of all striking workers to retain their jobs. Unions faced with permanent replacement of their members almost invariably insist on reinstatement as a condition to settlement of the strike. Resolution of this job security issue creates legal and psychological challenges well beyond the economic dispute that originally divided the parties. Moreover, when an employer like International Paper hires permanent replacements, it effectively tells the workers that it does not expect them to return. The workers, in response, may rationally conclude that their interests are no longer congruent with the long-term prosperity of their former employer. Ordinarily, even striking workers will feel constrained in their use of lawful self-help measures that threaten the company's ultimate market position. Once permanently replaced, however, these workers may feel impelled to reject such constraints; they may conclude that only a more pervasive campaign to force the company's sale or its replacement of top management will offer them a chance at reemployment.

Getman recounts that Local 14, with support from the International, relied on a range of complementary tactics in an effort to pressure International Paper and win the strike. It is noteworthy that certain

could not secure sufficiently large union concessions; and reporting that the purchaser who stepped in during a bitter strike in early 1991 was able to secure concessions, including the loss of over one-third of jobs, which were larger in some respects than what Tribune Company had demanded).

33. See generally John Schmeltzer, *Key Management Weapon: Threat to Replace Workers*, CHI. TRIB., Aug. 11, 1997, at 13 (reporting that since 1981 permanent replacements have become a "regular consideration within a corporation's arsenal of weapons" in response to a strike); Serrin, *supra* note 23 (describing ascent of new generation of managers willing to hire permanent replacements as part of cost-cutting efficiencies).

34. Labor-Management Reporting and Disclosure Act of 1959, Pub. L. No. 86-257, 73 Stat. 519 (codified as amended in scattered sections of U.S.C.).

35. See generally S. REP. NO. 103-110, at 13-15 (1993) (discussing the increased use of permanent replacements since 1980).

traditional approaches once employed by striking unions proved ineffective or were cast aside. Picket lines were set up, but they were unsuccessful either at stemming the movement of goods or supplies, or at preventing entry by replacements and crossovers.³⁶ These picket lines also generated violence and bad press in the early weeks of the strike. Nonviolent civil disobedience was contemplated, but the local union executive board rejected this technique based on fear of legal liability.³⁷

Instead, Local 14 developed a combination of four distinct yet overlapping tactical approaches. One was to expand the pool concept to bargaining with International Paper by enlisting other Paperworkers' local unions in the strike when their agreements expired.³⁸ Strike leaders anticipated that if locals around the country would reject the company's concessionary proposals and join the pool, then over the ensuing six to twelve months the strike would do far greater damage to International Paper's national production. A second tactic was to engage in outreach to the media and the larger community in an effort to present forcefully and responsibly the union's case against International Paper. By organizing a food bank that involved local businesses, conducting frequent local rallies and marches, taking strong stands against violence whenever tensions seemed about to explode, and seeking out the media to communicate its positions, the union attempted over a period of months to broaden interest among and win support from the general public.

A third tactical decision was to initiate a corporate campaign against International Paper. "Corporate campaign" has become a broadly defined term of art within the organized labor movement. Such campaigns involve a union's application of various pressure tactics, such as consumer actions, sophisticated public relations techniques, or lobbying a firm's creditors or lenders, that are directed at business priorities or decisions outside the labor relations arena.³⁹ By applying such pressure against a firm's executives and top policymakers, the union hopes to produce a

36. See GETMAN, *supra* note 5, at 51, 53.

37. See *id.* at 67-68.

38. See *id.* at 55.

39. See generally INDUSTRIAL UNION DEP'T, AFL-CIO, DEVELOPING NEW TACTICS: WINNING WITH COORDINATED CORPORATE CAMPAIGNS 4-10 (1985) [hereinafter DEVELOPING NEW TACTICS] (listing as suitable campaign tactics: (1) building coalitions with other groups; (2) public relations activities designed to raise community awareness of company positions; (3) legislative initiatives; (4) appeals to regulatory agencies; (5) litigation; (6) consumer actions; (7) pressuring creditors and lenders; (8) withdrawals of, or threats to withdraw, pension fund assets; (9) shareholder actions; and (10) in-plant actions).

conciliatory response regarding firm practices that affect the organizing or bargaining objectives of the union.⁴⁰

At Local 14's instigation, the International hired Ray Rogers, an outside consultant with a national reputation, to spearhead the campaign. A key goal was to disrupt International Paper's connections to corporations with which it shared board members.⁴¹ Through letter-writing campaigns and large, spirited demonstrations and rallies across New England, workers sought to force International Paper directors off the corporate boards of Bank of Boston, Coca-Cola, and Avon Products, among others. They also called for a boycott of these companies in an effort to pressure or embarrass them into cutting off their relationship with International Paper.⁴²

Finally, and partly in conjunction with the corporate campaign, the union and workers mounted a major environmental effort against International Paper's waste disposal practices.⁴³ The Company's environmental performance had never been terribly good, but in the past, the union and state and local officials had looked the other way. The leaks, spills, and dumping were seen as part of International Paper's cost of doing business. Now, though, the strikers pressured federal OSHA and state environmental officials for more rigorous enforcement;⁴⁴ they persuaded local officials to pass a restrictive licensing ordinance;⁴⁵ and they attracted national figures like Ralph Nader to criticize International Paper's disregard for the environment.⁴⁶

Over a period of sixteen months there were occasions when one or more of these tactics yielded tangible results. The workers gradually won considerable support from the local community and the Maine media, no small accomplishment given that initial press coverage had focused heavily on worker violence.⁴⁷ The corporate campaign led to participation and endorsement from state and national political leaders.⁴⁸ And the environmental campaign, aided by a fortuitously timed major gas leak into the atmosphere, was particularly effective at putting International

40. See, e.g., CHARLES C. HECKSCHER, *THE NEW UNIONISM* 171-72 (1988); THOMAS A. KOCHAN ET AL., *THE TRANSFORMATION OF AMERICAN INDUSTRIAL RELATIONS 195-97* (1986); Paul Jarley & Cheryl L. Maranto, *Union' Corporate Campaigns: An Assessment*, 43 *INDUS. & LAB. REL. REV.* 505, 506 (1990).

41. See GETMAN, *supra* note 5, at 123.

42. See *id.* at 130.

43. See *id.* at 80-81.

44. See *id.* at 80.

45. See *id.* at 98.

46. See *id.* at 144.

47. See *id.* at 67.

48. See *id.* at 90.

Paper on the defensive and bringing company leadership back to the bargaining table.⁴⁹

In the end, however, Local 14 failed in its principal objectives: regaining jobs for its members and resisting International Paper's concessionary demands. The International Union and its national membership did not consistently reinforce each foray proposed by Local 14. Workers at other plants, especially plants that had been rumored to be in economic trouble, never came to view the strike as their fight, and were not keen to jeopardize their jobs by joining the proposed new pool.⁵⁰ The International Union leadership, while generally supportive of the strikers, was less aggressive and innovative in drawing up battle plans. The leadership worried about members in other locals, and also about International Union representatives outside Maine who over a period of months wanted fewer resources devoted to the International Paper battle. In addition, International Union leaders had seen other unions in recent years decimated by failed strikes against major corporations. From this broader and more fearful perspective, the International's strategic instincts were to try and minimize losses rather than to wage all-out economic warfare.

The company was clever at exposing and exploiting tensions between the militant Local and the more cautious International. Perhaps the crucial example of this occurred in late March 1988, nine months into the strike.⁵¹ Responding to longstanding union interest in getting back to the table, International Paper officials offered to reopen national negotiations if the union would call off the corporate/environmental campaign. The International promptly accepted the offer and canceled the campaign; after two weeks of frustrating and unsuccessful talks, it was then difficult to regenerate the momentum that had been driving the local union effort.

The state of the law was also a major weapon in International Paper's hands. The company's negotiating position during those key two weeks in March 1988 was to offer every striker reinstatement within International Paper over the ensuing twelve months as well as retraining, job counseling, and special retirement incentives, but *not* to let them return to their actual jobs in Jay.⁵² By deciding that the permanent replacement workers should remain *permanently* ensconced, thereby requiring strikers to leave their own community and the fellowship of their comrades in order to regain economic security, International Paper

49. See *id.* at 144.

50. See *id.* at 55-58.

51. See *id.* at 144.

52. See *id.* at 150-51.

proposed a solution that was overwhelmingly rejected as punitive and manipulative.

When the strike ultimately was called off in October 1988, the NLRA effectively forced Local 14 to live through two gut-wrenching experiences which constitute the story's denouement. First, the local union leadership agreed to end the strike by sending a telegram to International Paper rather than taking a vote among its members.⁵³ This decision gave strikers immediate access to any mill vacancies existing at the time: the "right of access" is one of the morsels of the permanent replacement doctrine that distinguishes "replacement" from "discharge."⁵⁴ But in reaching for this morsel, Local 14 leaders had to acknowledge their concurrent fear that if a public meeting had been convened to vote on ending the strike, some strikers would have crossed over before the vote in order to be rehired. After sending the telegram, the Local leaders held a bitter meeting with their own dispirited and angry supporters, to explain why they had trusted the membership to vote for the strike and to man the front lines in the sixteen month battle, yet would not give them a chance to vote on ending the strike, out of fear that too many members would "cut and run."⁵⁵

The second law-induced cruelty suffered by strikers was the election to decertify the union. Once some of the replacements filed a petition to have the union decertified, former strikers confronted the choice of whether to soften their hatred of "scabs" in order to try to retain the union as exclusive representative inside the plant.⁵⁶ If the union were removed, access to future vacancies would effectively become a matter of company discretion. The long-term interest of the ex-strikers was thus to extend olive branches to the men and women who had previously been targeted by Local 14, in an effort to persuade these newcomers that the union was now its ally. The effort failed miserably: the ex-strikers lacked stomach to put up a convincing case, and even with more than 300 ex-strikers having been rehired by the time of the 1992 election, the union was decertified by a vote of 660 to 380. Two subsequent elections to reintroduce the union have failed as well, though the margin of defeat is down to 100 votes.⁵⁷

53. See *id.* at 175-76.

54. See *Laidlaw Corp.*, 171 N.L.R.B. 1366 (1968), discussed *supra* at note 21 and accompanying text.

55. See GETMAN, *supra* note 5, at 181-83.

56. See *id.* at 192-200.

57. See *id.* at 200.

II. HARD QUESTIONS

The first of the two issues identified earlier was the impossibility of “winning” a strike today, at least when, as is often the case, the employer hires or threatens to hire permanent replacements. Historically, the economic strike has been the foundation for trade unionism in this country. Collective withholding of labor is meant to impose “moral intimidation”⁵⁸ on customers and economic hardship on the employer’s business. The threat of a strike is often the primary force driving both parties to the bargaining table to settle their differences. Over 125 years the law evolved from treating strikes as criminal conspiracies,⁵⁹ illegal restraints on interstate commerce,⁶⁰ and enjoined torts,⁶¹ to according them qualified protected status under the NLRA.⁶² But as the lacuna of permanent replacements has expanded in recent decades, certain internal contradictions of the contemporary strike have come into focus.

The permanent replacement of strikers ups the ante on both sides. Instead of the comparable risks that used to exist, such as temporary lost wages and temporarily reduced profits, management now inflicts an enduring and transformative economic harm on the company’s own workforce. The predictable response of affected strikers is to pursue a broader, deeper offensive against the company: to attempt to inflict serious economic injury on management’s business operations beyond the strike site. This natural escalation by local striking workers threatens the leadership of the international union, both in its short-term tactics and its long-term vision. In the short term, workers at the firm’s other operations are not comparably alienated from the company and are not ready to take comparable risks. Efforts to bring the company to its

58. Cf. *Vegeahn v. Guntner*, 44 N.E. 1077, 1077 (Mass. 1896) (describing how worker patrols impose a “moral intimidation” on others seeking to continue as employees).

59. See, e.g., *Commonwealth v. Pullis* (Phila. Mayor’s Ct. 1806), in 3 A DOCUMENTARY HISTORY OF AMERICAN INDUSTRIAL SOCIETY 59, 66, 236 (John R. Commons et al. eds., 1910) (reporting indictment and jurors’ verdict, finding that strike by shoemakers in Philadelphia was a common law criminal conspiracy); *People v. Melvin*, 2 Wheeler Crim. Cas. 262, 281-82 (N.Y. Gen. Sess. 1810) (reporting conviction of striking journeymen shoemakers in New York).

60. See *Loewe v. Lawlor*, 208 U.S. 274 (1908) (holding that striking hatters could be sued for damages under Sherman Antitrust Act).

61. See *Duplex Printing Press Co. v. Deering*, 254 U.S. 443 (1921) (holding that strike by machinists could be enjoined). See generally FELIX FRANKFURTER & NATHAN GREENE, *THE LABOR INJUNCTION* 17-24, 33-35 (1930) (describing widespread use of injunctions in strike setting during late nineteenth and early twentieth centuries).

62. See 29 U.S.C. § 163 (1994) (providing that nothing in the Act shall interfere with or impede or diminish the right to strike or affect the limitations or qualifications on that right).

economic knees do not sit well with workers who still have something left to lose. One ironic piece of evidence from this story is that the corporate campaign run by Local 14 called for a boycott of companies sharing a director with International Paper, but *not* a boycott of International Paper itself.⁶³ The international union leadership viewed a “boycott International Paper strategy” as unacceptably injurious to its own members.

In the longer term, an industrial union like the Paperworkers views itself as a fighting force that must wage many battles with different companies over an extended period of time amidst dynamic changes in world market conditions. While an occasional scorched earth campaign may help bring other companies to the table,⁶⁴ an extended commitment to such tactics against vastly superior resources is likely to be an exercise in self-immolation. Wayne Glenn, the International Union president and the weak-kneed villain from Getman’s perspective, refers to his philosophy as one of “restrained battle.”⁶⁵ Getman expresses mild contempt for this top-down exercise of restraint,⁶⁶ but he does not really acknowledge the severely pinched realities facing a national union in today’s global market setting.

I am not suggesting the International is immune from criticism for its judgment calls. Getman is most persuasive when he contends that international union leaders have overvalued professionalism: they want their trained staff to handle too many matters and they do not understand or accept the importance of greater rank-and-file visibility and involvement in the various campaigns.⁶⁷ But I was unconvinced by his suggestion that the strikers had a decent chance to win at the table if the International had followed the Local’s innovative instincts and supported a simultaneous full-court press on all four fronts.⁶⁸ Instead, his description of the struggle against a powerful corporation and a hostile legal environment left me with the belief that the problem is close to intractable, and that a solution does not depend on whether the workers adopt more participatory leadership techniques and philosophies.

In this regard, it is useful to view the strike experience at International Paper in a broader social context. The 1980s witnessed a

63. See GETMAN, *supra* note 5, at 130-31.

64. See *id.* at 207-08.

65. See *id.* at 208.

66. See *id.* at 157, 208, 221-23.

67. See *id.* at 223.

68. See *id.* at 157-58. As noted earlier, these four fronts involved expanding the pool concept of bargaining to other International Paper locals, engaging in outreach to the media and larger community, initiating a corporate campaign, and pressuring agencies to take environmental action against the company.

substantial departure from the industry-wide or “pattern” bargaining approach that had characterized major unionized industries since shortly after World War II.⁶⁹ Firms faced with rising costs and stiff global competition expressed an individualized need for both wage concessions and flexible job classifications, and a consequent unwillingness to negotiate agreements that applied uniformly to most or all firms in an industry,⁷⁰ or even most or all facilities within a firm.⁷¹

As bargaining structures became more decentralized, there were increased opportunities for tension and disagreement on bargaining priorities between the leadership of an international union and its constitutive local union members. Substantively, international leadership’s interest in maintaining solidarity—even if that meant agreeing to concessions—often clashed with the democratic priorities of local unions seeking to resist or minimize changes in the economic status quo.⁷² Tactically, local unions that struck often simultaneously

69. See, e.g., Audrey Freedman & William E. Fulmer, *Last Rites for Pattern Bargaining*, 60 HARV. BUS. REV. 30 (1982); Daniel G. Gallagher & Cynthia L. Gramm, *Collective Bargaining and Strike Activity*, in THE HUMAN RESOURCE MANAGEMENT HANDBOOK, PART II 65, 66-67 (David Lewin et al. eds., 1997).

70. See, e.g., ROSENBLUM, *supra* note 4 at 105-07, 218-19 (describing the breakdown of pattern bargaining in copper industry); Freedman & Fulmer, *supra* note 69, at 40 (describing the breakdown of pattern bargaining in auto and rubber industries); Harry C. Katz, *The Decentralization of Collective Bargaining: A Literature Review and Comparative Analysis*, 47 INDUS. & LAB. REL. REV. 3, 11 (1993) (reporting abandonment of pattern bargaining in steel industry).

71. See, e.g., Gallagher & Gramm, *supra* note 69, at 67 (discussing decentralization from firm-wide to less than firm-wide bargaining structures); Katz, *supra* note 70, at 11 (describing shifts to plant level bargaining and away from firm-wide agreements in auto, tire, and airline industries).

72. Commentators have described international unions’ willingness to bend or adjust during the 1980s with varying degrees of sympathy. Compare, e.g., HAGE & KLAUDA, *supra* note 4, at 383 (contending that Local P-9 at Hormel wanted to preserve pattern bargaining based on Hormel as a high-wage packing company while UFCW leaders saw need to focus on low-wage companies in their industry) and *id.* at 388-89 (contrasting unions’ frequent willingness to adapt to sobering economic realities in 1980s with rigid resistance to change by Local P-9 at Hormel), with PETER RACHLEFF, *HARD-PRESSED IN THE HEARTLAND: THE HORMEL STRIKE AND THE FUTURE OF THE LABOR MOVEMENT* 107-08 (1993) (criticizing international union leadership for failure to replace traditional “business unionism” with a more participatory and aggressive model after collapse of pattern bargaining in 1980s). Of course, such tension between union leaders and members over economic issues is hardly unprecedented. See generally JEREMY BRECHER, *STRIKE!* 279-80 (1972) (predicting that in a deteriorating economy, union leaders may feel obliged to accept concessions and work adjustments, rank-and-file members may resist such adjustments, and prolonged strikes may help ease intra-union pressures); Gallagher & Gramm, *supra* note 69, at 70-71 (reviewing “faulty information” analyses of strike behavior that portray strikes as a tool used by union leaders in intra-organizational bargaining with their members). But employers’ newfound willingness to

promoted innovative and participatory involvement in a corporate campaign, while international leaders displayed caution or even skepticism regarding such efforts to broaden and deepen particularized industrial disputes.⁷³ At Phelps-Dodge, international union leadership resisted local union requests for a corporate campaign and the union lost the strike.⁷⁴ At Hormel, the local union initiated and waged a corporate campaign despite opposition from the international leadership, and the results were disastrous.⁷⁵ By comparison, local and international union leaders waged the corporate campaign at International Paper with relative equanimity, notwithstanding Getman's portrayal of the uneasiness in their alliance. The outcome, however, was no more successful than what had been achieved by copper miners in Arizona or meatpackers in Minnesota. An empirical study of corporate campaigns in the 1980s indicates that campaigns launched as a strike complement have regularly yielded disappointing results, and indeed have fared worse than campaigns initiated as strike substitutes or as part of an organizing drive.⁷⁶ The study's authors suggest that the crisis atmosphere accompanying strike complement campaigns may impose undue constraints on a union's ability to plan effectively for such an effort.⁷⁷

The demise of union solidarity is, of course, not simply a function of divisive internal union politics. As bargaining has become increasingly fragmented, employers have become more willing to whipsaw the union during the bargaining process, and to rely on permanent replacements when workers strike in opposition to demands for firm-specific or plant-specific variation in their terms and conditions of employment.⁷⁸ During

hire permanent replacements means that such tension is far more likely to have fatal consequences in terms of workers' job security.

73. See Jarley & Maranto, *supra* note 40, at 517 (discussing how aggressive local union officials have relied on independent labor consulting groups to initiate corporate campaigns despite national union policy discouraging such action).

74. See ROSENBLUM, *supra* note 4 at 166-69 (describing how Steelworkers' International Union leadership rejected proposed corporate campaign during Phelps-Dodge strike).

75. See HAGE & KLAUDA, *supra* note 4, at 99-103, 333-46, 368-69 (describing Local P-9's action to initiate campaign in face of suspicion and resistance from UFCW leadership, and subsequent action by UFCW placing the Local in trusteeship and negotiating a contract that did not meet the campaign's goals).

76. See Jarley & Maranto, *supra* note 40, at 505, 511-12, 519 (examining results associated with 28 corporate campaigns, and finding that organizing-related campaigns were more likely to yield gains for the union than bargaining-related campaigns, and that strike complement campaigns resulted in the largest number of complete failures).

77. See *id.* at 519.

78. See, e.g., HAGE & KLAUDA, *supra* note 4 at 380-81 (discussing Hormel's success at whipsawing Local P-9 with aid of replacement workers); Gallagher & Gramm, *supra* note 69, at 67 (discussing employer efforts to whipsaw unions during bargaining

the 1980s and early 1990s, employers successfully resorted to the use of permanent replacements in numerous high-profile strikes.⁷⁹ An important byproduct of this permanent replacement strategy has been a precipitous fall in the frequency of strikes by organized labor. Major strikes in the 1990s have declined by almost seventy percent when compared with the early 1980s, and by nearly ninety percent when compared with the 1970s.⁸⁰ Taken together, decentralization of the bargaining process and employers' willingness to brandish the permanent replacement weapon seem to have rendered the economic strike anomalous and inconsequential as a tactic for improving working conditions.

Unions and their allies have strenuously maintained that the law must be changed, that Congress should override *Mackay Radio* and restore a level playing field. Over a four year period in the early 1990s, a clear

process). In addition to employers' development of more aggressive bargaining and strike-response strategies, larger factors have contributed to the steady decline in union density over the past four decades. See Samuel Estreicher, *Labor Law Reform in a World of Competitive Product Markets*, 69 CHI.-KENT L. REV. 3 (1993) (discussing role played by the rise of competitive global markets); James J. Brudney, *Reflections on Group Action and the Law of the Workplace*, 74 TEX. L. REV. 1563 (1996) (discussing role played by emergence of an individual rights-based legal culture); Sharon Rabin Margalioth, *The Significance of Worker Attitudes: Individualism as a Cause for Labor's Decline*, 16 HOFSTRA LAB. & EMP. L.J. 133 (1998) (discussing role played by a shift in societal values and attitudes from utilitarian to expressive individualism).

79. Apart from the strike at International Paper, strikes that drew national attention and involved employer reliance on permanent replacements included Greyhound in 1983 (6000 workers replaced); Continental Airlines in 1985 (8000 workers replaced); Eastern Airlines in 1989 (7000 workers replaced); The *New York Daily News* in 1991 (800 permanent replacements hired); and Bridgestone Tire Co. in 1994 (2300 permanent replacements hired). See S. REP. NO. 103-110, at 11-13 (1993) (reporting replacement worker data for Greyhound, Continental, and Eastern); David E. Pitt, *News Strikers Ease Stance on a Big Issue*, N.Y. TIMES, Jan. 16, 1991, at B1 (reporting replacement worker figures for *Daily News*); Greenhouse, *supra* note 4 (reporting replacement worker figures for Bridgestone); see also Cindy Richards, *Cat Invites All UAW Strikers Back to Work*, CHI. SUN-TIMES, Apr. 17, 1992, at 45 (reviewing how Caterpillar Inc. stunned the UAW by announcing that it would hire permanent replacements if strikers did not return to work within five days, and how the union called off the strike in response to this threat).

80. See Fehmida Sleemi, *1997 Work Stoppages*, COMPENSATION AND WORKING CONDITIONS, Summer 1998, at 50 (reporting annual major work stoppage data, indicating that strikes involving 1000 workers or more declined from 289 per year during 1970s to 114 per year in 1980-1984, 52 per year in 1985-1989, and 37 per year in 1990-1997); Peter Cramton & Joseph Tracy, *The Use of Replacement Workers in Union Contract Negotiations: The U.S. Experience, 1980-1989*, 16 J. LAB. ECON. 667, 667 (1998) (reporting Bureau of Labor Statistics evidence that overall strike activity declined by more than 50% from the 1970s to the 1980s); *id.* at 699 (concluding that increases in the risk of worker replacement significantly reduces likelihood that union will engage in strike or threaten to strike).

majority in both Houses of Congress subscribed to precisely that position. But majority support for NLRA reform fell victim to the *supermajority* demands imposed under modern Senate practice. In 1991-1992 and again in 1993-1994, the House by substantial vote margins passed a bill overriding *Mackay* and banning the permanent replacement of economic strikers.⁸¹ On each occasion, a Senate majority fell several votes short of the sixty needed to invoke cloture.⁸² In an era of crowded legislative calendars and limited supplies of political capital, the *Mackay* issue may not be seriously revisited for many years to come. Future prospects are especially daunting given the enhanced power that can be wielded by a minority of pro-business Senators. Since the early 1970s, when the Senate leadership adopted its two-track system for handling debate, it has been easier to mount a filibuster because other floor business can move forward while cloture proceedings are pursued simultaneously on a separate track.⁸³ Unless the Senate returns to its prior practice of forcing filibustering members to occupy the floor and block all other business, an unlikely scenario to most congressional observers, there seems to be little realistic chance for a legislative solution.

Alternatively, unions may need to develop a more effective pre-strike strategy. If the workers at Jay had foreseen the "divide and conquer" approach of International Paper, they might have embraced the idea of a multi-plant bargaining pool at an earlier period. Then they would not have been asking workers in Ohio and Arkansas for commitments they themselves had been unwilling to make before their conflict with International Paper arose.⁸⁴ More broadly, if workers in an industry like

81. See 137 CONG. REC. 18,655 (1991) (recording House approval of bill to ban permanent replacements by a vote of 247 to 182); 139 CONG. REC. 12,866 (1993) (recording House approval of bill to ban permanent replacements by 239-190).

82. See 138 CONG. REC. 14,875 (1992) (Senate cloture vote fails 57-42); 140 CONG. REC. S8844 (daily ed. July 13, 1994) (Senate cloture vote fails 53-46); 140 CONG. REC. S8524 (daily ed. July 12, 1994) (Senate cloture vote fails 53-47).

83. See SARAH A. BINDER & STEVEN S. SMITH, POLITICS OR PRINCIPLE?: FILIBUSTERING IN THE UNITED STATES SENATE 13-16 (1997) (discussing changed Senate rules as an important factor contributing to expanded use of filibuster); Catherine Fisk & Erwin Chemerinsky, *The Filibuster*, 49 STAN. L. REV. 181, 201-05 (1997) (explaining rise of the "stealth" filibuster; contending that a major cause was Senate leadership's decision to allow other floor business to move forward while cloture proceedings are separately pursued; and reporting that number of cloture votes has increased steadily in each decade since 1960s as Senators filibuster on a broad range of domestic and foreign policy issues).

84. Industrial unions have at times sought to coordinate the bargaining occurring in different units in order to restore some of the economic leverage that they have lost through decentralized bargaining. For instance, when several plant-wide bargaining units propose that their contracts should all expire on the same date, they are reestablishing the possibility of a simultaneous strike. See *United States Pipe & Foundry Co. v. NLRB*, 298

paper manufacturing understand that in order to protect and improve their terms and conditions of employment they must become more aggressive and sophisticated about building alliances with others, criticizing management operations, and reaching out to the media, then solidarity might be easier to achieve. It is, however, a real challenge to secure such commitments from workers at the front end through rational persuasion. In our nonparticipatory television age, when "bowling alone"⁸⁵ is a metaphor for the withering of communitarian habits of thought, workers will not readily put their jobs and family security on the line. There is even less reason to believe that workers are prepared to take such risks in the absence of an immediate or imminent economic crisis.

And yet, the most compelling aspect of this book is the portrayal of a spirit and energy that emerges from the workers themselves. Through the words of individual men and women, Getman shows us that empowerment really does occur in this setting. The Wednesday night meetings at the union hall began as information sharing sessions but came to feature songs and poetry readings by workers as well as inspirational appearances by outsiders ranging from Amy Carter to Jesse Jackson.⁸⁶ These weekly meetings had a bonding and emotionally intensifying effect for workers and members of the larger community. A semi-formal "body

F.2d 873, 877-78 (5th Cir. 1962) (holding that union's proposal for common expiration date was a mandatory subject of bargaining, and it was lawful for the union to press the proposal to impasse.).

Such coordinated bargaining tactics have their pitfalls. As a legal matter, the Board or courts may characterize them as efforts to achieve multi-unit bargaining, which amounts to an unlawful insistence on expanding the scope of each bargaining unit. See *Douds v. International Longshoremen's Ass'n*, 241 F.2d 278, 283 (2d Cir. 1957) (holding that scope of bargaining unit is not a mandatory subject, hence it is unlawful for union to insist on expanding unit to include other locations); *Utility Workers Local 111*, 203 N.L.R.B. 230, 240 (1973), *aff'd*, 490 F.2d 1383 (6th Cir. 1974) (concluding that unions' withholding agreements for each bargaining unit until identical terms were offered to all other units was unlawful bad faith bargaining). For thoughtful discussion of the tension between coordinated bargaining and multi-unit bargaining, see Alexander Colvin, *Rethinking Bargaining Unit Determination: Labor Law and the Structure of Representation in a Changing Workplace*, 15 HOFSTRA LAB. & EMP. L.J. 419 (1998); Milton C. Regan, Jr., Note, *Multi-Unit Collective Bargaining: Autonomy and Dependence in Liberal Thought*, 72 GEO. L.J. 1369 (1984). Moreover, as a practical matter, employers may respond to coordinated bargaining approaches with differential strategies of their own that will have divisive effects on worker unity. As Getman explains, International Paper responded to labor unrest in this instance by locking out workers at one plant while hiring permanent replacements at three others. See GETMAN, *supra* note 5, at 24, 41.

85. Robert D. Putnam, *Bowling Alone: America's Declining Social Capital*, 6 J. DEMOCRACY 65, 68-75 (1995) (discussing decline of participatory civic and social organizations in United States).

86. See GETMAN, *supra* note 5, at 90-96.

count⁸⁷ revealed that during the strike more than 800 members of Local 14—almost everyone who remained out of work⁸⁸—were actively involved *doing something*. Rank-and-file members helped run the food bank, counseled workers with family problems, spoke about the strike at public meetings around New England, walked the picket line, raised money, wrote letters to corporations and government officials, and investigated environmental issues. In addition to displaying individual strengths and sharing newly discovered talents with one another, the workers developed a perspective on their battle with International Paper as part of a larger struggle for economic justice involving workers and activists nationwide.⁸⁹

The following descriptions of two workers are illustrative and typical. Roland Samson had worked twenty years in the mill and had never been active in the union. He became an articulate spokesman in the union's outreach program, spreading the strikers' message across the state. His wife found him to be:

[A] happier, less tense, calmer, more relaxed person than he had been before the strike. Roland was always a background person, but during the strike his whole personality changed. He learned to enjoy people, that he didn't have to be afraid of them, that they wouldn't bite his head off if he spoke to them. I used to ask, how was your day. He would just growl. But the strike gave us a lot to talk about. We really shared our lives And even though financially things were tight, it wasn't important.⁹⁰

Roland himself came belatedly to recognize he was a different person:

My kids told me I had changed and my wife told me I had changed. And I didn't believe them until I started looking at myself a little closer, and I had changed. I wasn't temperamental anymore. I calmed down and became more sensible, and that kind of stunned me.⁹¹

Louise Parker came from a family of International Paper employees who had long been unsympathetic to the union. She began chairing the food

87. *See id.* at 93.

88. Of the 1200 original strikers, some 300 opted for retirement, *see id.* at 93; thus, some 90% of those remaining on strike were actively engaged.

89. *See id.* at 90, 123.

90. *Id.* at 114.

91. *Id.*

bank committee, and in that capacity she organized a large and successful operation involving both distributors and wholesalers. She also built upon her country music background to develop a repertoire of union songs that she performed at meetings, rallies, and marches.⁹²

One could regard the book's series of worker self-portraits as a romantic post-hoc offset for the losses they have suffered. I do not think that is accurate. The workers' own perceptions, and those of family and community members, are too pervasive and articulate to be dismissed as after-the-fact rationalizations. One could also see this as a kind of false consciousness, workers riding the rhetorical wave of the "great struggle" without understanding its dire consequences or even its hopelessness. Again I think not. As Getman observes, some workers and most Local 14 leaders, even at the height of their power, had few illusions about the strength of the opposition or the length of the odds against them.⁹³ Yet ten years later, amidst understandably profound feelings of bitterness and loss, former Local 14 members were still fighting to get the union back into the plant and many others retained a powerful sense of how relationships had been transformed and new identities established.⁹⁴

Would it have been possible to foster this kind of individual empowerment and collective strength among International Paper workers without a strike? I am not at all sure it would. In legal terms, it is possible for a union to let a collective bargaining agreement expire, refuse to accede to management's concessionary demands, and continue to work without a contract while initiating at least some of the tactical approaches developed by the Jay strikers.⁹⁵ But Getman points out that under the law, International Paper could have unilaterally implemented its proposal, imposing lost holidays, job classification changes, and the elimination of some 300 jobs through subcontracting.⁹⁶ Those lawful moves would

92. See *id.* at 78-79.

93. See *id.* at 124.

94. See *id.* at 200, 213-14.

95. See *NLRB v. Insurance Agents Int'l Union*, 361 U.S. 477, 494-95 (1960) (holding that union that implements economic pressure tactics against employer does not per se violate duty to bargain in good faith even if the pressure tactics are themselves unprotected activity); see also Cranton & Tracy, *supra* note 80, at 669-71 (discussing unions' increased willingness to have workers remain on the job after contract expires, often combined with in-plant strategies such as work-to-rule or slowdown).

96. See GETMAN, *supra* note 5, at 39. Once a bargaining impasse is reached, an employer may unilaterally implement changes in working conditions consistent with the offers it made during negotiations. See *NLRB v. Katz*, 369 U.S. 736, 745 n.12 (1962); *Atlas Tack Corp.*, 226 N.L.R.B. 222, 227 (1976), *enforced*, 559 F.2d 1201 (1st Cir. 1977). While unilateral implementation would not be permitted if the employer's bargaining proposals had been so extreme as to constitute bad faith, courts of appeals and the Board have been reluctant to pass critical judgment on an employer's tough bargaining

likely anger members enough to force a strike. Moreover, and this I take as Getman's implicit message, workers do not generate the psychic energy, they will not risk the human investment that occurred in Jay, unless they have first opened the door to such a commitment by putting their economic status on the line.

Part of what has made the strike such a powerful force in labor relations is this synergy between economic sacrifice and psychological reformation. Although strikes are initiated to pursue certain expressed economic objectives, the continuation of a strike may well involve a series of transformative events in which workers who have challenged existing managerial authority reaffirm or develop bonds of mutual support and solidarity, and in the process change their individual identities.⁹⁷ Industrial and social psychologists agree that strikes often fulfill this function as a psychological crucible, although they have only begun to understand the dynamics of how group members alter their priorities and mental outlook during the crisis period.⁹⁸

Unions too have long recognized that strikes serve important solidarity and loyalty-reinforcing functions quite apart from their success or failure in economic terms.⁹⁹ Indeed, the revitalization of individual

demands. *See, e.g.*, Cincinnati Newspaper Guild, Local 9 v. NLRB, 938 F.2d 284, 288, 290 (D.C. Cir. 1991) (observing "the courts have held that the Act precludes almost any argument that a particular bargaining position constitutes an unfair labor practice per se," and holding that employer's bargaining demands were lawful where they "did not propose to strip the union of its collective bargaining function"); Reichhold Chems., Inc., 288 N.L.R.B., 69, 71 (1988), *rev'd in part on other grounds sub nom.* Teamsters Local 515 v. NLRB, 906 F.2d 719 (D.C. Cir. 1990), *cert. denied*, 498 U.S. 1053 (1991) (holding that employer acts lawfully so long as its bargaining demands do not go so far as to deprive the union of any "voice whatsoever concerning any facet of the employment relationship," thereby leaving "the union and employees with substantially fewer rights and protection than they would have had if they had never gone to the bargaining table").

97. *See generally* BRECHER, *supra* note 72, at 233-63.

98. *See, e.g.*, JEAN HARTLEY ET AL., STEEL STRIKE: A CASE STUDY IN INDUSTRIAL RELATIONS (1983) (reporting that participative decisionmaking during a strike by 10,000 British steelworkers was able to subdue internal opposition, and that the volunteer strikers' organization was characterized by strong group identity, solidarity, and mutual trust notwithstanding substantial disagreements as to strategy); Ross Stagner & Boaz Efilal, *Internal Union Dynamics During a Strike: A Quasi-Experimental Study*, 67 J. APPLIED PSYCHOL. 37, 37-44 (1982) (finding that workers on strike report more willingness to participate in union activities, assess the union and its leadership more favorably, and evaluate the benefit package more highly after the strike). *See generally* Stephen Bluen, *The Psychology of Strikes*, 9 INT'L REV. INDUS. & ORG. PSYCHOL. 113, 128-32 (1994) (reviewing literature on the psychological processes that develop during course of strikes, and concluding that while these processes exist they are not well understood).

99. *See, e.g.*, Norman Pearlstine, *Rallying the Ranks: UAW Uses GM Strike to 'Educate' Workers, Pull Together Factions*, WALL ST. J., Oct. 29, 1970, at 1, 23

commitments and mutual trust may leave workers feeling positive about union participation even when a strike has not advanced their material welfare.¹⁰⁰ It has become harder, however, for unions to invoke or rely on the psychological benefits accompanying a strike when the economic cost is not merely a failure to further workers' strike-related material objectives, but rather the annihilation of job security that occurs when strikers are permanently replaced or facilities closed.¹⁰¹ With slim chances for economic success and high downside risks, unions since 1980 have felt a new urgency to develop meaningful solidarity-affirming alternatives for workers involved in mature bargaining relationships.¹⁰²

The corporate campaign can be seen in part as a response to this challenge. In mobilizing workers on a number of different fronts, such a campaign provides diverse opportunities for participation and empowerment. At the same time, the campaign may educate workers regarding the role played by their corporate employer in the larger sociopolitical structure.¹⁰³

Ultimately, however, corporate campaigns like strikes have economic objectives; they are aimed at generating sufficient pressure so that the targeted employer will offer substantial labor relations changes if the union will discontinue its effort.¹⁰⁴ In this regard, unions appear to have achieved only modest successes using corporate campaigns as a

(reporting union leadership's belief that a long strike can "foster union loyalty and pull together various rank-and-file factions by uniting them against a common enemy" and by reinforcing links between current struggle and those of earlier decades). Long strikes may also ease intra-union pressures by reducing rank-and-file members' expectations over time until they become consistent with what the firm is able to pay and what union leaders are able to negotiate. See Orley Ashenfelter & George E. Johnson, *Bargaining Theory, Trade Unions, and Industrial Strike Activity*, 59 AM. ECON. REV. 35, 35-49 (1969); Pearlstine, *supra*.

100. See Gallagher & Gramm, *supra* note 69, at 82 (discussing why strike activity may be rational if it fulfills social motives or collective goals even if it does not further a worker's economic well-being).

101. In addition to hiring permanent replacements, companies facing economic difficulties may be more likely to close marginally efficient plants at which workers are on strike. See generally Freedman & Fulner, *supra* note 69, at 44. As Getman recognizes in the International Paper setting, employees at such marginal facilities are less willing to participate in militant collective activity that risks triggering a mass layoff or plant shutdown. See GETMAN, *supra* note 5, at 55-56.

102. Union organizing drives are another vehicle for developing bonds of solidarity and individual commitment; organizing campaigns, however, cannot serve these purposes for workers who are already unionized but are uninterested in collective participation.

103. See RACHLEFF, *supra* note 72, at 110 (discussing campaigns' educative function for workers); Jarley & Maranto, *supra* note 40, at 506-07 (discussing use of various nontraditional participatory tactics).

104. See DEVELOPING NEW TACTICS, *supra* note 39, at 1-3; Jarley & Maranto, *supra* note 40, at 508.

strike substitute, though empirical results after little more than a decade remain incomplete.¹⁰⁵ Further, corporate campaigns in the bargaining-related setting have not escaped the corrosive effects of intra-union conflict. Most bargaining-related campaigns stem from employer demands for concessions, and tensions between international leaders and local union members about whether or to what extent to accede to employer demands have spilled over into disagreements about the scope and intensity of the actual campaign.¹⁰⁶ Until such disagreements are minimized, it is difficult to envision how corporate campaigns can contribute significantly to the revitalization of solidarity among unionized workers.

Efforts by organized labor and rank-and-file workers to develop practical participatory alternatives to the strike bring us back to Professor Getman's tale. Accepting *arguendo* Getman's contention that the workers in Jay were genuinely empowered even as they experienced a devastating economic defeat, his narrative leaves us in search of a larger strategic framework. Can a series of strikes like the one at Jay educate and galvanize enough workers to make the labor movement a force—a threat to managerial elites as it was in the 1930s and 1940s? Can the kind of transformative events that occurred in Jay take place without utilizing a strike weapon that seems almost hopelessly self-destructive in immediate economic terms? Further, it is not sufficient for workers to be collectively animated for a brief period only to revert to a disengaged status.¹⁰⁷ With or without strikes as a triggering mechanism, can energies and talents such as those developed among the members of Local 14 remain intact over an extended period in the absence of a larger

105. The database compiled by Jarley & Maranto includes three disputes in which the parties reached a contract settlement within months after the union made its corporate campaign public, and two others in which a contract settlement was reached a year or more into the campaign. See Jarley & Maranto, *supra* note 40, at 510. As the authors point out, however, it is difficult to know whether the same or comparable results would have been achieved in the absence of the campaign. See *id.* at 510 n.8. The authors conclude that three of the five contract settlements were due primarily to events outside the scope of the campaigns. See *id.* at 512.

106. See *id.* at 517-18 (reporting that a number of bargaining-related campaigns were instigated principally by local unions and did not receive the full financial or moral support of national union leadership).

107. Some studies have indicated that the transformative impact of a strike may wear off after a relatively short time period. See HARTLEY ET AL., *supra* note 98, at 157-58 (reporting that workers had strong feelings of disappointment and/or pride shortly after strike ended, but that over longer term many workers simply wanted to forget that the strike had happened); Stagner & Eflal, *supra* note 98, at 43 (reporting that strikers' high assessment of leadership performance and benefits secured during strike disappears after seven months).

economic crisis that disrupts faith in our autonomy-celebrating and individual rights-based regime?

Getman does not attempt to answer these questions in his book. But apart from being a dramatic human story that is well told, his narrative forces us to confront some painful tensions within the modern labor movement. Because the book presents a tantalizing picture of the potential for a renewed and self-consciously empowered workers' movement, it leaves us with a sense that confronting these tensions is worth the candle.

