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Cynthia Estlund

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## BOOK REVIEW

### SOLIDARITY AND BETRAYAL IN THE NORTH WOODS:

### A REVIEW OF *STRIKE!* BY JULIUS GETMAN

*Cynthia Estlund*\*

A strike brings out the best and the worst in people—often the same people at the same time. A strike inspires individual sacrifice for the common good, and it often sparks transcendent moments of shared joy and community. Feelings of solidarity are the lifeblood of a union, and they are never so gloriously expressed as in the act of collectively walking off the job that brought the group together in the first place. People who had never before spoken in public or stood up for anything larger than their own day-to-day lives rise to the occasion, finding undiscovered talents and showing unexpected courage on behalf of their fellow workers. People who had never met the strikers—whose only connection is through the common work they do—will get on a bus and travel for hours to show their support. Non-singers may be inspired to sing together; non-siblings call each other “brother” and “sister” and mean it.

At the same time, a strike can provoke conflict, betrayal, hatred, and even violence among normally peaceable people. Indeed, the very same act—crossing a picket line to work during a strike—can be seen at once as selfishly betraying those with whom one has sworn to make common cause and undercutting their shared sacrifice, or as braving the contempt and hostility of others in order to bring home the wages, or the health insurance benefits, that sustain one’s family. And the person who crosses that picket line often sees his own actions from both perspectives

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\* Catherine A. Rein Professor of Law, New York University School of Law. The reader may wish to know that Professor Getman was my labor law teacher in the early 1980s and my colleague at the University of Texas for most of the 1990s.

at one time or another.

Inside the company, among managers and supervisors, other wrenching conflicts are often played out—though without the heightened pathos provided by the loss of income that strikers endure. Supervisors find themselves deeply at odds with friends, neighbors, and fellow parishioners whose jobs they may be helping to destroy. Local plant managers may find themselves driven to play their part in a corporate strategy that squanders and betrays feelings of amity and trust built up over decades. All of these intimate and local dramas are played out against the backdrop of wrenching social and economic change.

And that is to say nothing (yet) about the erotic electricity that sometimes crackles among the players in this production. It's a wonder that more fiction writers do not mine the rich dramatic possibilities that inhere in strikes and other labor conflicts. (Well, maybe not such a wonder, given the slump into which organized labor has fallen in recent decades; but more on that below.)

Julius Getman's novel, *Strike!*,<sup>1</sup> seizes upon the dramatic possibilities of labor strife with his story of striking Maine paperworkers for the fictional Consolidated Paper Co. in the fictional small mill town of North Bethany, Maine (well, maybe not entirely fictional; but more on that, too, below). Professor Getman, the Earl E. Sheffield Regents Professor at the University of Texas School of Law and one of the preeminent labor law scholars of our era, has brought labor conflict and the pathologies of labor law to life as no treatise or law review article could possibly do. He has also spun an engrossing tale that stands on its own in the too-small body of modern labor literature.

As the story begins, the local union president, Bill Samson, is facing the prospect of the first serious strike in his thirty years at the mill. Samson has just won a closely contested reelection campaign in which he was made out by the more militant challenger to be too cozy with the plant manager, Tom Gillian. Gillian is an “up-from-the-ranks executive with old-fashioned views of labor relations,” meaning that he believes the workers' loyalty, experience, and papermaking skills are indispensable to the company's success, and entitle them to a fair share of the rewards from that success.<sup>2</sup> Gillian is under pressure from new corporate management that is intent on making Consolidated Paper into a “leaner and meaner” operation, in part by demanding major concessions and reclaiming power from the unions. The new

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1. JULIUS GETMAN, *STRIKE!* (2006).

2. *Id.* at 12.

management, in the person of CEO George Watts, and Watts's academic guru, business professor Sheldon Eastman, are plotting to provoke a strike, to replace the workers, and eventually to decertify the union. Not only would this get the company out from under its bargaining obligations in North Bethany, but it would "scare the hell out of all the other unions."<sup>3</sup>

Even as Samson and the other paperworkers see the provocative bargaining proposals and the newly aggressive labor relations strategy coming down from corporate headquarters, they cannot help but believe that the old Consolidated Paper is waiting in the wings to reassert itself. As the strike deadline approaches, the workers are nearly unanimous in their confidence that the company cannot survive long without their combined millennia of papermaking experience, and will soon realize the folly of its confrontational battle plan. But they are in for a long and wrenching struggle, with euphoric highs, demoralizing lows, and plenty of twists and turns along the way. Reaching outward from North Bethany and backward into the history of organized labor and civil rights protest, the strikers find new resources and new sources of strength, even as Consolidated Paper proves more powerful and more determined to squash them than they had ever imagined.

As anyone familiar with his towering body of labor law scholarship knows; Getman is fundamentally supportive of organized labor and collective action, and critical of the law's tilt in favor of employers.<sup>4</sup> Not surprisingly, the reader spends most of her time experiencing the events through the eyes of the strikers and their supporters. And there are some pretty unsympathetic characters—some of them, like Watts and Eastman, downright despicable—on the other side. But the varied cast of characters includes managers, supervisors, picket-line crossers, and even imported strikebreakers whose humanity and struggles to do the right and decent thing are brought to life with great subtlety and empathy. And on the union side there are petty jealousies, selfish ambitions, violent outbursts, and plenty of finger-pointing, as well as solidarity, a commitment to non-violence, and affection among the strikers. This is not a simplistic parable of good and evil.

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3. *Id.* at 15.

4. For just a few examples, see JULIUS GETMAN, *THE BETRAYAL OF LOCAL 14: PAPERWORKERS, POLITICS, AND PERMANENT REPLACEMENTS* (1998) [hereinafter *THE BETRAYAL OF LOCAL 14*]; Julius Getman, *The National Labor Relations Act: What Went Wrong: Can We Fix It?*, 45 B.C. L. REV. 125 (2003); Julius Getman & F. Ray Marshall, *The Continuing Assault on the Right to Strike*, 79 TEX. L. REV. 703 (2001); Julius Getman, *The Human Costs of Permanent Strike Replacement*, 40 ST. LOUIS U. L.J. 51 (1996); and Julius Getman & F. Ray Marshall, *Industrial Relations in Transition: The Paper Industry Example*, 102 YALE L.J. 1803 (1993).

Early in the story, for example, the reader meets paperworker Jordan Marcon, a devout Christian who found his religion at the age of twenty-five in the course of falling in love with his wife-to-be Ann. Ann, with whom he now has three sons, is sick, and waiting for the results of diagnostic tests that may confirm that it is cancer.<sup>5</sup> But he is a loyal union member, and joins in the overwhelming vote to strike, even with the company's threat to replace the strikers hanging in the air, and without knowing what will happen to his health insurance. When things turn ominous on both fronts—the cancer is confirmed and the permanent replacements start arriving—the reader struggles along with Jordan to figure out what is right. Jordan draws God and his pastor into his own deliberations, but the redemption and loss that lie on both sides of the line—literally, the picket line—are painfully human and worldly. When Jordan crosses the line and reclaims his job, and explains his decision to a television reporter, he becomes a despised traitor among some of the strikers, who vow never to speak to him or anyone in his family. And then, they sing “Solidarity Forever.”<sup>6</sup>

For Jordan and the other workers whose lives oscillate around that picket line, the pressure to cross the line is vivid and immediate. It comes from the realistic fear of financial disaster and its consequences for their families—the loss of health insurance, of college tuition, of mortgage money and Christmas presents and car payments—that every reader and every observer of a strike can viscerally imagine. On the other side, the pressure to hold out against those fears and to stick with the strikers is tangible, audible, and personal. It is grounded in solidarity and deep-seated loyalties, but it boils over in emotional and bitter outbursts toward strikebreakers and picket line crossers—“scabs” and “superscabs” in the union's parlance—that the local papers reliably depict as union thuggishness. The dramatic confrontations between the strikers and those who cross the picket line play out on the street; they provide the compelling images that the press craves and that stick in the public's mind. We have all seen those pictures, and they are often not pretty. Without the kind of visceral sympathy for the union cause that is fading from the public mind in many quarters, it is often all too easy to blame the union for creating this tragic scene.

The company, for its part, gets to play out its role in these dramas largely behind closed doors—in private negotiating sessions and in closed-door management meetings. The company's public statements

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5. GETMAN, *supra* note 1, at 17-19.

6. *Id.* at 78.

are carefully drafted in advance, vetted by public relations experts, and delivered in calm and reasonable tones by well-groomed and well-fed men (usually) in impeccable suits. Those statements depict the company as being at the mercy of invisible and impersonal forces of global competition, and as fighting to keep the plant viable in the face of unreasonable union demands—claims that are hard to answer without a close examination of accounting records that the company does not have to reveal. And even record profits and unprecedented executive salaries and bonuses cannot compete for airtime with picket line profanity and frustration. When the cameras are rolling at the picket line as a shift begins, the company and its security guards are seen protecting the safety of workers who are simply trying to do their jobs from an angry and unruly mob. Even the strikers themselves find that their most visceral anger is often aimed not at the company but at their co-workers who cross the line out of economic desperation.

Yet in North Bethany, as in many strikes, it is the company that has brought about this tragic confrontation, and that has betrayed the workers and their decades of loyalty and hard work. In order to win the public support and sympathy that is indispensable to their success, the strikers (here and in many strikes) find it necessary—though unfortunate for future labor relations—for the union to demonize the company and its officials. Sometimes it is possible to do that by capitalizing on the very impersonality of the corporate adversary—by contrasting the company’s facelessness with the human stories of the strikers. But neither demonization nor dehumanization is a winning strategy for the novelist, and Getman manages both to complicate and to humanize his portrait of company management by making longtime plant manager Tom Gillian one of the book’s leading protagonists. Gillian comes across as a thoroughly decent man who is reluctantly conscripted into Consolidate Paper’s nefarious stratagems until he can no longer live with himself. Gillian’s heroic part in the final scene of the book sounds one of its more hopeful notes.

The complexity and multi-dimensionality of many of the characters is a great strength of the book. As every budding writer is told, you should “write what you know.” And Getman knows these people and these events. His 1998 book, *The Betrayal of Local 14*,<sup>7</sup> tells the true story of a long and bitter strike against International Paper in Jay, Maine, that followed much of the same basic trajectory and took place in the same kind of community as the fictional North Bethany strike. The

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7. THE BETRAYAL OF LOCAL 14, *supra* note 4.

scholarly book is based on scores of interviews that Getman conducted with strikers, strikebreakers, family members and supporters, community leaders, union leaders at various levels of the union hierarchy, and company officials. The result is a rich, multifaceted, and highly textured account of a labor dispute that destroyed a longstanding and productive collective bargaining relationship and tore apart a once-idyllic community.

The setting and many of the events and characters in the novel are very recognizable from the non-fiction account in *The Betrayal of Local 14*. Events in *Strike!* take their own imaginative (but realistic) turns, and characters follow their own imperatives and have their own quirks, to be sure. The novel certainly contains a lot more flirtation, romance, and sex, some of it quite steamy; still, one suspects that this is not only Getman's imagination at work, but a dimension of the Jay strike, and many of the labor conflicts and organizing efforts that Getman has closely witnessed left largely unexplored in his scholarly writings. The setting, events, and characters in *Strike!* seem so real in part because Getman knows their real-life counterparts so well. Getman's initial scholarly foray into the paperworkers' strike, and his close attention to the real stories and reflections of the players in Jay, Maine, may have helped him to resist some of the material's didactic temptations. Getman, the novelist, could not have written this book without the labors of Getman, the law professor.

Of course, Getman, the law professor, cannot resist delivering some lessons about labor law and its hollow promise of protection for concerted activity and especially strikes. These lessons are integral to the drama itself. Indeed, labor law itself is a major character in the novel, and it is one with few redeeming qualities. The law is mostly spineless and hypocritical, pretending to stand behind workers and their rights to bargain and to strike in support of their demands, while stacking the deck in employers' favor and creating not-so-hidden pitfalls for workers.

One of the large lessons in labor law that the book teaches is the ineffectuality of the legal "duty to bargain in good faith" in the face of an economically powerful company's determination to throw off the shackles of collective bargaining and power sharing. There is of course something of a paradox in the idea of legally compelling parties to reach a voluntary agreement. And indeed, legal compulsion was never meant to be the main driver in the dynamics of collective bargaining. Instead, the law sought to even the playing field, or the battlefield, by protecting the workers' ability to act collectively, and to establish some ground

rules for the parties' use of "economic weapons" against each other in support of their bargaining positions. The threat of shared economic pain—from the loss of production on one side and the loss of income on the other—was supposed to drive the parties to the bargaining table and to a contract.

But unlike many military battles, the parties to a labor dispute are inherently unequally situated; the two sides have access to fundamentally different types of "economic weapons," the efficacy of which may rise or decline depending on market conditions and the organization of the economy. Workers, who own only their labor power, are heavily reliant on a single weapon, the strike. Employers, for their part, own the workplace—the "means of production"—and the managerial powers that flow from ownership of capital. The balance of power between labor, with its right to strike, and capital, with its power over production, has shifted sharply in favor of capital as corporations have spread out their operations among multiple facilities and even countries, and weakened their ties to any local community, and as improved transportation and communication networks have made it easier to move production and to transport goods and supply services from afar.

So the ground rules that govern the use of "economic weapons" have not much changed over the last fifty years, but the use and efficacy of those weapons has changed dramatically. Employers have the ability to enfeeble the strike threat by shifting production to other plants, to preempt the strike by locking out the workers and hiring others (temporarily) to take their place, to cripple the strike by permanently replacing economic strikers, or simply to implement their chosen terms and conditions of employment upon reaching impasse. And they have the ability, unlike the strikers, to draw on vastly greater and more diversified assets and income sources to withstand the economic pain of a strike.

Particularly central to Getman's plot line, and to its tragic arc, is the company's anomalous but entrenched right to permanently replace strikers. This extra trump card that is dealt to the employer encourages its aggressive strategy, fuels the strikers' growing sense of frustration and despair, and ultimately dooms the strike. The employer's power to permanently replace strikers without violating the Act—even, it seems, when they are doing so for the purpose of breaking the union—has been a peculiar feature of the law since 1938. But this devastating weapon was little used by employers until the 1980s. That may be because the permanent replacement weapon jettisoned the accumulated skills of an

experienced workforce that were more valued then than now, or because it so devastated both labor relations and communities in which employers expected to remain, or simply because social norms of decent economic behavior inhibited its use. But some combination of changing norms and the changing economic context of labor relations have made the threat or use of permanent replacements a feature not only of nearly every labor dispute but of most organizing drives.

In its depiction of the interplay between economic forces and legal doctrines, *Strike!* does serve as a kind of parable of modern labor relations. For while the particular characters and narratives of the North Bethany strike are complex and distinctive, those characters and narratives unfold against a familiar background and follow a familiar trajectory. The basic legal ground rules, the large economic and organizational forces that have strengthened capital's hand in relation to labor's, and the labor relations strategies that companies have devised in light of those ground rules and those economic forces have made unions and their members the losers in many labor conflicts, and made the strike weapon into a tool of management.

For the economically powerful and determinedly anti-union employer, the law reads like a playbook, and Consolidated Paper's new CEO and his academic sidekick make clear from the start that they are following that playbook. First, conduct bargaining with an eye not on reaching agreement but on reaching impasse and provoking a strike.<sup>8</sup> Second, once the union strikes, begin hiring permanent replacement workers. That may frighten a lot of workers into returning to work on management's terms, thus breaking the strike and crippling the union. Or, if the strikers hang tough and much of the workplace is in fact permanently replaced, the next step is to aim for decertification by conjuring up evidence of the likely fact that a majority of the transformed bargaining unit no longer wishes to be represented by the union.

The law creates just enough potential pitfalls for employers following this strategy to make it worthwhile for many of them to hire "union avoidance" consultants to walk them through the playbook. The large and growing industry of anti-union consultants, which initially

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8. That sounds like bad faith bargaining, which might make the strikers immune from permanent replacement (or rather, eligible for reinstatement after what might be years of delay); but since the law is loathe to judge the substance of the employer's bargaining positions, the employer can generally avoid the risk of an unfair labor practice by demanding deep concessions that management knows the union cannot accept, while meeting often enough and giving just enough ground on small matters to create the appearance of good faith bargaining.

specialized in helping non-union companies to keep a union out, has moved heavily into the lucrative business of helping companies get rid of existing unions, even those that have been in place for decades.<sup>9</sup> In *Strike!*, the part of union avoidance consultant is played by business professor Eastman. In most companies the part would be played by lawyers or other private sector labor relations consultants. But the lessons and strategies they teach employers are the same: The law creates a rather unchallenging obstacle course along the path to deunionization. If you are prepared for its turns and hurdles, and if you follow our playbook, you can reach your destination.

One question is what is to be done about this. For answers to that question, one must turn to scholarly work by Getman and others. The final chapter of *The Betrayal of Local 14* contains a number of recommendations, with the prohibition of permanent replacement of strikers at the top of the list.<sup>10</sup> But *Strike!* suggests some answers to a different question: What happens to a community, a workplace, and the individuals at the center of one of these labor relations death matches?

North Bethany is indelibly changed for the worse. There can be no forgetting or forgiving for many of the workers who lost their jobs, or for those who, after the strike, eventually returned to work alongside the strikebreakers who crossed the line, helped break the strike, and took the jobs of their fellow strikers. Church congregations and even families are divided, neighbors become sworn enemies, co-workers are grimly tolerated under pain of discipline. For many of the individuals, though, the strike was both a social and economic tragedy and the most dramatic and uplifting episode in their lives. For some it elevated their lives from mundane to transcendent, and it transformed them from bit players to leading actors in life's drama. Almost all of them, one guesses, would gladly trade those years of exhilaration for the harmony and security that they enjoyed before the strike. And yet . . .

I do not think that Getman wishes for a world without strikes. One sees glimmers of an ideal of labor-management cooperation in the wings, but it is not conflict-free cooperation that Getman seems to wish for. It is the "old-fashioned" model that Gillian and Samson knew from their prior decades at Consolidated Paper, during which the parties fought every few years to gain ground in collective bargaining, always accepting the others' legitimacy and always finding enough common

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9. See John Logan, *Consultants, Lawyers, and the 'Union-Free' Movement in the USA Since the 1970s*, 33 INDUS. REL. J. 211-12 (2002).

10. THE BETRAYAL OF LOCAL 14, *supra* note 4, at 224-28.

ground to reach agreement and to carry on a productive working relationship under that agreement. It was a kind of constrained, almost ritualized, conflict between parties that understood that they were part of a shared enterprise and that they depended on each other for the success of that enterprise.

Looking back, that seems to have been a fragile equilibrium. It takes a long time to create, as it did in North Bethany and in Jay, Maine. And it can be destroyed in short order, as it was in North Bethany and Jay, if the employer decides—as the union never could—that it can do just as well or better without the other’s existence. Unfortunately for labor, organized and unorganized, that attitude has become the norm for most of the private sector. It seems that collective bargaining has become not only the exception, but, in management circles, an aberration or even a failure to be corrected. There are exceptions—companies have decided to accept their employees’ choice of unionization and to work with unions as partners essential to the success of the enterprise. For that attitude to take hold, and for collective bargaining to become normalized again, the law may have to change to allow for ways of organizing a union and ways of resolving labor disputes that do not require the parties to engage in virtual warfare and do not permit one side to seek the destruction of the other and give it the tools to do so.

But *Strike!* is not a brief for labor law reform, or even a simple cautionary tale. It is an engaging story of an “old-fashioned” community that is divided and scarred, and at the same time electrified—that is, both shocked and stimulated—by a labor dispute that highlights the community’s connections to national and global forces, and tests the hearts, minds, and souls of its inhabitants. North Bethany is a very small stage within a very large theater. But it is a stage on which one can closely observe the poignant human drama, versions of which are being played out in labor disputes across the country and beyond.