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## Maintaining Order in the Post-Strike Workplace: Employee Expression and the Scope of Section 7

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# Maintaining Order in the Post-Strike Workplace: Employee Expression and the Scope of Section 7

Lyrissa C. Barnett†

*In the aftermath of a typical strike, management often seeks to restore order to the workplace by imposing restrictions on employee expression. Although in principle employee expression is protected by section 7 of the National Labor Relations Act, courts, relying on outdated notions of workplace organization, often accept ad hoc management justifications for restrictions on employee expression. The author argues that after a strike, it is crucial for employees to be able to express their grievances or vent their frustrations at exactly the same time that employers feel it necessary to restrict expression as a way of re-imposing order in the workplace. She proposes that courts require a heightened showing of threats to workplace discipline before accepting the kinds of justifications traditionally accepted by courts in permitting employers to limit the rights of their employees. Courts can do this, she maintains, by recognizing and incorporating competing theories of workplace organization. Acceptance of competing organizational paradigms would increase their sensitivity to the nuances of employee rights under section 7 and eventually result in increased protection of employee rights consonant with section 7's guarantees.*

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I  
INTRODUCTION

Strikes are industrial warfare.<sup>1</sup> In a typical strike, management and labor become locked in a battle of wills, with each side deploying economic, political, and psychological weapons against the other. In addition to traditional picketing, a striking union may wage a multi-dimensional corporate campaign to bring public censure to bear upon the company and to disrupt its relations with other companies.<sup>2</sup> The employer often counteracts the union’s tactics with its own campaign to capture public opinion. And in an economic strike, the employer may further respond by permanently replacing its striking workers.<sup>3</sup> Thus, for striking employees, a strike is both a threat to their economic well-being and a symbol that their employer does not value their contribution to the workplace. Not surprisingly, emotions run high. Striking employees may direct their anger and frustration toward “scabs” (both crossover employees and permanent replacements), toward management, and toward anyone else connected with the company.<sup>4</sup> In this tense environment, strikers often exchange insults and profanity with replacement workers and supervisors. In extreme instances, threats and violence may ensue.

Hostilities do not necessarily end, however, when the strike is over. Lingering post-strike hostilities can create dissension and disharmony in the workplace, impairing discipline and, ultimately, production. The aftermath of the 1987-88 strike against International Paper (IP) in Jay, Maine, aptly demonstrates this problem. The IP strike was protracted and bitter, a bitterness exacerbated by IP’s permanently replacing the striking employees.<sup>5</sup> As Professors Jack Getman and Ray Marshall indicate in their recent study

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1. United Auto Workers strikers at Caterpillar’s plant in Peoria, Illinois made this point explicit by posting a large sign near a heavily traveled bridge that crosses the Illinois River. The sign read: “You are entering a war zone: Caterpillar versus its UAW employees.” Stephen Franklin, *No Peace, No Contract a Year After Caterpillar Standoff*, CHI. TRIB., Apr. 12, 1993, at 1, 1 (“Neither side seems to be winning this war. Nor is either willing to back down.”).

2. The union’s tactics “may include consumer boycotts, political lobbying, pressuring shareholders, and targeting financial institutions doing business with the employer.” Melinda J. Branscomb, *Labor, Loyalty, and the Corporate Campaign*, 73 B.U. L. REV. 291, 293 n.4 (citation omitted) (comparing the corporate campaign to “verbal warfare”). See Julius G. Getman & F. Ray Marshall, *Industrial Relations in Transition: The Paper Industry Example*, 102 YALE L.J. 1803, 1831 (1993) (“A corporate campaign generally involves actions against employers such as slowdowns, negative publicity, demonstrations, and efforts to disrupt the company’s executive structure and its relationships with other employers.”).

3. The Supreme Court recognized the right of employers to permanently replace economic strikers in *NLRB v. Mackay Radio & Tel. Co.*, 304 U.S. 333 (1938).

4. Getman & Marshall, *supra* note 2, at 1838.

5. *Id.*

of the IP strike, no matter which side wins the strike, workplace harmony may be destroyed: the IP strike “shattered the lives of employees, divided the community, and left a mill that was once a cooperative enterprise divided into warring, mutually suspicious factions.”<sup>6</sup> Rehired workers returned to IP “openly contemptuous of the replacements and hostile to supervisors.”<sup>7</sup> As one returning striker stated, “just because I’ve got my job doesn’t mean it’s over. I’ve still got 600-800 friends on the outside and until they’re back, I refuse to socialize with these people.”<sup>8</sup> Replacement workers, too, felt negatively toward IP because of the strife in the workplace.<sup>9</sup> Predictably, this post-strike friction at IP led to a decline in production, profits, and quality.<sup>10</sup> Although returning employees worked hard, the formerly cooperative work environment at IP was tainted. The former strikers “refused to give the company the benefit of their experience and know-how.”<sup>11</sup> The IP example thus illustrates that post-strike hostilities can have a lingering detrimental effect on the workplace.

In light of this danger, the employer has a strong interest in maintaining order and control in the workplace and in restoring a cooperative work environment. To advance this interest, employers often seek to impose restrictions on potentially inflammatory employee expression, whether that expression takes the form of union insignia, messages on t-shirts, or actual speech.<sup>12</sup> In addition, employers may even seek to discipline or discharge employees on the basis of post-strike expressive activity;<sup>13</sup> in essence, the

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6. *Id.* at 109. The aftermath of the UAW-Caterpillar strike also confirms this assessment: The dispute’s lingering effects—the bruised feelings, the corrosive uncertainty about the future, the shunning campaign by the union toward the 976 workers who crossed its lines, the grudging tit-for-tat war between Caterpillar and UAW—mount daily. Neither side seems to be winning this war. Nor is either willing to back down.

Stephen Franklin, *No Peace, No Contract a Year After Caterpillar Standoff*, CHI. TRIB., Apr. 12, 1993, at 1, 1.

7. Getman & Marshall, *supra* note 2, at 1836.

8. *Id.*

9. *Id.* at 1841.

10. *See generally id.*

11. *Id.* at 1840.

12. *See, e.g.,* Boeing Airplane Co. v. NLRB, 217 F.2d 369 (9th Cir. 1954) (employer adopted rules prohibiting employees from wearing steward and committee buttons, from displaying loyalty streamers, and from discussing union affairs on company property, in order to prevent violent actions in breach of peace); United Aircraft Corp., 134 N.L.R.B. 1632 (1961) (supervisors instructed to ask employees to remove union loyalty pins to promote post-strike harmony); Boise Cascade Corp., 300 N.L.R.B. 80 (1990) (post-strike employer unsuccessfully attempted to ban labor-related pins, t-shirts and stickers).

13. *See, e.g.,* Manchester Health Ctr. v. NLRB, 861 F.2d 50 (2d Cir. 1988) (holding that restricting rights of medical care provider employees to discuss union activities is justified in order to heal post-strike wounds; termination for repeated violation of ban is proper if employee received adequate warnings); Midstate Tel. Corp. v. NLRB, 706 F.2d 401 (2d Cir. 1983) (finding that employee right to display union-related messages must be balanced against right of employers to maintain discipline in their establishments; company did not violate NLRA by banning t-shirts and not paying t-shirt-wearing employees for the time it took them to procure a change of clothing).

employer seeks to regulate both the tone and the content of employee expression to restore order to the post-strike workplace.

The employer's interest in such restrictions, however, collides with the employees' interests in expressing their solidarity with other workers and in venting their grievances about their employer, interests that may be heightened in the wake of an emotional strike.<sup>14</sup>

Section 7 of the National Labor Relations Act ("NLRA")<sup>15</sup> provides that employees have a right to engage in "concerted activities for the purpose of . . . mutual aid or protection . . ."<sup>16</sup> In principle, section 7 entails the right of employees to wear union insignia<sup>17</sup> and to discuss workplace issues and grievances.<sup>18</sup> Yet the scope of these section 7 rights is not unlimited, and the National Labor Relations Board ("Board") and the courts have carved from it a number of "special exceptions." For example, courts sometimes have allowed employers to restrict employee expression ordinarily protected under section 7, on the ground that such restrictions are necessary to maintain efficiency and production or to maintain discipline.<sup>19</sup> Hence, section 7 doctrine creates a tension between employer and employee interests in the post-strike period: while the employer seeks to reassert order and efficiency by imposing restrictions on employee expression, the employees have a heightened need to engage in such expression at precisely the same time.

The case law interpreting section 7 fails to resolve this tension. The Board and the courts have charted no clear course for dealing with employer restrictions on employee expression in the post-strike workplace. Some tribunals have accepted employers' assertions that such restrictions are necessary to maintain discipline, efficiency and production.<sup>20</sup> Other tribunals, however, more solicitous of the section 7 rights of employees, have rejected such justifications.<sup>21</sup> The question then becomes, What bal-

14. Getman and Marshall note that the anger and resentment felt by returning strikers and supervisors after the IP strike might have been defused "if the strikers and supervisors had a chance to meet and express their anger and discuss their feelings with each other." Getman & Marshall, *supra* note 2, at 1839 n.119.

15. 29 U.S.C.A. §§ 151-169 (West 1973 & Supp. 1993).

16. 29 U.S.C.A. § 157.

17. Republic Aviation Corp. v. NLRB, 324 U.S. 793, 795-96, 803 (1945).

18. See, e.g., Eastex, Inc. v. NLRB, 437 U.S. 556, 563-68 (1978).

19. Employers also have asserted that employee expression, particularly in the form of union insignia, may be restricted because it harms customer relations or because it constitutes a safety hazard. See John W. Teeter, Jr., *Banning the Buttons: Employer Interference with the Right to Wear Union Insignia in the Workplace*, 80 Ky. L.J. 377, 378 (1991-92) (discussing various employer justifications for banning union insignia). Because these justifications do not carry any unique force in the post-strike context, they are beyond the scope of this paper.

20. Boeing Airplane Co. v. NLRB, 217 F.2d 369 (9th Cir. 1954); Midstate Tel. Corp. v. NLRB, 706 F.2d 401 (2d Cir. 1983); Reynolds Elec. & Eng'g Co., 292 N.L.R.B. 947 (1989).

21. Boise Cascade, 300 N.L.R.B. 80 (1990); Midstate Tel. Corp., 262 N.L.R.B. 1291 (1982), *enforcement denied in relevant part*, 706 F.2d 401 (2d Cir. 1983); Boeing Airplane Co., 103 N.L.R.B. 1025 (1953), *enforcement denied in relevant part*, 217 F.2d 369 (9th Cir. 1954).

ance should be struck between the employer's need to maintain order in the post-strike workplace and the employees' right to engage in expression protected by section 7?

In this article, I argue that the balance generally should be struck in favor of more, not less, employee expression. Part II explores the scope of section 7 and details the dangers of allowing the "special circumstances" exception to section 7 to eviscerate its protection of employee expression. Part III then analyzes competing values in the post-strike context and competing paradigms of workplace organization, and, based on this analysis, argues that appellate courts have adopted a paradigm of workplace relations that predisposes them to privilege employer control of the workplace at the expense of employee expression rights. Finally, Part IV proposes an alternative approach to restoring order to the workplace, one which accommodates both employer interests in maintaining order and employee interests in expression.

## II

### EXCEPTIONS AND THE RULE: *REPUBLIC AVIATION* AND ITS PROGENY

As the Supreme Court explicitly has recognized, section 7 protects the rights of employees to express themselves regarding workplace issues.<sup>22</sup> Such expression may take the form of speech, leafletting, or the wearing of union insignia or t-shirts. Section 7 protection of employee expression is not without limits, however. The Supreme Court's *Republic* opinion also recognized that "special circumstances" might justify employer restrictions on these rights: the employees' "undisputed right of self-organization" must be balanced against the "equally undisputed right of employers to maintain discipline in their establishments."<sup>23</sup> This supposedly narrow "special circumstances" exception has seriously eroded section 7's protection of employee expression in the post-strike context. In fact, a survey of pertinent case law reveals that the National Labor Relations Board and the federal courts often unquestioningly accept ad hoc employer determinations that restrictions on employee expression are necessary to maintain production or discipline in the post-strike context.

#### A. *Section 7 and Employee Expression*

Consider the following scenario: An employer and a union become embroiled in a bitter strike over wages and seniority. The employer perma-

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22. *Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945) (holding that section 7 protects both union solicitation during non-work time and in non-work areas, and the wearing of union insignia at work); *Eastex, Inc. v. NLRB*, 437 U.S. 556, 564 (1977) (holding that section 7 protects speech related to terms and conditions of employment as well as speech "in support of employees of employers other than their own").

23. *Republic Aviation*, 324 U.S. at 797-98.

nently replaces many of the striking employees. Strikers, permanent replacements, and supervisors trade insults and profanity daily on the picket line. Several unidentified strikers throw rocks and bottles at permanent replacements as they enter the plant. When the striking employees finally return to work, they are belligerent and angry. The atmosphere in the workplace is tense and unfriendly. To restore peace to this volatile environment, the employer promulgates two rules: one forbids any discussion of union matters on its premises; the other forbids the wearing of union insignia or t-shirts.<sup>24</sup> Do such restrictions interfere with employee expression protected under section 7 of the NLRA?

In principle, section 7 protects employee expression of the sort that is common after a strike, *i.e.*, expression concerning workplace issues and grievances, particularly expression calculated to enhance union solidarity.<sup>25</sup> Section 7 guarantees private-sector employees the “right to self-organize . . . and to engage in other concerted activities . . . for mutual aid or protection”<sup>26</sup> and proscribes employer interference with, or discrimination based on, the exercise of such employee rights.<sup>27</sup> As interpreted by the Supreme Court in *Republic Aviation*, employees’ rights of self-organization and association encompass the right to wear union insignia and apparel and to engage in union solicitation on an employer’s premises during non-work hours.<sup>28</sup> Specifically, the Court in *Republic Aviation* held that an employer’s broad rules against solicitation and its prohibitions against wearing union insignia interfered with the “right of employes [sic] to organize for mutual aid”<sup>29</sup> and thus constituted unfair labor practices.<sup>30</sup>

Although protecting employee expression, however, the *Republic Aviation* Court also indicated that an employer might restrict otherwise protected expression upon a showing of “special circumstances [that] make the rule necessary in order to maintain production or discipline.”<sup>31</sup> The Court framed the question as one of “working out an adjustment between

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24. The facts of this hypothetical derive from several cases. *See, e.g.*, *Boeing Airplane Co. v. NLRB*, 217 F.2d 369, 376-77 (9th Cir. 1954) (employer sought to restrict the wearing of union insignia and discussion on union matters following a six-month strike); *Midstate Tel. Corp. v. NLRB*, 706 F.2d 401, 402-03 (2d Cir. 1983) (employer sought to prohibit the wearing of union t-shirts).

25. Employee expression regarding “terms and conditions of employment” clearly is protected under section 7. *See Eastex, Inc. v. NLRB*, 437 U.S. 556, 565 (1978).

26. 29 U.S.C.A. § 157.

27. 29 U.S.C.A. § 158.

28. *Republic Aviation*, 324 U.S. at 795-96, 803.

29. *Id.* at 798.

30. First, the Court found that the employer’s broad anti-solicitation rule violated section 8(1). The Court next determined that the rule interfered with the employees’ associational rights under section 7 because it prohibited such solicitation even during non-work time. The Court also found that the employer’s prohibition of union insignia violated section 8(1) because it interfered with section 7 rights. Finally, the Court reasoned that by discharging an employee on the basis of this rule, the employer also violated section 8(3). *Id.* at 795-97.

31. *Republic Aviation*, 324 U.S. at 803-04 n.10 (quoting *Peyton Packing Co.*, 49 N.L.R.B. 828, 843-44 (1943)).

the undisputed right of self-organization assured to employees . . . and the equally undisputed right of employers to maintain discipline in their establishments.”<sup>32</sup> The Court summarized its position by stating that both the “[o]pportunity to organize” and “proper discipline” are vital in a “balanced society,”<sup>33</sup> implying that an employer’s right to manage his or her property might sometimes trump employees’ expression rights.

### B. *Post-Strike Special Circumstances*

*Republic Aviation’s* special circumstances exception has become a potent weapon in the hands of employers seeking to justify suppressing employee expression in the post-strike period. Specifically, employers have argued (often with little empirical foundation) that wearing union insignia or apparel, or discussing union matters, promotes dissension and disharmony in the workplace, thereby threatening production and discipline.<sup>34</sup> The appellate courts have been especially receptive to such arguments, even in the face of a Board finding of an unfair labor practice. Although the Board itself generally has been more protective of employee expression, it too sometimes has accepted employer justifications that rest on dubious premises about the dangers of employee expression.

#### 1. *The Courts*

*Boeing Airplane Co. v. NLRB*<sup>35</sup> illustrates the appellate courts’ willingness to denigrate the importance of employees’ section 7 rights in the name of maintaining post-strike workplace discipline. The employer in *Boeing* sought to restrict both wearing union insignia and speaking about union matters following a six-month strike.<sup>36</sup> After the striking employees returned to work, the union found itself in the middle of a “vigorous organizing campaign,”<sup>37</sup> competing for employee allegiance with a rival union. The original union alleged that the employer unlawfully supported the rival.<sup>38</sup> Although the Board found that the employer’s rule was unnecessary to maintain discipline in the workplace,<sup>39</sup> the Ninth Circuit rejected its find-

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32. *Id.* at 797-98.

33. *Id.* at 798.

34. *See, e.g., Boeing Airplane Co. v. NLRB*, 217 F.2d 369 (9th Cir. 1954).

35. 217 F.2d 369 (9th Cir. 1954).

36. *Id.* at 373, 375-76.

37. *Id.* at 371.

38. *Id.* at 371-72, 377. Employer support of a rival union violates 29 U.S.C. § 158(a)(2), which makes it unlawful for an employer “to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it.” *Id.* In this instance, however, the Ninth Circuit found that the employer had “favored,” but had not “dominated” the rival union. *Boeing*, 217 F.2d at 377.

39. *Boeing Airplane Co.*, 103 N.L.R.B. 1025, 1026 (1953), *enforcement denied in relevant part*, 217 F.2d 369 (9th Cir. 1954).



ings, stating that the employer's justification for imposing the rule, namely "keeping of peace between rival unions," was "important."<sup>40</sup>

The Ninth Circuit's rhetoric in *Boeing* reflects that court's weak commitment to protecting employee expression. According to the court's characterization, the union was "flaun[ting]" its union insignia.<sup>41</sup> Moreover, the court stated, given the "extremely inflammable . . . passions of the rival unions," the prohibited union insignia could be the "spark which might in a second set everything afire again."<sup>42</sup> The court even went so far as to laud the employer's suppression of employee expression in the post-strike period, stating that "[i]f there were a rule . . . that union business should not for the time being be discussed upon company premises, it would not be a violation of the Act but a salutary precaution."<sup>43</sup> Leaving no doubt where its sympathies lay, the court marvelled at how "remarkable" it was that "Boeing was able to keep the great organization from any more acts which the Board would construe as violations."<sup>44</sup>

*Boeing* reveals how unstable is the ground upon which employee expression rights rest. Based upon the employer's bald, unsubstantiated assertion that union insignia might incite violence in the aftermath of a violent strike (an assertion undermined by the court's own recognition that labor peace had reigned for years at Boeing),<sup>45</sup> the Ninth Circuit was willing to sacrifice employee expression of union solidarity even though the union was in the midst of a heated organizing campaign. The union insignia at issue—buttons and streamers indicating union membership—were not inflammatory in and of themselves, and the employer produced no evidence of violence between the rival unions. Not only was the court's characterization of the union insignia as "incitements to crime or violent action"<sup>46</sup> transparently false; the court also ignored the possibility that the employer's rules might have been motivated by ill will toward the union that had just returned from a bitter and costly strike. But perhaps the most disturbing element of the *Boeing* opinion is its assumption about worker behavior: the employer is justified in restricting employee expression in the post-strike period because employees automatically will respond violently to the slightest provocation.

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40. *Boeing*, 217 F.2d at 374-75. Further, the Ninth Circuit disagreed with the Board's conclusion that the company had adopted any rule prohibiting various forms of expression. *Id.*

41. *Id.* at 374. The court also quoted with favor the Trial Examiner's report that the employer's rule forbidding discussion of union matters on its premises was "reasonably related to the Respondent's interest in preserving peace between the competing factions so that production might go on, unhindered by extraneous matters." *Id.* at 373 (emphasis added).

42. *Id.* at 375. Although the court characterized the post-strike work environment at Boeing as volatile, it later noted that "labor peace has reigned for years [at Boeing]," thereby potentially undermining its own rationale for restricting employee expression. *Id.* at 377.

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.* at 375.

A Second Circuit case also perpetuates these assumptions. In *Midstate Telephone Corp. v. NLRB*,<sup>47</sup> the employer, a public utility, disciplined employees for wearing t-shirts bearing the company trademark appearing cracked in three places and displaying the words "I SURVIVED THE MID-STATE STRIKE OF 1971-75-79."<sup>48</sup> The Second Circuit found the employer's actions justified on the ground that the t-shirts might impair the company's public image and threaten internal discipline.<sup>49</sup> Again, the court's rhetoric is instructive. The court noted that the "cracked logo" "could readily be . . . construed" as offensive because, as the Administrative Law Judge found, it portrayed the company as "crumbling or disintegrating."<sup>50</sup> Thus, the employer had a "legitimate concern" that the t-shirts would "suggest to the public that the Company was in some way coming apart."<sup>51</sup> Regardless of the accuracy of the message, this characterization grossly overstates the threat to the employer posed by a t-shirt. In fact, the Board found that most workers wearing the t-shirts had no contact with the public.<sup>52</sup> Yet according to the court's logic, an employee's section 7 rights must give way to the employer's desire to present a harmonious facade for its customers.

The court went further, citing favorably the ALJ's finding that in the post-strike context, banning the t-shirts was "legitimately motivated in order to maintain discipline and harmonious employee-management relations."<sup>53</sup> The employees first wore the t-shirts three months after the end of a 19-week strike.<sup>54</sup> Yet, as in *Boeing*, the *Midstate* court did not require the employer to produce evidence that violence or intimidation had occurred in the post-strike period, but instead gave credence to a company official's testimony that the t-shirts were meant to "keep . . . the wounds [from the strike] open."<sup>55</sup> Moreover, the court reasoned that the t-shirts had the "potential to serve as a 'constant irritant' to management."<sup>56</sup> Finally, the court concluded that the employees had only an "ill-defined interest at the relevant time in promoting union solidarity in this manner," an interest that must give way to the interests of their employer.<sup>57</sup>

The *Midstate* decision is remarkable because it indicates just how far the court will stretch to accommodate employer business justifications for

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47. 706 F.2d 401 (2d Cir. 1983).

48. *Id.* at 402.

49. *Id.* at 404.

50. *Id.*

51. *Id.*

52. *Midstate Tel. Corp.*, 262 N.L.R.B. 1291, 1291 (1982), *enforcement denied in relevant part*, 706 F.2d 401 (2d Cir. 1983).

53. *Midstate*, 706 F.2d at 404.

54. *Id.* at 402.

55. *Id.* at 404.

56. *Id.* (quoting *Southwestern Bell Tel. Co.*, 200 N.L.R.B. 667, 670 (1972)).

57. *Midstate*, 706 F.2d at 404.

regulating employee speech in the post-strike context. Consider, for example, the court's statement that the t-shirts could be an "irritant" to management. The NLRA nowhere contemplates that section 7 rights of employees can be restricted merely because they "irritate" an employer.<sup>58</sup> At some level, almost *every* form of union organizing is an annoyance to management, infringing on its prerogatives to control its workplace in any manner it chooses.<sup>59</sup> In fact, it is hard to conceive of any activity more "irritating" to management than a strike, the economic weapon which lies at the heart of the NLRA.<sup>60</sup>

The Second Circuit's dedication to "healing the wounds" of the strike by suppressing employee expression is equally troubling. The very fact that the employees chose to wear the t-shirts indicates that the wounds still were open. Hence, the shirts served a venting function, allowing employees to express their grievances with their employer in a peaceful fashion.

Ultimately, the *Midstate* opinion manifests the court's fundamental doubt about whether the employee expression at issue actually falls within the scope of section 7. In *Midstate*, the ALJ found that the employees had "no legitimate or concerted purpose under section 7 because the strike was over and the employees' expression of discontent was made in a manner that 'can only prolong ill feelings and poor labor relations.'" <sup>61</sup> In contrast, the Board concluded that the t-shirts were "intended to promote employee solidarity on a matter of mutual concern to employees."<sup>62</sup> The Second Circuit, however, refused to decide this issue; instead, the court classified the employees' section 7 interests as "ill-defined" and reasoned that "*even if* the t-shirts were intended to promote employee solidarity," the employer's restrictions were legally justifiable.<sup>63</sup> This conception profoundly undermines the significance of employee expression rights, a significance that may be particularly acute after a prolonged strike.<sup>64</sup> The I-survived-the-strike t-shirt not only signaled the individual's pride in membership and

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58. See 29 U.S.C.A. §§ 157-158.

59. See Branscomb, *supra* note 2, at 365-66.

60. Perhaps the courts' real objection was to the *tone* of the t-shirts, which suggested the company's harsh management of its employees. In a different context, however, the Supreme Court indicated it would allow wide latitude to the *tone* of employee speech in labor disputes: the "[e]xpression of . . . an opinion, even in the most pejorative terms, is protected under federal labor law." *Old Dominion Branch No. 496, Nat'l Ass'n of Letter Carriers v. Austin*, 418 U.S. 264, 284 (1974) (holding that federal labor law preempts state libel law where the state defines statements made during labor disputes as actionable without applying an actual malice standard; therefore, the use of the term "scab" during a labor dispute was not libelous).

61. *Midstate*, 706 F.2d at 403.

62. *Id.*

63. *Id.*

64. See discussion *infra* part III.B. at 21-26.

commitment to group solidarity, but also reflected the continuing strength of the union.<sup>65</sup>

The *Midstate* court's refusal to acknowledge the importance of this right indicates how precarious the protection of employee expression may be in the post-strike period. Although *Republic Aviation* envisioned a scheme in which employer restrictions on speech would be presumptively invalid, *Boeing* and *Midstate* show how readily the appellate courts<sup>66</sup> will accept an employer's assertion that such restrictions are necessary to maintain order after a strike. As *Boeing* and *Midstate* also demonstrate, however, the Board is ordinarily more skeptical of such justifications than are the courts and is thus more likely to demand that an employer bring forth actual evidence of violence or disruption to justify suppressing employee expression. Even so, the Board's decisions often rest on a misguided notion of the "inflammability" of employee passions in the post-strike period.

## 2. *The Board*

*Reynolds Electrical & Engineering Co.*<sup>67</sup> exemplifies just how difficult it can be to mediate conflicts between the employees' right to expression and the employer's right to maintain order in the workplace.<sup>68</sup> *Reynolds* presents particularly appealing facts to justify restrictions on employee speech. The strike against Reynolds was violent, and the violence continued in the post-strike workplace. Returning strikers continually harassed "scabs" by slashing their tires, urinating on their food, and threatening and verbally abusing them.<sup>69</sup> A union business agent even told union members to treat the scabs "with a ten-foot pole, just like they're supervisors."<sup>70</sup> When the former strikers began wearing buttons showing the word "scab"

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65. See Teeter, *supra* note 19, at 379 ("On the collective level, wearing union insignia enhances group solidarity, encourages others to seek membership, and testifies to union strength. On the individual level, wearing insignia permits each worker to express union commitment and demonstrate pride in membership.").

66. In *Manchester Health Ctr. v. NLRB*, 861 F.2d 50 (2d Cir. 1988), the Second Circuit again indicated its commitment to "healing the wounds" caused by a strike by suppressing employee expression. In that case, the union and the employer, a health facility, agreed, following a bitter and violent strike, to proscribe discussions of union matters except during non-work time and in non-work areas. The employer disciplined and ultimately discharged an employee for discussing union matters in work areas. The court supported this rule: "We believe that the purpose of healing wounds after a bitter strike and insulating patients from the resultant controversy . . . justify restrictions on the rights of employees to discuss union activities." *Id.* at 51.

67. 292 N.L.R.B. 947 (1989).

68. The facts of *Reynolds* are similar, although perhaps more favorable to employer regulation of employee speech, than those in *United Aircraft Corp.*, 134 N.L.R.B. 1632 (1961). In that case, fighting and name-calling occurred after the strike and a union presidential candidate threatened that "every strike-breaker will be hunted down." Consequently, the Board held that an employer's prohibition against employees' wearing a pin indicating they had honored a nine-week strike was a "reasonable precautionary measure under the circumstances." *Id.* at 1635.

69. *Reynolds*, 292 N.L.R.B. at 948-49.

70. *Id.* at 953.

with a diagonal red slash through it, the employer intervened. Although it did not ban other union insignia, the employer banned the anti-scab buttons as a threat to discipline and production.<sup>71</sup> Consequently, the Board held that the employer's restriction was a "reasonable and precautionary measure" and did not violate section 8(a)(3) or (1).<sup>72</sup>

A more recent Board decision reveals, however, that the approach of the *Reynolds* court to post-strike restrictions on employee expression is not necessarily warranted, even in cases of egregious employee misbehavior. In *Boise Cascade*,<sup>73</sup> the employer, a paper company that recently had suffered an acrimonious strike, banned the wearing of "derogatory" insignia in the workplace. Several of its employees began wearing "anti-scab" t-shirts and sporting stickers in support of a sister local's strike at International Paper in Jay, Maine.<sup>74</sup> The employer banned these items as contrary to its prior regulation. But unlike the judge in *Reynolds*, the judge in *Boise* demanded *specific* proof linking the banned insignia to threats to discipline or production, stating that "general, speculative, isolated or conclusionary evidence of potential disruption does not amount to 'special circumstances.'" <sup>75</sup> The judge stressed the fact that employees had worn the shirts for six months preceding the ban, with no untoward consequences. Hence, the employer had "had an opportunity to deal with any threats to discipline or production posed by the post-strike animosity and, more particularly, by the open use of the banned t-shirts and stickers for the 6 months they had been worn or displayed at the mill."<sup>76</sup>

The judge not only demanded actual proof that the banned insignia would lead to discipline problems; he also rejected the oft-quoted argument that an employer should not be required to "wait until resentment piled up

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71. The ALJ in *Reynolds* discussed at length the meaning of the "scab"-with-a-slash buttons: The parties were in agreement that a word with a slash through it is an international symbol that means certain conduct is forbidden. Thus, in a park, a picture of a dog with a red slash through it means no dogs are permitted in that park . . . . [T]he "no scabs permitted here" buttons were not only statements of contempt for the employees who had not participated in the strike, but also requests that the Company discharge the employees (since the Company was the only one in a position to deny permission to them to be on the property) and an attempt to intimidate those employees into quitting.

*Reynolds*, 292 N.L.R.B. at 950. In adopting such a unilateral interpretation of the no-scab buttons, the ALJ failed to weigh properly the important interests served by the buttons. Several former strikers testified that the buttons were a symbol of solidarity and union pride and a signal to others to join so there would be no more scabs. The Board did not adopt this part of the ALJ's opinion and instead adopted the alternate rationale based on *United Aircraft*. *Id.* at 950-52.

72. *See id.* at 951-52.

73. 300 N.L.R.B. 80 (1990).

74. *Id.* at 81. The bumper stickers contained the names of the companies that provided work for IP during the Jay strike with "diagonal slashes through them, the words 'no way' next to them, and the words 'scab' and 'strikebreaker' written across the middle of the sticker." A picture of a rat appeared next to the symbol of one of the companies. The t-shirts also displayed the names of these companies with diagonal slashes through them and the words "no way" and "strikebreaker." *Id.*

75. *Id.* at 82. The Board's decision adopted the opinion of the ALJ. *Id.* at 80.

76. *Id.* at 84.

and the storm broke before it could suppress the threat of disruption.”<sup>77</sup> Although this argument may seem a persuasive justification for suppressing employee expression in the post-strike context, it begs the question of whether such suppression will actually achieve the desired result. Even where, as in *Reynolds*, an employer presents evidence of violence and disruption in the post-strike workplace, such evidence does not inevitably lead to the conclusion that the suppression of union insignia or discussion of union matters is the most effective means to remedy the problem. Instead, the proper solution is to punish the individuals who actually engage in violence or disruption in the workplace, rather than those employees who peacefully wear union insignia or discuss union matters in the workplace.

### III

#### COMPETING VALUES AND MODELS OF WORKPLACE DISCIPLINE: WHAT IS AT STAKE?

As the preceding discussion indicates, appellate courts must strike a balance between employer control of the workplace and employee expression protected by section 7, and striking this balance may be particularly difficult in the post-strike period. The case law in this area reveals that, despite section 7's explicit protection of employee expression, implicit assumptions about workplace relations and behavior often tip this balance in favor of managerial control. Specifically, appellate courts have adopted a “Tayloristic” or “rational systems” paradigm of workplace relations, a paradigm that, in the name of productivity and efficiency, gives primacy to employer control of the workplace and accords only a limited role to employee “voice.”<sup>78</sup> Recent scholarship, however, questions the basic premises of the Tayloristic paradigm and proposes alternative models of industrial relations.<sup>79</sup> These alternative models suggest that suppressing employee expression in the post-strike context actually may have the perverse result of prolonging rather than dispelling hostilities between labor and management. By adopting an alternative paradigm of workplace relations, courts can better fulfill the statutory scheme of section 7.

#### A. *The Tayloristic Model*

By tacitly adopting the Tayloristic paradigm, courts tend to favor employer over employee interests in the aftermath of a strike. According to

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77. Compare *id.* at 81-84 with *Caterpillar Tractor Co. v. NLRB*, 230 F.2d 357, 359 (7th Cir. 1956); *Reynolds Elec. & Eng'g Co.*, 292 N.L.R.B. 947, 952 (1988); *Southwestern Bell Tel. Co.*, 200 N.L.R.B. 667, 671 (1972).

78. See generally RAY MARSHALL & MARC TUCKER, *THINKING FOR A LIVING: WORK, SKILLS AND THE FUTURE OF THE AMERICAN ECONOMY* 3-27 (1992); FREDERICK W. TAYLOR, *SCIENTIFIC MANAGEMENT* (1947).

79. See, generally, Getman & Marshall, *supra* note 2; BARRY BLUESTONE & IRVING BLUESTONE, *NEGOTIATING THE FUTURE* (1992); PAUL WEILER, *GOVERNING THE WORKPLACE* (1990).

this theory of workplace relations, the employer's interest in maintaining order in the post-strike workplace is invariably at odds with the employee's interest in expression.<sup>80</sup> A central tenet of the Tayloristic model is that an authoritarian and hierarchically structured workplace is the key to optimal efficiency and that competitiveness thus will be fostered by increasing managerial discretion and reducing labor costs.<sup>81</sup> Often called the "rational systems" model, it emphasizes the "need for specific goals for an organization and a formalized structure."<sup>82</sup> Decision-making power and responsibility, or, as Professor Marshall terms them, "the thinking skills," are centralized in the hands of management.<sup>83</sup> Management's role, at least in theory, is to determine the "one best way to perform a task" and to "impose it on workers through detailed rules, instructions, administrators, and supervisors."<sup>84</sup>

This model has serious implications for the treatment of workers generally and the role given employee expression specifically. As Professor Massaro describes this view: "Employees are viewed as fungible, and feelings among employees are of little significance."<sup>85</sup> Workers are not supposed to think; they are supposed to obey. Employee voice has no functional role in the workplace.<sup>86</sup> In fact, employee input is considered subversive, threatening the established authority structure. Thus, in effect, the Tayloristic paradigm stacks the deck in the employer's favor.<sup>87</sup>

This model of workplace relations seems to underlie the courts' reasoning in cases such as *Boeing* and *Midstate*. In the tense atmosphere of the post-strike period, the employer has a heightened need to maintain order and discipline. According to the *Boeing* and *Midstate* courts, employee expression, though protected by section 7, serves no *positive* role in the workplace. The employer thus has no interest in allowing employees to vent their grievances because employee expression is a threat to managerial authority.

In *Midstate*, for example, the Second Circuit characterized employee expression as a potential "irritant" to management;<sup>88</sup> likewise, the *Boeing* court spoke of employee expression as the "spark" that might kindle the

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80. See generally Toni M. Massaro, *Significant Silences: Freedom of Speech in the Public Sector Workplace*, 61 S. CAL. L. REV. 1 (1987).

81. See generally Taylor, *supra* note 78.

82. Massaro, *supra* note 80, at 53-54 (discussing the Supreme Court's reliance on the "rational systems" paradigm of workplace relations in *extending* protection for the speech of public sector employees).

83. Getman & Marshall, *supra* note 2, at 1808.

84. *Id.*

85. Massaro, *supra* note 80, at 53-54.

86. *Id.* In essence, the Tayloristic model accords no positive role to employee "voice," regardless of whether that voice takes the form of protest or of employee input into the production process.

87. The courts' tendency to accord great deference to the need for managerial control is not unique to the post-strike situation. See generally JAMES B. ATLESON, *VALUES AND ASSUMPTIONS IN AMERICAN LABOR LAW* 91-107 (1983) (discussing courts' deference to managerial prerogatives).

88. *Midstate Tel. Corp. v. NLRB*, 706 F.2d 401, 404 (2d Cir. 1983).

“inflammable” passions in the workplace.<sup>89</sup> The courts thus have assumed that employee expression may threaten production and trigger chaos and disorder. Or, as one commentator has written, “*Boeing* and its progeny embody the belief that workers are Pavlovian creatures that will leap to violence at the sight of buttons.”<sup>90</sup> Because the *Boeing* and *Midstate* courts viewed the work environment (and its denizens) as inherently volatile, they demanded no empirical proof to support employers’ assertions that employee expression threatened to impair order and productivity. Such categorical assumptions about industrial relations predispose courts to give short shrift to the section 7 rights of employees in the post-strike context.

### B. *Competing Models of Industrial Relations*

Because these authoritarian assumptions about industrial relations ignore the human complexity of post-strike interactions, however, the courts’ decision to sacrifice employee section 7 rights to the goal of productivity may be self-defeating. The courts’ implicit adoption of the Tayloristic paradigm is neither necessary nor desirable, and courts would do well to consider competing organizational theories that are more consonant with section 7 rights. Competing theories of workplace organization<sup>91</sup>—theories that focus on high worker performance and high wages as strategies for competitiveness—stress the value of worker “voice” as a component of system efficiency. These theories of workplace relations take from occupational sociology the insight that “work skills are not only physical and intellectual;” they also are “social and interpersonal.”<sup>92</sup> Unlike the Tayloristic paradigm, these theories recognize that workers “are never merely ‘hired hands’ but bring along their heads and hearts.”<sup>93</sup> Worker motivation and morale can dramatically affect the productivity of the enterprise.<sup>94</sup> From this perspective, worker expression is not an inherent threat to productivity;

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89. *Boeing Airplane Co. v. NLRB*, 217 F.2d 369, 375 (9th Cir. 1954).

90. Teeter, *supra* note 19, at 415.

91. Both the “natural systems” model and the “open systems” model of workplace relations, for example, recognize the importance of worker behavior as a component of efficiency. For a discussion of these two theories, see generally W. RICHARD SCOTT, *ORGANIZATIONS: RATIONAL, NATURAL AND OPEN SYSTEMS* (1981).

92. Massaro, *supra* note 80, at 52 (citing WALTER S. NEFF, *WORK AND HUMAN BEHAVIOR* 70 (3d ed. 1985)).

93. This formulation comes from the “natural systems model” of labor sociology. W. RICHARD SCOTT, *ORGANIZATIONS: RATIONAL, NATURAL AND OPEN SYSTEMS* 83 (1981). This model values worker participation and “voice” in the organizational structure, since such participation actually may increase worker effectiveness. Massaro, *supra* note 80, at 57.

94. See SPECIAL TASK FORCE TO THE SECRETARY OF HEALTH, EDUCATION AND WELFARE, *WORK IN AMERICA* 13 (1973) (“What the workers want most, as more than 100 studies in the past 20 years show, is to become masters of their immediate environments and to feel that their work and they themselves are important.”).



it is essential to productivity. Efficiency therefore is fostered by providing workers with a mechanism to *express* and *resolve* their shared concerns.<sup>95</sup>

Interviews with workers involved in the International Paper and Caterpillar strikes confirm these observations about the effect of worker behavior on productivity. In both cases, returning strikers experienced alienation, frustration, anxiety, anger, and even depression.<sup>96</sup> No longer were they proud of the companies for which they worked. Instead, they felt betrayed, as if their employers had sent them a clear message that they were fungible, that their labor was unimportant.<sup>97</sup> One writer summed up the effect of the strike on the attitudes of Caterpillar workers: "Angry that they have spent years working for a company that does not respect its workers, they just want their paycheck and to be left alone."<sup>98</sup>

Emotions generated during an acrimonious strike continue to undermine worker motivation—"the extra drive that pushes productivity"<sup>99</sup>—in the post-strike period. At IP, for example, alienated workers refused to give the company the benefit of their knowledge and experience: "They worked hard, but with little thought about how best to do their jobs."<sup>100</sup> One returning Caterpillar striker poignantly expressed his resulting disaffection with the company: "'Eight hours was forever and I threatened to kill if they forced me to work overtime. It was that bad and I used to work a lot of overtime before the strike.'"<sup>101</sup> Not surprisingly, such behavior takes its toll on productivity, quality and profits.<sup>102</sup>

Viewed from this perspective, the employer will have a strong interest in reducing worker alienation and disaffection in the aftermath of a bitter strike. On one hand, the employer might seek to accomplish this goal by suppressing employee expression, presuming that such expression will perpetuate the hostilities generated by the strike. However, not only does this approach violate the statutory mandate of section 7; it also undermines the

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95. See Cynthia L. Estlund, *Economic Rationality and Union Avoidance: Misunderstanding the National Labor Relations Act*, 71 TEX. L. REV. 921, 956 (1993) (noting that unions may serve as an institutionalized "voice" for employees); RICHARD B. FREEMAN & JAMES L. MEDOFF, *WHAT DO UNIONS DO?* 8-9 (1984) (same).

96. See C. W. Kaha, *After the Caterpillar Strike*, ST. LOUIS POST DISPATCH, Aug. 10, 1992, at 3B, 3B (5-star ed.); Getman & Marshall, *supra* note 2, at 1836-45.

97. It used to be that the Caterpillar worker would feel proud to be a part of the company, proud of the product and pleased to wear a CAT hat. Because of the actions of the company during the strike—the hiring of Vance security, the threat to replace workers, the perception that the company was out to break the union—the workers are no longer proud of the company.

Kaha, *supra* note 96, at 3B.

98. *Id.*

99. Stephen Franklin, *No Peace, No Contract a Year After Caterpillar Standoff*, CHI. TRIB., Apr. 12, 1993, at 1.

100. Getman & Marshall, *supra* note 2, at 1840.

101. *Id.*

102. Getman & Marshall, *supra* note 2, at 1841-42.

personal dignity of employees.<sup>103</sup> As one commentator has noted, when an employer bans employee expression of union sympathies, employees are forced to “relinquish a fundamental aspect of . . . personal identity.”<sup>104</sup> Furthermore, this “needless subjugation of individual autonomy can only fuel feelings of resentment and alienation in the workplace.”<sup>105</sup> In essence, banning employee expression after a strike adds insult to injury. Rather than reducing the anger and frustration of workers, banning employee expression only reinforces their sense of insignificance in the workplace.

As the anecdotal evidence from the IP and the Caterpillar strikes reveals, banning employee expression in the name of workplace efficiency after a divisive strike ignores the human dimension of the problem. In fact, the goal of restoring harmony to the post-strike workplace may better be served by *fostering* rather than suppressing employee expression. Discussion of conflicts, or the exercise of “voice” in Professor Hirschman’s terminology, plays an important role in helping organizations to resolve problems and adapt to change.<sup>106</sup> By allowing employees to vent their grievances, then, employers may be taking the first step toward recognizing and resolving workplace conflicts.

Indeed, in the context of organizing campaigns, courts explicitly have acknowledged that labor relations may be heated and that considerable leeway must be allowed for emotional “venting.”<sup>107</sup> Interviews with returning strikers suggest that the functional role of “voice” may be especially important in the post-strike context.<sup>108</sup> Precisely because emotions run high in the aftermath of a strike, “voice” can act as a safety valve mechanism to defuse hostilities. Allowing employees to vent their grievances manifests respect for their individual autonomy and the importance of their role in the workplace. More fundamentally, “voice” is a positive alternative to

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103. Professor Weiler characterizes the importance of work to the personal identity of workers as follows: “For the employee work is . . . a major source of personal identity and satisfaction, of his sense of self-esteem and accomplishment, and of many of his closest and most enduring relationships.” PAUL WEILER, *GOVERNING THE WORKPLACE* 143 (1990).

104. Teeter, *supra* note 19, at 429.

105. *Id.* Banning employee expression also ignores its role in enhancing group solidarity, which may help reduce the alienation workers often feel after a strike. On a more practical note, solidarity is important in the post-strike period because of the likelihood of a decertification election following a divisive strike.

106. ALBERT O. HIRSCHMAN, *EXIT, VOICE, AND LOYALTY* 36-43 (1970).

107. See, e.g., *Linn v. United Plant Guard Workers of Am., Local 114*, 383 U.S. 53 (1966) (holding that state tort actions for libel are available in the course of a labor dispute only when the statements were made with malice and caused damage to the complainant); *Old Dominion Branch No. 496, National Ass’n of Letter Carriers v. Austin*, 418 U.S. 264 (1974) (holding that a union’s publication of a “list of scabs” is protected under federal labor law and is thus not actionable under state libel law). *But see Misericordia Hosp. Medical Ctr. v. NLRB*, 623 F.2d 808, 814 n.8 (2d Cir. 1980) (rejecting the argument that expression during an organizing campaign deserves greater section 7 protection than other types of section 7 activity).

108. See *supra* notes 96-98 and accompanying text.

“exit,”<sup>109</sup> whether literal or figurative. From this perspective, therefore, the interests of employees in venting their grievances and in expressing their union solidarity are not necessarily inconsistent.

This theory does not imply that fostering employee expression is always the best means of resolving conflict in the post-strike period. Undoubtedly, a tension exists between the need to maintain discipline and the employees' need to voice their grievances in the tense atmosphere often prevailing after the strike. As Hirschman has noted, “voice” can “be overdone: the discontented . . . members [of an organization] could become so harassing that their protests would at some point hinder rather than help” the operation of the organization.<sup>110</sup> Perhaps the best way to restore normalcy to the post-strike workplace would be to establish a formal procedure for employee expression and grievance resolution, with the union acting as intermediary. Short of this solution, however, courts must recognize the importance of section 7 expression rights in the aftermath of a strike, especially the positive role employee “voice” may play in restoring calm to the workplace.

#### IV

##### CONCLUSION: PRACTICAL AND PHILOSOPHICAL SUGGESTIONS

To a large extent, the role one assigns to employee expression in the workplace, as well as the extent to which one believes in the venting function of speech, are value judgments. Ideally, employers will recognize that it is not inimical to their interest to permit employee expression in the post-strike period, even though such expression may be, in the term used by the *Midstate* court, an “irritant.” Many employers, however, still will choose to act on the premise that increased managerial control is the best means of restoring order to the post-strike workplace. Even where employers seek to suppress employee expression, however, the Board and the courts should demand a threshold showing of imminent threat to discipline or production in order to satisfy *Republic Aviation*'s special exception test. Such a standard is necessary to fulfill section 7's guarantee of protection for employee self-organization rights.

In essence, this article proposes that courts adopt an alternative approach—both practically and philosophically—to restoring order to the post-strike workplace. As a practical matter, the Board and the courts should refuse to suppress employee expression unless the employer presents specific proof linking the banned expression to threats to discipline or production. Courts should refuse to accept ad hoc employer justifications

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109. HIRSCHMAN, *supra* note 106, at 36-37. Workers figuratively “exit” when they perform their work but, due to demoralizing effects of the strike, do not give their employer the benefit of their knowledge and experience.

110. *Id.* at 31.

based on a speculative connection between expression and chaos in the workplace. Furthermore, courts should assess whether suppressing employee expression actually will achieve the desired result. In many cases, punishing the actual *conduct* of individuals who engage in disruptive behavior will be more effective in maintaining discipline than will blanket suppression of employee expression.

As a philosophical matter, courts should reexamine their assumptions about workplace relations. Since the courts' choice of organizational theory about workplace relations is, in essence, a value choice, it is reasonable to expect courts to adopt the theory that best fosters the statutory purposes of section 7—protecting employee speech meant to enhance union solidarity—in the post-strike workplace. Although the Tayloristic model of workplace relations assigns no positive role to employee expression in the workplace, alternative models of workplace relations recognize that employee expression is a key component of organizational efficiency. Anecdotal evidence supports the theory that the problem of post-strike expression is a *human* problem; consequently, in striking a balance between labor and management, courts must remember that returning strikers are, as one writer put it, “people with stories to tell.”<sup>111</sup>

The story of Janet Kolzow illustrates just how important section 7 rights can be to the personal dignity of employees in the aftermath of a strike.<sup>112</sup> Kolzow, a “soft-spoken, gray-haired grandmother who voted for Ronald Reagan in 1980,” worked for Caterpillar for twenty-seven years. One morning shortly after the Caterpillar strike, Kolzow decided to take a stand by wearing a t-shirt to work bearing the words “Permanently Replace Fites.” Fites was Caterpillar’s CEO and the architect of its labor policy during the five-and-a-half month strike in Peoria, Illinois. When Kolzow’s foreman asked her to remove the shirt, she refused, citing an NLRB ruling about the union’s rights. In response, Kolzow’s manager indefinitely suspended her. A short while later, sitting at the offices of UAW Local 145, Kolzow expressed her feelings this way: “I decided this is what I was going to do. I decided there are some things in your life you have to stand up for and say, ‘Enough is enough.’”<sup>113</sup> Workers like Kolzow deserve a right to vent their frustration. Courts should not lightly sacrifice employees’ section 7 rights and their personal dignity in the purported interest of productivity.

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111. Kaha, *supra* note 96, at 3B.

112. See Franklin, *supra* note 99, at 1.

113. *Id.* at 1.