



THE INDIVIDUAL AND COLLECTIVE LEVELS OF THE RIGHT TO STRIKE

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Abstract: The article asks a question that labour law usually treats as settled: who is the holder of the right to strike, the individual worker, the workforce as a group, or the trade union? Drawing on the early American debate, on recent political and legal theory and on comparative law, the author argues that the answer is not a matter of terminology. The level at which a legal system locates the right determines who may call a strike, who is protected while it lasts and who is punished when it goes wrong. Three justifications of the right are compared: the derivative (collective bargaining) account, the composite “basic liberties” account and the radical account of resistance to domination. The composite account is shown to fit legal doctrine best. On this basis the article evaluates the model adopted by Uzbekistan in Law No. ZRU-1150 of 11 June 2026, which the author describes as a collective-representative model, and proposes several amendments to strengthen the position of the individual striker within it.

Keywords: right to strike, individual right, collective right, freedom of association, freedom from forced labour, non-domination, trade union, Labour Code of Uzbekistan.

Introduction

In December 1922, in the middle of a national railway strike, the Boston lawyer Moorfield Storey published a short paper in the Yale Law Journal with a blunt thesis.



Workers, he wrote, have no “right to strike” at all. A worker who stops working while his contract is in force simply breaks it, and the law “can give no man or class of men the right to break a contract”. What the law can do is decline to punish a combination of workers who quit together. The correct formula, Storey insisted, is therefore “not the right to strike, but the right not to be punished for striking”, and that privilege may be withdrawn by the legislature at any time [1, p.100].

A century later, Storey’s formula may look archaic, but the underlying problem remains. Alex Gourevitch puts the difficulty plainly: strikers refuse to work, yet claim a right to the jobs they are refusing to do. From the standpoint of ordinary contract law this “sounds like illiberal privilege” [2, p.307]. If a doctor or a lawyer abandoned a client and then demanded to be kept on and paid, nobody would call it a right. Why should the worker be treated differently?

The issue has direct significance for Uzbekistan. On 11 June 2026 the President signed Law No. ZRU-1150, which inserted a full chapter on strikes into the Labour Code; the law entered into force on 12 September 2026 [6]. For the first time since independence, the national legislator defined the strike, set out the procedure for calling it, listed the categories of workers who may not take part and attached administrative and criminal liability to unlawful strikes. A few weeks earlier, on 21 May 2026, the International Court of Justice held by ten votes to four that the right to strike is protected by ILO Convention No. 87 [5]. The right is therefore now recognised at both the international and national levels. What remains open, and what this article addresses, is a structural question: at what level is the right located? Is it a right of each worker, a right of the workforce acting by majority, or a right of the trade union?

This choice is not merely technical. It determines whether a spontaneous walkout is lawful, whether a minority can be dragged into a strike, whether a striker may be replaced, and whom the state punishes when a strike crosses a legal line. The



analysis first examines the contractual “immunity” view represented by Storey. It then compares three modern justifications of the right to strike, maps the legal models that place the right with the individual, the union or the group, and locates Uzbekistan’s new regime among them. The final part draws practical conclusions for national legislation. Methodologically, the study combines doctrinal analysis of the Labour Code with functional comparison and with the normative argument developed in political theory.

1. From immunity to right. Why the contract logic fails

Storey’s argument rests on two premises. The first is formal equality: employer and employee stand equal before the law, and each is bound by the bargain he has struck. The second is that every right either party has “as to the terms of employment” is fixed by that bargain [1, p.99]. From these premises it follows that the strike can only be a breach, tolerated or punished as the legislature decides. Storey went further. Quoting Calvin Coolidge’s telegram to Samuel Gompers during the Boston police strike, “There is no right to strike against the public safety by anybody, at any time, anywhere”, he concluded that the state may forbid strikes in any industry whose stoppage harms the public, just as it may draft a citizen in wartime [1, p.104].

The weakness of Storey’s reasoning becomes clearest in the case that concerned him most. A collective agreement or an individual contract that tolerates no interruption of work at all, enforced by criminal penalty, comes uncomfortably close to compulsory labour. This is why modern doctrine reverses the construction. In continental systems, a lawful strike does not breach the employment contract; it suspends the main obligations of both parties. The worker does not work and the employer does not pay, but the relationship survives. Article 585 of the Labour Code of Uzbekistan, as amended in 2026, follows this logic: participation in a lawful strike



cannot be treated as a disciplinary offence, the worker keeps the job and position, and wages for the strike period may be withheld [6].

The English model occupies a middle position. Because English law never developed a positive right to strike, the Trade Union and Labour Relations (Consolidation) Act 1992 works through immunities: an act done “in contemplation or furtherance of a trade dispute” is protected from certain tort actions if strict balloting and notice rules are observed [18]. Storey’s formula therefore has a modern counterpart here, although in a more limited and procedural form. The result is that the scope of protection has shifted with changes in labour legislation. The Trade Union Act 2016 tightened the conditions; the Employment Rights Act 2025, which received Royal Assent on 18 December 2025, loosened many of them again, including a reduction of the notice period from fourteen to ten days from February 2026 [22].

The historical lesson is straightforward. When the strike is treated as a privilege granted to a group, its scope depends heavily on the legislature. When it is treated as a right with an individual core, the starting point changes: restrictions on the right require justification. The next question is what that individual core consists of.

2. Three ways of justifying the right to strike

The derivative account. The dominant legal strategy derives the right to strike from collective bargaining, and collective bargaining from freedom of association. The logic is functional: bargaining without the possibility of a strike, as the German Federal Labour Court once put it, is “collective begging”. This is the route taken by the Supreme Court of Canada in *Saskatchewan Federation of Labour v Saskatchewan* (2015) [10] and, in substance, by the European Court of Human Rights after *Demir and Baykara v Turkey* and *Enerji Yapı-Yol Sen v Turkey* [11; 12]. The International Court of Justice reasoned in a similar way in 2026: reading



Articles 2, 3, 10 and 11 of Convention No. 87 together, it found that the freedom of workers' organisations to organise their "activities" and formulate their "programmes" for the defence of workers' interests includes strike action [5; 20].

The derivative account has obvious strengths. It ties the strike to an institution that states already accept, and it explains why the union is usually the actor. Its weakness is the mirror image. If the strike exists only to make bargaining effective, then strikes that are not about bargaining (a protest against unsafe conditions, a walkout over the dismissal of a colleague, a strike by workers who have no union) lose their foundation. The derivative account also explains why the worker may stop working, but not why she may keep the job.

The composite "basic liberties" account. Bogg and Estlund reject what they call the "reductive pattern" of deriving the right from a single liberty. Ruth Ben-Israel, they note, presented the freedom to strike as complementary "either to the freedom from slavery and forced labour, or to the freedom of association" [13]. Their answer is: "why either/or?" [4, p.230]. The strike is supported simultaneously by three liberties: the freedom to leave employment (exit), the freedom to act with others (association) and the freedom to express what one thinks (voice). None of them alone is enough. Exit protects the individual who quits, but most workers cannot quit their way out of a bad job; an individual right of exit, the authors observe, may simply leave them "bouncing around from one crummy job to another" [4, p.234]. Exit becomes effective only when it is exercised "collectively, expressively, and temporarily" [4, p.234], and those three adverbs correspond precisely to association, voice and the retention of the job.

This argument rests on Philip Pettit's republican ideal of freedom as non-domination and his "eyeball test": a person is free when she can look others in the eye without reason for fear or deference [14]. Bogg and Estlund draw from it the figure of the "contestatory citizen", who is "prepared to stand up and look the



powerful in the eye”, and a state that must give her the means to do so [4, p.232]. For legal analysis, two implications are especially important. The first is that the right is “rooted in a set of individual entitlements, rather than a concern for the institutional rights and privileges of organised labour” [4, p.250]. The second is that, because it is a basic liberty and not an absolute power, it can be subject to “rules of industrial order” such as ballots and notice requirements [4, p.240]. The account also implies, uncomfortably for some trade unionists, a “right to refrain” from strikes [4, p.237].

The radical account. Gourevitch accepts the republican starting point but draws sharper conclusions. Workers in a market society suffer two forms of domination: structural, because they are forced to sell their labour to some employer or other, and personal, because inside the workplace they are subject to managerial authority [2, p.307]. The individual right to quit answers neither: “workers can formally quit the job but they can’t quit work” [2, p.307]. The strike reverses this relationship by withdrawing labour while keeping the claim to the job. In his later work Gourevitch goes further and defines the right to strike as “a right to resist oppression”, which may in some circumstances take priority over the basic liberties of contract and property that strikers violate through mass picketing or sit-downs [3, p.905].

Assessment. The three accounts do not carry the same weight for a legislator. The radical view explains, better than any other, why strikes so often push against the edges of legality; but a positive legal system cannot coherently grant a right to break its own rules, and Gourevitch himself frames the question as one of political morality rather than statute. The derivative view describes the present settlement in international law, including the ICJ opinion, but it is too narrow to explain the protection of non-bargaining strikes. On balance, the composite account fits legal doctrine best. It locates the root of the right in the individual, explains why the right must be exercised with others, accepts procedural regulation, and provides a



principled basis for protecting the worker who does not wish to strike. The remainder of the article therefore uses this account as its main analytical yardstick.

3. Who holds the right? Three legal models and the Uzbek choice

Comparative law offers three basic answers to the question of who holds the right to strike, and each corresponds, roughly, to one of the justifications discussed above.

In the individual model, typical of France, the right belongs to each worker. Paragraph 7 of the Preamble to the 1946 Constitution, which remains part of the constitutional bloc, states that the right to strike is exercised within the framework of the laws that regulate it [16]. French courts nevertheless require a concerted stoppage and occupational demands; a single worker who stops alone does not strike. The individual is the holder, but the exercise is necessarily collective. Union approval is not required in the private sector, so even small groups of non-unionised workers are protected.

In the union model, the right is in practice vested in the trade union. Germany is the clearest example. Article 9(3) of the Basic Law guarantees freedom of coalition [17], and the case law of the Federal Labour Court has built on it a right to strike that serves the conclusion of collective agreements. A strike not called or adopted by a union (the so-called wildcat strike) is unlawful. Sweden and, in a different form, Croatia also reserve certain strikes to representative unions; R. Raonić and O. Raonić note that under Article 205 of the Croatian Labour Act a strike over the conclusion of a collective agreement may be called only by the unions that negotiated it [8, p.107]. This is the legal form of the derivative account: the strike belongs to the institution that bargains.



The immunity model of the United Kingdom formally protects the act rather than the actor, but in reality it channels industrial action through the union, since only a properly balloted union call attracts statutory protection [18]. Serbia occupies an intermediate position: its 1996 Strike Act defines the strike as a stoppage organised by employees, leaves participation to each employee's free decision, entrusts the decision to the union or another competent body and has a strike committee conduct the action on the employees' behalf [8, p. 108].

Where does Uzbekistan stand? ZRU-1150 combines elements of all three. The decision to declare a strike is taken by a general meeting (conference) of the employees of the organisation by a majority of more than fifty per cent of those present, under the quorum rules of Article 36 of the Labour Code (Article 582). The strike is then led by an authorised representative of the trade union committee (Article 584), and under Article 6 of the Code the notion of "trade union committee" also covers another representative body of employees where no union exists [6; 7]. Participation is voluntary, and coercion either to join or not to join a strike is prohibited and sanctioned by the Code of Administrative Responsibility [6].

This arrangement may be described as a collective-representative model. Its source of legitimacy is the democratic will of the workforce; procedural responsibility is concentrated in a representative body. The model has several practical advantages when assessed against the composite account. It does not make the right dependent on union membership, so workers in organisations without a union are not excluded. It protects the individual worker's "right to refrain" by forbidding coercion in both directions, which is a more consistent position than many Western systems take. By entrusting the conduct of the strike to an organised body, it also provides the "rules of industrial order" that Bogg and Estlund regard as compatible with a basic liberty.



The main weakness is the relationship between the two levels. The workforce decides; the union committee leads. If the leading body is dependent on the employer, the collective will can be filtered or quietly blocked. The concern is not merely theoretical. When Uzbekistan ratified Convention No. 87 in 2016, the international union federation IUF publicly questioned the independence of the national union structures [19]. A system in which the legitimacy of the strike comes from below but its legal “face” is fixed from above therefore carries a risk that the composite theory helps to identify: domination can be exercised not only by the employer but also by an organisation that claims to speak for workers, since unions too “pose a threat of domination if they exercise unchecked power over individuals” [4, p.243]. The individual root of the right provides a safeguard against this risk.

4. Why the level matters: four practical consequences

Replacement of strikers. If the strike is an individual right exercised collectively, protection must extend beyond dismissal. A striker must not be made redundant in practice simply because another worker is brought in to perform the same work. Gourevitch’s account explains the point: the whole purpose of the strike is to keep the claim to the job while refusing the work; a striker who can be replaced at once has, in effect, merely quit [2]. ZRU-1150 protects the striker against disciplinary sanctions and preserves the job (Article 585), but it says nothing about hiring replacements, and it allows non-striking employees to be transferred to other work at the employer’s initiative [6]. The Serbian Strike Act is more explicit: during a strike the employer may not hire new staff to replace strikers, except where the safety of persons and property or the minimum process of work is at stake [8, p.111]. Adding a similar rule to the Uzbek Code would make the guarantee in Article 585 more effective.

Spontaneous stoppages. In 2019, approximately 200 miners at the “Sharg’unko’mir” company in Surkhandarya stopped work, at a time when national



law punished leadership of a “prohibited” strike but offered no lawful procedure for any strike [21]. Under the new regime, a similar stoppage organised without a meeting decision made at least one month in advance would be unlawful. Article 590 treats any breach of the requirements of the Code or other laws as a ground for declaring a strike unlawful, without any test of seriousness [6]. A union model would reach the same result, and the composite account does not demand that wildcat strikes be lawful. It does, however, demand proportionality: a minor procedural defect should not expose every participant to the same consequences as a strike in a prohibited sector. The law should therefore distinguish between curable defects, which a court can order to be remedied, and substantive violations.

Workers outside the standard employment relationship. Bogg and Estlund also argue that, if the right is rooted in individual liberties of exit, association and voice, it should be enjoyed “by all those participating in the activity of labour, whether self-employed, workers in the informal sector, or standard employees” [4, p.251]. The Uzbek model, built around “the employees of the organisation” and its general meeting, has no place for couriers or drivers working through digital platforms, for many construction workers employed informally, or for self-employed persons whose economic dependence is real. This is not a defect peculiar to Uzbekistan; it is the price of any model in which the right belongs to a workforce defined by a single employer. The issue therefore deserves separate legislative attention as platform work grows.

Sanctions. The allocation of the right also affects the allocation of liability. Under ZRU-1150, participation in a prohibited strike is an administrative offence, while leading an unlawful strike or coercing workers to take part, under the conditions of the new Article 218¹ of the Criminal Code, may lead to criminal penalties up to restriction or deprivation of liberty [6]. In a collective-representative model, this risk falls on the representative who “leads” the strike and is responsible



for keeping the action within legal bounds. The more a system relies on representative leadership, the stronger the chilling effect of personal criminal liability. ILO supervisory practice regards prison sentences for peaceful strikes as disproportionate [9]. The author's view is that criminal liability should remain only for coercion, violence and serious consequences actually caused, while peaceful leadership of an unlawful strike should be left to administrative and labour-law sanctions.

Conclusion

Storey was right about one thing: the vocabulary of rights shapes what the law will tolerate. He used that vocabulary to deny that strikers had any right at all. The better conclusion, on the analysis developed here, is the opposite. The right to strike is best understood, following Bogg and Estlund, as a composite right with an individual root (the freedoms of exit, association and voice) that can only be exercised together with others. Gourevitch's formula captures its distinctive content: the striker quits the work but not the job. International law, after the 2026 advisory opinion, protects the right through the freedom of association of workers' organisations; but, as T. Novitz's work showed well before the opinion, the normative case for protecting the strike rests on several grounds and cannot be reduced to freedom of association alone [15].

Uzbekistan's new regime represents a significant step. Its collective-representative model avoids the union monopoly of the German type, protects the worker who chooses not to strike as well as the worker who strikes, and gives the strike a clear procedural form. Its weaknesses all concern the individual level of the right. On this basis, the author proposes the following:

1. Article 584 of the Labour Code should allow the general meeting (conference) to elect a strike leader other than the trade union representative, and should exclude persons representing the employer from that role.



2. Article 585 should be supplemented with a prohibition on hiring new workers, or bringing in workers from other employers, to perform the work of strikers, except for the provision of minimum necessary services; transfer of non-striking employees to strikers' work should require their written consent.

3. Article 590 should introduce a seriousness test: only a violation of the prohibitions in Article 589, or a procedural breach that materially affects the rights of the employer or third parties, should make a strike unlawful; curable defects should be remedied on a court's instruction.

4. Criminal liability under Article 218¹ of the Criminal Code should be confined to coercion, violence or threats of violence, and serious consequences actually caused.

5. The position of platform and other non-standard workers should become the subject of a separate study and, in due course, of legislation.

These proposals do not weaken the collective character of the strike. They secure it, by making sure that the collective rests on individuals who are free to join it, free to stay out and protected while they act.

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