

**Government Transfer Payments and Strike Activity: Reforming Public Policy**

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One of the most controversial labor policy issues is whether strikers should be eligible for government transfer payments, such as unemployment compensation, public assistance, and food stamps. The controversy often focuses on whether payment of such benefits to strikers increases the magnitude of strike activity. In this article, we argue that that is the wrong focus. The key issue is not whether strikers receive benefits, but who finances them. We contend that to the extent that the benefits are financed by the parties to the conflict (the employer and union), the transfers will not affect strike activity. This article extends our recent book on this topic,<sup>1</sup> by briefly describing current and past policies, summarizing our argument for why financing is key, and presenting a proposal for reforming strike-related government transfers.

It is widely believed, even by those with knowledge of the subject, that only two states, New York and Rhode Island, routinely permit strikers to collect unemployment benefits. Although it is true that these two states do allow strikers to collect benefits (in New York after an eight-week waiting period and in Rhode Island after a seven-week period), *it is also true that a majority of other states allow workers unemployed because of labor disputes to collect unemployment benefits under certain conditions.* Moreover, in these states the workers are eligible to collect benefits after the normal waiting period (usually one week) or virtually from the outset of a strike. While the relevant state unemployment insurance provisions take many forms, the following are particularly important.

(1) In 1984, twenty-seven states had a “stoppage-of-work” provision, whereby strikers collect unemployment benefits if their employer continues to operate at or near normal operating levels during the course of the labor dispute. In a sense, this provision provides insurance against

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<sup>1</sup> Hutchens, Robert, David Lipsky, and Robert Stern, *Strikers and Subsidies: The Influence of Government Transfer Programs on Strike Activity* (Kalamazoo, MI: W.E. Upjohn Institute, 1989).

a failed strike; if the strike fails to shut down the employer, then unemployment insurance benefits are available to the strikers.

(2) In 1984, twenty-one states qualified claimants for benefits if the labor dispute is caused by an employer lockout. For example, in the dispute between the USW and the USX Corporation in 1986-87, the union instructed a large number of its Pennsylvania members to report to work after the expiration of the national contract. When the corporation turned the workers away from the locked gates of its Pennsylvania steel mills, it became a near certainty that the state would allow the steelworkers to collect unemployment insurance benefits.

(3) In 1984, forty-four states had an “innocent bystander” provision whereby workers obtain unemployment insurance benefits if they are unemployed because of a labor dispute but are not participating in, financing, or directly interested in the dispute. Typically, innocent bystanders are employed at the struck establishment, but are not members of either the union or the bargaining unit that is on strike.

Figure 1 shows the range of unemployment insurance provisions that are related to labor disputes. Of course, these rules, especially the three central ones, interact. Some states have none of the provisions, others have one or two, while still others have all three. Interestingly, New York—popularly regarded as a state with liberal policies on the use of unemployment benefits in labor disputes—has none of the three policies. A New York worker engaged in a labor dispute receives no unemployment insurance benefits during the first eight weeks of the strike. Irrespective of whether he or she is a participant or an innocent bystander, and irrespective of whether the employer continues to operate or has locked strikers out. Of course, after the eight-week waiting period, the New Yorker receives full unemployment insurance benefits. In contrast, Rhode Island uses a stoppage-of-work rule. Thus, in Rhode Island, a striker can collect

benefits after a one- week waiting period if the employer *does* continue to operate during a strike and can collect benefits after a seven-week waiting period if the employer does not continue to operate during a strike.

It should be clear from this brief review that the rules governing the payment of unemployment benefits in labor disputes are complex and diverse. The variation in the rules across states means that strikers who are otherwise identical may be eligible to collect benefits in one state but not in another. Some states, particularly those with work-stoppage, lockout, and innocent bystander provisions, e.g., Georgia, Maryland, and West Virginia, are relatively liberal in qualifying workers for benefits. Other states, particularly those without work-stoppage, lockout, and innocent bystander provisions, e.g., Alabama and North Carolina, are quite strict.

Of course, the debate over paying government transfers to strikers not only focuses on unemployment insurance but also on welfare benefits. Until 1981, strikers in some states could receive benefits from the Unemployed Father component of the Aid to Families with Dependent Children program (AFDC). Moreover, during the 1970s, strikers occasionally benefited from the Food Stamp program. In 1981, the Reagan Administration proposed and Congress passed legislation which effectively prohibited payment of either AFDC or Food Stamp benefits to strikers.

### **The Current Debate**

The academic research and political and legal debate surrounding this issue have focused exclusively upon the question of whether providing benefits to strikers is appropriate and what effect it has upon strike activity. For example, in *Grinnell Corp. v. Hackett*, a case involving the

payment of unemployment compensation to strikers in Rhode Island, the First Circuit Court demanded an empirical burden of proof. The court said:

“[The] present record suffers from a fundamental defect. It provides no support for a causal relationship between the receipt of benefits, which unions obviously desire and often actively seek, and longer, costlier strikes. ... [The] record lacks even a crude form of what we assume would be the most relevant and probative type of evidence—statistical comparisons of the length and cost of strikes in states granting unemployment benefits (Rhode Island and New York) and the length and cost of strikes of similar size in similar industries in other states not granting such benefits.”<sup>2</sup>

Similarly, in *ITT Lamp Division v. Minter*, a case involving payment of AFDC-Unemployed parent benefits to strikers, the First Circuit Court called for evidence indicating, “how many states permit strikers to receive welfare; whether or not strikes tend to be of longer duration where welfare is received; and studies or expert testimony evaluating the impact of eligibility for benefits on the strikers’ resolve.”<sup>3</sup>

There exist but a handful of studies that examine the relationship between transfer payments and strike activity. Perhaps best known is a work by Thielblot and Cowin,<sup>4</sup> which is primarily based on case studies. A study of Great Britain by Gennard<sup>5</sup> similarly relies on description, case studies, and gross cost estimates. John Kennan<sup>6</sup> applies modern statistical

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<sup>2</sup> *Grinnell Corp. v. Hackett*, 475 F. 2d 499 at 459 (1st Cir.t 1973).

<sup>3</sup> *ITT Lamp Division v. Minter*, 435 F. 2d 989 (1st Cir., 1970), cert, denied, 420 U.S. 933 (1971).

<sup>4</sup> Thielblot, Armand and Ronald Cowin, *Welfare and Strikes: The Use of Public Funds to Support Strikers* (Philadelphia, PA: University of Pennsylvania Press, 1972).

<sup>5</sup> Gennard, John, *Financing Strikers* (New York: John Wiley and Sons, 1977).

<sup>6</sup> Kennan, John, “The Effect of Unemployment Insurance on Strike Duration,” *Unemployment Compensation Studies and Research*, Vol. 2 (National Commission on Unemployment Compensation, July, 1960), pp. 467-466.

methods in examining the relationship between unemployment insurance and the duration of strikes. His work, however, focuses on the New York and Rhode Island policy of providing unemployment insurance benefits in very long strikes,<sup>7</sup> and thereby ignores the multitude of other policies under which strikers receive government transfers, is pitched at the question of whether benefits should be granted at all, but an alternative perspective appears when the method by which the benefits are financed is examined.

### **Why Financing Matters**

There is good reason to argue that the effect of government transfers on strike activity depends in part on the way in which the transfers are financed. The argument is clearest in the context of a joint cost theory of strike activity. Joint cost theory was developed by Reder and Neumann and Kennan.<sup>8</sup> It argues that strike activity is a function of the combined (employer plus employee) cost of a strike, with greater combined cost leading to less strike activity.

In particular, Reder and Neumann argue that as the combined cost of strikes rise, bargainers develop protocols that make it easier to reach an agreement. Protocols are “the rules or conventions governing the procedure for negotiating collective-bargaining agreements.” These rules or conventions specify the procedures for negotiations, what topics will be covered, and how to know when a settlement is reached; they may include provisions for mediation and/or arbitration; they may deal with rates and methods of compensation, work rules, and fringe

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<sup>7</sup> See also Perl, Lewis, “Statistical Analysis of Strike Activity,” unpublished paper (New York: National Economic Research Association, Sept. 11, 1974.)

<sup>8</sup> Reder, Melvin and George R. Neumann, “Conflict and Contract: The Case of Strikes,” *J. of Political Economy*, Vol. 88 (October, 1968), pp. 867-886; Kennan, cited at note 6.

benefits. For example, many municipal fire departments and fire fighter unions abide by the protocol that their salary settlements should exactly equal the salary settlements reached by the municipalities and their police unions.

Although more elaborate protocols make it easier to reach agreements, they are also costly to negotiate. As such, not all contingencies and procedures will be covered by protocols. “In specifying a protocol, bargainers balance the cost reduction from reduced strike activity against the increased cost of specifying a more detailed protocol.”<sup>9</sup> It follows that as the combined cost of strikes rise, bargainers will tend to negotiate more elaborate protocols and thereby reduce both the frequency and duration of strikes.<sup>10</sup>

For purposes of analyzing the links between government transfers and strike activity, joint cost theory implies that financing matters. If the transfer payments are wholly financed out of taxes on the struck employer, then they will not alter the combined cost of strikes. In this case, although the transfer payments reduce the cost of strikes to strikers, they increase the cost of strikes to the employer by an equal amount. Since the combined cost of strikes is not altered, joint cost theory predicts that strike activity will remain unchanged. Strike activity is only affected if the parties to the strike do not bear the full cost of the transfer payment.

In the case of unemployment insurance, employers pay “experience-rated” taxes; when a worker receives \$1.00 in unemployment insurance benefits, the employer is supposed to pay \$1.00 in taxes. Yet, experience rating is not commensurate with benefits received by their

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<sup>9</sup> Reder and Neumann, cited at note 8, p. 871

<sup>10</sup> This logic applies irrespective of the division of strike costs. If strike costs are large and equally divided between the parties, then both will seek to negotiate protocols that minimize strikes. If strike activity imposes large costs on one of the parties but not on the other, then the party that bears the large costs will tend to make concessions that yield elaborate protocols. Either way, as combined strike costs rise, strike activity should fall, *ceteris paribus*.

workers. Moreover, prior to 1979, unemployment insurance benefits were not subject to the federal income tax. Such “tax preferences” are a form of subsidy to the recipient from the rest of society. Although experience rating usually insures that the struck employer will bear some of the cost of unemployment insurance benefits to strikers, imperfect experience rating and tax preferences insure that the employer will generally not bear the full cost. As such, a joint cost model implies that when unemployment insurance benefits are paid to strikers, strike activity will increase.

Our recent empirical work finds solid support for these ideas. Using state-level data covering strike activity from 1960 to 1974, we find evidence that when a state’s unemployment insurance law contains either the stoppage-of-work or innocent bystander provision, more generous benefits (and subsidies) are associated with a greater strike frequency.<sup>11</sup> Similar results were not obtained for other unemployment insurance provisions, e.g., the New York-Rhode Island waiting period. Further, the availability of food stamps or general assistance to strikers did not have an effect on strike frequency.

### **Alternative Policies**

If society’s goal is to make certain that the parties to the strike bear the full cost of the strike, then there are at least four ways to do this.

(1) *Perfect Experience Rating*: Under this provision, the employer would bear the full cost of the transfers payments. The option is clearly feasible. It would simply require refinement of the current financing system. At present, the principal reasons for imperfect experience rating

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<sup>11</sup> Hutchens, Lipsky, and Stern, cited at note 1.

are minimum and maximum tax rates on employers. The main route to perfect experience rating is elimination rates on employers. The main route to perfect experience rating is elimination of these minimums and maximums.<sup>12</sup>

(2) *Worker Repayment of Benefits Received*: Under this provision, workers who receive strike-related benefits would repay the benefits to the government. In a sense, this would put the government in the business of making loans to workers during a strike and collecting repayments afterwards. Administrative feasibility may be a problem here. It is not clear precisely how the government would collect money from the workers after the strike. For example, if the government used a payroll tax, that tax would have to be targeted on the strikers and not levied on new workers or workers who did not participate in the strike.

(3) *Union Repayment of Benefits Received*: Here, the striking union would repay the benefits. While perhaps easier to enforce than worker repayment, if the union represents other workers, some of the costs could be shifted to workers outside of the bargaining unit.

(4) *Income Taxation of Unemployment Insurance Benefits*: Policy has already moved in this direction. As of 1986, most unemployment insurance recipients had to include unemployment insurance benefits when computing their federal income tax. All four policies insure that the parties to the dispute bear the cost of the transfer benefits.

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<sup>12</sup> See Hamermesh, Daniel, *Jobless Pay and the Economy* (Baltimore, MD: Johns Hopkins University Press, 1977) for a discussion.

### **A Modest Proposal**

This leads us to a policy proposal. Since public policy in part depends upon goals, we begin by stating our goals. Specifically, in formulating a policy governing strike related transfer payments, greatest emphasis should be placed on two goals: alleviation of material hardship, and promotion of industrial peace.

Society pursues the goal of alleviating material hardship by providing a financial floor of protection so that people do not have to starve or beg. Public assistance programs, like Food Stamps or AFDC, are classic illustrations of this policy goal. These programs are only available to families that can pass a “means test” and thereby demonstrate material hardship. In our opinion, alleviation of hardship is an important public policy goal. Governments have a responsibility to provide a minimum level of supports. This responsibility extends to strikers and nonstrikers alike, and is of particular importance for families with children. When people can demonstrate material hardship by passing a means test, they deserve assistance irrespective of the reason for that hardship.

Society pursues the goal of promoting industrial peace by implementing policies that minimize strike-related disruptions of commerce. To a large extent, this goal underlies the current U.S. policy of encouraging collective bargaining. While strikes are a necessary and legal mechanism through which workers express disaffection with employers, the government encourages both workers and employers to find less disruptive avenues for voicing and resolving differences. In our opinion, promotion of industrial peace is an appropriate public policy goal. Since strikes imply a costly loss of output, it is proper for government to seek to minimize them. Of course, that does not mean that they should be eliminated. Some level of strikes may be necessary to resolve conflicts and to enhance the effectiveness of other conflict resolution

mechanisms. However, to the extent that there are feasible alternatives to strikes—alternatives that are consistent with worker rights and democratic institutions—the government should promote those alternatives.

These goals lead us to the following proposal: Public Assistance (AFDC, Food Stamps, and General Assistance) should be available to families suffering financial hardship irrespective of their involvement in a labor dispute. Unemployment insurance benefits should be paid to innocent bystanders. All strike-related transfers should be financed out of taxes on the employer. This policy addresses the problem of hardship suffered by strikers and their families by providing public assistance to workers involved in labor disputes. It promotes industrial peace by placing the cost of strike activity squarely upon the parties involved. Finally, the proposal includes payment of unemployment insurance to innocent bystanders. Their unemployment is unambiguously involuntary and thus worthy of compensation.

We would like to see the benefits financed out of taxes on the struck employer. This is a simpler administrative mechanism than worker repayment. Moreover, the workers who receive benefits under our plan would be quite poor, and would probably find it difficult to repay the government for the benefits. Asking impoverished workers to repay government benefits seems inconsistent with the goal of alleviating hardship. In our view, however, how the costs are divided between the disputing parties is not as important as making certain that the larger society does not share in the cost.

Our proposal is silent on other strike related provisions of the unemployment insurance program, i.e., lockout, work stoppage, etc. We find it difficult to justify them. In our opinion, the most desirable of these provisions is the New York- Rhode Island rule whereby strikers receive benefits if the strike lasts eight weeks. This provision has the twin virtues of being simple to

administer and of providing aid to people who are almost certainly experiencing material hardship. The other provisions are either administratively cumbersome (e.g., the lockout rule) or difficult to justify in terms of either compensating involuntary unemployment or alleviating hardship (e.g., the work stoppage rule). If it is decided that workers involved in labor disputes should continue to receive unemployment insurance, then we would propose extending the above proposal as follows.

Provide unemployment insurance benefits to workers who satisfy the New York- Rhode Island rule. Eliminate other provisions that provide unemployment insurance benefits to workers involved in labor disputes (except for the innocent bystander rule). Finance the additional strike-related benefits through taxes on the disputing parties. Consideration should be given to having the workers or their union share in the cost of these unemployment insurance benefits. Once again, these proposals would move government policy toward the goals of alleviating hardship and promoting industrial peace.

We hope that, in advancing these proposals, we will provoke a public discussion of the merits of the present system of strike-related transfer payments. In our view, that system does not make sense. It does not make sense to deny public assistance benefits to the child of a law-abiding striker, and yet provide benefits to the child of a jailed felon. It does not make sense to have the larger society share in the cost of strike-related benefits and thereby effectively subsidize strike activity. It is time for reform.

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Insert Figure I

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Figure 1

**Figure I**  
*Labor Dispute Disqualification Provisions in Unemployment Insurance Systems\**

<b>Standard provisions:</b>		<b>Prevalence as of 1984</b>
Labor dispute disqualification	Individuals filing claims for benefits are disqualified if unemployed because of the existence of a labor dispute.	All jurisdictions
Establishment rule	A worker is ineligible for benefits if the labor dispute causing his unemployment is at the "factory, establishment, or premises at which he is or was employed."	Almost all jurisdictions
New work	Otherwise eligible claimants cannot be denied benefits for refusing to accept new work if the job vacancy was created by a strike, lockout, or other labor dispute.	All jurisdictions
<b>Exceptions:</b>		
Stoppage-of-work	Also referred to as the "American Rule." Striking employees are not disqualified for benefits if an existing labor dispute has not caused a cessation or substantial curtailment of operations at the plant or establishment where the strikers are employed.	27 states
Waiting period	Strikers become eligible for benefits if, after a specified period of time, the labor dispute has not ended.	Two states (New York & Rhode Island)
Innocent bystander	Workers who are unemployed because of a labor dispute may qualify for benefits if they can show that they are not participating in, financing, and/or directly interested in the dispute.	Approximately 44 states
Lockout	Workers may collect benefits if their employer is withholding available work in order to bring pressure to bear in support of his bargaining position, or to resist recognition of an employee bargaining agent.	21 states
<b>Illegal Actions by Employers</b>	Benefits are paid to workers if the employer is found to be the cause of the labor dispute, by refusing to conform to the provisions of a collective bargaining contract and/or by failing to comply with federal or state laws pertaining to collective bargaining or the terms and conditions of employment.	Nine states
Interim Employment	Workers are eligible for benefits if, after going on strike, they obtain bona fide interim jobs from which they are then laid off.	Several states including Massachusetts, Michigan, Missouri, and Illinois
Grade or class disqualification	A worker, regardless of his own level of participation in a labor dispute, is ineligible for benefits if he was, at the time of the commencement of the dispute, a member of a grade or class of workers any one of whom participated in, financed, or had a direct interest in the dispute.	Approximately 40 states

\*From Robert Hutchens, David Lipsky and Robert Stern, *Strikes and Subsidies: The Influence of Government Transfer Programs on Strike Activity*, Kalamazoo, MI: W.E. Upjohn Institute, 1989, pp. 16-17.