

II. Striking Through the Silver Screen: Writers and Actors Strikes Mirror Larger Labor Issues

In the latest bout of labor disputes going back to the 1980s and beyond, the Writers Guild of America (“WGA”) and the Screen Actors Guild—the American Federation of Television and Radio Artists (“SAG” or “SAG-AFTRA”) went on strike starting on May 2, 2023, and July 14, 2023, respectively. While the WGA has ratified a contract recently on October 9, 2023, SAG-AFTRA continues striking at the time of this article, with negotiations coming to a contentious head between the actors and AMPTP, the studios negotiating origination. These high-profile strikes serve as a window into the troubled waters of American labor post pandemic, albeit with some distinctly Hollywood twists.

A. The History of the Guilds

The history of the writers’ and actors’ guilds is a long and contentious one. SAG was created in 1933 and has led several negotiations with a few strikes as a result.¹ The currently ongoing strike has outlasted any of the past, which demonstrates the importance of the issues being brought up, though it’s unclear if the length is due to high demands by SAG-AFTRA or if production companies are being reluctant to negotiate.² The WGA were founded in 1933, with their longest strike being in 1988, lasting 154 days, just six days longer than the most recent strike.³ Similarly to the 2023 strike, the main issue in 1988 was an increase and adjustment of residuals.⁴ In 1988 the new innovation that was threatening residuals was free TV included in basic cable bundles.⁵ These strikes tend to be short, as even the relatively short writers’ strike in 2007-2008 lead to economic losses of anywhere from

¹ *About: Our History*, SAG (2023) <https://www.sagaftra.org/about/our-history> (highlighting the history of the actor’s guild).

² *Id.* (describing the current strike’s intricate issues and what is being disputed).

³ *About us: History*, Writers Guild of America West (2023) <https://www.wga.org/the-guild/about-us/history> (annotating the history and past strikes of the WGA).

⁴ *Id.* (highlighting issues disputed in 1988 WGA strike).

⁵ *Id.* (highlighting new innovations that were roadblocks to 1988 WGA deal).

\$380 million to \$2.1 billion dollars.⁶ On a different level, the 2007 writers' strike had a massive effect on many popular TV shows and movies, from James Bond to The Flash.⁷ While many Americans might not notice the economic fallout of the strikes, they have created a very noticeable effect on the quality of the media consumed, which people are very aware of.⁸ The writers' strike's impact on television quality was seen in reduced viewing numbers, as networks like CBS lost roughly 10% of viewership in key demographics.⁹ The memories of the aftereffects of the 2007 writers' strikes likely played a big part of pressure for studios to resolve the strike, especially as streaming studios like Marvel face the need for reshoots and a constant treadmill of stream-able content, making a prolonged strike increasingly threatening.¹⁰ On the other hand, the most recent SAG strike was for commercial actors in 2000, a 182 day strike that was comparatively narrow compared to the WGA strikes, perhaps emboldening studios while dealing with SAG where they deferred to WGA.¹¹ Regardless, while the history of the unions and their past victories does inform the

⁶ John Horn, *TV and Movie Writers Strike Over 'Gig Economy' Conditions. What's At Stake In The WGA Walkout*, LAIST (May 4, 2023) <https://laist.com/news/arts-and-entertainment/wga-amtp-tv-movie-writers-strike-whats-at-stake> ("the Milken Institute estimated: \$2.1 billion in economic losses"); see also John Horn, *TV and Movie Writers Could Go On Strike On Monday. Here's What's At Stake*, LAIST (Apr. 28, 2023) <https://web.archive.org/web/20230429020519/https://laist.com/news/arts-and-entertainment/tv-and-movie-writers-could-go-on-strike-on-monday-heres-whats-at-stake> (discussing the economic loss impact of a SAG strike).

⁷ Charles Bramesco, *From Bond to Heroes: What was Affected by the 2007 Writers' Strike?*, THE GUARDIAN (May 4, 2023) <https://www.theguardian.com/culture/2023/may/04/2007-writers-strike-bond-movie-heroes> (listing various projects that were effected by the 2007 WGA strike).

⁸ *Id.* (discussing the quality drop in shows as a result of the WGA strike).

⁹ Joyce Hanson, *Old Media Hits Skids as New Model Roil Market*, CRAIN'S NEW YORK BUSINESS (Dec. 22, 2007) <https://web.archive.org/web/20080122105241/http://www.crainsnewyork.com/apps/pbcs.dll/article?AID=/20071223/FREE/465255421/1010/rss26&rssfeed=rss26> ("As of December, the networks' prime-time ratings in the key 18- to 49-year-old age category were all down: at NBC by 11%, at CBS by 10% and at ABC by 5%").

¹⁰ Tatiana Siegal, *Crisis at Marvel: Johnathan Major Back-up Plans, 'The Marvels' Reshoots, Reviving Original Avengers and more Issues Revealed*, VARIETY (Nov. 1, 2023) <https://variety.com/2023/film/features/marvel-jonathan-majors-problem-the-marvels-reshoots-kang-1235774940/> (highlighting Marvel's need for reshoots which are disrupted by SAG strikes).

¹¹ SAG, *supra* note 1 (discussing the SAG strike of 2000).

modern conflict, the strikes in 2023 face new and unique challenges caused by technology that the founders of these unions could not have imagined existing, like AI and streaming.

1. Classic Labor Disputes in a Modern Age

Some issues facing the unions are not new at all however, like simple pay raises.¹² In fact, these issues don't just effect actors and writers but all working Americans and their unions.¹³ After the COVID-19 pandemic, inflations rates have hit unprecedented highs, despite the government and the Federal Reserve's best efforts to control it.¹⁴ For many Americans, inflation has far outstripped any pay raises, leaving millions to struggle with an increased costs of living while maintaining a similar earning level.¹⁵ Almost four in ten Americans have a "side-hustle", either to make ends meet or to earn a bit of extra spending money, and twenty eight percent of Gen Z have been forced to draw from their 401(k) or IRA to make ends meet.¹⁶ This is not just a new phenomenon however, but an acerbation of an issue the guilds have been battling since the turn of the millennia, namely the "gig economy" concept that caused the writers strikes in 2007 and in 2023.¹⁷ While the freedom of the gig economy has its perks, it also has its drawbacks such a difficulty accessing health care and insurance, two services that have

¹² *Id.* (showing pay raises are often fought for by unions).

¹³ Jared Mitovich, *Union Workers 'are Catching up' on Pay as Labor Organizing Surges*, CNBC (Oct. 31, 2023, 11:57 AM) <https://www.cnbc.com/2023/10/31/union-workers-are-catching-up-on-pay-as-labor-organizing-surges.html> (discussing common issue unions fight).

¹⁴ *Federal Reserve Focuses Monetary Policy on Fighting Inflation*, U.S. BANK (Nov. 3, 2023) <https://www.usbank.com/investing/financial-perspectives/market-news/federal-reserve-tapering-asset-purchases.html> (focusing on how Fed has attempted to curb inflation).

¹⁵ Emily Lorsch, *Here's Why Salaries in the U.S. Don't Keep up with Inflation*, CNBC (Dec. 14, 2022, 7:00 AM) <https://www.cnbc.com/2022/12/14/why-salaries-in-the-united-states-dont-keep-up-with-inflation-.html> (discussing inflation outpacing wage growth).

¹⁶ Catherine Collison & Heidi Cho, *Post-Pandemic Realities: The Retirement Outlook of the Multigeneration Workforce*, TRANSAMERICA CENTER FOR RETIERMENT STUDIES (July, 2023) (discussing Gen Z's monetary struggles and ow the majority of them are coping such as taking out of 401Ks).

¹⁷ Horn, *supra* note 6 (highlighting the gig economy effect on strikes in 2007 and 2023).

become increasingly important in the aftermath of a global pandemic.¹⁸ With growing numbers of gig and independent workers, thirty six percent or roughly 58 million Americans compared to twenty seven percent of the employed population in 2016, writers have been increasingly worried about being brought on as gig writers and thus losing benefits.¹⁹ So, like many workers, the Writer’s Guild and SAG have demanded an eleven percent increase in minimum wage and more in employer support for healthcare and retirement funds.²⁰ This reflects a growing need for many Americans, and a high-profile victory for the guilds may serve to trigger further collective action to win wages in line with inflation rates.²¹ Thus far, the guilds have been rather successful, with the WGA having won a 12.5% total increase in most MBA minimums, including staff writers, spread throughout the next two years.²² On the actor’s side, AMPTP reports that SAG has been offered “the highest percentage increase in minimums in 35 years” and “an additional ... \$177 million in contributions to the Pensions and Health

¹⁸ Andre Dua et al, *Freelance, Side Hustles, and Gigs: Many more Americans have become Independent Workers*, MCKINSEY & COMPANY (August 23, 2022) https://www.mckinsey.com/featured-insights/sustainable-inclusive-growth/future-of-america/freelance-side-hustles-and-gigs-many-more-americans-have-become-independent-workers#/ (“Many lack access to basics including affordable healthcare and nutritious food, respondents tell us. A majority (54 percent) report being concerned about the stability of their employment, compared with 35 percent of permanent workers.”).

¹⁹ *Id.* (highlighting the negatives of being a gig writer); see also *Why We Strike*, WGA CONTRACT 2023 (June 15, 2023) <https://www.wgacontract2023.org/member-voices/why-we-strike> (accounting the many reasons why various WGA members choose to strike).

²⁰ Kaila Richardson, *SAG-AFTRA Chief Negotiator Breaks Down ‘Robust’ Strike-Ending Deal, AI Protections*, ROLLING STONES (Nov. 9, 2023) <https://www.rollingstone.com/tv-movies/tv-movie-features/sag-aftra-chief-negotiator-breaks-down-strike-ending-deal-ai-protections-streaming-residuals-1234874112/> (“And finally, SAG-AFTRA initially asked for an 11 percent wage increase in the first year”).

²¹ Meg James & Jonah Valdez, *A 7% Wage Increase, New AI Protections and Other Highlights from the SAG-AFTRA Contract*, LOS ANGELES TIMES (updated Nov. 10, 2023) <https://www.latimes.com/entertainment-arts/business/story/2023-11-10/actors-strike-deal-sag-aftra-amptp-takeaways-faq> (discussing need for wage increase as it was lagging behind).

²² *Summary of the 2023 WGA MBA*, WGA CONTRACT 2023 (2023) <https://www.wgacontract2023.org/the-campaign/summary-of-the-2023-wga-mba> (summarizing new WGA contract).

Plans during the contract term.”²³ While terms are not finalized yet for SAG-AFTRA, they have clearly made progress on the compensation front. The WGA also succeed in protecting writers against the “gigification” of the writers’ rooms by winning minimum service lengths, as will be discussed later, and increases to the healthcare and pension funds of writers.²⁴ For these common issues that every union could battle, the WGA contract represents a significant step forward, though it remains to be seen if SAG joins their screenwriting counterparts in taking that step. Regardless, most people can see their own struggles reflected in the strikes and while they might not be flashy, the terms worked out could have significant effects on the rest of the American work force.

2. *Artificial Intelligence: The New Face of Automation*

On the other hand, however, the average American is not worrying about corporations scanning their likeness, digitally recreating it and forever gaining the right to operate an Artificial Intelligence (AI) generated doppelganger without their consent. Most Americans probably have not worried about even one of those things happening. However, this issue is very critical to actors and writers, and the general threat of AI and automation is one that affects many different careers.²⁵ Programs like ChatGPT have passed the Bar and medical examinations, leading to many proclaiming the imminent end of skilled human labor in many fields.²⁶ On the other hand, those programs have proven to be

²³ *Statement from AMPTP*, AMPTP (Oct. 11, 2023) <https://labor.amptp.org/sites/labor.amptp.org/files/October%2011%20Statement%20from%20AMPTP.pdf#overlay-context=node/19252>.

²⁴ WGA, *supra* note 18 (summarizing 2023 WGA contract).

²⁵ Megan Cerullo, *How the Ai Revolution is Different: It Threatens White Collar Workers*, CBS NEWS (Sept. 21, 2023) <https://www.cbsnews.com/news/what-is-generative-ai-job-exposure/> (discussing how AI is threatening jobs).

²⁶ Debra Cassens Weiss, *Latest Version of ChatGPT Aces Bar Exam with Score Nearing 90th Percentile*, ABA JOURNAL (Mar. 16, 2023, 1:59 PM) <https://www.abajournal.com/web/article/latest-version-of-chatgpt-aces-the-bar-exam-with-score-in-90th-percentile> (highlighting the success AI has had with standardized tests).

unreliable when doing actual work.²⁷ Writers argued for a similarly required human element, which they believe will address AI from training itself on their work, battling to prevent being replaced by AI text generators.²⁸ Actors, meanwhile, fight for ownership of their likeness and voice, and workers across America from the factory floor to the courthouse face down the prospect of their own obsolescence.²⁹ In the new contract, the WGA scored a major victory over the new wave of automation.³⁰ Writers have successfully pushed chatbots out of their writers' rooms, prohibiting studios from requiring a writer to use AI, AI to be trained on their writing, and mandating that "AI can't write or rewrite literary material."³¹ This strong stance against AI may support the adoption of similar terms in the SAG-AFTRA contract and may even influence future stances towards AI programs like Midjourney, which have been embroiled in their own debates between artists and technology.³² Currently, while studios have expressed willingness to institute several AI protections themed around actors consent to their image being used, SAG has taken issue with consent being demanded on the first day of employment for the lifetime of the franchise.³³ The issue continues to be a sticking point between the two sides, and an Issue

²⁷ Sara Merken, *New York Lawyers Sanctioned for using Fake ChatGPT Cases in Brief*, REUTERS (June 26, 2023) [https://www.reuters.com/legal/new-york-lawyers-sanctioned-using-fake-chatgpt-cases-legal-brief-2023-06-22/#:~:text=New%20York%20lawyers%20sanctioned%20for%20using%20fake%20ChatGPT%20cases%20in%20legal%20brief,-By%20Sara%20Merken&text=NEW%20YORK%2C%20June%202022%20\(Reuters,an%20arti%20intelligence%20chatbot%2C%20ChatGPT](https://www.reuters.com/legal/new-york-lawyers-sanctioned-using-fake-chatgpt-cases-legal-brief-2023-06-22/#:~:text=New%20York%20lawyers%20sanctioned%20for%20using%20fake%20ChatGPT%20cases%20in%20legal%20brief,-By%20Sara%20Merken&text=NEW%20YORK%2C%20June%202022%20(Reuters,an%20arti%20intelligence%20chatbot%2C%20ChatGPT) ("A U.S. judge on Thursday imposed sanctions on two New York lawyers who submitted a legal brief that included six fictitious case citations generated by an artificial intelligence chatbot, ChatGPT.")

²⁸ Mariella Moon, *The WGA Strike Ends with Protections against AI Set in Place*, ENGADGET (Sept. 27, 2023) ("For starters, generative AI can't be used to write or rewrite literary material, and anything it produces cannot be considered source material.").

²⁹ *Why We Strike*, *supra* note 19 (highlighting importance of gaining favorable strike deals).

³⁰ WGA, *supra* note 18 (discussing limitations on AI in new contract).

³¹ *Id.*

³² *2023 TV/Theatrical Contracts*, SAG-AFTRA (2023) (discussing tentative agreement).

³³ AMPTP, *supra* note 19 (discussing host of AI protections SAG is seeking); See also *A Message From Your Negotiating Committee*, SAG-AFTRA (Oct. 12, 2023) <https://www.sagaftra.org/message-your-negotiating-committee-0> (discussing SAG negotiation status as of Oct. 12, 2023).

of critical importance to actors in the wild west of digital identity.³⁴ While the battle is still underway, it represents an exciting new angle to labor relations as automation comes for the creative roles long thought to be the untouchable sanctuary of human labor, though the interest is more akin to a thought experiment than a crisis for most workers.

B. Hollywood Specific Labor Issues

1. Streaming and Residuals

Streaming is becoming an increasingly common way to consume media, however most contracts still tie compensation to the box office numbers.³⁵ One of the key points being fought over is for actors to earn per stream, in a way similar to how musical artists are paid per play on streaming platforms like Spotify, in order to keep restore their residual income for work.³⁶ Streaming compensation has proven to be a major issue however, with AMPTP, the studio representees, claiming that SAG's current viewership offer would cost more than 800 million per year, an untenable demand upon the studios.³⁷ SAG has counter claimed that AMPTP has overstated the costs by as much as sixty percent, leaving the economic reality of the situation murky.³⁸

³⁴ AMPTP, *supra* note 19 (discussing issues prevalent in strike negotiations).

³⁵ David Arditi, *Fran Drescher's Just Fighting to take Back what the Netflix Loophole Erased- Understanding the Real Story over 2% Residuals*, FORTUNE (Sept. 30, 2023) <https://fortune.com/2023/09/30/why-hollywood-actors-still-on-strike-2-percent-residuals-streaming/> (highlighting ways in which actors are compensated).

³⁶ R.J Rico, *As streamers cut costs, TV shows- and residuals- vanish*, AP NEWS (Apr. 7, 2023). <https://apnews.com/article/streaming-shows-removed-residuals-4be3ac859c766c352e57ef96176fd812> (discussing what residuals have been cut by streamers).

³⁷ *Statement from AMPTP*, AMPTP (Oct. 11, 2023) <https://labor.amptp.org/sites/labor.amptp.org/files/October%2011%20Statement%20from%20AMPTP.pdf#overlay-context=node/19252> (“SAG-AFTRA's current offer included what it characterized as a viewership bonus that, by itself, would cost more than \$800 million per year—which would create an untenable economic burden.”).

³⁸ SAG-AFTRA, *supra* note 28 (“Just tonight, they intentionally misrepresented to the press the cost of the above proposal—overstating it by 60%.”).

(a) Long Development Times

Similarly, for TV and series actors, increasingly long development times of shows means increasingly long breaks between filming.³⁹ However, contracts typically prevent the principal actors from working while still on the show leaving them stuck without real work while they wait says SAG.⁴⁰ Furthermore, SAG demands relocation reimbursements for primary performers while they move around the world for shoots, potentially getting stuck for extended periods in foreign locals without working while waiting for a show to wrap up.⁴¹

(b) Mini-rooms

A similarly Hollywood focused issue, Mini-rooms were a key problem for the WGA, as they decried shrinking writers' rooms with less pay.⁴² Studios continued reliance on smaller writers' rooms have limited advancement opportunities and made work inconsistent.⁴³ They also played a major role in the gigification of writers' jobs that was discussed previously, as they enabled companies to utilize writers for increasingly shrinking episode orders.⁴⁴ new contract ratified by the WGA has limited this issue by mandating certain minimum sizes for development rooms and post-greenlight rooms, as well as requiring that writers be kept on for a minimum amount of time.⁴⁵ This is a critical win for the WGA, as length of employment was a key component in their access to benefits and the concession prevented writing from effectively becoming a side hustle.⁴⁶

³⁹ See SAG, *supra* note 17 (discussing why shows take so long to be released).

⁴⁰ *Id.* (discussing limitations on actors doing multiple projects).

⁴¹ *Id.*

⁴² *Mini-Rooms Are Writers Rooms. Period.*, WRITERS GUILD OF AMERICA WEST, (2023). <https://www.wga.org/news-events/news/connect/mini-rooms-are-writers-rooms-period> (discussing how mini rooms should be treated as writing rooms).

⁴³ *Id.*

⁴⁴ *Id.* (highlighting how mini rooms contributed to gigification).

⁴⁵ WGA, *supra* note 18 (explaining details of new WGA contract).

⁴⁶ WGA, *supra* note 16 (discussing important reasons for WGA strike).

C. The Current state of Negotiations

While the WGA strike has concluded, the high profile SAG-AFTRA strike rolls on, even expanding its reach to video games.⁴⁷ While many hoped that the conclusion of the WGA strike signaled an end to SAG-AFTRA's, as recently as October 12, 2023, negotiations have broken down again, with SAG-AFTRA citing increased compensation and AI as key issues.⁴⁸ As of the time of writing this article negotiations are ongoing with video game studios.⁴⁹ The AMPTP has sent what they called "'Last, Best, and Final Offer'" according to SAG, which is still under consideration by the negotiating committee.⁵⁰ As of November 6, SAG has responded, and though it is unclear in what manner exactly, SAG's negotiating committee has said that "there are still several essential items on which we do not have agreement, including AI."⁵¹ This may well be the end of the strikes, or an extension of them into the foreseeable future as it's unclear how much further either side is willing to budge, with the negotiations breaking down in the recent past and the finality of AMPTP's offer.⁵²

D. Conclusion

Television has long been a reflection and trendsetter for the American zeitgeist, and that seems to be true behind the camera as well. Very few unions make waves in their strikes like the writers and actors guilds do, but the demands they issue are largely reflective of the state of the United States as a whole. From common and relatively ageless issues like the expansion of the gig economy, inflation, and benefits to

⁴⁷ *SAG-AFTRA Members Approve Video Game Strike Authorization Vote with 98.32% Yes Vote*, SAG-AFTRA (Sept. 25, 2023) <https://www.sagaftra.org/sag-aftra-members-approve-video-game-strike-authorization-vote-9832-yes-vote> (highlighting vote on video game strike).

⁴⁸ SAG, *supra* note 28 (discussing key issues in strike).

⁴⁹ *SAG-AFTRA And Video Game Performers Talk AI At NYCC; Negotiations With Industry To Continue*, SAG-AFTRA (Oct. 6, 2023) <https://www.sagaftra.org/sag-aftra-and-video-game-performers-talk-ai-nycc-negotiations-industry-continue> (showing negotiations on going with video game strike).

⁵⁰ *A Negotiating Committee Update 11/4/23*, SAG-AFTRA, (Nov. 4, 2023) <https://www.sagaftra.org/negotiating-committee-update-11423> (clarifying that the latest offer to end the strike is under consideration).

⁵¹ *A Negotiating Committee Update 11/6/23*, SAG-AFTRA, (Nov. 6, 2023) <https://www.sagaftra.org/negotiating-committee-update-11623>

⁵² *Id.* (warning of issues still not in agreement per latest offer).

the new issues like AI art, streaming, and digital identity, the strikes have demonstrated the mentality of both corporate America and the labor force. After over hundred days of strikes and hundreds of millions of dollars in economic loss, the cost for settling these issues has proven to be incredibly high. While the WGA has shown that compromise can be found, it seems very likely that SAG’s response to the AMPTP’s “Final Offer” will be negative, and where the give on key issues will come.⁵³ With the longest actors’ guild strike being 182 days and the current strike roughly 120, the mettle of the SAG negotiating team is certainly being tested.⁵⁴ Faced with the dystopian prospect of AI actors dominating film and TV however, what other choice does labor have?

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⁵³ *Id.* (highlighting differences between SAG and studios).

⁵⁴ *About: Our History*, SAG (2023) <https://www.sagaftra.org/about/our-history> (archiving history of SAG strikes).

⁵⁵ Student, Boston University School of Law (J.D. 2025).