

LABOR RIGHTS IN THE JEWISH TRADITION

Michael S. Perry

Michael S. Perry is Executive Director of the Jewish Labor Committee.

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I. Introduction

The Jewish community in the United States has been supportive of worker and trade union rights for many years, even as it evolved from a predominantly working-class community in the first part of the 20th century to a predominantly professional and entrepreneurial-class community today. This support stems in part from a collective mem-

ory of an earlier period of mass Jewish immigration to the United States, when an overwhelmingly immigrant community toiled in difficult and often desperate conditions in the garment industry and other trades. This support is also consistent with Jewish religious law (“Halacha”). Both in spirit and in practice, religious command-

ments relating to the hiring of workers are imbued with respect for labor rights, and some Jewish religious laws anticipate current secular labor law by thousands of years. The following is a description of labor rights found in Jewish religious sources and an analysis of current industrial relations issues in light of this tradition.

II. Judaism and the Dignity of Labor

Respect for the dignity of labor has been an important theme in Jewish religious writings for centuries. This attitude stems from Biblical commandments relating to work and to the relationship, as seen by rabbinic authorities, between God and humanity.

A number of important passages in the Bible stress the value of work. In Exodus, the commandment to observe a day of rest is preceded by the phrase “Six days thou shalt do thy work,”^[1] which is interpreted to mean that “... just as Israel [*i.e.*, the Jewish people] was given the positive commandment of Sabbath, so were they given the commandment of working.”^[2] In Psalm 128, this is stated succinctly: “when you shall eat the labor of your hands, you will be happy and it shall be well with you,” and “the *Talmud* [the compilation of Jewish Oral Law] comments ‘You shall be happy in this world and it shall be well with you in the next world,’ which indicates that labor is an ethical commandment even apart from its practical value.”^[3] Indeed, Talmudic sages interpreted this passage to mean that “he who enjoys the fruits of his own labors is greater than the man who fears G-d.”^[4]

The Talmudic ideal of work stood in sharp contrast to other views prevailing in the ancient world at the time that Jewish oral religious law was codified. Both the ancient Greeks and ancient Romans looked down on labor, and freedom from work was considered a right of rank and privilege. According to Aristotle, “Labor stupefies both mind and body and deprives man of his natural dignity The title of citizen belongs only to those who need not work to live.”^[5] In reaction, Jewish scholars of the day countered: “Love labor and hate mastery and seek not acquaintance with the ruling power.”^[6]

A legacy of support for worker rights also stems in part from the broad social justice imperative in the Bible and other Jewish religious sources. In these sources, God is viewed as the ultimate owner of all the earth’s resources, and humankind, its temporary owners, is commanded to act ethically in the distribution of those resources:

“In contrast to G-d’s supreme and eternal mastery of the universe, man’s dominance over his acquisitions is qualified, limited in time and restricted in scope

This recognition of absolute Divine ownership and of limited temporary human ownership is a basic principle in all social legislation of the Torah Personal ownership is valid as long as it does not conflict with the welfare of society and with moral standards.”^[7]

Thus, for example, landowners are commanded to share their bounty in the Biblical commandment to leave the gleanings from the “corners” of their fields for the poor.^[8] Similarly, employers are commanded to act justly in their treatment of those they temporarily “own,” or hire. (As noted below, the act of hiring-out is viewed as a temporary surrender of one’s independence.) A social justice imperative appears repeatedly in Talmudic decisions concerning worker rights, and many decisions were based on the spirit rather than the letter of the law, in order to favor workers and the poor.

For example:

Some porters [negligently] broke a barrel of wine belonging to Rabbah son of R. Huna. Thereupon he seized their garments; so they went and complained to

1. *Exodus* 23: 12. Hertz, J. H. *Pentateuch and Haftorahs*, Soncino Press, London, 1971.
2. Rabbi Judah the Patriarch. *Mekhilta* of Rabbi Simeon ben Johai, cited in Federbush, Simon. *The Jewish Concept of Labor*, Torah Culture Department of the Jewish Agency and Hapoel Hamizrachi of America, New York, 1956, p. 25.
3. *Ibid.*, p. 23, citing the Talmud, *Berakoth* 8.
4. *Ibid.*
5. Weisfeld, Israel. *Labor Legislation in the Bible and Talmud*, Yeshiva University, New York, 1974, p. 53; from Aristotle. *Politics*, Parts 6, 8, 10, 11.
6. *Avot* 1:10. Cited in Danby, Herbert. *The Mishnah*, Oxford University Press, London, 1954. This text is the source of all quotes from the *Mishnah*.
7. Federbush, *op. cit.*, pp. 2-3.
8. *Leviticus* 19:9,10.

Rab. "Return them their garments," he ordered.

"Is that the law?" he inquired.

"Even so," he rejoined:

'That thou mayest walk in the way of good men.' (Proverbs 11:20)

Their garments having been returned, they observed "We are poor men, have worked all day, and are in need: are we to get nothing?" "Go and pay them," he ordered. "Is that the law?" he asked. "Even so," was his reply: *'and keep the path of the*

righteous'." (Proverbs 11:20)"^[9]

It is important to note that many interpreters of Jewish religious traditions who codified the Jewish Oral Law supported themselves through manual labor, which undoubtedly made them more sensitive to the concerns of their fellow workers. Talmudic sages were known to be woodcutters, construction workers, tailors, farmers, carpenters, blacksmiths, tanners, bakers, and shoemakers.^[10]

It is not surprising, therefore, that a combination of Biblical commandments, social

justice imperatives and daily experiences led early rabbinic authorities to exalt the worker. This attitude permeates the Oral Law: "R. Simeon used to carry a basket upon his shoulders, saying likewise, 'Great is labor, for it honors the worker'";^[11] "Flay a carcass in the street and earn a wage, and say not 'I am a great man and the work is degrading to me'";^[12] "If there is no [flour, *i.e.*, income] there is no study of the Law";^[13] and "Excellent is study of the Law together with worldly occupation."^[14]

III. Labor Rights in Traditional Jewish Religious Sources

A. Jewish Texts

There are two primary sources of Jewish religious philosophy and life: the *Tanach* - the Jewish [or Hebrew] Bible - composed of the *Five Books of Moses* (the *Torah*), the Prophets (*Nevi'im*), and the Writings (*Ketuvim*); and an Oral Law, compiled in the *Talmud*. According to Orthodox Jewish tradition, God gave Moses an oral as well as a written law at Mount Sinai, which was also passed on through the ages. After the destruction of the Second Temple, Rabbi Judah Ha-Nasi compiled all of the oral laws into a written document (the *Mishnah*) early in the third century C.E. The *Mishnah* deals with agriculture, festivals, marriage and divorce, civil and criminal law, temple practices, and personal and religious purity. In subsequent years, rabbinic authorities analyzed the document and provided extensive additional commentaries (the *Gemara*). The

Mishnah and the *Gemara* together are collectively known as the *Talmud*. The version of the *Talmud* most often referred to today was substantially in its present form by the middle of the sixth century C.E.

The Oral Law is a legal commentary on the written Bible, filling in details not explicitly spelled out in the Bible and explaining seeming contradictions or obscure passages. (In principle, interpretations that appear at odds with the literal meaning of a Biblical passage can only be offered in order to safeguard another principle outlined elsewhere in the Bible.) At the same time, such interpretations permit Talmudic sages to take advantage of evolving social thought.

Thus, while there are relatively few specific references to labor rights in the Bible, Talmudic scholars have found many labor protections to meet the contingencies of an increasingly complex economy.

The *Talmud* deals at length with contract law; indeed, an entire tractate (Fourth Division, *Nezikin*, or Damages) is devoted to the subject. In general, all decisions pertaining to non-labor contracts are also applicable to labor contracts. Nevertheless, the *Talmud* makes it clear that workers are entitled to special protection beyond their rights as a party to an agreement; in a particularly important passage, the *Talmud* recognized the general principle that "the Rabbis hold that the workers [always] have the advantage" in their relationship to the employer.^[15] The following is a review of major labor rights included in the Bible and *Talmud*.^[16]

B. Right to Prompt Payment

An important set of Biblical commandments requires the prompt payment of wages: "Thou shalt not oppress thy neighbor, nor rob him: the wages of a hired

9. *Baba Metzia* 83a. Cited in Epstein, I, *Babylonian Talmud*, Soncino Press, London, 1935. This text is the source of all quotes from the *Gemara*. Words in brackets are part of the Epstein translation. Words in brackets with the author's initials are added by the author. See also Katz, Mordecai. *Protection of the Weak in the Talmud*, Columbia University Press, New York, 1925, p. 7.

10. Federbush, *op. cit.*, p. 27.

11. *Nedarim* 49b. See also Weisfeld, *op. cit.*, p. 45.

12. *Baba Batra* 110a. See also Katz, *op. cit.*, p. 5.

13. *Avot* 3:18.

14. *Avot* 2:2. See also Federbush, *op. cit.*, p. 27.

15. *Baba Metzia* 77a. See also Weisfeld, *op. cit.*, p. 64.

16. An important distinction is made in Talmudic labor law between day laborers, who were paid for their time, and contract workers, who were paid to complete a specific task. Day laborers might have been hired to work a field for a month, while contract workers might have been hired to build a chair in their shops. Since the contract workers' efforts involve a degree of independence from their employers (e. g., they can start and stop working at whatever time they would like during the day), some rights granted to day laborers are denied to contract workers. In many cases, both groups of workers are provided protection. (Differences in their respective rights will be noted below.) See also Levine, Aaron. *Free Enterprise and Jewish Law*, KTAV, New York, 1980, pp. 44-46.)

servant shall not abide with thee all night until the morning”;^[17] and “Thou shalt not oppress a hired servant that is poor and needy, whether he be of thy brethren or of thy strangers that are in thy land within thy gates [*i.e.*, non-Israelites]. In the same day thou shalt give him his hire, neither shall the sun go down upon it; for he is poor and setteth his heart upon it.”^[18]

Talmudic scholars have interpreted these statements to mean that employers must pay their workers the day that the contracted period of labor ends (or the night following the day that the contracted period ends, for day work).^[19] The *Talmud* warns that employers who withhold wages are guilty of six violations: oppressing a neighbor, stealing, oppressing the poor, delaying payment of wages, failing to pay wages at the due date, and failing to pay wages before sunset.^[20] Indeed, the *Talmud* warns that “he who withholds an employee’s wages is as though he deprived him of his life.”^[21]

This principle was considered so sacrosanct that Talmudic sages reversed the burden of proof under contract law in cases involving disputes over the payment of wages. In an ordinary contract dispute in which there is no evidence to support

either claimant, under Jewish religious law, persons accused of owing money can defend themselves simply by taking an oath that they do not owe the money. If, however, a worker accuses an employer of owing wages, the *worker* is entitled to take the oath, and the accused - the employer - must pay.^[22]

This decision is discussed in a manner that seems designed to enable the employer to save face. It is argued that perhaps the employers have many employees and might become confused about whether they paid a particular employee or not, whereas employees would not be confused because of the importance of the wage to them; and that employers actually like this arrangement because if they mistakenly did not pay their employees, no one would work for them (an early recognition of the power of boycotts).^[23] Nevertheless, it is undoubtedly out of concern for the worker’s welfare that the traditional burden of proof is reversed.

In a related ruling, Talmudic sages simply ignored the literal meaning of the language of the Bible to provide aggrieved workers special rights to secure a lien on the property of employers who owe them wages. The Bible prohibits a creditor from

entering the home of a debtor: “When thou dost lend thy neighbor any manner of loan, thou shalt not go into his house to fetch his pledge. Thou shalt stand without, and the man to whom thou dost lend shall bring forth the pledge without unto thee.”^[24] But, workers who have not been paid are granted the right to enter their employer’s home and select a pledge that would secure the equivalent of their wages.^[25]

Several other protections related to the payment of wages are developed in the *Talmud*. While other debts may be paid in kind^[26], wages must be paid in currency.^[27] Requiring workers to spend their wages at a “company store,” for instance, would be prohibited. During the “sabbatical year,” when other debts are cancelled, wage debts are not.^[28]

If employers direct their workers to work for someone else, they are responsible for paying the workers’ wages; the workers do not have to try to collect from the employer to whom they were assigned.^[29]

The Talmudic mandates concerning the payment of wages have a number of implications today. For example,

... the biblical insistence on prompt payment would lead easily to the acceptance of workers as preferred

17. *Leviticus* 19:13.

18. *Deuteronomy* 24:14,15.

19. *Baba Metzia* 110b: “A worker engaged by the day can collect [his wages] the whole of the [following] night; if engaged by the night he can collect it the whole of the [following] day. If engaged by the hour, he can collect it the whole day and night. If engaged by the week, month, year or septennate, if his time expires by day, he can collect [his wages] the whole of that day; if by night, he can collect it all night and the [following] day.” See also Weisfeld, *op. cit.*, p. 69.

20. *Baba Metzia* 111a. See also Federbush, *op. cit.*, p. 55.

21. *Baba Metzia* 112a. See also Weisfeld, *op. cit.*, p. 70.

22. *Shevuot* 7:1 “All they that take the oaths which are enjoined in the Law take oaths that they need not make restitution; but ... if a hiring said to a householder, ‘Give me my hire which is in thine hand’, and he said, ‘I have given it’, and he said, ‘I have not had it’, the hiring shall take an oath and satisfy his claim.” See also Tamari, Meir. *With All Your Possessions*, The Free Press, New York, 1990, pp. 137-138.

23. *Baba Metzia* 112b: “The employer himself is pleased that the employee should swear and be paid, so that workers should engage themselves to him ... But [the reason is that] the employer is busily occupied with his laborers.” See also Weisfeld, *op. cit.*, p. 64.

24. *Deuteronomy* 24:10, 11.

25. *Baba Metzia* 115a: “His house thou mayest not enter, but thou mayest enter [to distraint] for portorage fees, payment for hiring asses, the hotel bill, or artists’ fees ...” Epstein; *op. cit.*, footnote 8, p. 654: “*i. e.*, for any debt incurred on account of service.” See also Weisfeld, *op. cit.*, p. 74.

26. *Baba Kamma* 7a. See also Tamari, *op. cit.*, p. 136.

27. *Baba Metzia* 118a: “If a man engages a laborer to work for him on straw or strubble, and when he demands his wages, says to him ‘take the results of your labor for your wage,’ he is not heeded.” See also Tamari, *op. cit.*, pp. 139-137.

28. *Shevi’it* 10:1: “The Seventh Year cancels any loan whether it is secured by bond or not ... The hire of an hiring is not cancelled ...” See also Federbush, *op. cit.*, p. 56.

29. *Baba Metzia* 76a: “If one engages an artisan to labor on his [work], but directs him to his neighbor’s, he must pay him in full, and receive from the owner [of the work actually done] the value whereby he benefitted him!” See also “Labor,” *The Universal Jewish Encyclopedia*, Volume 6, KTAV, New York, 1969, p. 502.

creditors in the case of bankruptcy. Furthermore, in many economies, money withheld from wages for payment of state compulsory loans, social security, or medical benefits is actually never distributed, as the workers are ignorant of their rights or lose evidence of their eligibility. Judaism's insistence on prompt payment would seem to make the employer or public sector agency holding those funds responsible for searching out the beneficiaries and paying them what is actually theirs.^[30]

C. Right to Stop Work

A second set of Talmudic laws relates to the right of workers to cease their labor at any time. The principle at stake is that a free worker may not be enslaved, and since the contracting of labor involves the temporary surrender of independence, day laborers may reassert their

independence at any time by quitting. This right is derived from the Biblical verse, "For unto Me the children of Israel are servants"; to which the *Talmud* adds the phrase, "but not servants to servants."^[31] (Since contract workers work at their discretion, they have more individual freedom than day laborers and are generally not permitted to renege on a labor agreement.)^[32]

Workers who quit *are* entitled to prorated pay, even if employers have to pay a higher wage to secure replacement workers.^[33] If, however, employers face an irretrievable loss (*e.g.*, losing the services of musicians during a wedding), they have two options: they can "deceive" the workers to induce them to return to work (*i.e.*, promise higher wages that they have no intention of paying), or they can hire other workers and pay them higher wages by reducing the wages that they owe to the workers who quit.^[34]

However, if there were mitigating circumstances, such as illness or the death of a relative, worker who quit must be paid even if they cause an irretrievable loss to the employer.^[35]

The employer, on the other hand, is not permitted to break the labor contract, and in this obligation we can see a rudimentary unemployment compensation system. Workers hired for a set period of time, who finish their work early, can only be given similar or lighter work for the remainder of the work period.^[36] (This is also a precursor of modern union work rules.) Their employer cannot compel them to work in a neighbor's field even if the work is easier.^[37] If they are laid off while their labor contract is in effect, and they find a lower-paying job, they can demand the difference in wages from the first employer.^[38] And if they cannot find any job of comparable difficulty at the same pay, they can demand

30. Tamari, *op. cit.*, p. 136.

31. *Leviticus* 25:55; *Baba Kamma* 116b. See also Katz, *op. cit.*, p. 23.

32. *Baba Metzia* 6:2: "If a man hired craftsmen and they retracted, they are at a disadvantage; if the householder retracted, he is at a disadvantage. Whosoever changes [the conditions of a contract] is at a disadvantage, and whosoever retracts [from an agreement] is at a disadvantage." See also Weisfeld, *op. cit.*, p. 61. Some have argued that withdrawing one's labor simply to secure a higher paying job puts the day laborer in the same position as the contract worker; (Levine, *op. cit.*, p. 47) others have disputed this. (Federbush, *op. cit.*, p. 58; Jung, Leo. *Business Ethics in Jewish Law*, Hebrew Publishing Company, New York, 1987, pp. 180-181; Reines, Ch. W. *Labor in Rabbinical Responsa*, in Jung, Leo, Ed. *Israel of Tomorrow*, Herald Square Press, New York, 1946, pp. 159-160.)

33. Levine, *op. cit.*, p. 46. Even if the 'worker had received the wage in advance and spent it, he cannot be compelled to work, and the payment is considered a loan. (*Choshen Mishpat, Sekirut U-Poalim* 333. 3, cited in Weisfeld, *op. cit.*, p. 74.)

34. *Baba Metzia* 6:1: "If a man hired an ass-driver or a wagon-driver to bring litter-bearers and pipers for a bride or for a corpse, or laborers to take his flax out of steep, or any matter that will not suffer delay, and they retracted, if it was a place where none others [could be hired for a like wage] he may hire others at their charges or he may deceive them." *Baba Metzia* 76b: "How does he deceive them? He says to them, 'I have promised you a *sela*; come and receive two.' To what extent may he engage [workers] against them? Even to forty or fifty *zuz*." See also Levine, *op. cit.*, p. 48: "Liability for the renegeing worker here cannot, however, extend beyond forfeiting the wages already due him and an out-of-pocket fine equal to the additional wages he would have earned had he finished the job In the event replacement workers cannot be secured, the renegeing worker bears full responsibility for any material loss his employer suffers."

35. *Baba Metzia* 77a-77b: "If one engages a laborer, and in the middle of the day he [the laborer] learns that he has suffered a bereavement, or is smitten with fever: then if he is a time worker, he must pay him his wages; if a contract worker, he must pay him his contract price." See also Levine, *op. cit.*, p. 48.

36. *Tosefta Baba Metzia* 7:6: "The householder has the right to change the terms of work by assigning an easier form of labor, but not by assigning a more exacting form of labor." Neusner, Jacob. *The Tosefta*, KTAV Publishing House, New York, 1981. This text is the source of all quotes from the *Tosefta*, a collection of commentaries on the *Talmud*. See also Weisfeld, *op. cit.*, p. 69.

37. *Tosefta Baba Metzia* 7:6: "If he finished plowing by noon-time, he may not say to him, 'Come and pull the weeds in another field.' For the worker may say to him, 'Provide me with work in your property, or pay me my wage for the work I already have done.'"

38. Weisfeld, *op. cit.*, pp. 68-69, citing *Choshen Mishpat*, 333.2. See also Levine, *op. cit.*, pp. 41-42.

an “idle wage” of at least fifty percent of their normal wage.^[39] If the workers were employed in an occupation in which idleness would have a deleterious impact on their health, the employer would have to pay the idle workers their full wages. This would apply, for example, to teachers, who might lose mental acuity, or to day laborers, who might lose physical fitness.^[40] If identical work at the same wage is available, the employer is not obligated to pay an “idle wage,” but only if more difficult work at the same pay is available, the worker can refuse the job and demand the “idle wage.”^[41]

The requirement that the employer pay an “idle wage” of 50 or 100 percent of the agreed salary undoubtedly reduced the number of sixth-century “plant closings,” and limited the ability of employers to immediately impose the burden of reduced business activity on their employees. It also provided an “unemployment compensation system” that was more generous in

benefits than the typical state unemployment compensation system in the United States today. This generosity is consistent with the importance in traditional Jewish thought of the self-respect that comes from employment, best illustrated in the ranking of progressively more virtuous charitable acts by Maimonides, the renowned twelfth-century philosopher and scholar. According to Maimonides, the highest form of charity is the providing of employment.^[42]

The *Talmud*'s prohibition on the retraction of contracts by employers provided a measure of protection against arbitrary dismissal some 1,500 years before trade union-negotiated collective bargaining agreements assumed that function. The employer *is* permitted to fire workers in cases of negligence resulting in an irretrievable loss.^[43] Nevertheless, “an isolated incident of malfeasance does not provide legitimate ground for immediate discharge without warning. Summary dismissal is justified only if the worker is guilty of malfeasance of the irretrievable

form on three separate occasions. In addition, it must be proved in the worker's presence that he was indeed failing in his duties.”^[44]

D. Limits on Hours of Work

A third set of Talmudic laws relate to hours of work. The most important law comes directly from the Bible: the requirement that workers be granted a day of rest, which was quite an innovation for that age.^[45] The Sabbath is one of Judaism's most important contributions to humankind, exemplifying the idea that individuals are more than merely tools to be exploited. Two other laws relating to hours of work are mentioned in the *Talmud*. The first requires that workers be paid for hours spent walking to work (although not for hours spent walking home). This law - incorporating at least in part the principle of “portal to portal” pay - was designed to prevent an employer from compelling a worker to leave home before the normal working day began.^[46] A second law prohibits a worker from

39. *Baba Metzia* 76b: “but if ass-drivers [are engaged to convey a load of grain from a certain place and] go [there] and find no grain, or laborers [hired to plough a field] go find the field a swamp [unfit for plowing], he must pay them in full; yet travelling with a load is not the same as travelling empty-handed, nor is working the same as sitting idle.” Levine, *op. cit.*, p. 41: “Insofar as the breaking of the contract affords the worker the consolation of spending his day in leisure, a discount is applied to the wages ... to the sum the worker would demand if asked to abandon his work for the broken portion of the contract in favor of leisure (*k'poet bateil*). This sum, according to R. Solomon b. Isaac's general rule, amounts to one-half the stipulated wage for the relevant period.” Rabbi Shlomo Sternberg writes that “the general ruling is more flexible, and is based on what the normal worker in the field would accept as a reduction for having the day off. The general tendency is to rule that there not be any idleness reduction for types of work that are pleasurable, that the worker would prefer to be at work than at home.” (Sternberg, Shlomo. Personal correspondence to the author, November 16, 1993.)
40. *Baba Metzia* 77a: “Raba referred to the workers of Mahuza, who, if they do not work, feel faint.” See also Weisfeld, *op. cit.*, pp. 68, 78; Sternberg, Shlomo, *op. cit.*
41. Levine, *op. cit.*, p. 42, citing Ramban, *Baba Metzia* 76b; Rashba and Ran, quoted in *Shittah M'kubbetzet*, *Baba Metzia* 76b; *Sifrei Kohan*, *Sh. Ar.*, 333, note 13. The employer is also not held accountable for a retraction *if the work had not been started* and the employer encountered *unforeseen* difficulties. See also Levine, *op. cit.*, p. 42; Weisfeld, *op. cit.*, p. 80. *Baba Metzia* 77a: “If one engaged laborers for irrigation, and there fell rain [rendering it unnecessary], the loss is theirs. But if the river overflowed, the loss is the employer's, and he must pay them as unemployed laborers.” Epstein, *op. cit.*, footnote 8, p. 443: “Because the worker cannot know that the field is so situated, by means of canals leading thereto, that the river's overflow irrigates it.” Thus, if the employer could have foreseen the difficulty (or if the work had already commenced), he cannot retract the hiring agreement.
42. 1) Giving sadly; 2) giving gladly but less than is fitting; 3) giving only after having been asked to; 4) giving before being asked; 5) giving so that the donor does not know who the recipient is; 6) giving so that the recipient does not know who the donor is; 7) giving so that neither the donor nor the recipient knows the identity of the other; 8) providing a job. (*Mishneh Torah*, Gifts To The Poor, Book 7, Chapter 10:7-14, cited in Birnbaum, Philip, *Mishneh Torah*. Hebrew Publishing Company, New York, 1967, pp. 158-159.) See also Tamari, *op. cit.*, p. 254.
43. *Baba Metzia* 109a-109b: “Ronias was Rabina's gardener. Having spoiled it, he was dismissed. Thereupon he went before Raba, complaining, ‘See, Sir, how he has treated me.’ ‘He has acted within his rights,’ he informed him. ‘But he gave me no warning,’ protested he. ‘No warning was necessary,’ he retorted. This is in accordance with Raba's views. For Raba said: Elementary teachers, a gardener, butcher, a cupper, and the town scribe, are all regarded as being permanently warned. The general principle is this: for every loss that is irrecoverable, [the workers] are regarded as being permanently warned.” See also Levine, *op. cit.*, p. 39.
44. Levine, *op. cit.*, p. 40, citing Rabad, quoted in *Maggid Mishneh*; Ran and Rashba, quoted in *Nimmukei Yosef*, *Baba Metzia*, 109a; *Ar. ha-Sh.*
45. *Exodus* 20:9,10: “Six days shalt thou labor, and do all thy work; but the seventh day is a sabbath unto the Lord thy God: in it thou shalt not do any manner of work”
46. *Baba Metzia* 83b: “A laborer's entry [to town] is in his own time, and his going forth [to the fields] is in his employer's.” See also Katz, *op. cit.*, p. 25.

working at night after working a day shift. This ancient “Fair Labor Standards Act” provision ostensibly protects the employer - workers cannot perform their regular day jobs satisfactorily if they are exhausted from working all night - but is as much for the benefit of the worker as for the employer.^[47]

E. The Right to Eat

One important “fringe benefit” that is guaranteed under Jewish religious law is the workers’ right to eat the food that they harvest. This right is found in the Biblical injunction “When thou comest into thy neighbor’s vineyard, then thou mayest eat grapes until thou have enough at thine own pleasure; but thou shalt not put any in thy vessel.”^[48] Workers are entitled to eat as much as they like, provided that the food comes from the field in which they are actually working. Waiters are also permitted to eat some of the food that they serve.^[49] Workers are not, however, entitled to eat processed food (*e.g.*, wine, as opposed to grapes) or to carry food away from the worksite.^[50]

Agriculture was the predominant economic activity during the Biblical and Talmudic periods, and the right to eat the food that one harvested was a significant benefit. The principle of workers enjoying the fruits of their labor has implications supportive of employee stock ownership and other benefit-sharing plans today.^[51]

F. Sick and Disability Pay

A rudimentary form of sick pay is recognized in a Talmudic ruling that a “Hebrew slave” who becomes ill for up to three years does not have to make up the lost work time.^[52] (In the Bible, a “Hebrew slave” was theoretically indentured for a period of six years, but the practice was of antiquity when the *Talmud* was codified.)^[53] In the fourteenth century, Rabbi Simeon ben Zemach Duran, the leading rabbinic authority in North Africa, drew upon this precedent to rule that long-term workers are also free from the obligation of making up work if they fall ill during the contracted period.^[54] Additional protection is offered to workers who are

injured on the job if the employer is negligent. For example, if an employer asks workers to “carry on their shoulders” a heavier load than that agreed upon or that is customary, the employer is liable for harm suffered by the latter.^[55] The laborer is entitled to damages relating to loss of income, loss of limb, pain incurred, and medical expenses.^[56]

Talmudic scholars assumed that there was a certain amount of risk inherent in any work, and the employer was generally not held liable if the worker was harmed in the normal course of employment.^[57] Talmudic thought was evolving, however, to a theory of more general employer liability even in cases where injury occurs during the course of normal work activities. The *Talmud* notes that Temple priests suffered intestinal illnesses due to their special responsibilities, and the Temple budget therefore provided for their medical care.^[58] Furthermore, the Bible generally prohibits human beings from placing themselves in grave danger, and workers are clearly prohibited from

47. *Tosefta Baba Metzia* 8:2: “A worker has no right to do his own work by night and to hire himself out by day.” This does not apply to contract workers. (Levine, *op. cit.*, p. 57.)

48. *Deuteronomy* 23:25. See also Weisfeld, *op. cit.*, p. 72.

49. *Ketuvot* 61a: “All [foodstuffs] may be held back from the waiter [until he has finished serving the meal- Epstein, *op. cit.*, footnote 16, p. 365] except meat and wine.” Epstein, *op. cit.*, footnote 17, p. 365: ‘which excite his appetite and any delay in satisfying it causes him extreme pain.’ See also Hirsch, Richard G. *The Way of the Upright: A Jewish View of Economic Justice*, Union of American Hebrew Congregations, New York, 1973, p. 56.

50. *Baba Metzia* 7:2-7:5: “These may eat [of the fruits among which they labor] by virtue of what is enjoined in the Law. he that labors on what is still growing after the work is finished, and he that labors on what is already gathered before the work is finished; [this applies only] to what grows from the soil. These are they that may not eat: he that labors on what is still growing while the work is still unfinished, and he that labors on what is already gathered after the work is finished, and [he may not eat] of what does not grow from the soil If he worked among figs he may not eat grapes, and if among grapes he may not eat figs; but he may refrain until he reaches the best fruits and then eat A laborer may eat cucumbers even to a *denar*’s worth, and dates even to a *denar*’s worth.” See also Weisfeld, *op. cit.*, pp. 72-73.

51. Federbush, *op. cit.*, p. 46. Employers were also commanded to provide food, drink and lodging of a quality equal to their own: “He must be with [*i.e.*, equal to] thee in food and drink that thou shouldst not eat white bread and he black bread, thou drink old wine and he new wine, thou sleep on a feather bed and he on straw.” (*Kiddushin* 20a) Although these commandments pertained to Hebrew slaves, “... the authorities accepted the principle that all legal privileges extended the Hebrew slave are applicable to the hired worker.” (Federbush, *op. cit.*, p. 46.)

52. *Kiddushin* 17a.

53. *Exodus* 21:2. See also *Encyclopaedia Judaica [First Edition]*, Volume 10, Keter Publishing House, Jerusalem, 1972, p. 1657.

54. Rabbi Duran writes: “... there is a unique reason in the case of the worker, for he is hired only for the day, and it does not occur to the employer that an accident might befall him, and that he [the employer] needs to make an explicit stipulation [to cover this eventuality]. For this reason the worker only receives wages for the time he actually worked. But as to a slave who is sold for six years, everyone knows that it is impossible that he work during the full period, because it is normal that a person becomes ill in a long period of time. Hence if he falls ill, he does not have to make up the missing time. Similarly a teacher [the subject of this case], who is hired for the year, receives full pay even if he is ill, since no explicit stipulation to the contrary was made by the employer.” *Responsa*, Vol. 1, # 64, cited in Sternberg, Shlomo, Personal correspondence to the author, December 26, 1993.

55. *Tosefta Baba Metzia* 7: 10. See also “Labor Law,” *Encyclopaedia Judaica*, *op. cit.*, pp. 1329-1330.

56. Tamari, *op. cit.*, p. 140.

57. *Ibid.* From *Baba Metzia* 112a: “Why did this man [the laborer] ascend the ladder, suspend himself from the tree, and risk death itself?”

58. *Shekalim* 5:1. See also Tamari, *op. cit.*, p. 141.

accepting work that threatens their person.^[59] In general, as the late Chief Rabbi of Israel, HaRav Uzziel, declared, “the Torah obligates [the employer] to make every effort to protect his workers from injury; failure to do so makes him liable to the moral crime of ‘Thou shalt not spill blood in thy house.’”^[60]

G. Employee Obligations

It is important to note that workers have *obligations* under Jewish religious law as well as rights. Day laborers are required to work faithfully, with all of their strength^[61] and to refrain from weakening themselves by going hungry or working both days and nights.^[62] Talmudic authorities exempted workers from reciting certain prayers after meals and prohibited them from rising out of respect in the presence of religious leaders so as not to interfere with their work.^[63] Maimonides noted: “Just as the employer is enjoined not to deprive the poor worker of his hire or withhold it from him when it is due, so is the worker enjoined not to deprive the employer of the benefit of this work by idling away his time, a little here and a little there, thus wasting the whole day deceitfully.”^[64]

Workers are also liable under some circumstances for damages that they cause during the course of their work. Contract

workers are responsible for ruining their product,^[65] and liability varies depending on the circumstance for day laborers. They are responsible if their charge is lost or stolen (*i.e.*, the loss is due to negligence), but are not responsible for accidental breakage, provided that they swear that the loss had not been due to willful negligence.^[66]

H. The Crucial Role of Local Custom

One final and extremely important principle of Talmudic law is crucial to any discussion of worker rights: the importance of local custom.

In the *Talmud*, Biblical injunctions and other Talmudic principles of labor rights are considered a “floor;” local customs can add a range of fringe benefits and prevent employers from making agreements less favorable than prevailing wages and benefits. The *Talmud* states:

If a man hired laborers and bade them to work early or to work late, he has no right to compel them to do so where the custom is not to work early or not to work late; where the custom is to give them their food he should give it to them, and where the custom is to provide them with sweet stuff he should provide it.

Everything should follow local use.
(Emphasis added.)^[67]

The right to appeal to local custom as a source of authority has echoes in a number of contemporary industrial relations practices, such as the requirement that builders on federally or state-funded construction projects pay “prevailing wages” to their workers. It provides tremendously enhanced rights to the worker. Local custom must be followed in all conditions not specified in the labor contract. *Today, any secular, government-mandated employee benefit that goes beyond (i.e., is not inferior to) the demands of Jewish religious law is considered “custom” and de facto assumes the status of religious law.*^[68] Thus, Jewish religious labor law includes both the specific labor rights spelled out in the Bible and Talmud and all customary (government-mandated and otherwise) labor practices. Respect for existing U.S. labor laws, such as those that guarantee workers the right to organize unions, is mandatory for employers under Jewish religious law. Furthermore, these rights can never be diminished below the “floor” provided by the *Talmud*. This is the basis upon which issues relating to modern industrial relations practices must be analyzed today.

59. *Deuteronomy* 4:15: “Take ye therefore good heed unto yourselves.” See also Tamari, *op. cit.*, p. 140.

60. Tamari, *op. cit.*, p. 142. See also *Decisions of Uzziel on Current Problems* 47, cited by Sternberg, Shlomo, Personal correspondence to the author, June 27, 1994.

61. *Genesis* 31:6: “And ye know that with all my power I have served your father.” See also Weisfeld, *op. cit.*, p. 80.

62. *Tosefta Baba Metzia* 8:2: “A worker has no right to do his own work by night and to hire himself out by day ... Nor may he deprive himself of food and starve himself in order to give his food to his children, on account of the robbery of his labor, which belongs to the householder [who hires him].”

63. *Berakoth* 16a: “Laborers working for an employer recite the *Shema* and say the *tefillah* [two central prayers - M. P.] and eat their crust without saying a blessing before it, but they say two blessings after it ...”; *Kiddushin* 33a: “Artisans may not rise before scholars whilst engaged in their work.” See also Federbush, *op. cit.*, pp. 28-29, 63.

64. *Mishneh Torah, Laws Concerning Hiring, Book 13*, Chapter 13:7, cited in Rabinowitz, Jacob. *The Code of Maimonides, Book 13, The Book of Civil Laws*, Yale University Press, New Haven, 1949, p. 50. See also Federbush, *op. cit.*, p. 62.

65. *Baba Kamma* 9:3, 9:4: “If he gave a carpenter a box, chest or cupboard to be mended, and he spoilt it, he must make restitution ... If a man gave wool to a dyer and the cauldron burned it, the dyer must repay him the value of his wool.” See also Weisfeld, *op. cit.*, p. 77.

66. *Baba Metzia* 6:8: “If a man moved a jar from place to place and broke it, whether he is a paid guardian or an unpaid guardian he may take an oath [that it was not through his neglect, and so be quit of liability].” But *Baba Metzia* 7:8: “... a paid guardian or hirer may take an oath if the beast was lamed or driven away or dead, but he must make restitution if it was lost or stolen.” See also Katz, *op. cit.*, pp. 24-25.

67. *Baba Metzia* 7:1 See also Federbush, *op. cit.*, p. 52; Tamari, *op. cit.*, pp. 133,158; Weisfeld, *op. cit.*, pp. 71-72; Jung, *Business Ethics in Jewish Law*, *op. cit.*, p. 181; Levine, Aaron. “Jewish Business Ethics in Contemporary Society,” in Jung, Leo, *Business Ethics in Jewish Law*, *op. cit.*, pp. 243-244.

68. As Federbush has noted: “The customs of the land are binding only if they are ethically progressive but if the custom is inferior and stands opposed to our ethical concepts, it is not to be relied on. Rabbenu Tam therefore asserts ‘that there are customs which are unreliable even in places where we are obligated to act in accordance with the custom of the land.’ Therefore, if there is legislation in any land depriving the laborer of his rights, we are obligated to oppose it.” Federbush, *op. cit.*, pp. 52-53, citing *Tosafot Baba Batra* 2; *Baba Metzia* 83.

I. The Right to Form Trade Unions

It is clear that worker organizations existed during the period in which the *Talmud* was codified. The *Talmud* refers to a separate synagogue for coppersmiths; ^[69] to separate seating in the Temple for different types of workers; and to efforts by the workers to engage in mutual self-help:

Goldsmiths sat separately, silver-smiths separately, blacksmiths separately, metalworkers separately and weavers separately, so that when a poor man entered the place he recognized the members of his craft and on applying [for employment (Epstein, *op. cit.*, footnote 3, p. 245)] to that quarter obtained a livelihood for himself and for the members of his family. ^[70]

Moreover, the *Talmud* explicitly recognized the right of worker organizations to regulate wages and to make binding rules and regulations on members of the association, in much the same way that trade unions negotiate wages and conditions for all members of a bargaining unit today:

The townspeople are also at liberty to fix weights and measures, prices, and wages, and to inflict penalties for the infringement of their rules. ^[71] Strictly speaking, this right of regulation applied to “the people of the city,” but the commentators understood that in the words of the Rashba, “every association organized for one purpose is to be considered as a ‘city’ even if the other

members of the community are not party to their decisions.

Even if only members of one occupation, like the merchants, butchers, or sailors, make regulations and articles of association, their decisions are binding.” ^[72]

Thus, the *Tosefta* comments:

The wool-weavers and dyers have the power to say, “Any order which comes to town - all of us will share in it.” The bakers have the right to make agreement on weights and measures among themselves The shipmasters have the right to declare, “Whosoever ship is lost - we shall provide him with another ship.” ^[73]

The *Shulchan Aruch* ^[74] ruled that “[c]raftsmen may make regulations pertaining to their work, to mutually agree that one will not work on the day his neighbor is employed, *etc.*, and that all transgressors will be punished in a certain manner.” ^[75]

In our own day, the late Chief Rabbi of Israel, HaRav Uzziel, stated that

our sages recognized the regulations of craftsmen or of workers’ federations, either in the form of one general union or in the form of separate professional ones in order to protect himself, the worker thus had the right to organize, and to enact suitable regulations. ^[76]

Many collective bargaining agreement provisions that strengthen unions as institutions are consistent with practices described in the *Talmud* or later works based on the *Talmud*. The right to establish work

rules and require compliance by members has already been noted. The right to distribute available work through hiring halls or other union arrangements is consistent with commentary in which “bakers are permitted to arrange that during periods of unemployment it is permissible to divide the working days between all the workers on an equitable scale.” ^[77] Similarly, limiting entry into an occupation (*e.g.*, by accepting apprentices based on expectations of the supply of work) is also permitted by Talmudic scholars:

The Chassam Sofer believes that limiting the number of workers in a trade and the barring of new members in excess of what are required are regulations within the spirit of Biblical law and therefore “The census of craftsmen in a city is not contrary to the Torah but rather as the Torah decrees, and if they were to come before us we would decide in a similar manner, so that they might be able to sustain themselves and not undermine their own livelihoods.” This holds true of all laws they agree upon not to undercut each other’s livelihood. ^[78]

Trade unions or their predecessors are thus centuries-old institutions in Jewish communal life.

J. The Right to Engage in Collective Bargaining and to Strike

The *Talmud* implicitly recognizes the right of trade unions to strike, although, as will be noted below, there is a strong pref-

69. *Magillah* 26a. See also Federbush, *op. cit.*, p. 61.

70. *Sukkah* 51b. See also Weisfeld, *op. cit.*, p. 76.

71. *Baba Batra* 8b. See also Federbush, *op. cit.*, p. 72; Bleich, David J. *Contemporary Halakhic Problems*, KTAV Publishing House, New York, 1977, p. 188.

72. Tamari, *op. cit.*, p. 149, citing *Tshuvot HaRashba*. part 4, section 185; part 5, section 125.

73. *Tosefta Baba Metzia*, 11:24 - 11:26. See also Tamari, *op. cit.*, p. 150.

74. The authoritative code of Jewish law compiled by Joseph Caro in 1565.

75. *Choshen Mishpat*, para. 231, Sub. Para. 28, cited in Federbush, *op. cit.*, p. 60. Interestingly, “The Rama there emphasizes that decisions of a worker’s union must be adopted democratically by majority rule, but a minority decision is not binding.” (Federbush, *op. cit.*, p. 60.)

76. *Mishpatei Uzziel* Part 3: *Choshen Mishpat* section 42. Cited in Tamari, *op. cit.*, p. 150.

77. *Kesef Mishne, Laws of Sales XIV*, 10, as explained by *Lechem Mishne*, cited in Federbush, *op. cit.*, p. 61.

78. Responsa of Chassam Sofer, *Choshen Mishpat*, para. 44, cited in Federbush, *op. cit.*, p. 61. The Chassam Sofer was a renowned Hungarian rabbi (1762-1839).

erence for binding arbitration in Jewish texts and *responsa*.

In what is certainly one of the first recorded strikes in history, the *Talmud* describes job actions taken by craftspeople associated with the Temple.

The family that baked ceremonial bread was dismissed after it refused to teach its secret methods to others. When replacements were found wanting, the family refused to return unless its wages were doubled. The *Talmud* notes without comment that the community agreed to the doubling of the wages; the main issue discussed was whether the family would agree to share its secrets with other workers. The *Talmud* eventually accepted the family's refusal to share its secrets once it was proved that family members had not used the ceremonial bread for their own purposes and that the family's concern was for the maintenance of high standards of their craft.^[79] (Families engaged in other crafts who withheld secrets, however, were condemned, presumably because they could not convince Talmudic authorities that they shared this concern for craftsmanship or that they had not abused the privileges of their office.)^[80]

Jewish communal workers as a rule have extra responsibilities and concomitantly fewer rights than "private sector" workers, since they are serving the community as a whole, often for a religious purpose. Interestingly, the description of the dispute over the baking of the ceremonial bread is contained in the section of the *Talmud* dealing with *Yom Kippur*, the Day of Atonement, the most sacred day of the Jewish calendar. The fact that the *Talmud*, in a section relating to *Yom Kippur*, permitted a strike for higher wages by communal workers against no less than the Temple itself implies that strikes to improve wages and conditions are consistent with Jewish law.

The *Talmud's* attitude in this instance is consistent, of course, with the rulings discussed above that permit day laborers to retract the labor contract at any time without penalty. Talmudic scholars reasoned that since day laborers cannot be enslaved, and since the contracting of labor involves a temporary surrender of independence, day laborers may reassert their independence at any time by quitting. The ability to engage in collective bargaining and to strike is a logical extension of this right.^[81]

While the right to engage in collective bargaining and to strike is consistent with Jewish religious law, it should be noted that there is a strong preference - some would argue a mandate - for binding arbitration over strikes in Jewish *responsa*.

The *Talmud* was codified in a theocratic society at a time when it was assumed that disputes between workers and their employers (indeed, all contract disputes) would be settled by a rabbinic court. The *Shulchan Aruch*

codifies as law a discussion dating back to Talmudic times that the regulations of artisans are effective "only in those places where there is no prominent person (*adam chashuv*) appointed over the public If such a personage is available, then their enactments have no validity and they cannot punish or fine those who do not carry them out except if they have his approval."^[82]

Today, some rabbis have argued that, under Jewish religious law, strikes may only be used to force an employer to submit disputes to arbitration or to adhere to an arbitration decision.^[83] Other rabbis have granted unions a much broader

79. *Yoma* 38a: "The house of Garmu was expert in preparing the shewbread, but would not teach it. The Sages sent for specialists from Alexandria of Egypt, who knew how to bake as well as they, but they did not know how to take [the loaves] down [from the oven] as well as the former, for they were heating the oven from without and baked from within, whereas the latter heated the oven from within and baked from within, [with the result] that the bread of the latter became moldy, whereas the bread of the former did not grow moldy. When the Sages heard that ... [they] said: Let the house of Garmu return to their office. The Sages sent for them, but they would not come. Then they doubled their hire and they came. [Until now] they used to get twelve *minas* for the day, [from] that day, twenty-four *minas*. R. Judah said: [Until then] they received twenty-four *minas* per day, [from] that day they received forty-eight *minas*. The Sages said to them: What ground did you see for refusing to teach [your art]? They said to them: In our father's house they knew that his House will be destroyed, and perhaps an unworthy man would learn it and then proceed to serve an idol with it. - For the following was their memory honored: Never was fine bread to be found in their children's hand, lest people say: These feed from the [preparation of] the shewbread. Thus [they endeavored] to fulfill [the command]: *Ye shall be clear before the Lord and before Israel.*" [*Numbers* 32:22] See also Federbush, *op. cit.*, p. 59.

80. *Yoma* 3:11: But [the memory of] these [was kept] in dishonor: They of the House of Garmu would not teach [any other] how to prepare the Shewbread. They of the House of Abtinus would not teach [any other] how to prepare the incense. Hygros b. Levi had a special art in singing but he would not teach it [to any other]. Ben Kamtzar would not teach [any other] in [his special] craft of writing. Of the first it is written, *The memory of the just is blessed* [*Proverbs* 10]; and of these [others] it is written, *But the name of the wicked shall rot.* [*Proverbs* 10]

81. See also Federbush, *op. cit.*, p. 58. Even if one argued that through collective bargaining, the worker equalizes his bargaining position with his employer: "Since, in the final analysis, collective bargaining does not essentially change the 'tied' status of the union worker, the latter's retraction advantage should remain intact, notwithstanding the position of strength his contract was negotiated from. (Levine, *Jewish Business Ethics in Contemporary Society, op. cit.*, p. 248.)

82. Tamari, *op. cit.*, pp. 152-153. *Baba Batra* 9a: "There were two butchers who made an agreement with one another that if either killed on the other's day, the skin of his beast should be torn up. One of them actually did kill on the other's day, and the other went and tore up the skin. Those who did so were summoned before Raba, and he condemned them to make a restitution. R. Yemar b. Shelemiah thereupon called Raba's attention to the [the *Baraita*, or commentary on the *Mishnah*, which says - M. P.] that the towns-people may inflict penalties for breach of their regulations. Raba did not deign to answer him. Said R. Papa: "Raba was quite right not to answer him; this regulation holds good only where there is no distinguished man in the town, but where there is a distinguished man, they certainly have not the power to make such stipulations."

83. Levine, *Free Enterprise and Jewish Law, op. cit.*, p. 18; Tamari, *op. cit.*, pp. 156-157.

mandate to strike.^[84] Virtually all rabbinic commentators would agree that collective bargaining disputes that endanger the public health and safety must be subject to compulsory arbitration.^[85] Rabbinic authorities have also ruled that if a strike is caused by the employer's violation of the labor agreement, the employer must pay back wages to the striking workers upon their return.^[86]

These opinions assume, of course, that there are no secular laws granting workers the right to strike. If such laws existed, they would become part of the "custom" of the land and would therefore be mandated under Jewish religious law.

Interestingly, there is strong support in the rabbinic community for the position that strikebreaking is prohibited under Jewish law:

According to the Halacha, strike-breaking and scabbing are prohibited. Strike-breakers are covered by the law. Rabbi Yitzchak, one of the Tosaphists, derives from this principle that a worker may not offer his services whenever there is another worker on the job, for he is damaging his neighbor's means of livelihood.

From this it is quite clear that where there are workers who make their livings from a certain kind of labor and are striking for better conditions, others should not offer to replace them. In addition, a group of workers who belong to any definite place of occupation may not break a strike proclaimed by the majority, and damage the overall cause. This is included in the words of the *Talmud* that workers may come to a decision by a majority vote and may then force the minority to accept the decision.^[87]

This opposition to strikebreaking stems from a number of Talmudic passages that admonish workers to avoid encroaching on the livelihood of one's neighbors. In the *Talmud*, King Saul is branded a murderer of the Gibeonites, not because he waged war against them, but because he destroyed their livelihood.^[88]

The *Talmud* interprets the injunction "Nor doeth evil to his fellow" to mean "he who does not set up in opposition to his fellow craftsman,"^[89] and the phrase "neither hath defiled his neighbor's wife" to mean "that he did not [competitively] enter his neighbor's profession."^[90]

These Talmudic imperatives have been interpreted by modern scholars, such as the late, renowned Rabbi Moshe Feinstein, as prohibiting strikebreaking:

A majority vote by members of a union to strike, according to R. Moshe Feinstein, binds the decision on all members of the union, including the dissenting minority. While both union demands and the decision to strike are not binding on non-union members, the striking union workers are entitled to judicial protection against the intrusion of strikebreakers. Offering to work for less advantageous terms than the demands of the striking workers amounts to encroaching upon the latter's livelihood and is therefore prohibited.^[91]

Rabbi Feinstein also ruled in a case involving teachers at a Jewish day school that strikers are entitled to be paid for the days that they are engaged in a "legal" (under Jewish law) strike.^[92] Clearly the practice of "permanently replacing" workers who exercise their right to strike also falls within this Talmudic prohibition.

IV. Conclusion

There is a range of labor protections in the Bible and *Talmud*. Talmudic labor regulations demand the prompt payment of wages, give the benefit of the doubt to workers in disputes over wages, and prohibit payment in-kind. A second set of Talmudic laws grants workers the right to stop working at any time, while prohibiting the employer from breaking the labor contract, and requires the employer to pay an "idle

wage" of one-half the contracted wage if workers finish their work early. A third set of Talmudic laws relate to the hours of work, including the requirement that workers have a day of rest, be paid for hours spent walking to work, and be prohibited from working at night after working a "day shift." Workers are entitled to eat the food that they harvest. Employers are liable for work-related injuries caused by negligence,

and workers are prohibited from accepting unsafe working conditions.

An entire class of Talmudic labor law deals with conditions of work, establishing rights that in many instances foreshadow modern trade union practices. Worker organizations existed during the period in which the *Talmud* was codified, and the *Talmud* explicitly recognized the right of worker associations to regulate wages and

84. Bleich, *op. cit.*, p. 187.

85. E. g., Levine, *Free Enterprise and Jewish Law, op. cit.*, p. 19.

86. Bleich, *op. cit.*, p. 189.

87. Federbush, *op. cit.*, pp. 58-59.

88. *Baba Kamma* 119a: "For indeed where do we find that Saul slew the Gibeonites? It must therefore be because he slew Nob, the city of the priests, who used to supply them with water and food [Epstein, *op. cit.*, footnote 10, p. 714: For the Gibeonites were employed there by the priests as hewers of wood and drawers of water]. Scripture considers it as though he had slain them." See also Federbush, *op. cit.*, p. 59.

89. *Makkot* 24a: " 'Nor doeth evil to his fellow,' that is, he who does not set up in opposition to his fellow craftsman."

90. *Sanhedrin* 81a: " 'Neither hath defiled his neighbor's wife,' indicating that he did not [competitively] enter his neighbor's profession."

91. Levine, *Free Enterprise and Jewish Law, op. cit.*, p. 18.

92. Rabbi Moshe Feinstein, *Iggerot Moshe, Choshen Mishpat* 59.

Labor Rights in the Jewish Tradition

to make binding rules and regulations on members of the association, in much the same way that trade unions negotiate wages and conditions for all members of a collective bargaining unit today. The right to work only at contracted duties is incorporated in Talmudic *dicta* that prohibit employers from compelling workers to work in a neighbor's field, even if the work is lighter, and that prohibit employers from changing the nature of the work if employees are hired for a specific task. Worker associations were granted the right to distribute available work and to limit entry into an occupation to conform to expectations of the supply of work.

The right to engage in collective bargaining and strike is consistent with the

worker's right to assert his independence by stopping work at any time without penalty, although there is a tradition of support for binding arbitration to settle disputes. Modern rabbis have condemned strikebreaking on the grounds that it violates several strong Talmudic prohibitions against threatening the livelihood of fellow workers.

Finally, and crucially, the *Talmud* establishes the principle that "everything should follow local use," or "custom." In the *Talmud*, Biblical injunctions and other Talmudic principles of labor rights are considered a "floor" and local "custom" can add a whole range of additional benefits and prevent employers from making agreements less favorable

than prevailing wages and benefits. Local "custom" must be followed in all conditions not specified in the labor contract, and today, any secular, government-mandated employee benefit that goes beyond the demands of Jewish law is considered "custom." Federal, state and local labor laws are in effect granted the status of religious law, the minimum rights that Jewish law would grant a worker. This expands worker rights considerably beyond those that flow from solely Jewish religious law, and provides an additional safeguard to ensure, in the classic Talmudic phrase that sums up the social justice imperative concerning worker rights, that "the workers always have the advantage."

“On the matter of workers, whether they are allowed to prevent others from working until they get a raise and similar matters, and particularly teachers.”

[In response to a query, Rabbi Moses Feinstein, one of the most authoritative commentators of Jewish law - “Halakha” - in the 20th century, notes the right of workers to go on strike, to prevent other workers from ‘strikebreaking,’ and the obligation of employers to pay striking workers if the strike is halakhically legal.]

3 Elul 5714 [September 1, 1954]

To Rabbi Joseph Elias
Director, Yeshiva Beth Yehuda, Detroit

On the matter of principle, whether workers have the right to strike for salary increase or to prevent others from working (known as a “strike”), your honor requested my opinion in practice.

Rabbi Asher wrote on the passage (BB.9) that tradesmen in a given trade can make binding stipulations, and that they are considered as the [totality of] townspeople as far as their trade is concerned. Maimonides also comes to the same decision, Ch. XIV Laws of Sale. Law 10. Similarly the Tur and Shulhan Aruch Hoshen Mishpat end of section 231. It is obvious that this is dependent on a majority, and even though Rabbi Moses Isserles wrote that an enactment of tradesmen requires that they all agree, [he nevertheless] concludes that “two or three” are insufficient. Thus his use of the word “all” is not meant in the strict sense, but rather that a minority cannot [enact legislation] Therefore, the unions in our country have a source in Jewish law, for they are the “tradespeople” of a given trade, and they constitute the majority. But it is necessary that it be known to all, so that the majority be from all workers. But since the existence of the union is well known, it is a natural presumption that they constitute the majority [of all the workers]. But if the workers in the union are only a minority in their trade, their enactments are null and void. But in most places they constitute a majority in a given trade.

As to the requirement that if an “important man” be present, that the innovations are void without his approval, this refers specifically to an “important man” who has been appointed a supervisor over the community specifically to investigate legislation and deal with community needs [An argument for this innovative position from the sources follows.] Therefore, in the cities in this country where no such official is appointed for this purpose the legal status is as if no “important man” is present, and the enactments and legislation are valid; certainly [it is the case] in our country where they [the workers] have the right according to law for this [to organize into unions and strike].

Therefore they have the right to decide not to work until they receive higher pay, and they have the right to impose this decision on the minority. But whether they have the right to prevent non-union workers [from working] in their place requires further analysis. For even when the majority belong to the union, since [according to the *Talmud*] they can legislate that one not work on the day assigned to another, surely they should be able to legislate that others not be able to work in their place; but since the union members have segregated themselves from the other workers, and don’t act on their behalf, it is unreasonable that they enact legislation for the non-union workers solely for the benefit of union members. And even though one might argue that since the union members constitute a majority, they have the right to legislate for all workers, and we can interpret their not acting for the benefit of non-union workers as a penalty for not joining the union (and they have the right to enact such penalties), therefore they have the right to insist that all workers not working for a given employer, but since we have the alternative interpretation [that the union members, by agreement have nothing to do with the non-union members] it might seem more plausible that they don’t have the right to prevent non-union members from working. Nevertheless it is reasonable that [since] they can prevent the non-union workers from working according to Jewish law on the principle “you are depriving me of a livelihood” and other laws of monopoly and possession And also,

[since] everyone agrees in this country that it is a very shameful act for one to work in someone else's job [scab], they have [the] right to force others not to work, and this is, after all, a matter of every day practice in this country.

On the question of teachers, whether they have the right to strike and to prevent others from teaching in their place when they are not paid on time or when their pay is insufficient [A long discussion on the moral obligation to teach and the sins involved of depriving children of their education, especially young children, follows.]

All of the above was on theoretical level. But if matters are such that the teachers are not getting salary to get along, and is therefore difficult for them to teach well, and it is strong and clear presumption that if they don't teach a day or two the school board members pay on time and raise their salary to a living wage, perhaps it is permissible on the ground that "now is the time to act for God, they overturned the law", since this will have the effect that they will be able to teach properly and would not have to worry and make the effort to look for an additional source of income. But since this requires careful thought to evaluate the circumstances properly, one should avoid this [teacher's strike] as far as possible.

Therefore, according to what I explained above, it makes no difference whether or not the teachers have a contract, or whether they originally stipulated to have the right to strike or whether they have agreed in their strike just not to teach, or not to supervise the children altogether.

As far as pay for the days they did not teach is concerned , if the strike was legal, because it was estimated that it would be beneficial, *e.g.*, it was difficult for them to teach under the existing conditions, certainly they are entitled to their pay. If the strike was prohibited according to Jewish law, it is plausible that then one does not have to give them [their wages]. But because of the principle of "the paths of the righteous" enunciated at the end of the chapter "Artisans" (BM) one should give them [their wages]. For they did not cease teaching frivolously, but rather from an excess of pain and poverty, and [they] thought that the strike would be beneficial.

Your friend sends his blessings,

Moshe Feinstein

ABOUT THE JEWISH LABOR COMMITTEE

The Jewish Labor Committee has represented the organized Jewish community on questions relating to trade unionism and human rights since 1934, when it was founded as a labor-based rescue operation in response to the rise of Nazism in Europe.

Today, the Jewish Labor Committee works to maintain and strengthen the historically strong relationship between the American Jewish community and the trade union movement, and to promote the shared social justice agenda of both communities.

Information about our current activities is available upon request.