

Work, workers and the Jewish owner¹

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Executive Summary

Why this *teshuvah*?

Jewish communities in general, and Conservative Jewish institutions in particular, generally attempt to live our values in the ways in which we care for members of our communities, in our choices about how to spend time and money, and in other aspects of our communal lives. We visit the sick, ensure *minyanim* for *shivah* homes, offer scholarships for students to visit Israel, pay extra for kosher food, and wake ourselves up for *Shacharit* because we believe that our commitments to individuals within our communities, to the state of Israel, to our children, and to the obligations of the *halakhic* system are not theoretical constructs.

Low-wage workers are also members of our communities. Maintenance staff, whom we pay directly or hire through contracting companies, keep our buildings clean; security personnel ensure our safety; and food service staff make our dinners and kiddushes run smoothly. Many members of our community also own or manage businesses that employ low wage workers in service, production, or other roles. If we are to live our values in our business practices, we should look to *halakhah* for guidance in determining how much to pay these employees, how to treat them, and how to approach unionization issues.

This *teshuvah* serves as a guideline for Conservative institutions to make such decisions in regard to their own employees, and also for Conservative Jews to think about integrating their Jewish practice with their workplace practices. Our institutions view their mission, in part, as modeling ritual, *g'milut chasadim*, learning, and concern for the greater Jewish people. Through these practices both educate our own members and serve as positive Jewish examples for the community at large. In taking workplace *halakhot* seriously, and in teaching and speaking publicly about this commitment, our institutions and individual members will live fuller halakhic lives while also acting as instruments of *kiddush hashem*.

Major findings

Some of the major findings of this *teshuvah* include:

- While Judaism offers different—and sometimes opposing—views of the value of work vis-à-vis *Talmud Torah*, there is a general sense that work should be a means of granting dignity to the worker.
- The *halakhic* and *aggadic* traditions both portray the *po'el* (day laborer, who is more or less parallel to the contemporary worker paid by the hour) as someone who is poor,

¹ Thank you to Rabbis Elliot Dorff, Jeremy Kalmanofsky, Levi Lauer, Daniel Nevins and Mayer Rabinowitz for reading and commenting on earlier versions of this paper.

dependent on his/her wages, and at the mercy of his/her employer. Employers are cautioned to treat this *po'el* fairly and with dignity. There is an emphasis on preventing any appearance that employees are enslaved to their employers, as we are *avadim* to God and not *avadim l'avadim*.

- The *minhag hamedinah* (custom of the land) determines all areas of employment practice. This *minhag* does not emerge from nowhere, but may be set by the townspeople, by religious authorities, and even by the workers themselves.
- There is a general assumption that a worker's wages will be sufficient to pay for his/her family's basic needs. One *Mishneh Torah* text (*Shekalim* 4:7, discussed on p. 31) even specifies that communal workers be paid enough to support their families, lest concern about their economic situation impede their ability to work effectively.
- Workers are permitted and, according to some, encouraged to organize into unions. Most poignantly, Rabbi Ben-Tzion Meir Chai Uziel comments that *halakhah* allows for unions "in order that the individual worker not be left on his own, to the point that he hires himself out for a low wage in order to satisfy his hunger and that of his family with a bit of bread and water and with a dark and dingy home." (*Hoshen Mishpat* 52:6, discussed on p. 58)

Outcome

Based on the *halakhot* of employer/employee relations discussed in this *teshuvah*, I conclude that Conservative Jews and Conservative Jewish institutions should:

- Treat workers with dignity and respect.
- Pay employees a living wage, defined according to one of the four commonly-accepted definitions of living wage. These definitions, explained on pages 28-29 are:
 - The living wage for the county, city, or municipality
 - Three times the fair market rent on a two-bedroom apartment in the county
 - The "self-sufficiency wage" for the county
 - 130% of the poverty line
 - 80% of area median income
- Not knowingly put their employees at risk of injury or death.
- Allow employees the space to make their own decisions about unionization, without threats or other interference on the part of the employer.
- Hire unionized employees when possible.

Employees, in turn, should do their best work, and treat their employers with the same dignity and respect due to employees. This relationship should, in the words of Chaim David Halevi, facilitate a situation in which both employers and employees feel that their work is "sacred" and that they are involved in "a partnership with God in the work of creation" (*Aseh l'kha Rav* 2:64)

While this paper addresses only the behavior of individual institutions and individuals, and does not propose state or federal policy, I include, as an appendix, an extensive section on the economics of living wage in response to the interest of CJLS members. Virtually all major studies of the living wage have concluded that there the institution of a living wage in a city or municipality does not lead to significant job loss.

Teshuvah

Question

What are the obligations of Jewish owners to workers paid by the hour? Specifically, should employers pay these workers a living wage? Should Jewish owners prioritize hiring union workers in unionized industries? Do employers' obligations change if workers take additional jobs?

Answer

I will divide this *teshuvah* into two major sections. The first section will address the question of whether Jewish owners are obligated to pay hourly workers a living wage. The second section will address the question of whether Jewish owners should hire union workers. First, however, I will introduce the topic by offering a few brief comments on the current state of the labor movement in America and on the methodology that I will employ in addressing the questions laid out above.

Introduction

The past few years have focused new attention on workers issues in the United States. While rates of union membership remain low, a few successful campaigns—most notably the Service Employees International Union's Justice for Janitors campaign—have energized the movement.² During the past decade, more than 130 municipalities throughout the country have

² As of January 2008, 12.1 % of workers were union members. By means of contrast, in 1975, 25% of the workforce belonged to unions. The fluctuations in union membership, however, vary greatly among professions and between the public and private sector. While only 7.5% of workers in the private sector belong to unions, 35.9 % of government workers do. Other highly unionized industries include transportation and utilities (22.1%), and construction (13.9%). It is significant that the service industry, which is the fastest growing employment sector in the United States, has one of the lowest rates of union membership. Only 3.1% of workers in sales and related industries are unionized, and only 4.3% of workers involved in food preparation are members of unions. (Bureau of Labor Statistics, "Union members Summary," News release, January 25, 2008. Available at: <http://www.bls.gov/news.release/union2.nr0.htm>)

adopted living wage ordinances³, and thirty-two states plus the District of Columbia have established minimum wages higher than the federal minimum wage of \$5.85/hour.⁴ In 2007, the federal government adopted the first minimum wage increase in ten years, raising the federal minimum wage from \$5.15/hour to \$5.85/hour, with the rate set to rise to \$7.25/hour in the summer of 2009.

Jews have been deeply involved in the American labor movement since its inception. The Triangle Shirtwaist Factory Fire of 1911, in which 146 workers—primarily Jewish and Italian women—lost their lives led to a successful effort by the largely-Jewish International Ladies Garment Workers Union to secure legislation mandating workplace safety protections. Many of the giants of the United States Labor movement, including Emma Goldman, Samuel Gompers and Samuel Hillman, have been Jews. Even today, Jews are at the helm of some of the largest and most influential labor unions, including SEIU (Andy Stern) and UNITE HERE! (Bruce Raynor).

Even while Jews retain a historical connection to the American labor movement, Jews—by virtue of their economic and educational ascent—are underrepresented in the union rank and file, who consist primarily of workers in blue collar and non-management positions.⁵ The question for the Jewish community now is—given that more of us find ourselves *hiring* low-

³ These numbers change rapidly. For an updated list of municipalities that have passed living wage ordinances, see www.livingwagecampaign.org

⁴ These numbers change at just about every election. An updated list is available at the Department of Labor's website: <http://www.dol.gov/esa/minwage/america.htm> As of 2008, the highest state minimum wage was \$8.07 (Washington State) and the lowest was \$2.65 (Kansas), with Oklahoma also allowing wages of as low as \$2.00 for employees of businesses with fewer than ten employees. When state minimum wages are lower than the federal minimum wage, these wages apply to workers not covered by the federal minimum wage law. These include some full-time students, workers with disabilities, tipped employees, and workers younger than twenty years old during the first 90 days of employment.

⁵ Current efforts to organize graduate students, doctors and other white collar workers may bring more Jews into the labor movement; however, these efforts are, as of now, limited in scope.

wage workers than *being* low-wage workers, how will we translate our historical connection to the labor movement into our new roles as owners and managers?

As the Jewish community as a whole and the Conservative Movement in particular struggles with the challenge of making Judaism relevant in the contemporary world, the Committee for Jewish Law and Standards can play a key role in offering halakhic guidance on the issues with which our constituents actively struggle. I hope that this *teshuvah* plays some small role in demonstrating one way in which the wisdom of Jewish civil law remains relevant to contemporary business practice.

In tackling the question of Jewish obligations toward workers, I will examine a combination of sources, including traditional *halakhah* and *aggadah* as well as stories and statistics about contemporary workers. I recognize that this approach deviates from the formalist halakhic methodology more often employed by the authors of *teshuvot* for this committee. However, the incorporation of human stories into this piece reflects my conviction that we cannot make *halakhah* in a vacuum, but must consider the real-life experience of those whom our decisions will affect. Addressing the interplay between the "texts" of workers' lives and the texts of our tradition yields a richer understanding of appropriate Jewish labor practice than does attention to only one of these areas. In bringing stories into this discussion, I follow the examples both of the early rabbis, who often choose to use stories to talk to us about poverty, and of generations of *teshuvot* writers, whose task most often is to respond to an individual situation and not to codify law in an impersonal way.⁶

⁶ For more on this approach to *halakhah* and *aggadah*, see Jill Jacobs, "Reclaiming Talmudic Judaism: an *Aggadic* Approach to *Halakhah*" in *Conservative Judaism*, Winter 2006

To use Max Kadushin's language, the *aggadot* included in this *teshuvah* are "reflection[s] of the way the value-concepts [of rabbinic Judaism] are concretized in a situation."⁷ An examination of the relevant *aggadic* texts therefore offers a window into the values that underlie all rabbinic discussions of employer-employee relations. As I will demonstrate, the related *halakhot* codify these same values into impersonal laws, which can be applied to multiple situations.

Section I: A living wage⁸

In this section, I will consider the obligation of employers to pay their workers a "living wage." This discussion requires first an examination of the place of work within Jewish tradition and the general expectations of employers toward their employees. Without understanding the setting in which living wage and union organizing campaigns take place, we cannot possibly understand the ways in which workers engage with these efforts.

The place of work in Jewish tradition

Rabbinic debate about labor most often concerns the relative value of work and *talmud torah*. This issue will remain outside of my discussion, both because the majority of low-wage workers are not Jewish, and because few Jews in our society have the leisure to choose between work and full-time study. I will similarly leave aside debates about whether the divine punishment that Adam acquire food "by the sweat of [his] brow" (Genesis 3:19) designates all work as a curse. I will say only that these two debates are emblematic of a deep rabbinic ambivalence about the value of work. On the one hand, the rabbis do not always view work as

⁷ Max Kadushin, *The Rabbinic Mind* (Binghamton, NY: Global Publications, 2001) p. 110

⁸ A revised version of this section appeared as "The Living Wage: A Jewish Approach" in *Conservative Judaism* Spring 2003

inherently valuable; on the other hand, they recognize that individuals must earn a living, and that the life of the community depends on certain types of work and workers. One text, *Pirkei Avot* 2:2, even suggests that work is not only economically necessary, but also a means of guaranteeing one's own moral well-being:

יָפָה תַלְמוּד תּוֹרָה עִם דְּרֶךְ אֶרֶץ, שְׂיִגְיַעַת שְׂנִיָּהֶם מְשַׁפְּחַת עוֹן. וְכָל תּוֹרָה שֶׁאֵין עִמָּה מְלָאכָה, סוֹפָה בְּטָלָה וְגוֹרָרַת עוֹן.

“Great is Talmud Torah that is combined with *Derekh Eretz*, as the two together will lead to the abandonment of sin. All Talmud Torah that is not combined with work will, in the end, be nullified and will lead to sin.”

Similarly, one rabbinic passage equates the obligation to work during the six days of the week with the obligation to rest on Shabbat. Expanding on the command in *Pirkei Avot* 1:10 to “Love work,” *Avot d’Rabbi Natan* comments:

אהוב את המלאכה כיצד מלמד שיהא אדם אוהב את המלאכה ואל יהיה [אדם] שונא את המלאכה שכשם שהתורה נתנה בברית כך המלאכה נתנה בברית שנאמר ששת ימים תעבוד ועשית כל מלאכתך ויום השביעי שבת לה' אלהיך (שמות כ' ט'):

“Love work” How? This teaches that a person should love work, and not hate work. Just as the Torah was given through the covenant, so too, work was given through the covenant, as it says “For six days you shall labor and do all of your work, and the seventh day is a Sabbath to your God.”⁹

The text goes on to offer examples of the ways in which sloth may lead to sin. One who does not work may, for example, use money set aside for Temple donations to buy food for Shabbat. A person who chooses not to work, this text suggests, fails to fulfill his/her share of the communal responsibility. Or, in the words of Chaim David haLevy (1924-1998), the Sephardic Chief Rabbi of Tel Aviv from 1973 until his death, “In the Jewish worldview, work is sacred—it is building and creating and is a partnership with God in the work of creation.”¹⁰

In some places, the rabbis depict certain types of work, notably tanning and skinning animals, as inherently undignified, presumably because these trades are notoriously dirty and

⁹ *Avot d’Rabbi Natan, Nusach* 1, chapter 11

¹⁰ *Aseh L’cha Rav*, 2:64

smelly. (b. Kiddushin 82b) Similarly, one should avoid engaging in trades associated with criminality, such as donkey or camel handling. (Kiddushin 82a) However, in other places, the rabbis caution against shunning any kind of work. In one Talmudic episode, Rav instructs Rav Kahana, "skin carcasses in the marketplace and collect your wages and do not say, 'I am a *kohen* and a great man and this is below my dignity.'" (b. Pesachim 113a)¹¹ Even more strikingly, the Talmud reports:

ר' יהודה כד אזיל לבי מדרשא שקיל גולפא על כתפיה, אמר: גדולה מלאכה שמכבדת את בעליה. רבי שמעון שקיל צנא על כתפיה, אמר: גדולה מלאכה שמכבדת את בעליה.

Rabbi Yehuda used to go into the Beit Midrash carrying a pitcher on his shoulders. He would say, 'Great is work, as it gives honor to the one who does it.' Rabbi Shimon would carry a basket on his shoulders, and would say, 'Great is work, as it gives honor to the one who does it.' (b. Nedarim 49b)

Here, the rabbis not only glorify working, but also introduce everyday work into the Beit Midrash, a place we might expect to remain a sanctuary from "everyday" intrusions.

The episode in the Beit Midrash confuses our notions of the sacred and the ordinary. We expect the rabbis, who declare *Talmud Torah* to be one of the greatest mitzvot, to present Torah study as the only means by which one acquires honor. Furthermore, we expect a clear division between the domains of work and of study. Instead, the Beit Midrash becomes a meeting point for these two pursuits, and the locus for a declaration about the honor of work. By locating inside the Beit Midrash Rabbi Yehuda's and Rabbi Shimon's exaltation of work, the text challenges our previous notions about the relative value of study and of work and about the existence of a separation between the spheres of "religious" and "ordinary." Not only can "ordinary" work enter the Beit Midrash, but the honor we might consider the exclusive property of the religious world, represented by the Beit Midrash, also describes everyday labor.

¹¹ cf: Bava Batra 110a

Another Talmudic text not only unites the sacred and the ordinary, but goes even further, and elevates work over religious belief. According to this text:

ואמר רבי חייא בר אמי משמיה דעולא: גדול הנהנה מיגיעו יותר מירא שמים, דאילו גבי ירא שמים כתיב: אשרי איש ירא את ה', ואילו גבי נהנה מיגיעו כתיב: יגיע כפיך כי תאכל אשריך וטוב לך, אשריך בעולם הזה, וטוב לך לעולם הבא, ולגבי ירא שמים וטוב לך לא כתיב ביה.

Rabbi Hiyya ben Ammi said in the name of Ulla: Greater is the one who benefits from the work of his hands than one who fears heaven. In regard to the one who fears heaven, it is written “Happy is the man who fears God (Psalms 112).” But in regard to the one who benefits from his own work, it is written “When you eat from the work of your hands, you will be happy, and it will be well with you. (Psalms 128)” “You will be happy” refers to this world; “It will be well with you” refers to the world to come. In regard to the one who fears heaven, the text does not say “it will be well with you.” (b. Brakhot 8a)

Again, this text challenges our assumptions about the relationship between the sacred and the ordinary. We might expect to reap the rewards of work in this world, and of religious faith in the world to come. Instead, Rabbi Hiyya asserts the opposite. While both the worker and the person of faith enjoy rewards in this world, only the worker automatically merits a place in the world to come. We can read this text in a number of ways. It may serve as an overcorrection of statements that value spiritual practice over physical labor, or as a means of adding a sacred dimension to the work that people are already compelled to do. However we read it, the text reminds us of the impossibility of drawing boundaries between the sacred and the mundane. Work not only can enter the Beit Midrash, but can even lead the worker into the world to come. Religious practice may lead us into a messianic age, but just as easily may trap us in the present world.

What are the obligations of employers in regard to creating a dignified workplace environment?

The story of the Exodus and its associated commentary offers the most extensive insight into traditional Jewish understandings about work and about work conditions. While the biblical account of the Israelites' slavery in Egypt focuses on the difficulty of the imposed physical labor, midrash and other rabbinic commentaries understand the difficulties of slavery to arise primarily from spiritual, rather than physical, oppression. In rabbinic expansions of the slavery narrative, the Egyptians prevent Israelite husbands and wives from seeing one another, and view the Israelites as "thorns," rather than as human beings. (*Sh'mot Rabbah* 1:12, 1:11)

The emphasis in these texts on the loss of dignity as the primary condition of slavery mirrors the experience of the low-wage workers I know who, when asked to describe their working conditions, invariably reply "they don't respect us" even before mentioning more concrete concerns such as low wages, long hours or the lack of health care. In the words of Marie Pierre, a nursing home assistant interviewed by Human Rights Watch (HRW), "We know our job, we love our job, we love our patients, but management doesn't respect us."¹² The midrashic text, coupled with the real-life examples, help to explain why so many strikes concern the desire for a voice at work, and not the wage issues we most often associate with labor disputes.

If we understand the biblical and rabbinic account of Egyptian slavery to present the primary example of unacceptable working conditions, we can assume a general prohibition against mimicking the practices of Pharaoh and his taskmasters. This assumption gains support from the repeated biblical assertion that the memory of slavery creates an obligation not to subject others to the conditions the Egyptians imposed on the Israelites and from the rabbinic willingness to learn rules of employer-employee behavior from the negative example of Pharaoh

¹² HRW. 11

and his taskmasters.¹³ In contrast to the Israelite workers described by the midrashim discussed above, the workers we hire should be permitted to continue regular family relations, and should perform jobs suited to their abilities. Basing himself on midrashic interpretations of the verse, “When your brother sells himself to you” (Deuteronomy 15:12) Ben-Tzion Meir Chai Uziel (1880-1953), the Sephardic Chief Rabbi of Palestine and then of Israel from 1939 until his death, comments, “Employers are obligated to behave with love, honor, goodwill and generosity toward their workers. Workers, for their part, should act faithfully and should give themselves fully to the work that they were hired to do.”^{14,15}

One of the best-known and most powerful statements of the responsibility of employers toward their workers demands that employers go above and beyond the letter of the law in caring for their workers:

רבה בר בר חנן תברו ליה הנהו שקולאי חביתא דחמרא. שקל לגלימיהו, אתו אמרו לרב. אמר ליה: הו להו גלימיהו. - אמר ליה: דינא הכי? - אמר ליה: אין, +משלי ב'+ למען תלך בדרך טובים. יהיב להו גלימיהו. אמרו ליה: עניי אנו, וטרחינן כולה יומא, וכפינן, ולית לן מידי. אמר ליה: זיל הב אגרייהו. - אמר ליה: דינא הכי? - אמר ליה: אין, +משלי ב'+ וארחות צדיקים תשמר.

Some porters working for Raba bar bar Hanan broke a jug of wine. He seized their clothes. They came before Rav, and Rav said to Raba bar bar Hanan, “give them their clothing.” Raba bar bar bar Hanan said to him, “Is this the law?” Rav said, “yes, because of the principle ‘you should walk in the ways of the good (Proverbs 2:20).’” He gave them back their clothes. They said to him, “we are poor, and we troubled ourselves to work all day and we are needy--do we receive nothing? Immediately, Rav said to Raba bar bar Hanan, “Go, give them their wages.” He said to Rav, “Is this the law.” Rav said, “yes-- ‘you should keep the ways of the righteous (ibid)’”¹⁶

¹³ For example, see Exodus 22:20 and 23:9, Leviticus 19:24 and 25:23 and Deuteronomy 10:19 and b. Bava Kamma 117b

¹⁴ *Mishpetei Uzziel, Hoshen Mishpat 52:1*

¹⁵ In relying on midrashic texts for his discussion of employers’ obligations toward workers, Uziel continues the rabbinic trend of talking about poverty using aggadic and midrashic sources. This tendency reflects a rabbinic awareness that poverty issues require attention to individual situations, and do not easily lend themselves to impersonal codified law.

16 b. Bava Metzia 83a

Rav's answer to Raba bar bar Hanan here is both unusual and instructive: a reader accustomed to the intricate style of talmudic discourse would expect Rav to respond by deriving a law from a biblical verse, or by quoting an earlier authority. Instead, Rav dodges legal discourse altogether by answering, effectively, that the letter of the law is irrelevant to the case at hand. As an employer, Raba bar bar Hanan is responsible for the welfare of his needy workers, and not simply for fulfilling his contractual obligations toward them. The principle "you should keep the ways of the righteous" compels employers to recognize their privileged and powerful position vis-à-vis their workers, and to act in such a way as to protect the interests of the workers.

Traditional sources indicate an awareness of the unclear boundaries between work and slavery. Workers are specifically permitted to quit a job in the middle of the day because "כי לי בני ישראל עבדים, ולא עבדים לעבדים" "the children of Israel are [God's] servants and not servants to servants." (b. Bava Kamma 117b)¹⁷ Likewise, a person may not accept employment in the household of another for more than three years, as such a position may take on the appearance of servitude. (Rema, Hoshen Mishpat 333:3) Today, when the institution of slavery is illegal, it is unlikely that anyone would confuse long-term employment, even for domestic servants, with slavery. Even so, we should be aware that some low-wage employment situations become, de facto, slavery. In my own organizing work in New Jersey, I was shocked to encounter a nursing home that employed Filipino nurses who were brought to the United States illegally and forced to work as indentured servants to pay off their transportation costs. The nurses lived in the nursing home and were on call twenty-four hours a day. Without documentation, the nurses could not take the risk of leaving the home. When the local health

¹⁷ Cf. *Bava Metzia* 10a

care union sent Tagalog-speaking organizers to speak with the nurses, nursing home administrators prevented these organizers from entering.

While midrashim on Egypt offer insight into unhealthy workplaces, one biblical episode offers us a more positive workplace model. The second chapter of the book of Ruth begins with Boaz, a wealthy field owner, visiting his fields to speak to the workers. This interaction offers a few insights into appropriate employer-employee relations. First, it is clear that Boaz visits the field often. He is familiar with the workers, and even notices the appearance of a new gleaner. Second, Boaz invokes God's name in greeting his workers. The Talmud understands the interaction between Boaz and his workers as the precedent for always invoking God's name in asking about the well-being of another. (b. Brakhot 54a) It is significant that the initial use of God's name as a greeting appears in a workplace situation, and not in a religious context. Perhaps it becomes even more important to introduce God into a situation in which one might not expect to sense God's presence. In this way, the episode parallels the stories of Rabbi Yehuda and Rabbi Shimon bringing their work into the Beit Midrash.

While the rabbis remain ambivalent about the inherent value of work, they push us toward the conclusion that work, when necessary, should confer dignity upon the worker. Employers should, like Boaz, ideally maintain close contact with their workers. In large companies, top executives may not naturally interact with lower-level workers, but can set the tone for a dignified and ethical workplace through their interactions with higher-level workers. This attitude toward workers will almost necessarily filter down to lower-level workers. Most importantly, the rabbis insist that divinity manifest itself in the workplace. One's work environment should offer the same kind of dignity and honor we associate with religious spaces such as the Beit Midrash.

What financial obligations do employers have toward workers paid by the hour?

Jewish law differentiates between two types of workers—the *poel*, who is paid by the day, and the *kablan*, who is paid by the task. Generally, the *poel* is a low-skilled worker who is hired for agricultural or other manual tasks. The *kablan* is more often a skilled craftsman who performs tasks such as dying cloth or repairing household items. This *teshuvah* will focus on the *poel*, who more closely parallels contemporary low-wage workers. I intend for the conclusions of this *teshuvah* to apply to workers paid by the hour, including maintenance people, security guards, servers, delivery people and other low-wage workers whom synagogues, Jewish institutions or Jewish employers might hire.¹⁸

Most Jewish employment law revolves around the concept of *minhag hamakom*—that the custom of the place determines workers' salaries, as well as other working conditions. This principle is laid out most clearly in Mishnah Bava Metzia 7:1:

השוכר את הפועלים ואמר להם להשכים ולהעריב מקום שנהגו שלא להשכים ושלא להעריב אינו רשאי לכופן מקום שנהגו לזון יזון לספק במתיקה יספק הכל כמנהג המדינה מעשה ברבי יוחנן בן מתיא שאמר לבנו צא שכור לנו פועלים הלך ופסק להם מזונות וכשבא אצל אביו אמר לו בני אפילו אם אתה עושה להם כסעודת שלמה בשעתו לא יצאת ידי חובתך עמהן שהן בני אברהם יצחק ויעקב אלא עד שלא יתחילו במלאה צא ואמור להם על מנת שאין לכם עלי אלא פת וקטנית בלבד רבן שמעון בן גמליאל אומר לא היה צריך לומר הכל כמנהג המדינה:

One who hires workers and instructs them to begin work early and to stay late—in a place in which it is not the custom to begin work early and to stay late, the employer may not force them to do so. In a place in which it is the custom to feed the workers, he must do so. In a place in which it is the custom to distribute sweets, he must do so. Everything goes according to the custom of the land.

A story about Rabbi Yochanan ben Matya, who told his son, "Go, hire us workers." His son went and promised them food (without specifying what kind, or how much). When he returned, his father said to him, "My son! Even if you gave them a feast like that of

¹⁸ While we are focusing on the *poel*, whose situation more closely parallels that of contemporary low-wage workers, a precise delineation of the distinctions between the *poel* and the *kablan* would be an interesting topic for further research, particularly as many companies excuse themselves from paying health benefits by classifying certain workers as contractors, rather than as permanent employees.

King Solomon, you would not have fulfilled your obligation toward them, for they are the children of Abraham, Isaac and Jacob. However, as they have not yet begun to work, go back and say to them that their employment is conditional on their not demanding more than bread and vegetables." Rabbi Shimon ben Gamliel said, "It is not necessary to make such a stipulation. Everything goes according to the custom of the place."

This text offers us a number of insights into Jewish labor practice, but also presents some difficulties. On the one hand, the beginning of the mishnah and the final statement of Rabbi Shimon ben Gamliel insist that the local *minhag* governs all aspects of labor practice. On the other hand, elements within the mishnah call this assumption into question.

The major contemporary writers on Judaism and business ethics have understood the principle of *minhag hamakom* as evidence of halakhic support for a controlled free market system.¹⁹ The custom of the area determines wages, hours and other working conditions, but no single employer may depart from the accepted practice of the place. The mishnah prohibits employers from forcing employees to work long hours, but leaves open the possibility that an employer may stipulate long hours in the initial contract. The gemara in the Bavli suggests that Torah law technically permits long hours, but that local custom may be more lenient. (b. Bava Metzia 83b)

The Yerushalmi commentary on the mishnah supports the initial conclusion that rabbinic law prefers a controlled free market system. There, Rabbi Hoshea concludes that "the minhag overrides the *halakhah*"—even though the Torah allows employers to insist on long working hours, local minhag takes precedence. (y. Bava Metzia 7:1) The Yerushalmi then offers the story of the people of Beit Maon who, unlike the people of Tiberius, were accustomed to starting work early and ending late. According to the Yerushalmi:

¹⁹ See, for example David Schnall, *By the Sweat of Your Brow: Reflections on Work and the Workplace in Classic Jewish Thought*. New York: Ktav, 2001; Meir Tamari *With All Your Possessions: Jewish Ethics and Economic Life*. New York: Free Press, 1987; and Aaron Levine *Moral Issues of the Marketplace in Jewish Law* (New York: Yashar, 2005), *Economic Public Policy and Jewish Law* (New York: Ktav, 1993

בני טבריא לא משכימין ולא מעריבין בני בית מעון משכימין ומעריבין בני טבריא שעלו לשכר בית מעון נשכרין בבית מעון בני בית מעון שירדו לשכר בטיבריא נשכרין בטיבריא אבל שעולה מטיבריא לשכר פועלין מבית מעון יכילו מימר לון כן סלקת במחשבתכון דלא הוינא משכח מיגר פועלין מטיבריא אלא בגין דשמעית עליכון דאתון משכימין ומעריבין בגין כן סלקית הכא מקום שאין מנהג

The people of Tiberius who went up to Beit Maon to hire themselves out would hire themselves according to the custom of Beit Maon. The people of Beit Maon who came down to Tiberius to hire themselves out would hire themselves according to the custom of Tiberius. However, when one went from Tiberius to hire workers in Beit Maon, he could say to them, "Do not think that I could not find workers to hire in Tiberius. Rather, I came here to hire workers because I heard that you will start work early and end late." (ibid.)

From this story we can infer that market forces are the only factor governing working conditions and that employers may demand any conditions that workers will accept. This story supports the claim by many employers that workers unhappy with their wages should find higher paying work. Disturbingly, this story also seems to justify the current practice of employing workers in developing countries at wages that would be illegal in America.

A few elements within the mishnah and its accompanying gemara in the Bavli challenge this initial conclusion. We are first struck by the number of apparently superfluous details in the mishnah. Instead of simply offering the concise statement that "everything goes according to the custom of the land," the mishnah offers numerous examples of conditions determined by the accepted *minhag*.

The gemara notices the expansive nature of the mishnah and questions the necessity of specifying that an employer may not force workers to begin early and stay late. The Talmud responds:

לא צריכא, דטפא להו אאגרייהו. מהו דתימא, אמר להו: הא דטפאי לכו אאגרייכו - אדעתא דמקדמיתו ומחשכיתו בהדאי, קא משמע לן דאמרו ליה: האי דטפת לן - אדעתא דעבדין לך עבדתא שפירתא.

We need [this statement] for the case in which the employer raises the workers' wages. In the case in which he says to them, 'I raised your wages in order that you would begin

work early and stay late,' they may reply, 'you raised our wages in order that we would do better work.'" (b. Bava Metzia 83a)

With these words, the gemara establishes wages and hours, and presumably other working conditions, as categories that are not inherently dependent on one another. Raising a worker's salary does not necessarily obligate this worker to work longer hours, or to accept new responsibilities. Employers and workers presumably may stipulate longer hours when they negotiate a contract, but an employer who fails to make such a stipulation before raising wages may not, post facto, demand a longer workday.

In the mishnaic story of Rabbi Yochanan ben Matya, we find a challenge to the idea that the local *minhag* governs all workplace conditions. Rabbi Yochanan assumes not only that the employer must stipulate the exact working conditions, but also that vague statements should be interpreted in favor of the worker. Presumably, no manual worker would expect to receive a feast like that of a king. Still, according to Rabbi Yochanan, a worker who is not told otherwise should receive the best possible meal.

With the comment that the workers are "the children of Abraham, Isaac and Jacob," Rabbi Yochanan ben Matya simultaneously asserts the dignity of these workers and emphasizes the lack of distance between himself and his son and those they employ. In contrast to employers who think little about the identities or backgrounds of their workers, Rabbi Yochanan forces his son to confront the humanity of the workers, and to acknowledge the shared narrative of employer and employee. Although the gemara does not eventually accept Rabbi Yochanan ben Matya's demand for clear stipulations regarding food quality and quantity, even in a place where a set custom exists, the inclusion of this aggadic text problematizes our acceptance of *minhag hamakom* as the sole determinant of worker contracts.

The specification that the workers in Rabbi Yochanan's story are Jewish is problematic for our discussion, both because our modern sensibilities resist legal separations between ethnic and religious groups, and because most low-wage workers in America are not Jewish. We can read this text either as evidence that the rabbis imagine a separate body of law for Jewish and non-Jewish workers, or as a reflection of the rabbinic inability to conceive of non-Jews working for Jews. The absence of a separate body of rabbinic law for non-Jewish workers supports the latter conclusion. However, we must admit that biblical law does recognize separate categories for Jewish and Canaanite slaves, and that the rabbis may consider this fact precedent for creating separate labor laws for Jews. While we may be inclined to argue that the rabbis simply can not imagine a situation in which Jews employ members of other ethnic groups, we need to admit that the question of the interpretation of this text remains open.

The talmudic texts we have thus examined therefore leave us with questions and paradoxes. On the one hand, some textual evidence points to a bias in favor of workers. On the other hand, the conclusion of the text instructs us to follow the minhag of the place in all areas of labor law. Additionally, we have no clear statement about appropriate wage levels, beyond the necessity that these levels conform to the regional minhag. Furthermore, it is not clear whether halakhic labor laws apply to non-Jews as well as to Jews. To sort out these issues, we must expand our inquiry into the assumptions of labor law.

I will first examine the two biblical verses that provide the basis for much of Jewish labor law:

לא תעשק את רעך ולא תגזל לא תלין פעלת שכיר אתך עד בקר:

Do not oppress your neighbor and do not rob him. Do not keep the wages of the worker with you until morning. (Leviticus 19:13)

לא תעשק שכיר עני ואביון מאחיק או מגרד אשר בארצך בשעריך: (טו) ביומו תתן שכרו ולא תבוא עליו השמש כי עני הוא ואליו הוא נשא את נפשו ולא יקרא עליך אל ה' והיה בך

Do not oppress the hired laborer who is poor and needy, whether he is one of your people or one of the sojourners in your land within your gates. Give him his wages in the daytime, and do not let the sun set on them, for he is poor, and his life depends on them, lest he cry out to God about you, for this will be counted as a sin for you." (Deuteronomy 24:14-15)

These biblical verses are significant in their acknowledgment of the essential power and wealth imbalance between employer and employee. The texts understand both the employer's power to rob the employee and the employee's dependence on the wages. From these verses, we understand workers to be a protected category, perhaps similar to widows, orphans and sojourners. The Deuteronomy verses further include sojourners among the protected workers, thereby prohibiting us from distinguishing between Jewish and non-Jewish workers.²⁰ From the biblical text, I therefore derive a few general principles. First, workers are understood to be poor and deserving of our protection. Second, both Jews and non-Jews are considered to be included in the category of protected workers. Third, the texts assert the need for specific legislation to prevent the oppression of workers.

Still, these biblical verses offer little assistance in determining appropriate wages or other labor conditions. While tardy payment of wages may have been an important labor issue in biblical times, most contemporary labor debates focus on wage levels and working conditions. We must explore further to determine a Jewish response to these modern-day concerns.

Two rabbinic texts do explicitly legislate against the gross underpayment of workers. One mishnah forbids an employer from telling an employee paid to handle straw, "טול מה שעשית בשכרך" "take the result of your labor as your wages." (m. Bava Metzia 10:5)

²⁰ The *gerim* mentioned in the Bible are not precisely analogous to contemporary non-Jews. Rather, *gerim* appear to be people who live within the Jewish community and who are bound by the *mitzvot lo ta'aseh*, if not by the *mitzvot aseh*. These *gerim*, who are unable to own land and who never become full members of the community are, according to the Bible, in need of special protections. A category of *gerim* as such no longer exists. However, the biblical extension of workers' protections to one group of people who are not fully Jewish allows us space to extend employment laws to other groups of non-Jews, especially those who are in need of special protection.

The Tosefta considers a case in which an employer hires someone to bring fruit to a sick person. If the employee goes to the home of the sick person and finds that this person has died or gotten better, the employer must pay the worker's wages in full and cannot say, “טול מה שהבאת בשכרך” "take what you are carrying as payment." (t. Bava Metzia 7:4)

While it might be tempting to compare straw and fruit with today's low wages, we must acknowledge the difference. The 2008 minimum wage of \$5.85/hour may not buy much, but we cannot equate it with straw and fruit, which are not even forms of currency. Furthermore, in these early rabbinic texts, as in the biblical commands, we assume that the employer originally agreed to reasonable wages and now wishes to break the contract.

As in the biblical verses we have discussed, these early legal texts are most significant in their understanding of the employer's inherent power over the employee. Because the employee may not have the power to refuse the straw and fruit and to demand monetary compensation, the texts legislate against the attempt on the part of the employer to take advantage of the employee. Second, while the examples of straw and fruit are extreme, the texts may set a precedent for some sort of minimum wage. Still, we must investigate further to determine whether Jewish law requires anything of the employer, beyond complicity with local labor practices.

Considering the assumptions of rabbinic texts offers us additional insight into the employer's responsibilities toward the employee. Returning to the biblical text, we may perhaps assume that the focus on delayed payment reflects the central concerns of laborers in the biblical period. As Nachmanides says in his comment on Deuteronomy 24:15, “דבר הכתובים לדבר בהווה” "The text speaks in the present." In singling out one labor law, the text does not imply that delayed payment is the only issue worthy of our consideration. Rather, in addressing the issue most relevant to workers of its own time, the Bible invites us to consider

ways to ameliorate the situation of workers in our own time. Paying workers promptly constitutes only one means of fulfilling the more general commandment, "do not oppress the hired laborer." Today, adherence to this general commandment may take many other forms.

Rabbinic commentary on the biblical verse helps us to understand the emphasis on prompt payment of wages, rather than on the amount of the wages themselves. In interpreting the phrase, "ואליו הוא נשא את נפשו" "his life depends on [the wages]," the Talmud explains, "מפני מה עלה זה בכבש ונתלה באילן ומסר את עצמו למיתה - לא על

שכרו? דבר אחר: ואליו הוא נשא את נפשו - כל הכובש שכר שכיר כאילו נוטל נפשו ממנו."

"Why does he climb a ladder or hang from a tree or risk death? Is it not for his wages? Another interpretation-- "His life depends on them" indicates that anyone who denies a hired laborer his wages, it is as though he takes his life from him." (b. Bava Metzia 112a) This reading is surprising in its suggestion that the employer assumes responsibility for the life and well-being of his workers. Even more radical is the statement of Jonah Gerondi, the medieval author of the *Sefer HaYirah*:

השמר מלצער בע"ח הן בהמה הן עוף, וכ"ש שלא לצער אדם שהוא עשוי בצלם המקום. אם אתה רוצה לשכור פועלים ומצאת עניים יהיו עניים בני ביתך, ואך אל תבזה אותם, אך דרך כבוד תצוה להם, ותשלם שכרם משלם,

Be careful not to afflict a living creature, whether animal or fowl, and even more so not to afflict a human being, who is created in God's image. If you want to hire workers and you find that they are poor, they should become like poor members of your household. You should not disgrace them, for you shall command them respectfully, and should pay their salaries.

Given this emphasis on the employer's responsibility to treat workers with dignity and to pay them in a timely manner, the absence of specific legislation about appropriate wages is puzzling. Even Gerondi assumes that prompt payment will guarantee the workers' well being.

While we still have no clear statement about appropriate wages, this text hints at an assumption that wages, when paid on time, will be sufficient to sustain the worker.

This point becomes even clearer in Nachmanides' commentary to Deuteronomy 24:15. He writes:

כי עני הוא כרובי הנשכרים, ואל השכר הזה הוא נושא נפשו שיקנה בו מזון להחיות נפשו. . . שאם לא תפרענו בצאתו ממלאכתו מיד הנה ילך לביתו וישאר שכרו אתך עד בקר וימות הוא ברעב בלילה.

For he is poor--like the majority of hired laborers, and he depends on the wages to buy food by which to live. . . if he does not collect the wages right away as he is leaving work, he will go home, and his wages will remain with you until the morning, and he will die of hunger that night.

Like Gerondi, Nachmanides holds the employer responsible for the health and sustenance of the worker. If the worker and/or his family die of hunger as a result of nonpayment of wages, Nachmanides implies, fault for the death lies with the employer.

In commenting that a person who does not receive wages on time will "die of hunger that night" Nachmanides takes for granted that a person who *does* receive payment on time *will* be able to provide sufficiently for himself and his family and will not die of hunger. This assumption also forms the premise for Maimonides' designation of the highest level of *tzedakah* as "the one who strengthens the hand of his fellow Jew by giving him a gift or a loan or entering into partnership with him or finding him work in order to strengthen his hand so that he will not need to ask in the future."²¹ For Maimonides, a person who has permanent employment or a share in a business will never find it necessary to ask for *tzedakah*.

A second Maimonides text offers an even clearer statement of the responsibility to pay workers enough to provide their families with basic needs. In regard to certain communal workers, he writes:

מגיהי ספרים שבירושלם נוטלין שכרן מתרומת הלשכה, דיינין שדנין את הגזלנין בירושלם נוטלין שכרן מתרומת הלשכה, וכמה היו נוטלים תשעים מנה בכל שנה ואם לא הספיקו להן מוסיפין להן, אף על פי שלא רצו מוסיפין להן כדי צרכן והם ונשיהם ובניהם ובני ביתן.²²

²¹ *Mishneh Torah. Matanot l'Aniyim. 10:7*

²² *Mishneh Torah, Shekalim 4:7*

The correctors of books in Jerusalem would take their salaries from [funds collected primarily to cover the cost of sacrifices]. The judges who judged cases of theft in Jerusalem would take their salary from these funds. And how much would they take? Ninety *maneh* per year; and if this was not enough for them, [those responsible for distributing the money] would increase the amount. Even if [these communal workers] did not want to take more, they would increase the amount according to the needs of the workers, their wives and their families.

By way of explaining this text, Rabbi Chaim David HaLevy comments, “In order for [these workers] to devote their full energies to their important tasks and in order that they will be able to focus on fulfilling their duties, without concerns about the needs of their families weighing on them.”²³ HaLevy also infers from Maimonides that a communal worker’s salary should go up as the size of the worker’s family increases. A person unable to support his/her family cannot possibly be an effective worker either because of his/her anxiety or—as Talmudic sources suggest—because s/he will find it necessary to take a second job in order to make ends meet.

The assumption that an employed person will be able to support him or herself and a family may respond to the reality of the medieval world, but does not reflect the current situation. In a time when 15% of homeless people and 40% of those who apply for emergency food relief are employed, we can no longer assume that providing jobs will eradicate poverty.²⁴ Today, estimates of the number of “working poor” in the United States vary widely, from 7.4 million people to as many as 28 million people.²⁵

²³ Chaim David Halevy, *Aseh L'cha Rav* 5:23

²⁴ US Conference of Mayors/Sodexo. *Hunger and Homelessness Report* December, 2005. [Available: www.usmayors.org]

²⁵ The Bureau of Labor Statistics’ figure of 7.4 million represents the number of people who work at least 27 hours a week, but live under the poverty line (in 2005, \$15,735 for a family of three). The higher number (28 million) represents the number of people who work full-time, but earn less than \$18,000/year (below the poverty line for a family of four) (Michelle Conlin and Aaron Bernstein, “Working and Poor,” *Businessweek* May 31, 2004)

The contemporary situation, then, differs from the reality upon which biblical and rabbinic wage laws are based. The rabbis are familiar with workers who live "check to check," but do not consider the possibility that a day's wages might prove insufficient to buy food or other necessities for that day. We therefore find ourselves in a difficult position. As discussed earlier, traditional *halakhah* remains relevant for many areas of employment law. However, in regard to wages, the rabbinic premise does not correspond with our current reality. This discrepancy suggests that the application of traditional *halakhah* to present-day labor issues first requires raising wages to a level at which rabbinic assumptions hold true.

Can and should we interfere with market-determined wages?

Having established that our current *minhagim*—including the minimum wage of \$5.85/hour and the failure to grant health benefits to all employees—do not enable employers or employees to fulfill their halakhic obligations toward one another, we must ask whether there is precedent for changing the *minhag hamakom* in response to new economic realities.

A few texts do indicate a need to adapt employment laws to changing conditions. The laws concerning a workers' right to quit a job in the middle of the day, as enumerated in the Talmud and later codes of law, change according to the availability of other workers. The principle that "the children of Israel are [God's] servants and not servants to servants" theoretically grants the worker permission to quit midday without penalty. However, in a case in which the work in question will be lost if not completed immediately and in which no other workers are available, a worker may not be able to quit early, or may face penalties for doing so. (b. Bava Metziah 86b)²⁶ Here, the texts stipulate one law for an ideal situation, then offer alternate laws for different economic conditions. These laws further establish a general principle that the law should favor the person in the more precarious position. Most commonly, the law

²⁶ Cf. Maimonides, *Mishneh Torah*. Hilkhhot Skhirut 9:4; *Shulchan Aruch*. Hoshen Mishpat 333:3

protects the worker, who stands in danger of becoming like a servant to the employer. In the words of Rabbi Shillem Warhaftig, a contemporary expert on issues of work in *halakhah*, “The purpose [of Jewish labor laws] is to protect the weaker side in these relationships—the worker who is exposed to injustice and exploitation by the stronger party—the employer. We can say that the labor laws attempt to correct the socio-economic discrimination that exists in society against workers by instituting a legal discrimination against employers.”²⁷ Similarly, Rabbi Chaim David HaLevy comments, “The sages of Israel and their courts always knew to side with the worker.”²⁸ Presumably, if workers were in a position of power, the law would favor the employer; however, as Warhaftig notes, the worker is more likely to be dependent on the employer and therefore in danger of exploitation.

Other texts more explicitly allow communities, and even groups of workers, to change the *minhag hamakom*. The Tosefta permits the “people of the city” to stipulate workers’ wages, as well as prices and measurements. (t. Bava Metzia 11:23) Here, we have an explicit break with the controlled free market system that some other texts describe. In granting individual communities the authority to determine wages, the rabbis indicate an understanding of the failures of a free market system. While certain economic conditions enable such a system to succeed, other conditions will make this system unworkable. To maintain stability, the local authority must have the power to adjust wage rates as necessary.

Some traditional texts extend to members of a trade this ability to set wages and regulate work. The clearest statement of this allowance appears in Tosefta Bava Metzia 11:24-26:

ורשאין הצמרין והצבעין לומר כל מקח שיבוא לעיר נהא כולנו שותפין בו.

רשאין נחתומין לעשות רגיעה בנייהן רשאין החמרין לומר כל מי שתמות חמורו נעמיד לו חמור אחר מתה בבוסיא אין צריכין להעמיד לו חמור דלא בבוסיא צריכין להעמיד לו ואם אמ' תנו

²⁷ Warhaftig, *Dinei Avodah b' Mishpat ha'Ivri* vol. 1, p. 2

²⁸ Chaim David HaLevy, *Aseh L'cha Rav* II:64

לי ואני לוקח לעצמי אין שומעין לו אלא לוקחין ונותנין לו.

רשאין הספנין לומר כל מי שתאבד ספינתו נעמיד לו ספינה אחרת אבדה בבוסיא אין צריכין להעמיד לו דלא בבוסיא צריכין להעמיד לו ואם פרש למקום שאין בני אדם פורשין אין צריכין להעמיד לו.

The wool workers and the dyers are permitted to say, "we will all be partners in any business that comes to the city."

The bakers are permitted to establish work shifts amongst themselves. Donkey drivers are permitted to say, "we will provide another donkey for anyone whose donkey dies." If it dies through negligence, they do not need to provide a new one; if not through negligence, they do need to provide him with another donkey. And if he says, "Give me the money, and I will purchase one myself, they should not listen to him, but should buy a donkey and give it to him."

Merchants are permitted to say, "we will provide another ship for anyone whose ship is destroyed." If it is destroyed through negligence, they do not need to provide another one; if it is not destroyed through negligence, they do need to provide another. And if he departs for a place to which people do not go, they do not need to provide him with another ship.

Interpreting this Tosefta, the Rashba comments, "all members of an organization are, unto themselves, like the people of a city in regard to these things. Similarly, every community is permitted to make enactments for itself and to establish fines and punishments beyond those mandated by the Torah." (*She'elot u'Teshuvot* 4: 185) This opinion also appears in the Mishneh Torah²⁹ and in the Shulhan Arukh.³⁰ Rabbi Moshe Isserles narrows the application of this provision, saying that members of a single trade can make stipulations "all together," and that "two or three of them cannot make a binding stipulation."³¹ Isserles' language is somewhat confusing. In his first statement, he requires unanimous consent for all stipulations. In his

²⁹ *Hilkhot Mekhira* 14:10.

³⁰ *Hoshen Mishpat*. 231:28

³¹ *ibid*.

second statement, he suggests that, while "two or three" members of a trade may not enforce a new condition, a significant majority may have such power.³²

Halakhic debate about the ability of individual communities to set wages generally revolves around the question of the necessity for a communal leader who is a "wise person" to approve changes. In Talmud Bava Batra 9a, Rava suggests that members of a trade may make economic stipulations among themselves only when there is no "important person" in the town. Commenting on this passage, the Rosh says:

כמינייהו מכאן דכל בעלי אומנות יכולין להתנות ביניהם והם הנקראין בני העיר בענין מלאכה ואדם חשוב היינו דוקא כגון רבא שהיה ראש ומנהיג בעיר ואפילו כל בני העיר לאו כל להתנות אם לא מדעת אדם חשוב:

From here, we learn that all artisans are able to make stipulations amongst themselves, and they are considered as "the people of the city," in regard to work issues. When we speak about an "important person," we refer specifically someone like Rava, who was the head and leader of the city. When there is such a person, even all of the people of the city together do not have the authority to make stipulations without the consent of this important person. (Comment to b. Bava Batra 9a)

Later medieval scholars similarly require that the *adam hashuv*—sometimes called an *adam gadol* or a *hakham*—approve any changes to employment law. The identity of this *adam hashuv* remains unclear. From the Rosh's comment, the *adam hashuv* appears to be a rabbi and scholar who also has political power. The Tur speaks of an *adam gadol v' hakham* who is responsible for establishing *takkanot* for the community. (*Hoshen Mishpat* 331:28) The R'i Migash defines this person as the appointed head of the community. (qtd. in *Beit Yosef, Hoshen Mishpat* 331:28)

Regardless of the precise identity and role of the *adam hashuv*, we can safely say, in accordance with Moshe Feinstein, that such a person does not exist in contemporary America,

³² Moshe Feinstein seems to interpret the statement that "two or three" may not make a binding stipulation as giving permission to the majority to make such a stipulation. *Iggerot Moshe*. Hoshen Mishpat 59

where the Jewish community does not have a separate political structure.³³ We can therefore say that our situation is one in which there is no *adam hashuv* and in which townspeople—ordinary citizens—have the authority to determine wages and working conditions. Even if we were to argue that the equivalent of the *adam hashuv* does exist in contemporary America, we would notice that the medieval halakhists discussed do not require that the impetus for the change in wages or other laws originate with the leader, but only that this leader consent to the change. These writers therefore implicitly encourage townspeople and members of a trade to determine appropriate regulations and then seek communal and official approval.

What is a living wage?

By definition, a “living wage,” is the amount of money a person needs to earn in order to support him/herself on a single forty hour/week job. In practice, the 134 living wage ordinances passed as of January 2006 define a living wage as anywhere from \$5.65/hour (Eau Claire, WI) to \$13/hour (Fairfax, CA). In some cases, the differences in the agreed-upon living wage reflect differing costs of living in various areas; in other cases, the living wage reflects a decision based on political expediency rather than the real cost of living.

The best indications of the actual, bare-bones costs of living in various metropolitan areas are the self-sufficiency indexes developed by Diana Pearce, et al for Wider Opportunities for Women and the Economic Policy Institute. These indexes consider the costs of basic costs of housing, transportation, food, health care, child care and other essentials for families of various sizes living in various counties in each state.³⁴

³³ *Iggerot Moshe, Hoshen Mishpat* 59

³⁴ These reports are available at www.wowonline.org or www.epinet.org

While the self-sufficiency indexes are broken down according to family size and the number of worker adults, organizations and businesses should not be expected to pay different rates according to the differing needs of individual families. Indeed, it would be both illegal and morally problematic to pay a worker without children, or with a working partner less than one pays a worker who is a single parent. Rather, in determining what to pay workers, Jewish employers and institutions have a few options for defining a living wage. None of these options is perfect, but all at least move toward guaranteeing that workers will be able to support themselves and their families:

- In metropolitan areas that have adopted a living wage, employers who are not required by law to adhere to this standard may anyway choose to pay workers the area living wage. *Employers should note that “official” living wages are sometimes determined for political reasons and do not always reflect the real cost of living in the area.*
- Employers may rely on the “housing wage,” established by the National Low Income Housing Coalition. This wage reflects the amount that a person would need to earn in order to spend 30% of his/her salary to rent a two-bedroom apartment at the fair market rate in a given area. (the official definition of affordable housing is housing that costs 30% of one’s income) The “housing wage” for various metropolitan areas is available at www.nlihc.org
- Employers may base the definition of a “living wage” on the self-sufficiency standard for an average sized family. An employer may decide, for instance, that all workers should be able to support one dependent child (assuming that an “average” sized family” has two children and two working parents.) Self-sufficiency wages for most U.S. counties are available at www.wowonline.org or www.epinet.org
- Some living wage laws guarantee wages that will bring workers’ incomes to 130% of the poverty line (The 2008 poverty guidelines set this level at \$17,600 for a family of three and \$22,200 for a family of four) as those earning more than 130% of the poverty line are not eligible for food stamps. Individual employers may also adopt this 130% guideline; however, we should acknowledge the problematic nature of calling a wage at which people are still dependent on food stamps a “living wage.”³⁵

³⁵ The federal government, each year, releases two versions of what is commonly called the “poverty line.” The “poverty threshold,” released in August of the year after the year in question (i.e. 2005 poverty thresholds are released in August 2006) are used primarily for statistical purposes, and vary according to the number of children in a household. The “poverty guidelines,” released each January, are a simplified version of the poverty thresholds, and are used to determine eligibility for certain government programs. Practically speaking, there is very little difference between the two numbers—usually, only a few hundred dollars separates the poverty threshold from the

- Some proposals define “living wage” as a wage that guarantees an income of 80% of the median income of a given area.

Given the multiple definitions of “living wage,” an employer can most effectively determine how much to pay his/her employees by choosing a wage that meets at least two of these guidelines. Requiring employers to pay wages that meet more than one of these guidelines will guarantee that employers do not simply seek out the option that produces the lowest wage. Given that it would be both unethical and illegal to pay workers with different family situations different wages for the same work, employers might calculate wages according to the average family size (3.14 according to the 2000 census).

The living wage for workers who earn an annual salary may be calculated by multiplying the hourly living wage (based on one of the formulas above) by 2080 (forty hours a week times fifty-two weeks a year, which is the *minhag hamakom* in contemporary America).

One question that arises often concerns the difference between the “minimum wage” and a “living wage.” In theory, there should be no difference. When the federal minimum wage was instituted, as part of the 1938 Fair Labor Standards Act, Congress identified this legislation as an attempt to stem “labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers.”³⁶ However, the minimum wage has failed to keep pace with the rate of inflation in the United States. As of 2005, the purchasing power of the minimum wage had reached its lowest level since 1955. Since 1997, the real value of the minimum wage has decreased by 20%.³⁷ Unlike social security and

poverty guideline. Poverty guidelines for the current year are available at <http://aspe.hhs.gov/poverty/08poverty.shtml> Note that the guidelines are slightly different for Alaska and Hawaii.

³⁶ Fair Labor Standards Act, Sec. 2(a)

³⁷ Jared Bernstein and Isaac Shapiro, “Buying Power of Minimum Wage at 51 Year Low” (Center on Budget and Policy Priorities and Economic Policy Institute, June 2006)

other benefits, minimum wage levels are not tied at all to consumer price indexes, but rather are determined only by acts of Congress.

The introduction of the term “living wage” reflects a desire to remind us that wages should be tied to the real costs of living, and should not be arbitrarily dictated by political forces. The phrase “living wage” also distinguishes among local wage ordinances and federal and state minimum wage levels. In theory, however, there should be no difference between the “minimum wage” and the “living wage.”

Do the obligations of employers change when workers take additional jobs?

Traditional sources compel employees to work diligently, to be precise in their work, and to avoid wasting the employer's time. Workers may even recite abbreviated prayers and excuse themselves from certain religious obligations in order not to detract from their work. (b. Brakhot 17a, 46a) According to Maimonides:

כדרך שמוזהר בעה"ב שלא יגזול שכר עני ולא יעכבנו כך העני מוזהר שלא יגזול מלאכת בעה"ב ויבטל מעט בכאן ומעט בכאן ומוציא כל היום במרמה אלא חייב לדקדק על עצמו בזמן שהרי הקפידו על ברכה רביעית של ברכת המזון שלא יברך אותה, וכן חייב לעבוד בכל כחו שהרי יעקב הצדיק אמר כי בכל כחי עבדתי את אביכן, לפיכך נטל שכר זאת אף בעולם הזה שנאמר ויפרץ האיש מאד מאד.

Just as the employer (literally: householder) is cautioned not to steal or delay the salary of the poor [worker], so too must the poor person be careful not to steal the work of the owner by wasting a little time here and there until the entire day is filled with fraud. Rather, he should be careful about time. For this reason, the rabbis specified that workers do not need to recite the fourth blessing of Birkat HaMazon. Similarly, the worker is obligated to work with all of his strength, for behold, Jacob the righteous said [to Rachel and Leah] " I have served your father with all my might." (Mishneh Torah Hilkhot Skhirut 13:7)³⁸

³⁸ Cf. *Shulchan Arukh*, Hoshen Mishpat 337:20.

Workers are also prohibited from working both during the day and at night, as taking on a second job interferes with one's ability to perform the first job well. (t. Bava Metzia 8:2)³⁹ Furthermore, workers must care for their own health. According to the Tosefta, “לא יהא מרעיב ומסגיף את עצמו ומאכיל מזונותיו לבניו מפני גזל מלאכתו של בעל הבית” “[A worker] may not starve or afflict himself in order to feed his children, as this is considered stealing work from the employer.” (ibid)⁴⁰

In theory, these regulations offer the employer reasonable guarantees that workers will be efficient and productive. However, as in the above discussion of appropriate wages, the assumptions that generate these laws do not reflect our current reality. For many Americans, holding multiple jobs is an economic necessity, particularly for low-wage workers. The Bureau of Labor Statistics estimates that 5.6% of Americans (7,556,000) hold multiple jobs, with 300,000 working two full-time jobs.⁴¹ Some have suggested that the actual rate may be closer to 15 or 20%.⁴² As with any labor statistic, the number of undocumented workers and "under the table" jobs makes it difficult accurately to determine the frequency of multiple employment, particularly among low-wage workers. Anecdotal evidence suggests that a high percentage of the lowest paid workers supplement their primary jobs with weekend and evening work.

A strict reading of the *Mishneh Torah* and other sources might suggest that these workers cheat their employers when accepting second and third jobs. However, given the virtual impossibility of supporting a family on a few hundred dollars a week, we can not reasonably expect low-wage workers to confine themselves to a single, forty-hour/week job. Again, we find ourselves caught between the halakhic ideal and the contemporary reality.

³⁹ Cf. Rif *Bava Metzia* 52b, Rambam *Mishneh Torah* Hilkhhot Skhirut 13:6.

⁴⁰ Cf. *Shulchan Arukh*, Hoshen Mishpat 337:19.

⁴¹ Bureau of Labor Statistics. *Monthly Labor Review*. 123:10 (October, 2000)

⁴² Stephen C. Betts. *Multiple Job Research Project*. (William Paterson University)

The lack of adequate health benefits for many workers makes it particularly difficult to fulfill the Tosefta's requirement that workers maintain their health. Without health benefits, workers forgo regular doctors' visits, and instead use the emergency room as their first line of medical care. The lack of adequate health care leads to missed work days, and also constitutes a drain on the public, as communal funds pay for the workers' emergency medical care.⁴³

Given the discrepancy between halakhic obligations on workers and the contemporary reality, we find ourselves with two possibilities. We can either reconsider the halakhic prohibition against taking multiple jobs and the requirement that employees work at full capacity, or we can accept the current reality as a challenge to traditional *halakhah* and, in turn, use *halakhah* to critique the present-day situation. In his analysis of Jewish labor issues, David Schnall takes the former approach. He suggests that in American society, multiple employment may have assumed the status of *minhag hamakom*, and therefore may be acceptable.⁴⁴ He also cites evidence that those who work second jobs "appear no more likely to underperform or to behave in an undesirable fashion [than those who work only one job]." Furthermore, Schnall classifies as "substantial" the argument that permitting multiple employment "is a means of retaining and satisfying talented workers when an employer cannot continue to raise salary or benefits."⁴⁵

⁴³ The question of whether the principle of *pikuah nefesh* can impose obligations also applies to this case, in which we might argue that the denial of benefits constitutes a threat to workers' lives.

⁴⁴ *By the Sweat of Your Brow*. 141. Schnall's statement assumes an acceptance of the general principle "*haminhag m'vatel et hahalakhah*," suggested by Rav Hoshea in Yerushalmi Bava Metzia 7:1. The question of the general applicability of this principle is a matter of much debate. The *Or Zarua* understands this principle to apply only to an accepted *minhag*, certified by a recognized authority. (2:393) Similarly, *Masekhet Sofrim* permits only a "*minhag vatikin*" to override halakhah (14:16) The Rashba softens the necessity for earlier precedent, requiring only an "agreed-upon minhag." (*She'elot u'Teshuvot* 2:43.) Joseph Caro, however, seems to accept the principle, "*haminhag m'vatel et hahalakhah*" as a general rule (*Beit Yosef* and *Shulhan Arukh*. *Hoshen Mishpat* 232:19).

⁴⁵ *Ibid.* 130 I find extremely problematic Schnall's assumption that certain employers—notably school systems—can justify paying low wages by assuming that employees—especially teachers—will take on part-time work.

Schnall's analysis may appropriately respond to certain instances of multiple employment, including the examples he cites of teachers who tutor after school or during the summer, and professionals who consult in their free time.⁴⁶ Within certain professions, such additional part-time work may be a reasonable and accepted practice. Teachers who take on one or two weekend or after-school tutoring jobs will not necessarily be less effective in their full-time jobs.⁴⁷ However, it does not seem reasonable to assume that a low-wage worker holding more than one *full-time* job will be as effective as a person working a single job. Furthermore, as noted above, other factors, including the lack of access to health care, and unreasonable production expectations make it even more difficult for many workers adequately to perform their assigned tasks. We can therefore suggest that the halakhic requirements that the employee maintain his/her health, eat properly, and work only one job implicitly obligate the employer to enable the worker to fulfill these conditions by making it possible to satisfy his/her basic needs through working one full-time job.

As we have seen, the traditional obligations placed on the employer and on the employee presuppose a situation that differs significantly from the contemporary work environment. In the halakhic ideal, a person who works full-time and receives wages promptly will be able to buy food and other necessities and maintain his/her health.⁴⁸ In return, this person is expected to work efficiently and reliably. In our time, a low-wage worker may work sixty or eighty hours a week and remain unable to purchase basic necessities. The prohibitive costs of medical care for

⁴⁶ *By the Sweat of Your Brow*. 127-143. As Schnall notes, the statistic that teachers are among the most likely to take supplementary jobs corresponds with the fact that most halakhic discussion around multiple employment has concerned teachers. There has been a general halakhic tendency to prohibit teachers from working after hours. 135-136

⁴⁸ The definition of "full-time," of course, changes according to the time and place. The rabbis understand the biblical definition of "full-time" to be dawn to dusk, though by Talmudic times, the workday appears to be shorter than this. (Bava Metzia 83a) In America, we can define full-time as approximately forty hours/week, with an appropriate number of sick days and vacation days. According to the Bureau of Labor Statistics, the average length of a workday is 8.1 hours. In other countries, this definition may be different.

those without health benefits make it virtually impossible for many of these workers to care for themselves sufficiently.

In the current situation, then, our *halakhah* does not work as intended. Applying Jewish labor laws to contemporary America requires first creating a system that mirrors the ideal upon which traditional sources are based. Most importantly, we need to ensure that even the lowest paid workers earn enough to provide their families with food, shelter, health care and other basic necessities.

When it is financially possible to support oneself through a single full-time job, Jewish workers should be responsible for upholding the *halakhot* that apply to workers—namely, the prohibitions against stealing time from the employer. Jewish union leaders should similarly ask union members to perform the best possible work.⁴⁹ In the halakhic ideal, the employer and employee become equal partners, each of whom has responsibilities toward the other, and each of whom benefits from the other.

Section 2: Are Jewish employers obligated to hire union workers?

In this section, I will consider the permissibility of unions and of strikes according to *halakha*, and will argue that Jewish employers should hire union workers in cases in which there is a choice between hiring unionized workers and non-unionized workers. Keeping with my focus on low-wage workers, I will apply this question, within this *teshuvah*, only to the cases of low-wage workers such as service employees (including janitors, security officers, cashiers, doormen, and others paid by the hour). Jewish law deals somewhat separately with the question

⁴⁹ We should note that union leaders do not directly supervise employees, and cannot monitor the work of any individual worker. Union leaders can, however, set expectations for members of the union, and can help to negotiate terms of employment (such as the number and length of lunch and bathroom breaks, the number of sick days, etc.) that are acceptable to both parties.

of the right of Torah teachers and doctors to strike. This *teshuvah* will not address the issues associated with these latter two groups of workers.

Based on the rabbinic discussions of stipulations among members of a single trade, later Jewish scholars overwhelmingly permit workers to establish labor unions. Rabbi Eliezer Waldenburg, for instance, rules that the people of a town, or their elected officials, may enact labor laws, which then become the *minhag hamakom*, incumbent on employers and employees. (She'elot u'Teshuvot of the Tzitz Eliezer 2:23) If a particular employer fails to comply with these regulations, workers may strike in order to force the employer to adhere to the established *minhag*. As justification for the permissibility of striking, Waldenburg takes the radical step of invoking Maimonides' statement that "a person who is able to do so may take the law into his own hands." (Mishneh Torah, Hilkhoh Sanhedrin 2:12) Rabbi Ovadiah Yosef similarly permits the leaders of labor unions to call strikes "in order to raise wages or to ease work conditions, or other such things"⁵⁰ on the basis of the establishment of the principle, within the Yerushalmi, that the *minhag* overturns the *halakha*. (y. Bava Metzia 7:1)

The workers' guilds described by the Talmud might not correspond exactly to contemporary labor unions, but *halakhah* has long prioritized reception over initial intent. The rabbis of the Talmud might not have precisely envisioned the structure of today's labor unions. However, the fact that contemporary rabbis of the stature of Ovadiah Yosef, Moshe Feinstein, Eliezer Waldenberg, and Chaim David HaLevy understand these rabbinic models as precedent for today's labor unions, is at least as halakhically significant as the intent of the talmudic rabbis.

The necessity of a Beit Din?

A few rabbinic authorities require workers to bring their case to a *Beit Din* before calling a strike. Rav Avraham Yitzchak haKohen Kook, Rabbi Chaim David Halevy, and Rabbi Rafael

⁵⁰ *Yechavvah Da'at* 4:58

Katznelbogen, for instance, permit strikes only when the employer refuses to appear before a *Beit Din*.⁵¹ Once a strike has been called, Katznelbogen declares scabbing to be illegal and permits striking workers to prevent others from entering the premises to work. Even while considering strikes to be “against the spirit of the law,” HaLevy permits strikes “in a time of need” but prefers for the two sides to enter into binding arbitration.⁵² Rabbi Ben-Tzion Meir Chai Uziel similarly suggests that labor disputes be brought before a court made up of experts in *halakhah* as well as experts in economics. If, however, a strike is declared, Uziel forbids employers to fire striking workers without the agreement of a *beit din*.⁵³

In contrast, Waldenburg does not require workers to bring the employer to a *beit din*, as he considers the workers to be acting in accordance with *halakhah*. The question of the necessity of a *beit din* may be relevant in Israel, where all of the above-mentioned rabbis lived, but is less important in America, where it is rare that both owners and workers are Jewish. When—as in most cases in contemporary America—there is no possibility of taking the case before a *beit din*, it is likely that all of the authorities mentioned would permit employees to strike.

While Waldenburg requires unions to make labor stipulations in partnership with an elected or appointed official, Moshe Feinstein requires such consultation only when the stipulations run counter to the law. (Iggerot Moshe, Hoshen Mishpat 58) In most cases, Feinstein dismisses the category of “important person” as irrelevant in America. He writes:

בערים שבמדינה זו לא ממונה שום חכם על כך ולכן הוא כליכא אדם חשוב שתנאיהם ותקנותיהם קיימים וכ”ש במדינתנו שיש להם רשות מהממשלה על זה. ולכן מה שמחליטין שלא לעבוד עד שיוסיף להם וכדומה היא תקנה שיכולין לכופ את המעוט שלא הסכימו.

⁵¹ Oral statement by Rav Kook, recorded in Rabbi Kazriel Tkhursh, “*Dinei Shevitot b’halakhah*.” *Shanah b’Shanah*, 1963; Chaim David Halevy, *Aseh L’cha Rav* 5:23; Rafael Katznelbogen, *HaMa’ayan Tishrei* 5725 pp. 9-14

⁵² *Aseh L’cha Rav* II:64

⁵³ *Mishpetei Uziel* III: 42

In the cities in our country, there is no person like this, and therefore, our case is like that of the cases in which there is no authority figure, and therefore the enactments and stipulations of the townspeople (in this case, of the union) take effect (even without outside agreement). Even more so is this the case in our country, in which the government permits unions to make stipulations.

Therefore, in the case in which workers decide that they will not work until they receive a raise in salary or a similar thing, this is considered a stipulation, and the majority may force the minority to observe it. (ibid., 59)

Feinstein further permits union members to prevent non-union members from working during a strike. As a basis for this ruling, he invokes the principle of "*ka pasakta l'hayuti*" –that one person may not take away the livelihood of another. He also compares the union to a *m'arupiya*, a person with whom one has an exclusive, and binding, business agreement. A company that has agreed to hire union workers may not, during a strike, contract with other, non-union workers. While generally supportive of strikes, Feinstein is more cautious about teachers' strikes, which he permits only if the teachers "do not have enough for their needs, so that as a result, it becomes difficult for them to teach the students well, and if it is clear that if they do not teach for a day or two that the employers will pay them on time or raise their salaries." (ibid)

Hiring union workers

While most of the authorities mentioned explicitly permit labor unions and allow at least some forms of strikes, none of these rabbis address the question of whether Jewish owners must hire union workers, but focus only on the process of declaring strikes, arbitrating disagreements, and preventing scabbing. This focus may reflect the cultural milieu in which each of the authorities cited writes. For Feinstein, the only American mentioned, the focus on Jews as union members may reflect the realities of 1950s America, when Jews were more likely to be workers than business owners. The Israeli scholars, for their part, address a situation in which both

employers and employees are assumed to be Jewish (though, of course, there are many non-Jewish workers working living wage jobs in Israel) and in which the existence of a strong national union means that most employers do not have a choice about hiring union workers. .

An oral statement by Rav Kook begins to lead us toward taking this next step of obligating employers to hire unionized workers. Rav Kook says:

Within the workers' organization, which is formed for the purpose of guarding and protecting the work conditions, there is an aspect of righteousness and uprightness and *tikkun olam*. The workers' organization may sue both the employer and the worker who causes this problem, for unorganized labor brings damage and loss of money to workers. For the unorganized worker works under worse conditions--both in regard to wages and in regard to working hours, etc. And this is likely to make working conditions worse in general.⁵⁴

To understand this statement, we must first determine the meaning of the phrase "*tikkun olam*." It is unlikely that Rav Kook intends these words as we often use them today, as a general imperative for social action work. The kabbalistic notion of "*tikkun olam*" would also be out of place here. Rather, based on the final words of the paragraph, "this is likely to make working conditions worse in general," we can compare Rav Kook's use of the phrase *tikkun olam* to the mishnaic phrase "*mipnei tikkun ha'olam*."

In the Mishnah, "*mipnei tikkun ha'olam*" introduces a *takkana* aimed at correcting a halakhic loophole. In some cases, the rabbis prohibit an action that, while technically permissible, creates unacceptable problems. Most often, these cases involve a woman whose marital status may become unclear. Wary of creating situations in which a married woman may mistakenly marry again, or in which a divorced woman may mistakenly avoid a second marriage, the rabbis prohibit certain means of canceling or enacting *gittin*. The rabbis also use this phrase to justify other laws, including the prohibition against paying high ransoms for captives, and the

⁵⁴ qtd. in Yaron, Tzvi. *Mishnato shel HaRav Kook*. Jerusalem: Moreshet Press, 1986.

institution of *prozbol*, which prevents the loss of money loaned before the *shmitta* year. (m. Gittin 4:2-9, 5:3-4)

In all of these cases, the rabbis institute a law that lies outside of the strict parameters of *halakhah*—and which, in the case of *prozbol*, even contradicts the apparent meaning of biblical law—in order to maintain the integrity of the greater system. Thus, the rabbis would rather institute stricter controls on *gittin* than allow a greater disruption of the marital system. Even though the Torah specifically warns against refusing to loan money immediately before *shmitta*, the rabbis understand that creditors will not heed this prohibition, and therefore enact a law that will preserve the institution of *shmitta* as a whole.

With this understanding of the phrase "*tikkun olam*," we can now understand Rav Kook to indicate that unions, though perhaps not specifically mandated by *halakhah*, help to preserve the halakhic system as a whole. As I have argued, traditional *halakhah* governing the relationship between employers and employees cannot work in a market in which workers do not earn enough money to provide their families with basic necessities, and in which workers may not be able to fulfill their obligations toward their employers. As Rav Kook suggests, unions may provide the only means of rectifying this situation. While legislation, including "living wage" laws and the institution of national health care may eventually create a market in which employers and employees can fulfill their obligations to one another, it is unlikely that such legislation will be in place soon. In the meantime, unions appear to be the most efficient means of guaranteeing that workers can live on their salaries, care for their health, and avoid taking second and third jobs.

Rabbi Ben-Tzion Meir Chai Uziel echoes this understanding of unions as a necessary means of protecting workers. He writes:

The law allows [for the existence of unions] in order that the individual worker not be left on his own, to the point that he hires himself out for a low wage in order to satisfy his hunger and that of his family with a bit of bread and water and with a dark and dingy home; in order that the worker may protect himself, the law gives him the legal right to organize, and to establish stipulations that benefit the members of his profession regarding the fair distribution of work among the workers, and to achieve fair treatment and a wage appropriate for the work and sufficient to sustain his household at the standard of living as the other residents of his city. . . all of these things can only be fulfilled through a workers' union. Therefore, the Torah gave the Jewish people the full and legal right to organize these, even though it is possible that [such unions] will result in a financial loss for the employers.⁵⁵

In industries such as office cleaning, there is an even greater imperative to hire unionized workers. As discussed earlier, cleaning companies engage in constant bidding wars for business, and thus are reluctant to pay workers higher wages. Therefore, the unions working in this industry generally agree not to hold companies to a union contract until the majority of companies in the region also agree to sign. The decision of each individual company thus has an impact on all other companies in the area, and on all of the associated workers. For the sake of *tikkun ha'olam*, as I have defined the term, Jewish employers should allow workers to unionize, in order to help all workers in the industry attain higher wages and benefits. To maintain the halakhically-desired equality in the employer-employee relationship, we should also insist that Jewish employees and union leaders endeavor to provide employers with the highest possible quality of work.

Unions, like other institutions, are not perfect. Unions, especially those that represent building trades workers and truck drivers, have been guilty of corruption and of other scandals. In the past decade or so, the AFL-CIO has put significant energy into reforming certain problematic unions, notably by installing new leadership in unions such as SEIU 32BJ (which now represents service workers along most of the east coast) and UNITE in Chicago (now

⁵⁵ *Mishpetei Uzziel, Hoshen Mishpat 52:6*

UNITE HERE! following a merger with the Hotel Employees and Restaurant Employees union). The 2005 split within the AFL-CIO and the emergence of the Change to Win Coalition highlighted differences within the labor movement about the extent to which unions should focus on organizing low-wage minority workers. Even given all of these concerns, unions remain, as Uziel points out, the only way for workers not “to be left on [their] own” without any collective bargaining power.

***Dina d'malkhuta dina* and non-interference in unionization**

In general, Jewish civil law insists on *dina d'malkhuta dina*. Since American law allows workers the right of free organization, and prohibits employers from firing workers who attempt to unionize, from threatening workers, or from otherwise interfering with unionization drives, it should be unnecessary to insist within a *teshuvah* that Jewish employers follow these American laws. However, in more than 90% of cases, employers do interfere with union organizing drives. Most employers realize that the chances of getting caught are minimal, and some even calculate penalty fees into their budgets.

Opponents of unions often point to the low rate of union affiliation in the United States as evidence of workers' disinterest in joining a union. Given that a poll of working people by Richard Freeman and Joel Rogers found that “45 percent of employees want a strongly independent workplace organization (which only unions provide in the current system), 43 percent want an organization with more limited independence from management; and the remaining workers want a workplace in which management alone rules,” it is difficult to explain the low rate of unionization simply as the product of workers' preferences.⁵⁶

Rather, workers are rarely able to make an independent decision about unionization without heavy negative pressure from employers. A 1994 study by Cornell economist Kate

⁵⁶ (Richard Freeman and Joel Rogers, *What Workers Want* [Ithaca, NY, ILR Press, 1999], 7

Bronfenbrenner found that, faced with a union organizing drive, 92 percent of private employers force workers to attend closed-door meetings to hear anti-union propaganda; 80 percent require supervisors to attend training sessions on attacking unions; 78 percent require that supervisors deliver anti-union messages to workers they oversee; and 75 percent hire outside consultants to run anti-union campaigns. She also found that that half of employers threaten to shut down if employees unionize and that in a quarter of organizing campaigns, employers illegally fire workers because they want to form a union.⁵⁷

A 1994 study prepared by Professor Richard Hurd of Cornell University for the US Department of Labor finds that:

- Adjusted for the number of certification elections and union voters, the incidence of unlawful firing of workers exercising the right to organize increased from one in every twenty elections adversely affecting one in 700 union supporters [in the early 1950s] to one in every four elections victimizing one in fifty union supporters [by the late 1980s]
- Most unlawfully fired workers do not take advantage of their right to reinstatement on the job, and most who are reinstated are gone within a year.
- In a national poll 59 percent of workers said it was likely they would lose favor with their employer if they supported an organizing drive. And 79 percent agreed that it was "very" or "somewhat" likely that "nonunion workers will get fired if they try to organize a union."⁵⁸

Furthermore, the Human Rights Watch, citing a 1997 study by the Secretariat of the North American Commission for Labor Cooperation, reports that "employers threaten to close the workplace in half of the organizing campaigns undertaken by workers in the United States, but rarely in Canada or Mexico. Such threats are used even more intensively in U.S. industries

⁵⁷ Kate Bronfenbrenner, "Employer Behavior in Certification Elections and First-Contract Campaigns: Implications for Labor Law Reform." In Friedman, Sheldon et al. (eds.), *Restoring the Promise of American Labor Law*. (Ithaca, NY: ILR Press, 1994) pp. 75-89)

⁵⁸ U.S. Department of Labor, U.S. Department of Commerce, Commission on the Future of Worker-Management Relations, *Fact Finding Report* (May, 1994) qtd. in Human Rights Watch. 72.

where workers feel most vulnerable to shutdowns and relocations. Employers threatened closings in nearly two-thirds of organizing efforts in manufacturing facilities and warehouses."⁵⁹

Between the early 1950s and 2000, the number of instances of discrimination, discharge, or other unfair labor practices against workers for union activity that led to back-pay orders by the National Labor Relations Board skyrocketed from 1,000 per year in the early 1950s to 15,000-25,000 annually in recent years, despite the fact that private employment in the United States during this period increased less than three-fold. This number only represents the small percentage of cases in which a low-wage worker brought a case of discrimination to the NLRB.⁶⁰

A 2005 study by University of Oregon economist Gordon Lafer further concluded that “At every step of the way, from the beginning to the end of a union election, NLRB procedures fail to live up to the standards of U.S. democracy. Apart from the use of secret ballots, there is not a single aspect of the NLRB process that does not violate the norms we hold sacred for political elections. The unequal access to voter lists; the absence of financial controls; monopoly control of both media and campaigning within the workplace; the use of economic power to force participation in political meetings; the tolerance of thinly disguised threats; the location of voting booths on partisan grounds; open-ended delays in implementing the results of an election; and the absence of meaningful enforcement measures—every one of these constitutes a profound departure from the norms that have governed U.S. democracy since its inception.⁶¹ Unions regularly request a “card check” process, in which employees can indicate their desire to join the

⁵⁹ Commission for Labor Cooperation. *Plant Closings and Labor Rights* (1997). qtd. in Human Rights Watch. 73

⁶⁰ (*Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards*. (New York: Human Rights Watch, 2000)

⁶¹ Gordon Lafer, “Free and Fair? How Labor Law Fails U.S. Democratic Election Standards,” (June 7 2005 presentation to Congress) See also, Chirag Mehta and Nik Theodore, *Undermining the Right to Organize: Employer Behavior During Union Representation Campaigns* (University of Illinois at Chicago Center for Urban Economic Development, December 2005)

union simply by signing a card. Most employers, however, refuse to allow this process, opting instead for a drawn-out election during which employers have the chance to intimidate workers interested in joining a union. The scare tactics popular among employers have proven effective: A survey of 400 NLRB election campaigns held in 1998 and 1999, found that thirty-six percent of workers who vote against union representation explain their vote as a response to employer pressure.⁶² Few workers feel empowered to bring cases to the National Labor Relations Board, the NLRB follows up on very few cases, and most cases take three or more years. Few low wage workers can wait even a few weeks to get their jobs back, and legal recourse therefore offers little help.

Since we cannot count on American legal structures to enforce *dina d'malkhuta* in this case, we should insist that it is a matter of *halakhah* for our members and member institutions to follow the American law, even when there is little chance of penalty.

Conclusion

Our tradition upholds an ideal in which the workplace offers dignity both to employers and to employees. In our society, the workplace instead often becomes a degrading place that fails to acknowledge the humanity of either the workers or their bosses. Workers often have no way of voicing their concerns, and may not even be able to provide their families with food, housing and medical care. Unfavorable conditions, in turn, prevent employees from doing their best work. Unions may not be the sole means of ameliorating this situation, but for now, are the most effective way of creating workplaces in which traditional *halakhah* can operate as intended. Thus, demanding that Jewish employers hire union workers and permit their workers to unionize

⁶² Kate Bronfenbrenner, *Uneasy Terrain: The Impact of Capital Mobility on Workers, Wages, and Union Organizing*, U.S. Trade Deficit Review Commission, 2000.

represents a first step in creating a system in which it will be possible to institute traditional *halakhah* in such a way that these laws will protect both employer and employee.

Jewish institutions, such as synagogues and schools, as well as Jewish-owned businesses, should not only hold themselves accountable to American law and *halakhah*, but also should strive to make their institutions places of *kiddush hashem*. The establishment of a workplace that takes seriously the dignity, welfare, and self-determination of all employees goes far toward making our institutions the models of halakhic and ethical behavior that we wish them to be.

Based on the sources explored within this *teshuvah*:

- 1) The halakhic system supports a controlled free-market wage system *only* when the market produces wages on which one can fulfill one's family with basic needs including food, housing, and health care. In order for the halakhah relating to workers and employers to function as intended, we must do what we can to restore a system in which people who work full-time are able to provide for their families' basic needs.
- 2) Jewish employers are obligated to treat their workers with dignity and respect. This obligation should include, but should not be limited to, prohibitions against publicly yelling at, mocking, or otherwise embarrassing workers; forbidding employees from speaking their native languages at work; banning all bathroom breaks; changing work hours or adding shifts without advance notice; or making improper sexual comments or advances toward workers.
- 3) Jewish employers must pay their workers on time, according to an agreed-upon schedule, and may not pay workers with bad checks. Employers must pay workers for the full time worked, including mandatory preparation and clean-up hours.

- Employers who hire workers through a contractor should make every effort to ensure that these workers are being paid on time.
- 4) Jewish employers may not knowingly put their employees' lives at risk by failing to provide appropriate safety equipment and training, or by knowingly forcing workers to work under dangerous conditions.
 - 5) Jewish employers should strive to pay workers a "living wage," defined according to any of the possibilities outlined on pages 28-29 of this *teshuvah*. When deciding among the options available, employers should not select a wage level that, while technically considered a living wage (according to a local ordinance, for example), is so low that employers know that workers will certainly need to take on additional jobs, and/or to endanger their health by working an excessive number of hours.
 - 6) In most cases, unions offer the most effective means of collective bargaining and of ensuring that workers are treated with dignity and paid sufficiently. Jewish employers should allow their employees to make their own independent decisions about whether to unionize, and may not interfere in any way with organizing drives by firing or otherwise punishing involved workers, by refusing workers the option for "card check" elections, or by otherwise threatening workers who wish to unionize. When hiring low-wage workers or engaging contractors who supply low-wage workers, Jewish employers should strive to hire unionized workers when possible.
 - 7) The principle of *dina d'malkhuta dina* obligates Jewish employers to comply with federal labor laws, even when these laws are inconsistently enforced.
 - 8) Jewish employees are obligated to work at full capacity during their work hours, and not to "steal time" from their employers. Jewish union leaders should similarly strive

to ensure that workers uphold the *halakhic* obligations of employees to employers. The ideal worker-employer relationship should be one of trusted partnership, in which each party looks out for the well-being of the other, and in which the two parties consider themselves to be working together for the perfection of the divine world.

Appendix: The economics of the living wage

Opposition against living wage legislation is often couched in a concern that raising wages will result in the loss of jobs. While this argument may make sense within an economic model, every major real-life study of the effects of living wage legislation has concluded that cities that implemented living wage legislation do not experience significant job loss and, in some cases, even gain jobs. A 1999 report on the effects of the nation's first living wage law, passed in Baltimore in 1994, found that the living wage law had no serious detrimental effect on either the rate of employment or on costs to the city. Instead, "the aggregate cost increase to the city amounted to 1.2%, less than the rate of inflation. The real cost to the city of these contracts, then, actually declined slightly despite the increase in wage rates."⁶³ Reports on the effect of the living wage in Detroit, Los Angeles and Miami-Dade reached similar conclusions.⁶⁴ A 2006 study on the effects of Santa Fe, New Mexico's living wage law, which covered all businesses with twenty-five or more employees, concluded that "The results show earnings increases overall and for the retail, health care, and accommodations and food services sectors specifically for employees of large Santa Fe businesses relative to employees of large Albuquerque businesses and small Santa Fe businesses. That employees of large Santa Fe businesses did better against both of these control groups suggests a real increase in quarterly earnings with no negative impact on employment."⁶⁵

⁶³ Christopher Niedt, Greg Ruiters, Dana Wise, and Erica Schoenberger, "The Effects of the Living Wage in Baltimore" (Johns Hopkins University/the Economic Policy Institute, 1999)

⁶⁴ David Reynolds, et al, "Impact of the Detroit Living Wage Ordinance," (Wayne State University, 1999); David Fairris et al, "Examining the Evidence: The Impact of the Los Angeles Living Wage ordinance on Workers and Businesses" Mark Brenner, "The Economic Impact of Living Wage Ordinances," (University of Massachusetts, Political Research Economy Institute, 2004) Also see Jeff Chapman, "Employment and the Minimum Wage: Evidence from Recent State Labor Market Trends," (Economic Policy Institute, May 2004) See also *Myth and Measurement: The New Economics of the Minimum Wage*

⁶⁵ University of New Mexico Bureau of Business and Economic Research, "Earnings and Employment: The Effects of the Living Wage Ordinance in Santa Fe, New Mexico" August 2006

The authors of a study on the effects of living wage in Los Angeles offer some explanation for the failure of wage increases to have a negative impact on employment, commenting that “Labor turnover has declined as a result of the ordinance. Current rates of turnover at living wage firms average 32 percent, compared to 49 percent at comparable non-living wage firms. These turnover reductions represent a cost savings for the average firm that is 16 percent of the cost of the wage increase, based on various estimates of the cost of replacing a low-wage worker.”⁶⁶ A study of the impact of the living wage on San Francisco similarly found that job retention in the restaurant industry increased by an average of five months after the passage of a city-wide living wage bill.⁶⁷ In most cases, paying a living wage has a minimal effect on a company’s overall costs. A 2004 study by a University of Massachusetts economist found that, in most companies, the cost of paying a living wage only accounts for 1-2% of the overall operating costs.⁶⁸ Businesses generally make up this difference by cutting costs elsewhere in the company or, in some cases, by raising prices for consumers.

Even if some of the cost of increased wages is passed on to consumers, there is evidence that consumers are willing to pay a premium for products or services that are produced under fair working conditions. A 2005 study by Philip Howard of the University of California Santa Cruz asked consumers how much more they would be willing to pay for a pint of strawberries picked by workers who were paid a living wage.⁶⁹ Howard reports:

After being told the regular price was \$1.50 a pint, they were asked if they would pay 5 cents, 25 cents, 50 cents or \$1.50 more for these standards. . . The median price that

⁶⁶ Fairris, 13

⁶⁷ Arindrajit Dube, Suresh Naidu, and Michael Reich, "The Economic Impacts of a Citywide Minimum Wage" (May 18, 2006). *Institute of Industrial Relations. Institute of Industrial Relations Working Paper Series*. Paper iirwps-111-05.

⁶⁸ Mark Brenner, “The Economic Impact of Living Wage Ordinances,” (University of Massachusetts, Political Research Economy Institute, 2004)

⁶⁹ Philip Howard, “Central Coast consumers want more food-related information, from safety to ethics,” (California Agriculture, January-March 2006)

people were willing to pay was \$1.06, or a 71% increase over the regular price. Eighty-four percent of respondents were willing to pay 5 cents more (a 3% increase), while 67% would pay 25 cents more (a 17% increase), 56% would pay an extra 50 cents (a 33% increase), and 42% would pay \$1.50 more (a 100% increase).

Other studies have similarly found that at least three quarters of consumers are willing to pay between 5% and 20% more for garments not made in sweatshops.⁷⁰

In order to measure whether consumers' actual behavior will conform to their reported willingness to spend more, a team of University of Michigan researchers conducted a two-year experiment in which they placed two similar pairs of athletic socks next to each other at a department store in the Detroit area. Some socks were marked "GWC" (for "Good Working Conditions") while others were unmarked. A nearby sign defined the GWC label as indicating "no sweatshops," "no child labor," and "safe working conditions." The regular socks sold for \$1, and the GWC socks were priced at various levels, ranging from \$1 to \$1.40. In-store interviews with consumers found that, while 64% of shoppers did not notice either the GWC label or the price difference, 50% of those who did notice the difference were willing to pay 20% more for the GWC socks.⁷¹

Anecdotal evidence also supports these conclusions. Certainly, the success of companies such as Timberland (which has taken to putting "sweat-free" tags on its shoes), American Apparel, and Costco testifies to the ability of companies that pay workers more to survive in a

⁷⁰ Different surveys have asked this question in different ways. A study by the Marymount University Center for Ethical Concerns found that 86% of consumers would pay 5% more on a \$20 garment. ("The Consumers and Sweatshops," November 1999), while a University of Maryland study found that 76% of consumers would pay 20% more on a \$20 garment. (University Maryland, Program on International Policy Attitudes, "Americans on Globalization: A Study of Public Attitudes," March 2000) See also Steven Kull, "Voice of the Superpower," *Foreign Policy* (May/June 2004).

⁷¹ Monica Prasad, Howard Kimeldorf, Rachel Meyer and Ian Robinson, "Consumers of the World, Unite: A Market-Based Response to Sweatshops," *Labor Studies Journal* (Fall 2004), pp. 57-79.

competitive market. The growing fair trade and eco-conscious consumption movements similarly indicates the willingness of customers to pay more for products that reflect their values.

The nature of low-wage jobs in America also makes it less likely that employers will fire workers when forced to pay higher salaries. At this point, virtually all manufacturing jobs that can be outsourced have been sent overseas. The low-wage jobs that remain are either manufacturing jobs that cannot be outsourced (such as certain types of food production or clothing manufacturing that require fast turnaround) or—more commonly—service jobs such as retail sales, food preparation, or cleaning. Employers cannot send these jobs abroad, and generally cannot reduce the number of employees necessary to run these businesses. Therefore, employers generally find some other way to pay for higher salaries. Presumably, there is some wage level at which employers would be forced to lay off workers; however, as studies such as those cited above have demonstrated, wages of \$12 or \$13/hour do not reach this level.⁷²

Virtually all economists have concluded that increases in wages do not contribute to large-scale job loss. Summarizing the debate among economists, Richard Freeman, the senior labor economist at Harvard University, comments, “The debate is over whether modest minimum wage increases have “no” employment effect, modest positive effects, or small negative effects. It is *not* about whether or not there are large negative effects.”⁷³

⁷² Thank you to Paul Sonn of the Brennan Center for his insight on this issue.

⁷³ Richard Freeman, “What will a 10% . . .50% . . .100% Increase in the Minimum Wage Do?” *Industrial and Labor Relations Review* 48:4 (1995) 830-834. The two economists who have been the most outspoken proponents of the idea that raising wages leads to job loss are Richard Sander and Aaron Yelowitz. Each of their work in this area has been widely discredited by their peers. Sander has published two major articles (of which I am aware) about the living wage. One of these, *The Economic and Distributional Consequences of the Santa Monica Minimum Wage Ordinance* (co-written with E. Douglas Williams and Joseph Doherty, *University of California Los Angeles, University of the South, and Empirical Research Group at UCLA*, 2002), relies on surveys that ask businesses how they *might* respond to a living wage ordinance. Even Sander et al. admit that “each business has an incentive to exaggerate their reaction to the ordinance” (41-42). Assumptions about what *might* happen if a living wage is passed are different from post-ordinance studies of what actually *does* happen when the minimum wage increases. Even Sander, in a study of the Los Angeles living wage, admits that “Apart from the direct costs of the living wage ordinance to the city budget (about \$500,000 in 1998 and \$3-4 million when the living wage ordinance is fully implemented) and the administrative costs of implementation (also around \$500,000 in 1998), there is no

significant positive or negative effect on the city's fiscal health or the local economy from the living wage ordinance" (Richard Sander and Sean Lokey, *The Los Angeles Living Wage: The First Eighteen Months*. [Norcross, Ga.: The Fair Housing Institute, 1998] p. 10) As far as Yelowitz goes, his major public involvement on this issue took the form of his expert witness testimony on behalf of the plaintiff in an April 2004 case challenging the validity of a Santa Fe Living Wage ordinance. There, Yelowitz challenged evidence presented by Robert Pollin, an economist at the University of Massachusetts and one of the national experts on living wage legislation, who served as the expert witness for the city of Santa Fe. In that case, Dr. Pollin argued that the direct costs of the ordinance, as well as the ripple effects (workers whose wages were raised in accordance with the wage raises of lower-paid workers) would cost approximately 1% of the gross sales income of the average company affected by the ordinance. Yelowitz then offered a rebuttal of Pollin's study, in which he argued that an increase in the minimum wage would result in more significant cost increases for companies.

In cross examination, Yelowitz testified that "he was able to form an opinion about the conclusions and methods in Dr. Pollin's report, but he was not able to confirm Dr. Pollin's calculations due to the limited time he had prior to trial to review the materials"⁷³ In his decision in favor of the city, Judge Daniel Sanchez found that:

Plaintiffs allege that they also would bear two types of indirect costs. The first is the "ripple effect" that would result from voluntary wage increases above the mandated minimum, given by employers both to maintain the wage hierarchy and its response to wage "compaction." . . . The second possible indirect costs are increases in the costs of supplies purchased from City of Santa Fe suppliers. . . . Plaintiffs did not show or convince this Court as to the amount of such indirect costs, if any, and as discussed below, the expert testimony of defendant's expert economist, Dr. Robert Pollin, shows that these indirect costs are likely to be relatively insignificant. . . .

The Plaintiffs did not prove that the implementation of the Living Wage Ordinance would cause their businesses to fail. . . . The Court finds the testimony and report of Dr. Pollin to be reliable and corroborated by Plaintiff's own financial figures. . . . Given that Dr. Pollin relied on reliable statistical data sources for his estimates, employing methodologies that had previously been peer-reviewed and that his findings were corroborated by Plaintiff's figures, the Court accepts the Study's cost estimates to be credible and well-founded. . . .

The Court finds that Dr. Yelowitz's rebuttal testimony fails to undermine the credibility of Dr. Pollin's Study. Dr. Yelowitz acknowledged that he has never before undertaken a study of the cost impact of a minimum wage ordinance.⁷³ Yelowitz's numbers are also contradicted by the 2006 report by the University of New Mexico's Bureau of Business and Economic Research, cited above.

Yelowitz later published a study in which he argues that Santa Fe's living wage ordinance has resulted in a 9.0% increase in the city's unemployment rate among the city's least educated workers.⁷³ In a study that replicates Yelowitz's model, Robert Pollin and Jeanette Wicks-Lim, also of the University of Massachusetts, demonstrate that Yelowitz's own figures show that employment in Santa Fe actually *grew* after the implementation of the Living Wage Ordinance

The two major problems in Yelowitz's study are:

1) He extends to *all workers in all industries* of a 2000 study showing that a 10% rise in the minimum wage for fast food workers would result in a 2% loss of employment.⁷³ Based on this study, Yelowitz suggests that there will be a similar negative effect on *all workers in all industries*. (David Neumark and William Wascher, "Minimum Wages and Employment: A Case Study of the Fast Food Industry in New Jersey and Pennsylvania: Comment," *American Economic Review* 90:5 [December, 2000], 1362-1396) Even Neumark and Wascher's minimal conclusion has been challenged. In a response to this paper, David Card and Alan Krueger replicated Neumark and Wascher's study and concluded that employment in the fast food industry actually *grew* in areas with higher minimum wages. ("Minimum Wages and Employment: A Case Study of the Fast Food Industry in New Jersey and Pennsylvania: Reply," *American Economic Review* 90:5 [December, 2000], 1397-1420) There is certainly no reason to assume that Neumark and Wascher's conclusions should extend to industries beyond the one that they study.

Virtually all respected economists who have discussed the living wage issue concur that increases in wages do not result in job loss. In 2006, more than 650 economists, including five Nobel Prize winners and six past presidents of the American Economics Association, signed a statement stating that federal and state minimum wage increases “can significantly improve the lives of low-income workers and their families, without the adverse effects that critics have claimed.”⁷⁴ A recent survey of economists from forty leading research universities who specialize in the fields of labor economists and public economics finds that raising the minimum wage by a modest amount results in no strong negative employment effects, if any.⁷⁵

Even some economists who previously opposed wage increases have changed their minds. Former Federal Reserve Vice Chairman and current Princeton economist Alan Blinder reflected, “My thinking on this has changed dramatically. The evidence appears to be against the simple-minded theory that a modest increase in the minimum wage causes substantial job loss⁷⁶.” In the latest version of his popular introductory economics textbook, Blinder comments:

Elementary economic reasoning...suggests that setting a minimum wage...above the free-market wage...must cause unemployment....Indeed, earlier editions of this book, for example, confidently told students that a higher minimum wage must lead to higher

2) Yelowitz bases his conclusion on an examination only of the unemployment figures for Santa Fe before and after the passing of the Living Wage Ordinance. Since unemployment figures only count those actively looking for work, and do not provide a count of everyone who is not in the workforce, these numbers do not always reflect the actual employment situation. Using Yelowitz’s data, Pollin and Wicks-Lim show that the percentage of Santa Fe adults with high school degrees or less who are in the workforce *increased* from 66.7% to 70.0% after the Living Wage ordinance passed. Pollin and Wicks-Lim write, “The only way for the unemployment rate to increase, given that employment opportunities did not fall, is for the percentage of adults looking for jobs to rise *not* for the percentage of adults who have jobs to fall.” (4)

⁷⁴ Economic Policy Institute, “Hundreds of Economists Say: Raise the Minimum Wage,” October 2006

⁷⁵ Victor R. Fuchs, Alan B. Krueger and James M. Poterba. “Economists’ Views about Parameters, Values, and Policies: Survey Results in Labor and Public Economics,” *Journal of Economic Literature*, 36(3) (1995) 1387-1425.

⁷⁶ Kim Chipman, “Higher Minimum Wage No Longer Seen as Sure-Fire U.S. Job Killer,” Bloomberg News Service, August 7 2006 (www.bloomberg.com)

unemployment. But some surprising economic research published in the 1990s cast serious doubt on this conventional wisdom.⁷⁷

Within the Jewish community, there is particular concern over the effect that paying a living wage may have on non-profits, which generally have lower operating budgets than for-profit businesses. As of now, most living wage ordinances around the country have exempted non-profits; for this reason, there is much less research on the effect of living wage ordinances on non-profit organizations than there is about the effect of such legislation on for-profit companies. The one significant study that does focus on non-profit organizations concludes that in Detroit, of the 1,739 non-profit workers affected by a living wage ordinance, only two part-time workers lost their jobs as a result of the new legislation. The authors of this report conclude:

The financial impact on most non-profits is minor. . . . At most only one out of four non-profits face significant financial problems in implementing the living wage requirements. . . . [Of the non-profits that faced more significant financial challenges] in terms of their overall budgets, the costs ran from well under 1% to a maximum of 6% of their total annual budget. Generally, the financial problems in implementing the living wage come not from the actual amount in relation to the organization's overall budget, but the fact that much of the funds used by non-profits are allocated for specific purposes and can not be easily moved. Non-profit fund seekers also have a difficult time in obtaining funds specifically for salaries, especially if the request is for mid-budget supplemental funds. Overall, the living wage law has not led to drastic cuts in either employment or services provided. The more serious adjustments involved mainly reduction in staff hours among a small proportion of employees, cuts in supplies for client events, or other measures to trim program budgets.⁷⁸

Paying a living wage will certainly have some effect on the budgets of Jewish institutions and of Jewish-owned companies. As the studies cited above demonstrate, this impact should not

⁷⁷ Alan Blinder, *Economics Principles and Policy* (Thomson, South-Western) 10th edition, 2006 (first edition printed 1979)

⁷⁸ David Reynolds and Jean Vortkamp, *Impact of Detroit's Living Wage Law on Non-Profit Organizations* (Center for Urban Studies & Labor Studies Center College of Urban, Labor and Metropolitan Affairs, 2000) 2

be major, and is unlikely to cause a significant loss of jobs. Economic concerns, of course, are not the driving force for the Conservative Movement's religious decisions. If we focused on economics alone, we would not ask our members to send their children to day school, buy kosher meat, or cease working on Shabbat. More than anything, the insistence that our institutions and our members pay their workers a living wage allows us to live out the values that we preach.

An additional critique of living wage legislation contends that these laws primarily affect teenagers who work after school to earn spending money, and that most minimum wage workers do not stay in their jobs for long periods of time. In fact, all research on minimum wage workers contradicts this assumption. As of 2005, eighty-percent of minimum wage workers were adults age twenty and older, half were between the ages of twenty-five and fifty-four, and twenty-six percent of these workers were parents. More than 7.3 million American children live in households in which at least one parent works at a minimum wage job. On average, the minimum wage earner's salary constitutes 59% of his or her family's total income and 46% of families rely solely on the wages of one minimum wage worker.⁷⁹ A study of low-wage workers conducted by Heather Boushey finds that over the course of a ten year period (1992-2003), one quarter of these workers (24.2 percent) transitioned to non-employment, more than a third (36.6 percent) stayed in low-wage jobs, and 39.2 percent transitioned into higher paying jobs. For women, foreign-born workers, and those with low levels of educational attainment, the chance of moving up is even smaller: Boushey found that 41.0 percent of women, 47.3 percent of foreign-born workers, and 48.8 percent of those without a high school degree stayed in low-wage jobs for the entire ten-year period. Twenty-six and a half percent of women moved into non-employment, as did 23.4 percent of foreign-born workers

⁷⁹ Liana Fox, "Minimum Wage Trends: Understanding Past and Contemporary Research." Economic Policy Institute Briefing paper, October 25, 2006 (www.epinet.org); J. Chapman and M. Ettlinger. *The who and why of the minimum wage: Raising the wage floor is an essential part of a strategy to support working families*. (Washington, DC: Economic Policy Institute, 2004) and Heather Boushey, "No Way Out: How Prime-Age Workers Get Trapped in Minimum-Wage Jobs." (*WorkingUSA: The Journal of Labor and Society* Volume 8, December 2005) 659–670.

and 30.9% of those without a high school degree. That is to say: a woman who begins a minimum wage job has only a 32.5 percent chance of finding herself in a higher-paid job ten years later. For a person without a high school degree or an immigrant, the chances of securing a better-paid job are only 20% and 29.4%, respectively.