

STRIKE: Worker Protest & Organizing in the Jewish Tradition

Babylonian Talmud Bava Metzia 10a

A worker may withdraw from his contract even in the middle of the day... for it is written: "For the people of Israel are servants to Me" (*Vayikra* 25:55) – they are servants to Me, and not servants to other servants.

Babylonian Talmud Bava Metzia 76b

As it has been taught: If someone hired artisans and they misled the employer, or the employer misled them, they have nothing but resentment against each other. In what case are these things said? When they did not go. But if ass drivers went and did not find produce, or if workers went and found the field while it was waterlogged, he gives them their wages in full. But someone who comes loaded is not like someone who comes empty-handed, and someone who works is not like someone who sits and is idle.^[1] In what case are these things said? When they have not begun work. But if they have begun work, we assess for them what they have done. How so? If they undertook to reap standing corn for two selas^[2] and they reaped half of it and left half of it, to weave a garment and they wove half of it and left half of it, we assess for them what they did. If what they did was worth six dinars,^[3] he gives them a sela, or they may finish their work and receive two selas. And if what they did was worth a sela, he gives them a sela. Rabbi Dosa says: We assess for them what remains to be done.^[4] If it was worth six dinars, he gives them a shekel, or they may finish their work and receive two selas. And if it was worth a sela, he gives them a sela. In what case are these things said? In the case of something that will not be an irretrievable loss ("*davar ha-avud*"). But in the case of an irretrievable loss, he may hire other workers at their expense or mislead them.^[5]

Shulchan Arukh, Choshen Mishpat 333:5

When does this apply? When the employer will not suffer an irretrievable loss. But when the employer will suffer an irretrievable loss, e.g., when the worker was hired to remove flax from the steeping pond, or to bring flutists to perform at a funeral or at a wedding, or the like, whether he is a timeworker or a pieceworker, he cannot withdraw from the contract, unless he was unavoidably prevented from completing the work, e.g., where he was ill or he heard that a relative had died. But where he was not unavoidably prevented from completing the work, and he withdrew from the contract – if the employer could have hired other workers when he hired this one,^[6] but now he cannot find them, he may hire other workers at their expense, or he may mislead them.

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Shakh, Choshen Mishpat 333: 4

While it is true that if he begun work, he can withdraw from the

תלמוד בבלי מסכת בבא מציעא דף י עמוד

א

והאמר רב: פועל יכול לחזור בו אפילו בחצי היום! דכתיב +ויקרא כ"ה+ כי לי בני ישראל עבדים - עבדי הם, ולא עבדים לעבדים.

תלמוד בבלי מסכת בבא מציעא דף עו

עמוד ב

דתניא: השוכר את האומנין והטעו את בעל הבית, או בעל הבית הטעה אותן - אין להם זה על זה אלא תרעומת. במה דברים אמורים - שלא הלכו, אבל הלכו חמרים ולא מצאו תבואה, פועלין ומצאו שדה כשהיא לחה - נותן להן שכרן משלם, אבל אינו דומה הבא טעון לבא ריקן, עושה מלאכה ליושב ובטל. במה דברים אמורים - שלא התחילו במלאכה, אבל התחילו במלאכה - שמין להן מה שעשו. כיצד? קבלו קמה לקצור בשני סלעים, קצרו חציה. והניחו חציה, בגד לארוג בשני סלעים, ארגו חציו והניחו חציו - שמין להן את מה שעשו. היה יפה ששה דינרים - נותן להן סלע, או יגמרו מלאכתן ויטלו שני סלעים. ואם סלע - נותן להם סלע. רבי דוסא אומר: שמין להן מה שעתידי להעשות, היה יפה ששה דינרים - נותן להם שקל, או יגמרו מלאכתן ויטלו שני סלעים. ואם סלע - נותן להם סלע. במה דברים אמורים - בדבר שאין אבוד, אבל בדבר האבוד - שוכר עליהן או מטען.

שולחן ערוך חושן משפט הלכות שכירות

פועלים סימן שלג

סעיף ה

בד"א, {יז} בדבר שאינו אבוד; {יח} אבל בדבר

האבוד, כגון פשתן להעלות מהמשרה, או ששכר חמור להביא חלילין למת או לכלה וכיוצא בהם

אחד פועל ואחד קבלן, אינו יכול לחזור, בו. א"כ נאנס, כגון שחלה או ששמע שמת לו מת ואם לא נאנס, {כב} וחזר בו, כח לד] אם היה מוצא <יא> פועלים אחרים לשכור כששכר את אלו, לה] ועכשיו אינו מוצא, כט

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שוכר עליהם או מטען.

ש"ר חושן משפט סימן שלג

הכא לא מהני אפי' אם ירצה להיות דו על התחתונה דהתם לא חשיב קנין אבל הכא כיון שמשך הכלי או הקנה בק"ס לא מהני שום ממון וצריך לעשות המלאכה

תוספתא מסכת בבא מציעא (ליברמן)

פרק יא

הלכה כז

מה שהיה בלן לרבים ספר לרבים נחתום לרבים שולחן לרבים ואין שם אחר אלא הוא והגיע שעת הרגל ומבקש לילך לתוך ביתו יכולין לעכב על ידיו עד שיעמיד אחר תחתיו ואם התנה עמהן בבית דין או שעברו עליו את הדרך הרשות בידו

contract, and be at a disadvantage... here, since he performed *meshikha* or a *kinyan sudar*, no amount of money helps, but rather he must perform the work, if his employer so desires.

They also write there (in *Hagahot Mordekhai*) concerning a community who hired a teacher and wanted to withdraw from the contract before he began to work, and he rules that anything done by the community does not require a *kinyan*, and they cannot withdraw from the contract. (*Darkhei Moshe, Choshen Mishpat 333:5*)

This only applies where he withdrew from the contract for no specific reason. But if he withdrew because of rising wages, we do not listen to him. (Rema, *Choshen Mishpat 333:4*)

Tosefta, Bava Metzia 11:13

Someone who is the community bath attendant, the community barber, the community baker, or the community moneychanger, and there is nobody else but him, and a festival was approaching, and he wishes to go home, they can prevent him from doing so, until he sets someone in his place. But if he had stipulated with them before a court or if they acted improperly toward him ("*she-ibru alav*"), he is permitted [to go home].

Rabbi David Pardo Chasdei David, ad loc.

I found this neither in the Gemara nor in the *Posekim*, but nevertheless it is clear that even though in general we maintain that a worker can withdraw from his contract, here, because of communal need, we compel him not to go home even to celebrate a festival, unless he sets another person in his place. But if from the outset he had explicitly stipulated that [he was accepting the position] on condition that he be permitted to go to his town for the festival, he is permitted And "*she-ibru alav*" means that they acted improperly toward him, e.g., they failed to pay his wages, or else they paid him less than he deserved.

Tzitz Eliezer, II, no. 23

This particular law regarding the use of force by way of a strike as is practiced in our day, to stop working and also bar other workers from working, and afterwards even to demand payment of wages for the strike days, has no explicit source in the Gemara or in the words of the *Posekim*. There is only the well-known law that a worker can withdraw from his contract even during the middle of the day. I will not discuss this here, because in my opinion, it is irrelevant to the matter under discussion which is entirely different. For the worker does not [wish to] withdraw from the contract and stop working for his employer. But rather he vigorously stands up for his rights which have already become the customary practice in the land, and he doesn't allow the employer to hire others in his place. Rather he compels him

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to agree to fulfill his demands, and then he will return to his work.

[10]

Shulchan Aruch, Choshen Mishpat 228:28

Members of a trade are permitted to enact ordinances regarding their trade, e.g., to agree among themselves that the one will not work on the day assigned to his fellow, and the like, and that whoever violates the stipulation will receive such-and-such a punishment. When does this apply? In a place where there is no important sage appointed over the community; but if there is [such a sage], their stipulation has no force, and they cannot punish and cause a loss to one who did not observe the stipulation, unless they did it with the consent of the sage.

שו"ת ציץ אליעזר חלק ב סימן כג

דין פרטי זה של אמצעי כפיה ע"י שביתה באופן הנהוג בזמננו, להשבית את העבודה ולא לתת גם לפועלים אחרים לגשת לעבודה, ולדרוש אח"כ גם שכר עבור ימי השביתה, לא נמצא לו מקור מפורש בגפ"ת ובדברי הפוסקים, נמצא רק הדין הידוע של פועל יכול לחזור בו אפי' בחצי היום...ולא אעמוד בכאן ע"ז, כי לפי דעתי אין לו מגע לנידון שאלתנו שהיא אחרת לגמרי, שאין הפועל חוזר בו ועוזב את עבודתו אצל הבעה"ב, אלא עומד בתוקף על זכויותיו שנעשו כבר למנהג המדינה, ולא עוזב לבע"ה לקחת אחרים במקומו, כי אם כופה עליו שיתרצה למלאות דרישותיו ואזי יחזור לעבודתו אצלו

שולחן ערוך חושן משפט הלכות אונאה

ומקח טעות סימן רלא

סעיף כח
ב יב[רשאים בעלי אומנות לפסוק ביניהם שלא יעשה אחד ביום שיעשה חבירו וכיוצא בזה, וכל מי שיעבור על התנאי יענישו אותו כן וכך. בד"א, במדינה שאין בה חכם חשוב ממונה על הציבור. אבל אם ישנו, אין התנאי שלהם מועיל כלום, ואין יכולים לענוש ולהפסיד למי שלא קיים התנאי, אלא אם כן עשו מדעת החכם



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Rav Sh.Z. Auerbach, *Techumin* V, pp. 291-292

It may be proposed that in those places where the rabbis and Torah scholars of the city do not involve themselves in labor issues and wage matters, it is as if there is no sage in the city^[12]Ö. This being the case, it is possible that the enactments of trade unions are valid, and that by law they may strike and bar others from encroaching on their territoryÖIn any event it seems that if the most important authority in the city agrees with the demands of the teachers, they are permitted to comply with the enactments of the members of their profession in that city, who forbade others to encroach upon their territory, and force thereby their employersÖAnd if he [= the rabbi of the city] sees that indeed they are being unfairly treated regarding their wages, the local custom should be followed, and there is no concern whatsoever regarding the cancellation of the children's Torah study, and the responsibility falls primarily on the general public and the leaders of the community, who refuse to adequately compensate the teachers, and sometimes cancellation of Torah study leads to its being strengthened.

Babylonian Talmud Bava Batra 8b

The townspeople are at liberty to fix weights and measures, prices, and wages, and to inflict punishments for the infringement of their rules.

Responsa Harash 6: 27

The townspeople are at liberty to inflict punishments for the infringement of their rules, all in accordance with the needs of the hour, in order to erect fences. If a person is poor so that a monetary penalty cannot be imposed upon him, they are at liberty to punish and penalize him with lashes and all kinds of punishments, until he complies with the law... This implies that the courts in each city are permitted to punish and chastise him who refuses to comply with their enactments with all kinds of punishments and bans

Tzitz Eliezer, II, no. 23

We may infer that if the townspeople deem it necessary and effective - in the case of a violation of the rules on the part of the employer - to give workers the right to declare a strike, that being the sole means by which they can pressure the employer, that it is within their authority to apply such a penalty, for such a penalty is no worse than the aforementioned penalties in the Rosh, which the townspeople are authorized to impose. After enacting such an enactment, and the employer and the workers know about it, then in the case of a transgression on the part of the employer, the workers can declare a strike, after they have clearly demonstrated that indeed the employer has

תלמוד בבלי מסכת בבא בתרא דף ח

עמוד ב

ורשאין בני העיר להתנות על המדות ועל השערים, ועל שכר פועלים, ולהסיע על קיצתן.

שו"ת הרא"ש כלל ו סימן כז

רשאין בני העיר להסיע על קיצותן, הכל לפי צורך השעה, משום מגדר מילתא. ואם עני הוא ואין יכולין לענשו בממון, רשאין לענשו ולקנסו במלקיות ובכל מיני הרדפות, עד שיהיה ציית דינא... אלמא, רשאין בית דין בכל עיר ועיר לרדות ולייסר, בכל מיני רדוין ונדויון, המסרב על תקנתם

שו"ת ציץ אליעזר חלק ב סימן כג

וממילא נשמע, שאם מוצאים בני העיר לנחוץ ולמועיל במקרה של עבירה על התקנות מצד הבעה"ב, לתת הזכות לפועלים שיוכלו להכריז שביתה, כי זהו האמצעי היחידי שיוכלו לכופ ביותר על הבעה"ב, ששפיר יש ביכלתם לקנסו כזאת, כי קנס זה אינו גרוע מהקנסות הנ"ל שברא"ש שיש ביכולת בני העיר לקנסו, ואחרי תיקון תקנה כזאת, וידיעת הבעה"ב והפועלים מזה, אזי במקרה של עבירה מצד בעה"ב יוכלו שפיר הפועלים להכריז על שביתה, אחרי הוכחתם הברורה שאמנם עבר והפר בעה"ב את תנאי העבודה שהוקבעו ונעשו כבר למנהג

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<p>violated the terms of their employment that have already been established as common custom...In such cases where the worker is absolutely certain that his employer violated the terms of employment that had been established as common practice, the worker can take the law into his own hands in accordance with the penalty that the city officials established in such a case, as the Rambam rules that a person can the law into his own hand if he has the power to do so. Since he is acting in accordance with the law, he need not exert himself and come before the court.</p>	<p>המדינה...במקרים כאלו שהפועל בטוח בהחלט בצדקתו על עבירה מצד בעה"ב על תנאי העבודה שקבעו ונעשו למנהג המדינה, יכול הפועל לעשות דין לעצמו בהתאם לקנס שקבעו במקרה כזה ממוני העיר, כנפסק ברמב"ם (פ"ב מה' סנהדרין הי"ב) שיש לאדם לעשות דין לעצמו אם יש בידו כח הואיל וכדת וכהלכה הוא עושה אינו חייב לטרוח ולבוא לבי"ד</p>
<p>A strike is permitted in order to force the employer to appear in a court or in order to fulfill a court ruling in connection with a dispute that had arisen, whether to fulfill the terms of employment or to improve the terms of employment. Consequently, it is clear that in any such dispute the workers must demand that the employer appear before a court. If the employer refuses, the workers have the right to apply pressure by declaring a strike, even without specific authorization on the part of the court. (<i>Keter Efrayim</i>, no. 19, in the name of Rav Kook)</p>	
<p><u>Responsa Rav Kook Choshen Mishpat 1:59</u> Regarding Torah teachers whether they are permitted not to teach themselves, and not to let others teach, when they are not being paid on time, or when their salary is low and they want it to be raised as necessary. I have already said that since the payments that they receive is merely "money for their idleness," i.e., they are paid to remain idle from work, and since they are idle, they are obligated by Torah law to teach for free – therefore, there is no room for them not to teach. In any event they are now idle from work, and they are obligated to teach their students.^[17] Only that since what they are being paid does not meet their needs, they are permitted to seek out a living, and thus they will not teach. But if so, they cannot prevent others who so desire to teach...This is by strict law. But if they are not receiving enough for their needs, so that it is difficult for them to teach well, and it is clear that if they don't teach for a day or two, their</p>	<p><u>שו"ת אגרות משה חושן משפט חלק א סימן נט</u> ובדבר מלמדים אם רשאיין שלא ללמד בעצמן וגם לא להניח לאחרים ללמד כשאיין משלמין להם בזמן או ששכרן מועט ורוצים שיוסיפו להם כפי הצריך להם הנה כבר אמרתי דכיון שהתשלומין להם הוא רק דמי בטלה פירושו שמשלמין להם כדי שישבו בטל ממלאכה ומכיון שהן בטליון מחוייבין ממילא ללמד מדין התורה בחנם וא"כ אין שייך שלא ילמדו הא עכ"פ עתה הם בטליון ממלאכה ומחוייבין ללמד עם התלמידים ורק שכיון שממה שמשלמין להם אין להם כדי צרכם רשאיין לילך לבקש מה להרויח וממילא יתבטלו אבל א"כ אין יכולין למנוע לאחרים הרוצים ללמד עמהם..זהו מדינא אבל אם הוא באופן שאין להם כדי צורכין שלכן קשה לפניהם ללמד בטוב עם התלמידים והאומדנא חזקה וברורה שאם לא ילמדו יום או יומים יועיל שהמתעסקים ישלמו בזמן ויוסיפו להם כדי</p>



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<p>employers will pay them on time, and add what they need, then perhaps there is room to allow this, for it is time to act for God... One must distance oneself from this as much as possible</p>	<p>צורכן אז אולי יש בכל האפשרי מקום להתיר מהא דעת לעשות לה'... צריך להתרחק מזה</p>
<p>The obligation to teach Torah falls on the parents. Teachers, in return for the salary that is paid them, whether by the parents or by some public body that stands in their place, accept upon themselves the task of teaching Torah to the children of Israel as agents of their parents. Now, as long as the teachers' salaries are paid in a satisfactory manner, their agency and obligation stand. But the moment that they reach the conclusion that their salaries do not suffice...[18] they are no longer obligated, for they are no longer agents, their agency having been based on the payment of their salaries. (Rav David Chayim Halevi, <i>Aseh Lekha Rav</i>, II, no. 23).</p>	