

Tacharut | The Movement for Freedom of Employment (NPO)

Restricting Strikes in Essential Services

November 2019

Tacharut

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1. Executive Summary

In the last two decades, the Israeli economy has been characterized by numerous strikes and threats of strikes. Although it is difficult to assess the economic damage caused by strikes or forced compromises, it could be easily understood that these give rise to huge costs and cause significant reduction in labor productivity. As a result, proposals have repeatedly been made to limit the right of workers' organizations to strike in Essential Services. When the term **essential service** is mentioned in Israeli discourse, the clearest example is the sea ports and the Israel Electric Corporation (IEC), followed by the airports and the trains or other important services that have a significant impact on the general public. **The main problem with a strike in the Essential Services is that its effects go beyond normal labor relations in the workplace and dramatically affect the entire economy**, and therefore, any proposal to limit essential service strikes should lessen the extent of harm to the public and the ability of workers' organizations to translate the strike into a political tool whose impact severely exceeds the limits of the workplace.

Until now, proposals have focused mainly on arbitration as the preferred solution for labor disputes in Essential Services, without having discussed the major problems and failures of labor disputes themselves, failures that bolstered, and in some places created the existing reality in the first place: **Firstly, the legal infrastructure regarding labor disputes is suited for the Israeli economy of the 1950s**: labor relations overwhelmingly based on collective relationships represented by one centralized labor union associated with a governing party, and a view that promotes autonomy for employees and employers who negotiate collectively. The economy has undergone many changes since then, making this reality all but non-existent.

Second, **the grounds for initiating a labor dispute are unclear** and not properly regulated by law. It is understood from the law that a labor dispute procedure can only be initiated based on work-related issues (and not political issues, for example), but it is not at all clear what is included in this framework and what is not.

Third, while in the past a distinction was made between disputes aimed at regulating workplace relations and disputes aimed at enforcing what had already been agreed upon in the collective agreement, **today there is no separation between economic and legal disputes**, making it difficult to classify disputes and enforce justice.

Fourth, **the price of striking is very low**, even in relation to the other countries. The only sanction against a strike is the non-payment of wages for the time of the strike, which is insufficient. Enforcement against illegal strikes is also ineffective. In the public sector, enforcement against strikes that are not part of a labor dispute is difficult and nearly impossible because, according to law, a labor union cannot be sued, even if it initiated the illegal strike. Even the employee is protected against a claim for the damage caused to a third party, and the only person who may sue an employee for an

illegal strike is the employer. Public employers, however, do not use this tool as a deterrent because it puts a strain on work relationships, thus management's motivation to advance such a claim is low. In recent years, the Labor Court has also banned the hiring of replacement workers during a strike, whether on temporary or permanent basis.

Fifth, **the institutions that are supposed to reduce friction are either weak or do not function properly.** The Labor Relations Council, which reflects a desire for concentrated management of labor relations at the national level – practically does not function ; the Agreed Arbitration Institution, which is supposed to mediate between the Histadrut and the State, is not often contacted and is not considered a desirable address for resolving conflicts, even though it exists and is budgeted; and even the operating mechanisms of the Labor Relations Commissioner at the Ministry of Labor are considered weak and irrelevant.

In the absence of adequate legislation, enforcement of existing legislation, built-in weakness of regulators and political weakness of the regulatory mechanisms, a void is created in any employee-employer conflict, a void filled by the system of Labor Courts. Over the years, the Labor Court has developed an infrastructure that includes tools, practices, and judgments based on an ideological perspective by which it examines or resolves labor disputes. Today, three main tools used by the Labor Court can be identified: the **duty to consult**, mixed classification and the conflict management doctrine.

According to the Labor Court, the duty to consult requires the employer to consult with employees before undertaking significant actions. However, the Court maintains ambiguity regarding the question as to what topics necessitate consultation, to what extent weight is given to employee representation in decision making, and thus over the years the court has extended the right of employees to make decisions regarding the workplace to the point of almost complete equality with the employer. **The ability to initiate a labor dispute and strike due to legitimate management decisions constitutes a powerful bargaining chip by committees and labor unions.** In the current situation, any organizational change or management decision enables employees to initiate a series of steps that undermine the ability to execute managerial decisions without the committee's consent. The ability to block managerial action translates into retaliatory methods by the committee. Every change comes with a price: Employees must be given benefits if a change is desired, not necessarily those workers who are affected by the change – **sometimes additional benefits are given to employees who will continue to work in the same job, while employees in retirement or lay off tracks remain with their old conditions.**

In Israel, political strikes aimed at changing government policy are forbidden. The question arises: What about strikes in cases where the State is also the employer, and

there is concern that the policy will affect the workers' employment conditions? In such cases, the High Court has ruled that there need to be classification of the strike: an economic strike – permissible. Where there is a belief that workers will be significantly harmed by government policy – the strike will be allowed for only a few hours. A strike that has no direct and immediate impact on workers – is deemed political, and prohibited. **The Labor Court completely reversed the High Court's ruling** and decided that instead of classifying cases, all cases are somewhere on an economic-political continuum. Therefore, the vast majority of strikes have been allowed and the judges began to examine each case according to the magnitude of its economic impact, according to which it allowed its duration and intensity.

In addition, **strikes have become a national political tool in their own right**. The Histadrut has declared several general strikes on the economy, but in the vast majority of cases did not implement them and, if exercised, limited the strike to several hours. In general, Labor Disputes in the market are intended to influence policy and not to promote the benefit of any employee in any factory in a local conflict. For example, strikes can be threatened on issues such as disability benefits, the group nursing insurance policy, a demand for a change in regulations and increased standards for handling construction site accidents, violence against women and more. These issues are of central importance to Israeli society, and the Histadrut uses the general wave of sympathy to declare a strike, but stops short of actually implementing it. **In this way, the strike has transformed from a tool for employee promotion to a tool of social policy**. These strikes have not yet been implemented and therefore their legal status has not yet been examined, but the threat of a strike constitutes a political tool wielded by the Histadrut.

To prevent strikes, the Labor Court began to adopt a **dispute management doctrine** instead of making a legal decision. According to this doctrine, the Labor Court stops the strike that is threatened to be imposed, while on the other hand, stops the proposed government policy, forcing the parties to sit down to forced negotiations, even in cases where the State believes it has every sovereign right to carry out the policy. In this way, **the Labor Court delays and prevents vital reforms that would reduce the cost of living in Israel**, this stemming from a sincere desire to prevent a general strike in the Israeli economy but also from its unwillingness to decide on the legality of the matter.

The situation elsewhere is significantly different. , Countries can be generally divided into three groups: **Scandinavian, Southern European and Anglo-Saxon countries**. The Scandinavian countries are based on industry-level organization and are characterized by high tolerance and self-imposed limitations through collective agreements. Southern European countries have less cooperation and high sympathy for strikes as a tool of social struggle. In addition, there is less self-regulation but also no external regulation. In these countries the court has a significant role. In Anglo-Saxon

countries, organization is more enterprise-based, and external regulation is much stricter. These countries have independent authorities and enforcement agencies for this purpose.

Be that as it may, there is no country where there are no restrictions on the right to strike. Different countries are taking different steps, including: the right of parliament to order an end to a strike; a ban on the striking of public servants; a minimum supply obligation during a strike; and a voting obligation for workers as a condition of a strike.

In terms of the organizing in the economy, Israel is more like the Anglo-Saxon model with a high concentration of workers' organizations. From a regulatory standpoint, the de jure situation is similar to the Nordic countries, but de facto Israel has a policy similar to the Southern European countries where there is no cooperation and the court acts as a regulator, even though it does not have the tools or authority to act in that capacity.

In terms of prohibiting strikes in Essential Services, four main mechanisms exist: an **absolute prohibition** on strikes in predefined services, and an immediate appeal to arbitration; **provision of minimal service** is essential at all times so the strike is limited from the onset; **submission of a strike outline prior** to its start to the regulatory body, and if the outline is disqualified the strike is prohibited; **ad hoc restriction of a strike** when the regulatory body believes that it prevents an essential service or that it is disproportionate.

Each method has its advantages and disadvantages and they are situation and country dependent. At the same time, a number of fundamental challenges face anyone seeking to limit strikes. First, it is best **not to take extreme measures. The more significant the restriction on strike freedom, the more workers will tend to break the law and launch wild strikes.** To deal with this phenomenon, conflicts must be reduced in the first place and settled early, not to limit the strike beyond what is necessary. Second, the more the regulatory body intervenes in the labor dispute, the more it may lose legitimacy in the eyes of either party or create dependency on arbitrators for daily activity. **Loss of legitimacy** may result from decisions not liked by the parties, which may result in unilateral actions. If the body enjoys legitimacy but does not have clear limits to its activities, **dependence** on the arbitration institution's decisions may develop in order to carry out routine labor relations actions. Third, use of mandatory arbitration may create **economic irresponsibility**. Although the arbitrator must be independent and free from budgetary or employer considerations, this freedom results in a lack of incentive to exercise financial prudence in his decisions or fair use of the parties' money. Fourth, **the broader the judgment of the regulatory body, the less clear the rules.** In such a situation, when it is unclear what will come of the strike, too great an incentive is created to appeal to the authoritative body to "try one's luck" in order to stop the strike. On the part of the employees, this is an incentive for irresponsible behavior

because it is clear that someone else will stop them, and if it does not stop them, they will gain public legitimacy.

The proposed solutions can be divided into two types: solutions that regulate the issue of striking in Israel as part of labor disputes, and solutions that regulate the restriction on strikes in Essential Services.

General regulatory solutions include:

- 1. Increasing certainty in collective relations**, including requiring public service employees to sign a single collective agreement, prohibiting a strike while there is an existing agreement, and defining clear grounds for a legitimate strike.
- 2. Defining the concept of a labor dispute and its boundaries**, including a definition that a conflict directed against the State in its sovereign role (and not as an employer) will not be regarded as a labor dispute and cannot be resolved by striking.
- 3. Consolidating collective agreements** – differentiating between types of disputes and enforcing collective agreements, including payment of compensation for violation of a collective agreement and prohibiting a strike in the context of a legal labor dispute.
- 4. Anchoring the employer's authority to manage** and hedging the labor dispute according to a model known in advance, whereby each conflict is examined as to whether or not there is a direct and immediate effect on the employees.
- 5. Applying clear rules for dispute settlement**, including extending the cooling off period between notice of a strike and its beginning, requiring communication with an intermediary as a condition for use of a strike, and defining the terms of the strike in advance.
- 6. Increasing the price of a strike** by allowing layoffs of striking workers, hiring replacement workers during a strike, allowing third parties affected by strikes to claim tort and permitting the Knesset to suspend a strike or transfer to mandatory arbitration.

Regulatory solutions for strikes in Essential Services include the creation of an integrated model that includes different restriction methods depending on the service definition: an absolute prohibition on strikes in Essential Services, provision of minimum service in semi-Essential Services, approval of strikes between collective agreements in public services, and a restriction on strikes in ad hoc Essential Services with the consent of the Knesset. **Details and a catalog of the various services appear in Chapter 8, Section 2.**

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3. Introduction

In 2013, the management of the Israel Electric Corporation (IEC) began a reform aimed at reducing the cost of electricity to Israeli households. The two significant steps in the reform were the connection of private power plants to the electric grid and implementation of a new computer system. The reform, which was also passed in the Knesset, was met by opposition from the IEC employees, who threatened to strike. In the end, the workers did not make good on their threat of disconnecting the first private power plant from the general grid, but still refused to cooperate with the reform. In

despair, the IEC management appealed to the Labor Court, where they were in for a surprise. The Court ruled not only that the employees did not have to cooperate with the reform, but that the management must also freeze the proceedings for its promotion. Moreover, it required the management to negotiate with the employees and if not, the employees may be allowed to cut off the private power plants.¹

In another case that year, the State wished to tender a license for two additional sea ports. Here, too, the goal was to lower the cost of living by expanding competition. When the port workers threatened to strike in protest, the State claimed that it had every authority to make the decision as part of government policy. In response, the workers argued that this decision could hurt their livelihoods in the future. In the ensuing court hearing, the Labor Court ruled that the workers did not have the right to strike at that time but that a strike was indeed legitimate. In this case, too, the Labor Court required the government to negotiate with the workers regarding the potential consequences of the establishment of competing ports, and prevented the promotion of the reform.²

In a third case in 2019, the Israel Railways management asked its train drivers to work approximately three (נכתב בהמשך הפסקה שהם עובדים 6 שעות ביום. צריך לתקן) hours and fifty minutes a day, an average of approximately twenty minutes more than their regular work day. In response, the drivers overwhelmingly turned in sick leave certificates and were absent from work. After the Court ruled that they did not have the right to strike, the train workers started implementing one sided sanctions: they stopped courses and training, damaged the supply of spare parts and garage equipment in Beersheva, allegedly in response to dismissal and cancellation of positions. All of this was done despite the fact that according to the collective agreement between the drivers and management, the drivers were required to travel an average of six hours per work day.³ On the same day, dozens of trains were disabled, and hundreds of thousands of passengers were unable to reach their destination.

The lack of trains, prevention of reforms, limitations on expanding competition and various other disruptions have all become routine in Israel, events for which it is difficult to estimate the costs incurred by the economy. As a result, in recent decades proposals have repeatedly been made to limit the right of workers' organizations to strike when it comes to Essential Services.⁴ These proposals have been raised mainly in response to

¹ Collective Dispute (אזורי חי) 31740-05-13 Israel Electric Corporation Ltd. - The New Histadrut General Organization of Workers (Published in Nevo, June 5, 2013).

² Collective Dispute (אזורי חי) 3335-02-13 Corporation Ltd. - The New Histadrut General Organization of Workers (Published in Nevo, June 2, 2013)

³ General Collective Dispute (National) 40815-07-13 Tel Aviv and Center Chamber of Commerce - Association of Chambers of Commerce v. The New Histadrut General Organization of Workers, July 29, 2013 ■ <https://www.globes.co.il/news/article.aspx?Did=1001273956>

⁴ Bill of MKs Yoel Hasson and Ronit Tirosh P/2441/17, Settlement of Labor Disputes Bill (Amendment - Restricting Strikes of International Airports and Sea Ports), 2007 ■ Bill of MK Elhanan Glazer, P/2899/17, Settlement of Labor Disputes Bill (Amendment - Mandatory Arbitration in the Public Services), 2007 ■ Bill of MKs Sofa Landwer, Robert

a strike or an intention to strike in services where the cessation of work can cause significant harm to the public. The clearest example of an 'essential service' is usually the ports and the IEC, followed by the airport authority and the Israel Railroad or other important services the cessation of which have a significant impact on the public.

For the most part, the proposed solution for restricting a strike in Essential Services is mandated arbitration. In the Israeli context, the mandated arbitration model draws its inspiration from the 1930's proposal of early Zionist leader Zeev Jabotinsky to make national arbitration an obligation as an alternative to a strike.⁵

To this day, proposals submitted to the Knesset have portrayed the arbitration tribunal as constituting a former judge of the Supreme Court or the Labor Court, together with an employee representative and an employer representative.⁶ These proposals include an absolute restriction for list of services defined as 'essential' and thus when a conflict arises, one of the parties must apply for a hearing and decision by the arbitrating body.

These proposals are considerably flawed. First, they do not clearly define the jurisdiction and authority of the arbitrator, the tools he is allowed to use and the situations in which he is allowed to intervene. Second, they do not address problems that could break out due to the improper use of the arbitration body, or the possibility that the strike would be considered a fundamental right and any restriction of it would be forbidden. Third, they do not mention or take into account international conventions signed by Israel that pertain to the matter. Finally, and most importantly, the main weakness of these proposals is that they do not address the general uncertainty that exists in labor relations in Israel, which has caused the entire issue of strikes to be uncontrolled and vague. Therefore, any proposal for a solution should first settle the relevant core issues in labor relations, and only then continue to create appropriate mechanisms for the question of arbitration in Essential Services.

Itov, Moshe (Motz) Matalon and Daniel Ayalon, P/78/18, Settlement of Labor Disputes Bill (Amendment - Mandatory Arbitration in the Public Services), 2009 ■ Bill of MK Arieh Eldad, P/3967/18, Settlement of Labor Disputes Bill (Amendment - Mandatory Arbitration in the Public Services), 2012 ■ Bill of MKs Ayelet Shaked, Robert Itov, and Meir Shitrit, P/1482/19, Settlement of Labor Disputes Bill (Amendment - Mandatory Arbitration in Essential Services), 2013 ■ Bill of MK Sharren Haskel, P/2188/20, Settlement of Labor Disputes Bill (Amendment - Mandatory Arbitration in Essential Services), 2015. Submitted again by in the 21st Knesset by Knesset Member Haskel, Bill no. P/242/21 ■ Bill of MKs Bezalel Smutrich and Sharren Haskel, P/5496/20, Settlement of Labor Disputes Bill (Amendment - Restricting Labor Dispute against Competition, Sovereignty and Essential Services) 2017.

Another bill can be cited for limiting political strikes that has come about as a result of strikes in essential services on political grounds: ■ Bill of MKs Ayelet Shaked, Ofer Shelah and Meir Shitrit, P/2213/19, Settlement of Labor Disputes Bill (Amendment – Political Labor Dispute) ■ The bill was again submitted in the 20th Knesset and in the 21st Knesset by MK Haskel, Bill no. P/5524/20 and P/377/21 ■ It was also submitted by MKs Ayelet Shaked, Ofer Shelah and Meir Shitrit in the 19th Knesset, Bill no. P/2213/19.

⁵ Ze'ev Jabotinsky (1934), *Strikes in Eretz Israel*. From: Reporters: Lists, Jerusalem: Ari Jabotinsky, 1943, pp. 287-292.

⁶ See the bills appearing in Footnote 4, especially the bills from the last three Knessets of MK Bezalel Smutrich, MK Sharren Haskel and MK Ayelet Shaked.

4. Description of the Situation in Israel

4.1 Background

A strike is a work stoppage organized by a group of workers in a workplace, with the aim of improving the conditions of the workers vis-a-vis the employer, and is a step taken in the context of a labor dispute. At present, two main laws regulate collective labor relations in Israel: the **Settlement of Labor Disputes Act**, 5717-1957 and the **Collective Agreements Act**, 5717-1957. These laws form the legal basis for the rules regarding labor disputes and employee-employer relations.

The legal infrastructure in Israel is outdated, and as it currently stands it reflects the Israeli economy of the 1950's: labor relations overwhelmingly based on collective relations with one centralized labor organization connected to a governing party, and a view that supports autonomy for workers and employers negotiating through collective bargaining. Nevertheless, there are some definitions in the law that are widely accepted in the world even nowadays as to who the parties to collective labor relations are and that the grounds for declaring a labor dispute should only deal with labor relations. However, in spite of the distinction that the grounds be related only to labor relations, details of the grounds for a labor dispute are lacking.

The grounds, which appear in Section 3 of the Settlement of Labor Disputes Act, include a list which is unclear, and in any case does not constitute a tool that guides the Court in a classification of strikes and labor disputes⁷ today. Previously, there was a differentiation between **economic labor disputes**, also called labor disputes regarding interests, and **legal labor disputes**. In Israel, these were also known as disputes for the creation of rights versus disputes for the exercise of rights. The idea is to differentiate between disputes designed to anchor benefits and working conditions under a collective agreement in which each party may make its demands without external intervention – and a conflict intended to enforce what has already been agreed upon in the collective agreement or rights provided by law, but currently this differentiation is no longer enforced or distinguished.

Beyond the ambiguity in the list of grounds for a strike, other reasons have led to the fact that historically, in Israel, the absolute majority of strikes have been initiated by public sector workers directed against the State. First and foremost, the cost of using the strike tool is very low for State employees. On average, several hundred labor disputes are sent to the Labor Disputes Commissioner every year. The only sanction against a strike is the non-payment of wages for the time of the strike, which is

⁷ Section 2 of the Settlement of Labor Disputes Law, 1957. In addition, the grounds for a dispute regarding the conclusion or modification of a collective agreement includes the matters for a collective agreement as provided in Section 1 of the Collective Agreements Law, 1957.

insufficient. Enforcement against illegal strikes is also ineffective. In the public sector, it is difficult and nearly impossible to implement enforcement against strikes that are not part of a labor dispute because, according to the law, a labor union cannot be sued, even if it initiated the illegal strike. Even the employee is protected against a claim for the damage caused to a third party, and the only person who may sue an employee for an illegal strike is the employer. Public employers, however, do not tend to use this tool as a deterrent because it puts a strain on work relations and management's motivation to advance such a claim is low. In recent years, the Labor Court has also banned the hiring of replacement workers during a strike, whether temporary or permanent, a prohibition that disproportionately increases the bargaining power of employees, especially in the public sector. In this situation, a significant incentive has been created to overuse the tool of a strike— whether legally or illegally.

In addition to the ineffective enforcement and limitation of strikes, the institutions that are supposed to reduce friction in the first place between workers and employers are weak or dysfunctional. In this vein, the Labor Relations Council, which represents a desire for centralized management at the national level of labor relations, does not function in practice; few apply to the Agreed Arbitration Institution, which is supposed to mediate between the Histadrut and the State, and it is not considered a desirable solution for the resolution of conflicts, even though it exists and is budgeted today, and even the operating mechanisms of the Labor Relations Commissioner in the Ministry of Labor are weak and irrelevant.⁸

For example, a few hundred notices regarding labor disputes are sent to the Commissioner each year, with the notices themselves stemming from a myriad of reasons. Regulation is minimal and there is no supervision over compliance. The lack of oversight can be seen in the fact that there is no check as to whether the dispute that is at the source of the notice is included in the grounds existing in the law for labor disputes, nor is any criticism or objection given regarding labor disputes inconsistent with the law. As labor dispute notifications are not time-limited and do not expire, most disputes escalate until one of the parties appeals to the Labor Court for a legal remedy. While, in the past, the Labor Court would examine the notice of the dispute as a prerequisite for the legal process, today it tends not to. In the absence of adequate

⁸ The fourth and fifth chapters of the Settlement of Labor Disputes Law, 1957 concerning public service labor disputes and the Labor Relations Council are not implemented in practice. The Labor Court rarely chooses to handle a labor dispute by way of a classic legal inquiry, but it is likely to use the fourth chapter of the Law in making a decision in relevant disputes. The contents of that chapter are not implemented in practice. In the matter of the use of brokerage and arbitration services by the Commissioner of Labor Relations, the Commissioner has refused to provide us with data but we know that the use made of these mechanisms is low and irrelevant in the public sector. A reliable review of labor dispute resolution mechanisms in Israel and the extent of their effectiveness can be found in a position paper by Guy Mundlak and Tali Crystal called "Working Relationships in an Age of Change – Position Paper for the Annual Economic Conference of the Israel Democracy Institute" (2004): <https://m.tau.ac.il/law/members/mundlak/chapter2.pdf> /.

legislation, enforcement of existing legislation, inherent weakness of regulators and political weakness of the regulatory mechanisms, a void is created in every employee-employer dispute, a void into which the Labor Court is more than happy to enter.

Over the years, the Labor Court has developed a legal infrastructure that includes tools, practices and rulings based on an ideological point of view that it uses to examine or resolve labor disputes. Today, three main tools are used by the Labor Court –

- 1) The duty to consult;
- 2) Mixed classification;
- 3) Conflict management doctrine.

At the same time, the Court promotes the recognition of the right to strike as a constitutional right through various rulings.

4.2. Duty to Consult

One of the key questions in the relationship between employers and employees revolves around the scope of management's right ("the employer's prerogative"). This issue examines the extent to which an employer has the right to take unilateral steps in his business without having to involve the employees. In general, it is customary to approach the question of an employer's ability to conduct his business vis-a-vis the employees' authority to influence the working conditions as part of the general discourse regarding labor rights. According to the Court, in this case, the employer's proprietary right contrasts with the employee's right to freedom of association, which the Court regards as superior to other types of associations.

In the last three decades, the perception that the labor organizations should be given additional rights in the workplace has grown,⁹ to the extent that they should be given management rights in the workplace. The Court has determined that while the employer has a proprietary right that gives him the mandate to manage the workplace, the employees -while not having ownership **of** the workplace, indeed have some proprietary rights **in** the workplace. According to the Court, these two rights must be balanced horizontally. In this way, new rights were created for workers' committees in the management of the workplace that do not necessarily result from an agreement between the parties. This view is also backed by a more traditional perception of the Court, an "industrial democracy" concept which holds that the owner and employees are

⁹ Segal, Zeev. *Judicial Activism and Passivism in the High Court of Justice and the National Labor Court* / Zeev Segal, Lilach Litor. Srigim-Leon: Nevo Publishing, 2008. (Below: Segal, Litor, *Activism and Passivism ...*) pp. 50-55.

equal parties in the production process, and therefore have to make decisions jointly – democratically.¹⁰

As a result of this prevailing perception in the labor court, the duty to consult was indeed anchored case law, but its scope and nature have remained vague.¹¹ The Court determined that the "good faith" practice of contract law should be applied to collective labor relations and certain obligations should be derived from it. For example, the Court has ruled that the workers' committee has the right to consult with management before significant changes are made in the workplace. However, there are two important definitions that remain unresolved – what is included in the duty to consult and what are the implications regarding decision-making.¹²

With regard to the question of what is included in the duty to consult, it is not at all clear what constitutes a significant change or decision. Is a significant decision only that which has an impact on employees, or also that which does not have an impact on employees but has a far-reaching impact on the business? Likewise, is there a distinction between decisions that have an incidental significance for employees, and decisions that have a direct or significant impact on employees? There are no clear answers to these questions in the case law.¹³

Regarding the significance of the duty to consult as it relates to the decision-making in the business, it is clear according to rulings that the employer must be open and have a willingness to be convinced for the consultation to be real. However, the ability to know what a person actually thinks and feels is limited, and therefore the ability to determine when the duty to consult has been exhausted. On the one hand, the duty to consult can be interpreted as a minimal obligation to provide information to the workers' organization or to share in general, but on the other hand it can be interpreted as giving employees a kind of veto right which requires their consent in fateful decisions. Beyond the lack of a

¹⁰ See Prof. Ruth Ben-Israel's description of the industrial democracy theory:

"According to this argument, a going concern is a function of two factors of production: the economic capital available to the enterprise for profit, and the human capital of the workers, leased to the enterprise for wages. Only the cooperation between the two production factors – between the proprietary resources of both parties – results in the finished product, the going concern. The recognition that the firm as a going concern is a meeting place of the two production factors, labor and capital, gives both parties status in the process of managerial decision making in the enterprise. Consequently, the worker has the right to participate in management decisions and therefore also the right to participate in the work conditions. The right to participate reflects the fact that employees not only the right to receive financial compensation for the work, but also a work status with human dignity." Israel, Ruth Ben, Hadara Bar-Mor and the Open University. Labor Law. The Open University, 1989. p. 38.

¹¹ Labor Court Hearing 27 NB 2-4, Bromine Compounds Ltd. v Histadrut, Labor Court Judgment W (1) 456 (1991).

¹² For further details regarding the development of the duty to consult, see the opinion in Chapter C of the Request of the Kohelet Forum and the Tacharut Movement to join as Friends of the High Court of Justice (2017): (<https://kohelet.org.il/wp-content/pdf.5768-18-בגץ-טיעון-ועיקרי-ועיקרי-טיעון-בבקשת-הצטרפות-ועיקרי-טיעון-בבגץ-5768-18>)

¹³ Many labor disputes begin even when there is no good reason to assume that the decision will have an impact on workers. A review of labor disputes and notification of strikes filed for registration in 2016-2017 will be published after the publication of this paper.

decision on how to interpret the duty to consult, it is not at all clear how the Court deals with those who violate it. Consequently, even if the duty to consult is interpreted as the right of employees to participate in fateful decisions as absolute equals to the employer, if the employer did not include the employees in the decision-making process – even then it is unclear how the law applies to him and whether a strike is possible as a result.¹⁴

Therefore, many unnecessary labor disputes arise that are unclear. There is a widespread phenomenon of labor disputes that have broken out due to a transfer of ownership, even if there is a promise to safeguard the workers' rights and even though those rights are anchored in the law (and therefore, presumably, are not in need of an additional safeguard).¹⁵ Disputes following the introduction of technology are a common issue as well, especially in the public sector, and disputes due to managerial decisions or structural changes in the workplace are also a common concern, and there is no separation of those that have a direct impact on employees from those for which it is doubtful that they at all effect employment conditions in the foreseeable future.

The ability to initiate a labor dispute and strike due to legitimate managerial decisions constitutes a powerful bargaining chip for workers' committees and labor unions. In the current situation, any organizational change or management decision makes it possible for employees to embark on a series of steps that essentially undermine the ability to carry out administrative actions without the consent of the committee or at least not without significant friction. From this, it is easy to understand that the ability to block administrative actions translates into retaliatory methods by the workers' committee. Every change has a price: Employees must be given benefits if a change is desired, and not necessarily for those workers who are harmed or may be effected by the change – sometimes benefits are given to employees who continue to work in the same workplace and under the same conditions, while employees who are retired or laid off as a result of the change retain the same benefit package and do receive any additional benefits.¹⁶

4.3. Mixed Classification

¹⁴ Name, see especially the issue of the ports from 2013.

¹⁵ For example: Gad Peretz and the Cellcom Workers' Committee to Elsztain: Securing Workers' Rights in the Sale, Globes February 8, 2018, <https://www.globes.co.il/news/article.asp?x?Did=1001222960> ■ Michael Rochwerger, Labor Dispute at Isracard: Employees are demanding a grant for the sale or transfer of control from Bank Hapoalim, TheMarker, January 20, 2019, <https://www.themarker.com/markets/1.6854228>.

¹⁶ This is an accepted practice. See, for example, the increased pension that workers who will not be fired will receive because of the IEC Reform compared to those who will be laid off and the Reform Grant for workers who will continue to enjoy job security: Hagai Amit and Ora Koren, Electricity Reform Unanimously Approved by the Government: NIS 7 billion – to be funded by the public, TheMarker, June 3, 2018 [<https://www.themarker.com/dynamo/1.6139191>]

Traditionally, strikes of a political nature, whose purpose is to influence or change government and Knesset policies are prohibited. These political strikes are distinct from ordinary economic strikes that are common in labor relations. While the purpose of a normal economic strike is to exert economic pressure to promote the interest of improving wages and working conditions in the workplace, the purpose of the political strike is to exert economic pressure on the State as the sovereign in order to change its policy.

Indeed, the State has authority to make decisions that may effect workers and the labor market at large. From legislation of a change in income tax, change in the minimum wage law or a change in pension legislation, through legislation for a restructuring in any given industry, to the implementation of regulatory tools on companies in which labor organizations operate or in the outlining of business policies in government companies in which the State serves as a shareholder. The question arises: what is the law in cases where the strike is aimed at the State whose decision has a significant impact on workers?

This question was posed to the High Court in the case of the Bezeq telecommunications company in 1995, which created a new category: the quasi-political strike.¹⁷ The quasi-political strike is the strike of workers whose purpose is to change policies that may effect the workers' conditions of employment. The High Court ruled that such a strike was legitimate, but set two significant limitations:

First, the strike is legitimate based on the right to freedom of expression since it is a protest strike against policy. However, such a strike should be limited in duration for a few hours and should not reach a level of economic pressure. Secondly, in order to define a strike as quasi-political and permit it, the policy must be proven to have a direct and immediate impact on the workers who are striking. Otherwise, it is a political strike, and therefore prohibited.¹⁸

How is it clarified whether a strike is economic, quasi-political, or completely political? According to the High Court, the correct way to deal with strikes that have a political element is through the "Doctrine of Classification". By that method, the court must determine the purpose of the strike and classify it as one of the following: economic strike – permissible, quasi-political – permitted as a protest strike under certain restrictions, or political – prohibited. The doctrine of classification establishes categories of judicial nature and does not seek to intervene in the labor dispute but to answer the question of whether there is permission to strike under the law. In the past two decades, the Labor Court has substantially changed the legal infrastructure laid down in the

¹⁷ High Court of Justice 1074/93 Attorney General v. National Labor Court Israeli Judgments MT, Part Two (1995).

¹⁸ Name, Section 32 of the opinion of J. Levin. See also a detailed analysis of the opinion in the participation application of the Kohelet Forum and the Tacharut Movement as friends of the High Court of Justice 12.

Bezeq ruling.¹⁹ When a conflict with the intent to strike comes before the Labor Court, it is no longer classified into one of the three categories. Instead, the Court sees a political conflict as one between two extremes – from classical economic to pure political.²⁰ The Labor Court actually changed the form of classification, and instead of classifying the cases according to the three categories presented by the High Court, it turned the issue into a question of placement on the spectrum. Therefore, it is not to be decided whether a strike from mixed motives is a strike from one of the categories presented above, but that if it has any economic component, it must be legitimized in a way that is compatible with its economic component.

For example, in a situation where employees may be effected by a particular policy, their legitimacy to strike will grow in accordance with the demonstratable likelihood of the impact on their working conditions . In other words, while according to the Bezeq judgment, a strike against a policy that does not have an immediate and direct impact on employees was considered to be an illegitimate political strike, according to the Labor Court, a strike that has a **certain** likelihood of indirect and future impact on workers is a strike that has some legitimacy based on the weight attributed to it by the Court.

Even if, in practice, the Court prohibited a strike on any political matter, it considered the strike legitimate, only that it should not be allowed due to immediacy considerations or for the purpose of continued dialogue. As an alternative to the strike, the Court required the State to negotiate with its workers regarding its policy.²¹ In one extreme case

¹⁹ A turning point in this regard is the 2007 ruling on the Electric Company of the then President of the Court, Steve Adler: Appeal of Collective Dispute (National Labor) 23/07 Israel Electric Company Ltd. v. The New General Histadrut (published in Nevo, October 10, 2007). See also Mironi: Mordechai. Involvement of the Law and the Courts in Public Service Labor Disputes – Old Problems, New Challenges. Law and Government, University of Haifa (2012): 271-311. (**hereinafter: Mironi**). Along with the Court's discontinuation of the separation, concerns were raised by academics in the field about the ability to separate political and economic strikes. According to the critics, as long as there is an effect of the political echelon's decision on the workers, the economic grounds cannot be separated from the political grounds of the strike and it is obvious that these commentaries reject the distinction between direct and obvious influence and indirect and vague influence. It should be noted that it is understandable in the narrow circles of legal practitioners to consider the degree of ideological weight in their arguments when supposedly professional positions are presented. For further information regarding additional positions, see: Gnainski, Nir. The Constitutional Status of the Right to Strike. Sarigim-Leon: Nevo Publishing, 2014. pp. 56-57 ■ Shaked, Michal, Theory of the Prohibition of Political Strike. Labor Law Yearbook (1999): 185 - 217.

²⁰ An example of a pure political conflict is the Druze teachers' strike in the Golan Heights against the annexation of the Golan discussed in the case of Khatib – a strike in the context of the conflict was considered to be intended to influence policy but had nothing to do with the working conditions of the strikers. High Court of Justice 525/84 Nabil Khatib v. National Labor Court, Jerusalem, M(1) 673 (1986).

²¹ Many proceedings can be noted. The following is an overview of some of the cases regarding the IEC and the ports reforms only: for example: Collective Dispute (National Labor) 12/03 Ports Authority v. New General Histadrut (published in Nevo, October 10, 2003; Various Civil Requests (National Labor) 511/03 Ports Authority v. New General Histadrut (published in Nevo, December 9, 2003 Collective Dispute (Haifa Labor) 35/07 Israel Electric Company Ltd. v. New General Histadrut (published in Nevo, June 29, 2007); Appeal Permission Request (National) 50556-09-11 New General Histadrut Association of Transportation Workers v. Israel Railroad Company Ltd.

regarding the reform of the electricity sector, the workers believed that the State was not negotiating the reform with them in good faith and therefore had not fulfilled their "duty to consult". The Court, in response, accepted their arguments and allowed them to strike.²² In this way, the Court reduced the political strikes, but left the political disputes intact, while giving the workers an alternative mechanism for exerting pressure on the State.

In addition, strikes have become a national political tool in their own right. Several times the Histadrut threatened general strikes, but in the vast majority of cases did not implement them, and, if they did, the strike was limited to several hours.²³ The general labor disputes in the economy are usually intended to influence policy and not to promote any specific employee in any enterprise in a local conflict. For example, it is possible to threaten strikes on issues such as disability benefits, the group nursing insurance scheme, a requirement to change regulations and increase standards for handling construction site accidents, violence against women, etc. These issues are of central importance to Israeli society, and the Histadrut uses the general wave of sympathy to declare a strike, but stops short of actualizing it. Thus, the strike has transformed from an employee promotion tool into a social policy tool. These strikes have not been implemented and therefore their legal status has not yet been examined, but the threat of a strike is a political tool for the Histadrut.

4.4. Conflict Management

In view of the conceptual infrastructure created by the Labor Court through the Duty to Consult and the Mixed Classification doctrines, a reality has been created in which most strikes having a political component are considered to be permissible and legitimate as far as the Court is concerned. Such a combination of permissiveness and a lack of legal infrastructure welcomes an escalation of the political reality, and indeed the such circumstances soon materialized. The era of reforms during Benjamin Netanyahu's time as Minister of Finance was characterized by great friction between the Histadrut and the State. Economic policy soon translated into a series of long-running conflicts in the economy as the strike tool in public sector services, including Essential Services such as sea ports, became one that was frequently used or threatened to be used. In the

(published in Nevo, September 28, 2011); General Collective Dispute (National) 40815-7-13 Tel Aviv and Central District Chamber of Commerce, Association of Chambers of Commerce v. New General Histadrut (published in Nevo July 29, 2013; Collective Dispute (Regional Haifa) 50534-03-14 Israel Electric Company Ltd. v. New General Histadrut (published in Nevo, April 3, 2014; Collective Dispute (Regional Haifa) 31740-05-13 Israel Electric Company Ltd. v. New General Histadrut (published in Nevo, June 5, 2013; Appeal Permission Request (National) 20768-04-14 State of Israel v. Israel Electric Company Ltd. (published in Nevo, July 16, 2014).

²² Appeal of Collective Dispute (National) 18983-09-14 New General Histadrut v. State of Israel (published in Nevo, May 4, 2017.

²³ See details in Footnote 36 below.

absence of a political solution to those disputes, the Labor Court adopted a policy of intervention in the actual disputes and significantly expanded its functions, contrary to the original intent of the legislature.

When the collective labor laws were enacted, significant emphasis was placed on the autonomy of the parties to negotiate freely without the intervention of the State (including the judiciary) or of other third parties. The reluctance of the State to intervene in disputes can be seen in the legislative process of the **Labor Court Law, 1969**. The most significant change distinguishing the original government proposal that was submitted and the proposal that ultimately passed is the deletion of a section that gave the Labor Court the right to interpret facts in relation to the parties' claims of a collective dispute.²⁴ Originally, the planners of the legislation sought to address the situation of multiple strikes in general and non-approved strikes by the Histadrut in particular, and therefore sought to provide tools to the Court to help resolve disputes in the legal arena rather than by exercising organizational power on both sides. However, the main section that gave explicit jurisdiction to the Court became controversial and due to very strong opposition in the committee, was deleted from the final proposal submitted to the Knesset.²⁵

Nevertheless, since 2003, the Labor Court began functioning as an mediator in collective disputes.²⁶ What began as court interference with the aim of preventing a strike of the port authorities that would have potentially caused significant damage to the economy has transformed in recent years into recurring phenomenon in many disputes whereas the Labor Court acts as an mediator between the parties to the dispute.²⁷ What began as a phenomenon of implementing measures that interfere with

²⁴ Section 25 of the original proposal. The section stated that if, for example, a labor organization declared a labor dispute following a cost-of-living supplement declared in the economy and the dispute was regarding the level of the supplement, the Labor Court could decide factually as to the claims.

²⁵ Section 25 of the government bill passed on first reading was deleted by the designated committee established by the Knesset to discuss the law. The section empowered the Labor Court to establish facts in collective disputes, for example, if there was a dispute regarding a cost-of-living supplement or the way of computation, the Court would be entitled to decide the factual dispute at the core of an economic dispute. In the language of the section at the request of the government, or the workers' union representing the largest number of civil servants, the National Court will have the authority to determine facts regarding a civil service labor dispute. This provision will apply, mutatis mutandis, to any company or administrative body subject to the State Comptroller's Audit under the State Comptroller's Law, 1958 [Integrated Version]. For more information, see the Joint Committee file of the Labor Committee and the Constitution Committee to the Labor Courts in the State Archives, Gal file 2215/7.

²⁶ Segal, Litor, *Activism and Passivism*, pp. 75-84, see also: Litor, Lilach. *The Strike: Law History and Politics*. Raanana: Open University, 2019. p. 65 and also Footnote 8. The beginning of the phenomenon in 2003 in the sea ports dispute, under which the Labor Court ordered the government to freeze legislative procedures for a reform of the ports, issued an order to prevent the strike and required the parties to negotiate: *Collective Dispute (National) 12/03 Ports Authority v. New General Histadrut*, (October 10, 2003).

²⁷ See an explanation of the Court's approach by Judge Yigal Plitman, Former President of the Labor Court. Remarks by the Former President of the Labor Court in the launching of the book "The Strike" (June 5, 2019), [<https://www.tacharut.org/plitman-speech-6-6-2019>].

the autonomy of the parties on rare occasions according to the intensity of the dispute²⁸ later became the Court's routine policy of **directing** the dispute according to the content of the parties' arguments in the dispute.²⁹ Indeed, at present, the Court does not function solely as a court of law that adjudicates labor issues, interprets laws and sets precedents that guide future judgment, but tends acts as a "soft" arbitration institution, a sort of center for dispute resolution and settlement, preferring to reconcile and bridge any dispute at the cost of avoiding a decision. In this way, the Court seeks to be the body that balances the conflicting interests so that the means employed by the disagreeing parties be proportionate to their damages and relative to the content and strength of their claims.

In general, the treatment of collective disputes is carried out in four chronological stages, which we will call herein the "Conflict Management Doctrine":

1. The parties to the dispute are summoned to the judge's chambers to clarify the dispute and to agree on steps to advance negotiations.
2. The parties are urged to make a public statement of in which they agree to enter negotiations- an agreement that at times is backed by an official court ruling.
3. A decision requiring the parties to report to the Court about progress in their ongoing negotiations .
4. In political disputes – a decision to issue a Prevention Order against the strike, or to reduce its scope during the negotiations, while at the same time a decision to freeze changes desired by management or changes that the State, as sovereign, decided to implement – whether that change under a law, for the promotion of legislation or by government decision.

In practice, the Court prevents many strikes by issuing prevention orders, but the result the strikers sought to achieve ends up being ultimately promoted instead through legal tools and often significantly so. That is, even in cases where, by law, it should have been deemed an illegal strike or a conflict that did not concern labor relations (in the classical sense), the Court still applied the Conflict Management doctrine. For example, the Court prevented the implementation of reforms secured in Knesset legislation and ordered a complete halt to the legislation – a situation that clearly is not included in the list as a grounds for initiating a labor conflict – because it treated the case of workers' intent to strike against legislation as a standard labor dispute for which the Conflict Management doctrine should be applied.³⁰

²⁸ See *Mironi*.

²⁹ Name, also, see affirmation for the application of the doctrine in the words of Yigal Plitman, Former President of the Court in Footnote 28.

³⁰ See Plitman's remarks in Footnote 28, and as a clear example, the judgments detailed in Footnote 22, which stand out as part of an accumulation of similar proceedings.

This position of the Court, especially in labor disputes with a political bent, did indeeds reduce the number of strikes and direct damage that could be caused to the public, but at the same time prevented the implementation of reforms, prolonged the conflicts, and in fact created legitimacy for declaring disputes that should not have been protected under the law at all. The Court has actually created an incentive for workers' organizations to strike and initiate a labor dispute even in cases where the workers do not have legitimate grounds for declaring a dispute under law – on the assumption that the Court will still force the employer and the State to negotiate and even temporarily curtail employer and State action.

The Conflict Management doctrine took the bargaining power that was previously expressed as the workers' freedom to strike and converted it into a tool of legal-political force that workers can wield in any situation – including situations that previously would not have been considered a classic labor dispute over wages and working conditions. The doctrine is similar to arbitration in the sense that it is an alternative tool to a strike as far as workers are concerned, but its price, unlike arbitration, is the absence of a decision resolving the conflict. Moreover, the doctrine often leads to an broadning of the boundaries of the conflict. Would it have been that the doctrine was being implemented by a separate and independent body, this might have been seen as a positive development , but the fact that the Labor Courts are the one's managing the dispute leaves no other body allowed to discuss and issue binding decision on legal questions relating to a given labor conflict. Even if, for example, the State believes that it has the authority to take action and is not obligated to negotiate, there is no judicial court to which it may turn to (except the High Court of Justice) other than the Labor Court,.

The Court's handling of labor disputes has made it a major player in their management. While banning an outright strike, it has offered workers an alternative to a strike through legal tools, but without a preliminary and systematic discussion on whether the strike, would have even been deemed legal in the first place. The Court's treatment of such situations, which in effect limited strikes in Essential Services, created a host of other problems, making it unclear whether their choice of the 'Conflict Management' doctrine is preferable over what was previously - where employees' had autonomy to decide whether and when to strike in a labor dispute.

For those professionals involved in collective labor law, the Labor Court's treatment is considered a good and balanced solution to strikes in Essential Services.³¹ However,

³¹ See the remarks of the President of the Labor Court, Justice Varda Wirt-Livne, in the session "Who wants to break the committees, and who wants to weaken labor?" At the Annual Labor Conference (September 4, 2018) [<https://www.tacharut.org/varada-/speech-4-9-2018>] See also Litor's opinion, despite marginal criticism: Lilach Litor. Regulatory Constitutionality in the Era of Privatization and Strikes affecting Competition: Between the Labor Court and the Antitrust Court. Law Studies, 379-448, and also: Orna Lin, Neta Shapira and Moria Glick, Court Uniqeness must be Maintained (December 11, 2018)

outside the closed world of labor law, there is criticism for the Labor Court's solution that claims that the side effects of the 'remedy' are more dangerous than the 'disease' itself.³² Beyond the problems it creates, the soft arbitration institution has undermined the Court's classic role as an interpreter of the law. Because the Court deals on a case-by-case basis, uncertainty has been created regarding what is permissible and what is prohibited in work relationships in general and regarding strikes in particular. In addition, dealing with politics weakens the Labor Court's status as a professional and objective body that can be approached by any party seeking a just remedy.

4.5. The Right to Strike as a Constitutional Right

The legislature did not define what constitutes a strike. For many years, the Supreme Court has given the right to strike status of a fundamental right, using terms such as "sacred tradition".³³ However, when asked as to whether the right to strike constitutes a constitutional right, the Supreme Court decided it was premature to make that determination. Despite a strike being a fundamental right, it would not be correct to say it constitutes a constitutional right without appropriate legislation, and as such the right to strike should and could definitely be balanced and restricted against other rights.³⁴

On the other hand, in recent years the Labor Courts have issued several rulings showing a growing tendency to give the right to strike the status of a constitutional right – either as a right derived from the constitutional right of freedom of association or as an independent right with constitutional status.³⁵ The Labor Court is not consistent in how it

[<https://www.globes.co.il/news/article.aspx?did=1001264207>] + Tzahi Sade, A Decision that will Cause more Strikes? Behind the Storm in the Labor Courts (November 17, 2018)

[<https://www.ynet.co.il/articles/0,7340,L-5402664,00.html>].

³² Will be presented by this author and others. Alon Tuval, In the "Labor Law" Family, Laundry is done in the House (December 24, 2018) [<https://www.globes.co.il/news/article.aspx?did=1001266006>].

³³ "There is nothing further from the Israeli legislature than the desire to eradicate the strike: If one of the justices in England called a strike, in a recently-issued judgment, a "holy cow", then we should at least consider it a sacred tradition so as not to allow any more reflection on it", Civil Appeal 25/71 Feinstein et al. v. Secondary School Teachers Organization et al., Judgment Y(1) 129.

³⁴ High Court of Justice 1181/03 Bar-Ilan University v. National Labor Court, Session (3) 204 (2011) | It is customary to cite the Bezeq case in the High Court of Justice (Footnote 27) as anchoring the right to strike as a constitutional right. Those who do so are not acting honestly because Justice Levin's position was not joined by the other judges.

³⁵ For the most part, the Labor Court derives the right to strike as an inseparable consequence of the constitutional right to freedom of association. However, there is a trend to establish the status of the right to strike as a constitutional right. For example, in the Rami Levy ruling (Collective Dispute) (Regional Beersheva) 14979-12-15 The New Histadrut – Bikurei Hashikma Ltd. (published in Nevo, March 12, 2017) The Court states that "the ruling is that the status of the right to strike is as a fundamental constitutional right" and grants the right to strike a constitutional and independent status. However, a review of the many sources brought by the Court in the same ruling indicates a determination which has no basis: (Appeal of a Collective Dispute) National 41357-11-12 The New Histadrut v. Electra Consumer Products (1951) Ltd. (January 15, 2013) [[Reference to the right of association as a constitutional, not to the right to strike]; Labor Court Case 30-4 "Amit" Maccabi Workers' Union – The New Histadrut, Labor Court Ruling 61 (1995)] as above; Labor Court Hearing 10 / 98-4 "Delek" - The Israel Fuel Corp. Ltd.

views the status of the right to strike and those times in which they do attribute constitutional status, their sources for granting such status are unclear.³⁶ Nevertheless, the question of the status of the right to strike in the Labor Court is significant as it is the highest instance for labor matters, and cannot be appealed.

There is disagreement as to whether the Labor Court must comply with Supreme Court rulings or whether the legislature granted it interpretative freedom similar to the Supreme Court, and it should only recuse itself before a petition to the High Court of Justice on a particular matter.³⁷

In recent years, the Labor Court has adopted the judicial review tools in constitutional matters similar to the practices employed by the Supreme Court, so there should be an awareness that judicial review may be administered to legislation limiting strikes in Essential Services.

The significance of defining the strike as having constitutional status would be the difficulty to petition to limit it. If the right to strike is a constitutional right, then it can only be limited for what the court deems a "suitable purpose" and to "an extent that does not exceed what is required", which may expose any legislation to limit strikes and measures to limit strikes to constitutional scrutiny based on ideological motivation. This

– The New Histadrut Labor Court Ruling 337 (1998, hereinafter also: the Delek ruling [reference to the freedom of association only, not in a constitutional context]; High Court of Justice 7029/95 The New Histadrut v. National Labor Court, Ruling (2) 63 (1997) There is no reference at all to the issue of the right to strike, the reference is to the freedom of association not in the context of constitutional status; Appeal of a Collective Dispute 1008/00 Horn & Leibowitz Ltd. - The New Histadrut, [Includes reference to the right of association, not to strike]; Appeal of a Collective Dispute 57/05 The New Histadrut - State of Israel et al. Labor Court Ruling M 481 [This refers to the Metrodan ruling - it is claimed that there is a fundamental constitutional right, based on the academic article by Steve Adler and on the Bezeq High Court ruling]; Conflict between Organizations 9685-07-12 Committee of Israel Railroad Employees - New General Histadrut (July 15, 2012) [This refers to the right of association as a fundamental right and it is claimed that the strike is its derivative, but it is not stated that the right to strike is a fundamental right].

³⁶ The Court tends to cite three main sources for determining constitutional status for the right to strike or for establishing its position: the Bezeq ruling, which is brought as evidence incorrectly – as stated in Footnote 46. Former Supreme Court President Aharon Barak's statement, expressed as a personal position in a short paragraph on an academic stage (A. Barak. Interpretation in Law, Vol. 3, Constitutional Interpretation (1993) 431). An academic article by Former President of the Labor Court, Steve Adler, (Steve Adler, Freedom to Strike in the Judgment, The Branson Book, 2000 (in which he attaches a title on " The Right to Strike as a Constitutional Right" to explain about the status of the right to strike as part of the constitutional right of freedom of association, about its high status in the Supreme Court, and adds a quote of Aharon Barak's concise position according to the above source. He also cites, as another source regarding strike status as a constitutional right, that it is derived from the proprietary right anchored in Basic Law: Human Dignity and Liberty, which, according to the Labor Court ruling, gives employees a proprietary right in their workplace that gives them rights in the work relationship. If so, despite the conceptual confusion, which often appears intentional, the sources relied upon by the Court are increasingly trying to identify the strike as a constitutional right without necessarily doing so directly and explicitly, but by creating a critical mass of references that may be sufficient to treat the right to strike as an independent constitutional right in the future.

³⁷ Moran Saburai, On the Open Boundaries of the Forum: Between the National Court and the Supreme Court, Labor, Society and Law M (2012) p. 7.

question has not yet been decided, but to the extent that it depends on the Labor Court, the trend is clear. It is therefore to be expected that a move to limit strikes in Essential Services, insofar as it is not anchored clearly crafted legislation, will sooner or later be subject to judicial review. Even if the legislation itself is not reviewed, its implementation and scope, if not clearly defined and balanced, could be limited and all but struck down, draining the measure of all content the legislators had in the first place. It is therefore advisable to clearly define what authority the Labor Court has in this matter and to set clear limits to the right to strike.

4.6. International Conventions

In addition to the legal ambiguity and the resulting solutions, Israel has also signed two international conventions of the International Labor Organization to maintain freedom of association in labor relations: Convention no. 87 and Convention no. 98.³⁸ The conventions include a duty to maintain freedom of association in labor matters and the autonomy of labor organizations, but there is no mention in the conventions of the freedom to strike. However, the International Labor Organization established a Freedom of Association Committee for the interpretation and oversight over the implementation of the conventions, which took liberties to interpret the obligations under the conventions. Among other things, the Committee determined that the right to strike is part of the freedom of association and laid down rules and guidelines regarding the proper intervention case of a strike.

Both conventions do not apply to the armed forces and the police.³⁹ Convention no. 98 even further recuses itself and states that the rules of the Convention do not apply to "officials engaged in the State's administration". Therefore, restricting the strike in the public sector and in public services is a matter of interpretation even in the context of the international conventions to which Israel is a signatory. Interpretation of the conventions, on the other hand, may be confusing and its intent can be detected more easily than a specific law can be identified as derived from it, and in any case, the conventions require that the signatory countries ratify their principles through appropriate legislation. Nevertheless, there are different approaches to the manner and extent that they bind the State after they are approved but not ratified in legislation.⁴⁰ The status question is brought up even more in the decisions of the Committee on Freedom of Association regarding the interpretation of the conventions.

³⁸ A convention (no. 87) on the freedom of association and protection of the right to organize, and a convention (no. 98) on the application of the principles of the right to organize and for collective bargaining.

³⁹ Article 9 of Convention 87 provides for the freedom of each country to determine the scope and manner of application of the Convention to the armed forces and police. The same reservation is also found in Article 5 of Convention 98, which adds that laws enacted prior to the adoption of the Convention will not be violated.

⁴⁰ For more information, see: Gnainski, Nir. *The Constitutional Status of the Right to Strike*. Sarigim-Leon: Nevo Publishing, pp. 46-48.

Over the years, the Committee on Freedom of Association has developed various and sometimes contradictory rules on maintaining freedom of association in the context of **Essential Services**. As a rule of thumb, strikes can be limited in **Essential Services**, but the Committee's sense of what constitutes an Essential Service is different from that accepted in public discourse in Israel. While in Israel, the Ports Authority and Railroad are considered **Essential Services**, the Committee refers to essential services in a more narrow sense: services in which an impairment of their supply could adversely affect **public life, personal safety or health**.⁴¹ In other words, it seems that the question of economic harm to the public or to the State cannot be considered in defining the **Essential Services**.

However, the Committee does appear to permit the restricting of strikes in **Essential Services** when it could cause lasting harm and significant suffering to the public, but suggests that a precaution should be taken not to use this permission widely. Furthermore, when the State decides to limit a strike, it must provide workers with alternative means to advance their interest and resolve disputes. This is usually an arbitration body or a strike restriction committee. According to the Committee on Freedom of Association, such entities must be independent and free from government or budget considerations.⁴²

As to which services can be considered **Essential Services** for which the strike can be restricted, the Committee does not provide a clear answer, but guidelines. First, the strike must not be restricted in advance, except in a national emergency.⁴³ Second, the definition of an Essential Service may differ from country to country depending on the circumstances of the country's economy and its public needs.⁴⁴ Third, the definition of an Essential Service is not a closed list, since there are services where a strike does not initially jeopardize the public but becomes one that endangers the public in view of certain circumstances or after a prolonged period – it can be restricted at that time.⁴⁵

⁴¹ The chapter: Freedom of Association. Compilation of decisions of the Committee on Freedom of Association /. International Labour Office – Geneva: ILO, 6th edition, 2018. p. 156.

⁴² Name, p. 154, p. 162, 166-167.

⁴³ Name, p. 154.

⁴⁴ Name, p. 156.

⁴⁵ Name.

Regarding public servants, the Committee states that their right to strike may be restricted but warns against widespread use of the tool on all public service employees, in the public services or in government-owned companies.⁴⁶ The restriction is only appropriate when it comes to **public servants exercising authority on behalf of the State**.⁴⁷ Therefore, limiting the strike of court employees engaged in the core activity of the courts, attorneys, foreign service, enforcement agencies in general, and officials who are in charge of state revenue – will most likely be allowed. To illustrate the Committee's position, it can be said that a strike by tax-collecting officials on behalf of the State can be restricted, but a strike by the Tax Authority's computer services employees must not be restricted.

Places where the Committee allowed the State to pre-empt the right to strike or at least require a relatively broad supply of service are security-type organizations and a hierarchical structure such as prisons and fire services that operate in a similar manner.

In the Israeli context, banning strikes in **Essential Services** cannot be across the board, but rather in particular cases. This, as long as Israel is signatory to the above conventions. In contrast, the United States decided not to sign these conventions, while New Zealand has refrained from signing Convention 87. If Israel would like to exit the conventions as well, the next exit date will be between 2020 and 2021. The list of services in which a strike can be restricted and which cannot be restricted according to the Freedom of Association Committee is found in **Appendix A** and a list of services in Israel and the strike restriction rules in their regard according to the Committee's rules is found in **Appendix B**.

5. The Problem with Strikes in Essential Services

In addition to the problems enumerated so far, a strike in Essential Services is problematic in several unique ways:

1. Public Damage – The damage to the public is wide-ranging, and is disproportional to importance of the conflict in the specific workplace. Therefore, unlike a strike in a non-essential service that has some impact on the public, the damage in this case is excessive and exaggerated – in terms of law, order, human life and economics.

2. Infringement of Governance – As a result of the damage to the public, the Essential Service strike gives the strikers bargaining power that is extreme and capable of thwarting, diverting or delaying economic policy outlined by the Knesset and the government or to block the enforcement of such policies by regulatory bodies. That is

⁴⁶ Name, pp. 154-155.

⁴⁷ Name.

how strikes of political nature are used widely, often to block structural changes at the macro-economic or industry level.⁴⁸

3. Disproportionate Power – Use of a sympathy strike (where workers strike in identification with the dispute of workers in another Service, but not a dispute of their own) in an Essential Service or a strike in an essential service as part of a general labor dispute in the economy exerts significant pressure on the government and serves as a powerful bargaining chip in the hands of labor organizations seeking to exert their power in the political field and influence overall economic policy.

4. Workplace Damage – The fear of the impact of a strike in an Essential Service changes the balance of power within the workplace dramatically. The need to prevent a strike results in the government's over-involvement in the management of the workplace, and the need to prevent the strike actually gives the workers' committee a disproportionate power directed against management's decisions. In that way, those bodies become largely unmanageable as any confrontation with the workers' committee could be translated very quickly into a crisis requiring national-level involvement. Inability to manage results in these organizations' deterioration and wastefulness.⁴⁹

5. Damage to the Democratic Mechanism – Employees have the right to choose because they are citizens, and an equal ability to influence the policy-making process through elections and civic activity. The agreement to strike, as an act that extends beyond the workplace, is in fact a political influence tool whose main strength is the harm to others and which is not given to other bodies in the political system.

⁴⁸ See a series of partial strikes against the electricity reform from 2007 to 2017 that culminated in permission for a widespread strike in 2017 against electricity reform, against which the State filed a petition to the High Court of Justice: Appeal of Collective Dispute (National) 18983-09-14, *The New Histadrut v. The State of Israel* (published in Nevo, May 4, 2017) ■ Another key example is the port reform for the establishment of two new ports in Haifa and Ashdod, during which wildcat strikes broke out alongside a series of legal proceedings that were intended to strike against the reform and then impose a duty on the state to negotiate the reform with the workers. That outline was anchored in a constituent ruling: General Collective Dispute (National) 40815-07-13 *Tel Aviv and Center Chamber of Commerce – Association of Chambers of Commerce v. The New Histadrut*, July 29, 2013 (hereinafter: *The Ports 2013*).

⁴⁹ For example: a general labor dispute in the economy regarding the phenomenon of contract workers (mega strike) (2011) <https://news.walla.co.il/item/1867538> + a general labor dispute in the economy regarding an increase in the minimum wage to NIS 5,300 (2014) <https://www.calcalist.co.il/local/articles/0,7340,L-3645300,00.html> ■ Sympathy strike with Teva workers following dismissal intent in crisis (2017) <https://news.walla.co.il/item/3119191> ■ General labor dispute in the economy following the decision of the commissioner of Insurance to order a cessation of the marketing of collective nursing insurance (2017) <https://www.ynet.co.il/articles/0,7340,L-5039731,00.html> ■ Threat of a general strike in the economy in support of the disabled protest (2017) <https://www.ynet.co.il/articles/0,7340,L-021934,00.html> ■ Threat of a sympathy strike in the public sector and in other services as identifying with the Broadcasting Authority labor conflict due to the reform (2017) <https://www.themarker.com/career/1.4038402> ■ Labor dispute in the economy against building industry accidents (2018) <https://www.calcalist.co.il/local/articles/0,7340,L-3747187,00.html> ■ General labor dispute in the economy over reductions in pensions and the deficit in the old pension funds (2019) (<https://www.calcalist.co.il/local/articles/0,7340,L-3764295,00.html>).

Therefore, in summary, the problem of a strike in Essential Services is that its effects go beyond normal labor relations in the workplace, and therefore, any proposal to limit a strike in Essential Services should mitigate the severity of the harm to the public and the ability of labor organizations to translate the strike act into a radical tool whose effects extend radically beyond the boundaries of the workplace.

6. World Comparison

6.1 Background

A study of how the issue of strikes in Essential Services plays out around the globe reveals that countries can be divided into three main groups:

1. Northern and Western European countries (Scandinavian)
2. Southern European countries
3. Anglo-American countries

Scandinavian countries are characterized by high rates of organization, and their associations are based at the industry level rather than at the enterprise level. These countries are characterized by a tolerant culture in labor relations and cooperation. Self-imposed limitations through collective agreements are much more common in these countries than in others, without the need of state laws to regulate collective relationships.

Southern European countries are characterized by labor relations where there is less cooperation and greater sympathy for strikes as a tool of social struggle. Unlike the Scandinavian countries, the parties impose less self-regulation, but state-level regulation is also relatively weak. As a result, the court in these countries is given extensive powers review the merits of a dispute in order to balance the constitutional rights with the right to strike.

Anglo-American countries are characterized by more rigid labor relations and associations organized per enterprise and less per-industry. State regulation in these countries is far stronger in relation to other countries in matters concerning strikes arising from labor relations. These countries have established agencies with arbitration, mediation, investigation, enforcement and jurisdiction over labor matters. It is evident that the treatment executed by these authorities is relatively quick and that there is a structural separation between the parties implementing the various powers. These authorities ensure that prerequisites set out in the law as a condition for a legal strike are indeed implemented and respond early to problems in labor relations with the aim of preventing a strike and redirecting an inquiry to a court of law.

Culturally, the relationships and nature of organizing in Israel are more similar to the Anglo-American countries, but fundamentally different in terms of the centrality of

workers' organizations. While for the most part, each enterprise stands as a separate bargaining unit and it is rare to find associations at the industrial level, most of the workplaces are organized under one governing body- the Histadrut. This is true for public sector employees as well, where civil servants are considered one bargaining unit represented by the Histadrut, while at the same time the Histadrut committees negotiate individual terms of employment with the ministries and sub-units.

In terms of regulation, Israeli legislation is based on the Scandinavian model, which gives autonomy to the parties and assumes that they will self-regulate, but in practice it is more similar to Southern European countries where the parties tend not to adopt co-operative and dispute resolution mechanisms. Also, the Labor Court constitutes the single body that regulates the rules and resolves disputes in this area as if it were a regulator, but it lacks the tools of a regulator. The Court's tendency to examine each case on its merits and its tendency to prefer mediation creates uncertainty in the labor relations market, thereby incentivizing unnecessary disputes.

6.2 Limiting the Right to Strike

In terms of the public sector and Essential Services, there are a number of tools that exist in the other countries and are absent in Israel, or rather exist but are not implemented effectively.

6.2.1. Countries where the parliament/government may order termination of a strike

In Norway, Sweden and Denmark, the Parliament may order the strike to be terminated by means of the "Return to Work Law" due to national, economic or social interest. In Japan, the prime minister is allowed to halt a strike for similar reasons of clear state interest and for the sake of maintaining the public welfare, and similarly, the Spanish government may order the termination of a strike and transfer the dispute to arbitration if it is deemed to be detrimental to the country's economy.

In Belgium, the presiding minister may order the termination of a strike in services defined as essential, such as security, transport and public broadcasting, as well as a list of services defined as essential in the private sector as determined in agreements between workers' organizations and employers' organizations. Belgian public servants were traditionally prohibited from striking until 1995, when they were allowed to go on strike, but they could be punished if they improperly used their right to do so.

In Canada, alongside the police and fire fighters where mandatory arbitration is practiced, each district adopts its own legislation on limiting strikes in essential services and defines the essential services that must be maintained at all times. Accordingly, mandatory arbitration mechanisms exist in some districts. The regulatory authority may

terminate strikes, order mediation or demand minimum service according to the service affected by the strike. In addition, the General Parliament may terminate a strike and enact a “return to work” law if it is convinced that there is a special interest in doing so or because of significant economic damage.

Australia has a very strong regulator that must be contacted prior to a strike and that has many powers to delay or prevent a strike if he considers it to be invalid, contrary to an agreement or that the negotiations have not been exhausted prior to the request to strike. If the strike causes significant economic or public damage, he may limit the strike as well. The Minister in charge has similar authority and he may propose that the regulator limit the strike or he may limit the strike himself if he is convinced that it has a significant impact on the country’s economy or on the public.

6.2.2. Countries where strikes are forbidden for public servants

There are countries that restrict strikes among public sector workers. Here, a distinction must be made between the different public sector workers: civil servants, who work mainly in government, and public servants. Public servants are characterized by the authority they exercise on behalf of the state. The definitions of who is considered a civil servant versus a public servant vary from country to country.

In the United States, the strike ban is extremely extensive. Federal government employee strikes are prohibited, as are civil servants strikes in 31 states. The other 19 states not only prohibit a strike but overwhelmingly prohibit the organization of civil servants. An exception to this rule is rail and air transportation workers, whether private or public, who fall under a different type of regulation. In these services, there is a regulator who acts as a mediator and arbitrator on labor matters for which long hearings are ongoing. While dealing with the conflict, the strike is prohibited, but management changes are also prohibited, which could impair the functioning of those workplaces.

In Sweden, strikes are prohibited according to a collective agreement for civil servants exercising authority on behalf of the state. The same is true for **Denmark**, which previously banned the strike of all government workers who were considered civil servants, but with the reduction of workers considered to be civil servants and the expansion of the status of ordinary workers working for the state, the group banned from striking was also reduced. In Germany, there is a broader strike ban that, in addition to classic civil servants, also includes teachers and social workers, for example.

6.2.3. Countries where there is a minimum service obligation during a strike

There are countries where minimum essential services must be provided. This is true in Canada and to some extent in Belgium there is a similar arrangement. In Italy and

Spain, the practiced method requires the provision of minimum service at all times. In Spain, this is ordered by the court and in Italy there is a different mechanism. In Spain, Essential Services are considered services deriving from the rights conferred by the Constitution and each government office may specify the bodies and workers under its authority whose work complies with this definition and apply it to them. The services that are customarily restricted from striking in Spain are transportation, hospitals and other health services, the supply of energy, the supply and treatment of water, waste treatment, post and education. For example, in transportation, it is customary to require a minimum service of 50%-80% of regular service by court order.

In Italy, there is a regulator that requires workers' and employers' organizations to reach an agreement on a list of Essential Services or essential workers that must continue to work even during a strike. The restriction must be usually anchored in an agreement that the regulator approves of, or conversely is imposed by him in the absence of an agreement. The list of Essential Services is similar to that practiced in Spain and also derives from the rights conferred on citizens by the Constitution. The regulator may halt a strike for a limited period and order negotiations or postpone the start of the strike for negotiations. For example, in transportation services, it is customary to require full activity during rush hours, provision of a minimum of 50% of regular service, and by at least 30% of the normal workforce. Employees who do not follow the regulator's instructions may be fined, as well as workers' organizations for which the entitlement to collect organization fees may be revoked for a certain period.

6.2.4. Countries where workers have a duty to vote as a condition of a strike

In Ireland there are no special mechanisms for restricting strikes in Essential Services but there is a duty to hold a vote among workers before a striking in which the strike must gain majority support. Australia and the United Kingdom have the same duty in all workplaces – regardless of the type of service, and it applies to both public and private workplaces. Services that are defined as essential in the UK require increased support in a vote by secret ballot. As a rule, the law requires voting participation of at least 50% of the workers who have the right to vote and that the majority will vote in favor. In essential services, in addition to this obligation, there is a requirement that at least 40% of all those with the right to vote (not among the actual voters) vote for the strike for it to be protected by law. In Germany, only an organization having as members 75% of the employees in the workplace where a strike is planned may declare a strike.

There are other mechanisms in various countries designed to reduce strikes and limit them to certain times. For example, countries such as Germany, Ireland and Finland state that disputes that do not concern labor relations will not be considered as a matter for a strike or labor dispute. In the Scandinavian countries and to a large extent also in Germany and the U.S., it is customary to limit a strike during a collective agreement and

to allow a strike only at or towards the end, with a goal of reaching a new collective agreement. In Scandinavian countries, if disputes arise during the agreement, it is customary to resolve them by legal inquiry in the absence of agreement, or if there is a concern about financial harm or a question about an administrative decision violating the terms of employment, the matter will be resolved through an external body and not by strike. In addition, it is mandatory to contact an intermediary body before a strike and sometimes even as a condition for its implementation, in countries such as the United Kingdom, Australia, Denmark, Norway and Finland.

7. Restriction Mechanisms and Challenges

7.1. Mechanisms for Limiting Strikes in Essential Services

There are several accepted methods of limiting strikes in Essential Services:

7.1.1. Prohibition on strikes in Essential Services

As per this option, the law sets a strict prohibition on a strike in a particular service. The prohibition to strike is full and valid at all times, and as an alternative to the workers' right to strike, they are given the right to apply for arbitration in which the employer is obliged to participate and to obey the arbitrator's decisions.

7.1.2. Provision of minimum service defined in advance

Another method is to require the Essential Service to provide minimal service at all times, so that the strike is effectively limited. This method does not impair the freedom of workers in non-essential positions and enables a strike with less damage to the public. There are two ways to apply this method:

1. Determine through legislation the minimum level of service required for each service.
2. Include an obligation to determine the minimum of a service to be provided and the employees to be prohibited from striking in a collective bargaining agreement subject to the approval of the regulatory body.

7.1.3. Provision of minimum service in the strike outline submitted in advance

In contrast to the method of pre-determining the minimum service in a collective bargaining agreement or legislation, the workers' organization seeking to strike must submit the strike outline to the regulatory body, which in turn will determine whether will be disproportionately harmed. If the regulatory body believes that this is so, it may disqualify the outline and prohibit the strike.

7.1.4. Ad hoc provision of minimum service

Under an ad hoc strike method, the employer or third party may appeal to the regulatory body and demand that it limit the strike due to its damage. In such a case, the regulatory body may limit the strike if it considers that its damages are disproportionate or to order the strike to be frozen for a certain period while directing the parties to negotiate and under extreme conditions even turn to arbitration. The advantage of this type of restriction is its flexibility, so that a strike whose damage is great can be limited even in services that are not initially listed as 'Essential'. For example, even if urban sanitation services are not considered essential services on a permanent basis, a prolonged strike will cause harm to the public, and then the regulatory body may limit it. The ability to halt the strike allows a cooling-off period for negotiations that may lead to a solution. The main disadvantage is the uncertainty it creates regarding what is allowed and prohibited in a strike, so that unnecessary friction and anger may be created by the striking bodies towards the regulatory body due to its decisions.

7.2. Challenges in the methods of limiting strikes in Essential Services

There are several challenges in the different methods of limiting strikes:

1. Regulatory extremism – The more stringent the restriction on the freedom to strike, the more likely workers are to break the rules and initiate rampant strikes. Unions of a violent nature may frequently use unlawful strikes or employ methods such as mass submission of sick leave certificates as has happened, for instance, in the Israel Railroad services. A strike constitutes a form pressure relief valve, without which the chance increases of a strike contrary to the decision of the regulatory bodies and without the approval of the workers' union. The way to deal with this phenomenon is to reduce conflicts when they start and settle them early, not to limit the strike beyond what is required and to ensure effective enforcement against the striking workers by eliminating the tort defense and the protection against dismissal, or by imposing fines.

2. Loss of legitimacy – the more a regulatory body - be it a mandatory arbitration institution or a strike-restricting committee – becomes more involved in the labor dispute, there is a growing danger of losing its legitimacy in the eyes of either party or creating dependence on the arbitrator for daily conduct. The loss of legitimacy may result from decisions that are disliked by one or both parties, which could lead to unilateral actions such as illegal strikes or an inflation of the conflict. If the body enjoys legitimacy, but there are no clear boundaries in the labor relations as whole nor as to what matters may come before the institution for arbitration, dependence could develop on the institution's arbitration decisions in order to carry out routine labor-relation related actions. A situation in which a workplace is in an internal labor dispute, in which employees want to strike but must come to an arbitrator to decide their case, or a situation where management must obtain approval from the arbitrator in order to make

routine decisions, is an impossible situation in terms of workplace management. To deal with this challenge, certainty must be increased in the labor relations and the authority of the arbitration body must be well defined, to the extent that it is a part of the regulation system.

3. Economic irresponsibility – The use of mandatory arbitration to determine arrangements that have budgetary significance can turn into a double-edged sword. Naturally, the arbitrator must be independent and free from budget or employer considerations. The problem is that he then has no incentive to be financially cautious in his decisions and does not have an incentive to deal fairly with someone else's money. In Canada, for example, there is dissatisfaction with the existing mandatory arbitration mechanism, which turns out to be very expensive for public employers.

4. Uncertainty – When it is unclear what will become of the strike and whether the authoritative body will halt it and intervene or not, an over incentive is created to appeal to the authoritative body, to “try one’s luck” in order to stop the strike. On the part of the employees, this is an incentive for irresponsible behavior because it is clear that someone else will stop them, and if it does not stop them, they will gain public legitimacy. It is therefore advisable to make limited use of this mechanism which gives broad discretion to the regulatory body or to the Labor Court. It is recommended that this means be used only as a supplement in rare or extreme cases.

8. Possible Solutions

8.1. Solutions to labor dispute issues

8.1.1. Increase certainty in collective relationships

1. First and foremost, the legislature must clearly define the relevant laws, including an updating of the appropriate sections of the Settlement of Labor Disputes Law that currently have become obsolete.
2. Restore the Court to its position as interpreter of the law and for the resolution of disputes in the implementation of agreements while they are valid. This can be achieved by prohibiting a strike during an agreement in a public service and determining the obligation to pay mutual compensation.
3. Define and clearly state the legal grounds for a strike on the one hand and emphasize the illegal grounds on the other, such as a political strike or a strike against a third party.

8.1.2. Define the labor conflict and its boundaries

1. Determine that a protected strike will be a strike only within a declared labor dispute.

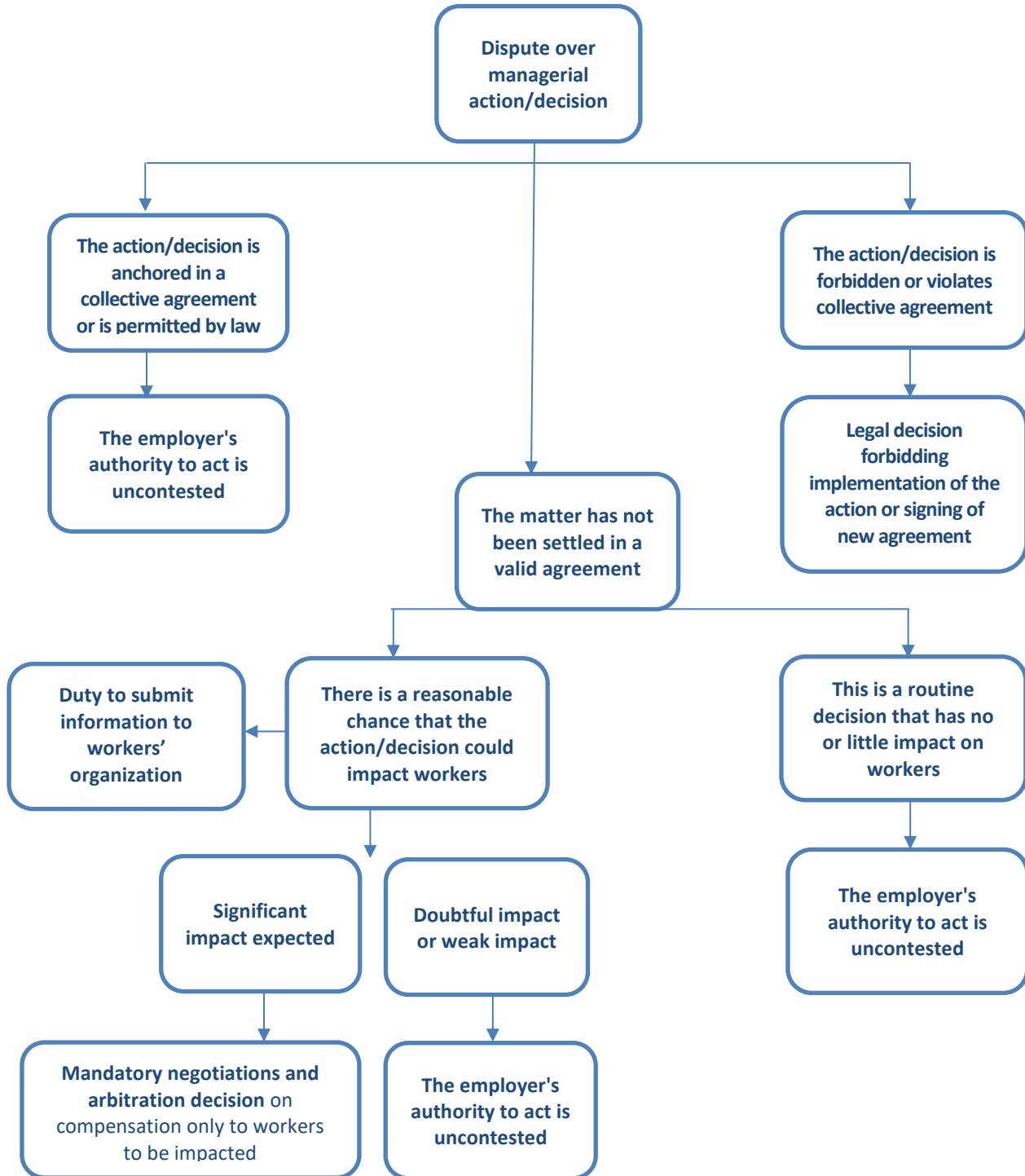
2. Determine that a dispute directed against the State as a sovereign shaping policy or against a regulator carrying out actions that he is authorized by law to carry out will not be considered a labor dispute.
3. Determine that a dispute directed against a third party or for the purpose of preventing future competition as well as a dispute intended to benefit the employer will not be regarded by law as a labor dispute.

8.1.3. Consolidate collective agreements, differentiate between conflict types and enforce collective agreements

1. The Collective Agreements Law will be amended to abolish the exemption of workers' organizations and employers' organizations from payment of compensation for the breach of a collective agreement. It will be permissible to charge a workers' organization compensation in the amount of its total membership fees and handling fees collected from the employees to whom the agreement applies during the six-month period prior to the claim.
2. In the public service and Essential Services, strikes will be prohibited in the context of a legal labor dispute so that the agreement will be enforced only by the Labor Court, the arbitration institution or an agreed upon arbitrator.
3. Introduction of an integrated agreement. In the public service and in Essential Services, the signing of more than one collective agreement applicable in the same workplace will be forbidden. If a number of agreements exist, they will be consolidated into one agreement that will be valid for a limited period, in which all agreements will be implemented. Prior to the expiration of the agreement, negotiations will be conducted for the signing of a new agreement and during the validity period of the agreement, legal enforcement will be carried out. Any changes that the parties wish to make during the agreement will only be made with the consent of both parties.

8.1.4. Anchor the employer's authority and hedge the labor dispute

It is proposed to follow the model below and make the necessary legislative changes to implement it.



The model seeks first to base the dispute on previous agreements. If a valid collective agreement permits or prohibits a particular action, the agreement must be followed. If a dispute arises due to managerial decisions on matters that have not been settled in the collective agreement, a balanced decision-making policy should be adopted that permits management policy to be carried out where, on the one hand, employees have no right to challenge it, and on the other hand, the employer cannot carry out unilateral actions in matters relating to employment or employment-conditions of without giving the workers the right to consult and to implement organizational measures.

In a situation in which a conflict arises regarding an administrative decision or its execution, the first thing to understand (in a legal inquiry) is whether there is a real impact on the employment or employment-conditions of workers and if this decision constitutes an unusual step. Routine actions and decisions will not constitute grounds for a labor dispute. If the decision has minor impact on working conditions or is of a routine nature, it will not be grounds for a labor dispute. For example, arranging shifts, imposing a task on an employee or implementing a computer system will not constitute grounds for a work conflict and there will be no duty to consult regarding the matter.

If there is a concern that an action or administrative decision will have an effect on the employment or employment-conditions of workers, it must be decided whether it is a decision or action that requires the employer to provide information to the committee, and to give the committee permission to submit alternative proposals, or whether it is a decision or action for which negotiations are required and for which organizational measures may be implemented. A decision on the consolidation of departments, for example, may affect the employment of workers or their conditions, and should therefore be updated and the relevant information communicated to the committee. However, the committee is not entitled to appeal the decision. On the other hand, if it is proven that as a result of that consolidation, workers will be laid off or their employment conditions violated, the employer must negotiate and the workers may implement organizational measures. This is even more true regarding a direct decision for a change in the terms of employment, which requires consultation, negotiation and establishes the right to implement organizational measures.

Nevertheless, even when a decision or administrative action is grounds for a labor dispute and allows organizational measures to be implemented, the employer's duty is to negotiate only regarding the compensation that will be given to workers who are harmed or may be harmed in the future as a result, and not regarding the decision or administrative action itself.

A change in the law should require the Labor Court to adopt these tests as a series of intersections or a series of filters that, only in the extreme cases, when a real impact is proven on the employment of workers, a work conflict will be permitted, as will organizational measures due to the managerial decision.

8.1.5. Conflict resolution

1. The cooling off period between the notification of a strike and its initiation will be extended to 30 days.
2. A mediator-sponsored dialogue will be mandatory as a condition for execution of a strike.
3. The strike notice must include the conditions that, if met, will end it.
4. When giving notice of a strike and details of the matters in dispute, the other party should be allowed to send a message in response regarding what is deemed the matters in dispute.

8.1.6. Increase the price of a strike

1. It will be possible for third parties affected by an ungrounded strike to sue workers and workers' organizations.
2. A worker who took part in an illegal strike may have his employment terminated by his employer.
3. An employer will be allowed to hire temporary workers during a legal strike and permission to permanently terminate the work of the strikers as a result of hiring permanent replacements, provided that none of the strikers are re-employed. This is a balanced arrangement that does not incentivize the employer to break the workers' strike due to the fear of losing organizational knowledge and experience but limits the strikers in terms of the damage they choose to cause.
4. Legislation authorizing the Knesset to freeze a strike for a period of up to 30 days or to submit the dispute to arbitration, whose decision will be final. This pause, which is widely accepted in many parliaments around the world, is created to allow public representatives to limit strikes they believe are disproportionately affecting the public.

8.2. Solutions to strikes in Essential Services

It is advisable to adopt a model that incorporates several strike restriction methods according to the type of service:

■ **Essential Services** – Services where a strike will be fully prohibited, and an alternative of arbitration will be offered.

■ **Semi-Essential Services** – Services where employees will be required to commit, in an agreement, to providing minimum service and to submit a strike outline while providing limited authority to an arbitration institution.

■ **Public Services** – Services where a strike will generally be allowed, but a strike will be prohibited during the term of a collective agreement.

■ **Ad hoc essential service** – Services where a conflict will become a matter for arbitration due to an ad hoc Knesset decision, which will be enacted in legislation for such a decision.

Type	Services	If and when a strike is permitted	Powers of arbitration institution in economic dispute (before collective agreement is signed)*	Powers of arbitration institution in legal dispute (with valid agreement)*
Essential services	<ul style="list-style-type: none"> ▪ Firefighting services ▪ Rescue services ▪ Air traffic control ▪ Foreign service workers ▪ Courts ▪ Attorneys ▪ Certain tax officials ▪ Civil servants with supervision and policing authority 	Full prohibition.	Serves as arbitrator through pendulum arbitration.	<ul style="list-style-type: none"> ▪ May serve as arbitrator with the consent of the parties for the purpose of interpreting a collective agreement. ▪ Serves as arbitrator for matters not settled in the collective agreement through pendulum arbitration.
Semi-essential services	<ul style="list-style-type: none"> ▪ Sea ports ▪ Airport authority ▪ Israel Railways ▪ Banks ▪ Communications services ▪ Companies producing and supplying energy ▪ Companies producing and supplying water 	<p>Workers may strike prior to signing a new collective agreement while providing minimum service.</p> <p>Striking is prohibited during the term of a valid collective agreement.</p>	The service employees and employers must anchor in a collective agreement the minimum services to be provided during a strike. The arbitrator must approve or reject these agreements. During the cooling-off period prior to the strike, employees must submit a strike outline to the arbitration institution, which may reduce the scope of the strike or require the service employees to negotiate and mediate before the strike and as a condition for its implementation.	Serves as arbitrator for matters not settled in the collective agreement through pendulum arbitration.

Type	Services	If and when a strike is permitted	Powers of arbitration institution in economic dispute (before collective agreement is signed)*	Powers of arbitration institution in legal dispute (with valid agreement)*
Public services	All civil service.	Workers may strike prior to signing a new collective agreement. Striking is prohibited during the term of a valid collective agreement.	Workers may strike prior to signing a new collective agreement. Striking is prohibited during the term of a valid collective agreement.	May serve as arbitrator with the consent of the parties for the purpose of interpreting a collective agreement.
Ad hoc essential service	A service in which the Knesset believes that a continuing strike would significantly harm the public and decides to submit the dispute to arbitration.	There is no limit on the strike, except after the Knesset has decided to submit the dispute to arbitration.	The arbitration institution will decide the dispute through pendulum arbitration. The arbitration institution may refer the parties to mediation while halting the strike for a limited period if it considers that the parties' proposals are not reasonable.	
<p>* The parties may at any stage agree to appoint an alternate arbitrator to rule in the manner they deem fit. The parties may also terminate the arbitration and return to direct negotiations at each stage by publication of the arbitrator's final decision.</p>				

8.2.1. The Arbitration Institution

The best way to resolve disputes is to negotiate freely, with the agreement of both parties. With that being said, the arbitration institution seeks to address cases where the dispute cannot be resolved by mutual agreement. However, a situation where the arbitrator has too much authority is also undesirable. In a model in which the arbitrator has the power to make independent proposals, there is a chance that the parties to the labor dispute will be subject to the arbitrators' own personal views. In order to minimize possible distortions in the mechanism, it is proposed that the arbitrators' powers be clearly defined and for them to act solely in ways of contractual legal inquiry and pendulum arbitration. In this arbitration, each party may submit to the arbitrator only one proposal to resolve the dispute. The arbitrator must adopt the proposal that is more acceptable to him and may not add another proposal on his behalf or edit one of the proposals. Such an outline ensures that the parties will try to exhaust all the ways to reach solutions independently and with a true desire to reach an agreement, and to avoid arbitration whenever disagreement arises.

8.3. Composition of the Arbitration Institution

Contrary to the previous proposals that sought to establish a three member committee headed by a former Supreme Court justice or a former Labor Court president alongside representatives of employees and representatives of employers, we propose a committee of five. In the proposed committee, significant representation will also be given to entities that represent the public's position, with the understanding that disputes in Essential Services are not only of interest to the disputed parties.

We propose the following composition:

Position	Minimum Conditions	Term of Office and Manner of Appointment
Chairman	A person with legal training and significant legal experience	5 years will be appointed by the Knesset
Representative of the National Economic Council	A person with substantial economic training, and preferably also legal training	4 years will be chosen by the Chairman of the National Economic Council and approved by the government
Representative of Consumer Organizations		3 years will be chosen by a consumer organizations committee to be appointed by the Minister of Economy
Representative of the National Economic Council		3 years will be chosen by a workers' organizations committee to be appointed by the Minister of Labor
Representative of the National Economic Council		3 years will be chosen by an employers' organizations committee to be appointed by the Minister of Labor

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10. Appendices

10.1. Limiting strikes in essential services according to the International Labor Commission

Guidelines for the International Labor Organization's Freedom of Arrangement to Restrict Essential Services Strike - A Collection

10.1.1. Defining essential services

Essential service - A service that impaired can be life-threatening or result in a violation of personal security or of the health of all or part of the public.

Rules:

The decision to stop a strike should be of an independent body rather than of the government.

An absolute ban on strikes can only apply in a state of national emergency and for a limited period.

Prohibition or restriction of strikes in essential and public services is permitted if the strike can cause significant harm and suffering to the public. However, too broad a definition of an essential service is prohibited.

Restricting strikes in essential or public services must be accompanied by alternative means of promoting employees' interests.

A strike by public servants exercising authority on behalf of the State can be restricted.

Government-owned services should enjoy the right to strike as long as they do not meet the narrow definition of an essential service.

Services related to the accounting and collection of state revenue are considered to be exercising authority on behalf of the State.

The definition of an essential service may vary according to the circumstances of each country and the effects of the strike. A particular service can be essential in one country and not essential in another. A strike may be prohibited in a service that became essential after a prolonged period of a strike that could cause harm to public life, security or health.

In a situation where the parties wish to stop mandatory arbitration and return to negotiations – they should have the authority to do so.

Those in charge of budget considerations should not be able to change or prevent an arbitration order.

When collective relationships in an important (but not essential) sector of the State's economy that affects the normal lives of citizens come to a standstill, requiring a strike restriction is possible.

See Appendix B for a list of essential services in Israel in view of international definitions.

A (partial) list of services that may be considered essential and those that are not clearly essential:

Services that may be considered essential:

- Hospitals
- Electricity services
- Water supply
- Telephony services
- Police and security forces
- Firefighting services
- Prison service
- Provision of food to kindergarteners and school children
- Air traffic control

Services that are not considered clearly essential:

- Radio and television
- Oil production and refining
- Gas supply
- Flight deck supply
- Sale and filling of gas cylinders
- Ports
- Banking services
- Central bank
- Insurance services
- Computer services for the collection of taxes
- Convenience stores
- Steel and mining industries
- Transportation services, including municipal transport services
- Flight pilots
- Production, transport and distribution of fuel
- Train services
- Public transportation services
- Postal services
- Refrigeration services
- Hotel services
- Construction
- Automotive industry
- Agriculture and supply of produce
- Education services
- Airports (excluding air traffic control)

10.2. Restricting strikes in essential services – essential service recommendations in Israel – their status, type of restriction proposed, and proposed restriction measures

Service	Type and Scope of Restriction	Means of Restriction	Remarks
Firefighting services	Full restriction	Mandatory arbitration	
Tax Authority	Full restriction on tax collection clerks and investigators	Mandatory arbitration for clerks and investigators, and ad hoc restriction of a strike according to the extent of the prolonged damage from officials in ancillary services	
Attorneys, Inspectors (officials with enforcement powers on behalf of the State)	Full restriction on strike of officials	Mandatory arbitration or duty to provide minimum service	
Air Traffic Control	Full restriction	Duty to provide minimum service	

Service	Type and Scope of Restriction	Means of Restriction	Remarks
Airport Authority (including its land crossing operations)	Partial restriction	Mandatory arbitration	
Energy Supply Services (production, transport and supply of gas and fuel)	Ad hoc restriction in a state of danger or prolonged public suffering	An order to reduce or suspend the strike or arbitration with the consent of the employees	
Communications Services	Partial and/or ad hoc restriction	Partial and/or ad hoc restriction	
Sea Ports	Partial and/or ad hoc restriction	Duty to provide minimum service or ad hoc restriction	As a rule, sea ports are not considered an essential service according to the Committee on Freedom of Association, but under the circumstances of an island economy where there is no alternative option for the land entry of goods, the strike can be restricted.

Service	Type and Scope of Restriction	Means of Restriction	Remarks
Israel Railways	Limited partial restriction / ad hoc restriction	Duty to provide minimum service so that the strike will be subject to self-limitation during the term of a collective agreement or the submission of a strike plan prior to its implementation which will require a proportionate strike	Rail services are not considered essential services by the Association for Freedom of Association, but there is some restriction on strikes in public transportation in European countries, and a country should consider extending the restriction to these services as they are essential in the lives of many citizens. However, the restriction should be proportionate. For example, a mandatory provision of 50%-80% service or maintaining service during peak hours
Municipal Transportation Services (busses and light-rail)	Limited partial restriction / ad hoc restriction	Duty to provide minimum service so that the strike will be subject to self-limitation during the term of a collective agreement or the submission of a strike plan prior to its implementation which will require a proportionate strike	As with the trains, but apparently to a lesser extent – a basic minimum can be required if no reasonable alternatives are available to the public
Israel Post	No restriction possible / ad hoc restriction		In the past, when mail was used as a central and almost exclusive tool for messaging, it was possible to determine a minimum service requirement. This is not the case today.
Banking Services	Ad hoc restriction	As a rule a restriction is not possible, except in a situation of prolonged damage	

Service	Type and Scope of Restriction	Means of Restriction	Remarks
Education System	Ad hoc restriction	As a rule a restriction is not possible, except in a situation of prolonged damage	According to the Freedom of Association Committee, a strike of school administrators can be restricted as public officials
Israel Electric Corporation (IEC) and Private Electricity Producers	Partial restriction and ad hoc restriction	Duty to provide minimum service or ad hoc restriction depending on the extent of the damage	Relatively broad minimum service supply can be required but no restriction of strike in ancillary services
Foreign Service	Full restriction	Mandatory arbitration	Of course, the restriction should apply to employees with a letter of appointment and those who are allowed to act on behalf of the State or for diplomatic events and operations. Administrative employees who do not deal with these matters and local employees of the Foreign Ministry are not considered the same as those at the core of the Foreign Service activity.

10.3. International Comparison of the Restriction of Strikes in Essential Services

10.3.1. Australia^{[5][6]}

Essential Services:

There is no closed definition of services and no distinction is made between essential services and others, except by the degree of harm to the public.

Additional restrictions:

There is a mandatory voting obligation by secret ballot before a strike in which a minimum of 50% of employees participated. A strike during the term of a collective agreement is prohibited. The regulatory authority has extensive powers to prevent or organizational measures in advance or to stop them if it believes that the strike involves serious economic damage. A minister may order the authority to discuss a strike restriction. The authority may extend the cooling-off period before the strike if it deems it necessary or believes that the rejection will be beneficial to the resolution of the conflict.

Restrictions in Essential Services:

The regulatory authority must, by law, terminate strikes that could endanger human lives, public safety, public welfare or when the strike could significantly harm the State's economy, and can restrict a strike if it could significantly harm third parties. The relevant minister may order a cessation of a strike for the same reasons.

10.3.2. Italy^{[2][3][6]}

Essential Services:

Firefighters and police. In addition, the law requires workers' organizations and employers to define the **Essential Services** in the economy through dialogue. These include education services, transportation, health, energy, sanitation, banking, postal services and other basic services, or those in which any harm may impair the exercise of an individual's fundamental rights guaranteed by the constitution or threaten public welfare.

Additional restrictions:

None.

Restrictions in Essential Services Essential Services:

The military and the police do not have the right to strike under the law. In the Essential Services minimum service to be provided in a strike must be anchored in a collective

agreement and approved by the regulator. There is a mandatory 5 day advance public notice of transportation strikes. It is customary to require full operation at certain hours or a minimum stoppage of service. As a general rule, it is mandatory to provide 50% of the standard level of service and to operate 30% of the routine operating manpower. The committee may issue an order to postpone the strike to negotiate, to shorten the strike or to suspend it for a limited period for the purpose of negotiating. Employees or workers' organizations that do not comply with the restrictions can be penalized by the imposition of fines on individuals or the revoking of the organization tax for the benefit of the employee organization for a certain period. There is no distinction between essential service in the public sector and in the private sector.

10.3.3. Ireland

Essential Services:

Police.

Additional restrictions:

There is a mandatory majority voting obligation by secret ballot before a strike. Prohibition of a police strike only. A strike will be avoided if the matter of the strike is not the terms of employment.

Restrictions in Essential Services:

There is no restriction except regarding the police.

10.3.4. United States^[10]

Essential Services:

There is no special rule for Essential Services, but some transportation services are subject to special regulation, as are public sector workers in the various states operating under other legislation.

Additional restrictions:

Collective agreements are usually signed for a defined period of 3 years. Generally speaking, the employment of alternative workers in a strike is permitted temporarily and even permanently if the strike is in the context of an economic dispute.

Restrictions in Essential Services:

Railway and aviation services operate under a separate law requiring the parties to mediate and arbitrate, and the arbitrator permits a strike in rare cases. However, during

arbitration, which may take a long time, no changes may be made in the workplace. As of 2011, 31 states allow collective labor relations and negotiation in the public sector, while 19 states prohibit collective labor relations in the public sector, and accordingly also prohibit the strike as a collective tool. In the federal government, it is customary to have collective labor relations. Nevertheless, even in most states that have collective labor relations and in the federal government, as a rule, striking is prohibited. As an alternative to a strike, there is a system of compromise, arbitration and clarification of facts for a solution to disputes.

10.3.5. Belgium^{[6][7]}

Essential Services:

Restriction on police, transportation and public broadcasting.

Additional restrictions:

None.

Restrictions in Essential Services:

The Minister of the Interior may issue an order to stop a strike in the police force and there is legislation requiring minimum service in transportation and in public broadcasting. As for public servants, if they have abused their right to strike they can be punished but their right to strike may not be violated in normal circumstances. In the private sector, workers' organizations and employers may decide by agreement on a minimum of Essential Services to be filled. A strike in violation of these agreements allows the minister to issue return to work orders or to order the provision of minimum service in a particular industry (this option has never been used).

10.3.6. United Kingdom^{[1][2]}

Essential Services:

With the approval of both Houses of Representatives, the Minister may apply regulation to services falling under the definitions of health services, fire extinguishing, education (under the age of 17), transportation services, nuclear waste treatment and border crossings.

Additional restrictions:

Mandatory vote by secret ballot, with at least 50% of employees participating, as a condition for recognizing a strike as protected.

Restrictions in Essential Services:

Mandatory vote by secret ballot with participation of at least 50% of the employees, together with a required support for the strike of at least 40% of all eligible voters.

10.3.7. Germany^{[2][6][9]}

Essential Services:

Civil servants, including teachers and social workers.

Additional restrictions:

In order to declare a strike, the workers' organization must represent at least 75% of the workers. The strike should be proportional to its goals. A labor dispute can only take place between the parties who are able to sign a collective agreement and it may only deal with the terms of employment. Strikes are prohibited in matters settled in a valid agreement and allowed in matters that have not been settled or upon expiry of the agreement. In general, a strike can only be considered legitimate as a last alternative (except for short warning strikes).

Restrictions in Essential Services:

Strikes are prohibited among public servants, including teachers – that is, most of the public service. Public servants who have abused their right to strike can be punished but their right to strike may not be violated in normal circumstances. In the private sector, workers' organizations and employers may decide by agreement on a minimum of Essential Services to be filled. A strike in violation of these agreements allows the minister to issue return to work orders or to order the provision of minimum service in a particular industry (this option has never been used).

10.3.8. Denmark^[6]

Essential Services:

There is no unique definition, other than in collective agreements, with the consent of the parties.

Additional restrictions:

In general, a strike during the term of a collective agreement is considered illegal. If, while there is an active collective agreement, a workers' organization, committee, or group of workers believe that dismissals are unfair or unlawful, they should turn to a judicial court or arbitration institution to decide the matter as an alternative to a strike.

Before a strike, the parties must resolve the dispute peacefully and turn to the Conciliator or to the Conciliation Committee and submit documents to it as directed. The main conciliator may order the postponement of the planned strike in order to resolve the conflict.

Restrictions in Essential Services:

Workers who are considered public servants – a group that includes the military, police, courts, prisons, etc. – must be available to their employers at all times and are therefore prohibited from striking. Collective agreements in the public sector (and sometimes in the private sector) stipulate the exclusion of certain workers so that they will not participate in the strike. In the event of a prolonged economic strike, the parliament may determine the terms of the collective agreement in law – because a strike against legislation is prohibited, in fact a strike will be banned in such a case.

10.3.9. The Netherlands^[2]

Essential Services:

At the discretion of a court in the fields of medicine and transportation.

Additional restrictions:

None.

Restrictions in Essential Services:

Sometimes the court demands the supply of an essential service.

10.3.10. Japan^[7]

Essential Services:

Transportation, post, communications, water, electricity, gas and medical services.

Additional restrictions:

None.

Restrictions in Essential Services:

The Prime Minister may order the termination of a strike in the event that a strike could adversely affect the state interests, with Essential Services being affected by the strike at the national level or when the strike could adversely affect society as a whole or the security and public health.

10.3.11. Norway^{[6][7]}

Essential Services:

There is no specific definition.

Additional restrictions:

The law does not allow strikes on matters that were settled in a valid collective agreement or that they intended to include in an existing agreement or on existing rights (a legal dispute), but does allow a strike on matters that have not been settled. Initiation of a labor dispute requires updating the national conciliation body, which has the power to postpone the start of the strike for a maximum of 10 days for a compromise between the parties. Sympathy strikes are generally allowed (under certain conditions in the public sector) and political strikes are generally permitted but must be brief and must not exert pressure that may change an existing collective agreement.

Restrictions in Essential Services:

At the conclusion of a collective agreement in the public sector, the parties must notify the conciliation body and begin negotiations within 14 days of the under the conciliation – then a 21-day cooling-off period will begin prior to the strike. The Parliament may stop a strike in a service that is of importance to society or threatens the public welfare, and transfer the decision to the National Wage Committee whose decision will be final. In the public sector, sympathy strikes are only allowed if explicitly agreed in a collective agreement.

10.3.12. New Zealand^[7]

Essential Services:

Fuel production, energy, water supply, sewage system, firefighting, hospitals, port operation, ferries, air transport, emergency medical services, pharmaceutical supply, welfare and pension institutions and dairy production.

Additional restrictions:

None.

Restrictions in Essential Services:

Essential service workers must notify the Minister of Labor of a strike 14 days in advance of the strike.

10.3.13. Spain^{[2][7]}

Essential Services:

Striking is prohibited among military and police forces, judges and civil prosecutors. Essential Services are considered services that derive from the rights conferred by the constitution and each government office must specify the areas under its responsibility.

Additional restrictions:

It is evident that the Labor Court has extensive powers of interpretation and sometimes exercises them to stop sympathy strikes and political strikes, to prohibit strikes that violate an existing collective agreement or to reduce a strike using broad discretion. Sympathy strikes are generally prohibited, except if they have a major impact on secondary strikers and strikes that do not directly affect workers' professional interests (including political strikes) are prohibited.

Restrictions in Essential Services:

The court restricts strikes with the aim of protecting the users of Essential Services, such as transportation, hospitals and other health services, energy supply, water supply and water treatment, waste treatment, post and education. The government may order the termination of a strike and transfer the matter to arbitration if it believes that the strike could damage the State's economy.

10.3.14. Finland^{[6][7]}

Essential Services:

There is no unique definition.

Additional restrictions:

In order for a strike in an economic conflict to be legal, the parties must try to resolve the conflict peacefully and seek mediation beforehand. In the event of a legal dispute (regarding the implementation or interpretation of a valid agreement), a strike is prohibited and the decision is transferred to the Labor Court. In the case of a prohibited strike during the term of an agreement, the court customarily charges the workers' organization payment of compensation to the employer.

Restrictions in Essential Services:

On the recommendation of the chief conciliator, and for the purpose of promoting consent, the Minister may postpone the scheduled start of the strike up to a maximum of 14 days for any service in which a strike may cause significant damage or 21 days for

a public service strike. If a public employer believes that a strike can cause serious harm to the company, he may contact a designated public body that may notify the organization of its strike intent and defer the strike for an additional 14 days (a total postponement of up to 35 days). Furthermore, there is no special restriction on strikes in Essential Services or in the public sector, but there is regulation regarding the legality of strikes: the only legitimate strike is a complete strike (there is a prohibition on sanctions), a strike is not permitted to better conditions when a valid collective agreement exists or due to a disagreement on the implementation of a collective agreement, a strike is not considered legal if it is aimed at achieving matters that are not considered fit for collective bargaining, such as: political demands, management and structure of the workplace, work practices, public service and pension obligations.

10.3.15. France^{[2][6][7]}

Essential Services:

Land, sea and air transportation services (excluding the transport of goods and tourism).

Additional restrictions:

None.

Restrictions in Essential Services:

A strike is restricted in accordance with a collective agreement or government order.

10.3.16. Canada^{[4][7]}

Essential Services:

A general restriction in services that harm to them will pose a danger to public welfare, safety or well-being or that may harm educational programs. Each district defines its Essential Services in that spirit. There is explicit and sweeping restriction on the police and fire department.

Additional restrictions:

None.

Restrictions in Essential Services:

The regulatory body (which has jurisdiction as the Labor Court but is more like a statutory authority than a court) may determine whether it is appropriate to limit a strike and may issue orders for the provision of minimum service, termination of the strike or

referring the parties to mediation. Mandatory arbitration applies to the police and fire departments. The Parliament may also enact a “return to work” law in cases where a strike causes heavy economic damage or it believes there is a special interest in doing so.

10.3.17. Sweden^{[6][8]}

Essential Services:

Public service collective agreements determine the Essential Services at the state and community level and establish conditions that will enable security, law and order, medical service, and significant economic disruption to be avoided. Also, striking is prohibited for civil servants exercising authority on behalf of the state.

Additional restrictions:

A strike during the term of a collective agreement is considered illegal. The organization would be guilty of a breach in the event of an illegal strike by its members unless it fulfilled its duty to prevent the strike. The conciliatory body must be notified 7 days in advance of a strike (failure to notify may require compensation but does not render the strike illegal). The conciliator may intervene in any dispute he considers appropriate and may persuade the parties to postpone the organizational measures. Political strikes are considered illegal.

Restrictions in Essential Services:

The regulatory body (which has jurisdiction as the Labor Court but is more like a statutory authority than a court) may determine whether it is appropriate to limit a strike and may issue orders for the provision of minimum service, termination of the strike or referring the parties to mediation. Mandatory arbitration applies to the police and firefighting services. The Parliament may also enact a “return to work” law in cases where a strike causes heavy economic damage or it believes there is a special interest in doing so.

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