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Labour courts in Israel

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Eight years have passed since labour courts were established in Israel.[1] From a historical perspective, eight years is insufficient time to allow for a definitive judgement as to whether they have fulfilled the hopes which accompanied their foundation. Nevertheless, even at this early stage, it is worth while making an interim evaluation. Reviewing the way the courts have functioned in the light of their structure, composition, procedure and jurisdiction as prescribed in the Labour Courts Law, and examining the case law and available statistical data, can serve to indicate the extent to which the present arrangements are satisfactory or require revision. Such is the purpose of this article.

I. The aims of the labour court system

An evaluation of the success of the labour courts must necessarily start with the preliminary question: what were the motives in establishing them and what aims were intended to be achieved? The legislature saw four advantages in taking the exceptional step of splitting the judicial system and setting up special courts for labour matters: *(a)* centralisation; *(b)* efficiency; *(c)* enhancing expertise; and *(d)* encouraging recourse to the courts instead of to strikes.

The first aim in establishing the labour courts was to centralise within one judicial system all actions regarding the enforcement of rights derived from labour laws. During Israel's first two decades of statehood (from 1948 till the introduction of the labour courts in 1969), an extensive series of laws were passed defining the rights and obligations of employees, including substantial legislation in the sphere of social security. Until the establishment of the labour courts, enforcement of labour and social security rights was in the hands of the general courts, the national insurance tribunals and various special tribunals set up under other labour laws. It seemed that the time was ripe to deal with these matters within one framework.

The second aim was to achieve greater efficiency by reducing the duration, complexity and costs of litigation. The general court system was hindered in dealing with labour actions by rigid rules of procedure and evidence,

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high court fees and, particularly, the long period—often years—which elapsed between the hearing of a case and the handing down of the verdict. The situation was burdensome and expensive for the employee. Even worse, the manner of litigation before the general courts was totally unsuitable for the resolution of collective disputes. Strikes and breaches of a collective agreement demand immediate hearing and remedy, which the general courts were unable to provide.

The third factor was the need to raise the level of expertise of those dealing with the particular issues of labour law. This expertise was lacking despite the usual high professional standard of the general courts. Labour law constitutes only one component of the labour relations system. As a result, a judge versed only in the precepts of labour law may hand down unrealistic and misleading judgements, particularly in regard to collective labour disputes. A judge dealing with labour matters must possess not only broad basic knowledge of the law in general, of which labour law is a part, but also considerable familiarity with those disciplines which together with labour law constitute the labour relations system: labour economics and labour sociology.[2] The establishment of a labour court system with professional judges dealing exclusively with labour matters and thus becoming specialists both in the legal and socio-economic aspects of the field, sitting on the same bench with public representatives coming from the employees' and employers' organisations, was intended to create a reserve of judicial experts in the sphere of labour relations.

Resolving collective disputes by organisational means—resort to the strike instead of the courts—did not contribute towards improving the labour relations climate. On the contrary, the harm to the national economy resulting from the wave of strikes convinced the legislature of the need for innovation. The time had come to devise an arrangement whereby those rights derived from collective labour law would also be implemented in the proper manner—through recourse to the courts. The fourth aim of the labour courts, therefore, was to encourage litigation rather than strike action. The legislature believed that the establishment of the labour courts would serve as an impetus for improving labour relations by bringing about a change in the attitude of the employees' organisations towards the judicial process.

II. Structure and composition of the labour courts

The labour court system has a dual structure comprising *(a)* a network of five regional courts covering the country and acting as courts of first instance in both civil and criminal matters; and *(b)* a National Labour Court with jurisdiction to hear appeals from the regional courts and to sit as a court of first instance in certain civil matters of special importance.

The labour court bench comprises both professional judges and public representatives. The latter in essence serve as the representatives of the

employees' and employers' organisations. The Labour Courts Law prescribes the qualifications of the public representatives on the National Court only. Such representatives must have had experience in one of three fields: labour relations work, teaching or research in a discipline related to labour relations, or legal work. The qualifications were meant to ensure that the public representatives would have the type of experience which would contribute to the working of the Court and raise its standard of expertise. The public representatives are appointed jointly by the Ministers of Justice and Labour—for a term of three years—after consultation with the employees' and employers' organisations. They receive no salary but are given small allowances as compensation for expenses. The Labour Courts Law provides for their independence. In the same manner as a professional judge, a public representative is subject to no authority other than that of the law, and owes no allegiance to the organisation consulted in his appointment. To encourage public representatives to act in accordance with the dictates of their conscience, the Law states that dissenting opinions shall appear in the record without indicating the name of the member in dissent.

The status, qualifications, term of office and manner of appointment of the professional judges are determined in accordance with the Judges Law which regulates the appointment of all judges in Israel. The qualifications of a labour court judge are the same as those of a district court judge in the general court system.

For civil cases, both professional judges and public representatives sit on the bench. The regional court bench comprises three persons: one professional judge and one public representative each of the employees' and employers' organisations. The professional judge can sit alone provided that the person authorised to compose the bench so agrees in a reasoned opinion and the parties have so requested. In addition, the Law provides that only a professional judge may act with regard to various procedural matters: examining the pleadings, deciding whether to allow the pleadings to be amended, drawing up the list of points in dispute, prescribing the order in which the parties will be heard and evidence presented, etc.

When the National Court sits as a court of first instance on collective disputes, the bench comprises seven members: three professional judges and two public representatives each of the employees' and employers' organisations. In all other cases, the National Labour Court bench consists of three judges and one public representative each of the employees' and employers' organisations. However, when general economic or labour relations questions arise, the bench may be enlarged to seven members. Both in the regional courts and in the National Court proceedings can go forward despite the absence of a public representative, provided that he was properly notified and offered no reasonable explanation for his non-appearance, and further provided that at least one public representative is in attendance.

In contrast, only professional judges are authorised to hear criminal cases: one judge in the regional courts and three in the National Court.

III. Substantive jurisdiction

The Labour Courts Law aims, as we have seen, at centralising all matters of labour law and social security within a single judicial framework.

Regional labour courts may have exclusive jurisdiction over individual disputes between an employee and an employer, between an employee and his employees' organisation and between a person insured under a social security scheme and the insuring institution. In employee-employer actions, their jurisdiction is contingent upon the cause of action and the identity of the parties thereto. The rule is that a dispute based upon the employee-employer relationship, whether or not the cause of action is derived from the employment contract, is heard in a labour court. Furthermore, regional labour courts have jurisdiction over questions regarding the existence of an employee-employer relationship. To avoid the possibility of conflicting case law, these courts were not given jurisdiction over individual disputes deriving from civil wrongs. Therefore, an action by an employee against his employer for damages suffered in a work accident is heard in a general court, nothwithstanding the identity of the parties.

Judicial powers previously in the hands of administrative bodies under various labour laws were transferred to the exclusive jurisdiction of the regional labour courts. Also under the exclusive jurisdiction of these courts and constituting a substantial portion of their work is litigation related to the implementation of social security rights. Parties to these actions may be: individuals insured under a social security scheme, employers, provident funds and the National Insurance Institute. Another area in which the regional labour courts were given exclusive jurisdiction is that of individual actions between an employee and an employees' organisation concerning his membership or the organisation's work in labour matters.

In addition to hearing actions brought by individuals, the regional labour courts may have exclusive jurisdiction over collective disputes. In this matter also, their jurisdiction is contingent upon the nature of the cause of action and the identity of the parties. The cause of action must concern either the existence, application, interpretation, execution or breach of a collective agreement or any other issue derived therefrom—or the application, interpretation, execution or breach of any legal enactment regarding the collective agreement. Only those with the capacity to be parties to a collective agreement can be parties to collective litigation. Under one of the several amendments to the Labour Courts Law, the regional labour courts were given exclusive jurisdiction over civil wrongs actions for causing a breach of contract or breaching a statutory obligation, provided that the cause of action is derived from a collective dispute.

The regional labour courts have parallel jurisdiction with the general court system over the criminal provisions in the various labour laws. Despite the right of recourse to the general courts, the practice is to try such cases in the labour courts.

The National Labour Court was given exclusive original jurisdiction over collective disputes regarding national collective agreements and over disputes between employees' organisations or employers' organisations.

IV. Appeals

The Labour Courts Law allows for civil appeals only within the labour court system. Therefore, a regional court decision can be appealed to the National Court sitting as a court of appeals. The idea was that by giving exclusive jurisdiction to the labour courts, the National Court would develop a body of leading case law and rules on labour matters.

In contrast, criminal matters heard in the regional labour courts can be appealed first to the National Labour Court and then to the general High Court of Appeals. The fact that criminal decisions are open to review in the general court system is one reason why the Labour Courts Law prescribes that only professional judges hear criminal cases and that the usual rules of procedure and evidence apply.

V. Remedies

In principle, a labour court can grant the same broad range of remedies in civil cases as can a general court: declaratory judgements, mandatory or prohibitory injunctions, specific performance orders, damages. Furthermore, it can punish the recalcitrant litigant for contempt of court. Although the authority of the labour court to grant remedies parallels that of the general court system, the two do not necessarily exercise the authority in an identical manner. Labour courts have several times held that while the essence of the remedy does not change with the forum, there is no reason why they cannot consider the special characteristics of labour law in deciding whether to award discretionary remedies. This attitude is particularly evident in their rulings regarding the issuing of temporary injunctions against strikers. However, the power of the labour courts to grant remedies is effectively restricted both by legislation and by the case law they have themselves developed. For example, the Contract (Remedies) Law prohibits issuing specific performance orders for the doing or acceptance of labour or service. Therefore an employee cannot be forced to work, nor an employer forced to engage him. An employee fired in breach of his employment contract can only be awarded damages. However, the labour courts have held that in cases in which the employment contract is dictated by the normative provisions of a collective agreement, they may, under special circumstances, issue a specific performance order should they be convinced that damages would not be sufficient compensation.

Another substantial restriction is found in the amendment to the Settlement of Labour Disputes Law which expressly bars imprisonment under the Contempt of Court Ordinance for disobeying a judgement, decision, order or statutory provision by participating in a strike. The result is that the only sanction which the courts can impose in such cases is a fine. Should the

person fined refuse to pay, the judgement can be enforced only through such means as garnishment of wages or attachment of property and not through imprisonment.

VI. Procedure and evidence

In principle the labour courts are free from the obligation to follow the procedural and evidence rules used in the general court system. Such freedom, however, does not mean that there are no restraints and that the judge may act at will. The Law and its Regulations provide a procedural framework which the judge must respect. This framework is flexible and limited in scope, thereby allowing the judge broad discretion. Any procedure not prescribed must, under the Law, be decided by the judge as he deems best to achieve a just verdict. The framework is intended to provide procedure which the " common man " plaintiff can grasp, to adapt the procedure to the needs of collective litigation, to shorten the duration of the litigation, to simplify the proving of facts and, especially, to reduce litigation expenses. These five aims can be illustrated by various provisions of the Law and Regulations.

The Labour Court Procedure Regulations provide for the use of affidavits to present primary testimony. These are submitted immediately after the list of points in dispute has been drawn up. To make it easier for the litigants, the Regulations state that the affidavit be given before the labour court registrar who administers the authenticating oath and writes up the record. This arrangement not only reduces litigation time, but also discourages the parties from including baseless claims in their pleadings since they know that the claims must be substantiated under oath. Furthermore, the arrangement enables the parties at an early stage in the proceedings to evaluate their chance of success—a circumstance which favours compromise.

Maximum simplicity is achieved within the framework of summary deliberations. In such cases, the judge can set the dates for hearing the claims without service of summons or pleadings. A summary hearing is held before a single judge who has full authority to hand down a verdict or to help the parties arrive at a compromise. The use of summary deliberations is contingent upon the request of both parties.

Procedural rules for collective disputes received special attention. The procedure was prescribed with the awareness that the judicial proceedings constitute but one phase in a continuing relationship, and that efforts should therefore be made to avoid either party being " victorious ". For example, the Regulations provide for a joint petition, with both parties to the dispute turning to the court together. A joint petition is not intended to gloss over the disagreement but merely to ameliorate the litigation atmosphere. Under this procedure, each party pleads its claims and endeavours to prove them by affidavit. Another example: collective proceedings at times necessitate adding as a party all employees or employers affected by the collective agreement. To make this a practical possibility, the Regulations provide that

individual names do not have to be listed. Furthermore, the service of a summons and notification of pleadings can be done through publication in two daily newspapers. The pleadings are then deposited with the court secretariat so that all parties can have access to examine and copy them. Without such rules, the hearing of a collective dispute would present insurmountable obstacles.

Reducing litigation costs finds expression in two areas: representation and court fees. Regarding representation, the Law allows a party to be represented before the court either by a lawyer or by a representative of his employees' or employers' organisation. Since the representative appears without charge, this option can be of great importance to the average litigant. As to court fees, a number of concessions have been granted. Certain actions, such as collective and organisational disputes, are exempt from fees. For certain other matters—e.g. actions to recover deferred wages up to a set ceiling, actions to secure severance pay, actions against a provident fund—payment of the fees is automatically deferred until the verdict is handed down and depends upon the outcome. In all other cases, fees may be paid in two instalments. Furthermore, labour court fees are lower than those charged in the general court system. Reducing litigation costs and not requiring immediate payment of full fees serve to open the labour courts to many plaintiffs who otherwise would have no possibility of judicial redress.

VII. Examination of the workings of the labour courts

A look at the case law developed over the past eight years shows the broad variety of cases which have come before the labour courts. These have covered the entire spectrum of labour relations with the exception of civil wrongs actions.

During its first year of operation (September 1969 to September 1970) about 7,800 actions were brought before the labour courts. This large number came as a surprise to the court administration. On the basis of the quantity of labour cases which had been heard by the general courts and judicial tribunals, far fewer cases were expected. Since then, the number of cases has steadily grown, reaching 11,253 in 1976.[3] The unpredicted wave of litigation in the first year began creating a backlog which continued to increase. About 4,000 cases which were commenced in 1969 were not completed that year. Today, the courts manage to keep up with the pace of work and at times even to exceed it. However, notwithstanding that the number of regional judges has been raised from five to 17, it has not yet been possible to make up the whole backlog. Sixty per cent of the small claims take two months or more until a verdict is received. Half these claims end in compromise. The backlog problem does not affect collective disputes since the rules provide that they be heard without delay or interruption.

A symposium held in 1976 on the workings of the labour courts, with the participation of judges, public representatives, lawyers and academic personnel, revealed that not all the judges make use of the special procedures

such as that for authenticating affidavits. As a result, a substantial number of cases are heard under the procedure used in the general courts. Preparing a case in its early stages by establishing the points in dispute and the order of presenting pleadings and evidence can markedly reduce the duration of the deliberations. The elimination of such preliminary steps, therefore, influences the progress of the proceedings. Furthermore, notwithstanding that the Law prescribes the rules for summary deliberations, such procedure is not in fact used. Finally, there are judges who delay writing their decisions once the hearing is over. At times, such delays run into several months.

Another matter that was noted is that individuals tend to appear before the courts without legal counsel. In nearly 70 per cent of individual claims for small amounts and 50 per cent of individual claims for large amounts, the plaintiff represents himself. Pleading on one's own behalf is particularly common in actions against the National Insurance Institute and claims for deferred wages and severance pay. However, there have been complaints that when a respondent is represented by counsel, the judge often finds it necessary to recommend that the plaintiff also engage a lawyer. Under such circumstances, the hearing becomes more lengthy, formal and rigid.

It is difficult to evaluate the extent to which the public representatives on the labour court benches have contributed to the development of case law. Many doubts have been expressed and much criticism has been directed against the public representatives, especially those in the regional courts. The judges seem to find them burdensome and are usually willing to accede to the parties' request that the case be heard without the participation of the public representatives. This practice has come in for censure by the National Court. In one judgement, the National Court stated that the public representatives can be of great benefit and therefore should usually be included on the bench. However, the National Court's ruling notwithstanding, the regional courts still frequently hear cases in the absence of the public representatives.

The functioning of the labour courts has been far more successful from the viewpoint of their contribution to the development of labour law. While in the past the general courts had a negligible effect on labour law, which was more or less limited to what appeared in the statute books, today labour law is being created by the extensive and enlightened case law handed down by the labour courts. A brief analysis of the basic characteristics of this case law reveals how the courts have come to shape labour law.

While the Labour Courts Law does not bind the labour courts to conform with the precedents set by the general High Court, the labour courts themselves have set the rule that, in matters not related to labour law in particular, such precedents will be followed. However, when called upon to decide labour matters, the courts have declared themselves independent in developing case law.

In the past, various fields of litigation, such as collective and organisational disputes, lacked legal certainty because of the dearth of legislation

and case law on the subject. To remedy this situation, during their first years of operation, the labour courts used every opportunity to explain, clarify and promulgate rules, even beyond what was needed for the immediate cases before them. To illustrate this, the first question regarding the interpretation of the normative provisions of a collective agreement to come before the courts was whether the subjective intent of the parties had to be considered: the court concerned did not restrict itself to ruling on this specific matter, but took the opportunity to prescribe the general principles governing the interpretation of the normative provisions of a collective agreement.

This approach enabled the labour courts to make rapid progress. The case law was built up precedent upon precedent, creating a comprehensive body of collective labour law. Thus, the parties to collective labour relations were provided with a system of norms to guide their actions in hitherto unregulated areas. Labour court case law devised the rules governing such matters as the hierarchical order of collective agreements, determining which employees' organisation is the proper party to a collective agreement, classifying the clauses relating to arbitration of interest and rights disputes, determining the normative implications of the collective agreement, determining the effect of strikes on wages or on the individual contract of employment, and determining the nature of the civil wrong of causing a contractual breach as it relates to strikes.

The courts' initiative was also directed towards questions of procedure and evidence. The President of the National Court, after consultation with the rest of the bench, has begun publishing guidelines. These guidelines are not meant to replace the Regulations issued under the Labour Courts Law, nor are they binding on the judges. Rather, their purpose is to bring to the attention of all concerned the manner in which the labour courts operate. This practice has proved useful to the parties, especially regarding issues not previously before the courts and for which no defined procedure exists. For example, the use of injunctions against strikers, particularly in wild-cat strikes, raised a number of procedural difficulties. There was doubt as to who was actually the respondent: the representative employees' organisation, the employees' committee (i.e. the shop stewards) or the employees themselves. Furthermore, it was uncertain whether one of these had to be added if it had not been originally listed as a respondent. Also unclear were the issues: who was to serve the injunction directed against a large number of employees? how long should the injunction be in force? what was the proper role of the court in preventing the injunction from replacing bargaining between the parties? It was to clarify such questions that the guidelines were published. At first they took the form of notes within the judgement. Eventually they appeared under a special heading apart from the judgement but within the volumes of published case law.

The labour courts also took the initiative in devising rules of evidence. It was held, for example, that a labour court judge does not have to act in accordance with the adversary system practised in the general courts. Rather,

the labour courts have a particular obligation to contribute towards giving maximum effect to collective labour relations by creating norms the validity of which would be similar to that of legislation. This special function justifies, under the proper circumstances, deviation from the adversary system. Otherwise, a court would be forced to ignore the existence of a collective agreement should the parties fail to raise it. The courts also created rules to simplify the presentation of evidence. For example, collective agreements or pension regulations already published are assumed to be part of judicial knowledge and therefore copies do not have to be submitted. This rule is particularly helpful to the individual employee for whom it can be difficult to obtain a copy of the document in question.

The labour courts not only devise rules but also see themselves obligated to guide the actions of the parties to an employment relationship or otherwise connected with such a relationship. They have done much to educate employees' and employers' organisations regarding collective agreements. In one case, for example, a labour court learned that the parties were acting under an agreement signed in 1939, which, while having been amended from time to time, had not been basically altered over the years. The court ordered that its verdict be brought to the attention of the parties to the agreement so that it could be properly revised. In another instance, the court found that a number of working conditions in the enterprise were left without regulation in the collective agreement. As a consequence, it was forced to rely on " rules ", " notices ", various provisions of agreements in force in other enterprises and agreements signed with the employees' committee to be able to reach a decision. Again, the court directed that the agreement be amended to include all relevant provisions. Another example concerns the not uncommon situation in which the identity of the parties to a collective agreement is not made clear in the agreement. The courts have made known their opinion that those responsible for drafting such agreements should establish unified legal terminology to overcome this defect.

The courts have also directed their attention to the legislature. The rule they have adopted is that the courts will purposely refuse to mitigate the severity of a social wrong through judicial measures so as to force the legislature to act. This approach has had certain positive results. For example, it led to the amending of the National Insurance Law to provide for the division of a survivor's pension when the deceased leaves two widows.

Finally, a few words should be devoted to the extent to which the labour courts' decisions and orders are obeyed. A unique phenomenon exists in Israel in that there is a great disparity between the actual situation and what the public believes it to be. Of the 137 requests for injunctions, the courts agreed to issue only 31, and 28 of these were complied with. In only three cases did the employees breach the order. However, because of the extensive news coverage given to the three cases of defiance, and the little attention paid to the cases of compliance, the picture inaccurately appears to be one of widespread disregard for the courts' orders.

VIII. Summary and conclusions

At the beginning of this article, four aims which motivated the establishment of the labour courts were listed. After examining their structure and jurisdiction, their manner of operation and the case law they have developed, this final section will be devoted to answering the questions: to what extent have the labour courts succeeded in fulfilling those expectations? what areas are in need of improvement? and what can be done to bring such improvement about?

The first aim was *centralisation*—i.e. concentrating all actions deriving from labour matters within one judicial framework. This intention notwithstanding, the Labour Courts Law itself excluded the entire sphere of civil wrongs suits by individuals (primarily work accident actions) from the jurisdiction of the courts. However, since this remained the sole exclusion, the situation as regards centralisation can be considered satisfactory.

The second aim was *efficiency*—i.e. reducing the duration, complexity and costs of litigation. This aim has been only partially realised. While litigation before the labour courts is faster, simpler and less expensive than in the general court system, there is still much room for improvement, especially regarding individual disputes between employee and employer.

Deliberations could be accelerated and simplified if all the judges would make proper use of the special procedures provided in the Law and Regulations: summary proceedings, manner of authenticating affidavits, holding preliminary hearings, etc. Improving efficiency in this context does not require amending the Law, but merely implementing it as it now stands. It would also be worth while making a once-and-for-all intensive effort to reduce the backlog of 4,000 cases which has accumulated over the past eight years. Furthermore, additional thought should be given to the cost of litigation. While it is true that 75 per cent of the individuals with small claims represent themselves, in cases in which the employer-respondent is represented by counsel, the plaintiff may also be forced to engage a lawyer. A possible way of avoiding the difficulty is by prescribing rules on representation similar to those in force for the Small Claims Court, where the consent of the court is required before counsel can appear for a party. Once such consent is given, it is valid for both parties. Such procedure should be considered for individual suits between employee and employer, when the amount in question does not exceed a certain ceiling. Another solution might be found in the judges' guidelines. Should the plaintiff appear for himself and the respondent be represented by counsel, the judge ceases to act in accordance with his role in an adversary system and becomes an active participant in the proceedings.

The third aim was *expertise*—i.e. raising judicial standards and increasing the judiciary's familiarity with all disciplines relevant to labour matters. The case law developed by the labour courts testifies to the success with which this aim has been achieved. Two points, however, require comment.

The first relates to the High Court of Justice, which makes use of its judicial review powers to sit in practice on appeal over National Labour Court

decisions. As a result, legal uncertainty has developed, with conflicting case law being handed down by the two court systems. The High Court of Justice bases its case law, for labour as for other matters, primarily on general legal criteria. At the same time, the National Labour Court gives particular weight to the sociological and economic ramifications of its decisions. This dualism complicates the situation for the litigants and was not what the legislature intended in establishing the labour court system. The aim of expertise finds expression in several aspects of the Labour Courts Law: thus it gives the labour court exclusive jurisdiction over labour matters; it makes no provision for National Labour Court decisions in civil cases to be appealed before the High Court; and it relieves the labour courts from the obligation to follow High Court precedent. All these were meant to raise the level of expertise, but the parallel jurisdiction which has developed between the National Labour Court and the High Court of Justice hinders the attainment of this objective. It seems that the legislation should explicitly state that there is no recourse from labour decisions to the High Court of Justice. In this way, legal certainty would be achieved and, furthermore, the case law would be developed by judges with maximum expertise in labour matters.

The second point relates to the public representatives. The fact that the Law does not prescribe requirements for public representatives on the regional court benches had led to poorly qualified persons being chosen, and thereby lowering the general level of expertise. The Law, therefore, should be amended to require representatives in the regional courts to fulfil the same qualifications as are now demanded for the National Court. In addition, experience has shown that, while the contribution of the public representatives can be of great value in collective and organisational disputes, they add little to deliberations on individual claims. The Law might therefore be amended to provide that public representatives participate only in cases concerning collective or organisational disputes and in appeals. Such an innovation would reduce the number of public representatives and make it possible to choose suitable people with rich experience. This would be another step towards increasing expertise.

The fourth aim was *recourse to the courts instead of to strikes.* The intention was not that the court replace the strike but only that it help to improve the labour relations atmosphere. While a court is not equipped to solve social problems, but only to resolve disputes between parties, the workings and acts of the court may affect social activity in the sphere of labour relations. The mere fact that a suit was brought before a court and legal action commenced has at times proved sufficient to encourage the parties to solve their dispute on their own, without waiting for the court to provide a remedy.

The fact that, in 1976, 45 collective disputes were heard by the labour courts indicates that the employees' and employers' organisations are beginning to trust the labour court mechanism. It can be assumed that, had these disputes not been brought before the courts, they would have resulted in industrial action. Even in cases where a strike had already broken out by the

time the dispute got to court, the court concerned was guided by its judicial philosophy that injunctions cannot replace negotiations. The appearance of the parties in court opened the way for the return to the bargaining table.

The labour courts' contribution to improving labour relations could be greater if additional steps were to be taken in two spheres.[4] One obstacle hindering the work of the courts is the fact that there is a chasm between the formal and actual division of power within the organisation representing the largest number of employees in Israel (Histadrut). The organisation's by-laws grant formal power to its central organs, particularly to its trade union department, while the real power lies with the employees' committees. As a result, the employees' committees have power without responsibility. They tend to ignore orders from above, call wild-cat strikes, etc. Adapting the by-laws to the actual situation would enable the courts' decisions to take account of the real power of the employees' committees.

A second obstacle is that a labour court can function only if called upon to do so by a party to a dispute. For example, when strikers disobey an injunction, the employer must petition the court to impose a fine for contempt of court orders. It should be possible to overcome the problem by amending the Law to allow imposition of contempt fines without the need for the second party to act.

In conclusion, it seems that the labour courts have justified their establishment and existence over their first eight years, but that certain action is now called for by the legislature and the court administration to raise their level of accomplishment still further.

Notes

[1] The labour courts were set up under the Labour Courts Law, 5729-1969, *Laws of the State of Israel*, Vol. 23, p. 76 (see ILO: *Legislative Series*, 1969—Isr. 1), and began functioning in September 1969. The Law has been amended five times directly and three times through amendments to other legislation. Regulations authorised by the Law have been issued regarding labour court procedure, procedure for collective disputes, and court fees.

[2] From the remarks made by the President of the National Labour Court at a symposium on labour courts in Israel, July 1976.

[3] For a population of approximately 3.5 million.

[4] From an interview with the National Labour Court President, published in the Israeli daily newspaper *Davar* (Tel Aviv), 11 Feb. 1977.