**The National Labor Court**

The Senior Academic Faculty of Bar-Ilan University

v.

Bar Ilan University

SUBJECTS: union representation of pensioners, the freedom to strike, collective bargaining, union membership, definition of “worker” as including “pensioner”, collective dispute over pensioners’ rights.

### Facts of the Case:

Collective bargaining between Bar-Ilan University (hereinafter: ***the University***) administration and its’ Senior Academic Faculty Union (hereinafter: ***the Union***), has resulted in various collective agreements. Collective bargaining includes a unions’ freedom to strike. The issue raised by this case is whether the Union may strike when its’ sole goal is to achieve benefits for its retired members of the senior academic faculty.

According to Union bylaws, senior academic faculty are entitled to remain dues paying members after they retire. The bylaws grant them limited participation in Union affairs, prohibiting them from participating in vote whether to declare a strike.

In the time period relevant to this case there was a collective agreement in force.

Since 1959 the senior academic faculty at the University are insured in a pension plan called “Gilad”, which is separate legal entity. The pensions were linked to faculty salaries. Since the cost of living index rose faster than faculty salaries the University and Union signed, in 1988, a collective agreement changing pension linkage to the cost of living index. However, in 1993 faculty salaries rose by 14%, far more than the cost of income index. The Union demanded to change the pension linkage, the University refused and the Union declared a work dispute on this issue by sending the required 14 day strike notice to the Chief Labor Relations Officer. Another demand was an increase in the senior staffs’ research funds.

In response to the Union’s work dispute notice the University filed a case in the Tel Aviv Regional Labor Court, requesting a temporary and permanent injunction against the planned strike. The University’s main claim was that it was illegal for a union to declare a labor dispute and/or strike on behalf of its’ retired members. At the Labor Court hearing the Union cancelled its strike notice and the parties agreed continue negotiations.

However, the parties did reach an agreement and the Union declared a work dispute again, stating that the sole issue was an increase in pension payments for the retired faculty. The same day a general assembly of Union member’ decided to support the retirees’ claim to a 14% raise in pensions. Two weeks later, another general assembly decided that it would take all measures, including a strike, to achieve this bargaining demand.

Thereafter, the Union sent a third work dispute notice, repeating its demand for a pension benefit increase for both pensioners and those who will retire. Within a few days the University again petitioned the Tel Aviv Regional Labor Court for an injunction against the upcoming strike.

During the brief court hearing it encouraged the parties to negotiate and, before the judgment was handed down they signed a collective agreement, thus ending the work dispute, without a strike. However, both parties requested the Court to issue its’ judgment, in order to obtain an answer to this recurring legal issue.

The Regional Labor Court accepted the University’s claim and declared that the Union could not declare a work dispute whose sole purpose was to obtain benefits for retired employees. The Court’s reasoning was that collective labor law applied to “employees” and “employers” and pensioners. Since there was no “employee-employer” relationship between the University and its retired staff, any dispute between them was out of the labor law sphere and not a legitimate subject for a strike. Unions were given legal power to strike for “labor conditions” and not but pension conditions. Finally, allowing the Union to bargain collectively about retirees’ pension rights may result in their reduction, which is not desirable.

The Union appealed this judgment to the National Labor Court, which set aside the lower court’s judgment. This appeals court began its discussion by restating the rule that courts does not decide theoretical cases and the lower court should have dismissed the case when the parties reached an agreement. However, since the lower court had decided an important legal issue which it was desirable for the appeals court to hear this case and set the norms.

### JUDGMENT

**Judge Stephen Adler** (President) handed down the opinion:

***The facts and lower court hearing*** - The main issue in this case is the extent to which unions are entitled to represent retired members. There is no doubt that retirees may be union members, since a collective agreement may grant retirees benefits. The issue here is whether, as part of the collective bargaining process, the union may also strike to obtain benefits for its’ retired members? On the face of it the answer is simple, since the right to strike is an integral part of the power to bargain collectively. Moreover, the history of collective bargaining in Israel is that retirees are Histadrut members, unless they cancel this membership after retiring. The Histadrut has a separate department for retirees. Finally, the concept of unity among workers includes both current and retired workers. Furthermore, in practice it is customary for the Histadrut to represent both workers and retirees.

Also, the lower courts’ fear, that pension rights could be reduced by collective bargaining, is unfounded since case law prohibits reduction of pension rights of retirees already receiving pensions.

Yet another reason for rejecting the University’s request for an injunction is that the freedom to strike derives from the constitution right of freedom of assembly, which grants a union broad freedom to further its’ members welfare. However, the issue here is not the freedom to strike for retirees’ benefit, but whether such a strike has the special protections granted strikes by collective labor law…

We learn from the Supreme Court’s **Station Film judgment** (handed down by Chief Justice Aaron Barak), that a balance must be made between basic rights, such as the workers’ freedom of assembly and speech and the employers’ property rights. This idea is applicable in our case, since the freedom to strike derived from freedom of assembly, which is derived from freedom of speech.

However, we must examine the questions raised concerning interpretation of the ***Collective Agreements Law*** (1957) and the ***Settlements of Disputes Law*** (1957), which use the term “employee”, “working conditions” and “labor relations” and do not relate to “retirees”. Such interpretation is guided by the current purpose of these laws….

***The Organized Sector of the Work Force*** - As a preliminary remark it should be noted that this appeal relates to organized workplaces, which are a third of the work force, mainly in the public sector. According to recent research reports only 10% - 15% of the private sector is organized. In general, the organized sector of the workforce has the following characteristics:

[1] The worker remains in the same workplace for many years, sometimes his entire working life;

[2] Union members include retirees, who maintain links with the workplace, from which they retired. In many workplaces retirement does not mean an absolute severing of connections between the employer and the retiree. In such workplaces there are collective agreements, individual labor contracts or laws which maintain a certain relationship between the retiree and his/her former employer. Thus, when an employer pays its’ workers a budgeted pension (paid by the employer to the retiree, such as exists for government workers) the retiree is dependent on the employers’ financial stability in order to continue receiving his/her pension. Further dependence is when collective agreements link retirees’ benefits (or some of them) to those of current workers employed at his/her former workplace. Another such linkage is when the collective agreement obligates the former employer to give retirees presents for various holidays, subsidy for workplace trips and outings, entrance to the workplace sports facilities, etc… When retirement does not result in an absolute severance of ties with the employer we must determine the content of the legal ties which continue to exist...

The best example of such continuing linkage is the budgetary pension, when the worker receives the pension directly from the workplace, such as described in the **Shekem Judgment**.

[3] Collective agreements and collective bargaining for an extended period at the same workplace often result in additional benefits for the retirees of that workplace.

[4] In addition, unions in the twenty first century do not generally limit their attention to achieving better conditions for the workers, but also have a social agenda, which includes senior citizens’ rights.

[5] … collective agreements relate to employees’ pension rights. The Employers’ Association and the Histadrut signed collective agreements which established pension funds. They also signed agreements with these pension funds and have representatives on the boards of these pension funds; they thereby continue to represent retirees’ interests, ie. pension rights. Thus, there is a continuation of representation when the worker retires.

[6] In addition, when we consider the situation of Bar Ilan University’s senior faculty there are many instances when they continue to lecture and conduct research at the university after retiring.

***Unions and Pensioners*** - A preliminary remark is to emphasize that trade unions’ main task is to represent workers; to improve their working conditions and protect their jobs. Working conditions include guaranteeing workers income after they retire, including a pension plan which allows pensioners to live a dignified life. Further ways that unions achieve better working conditions may also include health insurance, cultural and sport activities, improving the working woman’s situation and advocating social causes.

Therefore, a trade unions’ main characteristic is membership composed mainly of workers, as my minority decision in the **Amit Judgment** and the Supreme Courts’ judgment held. There is no doubt that all or most of union membership must be workers and that its’ main role must be to improve and protect their working conditions.

However, a union is entitled to allow retired workers to continue their membership. In many organized workplaces the worker, upon retiring, is transferred from the trade union department to the pensioners’ department of the same union. This is the situation for most members of the Histadrut, which has a pensioners’ union (department) and pensioners’ work committees, either within or separate from the workers’ work committee. The rules regarding membership of pensioners in unions are generally determined by the union constitution; this is so for the Histadrut. The principles of freedom of association guarantee the union a right to accept pensioners as members, if it so sees fit. This is in accordance with Convention 87 of the International Labor Organization, which says in Article 3, as follows:

“Article 3

[1] Workers’ and employers shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programs.

[2] The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof”.

Unions in many nations accept pensioners as members, such as the U.S.A., Canada, Spain, most Scandinavian nations and Argentina. In other nations, such as Australia, which has a centralized union structure, a pensioners’ department exists within this structure. Moreover, there are Regional Unions which have pensioners’ departments, such as the Latin American Confederation of Retired Workers and Pensioners.

The extent of pensioners’ rights and obligations as union members is determined by the unions’ bylaws and/or constitution. Today, the situation is that many union members are pensioners. This is an integral part of their freedom of association. As this Court said in the **Electric Company Decision**:

“We have not heard that the employee who ceases to be a worker and becomes a pensioner, ceases to be a union member; this, in contrast, to being a member of the Trade Union department of the union. … The Histadrut has a department and other bodies which represent pensioners’ interests. This clearly includes representation for the purposes of collective bargaining and determining rights”.

Moreover, there are some organized workplaces, at which the pensioners take an active part in certain work activities, such as company outings, sports and cultural activities.

With the increase of pensioners as a percentage of the population, there is a growing dependence between them and the active workers. They also have common interests, are willing to assist each other, and in many ways they can be described as one community. On the other hand, the active workers are being required to generate enough income to support both themselves and the pensioners.

Of course, pensioners are entitled to form organizations independent of a union without connection to a particular workplace. However, such an organization will be powerless to negotiate with former employers.

Generally, when pensioners remains a union member, it is empowered to represent them in negotiating with their former employer.

# ***The Collective Agreement Law* -** In light of the above we now examine the **Collective Agreement Law**. Does this law prevent a union from representing retired workers in collective bargaining, signing a collective agreement which increases pensioners’ benefits or striking to achieve better conditions for pensioners? Sections 1, 15 and 19 of this law say:

“1. **Definition of Collective Agreement**. A collective agreement is an agreement between and employer or an employers’ organization and an employees’ organizations, made and submitted for registration under this Law, concerning all or any of the following matters: the engagement of employees and the termination of employment, terms of employment, labor relations, and the rights and obligations of the organizations which are parties to the agreement.

15. **Scope of special collective agreement**. A special collective agreement shall apply to - [1] the parties to the agreement, [2] the employers represented, for the purposes of that agreement, by an employers’ organization which is a party to the agreement, [3] all employees of the classes included in the agreement who are employed in trades or functions included in the agreement by employers who are parties to the agreement or who are represented as specified in paragraph [2].

19. **Rights and obligations of employee and employer**. Provisions of a collective agreement concerning terms of employment and termination of employment, and personal obligations imposed on, and rights granted to, an employee and employer by such provisions (hereinafter referred to as ‘personal provisions’), shall be regarded as a contract of employment between each employer and each employee to whom the agreement applies, and shall have effect even after the expiration of the collective agreement, so long as they have not been validly varied or repealed, participation in a strike shall not be regarded as breach of a personal obligation”.

These sections of the law use the terminology of “employee”, “employment conditions” and the like, which, on the face of it, refer only to a worker actively employed by his employer. Also, the pensioner is not an employee of his former employer; there is not an employer – employee relationship between them. On the one hand, the Histadrut has not claimed that the plaintiffs were “employees” of University Bar-Ilan. Also, retired senior faculty are not “foreign” to their former employer…

***Interpretation of the Collective Agreements Law*** - The Collective Agreements Law should be interpreted according to its’ purpose and the current industrial reality. The **Rosenblatt judgment** discussed the question of what “work conditions” may be determined by collective agreements, in these words:

“’Work conditions’ mentioned in section 1 of the Collective Agreements Law also include the conditions by which a worker leaves his/her job, such as: severance pay, pension and other payments. In effect this means that the benefits promised to a worker as part of his work conditions, including those conditions which will exist after the work contract is terminated and the employer-employee relationship no longer exists…”.

… Collective agreements generally determine rights workers shall receive upon retiring or concluding the employer-employee relationship… this is also the situation in Germany.

Does the term in Section 15[c] of the **Collective Agreements Law** “all workers of the types covered by the agreement” include pensioners? The National Labor Court has interpreted this term to include pensioners, according to its’ purpose and the industrial context. In the **Rozenblatt judgment** the court said:

“Section 19 of the collective agreement, which applies to the parties, determines which workers Section 15 of the law applies to, ie. ‘tenured workers’, temporary workers, those employed according to an individual labor contract, and also ‘retired workers’, even those who have retired prior to its signing.”

Therefore, the parties to a collective agreement may agree to include conditions granting rights to pensioners. A collective agreement may grant pensioners additional rights. The **Rozenblatt judgment** said that such agreement to increase pensioners’ rights must mention specifically that it applies to pensioner; ie, that pensioners are not automatically entitled to additional rights granted workers in a collective agreement, … However, when a collective agreement specifically grants pensioners increased rights, such agreement should be given legal validity.

In the **Electric Company judgment** this court held that pensioners are entitled to the same benefits which the collective agreement between their former employer and the union grants all retiring employees. Moreover, these benefits were paid to the pensioner for four years and, thereby became implied condition in his pension contract. In that judgment the Court said that a union which also represents pensioners is entitled to negotiate with their former employer in order to obtain additional benefits for them.

Regarding the definition of an “employee” in the **Collective Agreements Law** this Court said in the **Shekem Pensioners’ Union judgment**:

“When implementing this policy on a collective level we shall state that a collective agreement may set benefit conditions which a worker is entitled to when he retires, such as a pension, presents on holidays and membership in the workplace’s club. Moreover, a collective agreement may grant conditions to workers who have already retired, such as improving their pensions… These rights are achieved as part of the unions’ role as representative of workers, which can also represent pensioners’ interests, since they are also union members. We note that the unions’ role to represent the workers includes the responsibility to care for their sustenance and well-being not only while they are working but after their retirement. The worker seeks to guarantee his income after his retirement, when he will be a pensioner and senior citizen. However, the union is not empowered to represent pensioners without their permission and consent and if this is not included in the union constitution and bylaws and the collective agreement.”

The **Shekem Pensioners’ Union judgment** held that the Regional Labor Court has jurisdiction to hear a case filed by a pensioners’ union against the workplace at which the members worked prior to their retirement. [The Labor Court has jurisdiction over employer – employee matters.] The Shekem Pensioners’ Union is part of the Histadrut’s Pensioners’ Union, which is a department of the Histadrut and work together with the Shekem Workers Committee, which is a unit of the Histadrut representing Shekem workers. Shekem’s pensioners maintained a connection with that company, among other things by participating in company outings, receiving a holiday present and the same discount at company stores received by workers; the Shekem Pensioners’ Union had an office in the Shekem Workers’ Committee offices, which were located in a Shekem administration building. The Shekem Pensioners’ judgment discussed the place of pensioners’ unions in Israel, by saying:

“The Israeli labor union model is many faceted and, in addition to the trade union department, includes the other activities, among them: representing pensioners (for example: the Histadrut’s Pensioners Union); representing the working woman (for example: Naamat, the Histadrut department for working women); sport activities (for example: the Hapoel teams, some of which are still controlled by the Histadrut). It has already been held that representation regarding pension terms is within the legitimate interests of a trade union. Article 11 of the Histadrut’s constitution empowers the Histadrut Pensioners’ Union to further pensioners’ pension conditions. A pensioner is entitled to be a union member and a union may include a section or department to care for the senior citizen… Therefore, in addition to representing workers, which is a unions’ main purpose, it may also represent pensioners, in certain circumstances and within certain boundaries. The extent of pensioners’ representation by a union raises complex legal questions, which might be dealt with in the future by the legislature and courts, but in this judgment we don’t have to decide this matter”.

Furthermore, the term “industrial relations”, which appears in the **Collective Agreements Law** includes the situation of workers who retired from their workplace, regarding matters related to their rights and obligations arising from their former work. Thus, the subject of pensioners’ rights in pension funds is regarded as part of “labor relations” and the Labor Courts have jurisdiction over these subjects, even though there no longer exists an employee-employer relationship at the time of the suit. … the term “work conditions” is very broad and certainly includes retirement conditions of workers at the workplace.

In summary, the purpose of the **Collective Agreements Law** is to facilitate concluding collective agreements. Such agreements apply primarily to workers and determine their retirement conditions. Unions continue to represent workers’ interests after their retirement. The Law’s terms indeed refer to “workers” and “working conditions”, because its’ main purpose is to protect the person doing work, who is a side to the employer-employee relationship. However, the term “industrial relations” may also be interpreted as referring to pensioners. In addition, we can interpret action which benefits workers as including their well-being after retirement. The reality in the organized sector is that collective agreements determine conditions which add rights to pensioners. This does not, of course, make the pensioner a worker at the workplace from which he retired; but this does make him a “worker” for the purposes of general representation arising out of the period he worked. Therefore, conditions in a collective agreement which grant pensioners rights are enforceable. For the purpose we need not use the theory of a contract in favor of a third party. According to what I said in the **Amit judgment**, the Amit union was a new breed of unions which was not suitable for workers unionization. On the other hand, unions which include pensioners as members are suitable for our modern era …

## *The Settlements of Labor Disputes Law* - We should relate to Section 2 of the Settlement of Labor Disputes Law, which is quoted below, in the same spirit and policy.

“2. For the purpose of this law, ‘labor dispute’ means a dispute as to any of the matters enumerated hereunder arising between an employer and his employees or part of them or between an employer and an employees’ organization or between an employers’ organization and an employees’ organization, but does not include an individual dispute; these matters are [included in the term ‘labor dispute’] are:

[1] the conclusion, renewal, alteration or cancellation of a collective agreement;

[2] the determination of terms of employment;

[3] the engagement or non-engagement of employees and the termination of employment;

[4] the determination of rights and obligations arising from employer-employee relations”.

Since improving conditions relating to pensioners’ rights may be a subject of a collective agreement, it can also be the subject of a labor dispute. While the law states that a labor dispute is between an employer and his employees, the **subject** of the dispute can be the conditions of that workplace’s pensioners’ income. In addition, we can include in “rights and obligations which arise from employer-employee relations” rights granted to persons who had worked at the workplace.

In this judgment we need not relate to instances where an independent pensioners’ union is formed to represent those who worked at the workplace prior to retirement. In the **Rosenblatt judgment** this court mentioned this possibility, saying that such a union could not be party to a collective agreement. However, there is not an independent pensioners’ union in the case before us; the pensioners were included in the Union which represented both the academic staff working at the University and the pensioners. We also are not relating in this judgment to the problem of how a union balances the interests of various types of workers at the workplace and the pensioners. We are need not relate to the relationship between a collective agreement determining pension rights and another agreement between the employer [and sometimes the union] and the pension fund, which is often done in labor relations. These issues do not arise in our case and we do not express an opinion about them….

Let us enumerate this cases’ special circumstances which support my conclusion that the Union is entitled to declare a strike whose purpose is to improve pension conditions: [1] the pensioners continue to be union members in an organized workplace; [2] the union has negotiated for the pensioners and included improved pension conditions in prior collective agreements; [3] the precedent of the **Shekem Workers’ judgment**. We shall discuss each of these circumstances, in order:

***The Union*** - the Senior Academic Faculty of Bar-Ilan University Union is the representative union for the senior faculty at Bar Ilan University and retired faculty. Section 3a of the Union by-laws… states:

“A union member is every university faculty member with the rank of lecturer and higher, in the regular appointment track, or a similar track, with a regular appointment (excluding guest appointments for a year or less), for at least a half-time position, **including university pensioners**, unless the worker has given written notification to the union chairman that he does not want to be a union member.

Section 2 of these Union by-laws states the Unions’ purposes, as follows:

“Purpose and methods of action –

1. representing union members to the university institutions in order to further professional interests relating to their work at the university, such as working conditions, salary, social benefits and fringe benefits (salary, hours of work, vacations, seniority, severance of employment, benevolent funds, professional betterment funds, sabbatical conditions, pension, severance pay insurance, etc.
2. representing union members before government institutions in the above or similar matters.
3. The functions mentioned in subsections “a” and “b” include those who are no longer union members, in matters which concerned them during their union membership.”

Section 2[c] determines Union functions to include representing pensioners regarding pensions and benevolent funds. There may be other functions which the union performs for retirees, but evidence was not submitted on this topic. We also do not know how many pensioners remain union members and how many resigned their union membership.

Section 6 of the Union by-laws states:

“The union works committee is the body which represents union members to university and outside institutions, regarding matters within the union’s authorized activities”.

…

Pensioners are also entitled to participate in union functions and institutions; however, Section 5 of the Union by-laws deprives pensioners the right to vote whether to declare a strike; it says:

“5(7) every member has the right to vote at general meetings; however, except for pensioners on the subject of any work stoppage…”.

According to the evidence presented it is evident that pensioners are active on the Works Committee and that there is no independent pensioners’ organization… This is an example of a union which represents both workers and pensioners.

As an aside, we mention that such a policy furthers labor relations at the University, improving motivation of existing faculty, since they know that their employer will continue to assist them after retirement.

***The scope of collective bargaining between the parties*** - In practice the Union and University administration negotiate and sign collective agreements on subjects affecting pensioners…While these agreements took the form of a letter from the University president to every pensioner, it was also signed by representatives of the University administration and Union. The collective agreement stated that:

“The signature of the administration shall be valid only if ratified by: the general assembly of the union; the body representing the pensioners; and the university’s standing committee.”

This is a clear indication of a conditional agreement and not a unilateral granting of rights. Together with the letter from the University president, there was another document concerning the pensioners, which was a letter from the Union to the University administration. …

As mentioned above, there were successful negotiations between the Union and administration concerning the Unions’ demand to raise the pensioners’ pension by 14%, culminating in an agreement. This is de-facto recognition of the Unions’ right to represent the pensioners and that their rights are an integral part of workplace collective bargaining. …a strike is an integral part of collective bargaining. As Prof. Ruth Ben-Israel and Gideon Ben-Israel mentioned in the article “Senior citizens: social dignity, status and collective representation”: [[1]](#footnote-1)

“In order to achieve a balance of the senior citizens bargaining power it is not sufficient for the union to bargaining collectively on their behalf. For the collective bargaining to succeed the senior citizens also require the power to apply pressure so as to advance the negotiations. A senior citizens’ union requires the same strike power as a workers’ union.”

This is also true when the union is negotiating for the pensioners. Moreover, according to the description of the negotiations in this case the Union demand to raise pensions by 14% its’ only bargaining demand. Also, the Union chairman described the pensioners he was negotiating for as “… everyone who had retired **or will retire by December 31, 2003**, [which is months after the negotiations]. The shows the common interests of workers and pensioners. One day a person is an active worker and the next day he is a pensioner of that workplace. In both instances he needs the representation and protection of the union.

***Policy suitable for today’s Israeli society*** - The retired population is greater today than in the past because of the increase in life expectancy and early retirements related to the shrinking work force. Those who retire require an alternative to their former work income in order to maintain a minimum level of dignity. As much as Israel’s resources permit, it should protect the dignity and income of senior citizens. As mentioned in the Ben-Israel article:

“Reality teaches us that when social policy is formulated , or when it is decided how to distribute public resources, the voice of the senior citizen is not heard, since individual senior citizens lack the bargaining power necessary for inclusion in this decision making process”.

On of the important tools for guaranteeing senior citizens dignity is union representation, as the Ben-Israel article stated:

“The recognition of new pensioners’ needs stimulated the formation of retired workers’ departments in unions,.. Such needs are, in principle, within the union framework and justify involving retirees in its’ governing bodies. This is a new phenomenon, but already exists in Italy and Israel….”

Of course, unions mainly further the interests of those who have retired from organized work places. They are, therefore, not a complete answer to senior citizens’ problems. On the other hand they are a partial solution… and, therefore, the desirable policy is to interpret legislation so as to enable unions to represent retirees, including negotiating on their behalf with their former employer. …

***Expanding unions’ traditional role and the protection of senior citizens*** - When concluding my remarks concerning policy and industrial reality I summarize the remarks of [former Supreme Court justice] Tzvi Berenzon, that there is a history in Israel of pensioners’ representation within the Histadrut Labor Federation in a special department. This is in addition to pensioners being members of Histadrut’s national unions [the engineers, clerks, metal workers, etc]. The Ben-Israel article also describes the development of this representation as a partial solution for protecting senior citizens …

Not only in Israel are there unions with general social purposes. Several opinions of the ILO Committee for Freedom of Association stated that it was legitimate for unions to further general social purposes, including strikes for the benefit of pensioners. One opinion [[2]](#footnote-2) stated:

“As concerns the political nature of the strike, while the Committee has always held that strikes of a political nature do not fall within the scope of the principles of freedom of association, in this case it would appear that a substantial part of the claims of the NLC PESGASSAN and NUPENG were of a social and economic nature, in particular as concerns the situation in the oil industry. The Committee therefore draws the Government’s attention to the principle that organizations responsible for defending workers’ socio-economic and occupational interests should be able to use strike action to support their position in the search for solutions to problems posed by major social and economic trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and the standards of living (see, General Survey on Freedom of Association and Collective Bargaining, ILC 81 st Session, 1994, para 165). Accordingly, the right to strike should not be limited to industrial disputes that are likely to be resolved through the signing of a collective agreement, workers and their organizations should be able to express in a broader context, if necessary, their dissatisfaction as regards economic and social matters affecting their members’ interests”.

My conclusion is, therefore, that while unions’ primary purpose is to represent workers they may also further pensioners’ interests, including protecting their pension income.

***On the freedom to strike*** - To the extent that a union may represent pensioners, negotiate for them and enter into collective agreements with provisions concerning pensioners’ rights, it may also strike on these issues, since the freedom to strike is part of collective bargaining. The right to bargain collectively is directly related to the freedom to strike; without a union being able to apply pressure to the employer its’ power to negotiate is limited. In this regard Professor Milton Konvitz said:

“Without the power to affect the course of events, a person or group lacks the responsibility to reach decisions. Power is the source of responsibility. Without the right to strike, unions will lack the foundation for voluntary negotiation and agreement. If a free labor agreement - free collective bargaining in a free enterprise system – is in the public interest, so is the right to strike, which makes the free labor agreement possible”. [[3]](#footnote-3)

As much as possible, case law should adapt itself to the industrial reality. We should interpret laws according to their current purpose. In the case before us the parties have adopted a progressive and positive model of industrial relations which cares for pensioners. To the extent which unions are entitled to negotiate for pensioners they are also entitled to declare a strike on their behalf, since the strike is an integral part of collective bargaining.

The freedom to strike, as an integral part of collective bargaining, takes on a new meaning in this constitutional era. The freedom to strike is part of the constitutional freedom of assembly. The right of a senior citizen to human dignity derives from the constitutional right of human dignity. There is little meaning to this right if the senior citizen has no means of protecting his/her income. Society sets a legal framework for collective and individual labor law in order to protect workers’ rights, including retired workers. Moreover, we can assume that prohibiting a union’s freedom to strike for its pensioner members will be considered as an impermissible restriction on the freedom to organize, which is guaranteed by ILO conventions.

Therefore, the term “worker” in labor legislation should be interpreted to include “pensioner”, as far as this suits the current purpose of labor legislation. One way of defining a free society is when its citizens are free to advance their interests collectively. The freedom to strike, which is a part of collective bargaining, expresses the right of groups to advance their interests, which is part of legitimate social changes in our country.

***Conclusion*** *-* This appeal should be accepted. In the circumstance of this case the Union is entitled to declare a labor dispute and strike, as part of its efforts to achieve better pension rights for its pensioner members.

ANNOTATION

This case and the recent ***Shekem Workers Case*** explore the extent to which unions can further pensioners’ rights. In **the Shekem Workers Case**, the National Labor Court held that the Labor Courts have jurisdiction over a petition filed by the pensioners’ union to require the former employer of its’ members to continue granting them reductions on purchasing at its’ stores, holiday presents and participation in workplace outings. In addition, the union requested continued use of its office located in workplace headquarters. The former employers’ claim that the Labor Courts do not have jurisdiction over cases between pensioners or pensioners’ unions and former employers, was rejected. In that case there was a history of negotiations and agreements between the union and employer regarding pensioners and the pensioners’ union was part of the Histadrut’s pensioners department.

The Bar-Ilan case explores the extent of collective bargaining for pensioners’ rights. As life expectancy rises and workers retire early issues concerning pensioners’ rights become more acute. Society must balance the rights of workers and pensioners and relate to the economies’ ability to support an increasing retired population.

Unions which include pensioners as members must also balance their rights and obligations against those of the working members. What should be the extent to which retired members can participate in union activities, including holding office and participating in strike votes. How should negotiations be conducted regarding pension rights, to what extent should pensioners participate in such negotiations?

These issues affect the organized sector of the economy, where there are unions and collective bargaining. They arise mainly at workplaces which have a tradition of long term employment and continued relations between the former employer and its’ retirees. However, agreements and conditions at such workplaces have indirect effects on other workplaces.

What is the proper forum to deal with these issues? Israeli case law holds that the Labor Courts have jurisdiction. This is in addition to their jurisdiction over issues concerning pensions, dismissal and collective labor law.

What is the legal framework for pensioners’ rights? As individuals they have a contract with their pension fund and, when they receive their pension directly from their former employer, their contract is with that employer. However, on a collective level rights and obligations arise from collective agreements. To what extent can a collective agreement bind a retired worker?

Finally, there is the broad issue concerning organizations solely for the representation of senior citizens. At first glance it would seem that such organizations have no or little relationship to the former workplaces of their members. However, can departments be created within such organizations for individual workplaces? Can such an organization, which is not traditionally defined as a union, negotiate and sign collective agreements?

As we enter a new era in which retired workers and senior citizens form an increased part of the population we are challenged by many new legal, industrial relation and social issues which arise. The Bar-Ilan case is a modest beginning of legal analysis of these issues.

1. Hebrew article, published in the annual journal of the Israeli Labour Law and Social Security Society, “**Labor, Society and Law**”, volume 9, 2002, p. 229. A similar article, “Senior citizens: social dignity, status and the rights to representative freedom of organization”, was published in the **International Labour Review**, volume 141, number 3, p. 253. [↑](#footnote-ref-1)
2. Complaint against the Government of Nigeria presented by the International Confederation of Free Trade Unions (ICFTU), the Organization of African Trade Unions (OATUU) and the World Confederation of Labour (WCL), Report No. 295, Case No. 1793; ILO internet site, ILOLEX, http://www.ilo.org/ilolex/english/iloquery.htm. [↑](#footnote-ref-2)
3. Milton R. Konvitz, “An Empirical Theory of the Labor Movement”, **Philosophical Review**, 62, January 1948, p. 75. [↑](#footnote-ref-3)