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TOPIC 2
LABOUR LAW (IN ITS INDIVIDUAL AND COLLECTIVE ASPECTS) AND PRODUCTIVE DECENTRALIZATION

ISTRAEL

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INTRODUCTION

In this paper we shall attempt to present both the descriptive and normative status of triangular employment relationships in Israel (hereinafter: TER). We start the analysis with a statistical description of changes in employment relations in the Israeli labor market and focus mainly on the prevalence, forms and status of employees employed by contactors' firms. We focus on this form of TER in view of the lack of data on other forms of TER[3] . However, this does not imply that other forms of TER are used infrequently in the Israeli labor market. We make the case that Israel is one of the OECD countries with the highest percentage of workers who are not directly employed. Further, the employment conditions (e.g. wages and benefits) of these employees are substantially lower than those of their

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[3] As this is the only form of triangular relationship which is subject to regulation, for further discussion see below at section 1.1.1.

counterparts who are employed on a regular basis.

The dramatic gaps presented in the first section of this paper were partly responsible for the change in the judicial approach to this phenomenon, as described in the second section of the paper. As we shall explain the traditional approach of the courts was formal, allowing employers to escape responsibility for their employees. In about the mid 1990s the courts realized that their traditional position was partly responsible for the changes described in the first section and introduced more substantive tests to be considered when attempting to identify the 'true' employer.

Labor markets and employment relations have undergone a pronounced change during the last two decades (Belous, 1989; Diprete, Graaf, Luijkx & Blossfeld, 1997; Esping-Anderson, 1992; Hakim, 1997; Pfeffer & Baron, 1988; Rodgers & Rodgers, 1989). Most industrial countries are transforming their economies, labor markets and industrial relations into more flexible (Pfeffer & Baron, 1988) and less regulated (Muckenberger, 1989) entities. Expansion of the service sector (Tilly, 1991; 1992; 1996), development of alternative[4] work arrangements (Belous, 1989; Polvika & Nardone, 1996; Rodgers & Rodgers, 1989; Tilly, 1996) and the emergence of the global market and global competition (Frankel & Royal, 1997) are a few examples of changes, known as “restructuring the economy” (Castelles, 1989; Sabel & Zeitling, 1997) processes.

As a result, a substantial share of the workforce is found in various types of temporary, contract and part time work, and evidence suggests that the share in at least some of these arrangements is growing faster than total employment (Housman, 1997). This growth has raised concern because jobs in so-called “alternative” arrangements often provide lower wages, fewer benefits and less stability than comparable standard full time jobs.

1. CHANGES IN EMPLOYMENT RELATIONS IN ISRAEL

Changes in employment relations and the labor process have not bypassed the Israeli labor market (Mundlack et al, 2004). The most prominent change may be seen in the erosion of corporatist employment relations, accompanied by a sharp decline in employment security and an increase in the number of employees working in alternative work arrangements. The present section describes the principal shifts in the Israeli labor market. The section continues with an analysis of data on the Israeli temporary help industry, which is the most prominent example of triangular employment relations in Israel.

The reasons for the erosion in Israeli corporatist employment relations are numerous

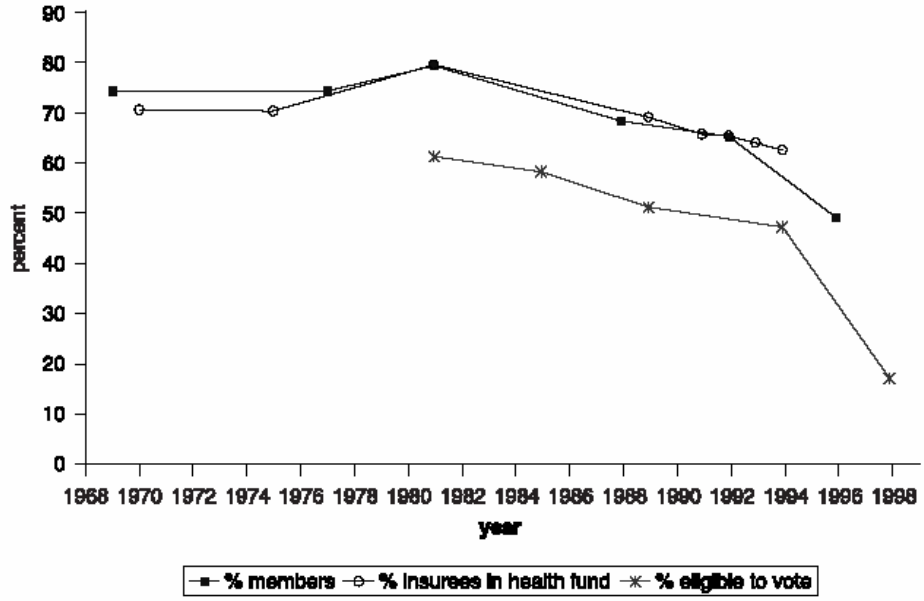
[4] In this section we use the term alternative work arrangements to describe any work arrangements that differ from full time regular work. This term can be replaced with ‘non- standard work’.

and varied (Mundlack et al, 2004). On the demand side, there has been a change in the composition of industry making it very difficult to continue corporatist collective negotiation. On one hand, traditional industry, based on collective agreements, has become less prominent in the Israeli labor market. On the other hand, hi-tech industries, which are based exclusively on individual agreements, have grown very fast. Globalization and the opening of the Israeli labor market to foreign trade and competition has damaged the protection afforded to unskilled workers and local production, especially in intense labor industries. On the supply side, the growing heterogeneity of the labor force has widened the workers interest scoop and thus made it very difficult to manage collective employment agreements. These trends have been accompanied by an erosion of solidarity in Israel's social system, which was very dominant in Israel's early years.

Figure 1 describes the many faces of the decline in corporatist employment relations in Israel since the 1980's. While 80% of the salaried workers were members of the Israeli Labor Federation (Histadrut) in the 1980s, by the beginning of 2000 only 45% of salaried workers were unionized. Moreover, voting rights declined sharply from 60% to 20%. In sum, during the 15 years between 1981 and 1996, the General Histadrut's membership rate among wage and salary workers declined by about 30 percent pointes.

FIGURE 1

PERCENT MEMBERSHIP IN THE GENERAL HISTADRUT AMONG WAGE AND SALARY WORKERS, PERCENT ELIGIBLE TO VOTE IN THE HISTADRUT'S GENERAL ELECTIONS, AND PERCENT INSUREES IN THE HEALTH FUND OF THE GENERAL HISTADRUT AMONG THE TOTAL POPULATION, 1969–1998.



Sources:
% Membership: our analyses of pre-election polls. See note #4
% Insurees: Bin-Nun and Greenblatt (1999)
% Eligible to vote: 1982–1994 Nathanson and Associates (1999).
1998: our calculations, based on number eligible to vote in numerator (Nathanson and Associates 1999) and adult Israeli population in denominator

Data source: Yinon Cohen, Yitshak Haberfeld, Guy Mundlak, Ishak Saporta, Unpacking Union Density: Union membership and coverage in the transformation of the Israeli industrial relations system, **Industrial Relations** 42(4) 692-712 (2003).

These explanations for the erosion of the corporatist system are not unique to the Israeli labor market. However, local effects in the Israeli labor market and its institutional structure have also contributed to the flourish of alternative work arrangements and especially to triangular employment relations in the Israeli labor market:

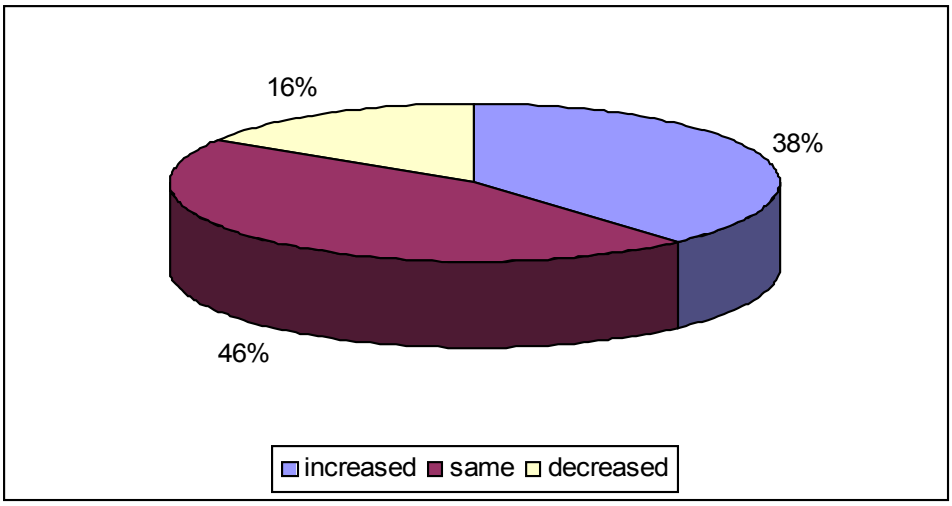
1. Employment restrictions in the public sector since 1985 have driven the massive use of external workers in the public sector as well as in the business sector.
2. The wage structure in Israel, which is settled in collective agreements, is based on a dual structure of salary and benefits. Since the benefits portion is very expensive, paying only the salary portion (usually the case for external workers) has lowered the total labor cost.
3. The high increase in labor supply since the 1990s, as a result of massive Russian immigration has raised the rate of unemployment, so that employers are able to attract workers on very low employment conditions and salary.
4. Terror attacks on Israel since the mid 1990s have raised the demand for unskilled workers to replace Palestinian labor. This demand has been filled partly by the rising numbers of international workers and partly by Israeli workers working on external employment relations terms.

Although, as in other countries, time series data on employment in alternative work arrangements do not exist in Israel, , indirect evidence suggests that the share in these arrangements is growing. Some researchers have cited the rapid growth in business services as evidence, on the grounds that many contract company workers are classified in this sector. Moreover, several employer surveys provide qualitative evidence that other types of alternative work arrangements have grown significantly in recent years (Abraham, 1990; Abraham & Taylor, 1996; Housman, 1997).

The following figures provide a glimpse of Israel's alternative work arrangements . The data is based on an international survey (CARNET) and describes total change in the use of external providers and alternative work arrangements by Israeli firms in 2003.

FIGURE 2:

USE OF EXTERNAL PROVIDERS DURING THE LAST THREE YEARS (PERCENTAGE)

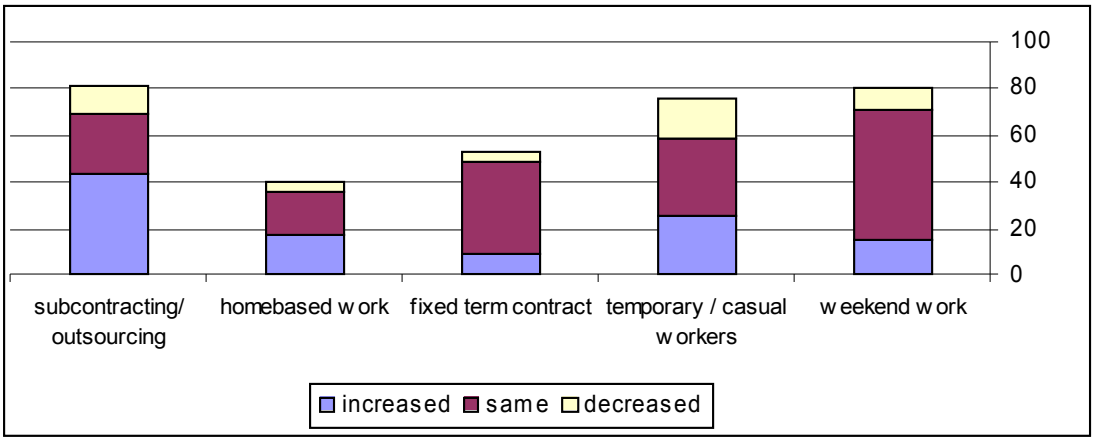


Data source: Carnet Survey, 2003

During the last 3 years there has been an increase in the use of external providers by Israeli firms. About 38% of firms increased their use of external providers while 16% decreased their use. Thus, total net change of use was 22%. Moreover, 62% of total organizations used external providers in personnel functions in assignments, such as recruitment and selection, training and development or pay and benefits.

FIGURE 3:

CHANGE IN ALTERNATIVE WORK ARRANGEMENTS, USE BY ISRAELI FIRMS IN THE LAST THREE YEARS, 2003[5]



Data source: Carnet Survey, 2003

In most of the alternative work arrangements described in figure 3 there was an increase in use over the last 3 years. The most pronounced change in use occurred in areas such as subcontracting or outsourcing and temporary / casual workers. In all the work arrangements described in figure 8 there was a positive net change in use over the last 3

[5] Firms not using these work arrangements are not described.

years. Thus, one can conclude that there was an increase in use of alternative work arrangements in the last 3 years in Israel occurring mainly in work arrangements based on triangular employment relations.

1.1. The temporary help industry in Israeli law and practice

Temporary help or employment of employees by manpower contractors is the most prominent alternative work arrangement in the Israeli labor market. Thus, in order to understand the dynamics of the temporary help industry in Israel it is very important to describe the institutional setting of this phenomenon.

Since 1996 the temporary help industry has been regulated by the **Employment of Employees by Manpower Contractors Law (1996) (Isr.).** This statute sets the standards for temporary help employment while applying regulations and formalizing the work of temporary help firms and describing the basic rights of temporary help workers.

The main provision concerning employees' rights sought to equate the employment condition of employees supplied by manpower contractors' with those of regular employees operating in the same workplace by applying the collective arrangements to the former after 3 years of work in the host firm.

However, this provision was never really applied as the law was amended just at the time the directive was due to come into effect. Further, the directive was not intended to apply to work places were work conditions were not set by collective agreements. Hosting firms were also able to avoid the directive by signing collective agreements with manpower contractors.

In 2000 two main aspects of the 1996 law provisions were revised: First, it was provided that the equalization directive would be applied from first day of employment of manpower contractor workers in a host firm and that comparable work conditions would be afforded to employees of manpower contractors and regular workers, doing the same work. Second, a time limit of 9 month was set for use of employees of manpower contractors by a host firm. However, this provision too was never put into operation as its application has been postponed every year by the Economic Policy Law.

Under the 2000 amendment, hosting firms were also able to avoid the initial directive mentioned above, by signing general collective agreements with manpower contractors.

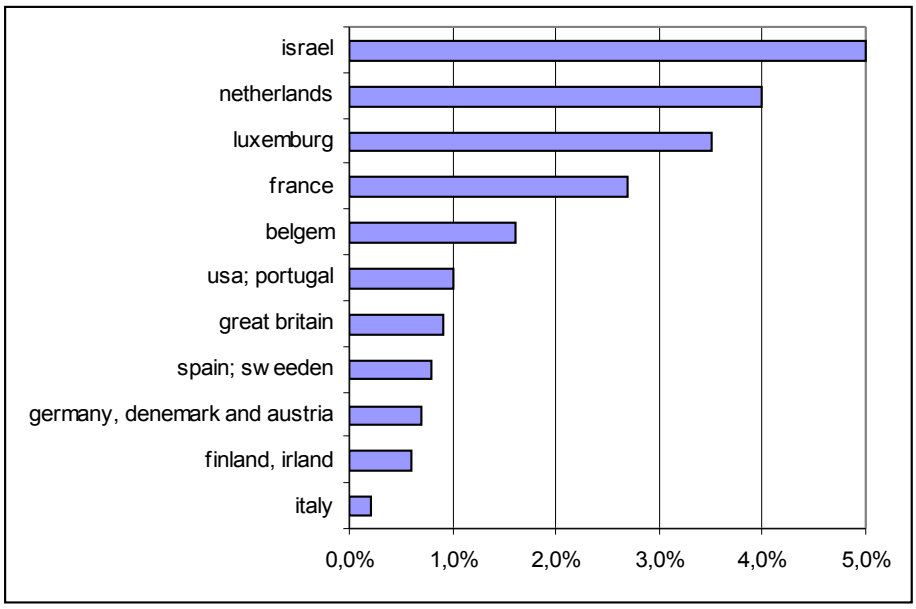
A general collective agreement in the temporary help industry was signed at the end of 2004, and was widened to embrace the entire industry by the Ministry of Trade Industry and Employment. However, this agreement did not improve the work conditions of employees of manpower contractors.

1.1.1. Share of employees of manpower contractors

In Israel, there is very limited empirical data on “new” flexible work patterns, counterpoised to “old” forms of labor based on “taylorist” or “fordist” forms of production. Empirical data collected by labor force surveys since the beginning of 2000 apply mainly to the temporary help industry and its workers. Empirical data on temporary help workers, temporary help firms, and organizational use of temporary help workers has been collected by the Ministry of Trade Industry and Employment since 1999 as well.

FIGURE 4:

Figure 4: Temporary employment in OECD, as percentage of total employment, 2000

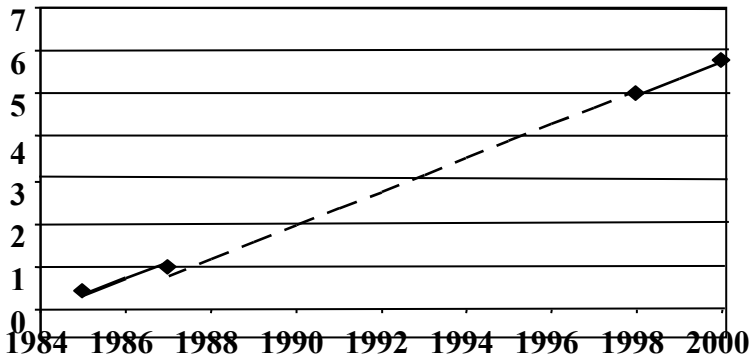


Data source: European foundation, 2002; Cohany, 1998; Israel’s Ministry of industry, trade & employment 2000.

The share of temporary employment in Israel is the highest in OECD countries. Temporary help firms employ five precent of total employment in Israel. In comparison, temporary help firms in the USA, where the share of total contingent employment is very high, employ only 1% of total employment. European countries such as France, Luxemburg and the Netherlands are in between these two extremes, with about 3% of total employment employed by temporary help firms.

The temporary help industry in Israel grew very fast during the 1990's. While in 1985 temporary help firms employed less than 1% of salaried workers, in 2000 temporary help firms employed 6% of salaried workers.

Figure 5: salaried workers employed by temporary help firms (percentage), 1985-2000



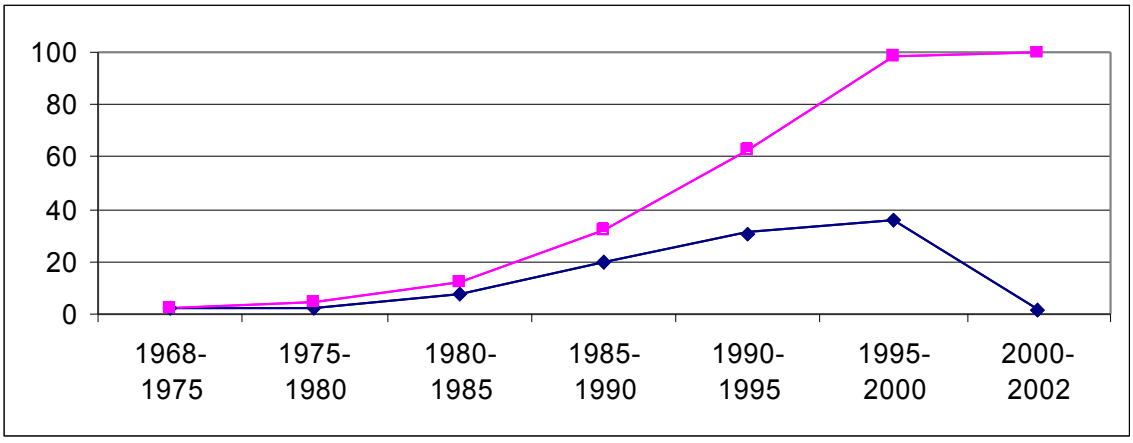
Data source: Nadiv, 2004

Finally, another indicator of the growing prominence of temporary help firms in the Israeli labor market is the rising number of temporary help firms since the mid 1990's.

FIGURE 6:

PERCENTAGE AND CUMULATIVE PERCENTAGE OF TEMPORARY HELP FIRMS BY YEAR OF FOUNDATION, 1968-2002

Cumulative percentage of temporary firms opened each year
Percentage of total temporary firms by year of foundation



Data source: Ministry of Industry Irade & Employment

There were 280 temporary help firms in Israel in 2002. The total number of temporary help firms was highest in 1998 and stood at 380. The temporary help industry grew very fast during the 1990's while at the beginning of 2000 there was a sharp decline in the number of new entrances to the temporary help industry. Interestingly enough this change happened in the same time as the changes in the law and as in the approach of the courts toward TWA.

Lacking the data which would enable us to present a causal mode, we cannot say with confidence whether this change ought to be attributed to the legal changes or to the partial depression which started at about the same time.

As is evident from the data, there is a wage gap between temporary help workers and regular employees even when controlling for age and occupation. For example, on average there is a 40% gap in the salary of older (age 35+) professionals working for temporary help firms compared to regular employees. This gap shrinks with age (younger workers) and occupation (less skilled). Although the **revision of the Employment of Employees by Manpower Contractors Law (2000)** has forced employers to provide equal wages and employment conditions to temporary help workers and regular workers performing the same job, the employment conditions of temporary help workers remain very poor. This may imply that employers were only partly complying with the law or that there were no regular workers performing the same job.

TABLE 1:

SALARY GAP BETWEEN TEMPORARY HELP WORKERS AND SALARIED WORKERS BY OCCUPATION AND AGE, 2000

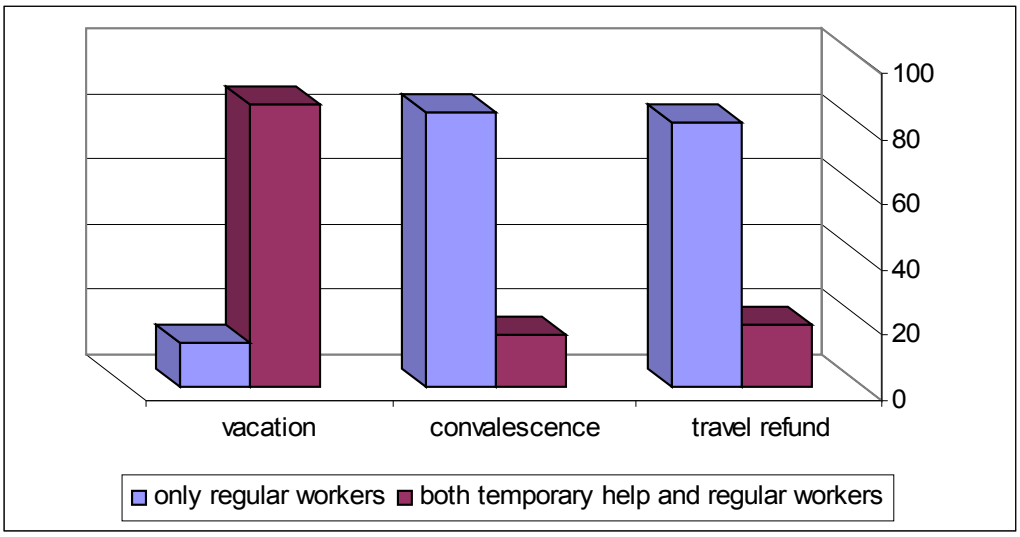
	Salary gap, salaried workers age 35	***Salary gap, salaried workers age 25***	***Temporary help workers***
Profesionals	40%	20%	26.3
workers			
Clerical workers	30%	20%	18.3
Agent & service	35%	25%	16.3
workers			
Skilled workers	0%	12%-	22.4
Unskilled workers	20%	20%	16.3
Total average	40%	20%	18.4
Fixed Avrerage	30%	15%	

Data source: Income Survey CBS, 2000; Temporary Help Workers Survey, Ministry of Industry Trade and Employment, 2000.

Figure 6 describes paid employment conditions for regular and temporary help workers. These employment benefits are mandated by Israeli law, however, as can be seen, most organizations do not pay these benefits to temporary help workers. While 80% of the organizations pay for paid vacations for both temporary help and regular workers, 20% pay for only the regular workers. Less than 20% of the organizations pay for convalescence and travel refunds for temporary help workers.

FIGURE 6:

PAYMENT FOR EMPLOYMENT CONDITIONS BY FIRMS USING TEMPORARY HELP WORKERS, 2003



Data source: Employers Survey, Ministry of Industry, Trade and Employment, 2003

1.2 Summary of findings

The indicators presented in this section, describe changes in Israel's employment relations -- a sharp decline in corporatist employment relations. As a result, a larger portion of the labor market is exposed to alternative work arrangements and worse employment conditions. Since there is a dearth of empirical data on alternative work arrangements in Israel, it is very difficult to estimate the total share of alternative work arrangements in total employment. The existing data on TWA affords us a certain insight into this arena of the Israeli labor market. However, it is very difficult to distinguish between different types of alternative work arrangements because of the lack of empirical data and the vague definitions given to different work arrangements in Israeli law. In contrast, the legal analysis of work arrangements as shown in the second part of this paper, allows us a better understanding of changes in employment relations in Israel as a whole and particularly with regard to the share of alternative employment relations in Israel's labor market.

The presentation of the law in Israel will be conducted – in keeping with the requirements of the editors — according to seven categories such as employee leasing, contractors and franchising. Approaching TER by looking at each category individually is justified because of the very real differences which exist between these categories. As we shall shortly demonstrate, there are categories which attract heavier scrutiny by the courts than others. The courts have differentiated between justified and unjustified business

strategies. In some categories, the courts have been more lenient, for example employee leasing, while in others, such as in the group of companies category, where piercing the veil is very common, they have taken a stricter approach. At the same time, such an approach may cause us to lose the 'bigger picture' of the legal status of decentralized production in Israel. Consequently, we would like to make one preliminary comment regarding changes in the case law in Israel in recent years, the impact of which has not been limited to any particular category.

1.3 Overall trends in the Israeli Case Law.

TER is a varied work arrangement that involves three parties in the employment relationship: employee, contractor firm and using firm. This contrasts with traditional work arrangements that involve only two parties in the employment relationship (e.g. employee and employer). The different types of TER vary primarily in relation to the degree of attachment between the employee, who is employed by the contractor firm (or temporary help firm) and the using firm which 'rents' the employee from the contractor firm. In the case of temporary help firms, the employee is usually directed and managed by the using firm, while in the case of employee leasing the employee is managed by the contractor firm. In between these two forms of TER lies the contractor's employment relationship in which the employee is managed by both the contactor and the using firm. Given that courts in Israel tend not to differentiate between different kinds of TER changes in one category are expected to have an effect on other categories as well. However, as mentioned, the Israeli law regulates only one form of TER – TWA, thus in order to escape the directives of the law firms may prefer other forms of TER which will allow them to achieve flexibility in the employment relationship.

Since the mid 1990's the courts have wielded substantial powers designed to dramatically decrease employers' attempts to escape their obligations towards employees; however, as this paper will demonstrate, the reality is extremely complex. Generally speaking, the courts in Israel have sought to use this substantive approach in every situation in which, due to a triangular relationship, an employee's statutory rights with regard to conditions of employment, health and safety have been threatened. As we shall shortly show, there have been two major shifts in the Israeli case law which for the most part have had overreaching effect on all categories discussed in this paper. The first shift occurred in the mid 1990's; represented in a series of decisions by the National Labor Court[6] In that

[6] D.B.A NB/142-3 *Hassan El Harinat v. Ruth Village*, 24 P.D.A 535 (1992).
D.B.A ND/96-3 M.B. *The Kibbuts' Construction Division v. Abed*, 29 P.D.A 151(1995).
L.A. 1189/00, *Ilana Levinger v. The State of Israel* (unpublished) (2000).

shift the courts made it harder for employers to escape liability through a set of contracts.

The courts presumed as a matter of law that the user enterprise was the employer. Only if the user employer was able to bring *prima facie* proof that the triangular relationship was formed by a set of contracts and that it was not the purpose of the transaction to escape liability, then the court was willing to consider which of the two entities was the real employer on the basis of a series of tests determining which had the closer connection to the employee.

In our review of the law in Israel we shall attempt to present not only the current law but also to describe the development of the law and to critically examine whether the changes announced by the courts and legislature have indeed improved the conditions of employees. Taking this broader approach is important for more than merely academic reasons. As we shall show, some of the dynamics of the law correspond to the dynamics of the labor market itself in which employers respond to changes in the law. Thus, even though we shall attempt to fit our review to the categories requested by the editors, it is important to keep in mind that the dynamics of employment are such that changes in one category are not isolated from changes in other categories. Employers who seek to avoid responsibility for employees may try to operate through other categories. Furthermore, the National Labor Court tends to focus on the actual relationship between the parties and not on the formal definitions suggested by the editors. Having said that, there are obvious differences between the categories that justify separating the detailed discussion of the case law in the suggested categories.

3 OUTSOURCING – TRANSFER OF UNDERTAKING AND OTHER MODIFICATIONS IN THE LEGAL SITUATION OF AN UNDERTAKING OR PARTS THEREOF

One of the most common categories of triangular relationships concerns the transfer of an activity which was originally in one enterprise to a different entity that specializes in this activity.

Generally speaking, there are two major types of outsourcing:

The first type is outsourcing of functions. That is, the organization which does not have the specialty or the resources to manage a certain activity on its own, buys the services of other companies which specialize in that activity. Common operations which companies tend to outsource are IT management and cleaning.

The second type is outsourcings of employees. In this case the employer has more control and knowledge about the management of the specific employees, however, he takes employees from a different company and deals exclusively with handling that function,

usually within the premises of the original company.

There are number of reasons for outsourcing, each with its own economic justification. In some cases it is more efficient for a factory to specialize in its core activity and buy services which are unrelated to the core activity of the company. In these cases, even if the original rationale was justified, the fact that employees work with someone who is not their employer naturally leads to tension between the core employees and the employees of the service companies.

A representative case for the approach of courts in Israel to outsourcing is the *Toper case*.[7] In that case, an employee named Toper worked in a private company called 'Granot' which gave accounting services to both private corporations and municipalities. When Ms. Toper started her work, she did so in the offices of a number of municipalities. After some time she moved to work in the offices of two municipalities in the south of the country. She worked there for four years until she was fired in 2001 at which point she sued the two municipalities. The court ruled that as the private accounting company had hired Ms. Toper, fired her, paid her salary, set her employment conditions and reported her as its employee to the tax and social security authorities, she should be seen as an employee. Basically the court relied on the 12 tests set out in the highly influential *Kfar-Ruth case*[8] in coming to the conclusion that this was not an artificial transaction but rather a real one. Further, when Ms. Toper felt that she ought to receive more vacation time, she sued Granot and not the municipality, casting doubt on the good faith of the employee. The court took into account the fact that many employers engage in such practices, especially in the municipal sector. In that context, the court argued that particularly in the municipal sector, and *a fortiori* in the context of the Tel Sheva, which is a tiny community with a limited number of positions, outsourcing serves an important function since it helps ease the bureaucratic barriers that exist in the municipalities themselves. Interestingly, the court did not stop its analysis with an examination as to whether each of the 12 tests had been fulfilled in order to justify its non-intervention in this case. The court analyzed the specific employment conditions of the plaintiff and came to the conclusion that since her employment conditions were much better than required by statute, it was not dealing with an employee who had been abused by the triangular relationship bur rather with an employee who was fully aware of her rights and her past behavior demonstrated her awareness of her rights and her current claim was therefore tainted with bad faith. The emphasis of the conditions of the employee, is a common argument by courts who deal with such cases. It seems to represent that beyond all the formal test that they cite, they want to make sure that they intervene only in situation where the employment conditions of the employee were harmed by the triangular structure of the

[7] LA. (B.S.) 2515/01 *Nina Toper v. Municipality of Tel-Sheva*, 2004(2) TK-AV 3423 (2004)

[8] See infra note 11

relationship.

3.1 The role of labor unions with regard to outsourcing

Naturally, labor unions are the obvious nemesis of any attempts by the employer to use alternative sources of employees. The greater leverage obtained by an employer when negotiating with a union is straightforward. Consequently, the Israeli case law documents a number of cases in which the Labor Federation (Histadrut) has sued an employer for allegedly violating its commitment to consult the union before engaging in any form of outsourcing.

One of the leading cases to examine the standing of a union with regard to outsourcing is that which dealt with the responsibility for cleaning the streets in the city of Be'er Sheva[9]. In that case, the Histadrut attacked the municipality's decision to outsource cleaning services without consulting with the union. The Histadrut argued that according to the collective agreements, the municipality had undertaken not to increase the number of temporary workers without prior consultation with the union. The city argued that its only action was to lay off the temporary workers and bring in a contractor to replace them. The court held that as the collective agreement did not distinguish between temporary employees and contractor employees the municipality's decision did not violate the collective agreement.

Thus, we can summarize that in most organized places, the language of the collective agreement as well as practice result in the unions being consulted on a broad spectrum of decisions that concern outsourcing, even if the impact is arguably minimal. Courts generally recognize that employees have the right to take organizational steps (e.g. strike) when such consultation is not pursued.

4. THE LEGAL SITUATION OF THE EMPLOYEES OF CONTRACTORS AND OTHER AFFILIATED ENTERPRISES VIS A VIS THE PRINCIPAL/PARENT ENTERPRISE

One of the most basic forms of triangular relationships concerns the situation in which a corporation hires a subcontractor to conduct an activity and the subcontractor is expected to bring in his own people and carry out the required work. Naturally, since most of the work is conducted within the premises of the "user" enterprise one of the topics which draws much of the attention of the courts in these relationships concerns questions of tort liability in situations in which the employee is harmed.

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[9] C.F.A. 1020/04 *City of Beer-Sheva v. Histadrut* (unpublished) (2005).

A leading case on this topic is the *State of Israel v. Nisim*[10]. In this case a private company signed an agreement with the State of Israel for the supply of drivers to the State. The vehicles themselves were owned by the State. The private company assigned drivers to each mission but an on-site employee of the State was in charge of the drivers. In this case, such a driver negligently hit an employee of the State whose job it was to supervise the drivers. The question asked was who was vicariously liable in this situation? The court held that both the State and the private company were vicariously liable for the negligent driver. Nonetheless, is allowed the State to be reimbursed by the private company.

In another classical tort claim - the *Solel Bone case*[11] - the court reaffirmed its commitment to prevent situations in which an employee would be left without an employer whom he could sue. In that case a web of contracts was signed between a number of companies for the construction of a structure for a company that owned the land on which the structure was built. An employee was injured in the process of building the structure and the court ruled that all the companies were responsible for the damages of the employee as a duty of care existed not only towards employees but also towards contractors.

The policy of the courts that employees should not be left without an employer due to triangular relationships was not confined solely to employees who had been physically injured on the job. In the case of *The Construction Division v. Halil Abed*[12], the court extended its protection to situations in which the contractor had gone out of business and skipped the country. The circumstances of that case were as follows:

The construction division of the kibbutzim in Israel had employed workers through a subcontractor. The subcontractor encountered financial difficulties and left the country without paying the employees. The majority of the court expressed its refusal to tolerate situations in which employees were not getting paid. The court explored the concept of the statutory employer and the feasibility of applying this concept in Israel. While the court did not rule as to the existence of such a doctrine in Israel it did hold the construction division responsible for the debts of the subcontractors to its employees. The minority opinion held that the construction division should only be considered a guarantor and rejected the application of the 'statutory employer doctrine' in Israel. This decision, together with the *Ruth Village* ruling that we shall review shortly in the other categories, is perceived as a change in the judicial approach towards more aggressive intervention in triangular relationships.

As explained in the introduction a major shift took place in the approach of courts to triangular relationships. This shift was not limited to a single category and accordingly the change we discuss in the following paragraphs is relevant to all outsourcing situations and not only to the employee leasing category which has been the subject of a relatively stable

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10 C.A. 502/78 *The State of Israel v. Yeruham Nissim*, 35(4) P.D. 748 (1981).

11 C.A. 7130/01 *Solel-Bone v. Igal Tanami*, 58(1) P.D. 1 (2003).

12 *See supra* note 3.

case law.

The most influential decision in the new case law concerning triangular relationships is the National Labor Court case of *Ruth Village.* [13]

There, a subcontractor brought employees to work in agriculture in an Israeli residential community. The question which arose was who was their employer. The Supreme Court ruled that new tests should be applied to identify triangular relations.

First, a screening test would allow the court to verify that no attempt was being made to avoid responsibility for the rights of the employee. In this context the court would also examine whether or note the purpose of the transaction contradicted the values of society. In addition, in order to avoid situations in which it was not clear who was the employer, the court would require proof of contract between both the employer and the contractor and between the contractor and the employee.

After the user enterprise met the burden of proof that all three conditions were fulfilled the court would take 12 tests into account when attempting to determine who was the employer.. The tests are as follows:

1. The intention of the parties
2. Who can fire the employee
3. Who hired the employer and agreed to his employment conditions
4. Who set his salary and other employment conditions
5. Who is legally obliged to pay his salary (the entity which actually pays is unimportant)
6. Who gives him vacations
7. Who reports to the tax authorities
8. Who supervises the labor
9. Who owns the means of production
10. Is the work unique and temporary or is it the kind of work that the actual user, needs regularly
11. The length of time the employee has worked in the place
12. Does the contactor have his own business in which the employee is an integral part

Nonetheless, while the courts have attempted to make it much harder for employers to escape responsibility merely by inserting provisions to that effect in the contract, there are still many cases, even in recent years, in which courts showed themselves willing to accept arrangements in which employees worked for many years in one place, but were still considered to be employees of the original company from which they had transferred. Such cases are common, for example, in the category of employee leasing that we shall shortly

[13] *See supra* note 3,

review.

Thus, we can summarize that with regard to subcontractors, courts were very strict in ensuring that employees would not be deemed to be without an employer either in respect of tort liability or for wages and other benefits. The 12 tests precedent of *Ruth Village* was seen as a major change from the previously applied test which had made it easier for an employer to use employees without assuming legal responsibility for its employees.

5 LEASE OF EMPLOYEES

5.1 The legal situation in Israel

The judicial treatment of employee leasing is somewhat complex.

On one hand, judicial rhetoric regarding the phenomenon of leasing workers is judgmental and somewhat suspicious. At the same time, when faced with an instance of employee leasing, the courts do not assume that it was intended to bypass employment laws but frequently admit that this phenomenon is widely accepted and hence should not automatically be seen as an attempt to circumvent the law. As a consequence the courts have traditionally adopted an easily manipulated test to determine who should be seen as the employer of leased employees. Basically, the courts have maintained that the enterprise which hires and fires the employee is the one which should be seen as the employer. Obviously, such a test makes it very easy for a corporation which seeks to escape liability to do so. A representative example is the case of *Malam v. The Histadrut*[14]. That 1986 case discussed the status of government employees who had become employees of a separate company –Malam - which had been established for the purpose of handling the computer related activities of the government. The court held that since the State had paid the salaries of these workers and had the right to fire them, it was immaterial what other functions Malam had toward its employees, and the State would be considered their employer. Consequently all limitations and agreements that the State had with the National Labor Federation would be maintained in this case as well[15]..

The same focus on hiring and firing as the main criteria for identifying the employer in leasing situations may be seen in the case of *Olberg v. Beit Hagefen.*[16] An employee worked for four years in a non-profit corporation which received its funds from the municipality of Haifa. Upon being laid off by the non-profit corporation, he was employed by the municipality. After a two years he was fired by the municipality at which point he argued that he had actually been an employee of the non-profit organization throughout. The court held that since the municipality had paid his wages, Olberg was its employee and therefore the

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14 D.B.A MV/4-27 *Malam Systems v. Histadrut*, 18 P.D.A 57 (1986).

15 It should be admitted that in this case, seeing the original employer as the legal employer was in the best interest of the employee.

16 D.B.A NA/3-82 *Arye Olberg v. Beit Hagefen*, 23 P.D.A 255 (1991).

transfer from the non profit organization to the municipality could not be deemed to be a lay off from the municipality. Instead the court ruled that Olberg ought to be seen as an employee who had been leased to that organization and after few years returned to the municipality which had been his employer from the beginning.

In a another well-discussed case --*Hershkovitz*[17] -- the court introduced a few more tests to be taken into account when attempting to determine who is the employer in leasing situations. In that case an employee worked for four years in a hospital which was owned and partly financed by the government. However, he was sent to work in that hospital by a company which specialized in finding jobs for employees with disabilities --Hamshakem. The question in front of the National Labor Court was who should be seen as the employer of this person: the State because the employee had worked for a government hospital, or Hamshakem. The court held that while the important test was still who had the power to fire the employer, it would also look at the other circumstances of the relationship, such as who had hired the employee? Who fired him? Who paid his salary and who reported him to the tax authorities? The further important point made by the court was that in contrast to cases that dealt with the definition of the individual as an employee, in situations where it was clear that the person was an employee, but it was not clear who the employer was, it was legitimate for the court to take the parties' intention into account.

In aggregating all these factors, the court ruled that Hamshakem – the formal employer – should be seen as the employer and not the user enterprise.

Thus, we can summarize that according to the traditional judicial approach, it was relatively easy for corporations to use leased employees and still have the formal employer take all the responsibility. At the same time it is important to note that in the cases reviewed there was indeed a legitimate business purpose underlying the leasing. In addition, in all of these cases the courts were not faced with a situation in which the formal employer was substantially less trustworthy than the user enterprise, as was the case in some of the situations falling within the previous category.

Cases of employee's leasing occasionally reached the courts in a different context. Thus, in the case of *Ronen v. The Institute of National Insurance*[18], an employee was transferred from his Israeli company (IBM-Israel) to the parent company (IBM Europe) for a limited period of time and died during that period. The claim concerned payments to the widow. The parent enterprise was a foreign company and consequently was not making payments to the Israeli Institute of National Insurance since only local enterprises were obliged to pay. The court relied on the following tests to decide that the foreign company was the actual employer of the employee. Who were the parties to the contract? What type of

[17] D.B.A SHM/3-129 *Yossef Hershkovitz v. The State of Israel*, 12 P.D.A. 255 (1981).

[18] D.B.A MG/0-60 *Rasiella Ronen v. Institute of National Insurance*, 15 P.D.A 87 (1983).

work was being conducted and who had supervised the employee? Consequently, in contrast to all the previous cases, the user enterprise was seen as the employer of the employee and hence he was eligible for payments from the Institute of National Insurance. Cases here[19]:

The following recent case is a representative one dealing with employee leasing[20]. The appellant worked as a researcher in a military production unit and was transferred with his unit to a different enterprise. Special arrangements for the research staff meant that they were regarded as employees of the original employer. At some point the appellant signed an agreement for early retirement with his original employer, however, he petitioned the court for a ruling that he be considered an employee of the employer for whom he had worked for 14 years. Both the lower court and the appellate court rejected his request, holding that as a matter of fact he had always been an employee of the original employer. The court has applied the tests of Kfar-Ruth to the case, but still the major evidence relied on by court was that the user enterprise was not able to dismiss him.

In a different case, the appellant[21] worked in the Israeli aerospace industry (hereafter: IAI). At first he was transferred from the Ministry of Defense and then after half a year he moved to the IAI, as a full time employee. After 30 years in IAI, he resigned and asked that his first six months be taken into consideration for the purpose of calculating his rights. The court ruled that since in his contract stated that he was an employee of the Ministry of Defence he was not entitled to receive rights for that period from IAI. The result is that in cases of employee leasing, courts generally tend to respect the agreement and regard the employee as employed by the original employer as long as the enterprise which pays the salary and is able to dismiss the employee is the original employer. This situation seems to suggest that in situations in which an employee is transferred from one factory to another for a limited time and for a legitimate business purpose, the courts will display greater willingness to regard the individual as an employee of the original employer since the parties intend that the employee will be leased for a limited period. Given that in the above case the Ministry of Defense was paying his salary, pension, social security etc, there was no reason to regard the appellant as an employee of IAI.

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19 D.B.A SHM/3-129 *Yossef Hershkovitz v. The State of Israel*, 12 P.D.A. 255 (1981);
D.B.A MD/421 *Histadrut v. The Guardian General*, 15 P.D.A. 365, 373 (1984);
D.B.A MV/4-27 *Malam Systems v. Histadrut*, 18 P.D.A 57, 61; (1986)
D.B.A. MV/3-92 *Yeruham Municipality v. Shmueli*, 18 P.D.A. 259, 262 (1986).

20 W.C. NB/3-905 *Uriel Itzhak v. The Military Industry of Israel* (1997);
L.A. 300336/97 *Itzhak Uriel v. The Military Industry of Israel*, 2002(2) TK-AR 308 (2002);
H.C.J. 1887/03 *Uriel Itzhak v. The State Labour Court*, 2003(1) TK-EL 369 (2003).
The Supreme Court refused to hear this case, loyal to the approach that it would only intervene in rare cases, when the National Labour Court made a substantive mistake.

21 L.A. 300002/98 *Yosef Natar v. Israel Aircraft Industry* (unpublished) (1999)

5.1.1 The Civil Service Regulations

It seems worth reporting about a recent change in the civil service regulations. Recently, a move against the practice of employee leasing occurred in one of the largest sectors in Israel – the public sector—in a recent change to the *Takshir* - **The Civil Service Regulations**. The *Takshir* was amended in 1999 to include the following provision:

> "Employing a person by way of leasing him from another employer and at the same time maintaining his rights with that employer is an unacceptable form of employment, it creates administrative, legal and ethical problems. Therefore, from now on, the State will be allowed to use this form of employment **only** in the IDF, the Police and the Prison Guard.

This change, seems to suggest that the public authorities themselves have come to realize that in the long run this practice should be constrained to situations in which it is mostly needed.

6 TEMPORARY WORK AGENCIES

The most known example of triangular relations is related to the use employees from Temporary Work Agencies. There are three stages in the development of the case law in this category. In contrast to the law governing the other categories, here a new law was enacted in 1996 and amended in 2000, namely, the **Employment of Employees by Manpower Contractors Law (1996) (Isr.)** (hereafter: "the Law"). This specific Law sets out the conditions which must be met in order to obtain a license to operate as a manpower contractor. It further provides that the employment conditions of temporary workers must be equal to those of other employees of the user enterprise. Yet another section encourages collective agreement between TWA agencies and its employees. The sections that deal with the time limitation of nine months are suspended until 2008.

6.1 Major cases illustrating the traditional approach

The traditional approach of courts to this category could be demonstrated through the case of Yoav Geva v. the State of Israel [22]

Mr. Geva was employed as a security guard in the Israeli Military Industry through a private company which paid his salary. Mr. Geva wished to be regarded as an employee of IMI since it supervised his work. The court ruled that this was neither a situation of joint employment nor dual employment. The court based its judgment on the fact that there was no contract which suggested that either joint or mutual employment was involved, but on the contrary there was a specific term in the contract between the private company and the Military Industry that stated that Mr. Geva was not an employee of the latter.

[22] D.B.A. MG/2-22 *Yoav Geva v. The State of Israel*, 16 P.D.A. 318 (1985).

Consequently, following the traditional approach, the court accepted the language of the contract when defining the parties to the employment relationship.

6.2 The second stage: the change in the approach of courts in the pre law era

The *Ilana Levinger case*[23] is a vivid example of the harm which is associated with the practice of using employees from temporary work agencies in the public sector. This case is usually seen together with some of the cases discussed earlier, as illustrative of the change in the intervention of courts in triangular relationships.

The *Levinger case* concerned a secretary who worked for 20 years! for the government without being regarded as an employee of the government. During this period the temporary agencies came and went, but Ms. Levinger stayed in the same position only replacing the agency through which she was employed as a secretary. In her case, it was easy to see that the purpose of the transaction was to circumvent the protection employees receive under the law as Ms. Levinger was originally hired as a contactor, and only after her superiors received legal advice that such a practice might put them at legal risk of being sued for violation of the employment law, did they move to hire her, using temporary work agencies. The court was very clear that such a practice manifestly violated the duty of good faith and ruled that Ms. Levinger had always been an employee of the State.

A similar approach emphasizing the limited judicial tolerance for long term employment of employees through TWA may be seen in the case of Tzvi Shafir[24]. In that case, Mr. Shafir was employed through a TWA in The Dead Sea Facility. He worked there for 8 years, half the time as an employee of the TWA and half the time as an independent contractor. The court ruled that after 8 years, he should be seen as an employee of the "user" enterprise.

6.3 The third stage – post law era

Following the enactment of the Law, the category of temporary help agencies has undergone a major change from being seen as the most notorious type of triangular relationship, in which courts frequently intervene, to a regulated and consequently respected form of employment. In the following section we will review some of the major cases that dealt with employment through TWA in the period following the enactment of the Law. However, prior to moving to this line of cases it is important to mention that there is at least one judgment[25] which held that the enactment of the statute was immaterial to the question of identifying the employer. The judge in this lower Labor Court explicitly stated that the statute focused only on regulating the conditions of employment through TWA and not on making it

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23 *See supra* note 3.

24 D.B.A. NZ/3-56 *Tsvi Shaffir v. Nativ Bitsua Taasiati*, 32 P.D.A. 241(1999).

25 L.C 911583/99 *Hani Avni-Choen v. The State of Israel*, (unpublished) (2001).

easier to regard the TWA as the employer. In any event, it seems that this case is the exception, and the dominant approach today as advocated by the higher courts is that the statute did have an effect on the question of who is the employer.

The first case is the *State of Israel v. Dany Roitman*[26]

In that case, security guards were employed in State facilities through a TWA. The employees stayed in the same position but the TWA changed. At some point the State decided that it would stop using TWA and move to complete outsourcing. The employees sought a temporary restraining order preventing the State from hiring new workers until the status of the petitioners could be examined.

The court ruled that it did not make sense to compel the State to hire the petitioners through such a temporary procedure. Further, the court held that for the most part these employees regarded themselves as employees of the TWA and no formal procedures had been put in place to establish them as State employees.

A similar case is that of Alexander Wollovitch[27]. There, an electrical engineer was employed by a TWA. In practice he worked for the Electric Corporation for two years. After that, he left the TWA and became a temporary employee of the Electric Corporation for ten years. When he was fired, he argued that he had basically been employed by the Electric Corporation all along, and consequently should receive compensation for all twelve years. The court, in its majority opinion, ruled that employment by the TWA was not artificial, even though the plaintiff was later employed by the company.

At the same time, it should be noted that there are cases in which recognition of the status of an employee as an employee of the TWA is actually against his best interest as occurred in the case of Maagarey Enosh[28]. In that case, the user enterprise became bankrupt and the TWA argued that there was no reason to give priority to the regular employees of the user enterprise over the TWA employees who had also not been paid. The court held that the debt the user enterprise owed the TWA was like any other debt owed to its suppliers. Further, the court held that the Law had changed some of the presumptions regarding the true employer. The argument put by the court was that since the Law was intended to ensure the minimal conditions received by TWA employees, there was less reason for the court to ignore the formal definition of the relationship.

The picture presented here was confirmed by an explicit statement by a magistrate in a bankruptcy case which raised the question of the identity of an employer when a TWA was involved. The judge said:

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26 L.A. 1427/04 *The State of Israel v. Danny Roitman* (unpublished) (2005).

27 L.A. 198/05 *Alexander Wollovich v. The Electric Corporation* (unpublished) (2005).

28 P.C.A. 4381/03 *Sh.K. Maagarey Enosh v. Mutagey Ofna* (unpublished) (2005).

"Prior to the enactment by the Law, the presumption was that of *Ruth Village* – the user is the employer and whoever wishes to refute this presumption must prove otherwise. The Law changed this situation, it recognizes TWA as legitimate employers and the presumption is that the TWA is the employer and one needs to bring evidence to refute this presumption." [29]

It seems that the change in the Law was responsible for the change in attitude of the courts. Overall it seems safe to say that the courts are now more willing to accept situations in which the TWA is seen as the employer compared to the position prior to the enactment of the statute when the courts were very suspicious whenever such a transaction came before them.

6.4 Collective labor relations:

Some representative cases of the role of labor unions in the context of TWA are discussed in the following paragraphs:

In the *Telrad Company case*[30] the collective agreement stated that all TWA employees would either become the employees of Telrad or would be laid off. It was agreed that the company would stop the practice of hiring any more TWA employees in its production unit for periods exceeding 11 months. The company created a practice in which it laid off the employee after 11 months and then after a short period rehired him. The court ruled against the company, stating that it had violated the implicit purpose of the agreement which was to constrain the use of TWA employees. Accordingly the company had violated the collective agreement.

In the case of *The Research Staff of the Ministry of Defense*[31] the Union of Research Staff objected to the continuous employment of temporary employees as researchers. The union argued that such a practice harmed the employment relationship and the bargaining power of the unions and also contradicted the public order as well as minimal requirements of good faith and proper administrative order.

The court held that the National Labour Court did not have authority to rule in a dispute between an employer and a labor union. Accordingly, the case was remitted to the District Labor Court.

It is also important to mention that according to section 16 of the Law a temporary work agency may not allow workers to replace striking employees. Hence, the law attempted to prevent situations in which the use of TWA will weaken the bargaining power of labor unions.

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29 P.SH.R. (T.A.) 1209/01 *Adv. Moshe Goldshleger v. Bank Hapoalim*, 2004(2) TK-MH 2414 (2004).

30 C.C. NH/4-72 *Histadrut v. Telrad* (unpublished) (1997).

31 C.F. 5/99 *Research Staff of the Ministry of Defence v. Histadrut*, 99(2) TK-AR 27 (1999).

6.5 Reviewing major collective agreements

When looking at the major collective agreements in the market, it seems that many have sections which deal with temporary employees. It is common to see an obligation by the company not to hire any temporary workers albeit other collective agreements do not pay any attention to this issue. Between these two extremes lie most of the agreements, proposing some limitations on the use of temporary workers. For example, it is common to see an agreement in which the employer agrees to hire temporary workers only when the regular employees are absent or for strictly defined positions.

7 GROUP OF COMPANIES AND THE UNITY OF ENTERPRISE

There are many doctrines in Israeli law in which the court allows itself to treat different enterprises as one (a practice known as piercing the corporate veil). Such practices exist, for example, in bankruptcy law, corporate law, taxation and tort law. In these cases the court examines who appointed the business managers of each company, who makes the calls in terms of major decision making and whether the control of the enterprise is continuous and effective.

The courts have repeatedly said that whenever the rights of employees are jeopardized, the court will be aggressive in piercing the veil and preventing situations in which the employee will lose his rights. Courts have repeatedly stated that employees are not voluntary debtors and therefore there should be greater judicial scrutiny when it comes to situations of corporate groups.

In the case of *Meir Lebi v. Orbotech*[32], Orbotech employees were employed by a Belgian company which was a subsidiary of Orbotech, while on a leave from Orbotech. Orbotech was the parent corporation but the Belgian company controlled the employees while in Belgium, paid their salaries and reported them to the Belgian authorities. During that time no relationships whatsoever existed between the Israeli company and Mr. Lebi.

The employees argued that they had always remained employees of Orbotech – the parent corporation, however, the court agreed with Orbotech that there they were in fact employees of the Belgian company.

In a recent case --*Yehudit Zilberstein v. Erev Hadash* [33]-- the court was willing to pierce the corporate veil. In that case, a newspaper was unable to pay the salaries and other rights of an employee who had been laid off from that newspaper. The court took into account the fact that the owner of the newspaper had pumped money into the newspaper in various ways and through other corporations. The court criticized this practice especially

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32 L.A. 3000093/98 *Meir Lebi v. Orbotech L.T.D.* (unpublished) (2003).

33 L.A. 1201/00 *Yehudit Zilberstein v. Erev Hadash*, 2002(4) TK-AR 106 (2002).

when employees rights were involved and asked the owner to take resources from his other holdings to cover the newspapers debts to the laid off employee.

A similar conclusion was reached in the case of *Miriam Friedman v. Uniov Verachmiel*[34]. Friedman worked for a company and from time to time provided services to the owner of the company through a different company which he held. The first company became bankrupt and Ms. Fridman argued that she was entitled to payment through the assets of the other companies held by the owner. The court ruled that apparently the shareholders were not overly concerned with the corporate structure and that money was being transferred from one company to another without any attempt being made to ensure the ability of the first company to stand by its commitments to its employees. Accordingly, the court pierced the corporate veil and treated all the companies as one.

A somewhat different case with a different outcome occurred in the matter of *Eli Avshalom v. Kur*[35]. There, the CEO of a construction company argued that the parent corporation was basically a joint employer and hence should be held accountable for all the debts of the company of which he was the CEO. The court used the 12 tests which were formulated in *Ruth Village*. The court stated that whenever there was doubt as to the identity of the employer in a group of corporations, great care had to be taken to examine the business environment. That is, the court had to bear in mind that the practice of key people serving in various positions within the different groups was not in itself a justification for treating all the companies as one, since this practice was common in many companies. The court added that even common interests between the companies did not automatically mean that it was right to pierce the veil between the companies. In conclusion the court ruled that there was no justification for piercing the veil between the parent company and its subsidiary.
A more structured formula was suggested in the case of *Amiel Cohen v. Israel Chemicals*.[36]
There the court talked about four conditions that have to be taken into account:

1. Lack of good faith by the employer
2. Mixture of assets
3. Criminal activity
4. False representation of the identity of the employer.

It should be noted that here again the practice of piercing the corporate veil was used to deprive employees of their rights rather than to afford them more rights.
This was the situation in *Amir Bone v. Plasim*. [37] In this case a member of a kibbutz was working for a subsidiary of the kibbutz. After working in that company for 8 years, he was laid off. The question was whether Mr. Bone had been employed by the subsidiary or whether he

34 L.A. 1170/00 *Miryam Fridman v. Uniov Yerahmiel*, 2002(3) TK-AR 1679 (2002).
35 D.B.A. NV/3-308 *Eli Avshalom v. Kur Matehet*, 30 P.D.A. 513 (1997).
36 L.A. 1359/00 *Amiel Cohen v. Chemicals of Israel*, 2003(2) TK-AR 788 (2003).
37 L.A. (Nz.) 1264/02 *Amir Bone v. Plasim*, 17 AV-EZ 467 (2004).

worked there as part of his duties toward the kibbutz and therefore should not be treated differently from any other kibbutz member whose duties usually included doing some sort of work for the kibbutz. The court held that it was right to pierce the corporate veil and consequently the employee would not be seen as an employee of the subsidiary.

8 FRANCHISING

There is no hard data on the prevalence of franchising relationships in Israel. However, unofficial accounts describe a business apparatus of around 80,000 people who are employed through franchisees. According to this estimate this form of employment is due to grow dramatically in the immediate future, as many Israeli companies are now opening new branches throughout the world.

Most legal cases that discus franchising relationships deal with the question of whether the franchisee should be seen as an independent entrepreneur or as an employee who is subordinated to the franchisor.

The leading cases in this tradition are the following:

Fritz Haim v. The Israel Lottery[38]

In that case individuals who were franchisees of the Israeli lottery and sold lottery tickets for it – argued that they were in fact employees of the company. The court ruled that even though the lottery company paid for the costs of housing and insurance, the franchisees should be seen as independent contractors. Moreover, according to the arrangement between the company and the franchisees, the company had agreed to buy back all the lottery tickets which were not sold, so that the franchisees were not even at any risk in their activities. Nonetheless, the court held that these franchisees were independent entrepreneurs since they were able to control their revenues and since they had independent judgment with regard to opening hours, marketing strategy, *etc*. In addition, the court took into account the fact that they were registered by the tax authorities and the social security offices as independent contractors and were allowed to conduct their job through others.

A similar conclusion was reached by the court in the case of *Harary v. the Israeli Lottery.*[39] That case illustrates the changes in franchising agreements in Israel – in which franchisees were given greater responsibility and at the same time faced greater risk. The court ruled, based on the older case law, that in such a situation when so much independence was given to the franchisee there was no reason to impose responsibility on the franchisor. This was the case, even thought the Lottery had determined the pricing policy and opening hours and supervised the activities of the franchisee.

This ruling was affirmed in *Diga Michael v. Gideon Sachar.* [40]

38 D.B.A. NB/3-254 *Fritz Haim v. The Israeli Lottery*, 26 P.D.A. 372 (1993).

39 L.A. (T.A.) 300589/98 *Yaakov Harari v. The Israeli Lottery* (2002).

40 L.A. 3774/03 *Diga Michael v. Gideon Shachar*, 22 AV-EZ 241(2005).

Nonetheless a different conclusion was reached in *Shreiber v. Toper.* [41] There the court held that the decision with regard to the relationship between the franchisee and the franchisor should be decided on the basis of the specific circumstances of the case, relying on regular case law principles with regard to employee/contractor issues. In that case the court was impressed by the fact that Ms. Shreiver paid the salaries of her workers, was registered as an independent contractor by the tax authorities and was responsible for the costs of operating the store (rent *etc*.). these facts led the court to decide that no employment relationships have emerged between the franchisor and the franchisee.

[41] L.A 156/99 *Rachel Shreiber v. Toper Fashion Industries & Rosh Indiani* (2000).