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# Do Unions Promote Rights for People with Disabilities?

Lilach Lurie\*

## ABSTRACT

*Scholars and international organizations emphasize the role of unions in promoting disability rights. Nonetheless, previous studies showed that unions may underrepresent people with disabilities. The current research aims to contribute to this debate through an empirical examination of collective agreements in Israel. The research shows that although collective agreements in Israel promote disability insurance and job security for people with disabilities, they do not promote accommodations or employability security for workers with disabilities. Moreover, the research shows that coordination between unions and disability organizations is essential to promote the rights of workers with disabilities. Lastly, the research emphasizes the importance of national collective bargaining.*

## INTRODUCTION

People with disabilities are a marginalized group in society. Compared with non-disabled people, people with disabilities are much less likely to participate in the labor market.<sup>1</sup> Employment rates are particularly low among people with severe disabilities. Among employed people, workers with disabilities are more likely than non-disabled workers to be in non-standard jobs, to earn less, and to suffer poverty.<sup>2</sup> Scholars, policy makers, unions, NGOs, and activists around the world exert efforts to promote the rights of people with disabilities through various methods. Although major differences exist between the methods, there are also many similarities.

Scholars and international organizations (the UN, the ILO, and the EU) point to the importance of social dialogue and to the involvement of unions in the promotion of the rights of workers with disabilities.<sup>3</sup> Scholars also emphasize the importance of collaborations between unions and disability rights organizations.

According to ILO Recommendation No. 168, “workers’ organizations should adopt a policy for the promotion of training and suitable employment of disabled

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1 Lisa A. Schur, *Dead End Jobs or a Path to Economic Well Being? The Consequences of Non-Standard Work among People with Disabilities*, 20 BEHAV. SCI. L. 601, 602 (2002); Lisa Schur, Douglas Kruse & Peter Blanck, *Corporate Culture and the Employment of Persons with Disabilities*, 23 BEHAV. SCI. L. 3, 5 (2005).

2 Schur, *supra* note 1, at 601.

3 Richard Whittle, *The Framework Directive for Equal Treatment in Employment and Occupation: An Analysis from a Disability Rights Perspective*, 27(3) EUROP. L. REV. 303, 304 (2002); Koula Labropoulou & Eva Soumeli, *Workers with Disabilities: Law, Bargaining and the Social Partners*, EU Work (Feb. 27, 2001), <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/workers-with-disabilities-law-bargaining-and-the-social-partners>; Schur, *supra* note 1, at 618; Deborah Foster & Patricia Fosh, *Negotiating ‘Difference’: Representing Disabled Employees in the British Workplace*, 48(3) BRIT. J. INDUS. REL. 560, 560 (2010).

persons on an equal footing with other workers.”<sup>4</sup> Article 271(c) of the UN Convention on the Rights of Persons with Disabilities (United Nations 2006) declares that “[. . .] States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps [. . .] to [. . .] ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others.”<sup>5</sup> Foster and Fosh claim that of all workplace actors, unions can best promote a “social model of disability” as opposed to an “individual model.”<sup>6</sup> Therefore, unions (as opposed to NGOs) are in the best position to properly represent the interests of workers with disabilities. The current research aims to contribute to the literature by addressing the following questions: Do unions promote rights of workers with disabilities? Which unions promote rights for workers with disabilities? Which rights do unions promote, and which rights they do not?

## METHODOLOGY

The research includes collective agreements in Israel, which refer to workers with disabilities at four levels: the national level, the sector level, the public sector level, and the enterprise level. At all four levels, the research examines the provisions that provide job security (the certainty of retaining a particular job with a specific employer over the years), income security (the security to receive an adequate income during disability through disability insurance and paid sick leave), and employability security (security to join the labor market and to stay in it) to people with disabilities.<sup>7</sup>

At the national level, the research includes all collective agreements that refer to workers with disabilities: three national collective agreements. At the sectoral level, the research includes nearly all sectoral collective agreements in the private sector: 38 private sector agreements. The research also includes 38 extension orders of the Israeli Minister of the Economy; each order extends a collective agreement to apply to all workers in the sector. The research also includes most collective agreements in the public sector (18 collective agreements).

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4 Debra A. Perry & Angela K. Traiforos, *Rights and Duties: Workers' Perspective*, In *Disability and Work*, ENCYCLOPEDIA OF OCCUPATIONAL HEALTH AND SAFETY (Friday, 11 February 2011 21:25), <http://www.iloencyclopaedia.org/part-iii-48230/disability-and-work/12-disability-and-work/rights-and-duties-workers-perspective>.

5 The European Union Council Directive 2000/78/EC of 27 November 2000, Article 9(2) declares that, “Member States shall ensure that associations, organisations or other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.”

6 Foster & Fosh, *supra* note 3, at 562.

7 See RUDD J. A. MUFFELS, FLEXIBILITY AND EMPLOYMENT SECURITY IN EUROPE—LABOUR MARKETS IN TRANSITION (2008); GUY STANDING, GLOBAL LABOUR FLEXIBILITY: SEEKING DISTRIBUTIVE JUSTICE (1999); GUY STANDING, BEYOND THE NEW PATERNALISM: BASIC SECURITY AS EQUALITY (2002); see also Ton Wilthagen & Ralf Rogowski, *The Legal Regulation of Transitional Labor Markets*, in *THE DYNAMICS OF FULL EMPLOYMENT: SOCIAL INTEGRATION THROUGH TRANSITIONAL LABOUR MARKETS*, 233, 244–45 (Gunther Schmid & Bernard Gazier eds., 2002).

Additionally, the research includes Israel's civil service regulation (Takshir), which is partly integrated into the collective agreements of the public sector.<sup>8</sup>

At the enterprise level, the research includes nearly all new collective agreements that were signed in 2013 and 2014 in places that were not previously organized. In 2013, 374 new collective agreements were signed in Israel; in 2014, 322 were signed.<sup>9</sup> Of these, 46 collective agreements are new collective agreements in places that were not previously organized.<sup>10</sup> The research also includes all the collective agreements applicable to Teva Pharmaceutical Industries (199 agreements) and El-Al Airlines (571 agreements). Teva and El-Al were chosen as case studies of two corporations that have been regulated by collective agreements for several decades.

Lastly, in order to better understand the intricacies of the process that produced the collective agreements, the author has conducted several interviews with employee union representatives, employer union representatives, and activists from NGOs.

### APPROACHES TOWARD DISABILITY

In recent decades, scholars from several fields and countries (particularly the US and the UK) established a new academic field: disability studies.<sup>11</sup> "Disability studies . . . refers to the examination of disability as a social, cultural, and political phenomenon, which counters the notion of disability as an inherent, immutable trait located in the person."<sup>12</sup> One major feature of disability studies is the idea of "nothing about us without us."<sup>13</sup> "Disability Studies recognizes that knowledge of disability is to be found among people with disabilities themselves."<sup>14</sup> Therefore, people with disabilities should be involved in the policy making process.

A second major feature of disability studies is the rejection of the individual medical model to disability. Although there are many disagreements between disability scholars, in accordance with Oliver,<sup>15</sup> most disability scholars agree that viewing disability through the medical model is no longer acceptable.<sup>16</sup> The

8 The Takshir Regulation (Israel's Civil Service Regulation) (Jul. 14, 2017) <http://www.csc.gov.il/Takshir/terms/Pages/default.aspx>.

9 The Minister of Economy Website, <http://apps.moital.gov.il/Agreements/Search.aspx>.

10 The selected agreements are not a sample, but rather all of the collective agreements that regulate in a comprehensive manner the conditions of labor in the various workplaces. The rest of the collective agreements that are not comprehensive, namely they deal with specific regularly and annually reached amendments to standing agreements. The selected agreements, on the other hand, were reached in workplaces where such agreements have not existed. In these formerly unorganized workplaces, one could have expected to find norms that fit the latest conceptions of equality and disabilities.

11 SIMI LINTON, *CLAIMING DISABILITY: KNOWLEDGE AND IDENTITY* (1998); MICHAEL OLIVER, *THE POLITICS OF DISABLEMENT* (1990); SUSAN WENDELL, *THE REJECTED BODY: FEMINIST PHILOSOPHICAL REFLECTIONS ON DISABILITY* (1996).

12 Arlene S. Kanter, *The Law: What's Disability Studies Got to Do With It or an Introduction to Disability Legal Studies*, 42 COLUM. HUM. RTS. L. REV. 403, 407 (2011).

13 JAMES I. CHARLTON, *NOTHING ABOUT US WITHOUT US – DISABILITY OPPRESSION AND EMPOWERMENT* (2000).

14 Kanter, *supra* note 12, at 409.

15 MICHAEL OLIVER, *UNDERSTANDING DISABILITY: FROM THEORY TO PRACTICE* (1996); OLIVER, *supra* note 11.

16 Kanter, *supra* note 12, at 419.

medical (individual) model is centred on the problem of impairment. The disability is viewed as a personal tragedy and not as a social phenomenon with an institutional context.<sup>17</sup>

In contrast to the medical model, the social model emphasizes the social structures that exclude people with disabilities. The social model points to the economic, political, and cultural sources of disability. Disability activists (who embrace the “social model”) focus on changing society and its structures, challenging attitudes and prejudices, which can potentially be altered.<sup>18</sup>

Nonetheless, there is no single universal concept of the social model. British advocates of the model emphasize challenges to the bureaucratic oppression of the welfare state from a Marxist perspective. Conversely, the American variant has been influenced by the Civil Rights and Women’s movements.<sup>19</sup> Moreover, several scholars challenge and criticize the social model. Shakespeare and Watson, for example, claim that the denial of difference (and of impairment) is a major flaw in the social model. The researchers claim that people are disabled both by social barriers and by their bodies.<sup>20</sup>

Both models (the individual model and the social model) have policy implications.<sup>21</sup> If disability is an individual-medical issue, then it should be treated through medical treatments and allowances, which will save the individual from poverty. If disability is an individual-medical issue, then people with disabilities should realize their rights alone and through specific NGOs and advocates. If disability is a social issue, then society should exert active efforts to integrate people with disabilities (as well as other groups) into the society. Society (including employers) should accommodate buildings, transportation, and the workplace to people with disabilities. If disability is a social issue, then employee unions should be central players in the promotion and realization of the rights of people with disabilities.

## UNIONS AND WORKERS WITH DISABILITIES

Neo-classic scholars claim that unions are monopolies that lead to exaggerated wages and inefficiencies.<sup>22</sup> Employers externalize the high costs of unionization on third parties: consumers, unorganized workers, and outsiders (people outside the labor market). Due to the high costs of unionization, employers will hire fewer employees, and unemployment rates will rise.<sup>23</sup> As monopolies,

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17 Foster & Fosh, *supra* note 3, at 562; Ravi A. Malhotra, *The Duty to Accommodate Unionized Workers with Disabilities in Canada and the United States: A Counter-Hegemonic Approach*, 2 J.L. & EQUAL. 92, 102 (2003).

18 Foster & Fosh, *supra* note 3, at 562.

19 Malhotra, *supra* note 17, at 108.

20 Tom Shakespeare & Nicholas Watson, *The Social Model of Disability: An Outdated Ideology?* 2 RES. SOC. SCI. & DIS. 9, 16 (2002).

21 Malhotra, *supra* note 17, at 96.

22 Richard A. Epstein, *Problems and Possibilities in the Administrative State: A Common Law for Labor Relations: A Critique of the New Deal Labor Legislation*, 92 YALE L.J. 1357, 1381–2 (1983); Richard A. Posner, *Some Economics of Labor Law*, 51 U. CHI. L. REV. 988, 991 (1984).

23 Cf. Kenneth G. Dau-Schmidt & Arthur R. Traynor, *Regulating Unions and Collective Bargaining*, 2 LABOR AND EMPLOYMENT LAW & ECONOMICS 96 (Kenneth G. Dau-Schmidt, Seth D. Harris & Orly Lobel eds., 2009).

unions are therefore unable to promote the integration of people with disabilities into the labor market.

Richard Freeman and James Medoff challenged the above neo-classical view. These researchers instead claimed that unions have two faces: “monopoly” and “voice.”<sup>24</sup> Unions play an important role in “voicing” workers’ needs and desires to the management. Freeman and Medoff, in accordance with Albert O. Hirschman’s view in “Exit, Voice, and Loyalty,” emphasized the importance of “voice” in maintaining stability and in preventing employment turnover.<sup>25</sup> While an individual employee may fear voicing his needs to his employer, unions have the ability to voice workers’ collective needs.<sup>26</sup>

In accordance with Freeman and Medoff, many researchers accepted unions’ role as voicing workers’ needs. However, researchers also raised the following questions: Whose voice do unions represent? Is it the voice of all of the workers or only some of them? Are the voices of groups such as women, foreign workers, workers with disabilities, old workers, and gay and lesbian workers heard? Do unions promote equality and diversity?

One problem of union representation is the tendency to advocate for the median worker. Because unions are political institutions with contract ratification and leadership selection achieved through majority voting, a median voter model implies that unions will negotiate compensation packages that reflect the preferences of the median worker.<sup>27</sup> The packages do not reflect the preferences of the marginal worker.<sup>28</sup> Previous researchers showed how unions tend to under-represent the interests of elderly workers and women.<sup>29</sup> Several researchers have shown that unions neglect the interests of foreign workers.<sup>30</sup>

“Representing disabled employees presents unions with unique challenges.”<sup>31</sup> First, the interest and needs of workers with disabilities may occasionally conflict with the interests of other employees, which are at least traditionally represented by unions (who, for example, need to work an extra shift).<sup>32</sup> For instance, accommodations that enable a worker with disability to work flexible hours may conflict with the seniority rights (regulated by collective

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24 RICHARD B. FREEMAN & JAMES L. MEDOFF, WHAT DO UNIONS DO? (1984).

25 ALBERT O. HIRSCHMAN, EXIT, VOICE, AND LOYALTY: RESPONSES TO DECLINE IN FIRMS, ORGANIZATIONS, AND STATES (1970).

26 FREEMAN & MEDOFF, *supra* note 24.

27 Bruce E. Kaufman, *Models of Union Wage Determination: What Have We Learned Since Dunlop and Ross?*, 41 INDUS. REL. 110, 139 (2002).

28 Wilthagen & Rogowski, *supra* note 7, at 244–45; Alain Supiot, *The Transformation of Work and the Future of Labour Law in Europe: A Multidisciplinary Perspective*, 138 INT’L LAB. REV. 31, 41 (1999); John W. Budd, *The Effect of Unions on Employee Benefits and Non-Wage Compensation: Monopoly, Power, Collective Voice and Facilitation*, in WHAT DO UNIONS DO? A TWENTY-YEAR PERSPECTIVE 60, 162–64 (James T. Bennett & Bruce E. Kaufman eds., 2007).

29 Lilach Lurie, *Do Unions Promote Gender Equality?* 22 DUKE J. GENDER L. & POL’Y 89, 94 (2014); Lilach Lurie, *Can Unions Promote Employability? Senior Workers in Israel’s Collective Agreements*, 42(3) INDUS. L.J. 249, 250 (UK) (2013).

30 Einat Albin, *Union Responsibility to Migrant Workers: A Global Justice Approach*, 34 OXFORD J. LEGAL STUD. 133, 134 (2014).

31 Foster & Fosh, *supra* note 3, at 564.

32 Malhotra, *supra* note 17, at 102–05.

agreements) of a certain worker who must work more.<sup>33</sup> Collective agreements, which do not enable flexible wages, may conflict with efforts to provide accommodated wages for employees who have a reduced work capacity.<sup>34</sup>

Second, the needs and desires of every worker with a disability are very different from one another. An accommodation provided to one worker with a disability may serve as a barrier for the employment of another worker with a disability.<sup>35</sup> Third, many people with disabilities do not share a collective identity and do not want to be part of the “disabled” group. These people downplay the significance of their impairments and seek access to a mainstream identity.<sup>36</sup> Fourth, while unions tend to represent employees, many disabled people are outside the labor market and are not yet union members.<sup>37</sup> Therefore, unions tend to concentrate on the job retention of workers who become disabled and not on the subject of recruitment of disabled workers.<sup>38</sup>

Conversely, several issues regarding disability may be in the interest of all employees; therefore, it may be expected that unions will promote them. It is true that people with disabilities are a minority, at least among the young. Nonetheless, the median worker is not young. Moreover, everyone has the potential to become a person with a disability. Most people hope that in case of disability, they will not encounter social exclusion. Therefore, disability insurance and layoff protection (in case of a disability) are a personal interest of every worker. Therefore, I would expect unions to promote disability insurance and protection against layoffs.<sup>39</sup>

Examining the comparative experience of countries may show that there is a common ground between union activities in different countries. Labor unions in many countries have exerted efforts to promote the rights of people with disabilities.<sup>40</sup> Nonetheless, these efforts differ very much from one another. For example, while certain collective agreements (at the sector or company level) refer to people with disabilities in most EU countries, few countries have national collective agreements that refer to people with disabilities.<sup>41</sup> Several countries regulate the rights of people with disabilities solely by legislation without

33 Erika F. Rottenberg, *The Americans with Disabilities Act: Erosion of Collective Rights?*, 14 BERKELEY J. EMP. & LAB. L. 179 (1993).

34 Stephanie Cowdell, *Employment Law and People with Disabilities*, 8 AUCKLAND L. REV. 806 (1999).

35 In fact, while unions tend to struggle towards “public goods” (and not towards individual rights), people with disabilities often need individual treatment or individual accommodations.

36 Shakespeare, *supra* note 20 at 3.

37 Foster & Fosh, *supra* note 3, at 566.

38 *Id.*

39 Cf. Berndt Keller, “*Social Dialogue—The Specific Case of the European Union*,” 24(2) INT’L J. COMP. LAB. L. AND INDUS. REL. 201, 220 (2008); RICHARD FREEMAN & JAMES MEDOFF, WHAT DO UNIONS DO? 10, 94–111, 122–35 (1984).

40 Debra A. Perry, Angela K. Traiforos, Rights and Duties: Workers' Perspective, In DISABILITY AND WORK, Momm, Willi, Ransom, Robert, Editor, Encyclopedia of Occupational Health and Safety, Jeanne Mager Stellman, Editor-in-Chief. International Labor Organization, Geneva (2011) <http://www.iloencyclopaedia.org/part-iii-48230/disability-and-work/12-disability-and-work/rights-and-duties-workers-perspective>.

41 Koula Labropoulou & Eva Soumeli, *Workers with disabilities: law, bargaining and the social partners*, EUROFOUND, <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/workers-with-disabilities-law-bargaining-and-the-social-partners>.

collective agreements.<sup>42</sup> Several sector and company level collective agreements in EU countries provide for the regulation of pay to workers with disabilities. In a few cases, collective agreements set a quota for people with disabilities.<sup>43</sup>

Unions in many countries exert much effort to promote workers and people with disabilities outside the form of collective agreements.<sup>44</sup> For example, in the UK, certain unions appoint Equality Representatives (ERs). ERs address equality in its broadest form.<sup>45</sup>

Studies regarding the effects of unionization on compensation benefits emphasize both the similarities and the differentiation among industrial relations regimes. With regard to similarities between countries, studies found that in several countries, unions are associated with an increase in the reciprocity of workers' compensation benefits (when a wide range of variables including job risks are held constant).<sup>46</sup> Most studies also associate unionized workers with more nonfatal injury claims, but with fewer traumatic injury and fatality claims than non-unionized workers.<sup>47</sup>

With regard to differences between countries, although research conducted in Canada found that unionized workers have shorter claims than nonunionized workers, and they return to work faster;<sup>48</sup> studies conducted in the US resulted in opposite outcomes.<sup>49</sup>

The different approaches of countries towards unions and the different approaches of unions towards people with disabilities could, at least partly, be explained by the major differences between the structure and power of unions in different countries. The Varieties of Capitalism approach identifies two major economic regimes with two very different industrial relations systems: Liberal Market Economy (LME) and Coordinated Market Economy (CME).<sup>50</sup> In liberal market economies, firms coordinate their activities primarily via hierarchies and competitive market arrangements. In coordinated market economies, firms more heavily depend on non-market relations to coordinate their endeavours with other actors and to construct their core competencies.<sup>51</sup>

In CMEs (which can also be identified as corporatist regimes) social partners (employer unions and employee unions) are strong and highly involved in the process of socio-economic policy making in the country. Employee unions

42 *Id.*

43 *Id.*

44 Perry, *supra* note 40.

45 Tessa Wright, Hazel Conley & Sian Moore, *Addressing Discrimination in the Workplace on Multiple Grounds: The Experience of Trade Union Equality Representatives*, 40(4) *INDUS. L. J.* 1, 4 (2011).

46 Barry T. Hirsch, David A. MacPherson, & J. Michael Dumond, *Workers' Compensation Reciprocity in Union and Nonunion Workplaces*, 50 *INDUS. AND LAB. REL. REV.* 213–236 (1997); Ronald Meng & Dennis Smith, *Union Impacts on the Receipt of Workers' Compensation*, 48 *INDUS. REL.* 503–18 (1993).

47 Alejandro Donado, *Why Do Unionized Workers Have More Nonfatal Occupational Injuries?* 68(1) *ILR REV.* 153–183 (2015); Alison D. Morantz, *Coal Mine Safety: Do Unions Make a Difference?*, 66(1) *INDUS. & LAB. REL. REV.*, 88–116 (2013).

48 Michele Campolieti, *The Correlates of Accommodations for Permanently Disabled Workers*, 43(3) *INDUS. REL.: J. ECON. AND SOC'Y.* 546–72 (2004).

49 Richard J. Butler & John D. Worrall, *Work Injury Compensation and the Duration of Nonwork Spells*, *ECON. J.* 714–24 (1985); William G. Johnson & Jan Ondrich, *The Duration of Post-Injury Absences from Work*, 72 *REV. OF ECON. AND STAT.*, 578–86 (1990).

50 PETER HALL & DAVID SOSKICE, *VARIETIES OF CAPITALISM* (2001).

51 *Id.* at 8.



and employer unions are involved in all levels of negotiations: the enterprise level, the sector level and the national level. Conversely, in LMEs, union density is low, and collective negotiation occurs solely at the enterprise level, resulting in collective agreements mainly at that level. Nonetheless, LMEs are characterized by more equality rights discourse than CMEs.

### WORKERS WITH DISABILITIES: BACKGROUND ON ISRAEL

Using the “Varieties of Capitalism” distinction, Israel could be described as a CME with several LME elements.<sup>52</sup> In recent decades, the *Histadrut*, Israel’s major employment union, lost its control over healthcare and pension plans;<sup>53</sup> however, the *Histadrut* remains part of a tri-pillar roundtable that consolidates employment and economic policies. Half of Israeli workers are covered by collective agreements; however, 24 percent of Israeli workers are unionized (compared with 80 percent during the nineteen eighties).<sup>54</sup> This gap between union membership and collective agreements’ coverage is a result of Israel’s industrial relations regime. The Collective Agreements Act declares that collective agreements apply to all employees included in the agreement regardless of their membership status.<sup>55</sup> Moreover, due to the ministry’s power to extend a collective agreement, an agreement can also apply to employers who were not parties to the collective agreements and to their employees.<sup>56</sup>

As a CME, many employment rights (including rights in case of disability) are regulated in collective agreements and extension orders. Nonetheless, many rights are regulated by legislation. Israel’s legislators (the Knesset) assist people and workers with disabilities through a combination of passive and active labor market policies. Generally, passive labor market policies play a much more dominant role. Approximately 5.5 percent of the working age population in Israel (15–64) suffer from disabilities of one kind or another. (OECD 2013: 45).<sup>57</sup> The system of providing benefits for the disabled in Israel consists of eighteen programs<sup>58</sup> that are very different from one another. Each program provides

52 Stier, Lewin Epstein and Braun describe Israel’s welfare regime as a conservative-corporatist welfare state with a high level of support to mothers’ employment. Haya Stier, Noah Lewin Epstein & Michael Braun, *Welfare Regimes, Family Supportive Policies, and Women’s Employment along the Life-Course* 106(6) AM. J. SOC. 1731 (2001). Mundlak, Saporta, Haberfeld and Cohen describe Israel’s industrial relation regime as a hybrid system, a system where coverage rates are relatively high and membership rates are low. Guy Mundlak, Yishak Saporta, Yitchak Haberfeld & Yinon Cohen, *Union Density in Israel 1995-2010: The Hybridization of Industrial Relations*, 52(1) INDUS. REL., 78-101 (2013).

53 GUY MUNDLAK, *FADING CORPORATISM* 121–24 (2007).

54 Central Bureau of Statistics. (2014), [http://www.cbs.gov.il/publications14/seker\\_hevrati12\\_1555/pdf/h\\_print.pdf](http://www.cbs.gov.il/publications14/seker_hevrati12_1555/pdf/h_print.pdf) (accessed Oct. 6, 2016)

55 The Collective Agreements Law 1957, art. 15-16 (Isr.).

56 *Id.* art. 30. (Isr.).

57 Nonetheless, researchers found that approximately twenty percent of the working population in Israel define themselves as suffering from a disability. See Lital Bar-Lev Kotler & Dory Rivkin, *People with Disabilities in Israel: Facts and Numbers* (Myers-JDC-Brookdale Institute, 2014) [http://brookdaleheb.jdc.org.il/\\_Uploads/dbsAttachedFiles/FACTS\\_FIGURES2014-HEB.pdf](http://brookdaleheb.jdc.org.il/_Uploads/dbsAttachedFiles/FACTS_FIGURES2014-HEB.pdf).

58 Sagit Mor, *Disability and the Persistence of Poverty: Reconstructing Disability Allowances* 6(1) NW. J.L. AND SOC. POL’Y 178, 186 (2011).

radically divergent benefits based on distinct eligibility conditions.<sup>59</sup> The differences between the programs depend mainly on what caused the disability: army service, work injury or sickness. People with the same disability and the same needs will be entitled to different benefits.<sup>60</sup>

Among the eighteen programs, three programs, General Disability, Disabled Veterans, and Work Injury, are the major programs that provide benefits to the disabled. The general disability program is the largest and newest program among the three. In 2013 the NII (National Insurance Institute) allocated 18.7% of its budget to general disability benefits, and 222,641 people received the benefit.<sup>61</sup> The sum of the benefits, approximately a third of the average wage, is relatively small in comparison with the Work Injury and Disabled Veteran Programs.<sup>62</sup> Although Israel's parliament (the Knesset) established the Disabled Veteran Program in 1949 and the Work Injury Program in 1954, the General Disability Program was established only in 1974.<sup>63</sup> Since the establishment of Israel in 1948 and until 1974, many of the disabled were not entitled to benefits from the state. The dominant view was that they should work.<sup>64</sup> Those who could not do so encountered severe financial hardship.

Since 1974, there has been a growing increase in the number of general disability recipients.<sup>65</sup> The growth is much higher than the demographic-population growth.<sup>66</sup> At the same time, people with disabilities suffer from low-participation rates in the labor market.

In the last twenty years, Israel's legislators have promoted several active labor-market policies to integrate people with disabilities into the labor market. First, in 1998, Israel's *Knesset* enacted the Equal Rights for People with Disabilities Law.<sup>67</sup> The law prohibits discrimination in employment against workers with disabilities.<sup>68</sup> Furthermore, the law requires the employer to

59 John Gal, *The Perils of Compensation in Social Welfare Policy: Disability Policy in Israel*, 75(2) SOC. SERV. REV., 225, 232 (2001).

60 Mor, *supra* note 58, at 186-188; Arie Rimmerman & Tal Araten-Bergman, *Employment, Social Capital, and Community Participation among Israelis with Disabilities*, 8 J. SOC. WORK DISABILITY & REHABILITATION, 134-35 (2009); Gal, *supra* note 59; JOHN GAL, SOCIAL SECURITY IN ISRAEL 64-77 (2004).

61 National Insurance Institute Annual Report 2013, 173-205, [http://www.btl.gov.il/Publications/Skira\\_shnatit/2013/Documents/skira%202013\\_all.pdf](http://www.btl.gov.il/Publications/Skira_shnatit/2013/Documents/skira%202013_all.pdf).

62 *Id.* at 204.

63 Mor, *supra* note 58, at 178; GAL, *supra* note 60.

64 *Cf.* Mor, *supra* note 58, at 186-88.

65 NATIONAL INSURANCE INSTITUTE ANNUAL REPORT 1980, 75 <http://www.btl.gov.il/SiteCollectionDocuments/btl/Publications/SkirotShantiot/Archiv/skira1980.pdf> ; NATIONAL INSURANCE INSTITUTE ANNUAL REPORT 1990, 112 <http://www.btl.gov.il/SiteCollectionDocuments/btl/Publications/SkirotShantiot/Archiv/skira1990.pdf> ; NATIONAL INSURANCE INSTITUTE ANNUAL REPORT 2000, 169 <http://www.btl.gov.il/SiteCollectionDocuments/btl/Publications/SkirotShantiot/AnnualSurvey2000/2000.pdf>; NATIONAL INSURANCE INSTITUTE ANNUAL REPORT 2013, 177 [http://www.btl.gov.il/Publications/Skira\\_shnatit/2013/Documents/skira%202013\\_all.pdf](http://www.btl.gov.il/Publications/Skira_shnatit/2013/Documents/skira%202013_all.pdf).

66 NATIONAL INSURANCE INSTITUTE ANNUAL REPORT 1980, *supra* note 65 at 75; NATIONAL INSURANCE INSTITUTE ANNUAL REPORT 1990, *supra* note 65 at 112; NATIONAL INSURANCE INSTITUTE ANNUAL REPORT 2000, *supra* note 65 at 169, NATIONAL INSURANCE INSTITUTE ANNUAL REPORT 2013, *supra* note 65 at 177.

67 28 NETA ZIV, *Disability Law in Israel and the United States—A Comparative Perspective*, in ISRAEL YEARBOOK ON HUMAN RIGHTS 171, 171 (Yoram Dinstein ed., 1999).

68 Equal Rights for People with Disabilities Law, 5758-1998, SH No. 1658 p. 152 § 8(a) (Isr.).

accommodate the workplace for a worker with a disability.<sup>69</sup> The law also imposes an affirmative-action duty on employers to take measures to promote “appropriate representation” of persons with disability in the workforce.<sup>70</sup> Lastly, the law established the Commission for Equal Rights of Persons with Disabilities and defined its goals. One of the primary goals of the commission is to “encourage the active integration and participation of disabled persons in society.”<sup>71</sup>

Second, in 2002 the Minister of Labour and Social Welfare enacted regulations that enabled employers to pay a reduced minimum wage to workers with severe disabilities.<sup>72</sup> According to the regulations, “when the Director General of the Ministry of Labor . . . is satisfied that because of the employee’s disability the working capability of the employee with disabilities is less than the ordinary working capability in that position . . . then he shall decide on an adjusted minimum wage for him . . . .”<sup>73</sup> For example, “if the working capacity is greater than 19% but not greater than 30% of the ordinary working capacity [the minimum wage sum will be] 30% of the minimum wage.”<sup>74</sup> In 2007, Israel’s *Knesset* enacted the Rights of Persons with Disabilities Employed as Rehabilitees Law (Ad Hoc Provision) 5767-2007.<sup>75</sup>

Third, in 2009 Israel’s *Knesset* amended the National Insurance Law to improve the conditions for disability-benefits recipients who join the workforce.<sup>76</sup> The amendment to the law improves the conditions for those who join the workforce and does not diminish the rights of those who are not working.<sup>77</sup>

Lastly, the Minister of Economy and the National Insurance Institute of Israel promote several active labor-market policies towards people with disabilities. The Minister of Economy provides assistance and subsidies to employers of workers with disabilities.<sup>78</sup> The Minister of Economy currently promotes the One Stop Centre for workers with disabilities.<sup>79</sup> The National Insurance Institute of Israel provides vocational rehabilitation to eligible people with disabilities.<sup>80</sup> Although legislation plays an important role in promoting the rights of workers with disabilities, due to low-participation rates of people with disabilities in the Israeli labor market, there is much more room for employee union activity on this issue.

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69 Equal Rights for People with Disabilities Law, 5758–1998, § 8.

70 § 9.

71 § 21.

72 Minimum Wage Regulations [adjusted wage for employees with disabilities and reduced working capacity], 5762–2002, SH No. 6154 p. 460 (Isr.).

73 § 4.

74 *Id.*

75 SH No. 2109 p. 450.

76 National Insurance Law – Amendment 109, 2009, SH. 2169 No. p. 671 (Isr).

77 NATIONAL INSURANCE INSTITUTE OF ISRAEL, *Going to work and still receiving a pension* (Jul. 7, 2017), <https://www.btl.gov.il/English%20Homepage/Benefits/Disability%20Insurance/laron/Pages/default.aspx>.

78 Lidar Graveh-Lazi, *Economy Ministry initiative to Include Disabled in the Workforce*, THE JERUSALEM POST (April 7, 2016).

79 <http://www.workitout.co.il/> (July 7, 2017).

80 NATIONAL INSURANCE INSTITUTE OF ISRAEL, *Vocational Training for People with Disabilities*, (July 7 2017), <https://www.btl.gov.il/English%20Homepage/Benefits/Vocational%20Rehabilitation/Pages/default.aspx>

## FINDINGS

The findings reinforce the assumption that the social partners (employee unions and employer unions) who promote workers with disabilities are important players in the labor market. In Israel, unions promote workers with disabilities at all levels of collective bargaining: the national level, the sectoral level, the public-sector level, and the enterprise level.

Nonetheless, the findings also emphasize the differences between the levels. At the national level, unions promote not only ‘insiders’ but also ‘outsiders.’ Collective agreements at the national level promote the integration of people with disabilities into the labor market. Collective agreements at the sectoral, enterprise, and public-sector level do not promote the integration of people with disabilities into the labor market but do help workers who become disabled during their work to remain in the labor market.

### *Collective Agreements at the National Level*

At the national level, three main collective agreements promote rights for workers with disabilities. Israel’s social partners (the *Histadrut* and the *Hitachdut Hatasianim*) signed the first collective agreement regarding workers with disabilities in 1966.<sup>81</sup> The title of the collective agreement was “Collective Agreement for the Working Conditions of the Elderly and the Disabled.”<sup>82</sup> The purpose of the collective agreement was to “integrate people [with disabilities] in the labor market.”<sup>83</sup> The collective agreement encourages employers to employ workers with disabilities and defines their working conditions.<sup>84</sup>

In December 2007, Israel’s social partners, the *Histadrut* and the *Lishkat Hatium* signed a collective agreement, which was extended by the Minister of Economy, regarding disability insurance.<sup>85</sup> According to the Extension Order, all Israeli employers are obligated to insure their employees through a pension fund.<sup>86</sup> The insurance must include disability and survivor insurance.<sup>87</sup> Therefore, the Collective Agreement and the Extension Order provided an occupational disability insurance (in addition to the NII disability insurance) to all Israeli workers.<sup>88</sup> In June 2014, the *Histadrut*, and the *Lishkat Hatium* signed a collective agreement, which was extended by the Minister of Industry, Trade, and Employment.<sup>89</sup> According to the extension order, large employers in the private sector (with 100 employees or more) must employ a certain share of employees

81 Collective Agreement (Collective Agreements for the Working Conditions of the Elderly and the Disabled), 7018-1967, The Ministry of Economy Website (Isr.).

82 Collective Agreement (Collective Agreements for the Working Conditions of the Elderly and the Disabled), 7018-1967, The Ministry of Economy Website (Isr.).

83 *Id.*

84 *Id.* Already in 1954 the *Histadrut* included in its constitution an article stipulating that employment bureaus (at the time run by the *Histadrut*) needed to take care that workers with disabilities would find work. THE HISTADRUT'S CONSTITUTION 1954 [Hebrew].

85 Mandatory Pension Collective Agreement 7019/2007 (19.7.2007).

86 Mandatory Pension Extension Order, 5768–2007, SH No. 5772 p. 1736 (Isr.).

87 § 3.

88 *Id.*

89 Employees with Disabilities Extension Order, 5774- 2014, SH No. 6891 p. 48.

with disabilities (two percent in the first year and three percent in the second year).<sup>90</sup>

### *Collective Agreements at the Sectoral Level*

In contrast to the collective agreement at the national level, the collective agreements at the sectoral level do not promote the integration of people with disabilities into the labor market. However, these agreements do provide income security, job security, and employment security to workers with disabilities who are already in the labor market (Table 1; Table 2; Table 3).<sup>91</sup>

Income security for people with disabilities plays a very dominant role in Israel's collective agreements. Disability insurance clauses were found in all collective agreements except one.<sup>92</sup> The Minister extended eighty-four percent disability insurance provisions in collective agreements in the private sector were extended by the minister.<sup>93</sup> Moreover, as noted above, in 2007, Israel's social partners signed a general collective agreement to provide disability insurance to all Israeli workers.<sup>94</sup> The Minister of Industry, Trade, and Labour extended the collective agreement's application to all Israeli workers.<sup>95</sup>

Moreover, sixty-six percent of sectoral collective agreements in the private sector provide paid sick-leave insurance.<sup>96</sup> Several collective agreements provide extended periods of paid sick leave (compared with the paid sick leave granted by law).<sup>97</sup>

None of the sectoral collective agreements in the private sector provide workplace accommodations to workers with disabilities.<sup>98</sup> Nonetheless, collective agreements do provide employability security to workers who become disabled during their work. Approximately half of the collective agreements in the private sector maintain that “[a]n employer will make an effort to find a job for an employee who is unable [against his will] to perform his job.”<sup>99</sup>

90 *Id.*

91 *See infra* Table 1; Table 2 and Table 3.

92 *See infra* the list of all sectorial collective agreements in the private sector. The only collective agreement which does not include a disability insurance provision is The Artists Collective Agreement 7105/1996, MINISTRY OF ECONOMY (Jan. 12, 1996) <https://apps.moital.gov.il/WorkAgreements/>.

93 *See infra* Table 1.

94 Mandatory Pension Collective Agreement 7019/2007 (19.7.2007).

95 Mandatory Pension Extension Order, 5768–2007, SH No. 5772 p. 1736 (Isr.).

96 Collective agreements in the textile and clothing industry; Collective agreements in print; Collective agreements in the cardboard industry; Collective agreements in garages; Collective agreements in the metal industry; Collective agreements in ceramics; Collective agreements in the baking industry; Collective agreements in the juice industry; Collective agreements in the oils industry; Collective agreements in the chocolate industry; Collective agreements in the coffee industry; Collective agreements in the flour industry; Collective agreements in agriculture; Collective agreements in the cigarettes industry; Collective agreements in the pharmaceutical industry; Collective agreements in the diamond industry; Collective agreements in the transport sector. All of the above collective agreements were published in: COLLECTIVE AGREEMENTS, Vol. 1-5 (Moshe Pasternak ed., 2015) [Hebrew].

97 Collective agreements in the oil industry; Collective agreements in print. Both collective agreements were published in: COLLECTIVE AGREEMENTS, Vol. 1-5 (Moshe Pasternak ed., 2015) [Hebrew].

98 *See infra* the list of all sectorial collective agreements in the private sector.

99 *See for example:* Collective agreements in the plastics industry, § 34; Collective agreements in the textile and clothing industry, § 31; Collective agreements in laundries, § 23; Collective agreements

### *Collective Agreements at the Public Sector Level*

Similar to the collective agreements at the sectoral level, the collective agreements in the public sector provide income security, job security, and employment security to workers with disabilities who are already in the labor market, but do not promote the integration of people with disabilities into the labor market.<sup>100</sup> All collective agreements in the public sector provide disability insurance to the workers. None of the collective agreements in the public sector provide accommodations to workers with disabilities.<sup>101</sup> Workers with disabilities in the public sector (as workers with disabilities in the private sector) are entitled to accommodations; however, the source of their rights is legislation and *Takshir* regulation (Israel's Civil Service Regulation), not collective agreements. Only one collective agreement in the public sector states, "An employer will make [an] effort to find a job [for] an employee who is unable [against his will] to perform his job."<sup>102</sup>

### *Collective Agreements at the Enterprise Level*

Similar to the collective agreements at the sectoral level, none of the collective agreements I analysed at the enterprise level promoted the integration of people with disabilities into the labor market.<sup>103</sup>

However, the collective agreements in Teva and El-Al (two enterprises that have been organized for several decades) do provide income security, job security, and employment security to workers with disabilities who are already in the labor market. The collective agreements in Teva and El-Al provide disability insurance to workers.<sup>104</sup> Similar to the sectoral collective agreements, the collective agreements in Teva and El-Al also declare that the employer will exert efforts to find a job for an employee who is disabled.<sup>105</sup> Lastly, the collective agreement in El-Al provides an employment priority to a relative of a disabled worker (who became disabled via a work injury).<sup>106</sup>

In contrast to the collective agreements in Teva and El-Al, approximately ninety percent of the new collective agreements I studied (forty-six collective agreements in workplaces did not have collective agreements until 2013–14) do not provide any rights to workers with disabilities, except disability insurance (which is mandatory in Israel in any case) and job security (which is provided to all workers in the enterprise).<sup>107</sup> Moreover, many collective agreements provide a very *soft* job security and solely provide the mandatory disability insurance.

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in the chocolate industry, § 7.1.2. All collective agreements were published in: COLLECTIVE AGREEMENTS, Vol. 1-5 (Moshe Pasternak ed., 2015) [Hebrew].

100 See *infra* tables 1–3.

101 See *infra* the list of collective agreements in the public sector.

102 The Local Government Collective Agreement § 13 (the Nevo Website).

103 See *infra* the list of collective agreements at the enterprise level.

104 Teva Collective Agreement 216/2010 (June 23, 2010); El-Al Collective Agreement 588/1990 (Jan. 4, 1990) ch. two.

105 Teva Collective Agreement 336/2003 (July 15, 2003) ch. six (The Ministry of Economy Website); El-Al Collective Agreement 588/1990 (Apr. 1, 1990) ch. six (The Ministry of Economy Website).

106 El-Al Collective Agreement 588/1990, *supra* note 105.

107 See *infra* the list of collective agreements at the enterprise level. All collective agreements at the enterprise level, except the collective agreements listed at n. 110, do not provide any rights to workers with disabilities except disability insurance.

Only four collective agreements provide employability security in case of a disability. The Geshher Theater collective agreement states, “the theater is entitled to provide medical treatment to the actor in order to enable him to speak and move on stage.”<sup>108</sup> The basketball referee collective agreement includes a right for a physiotherapist.<sup>109</sup> The Environmental Service Company and the Kamada collective agreement declare that the employer will exert efforts to find a new accommodated job for a worker who became disabled.<sup>110</sup>

## DISCUSSION

### *Unions' Advantages*

The findings of this research show the ambivalence of unions with regard to workers with disabilities: unions' advantages and unions' limitations.<sup>111</sup> Optimistically, the research shows that unions are capable of promoting all three types of security to workers with disabilities: income security, job security, and employment security. Most collective agreements in Israel include disability insurance, which provides income security to workers in case of disability.<sup>112</sup> Several sectoral and enterprise level collective agreements in Israel provide job security to workers (including workers with disabilities).<sup>113</sup> Several collective agreements provide employability security to disabled workers who were injured during their work.<sup>114</sup>

The findings reinforce the literature that points to the importance of the involvement of unions in the promotion of rights of workers with disabilities.<sup>115</sup> The findings show that, as recommended by the International Labor Organisation, United Nations, and European Union, the unions in Israel indeed took steps to “ensure that persons with disabilities [were] able to exercise their labour . . . rights on an equal basis with others.”<sup>116</sup> Moreover, the findings show that unions promote universal rights that support the “social model” of disability:<sup>117</sup> job security (which

108 The Geshher Theater Collective Agreement 0224/2013 (July 31, 2013) § 52.

109 Collective Agreement for Basketball Referee 234/2014 (Sept. 23, 2014)/

110 Collective Agreement in Kamada 37/2014 (Dec. 15, 2013); Collective Agreement Environmental Service Company 260/2014 (Dec. 15, 2013).

111 See *supra* notes 23–51.

112 See *infra* Table 1.

113 See *infra* Table 3.

114 See *infra* Table 2.

115 Koula Labropoulou & Eva Soumeli, *Workers with Disabilities: Law, Bargaining and the Social Partners*, EUROFOUND (Feb. 27, 2001), <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/workers-with-disabilities-law-bargaining-and-the-social-partners>; Deborah Foster & Patricia Fosh, *Negotiating 'Difference': Representing Disabled Employees in the British Workplace*, 48 BRITISH J. INDUS. REL. 560, 579-80 (2010); Lisa A. Schur, *Dead End Jobs or a Path to Economic Well Being? The Consequences of Non-Standard Work Among People with Disabilities*, 20 BEHAV. SCI. L. 601, 618 (2002); Richard Whittle, *The Framework Directive for Equal Treatment in Employment and Occupation: n Analysis from a Disability Rights Perspective*, 27 EUR. L. REV. 303, 317, 325 (2002).

116 G.A. Res. A/61/611, annex, Convention on the Rights of Persons with Disabilities, § 27(c) (Dec. 6, 2006).

117 MICHAEL J. OLIVER, UNDERSTANDING DISABILITY: FROM THEORY TO PRACTICE 30–42 (1996).

helps all workers including workers with disabilities) and income security (disability insurance, which includes pension and survivors insurance).

The findings can be explained by the literature that emphasizes unions' ability to "voice" workers' needs.<sup>118</sup> Moreover, the findings show that, indeed, unions promote "public goods," which are at the collective interest of all workers.<sup>119</sup> All workers have the potential to be injured and dismissed. Therefore, all employers may benefit from providing disability insurance, job security, and employability security to workers who were injured on the job.

The relatively new national collective agreement, which was extended by the Minister of Economy, is particularly exciting. According to the extension order, large employers must employ a certain share of employees with disabilities (two percent in the first year and three percent in the second year).<sup>120</sup> The collective agreement is unique (in the Israeli context) because it aims to integrate people with disabilities who are outside the labor market into the labor market, which is in contrast to the tendency of unions, reported in the literature, to promote *insiders*.<sup>121</sup> The new collective agreement shows that unions are capable of advancing broad social goals despite the fact that these goals do not directly advance their members. In fact, these goals may be in contrast with the interests of other workers. This will be the case if, for example, an employer will dismiss an employee to recruit a disabled employee.

### *Unions' Limitations*

Nonetheless, the findings also point to unions' limitations. First, the findings show that at the sectoral, enterprise, and public sector levels, unions in Israel did not concentrate on integrating people with disabilities into the labor market. Moreover, none of the collective agreements at all four levels (national, sectoral, public sector, and enterprise) provide accommodations for workers with disabilities. Therefore, none of these agreements fully reflect the "social model" of disability. These findings reinforce the literature that claims that unions tend to underrepresent minorities and outsiders.<sup>122</sup>

118 RICHARD B. FREEMAN & JAMES L. MEDOFF, WHAT DO UNIONS DO? 79 (Basic Books) (1984).

119 Berndt Keller, *Social Dialogue—The Specific Case of the European Union*, 24(2) THE INTERNATIONAL JOURNAL OF COMPARATIVE LABOUR LAW AND INDUSTRIAL RELATIONS 201, 220 (2008); RICHARD FREEMAN AND JAMES MEDOFF, WHAT DO UNIONS DO? 10, 94–111, 122–35 (1984); Yitchak Haberfeld, *Why do Workers Join Unions? The Case of Israel*, 48(4) INDUS. & LAB. REL. R. 656 (1995).

120 Employees with Disabilities Extension Order, 5774- 2014, SH No. 6891 p. 48.

121 Foster & Fosh, *supra* note 3, at 566.

122 Ton Wilthagen & Ralf Rogowski, *The Legal Regulation of Transitional Labor Market*, in THE DYNAMICS OF FULL EMPLOYMENT: SOCIAL INTEGRATION THROUGH TRANSITIONAL LABOUR MARKETS 233, 244–45 (Gunther Schmid & Bernard Gazier eds., Edward Elgar, 2002); John W. Budd, *The Effect of Unions on Employee Benefits and Non-Wage Compensation: Monopoly, Power, Collective Voice and Facilitation*, in What Do Unions Do? A Twenty Year Perspective 60, 162–64 (James T. Bennett & Bruce E. Kaufman eds., Transaction Publishers, 2007); Alain Supiot, *The Transformation of Work and the Future of Labour Law in Europe: A Multidisciplinary Perspective*, 138 INT'L LAB. REV. 31, 41 (1999).



Second, the findings show that unions in Israel exerted efforts to integrate people with disabilities in the workplace solely through national negotiation (and not through the sectoral level, enterprise level, or public sector level negotiations). These findings reinforce the literature that points to the connections between corporatism and equality.<sup>123</sup> The findings reinforce Olson's claim that although relatively small unions will supposedly promote the narrow interests of its members, large encompassing unions will promote broad social issues.<sup>124</sup> As Olson explains, the members of the highly encompassing organization have an incentive to make sacrifices, up to a point, for policies and activities that are sufficiently rewarding for society as a whole.<sup>125</sup>

Nonetheless, because I found that unions promoted the integration of people with disabilities into the labor market only at the national level, the implications of these findings are limited solely to coordinated labor economies (CME) corporatist countries where national negotiation is possible. Moreover, even in corporatist countries (such as Israel), the density of unions is in decline.<sup>126</sup> Consequently, unions are losing their encompassing structure and their legitimacy to achieve national collective agreements.<sup>127</sup>

### *When Do Unions Promote Workers with Disabilities?*

The findings expand our knowledge regarding the circumstances in which unions are likely to represent the interests of workers with disabilities well. More specifically, the findings show the importance of collaborations between unions and NGOs. Several circumstances led to the relatively new Israeli collective agreement, which aimed to integrate people with disabilities into the labor market.

First, the process that led to the collective agreement and its application resembled the disability scholars and advocates recommendations. Disability-Study scholars emphasize the involvement of people with disabilities in the process of policymaking<sup>128</sup> and the importance of collaboration between unions and disability organizations.<sup>129</sup> While the collective negotiation only included employee

123 GUY MUNDLAK, *FADING CORPORATISM: ISRAEL'S LABOR LAW AND INDUSTRIAL RELATIONS IN TRANSITION* 25–26 (Cornell University Press) (2007).

124 MANCUR OLSON, *THE RISE AND DECLINE OF NATIONS: ECONOMIC GROWTH, STAGFLATION, AND SOCIAL RIGIDITIES* 49–53 (Yale University Press) (1982).

125 Nonetheless, Olson also notes the limitations of encompassing unions: “The degree of monopoly power often increases as an organization becomes more encompassing. If an enterprise union becomes an industry-wide union, for example, it may, by striking against any firms in the industry that do not cooperate, make it easier for the firms to have an effective cartel, and thereby maximize the joint monopoly gain of the firms and the workers.” MANCUR OLSON, *THE RISE AND DECLINE OF NATIONS* 49–53 (1982).

126 Guy Mundlak, Ishak Saporta, Yitchak Haberfeld, & Yinon Cohen, *Union Density in Israel 1995–2010: The Hybridization of Industrial Relations*, 52 *INDUS. REL.* 78, 78 (2013).

127 Guy Mundlak, *Addressing the Legitimacy Gap in the Israeli Corporatist Revival*, 47 *BRITISH J. INDUS. REL.* 765, 768 (2009).

128 Arlene S. Kanter, *The Law: What's Disability Studies Got to Do With It or An Introduction to Disability Legal Studies*, 42 *COLUM. HUM. RTS. L. REV.* 403, 415 (2011); JAMES I. CHARLTON, *NOTHING ABOUT US WITHOUT US: DISABILITY OPPRESSION AND EMPOWERMENT* 67, 125 (University of California Press) (1998).

129 Foster & Fosh, *supra* note 115, at 566.

and employer organizations, people with disabilities, and disability NGOs, all were involved in the collective agreement process and in its application.

In 2011, several years prior to the collective agreement, Ranaan Dinor, former CEO of the Prime Minister's Office, established a "Public-Private Social Partnership" together with Eyal Gabay, the CEO of the Prime Minister's Office, other relevant CEOs of government ministries, the head of the *Histadrut*, the head of the *Lishkat Hatium*, and disability NGOs.<sup>130</sup> They established a partnership in order to promote the rights of people with disabilities.<sup>131</sup> The partnership included eighty representatives from the following sectors: the civil service, the employers (including employer unions), the employee unions, and disability NGOs. Activists for rights of people with disabilities were also involved in the taskforce. The partnership established (through five teams) specific recommendations in order to integrate people with disabilities in the workforce.<sup>132</sup> Moreover, the involvement of employee unions in the process enabled the employee unions to learn about the specific needs of workers with disabilities and facilitated their ability to advocate for their rights through collective agreements.

In 2014, Israel's social partners signed the aforementioned collective agreement, which aims to integrate workers with disabilities in the workforce. Nonetheless, the work of the partnership has not ended.<sup>133</sup> After the collective agreement was signed, the partnership established a job-mediation website, which aims to ensure the fulfilment of the collective agreement.<sup>134</sup> Moreover, following the collective agreement, Israel's major union, the *Histadrut*, established within it a new role—a special commissioner for the employment of people with disabilities.

Second, the Israeli arrangement is soft compared with arrangements in many other countries; it does not impose an undue hardship on employers and it does not contain sanctions or an enforcement mechanism. In addition, the Israeli arrangement does not contain a definition of "disabilities" and therefore is not limited to severe disabilities. The quota rate (two percent–three percent) is low compared to the quota systems in other countries.<sup>135</sup> The soft nature of this agreement enabled the employers' consent. Nonetheless, the soft nature of the

130 AMERICAN JEWISH JOINT DISTRIBUTION COMMITTEE, *Hebrew title first [The InterAgency Task Force: Promoting Employment of People with Disabilities]* <http://www2.jdc.org.il/sites/default/files/wide-shutfutbeinmigzaritbook.pdf> (last visited Jul. 13 2017) at 2-5.

131 AMERICAN JEWISH JOINT DISTRIBUTION COMMITTEE, *Hebrew title first [The InterAgency Task Force: Promoting Employment of People with Disabilities]* <http://www2.jdc.org.il/sites/default/files/wide-shutfutbeinmigzaritbook.pdf> (last visited July 13 2017) at 2–5.

132 *Id.* at 27–59.

133 Interview with Yael Nachmias, title, Am. Jewish Joint Distribution Comm., in City, State. (Dec. 27, 2015).

134 AMERICAN JEWISH JOINT DISTRIBUTION COMMITTEE: ACCOMMODATED WORK <http://www.avodanegisha.org.il/> (last visited Oct. 6, 2015).

135 Cf. EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS, *Implementing the United Nations Convention on the Rights of Persons with Disabilities* 12–13 (May 2015), <http://fra.europa.eu/sites/default/files/fra-2015-focus-05-2015-crpd.pdf>; Michael Fuchs, *Quota Systems for Disabled Persons: Parameters, Aspects, Effectivity*, EUROPEAN CTR. SOC. WELFARE POL'Y & RES. 2 (2014), [http://www.euro.centre.org/data/1393943316\\_63424.pdf](http://www.euro.centre.org/data/1393943316_63424.pdf); INT'L LABOUR ORG., *Achieving Equal Employment Opportunities for People with Disabilities Through Legislation: Guidelines* 49–55 (2014), [http://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---ifp\\_skills/documents/publication/wcms\\_322685.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/publication/wcms_322685.pdf).

arrangement also limits the collective agreements' ability to integrate people with severe disabilities in the labor market.

## CONCLUSION

In recent decades, there was a sharp increase in life expectancy in all developed states. Due to scientific and medical developments, people live longer than in the past but also often suffer more from disabilities, at least in old age. In addition to the rise in the rate of people reporting disabilities, people with disabilities suffer from great difficulties when entering and participating in the labor market. In fact, the integration of people with disabilities into the labor market is one of the greatest challenges to current policy makers.

As this paper shows, employee unions and employer unions play an important role in promoting rights for people with disabilities. In Israel, employee unions promoted quotas for people with disabilities; they also promoted disability insurance, job security and, in several places, employability security to workers who become disabled during work.

Nonetheless, this paper also noted unions' limitations regarding the promotion of rights for people with disabilities. Until recently, unions in Israel solely promoted rights for workers who became disabled during work. Moreover, today most collective agreements emphasize disability insurance and job security but not employability security or accommodations for new workers with disabilities.

Due to the capability of unions to promote rights for workers with disabilities on the one hand, and the limitations of the abilities of unions to promote the integration of people with disabilities into the labor market on the other hand, this paper emphasizes the importance of collaborations between unions and NGOs. Although unions are experts in the labor market and have the capability to promote a "social model" of disability, NGOs are the experts in the specific needs of people with disabilities. Strong connections and collaborations between unions and NGOs may lead to a real integration of people with disabilities into the labor market.

Collective Agreements in the Public Sector

(All collective agreements were published in Pasternak 2015).

Collective agreements that apply to technical employees  
Collective agreements that apply to administrative employees  
Collective agreements that apply to social scientists employees  
Collective agreements that apply to engineers  
Collective agreements that apply to doctors  
Collective agreements that apply to veterinarians  
Collective agreements that apply to pharmacists  
Collective agreements that apply to psychologists  
Collective agreements that apply to social workers  
Collective agreements that apply to lawyers and prosecutors  
Collective agreements that apply to biochemists, microbiologists and employees laboratories  
Collective agreements that apply to engineers and technicians  
Collective agreements that apply to X-ray technicians  
Collective agreements that apply to occupational therapists  
Collective agreements that apply to nurses  
Collective agreements that apply to teachers  
Collective agreements that apply to local authority employees  
Collective agreements that apply to academic staff

Sectoral Collective Agreements in the Private Sector

(All collective agreements were published in Pasternak 2015).

Collective agreements in the security and protection sector  
Collective agreements in the cleaning and maintenance sector  
Collective agreements in gas stations  
Collective agreements in the hotel industry  
Collective agreements in the plastics industry  
Collective agreements in the textile and clothing industry  
Collective agreements in the construction sector  
Collective agreements in public works  
Collective agreements in the tree industry  
Collective agreements in the cinema  
Collective agreements in laundries  
Collective agreements in tanning  
Collective agreements in print  
Collective agreements in the cardboard industry  
Collective agreements in garages  
Collective agreements in the metal industry  
Collective agreements electrical and electronics  
Collective agreements in ceramics  
Collective agreements in the glass industry  
Collective agreements in the baking industry  
Collective agreements in the juice industry  
Collective agreements in the oils industry  
Collective agreements in the chocolate industry  
Collective agreements in the coffee industry  
Collective agreements in the flour industry  
Collective agreements in agriculture  
Collective agreements in the cigarettes industry  
Collective agreements in the pharmaceutical industry  
Collective agreements in the diamond industry  
Collective agreements in human resource companies  
Collective agreements the import industry  
Collective agreements the exports and trade industry  
Collective agreements the retail trade industry

Collective agreements the transport sector  
Collective agreements for hairdresser's  
Collective agreements the remodelling contractors  
Collective Agreement in Garden Events Places  
Collective Agreements in Supermarkets

Collective agreements at the enterprise level

All collective agreements of Teva  
All collective agreements of El-Al  
Collective Agreement in Kamada (20140037)  
Collective Agreement for the Association for Civil Rights in Israel (20140043)  
Collective Agreement in Ochma (20140012)  
Collective Agreement IT Soft LTD (20130324)  
Collective Agreement Milouoff (20130295)  
Collective Agreement Day Care Centers Herut Women's Organization (20130323)  
Collective Agreement in Keren Or (20130303)  
Collective Agreement in the Transportation Services (20140096)  
Collective Agreement in Clalit Bio-Medical Engineering (20130231)  
Collective Agreements in Community Centers Petach Tikva (20130230)  
Collective Agreement in the Jerusalem College of Technology (20130241)  
Collective Agreement in Geshet Theater (20130224)  
Collective Agreement in Emilly (20130233)  
Collective Agreement in Jana Beverage Industry Ltd. (20130218)  
Collective Agreement of the Israeli Cattle Breeders Association (20130176)  
Collective Agreement in Orgad (Burgerranch) (20130149)  
Collective Agreements Community Centers Ramat Hasharon (20130158)  
Collective Agreement in Cachol (Blue) Lavan (White) (20130122)  
Collective Agreement in Papa (20130047)  
Collective Agreement in Pelephone (20140281)  
Collective Agreement in Pelephone (20130310)  
Collective Agreement in Atid (20130045)  
Collective Agreement in the Israel Bar Association (20140170)  
Collective Agreement in Mahar (20140240)  
Collective agreement in Reut (20140254)  
Collective agreement in Tabasko (Pizza Hut Israel) (20140213)  
Collective Agreement Working and Studying Youth (20140083)  
Collective Agreement in Globus Group (20140055)  
Collective Agreement in Electra (20140148)  
Collective Agreement in Afikim (20140094)  
Collective Agreement in Unilever (20140143)  
Collective Agreement in Lapid (20140032)  
Collective Agreement in Lapid (20140033)  
Collective Agreement in Democratic School Hod Hasharon (20140035)  
Collective Agreement in Kupat Holim Meochedet (20140082)  
Collective Agreement for Basketball Referee (20140092) (20140234)  
Collective Agreement in the Pension Fund for Agriculture Workers (20140152)  
Collective Agreement in Plu-Tal Cleaning Company (20140191)  
Collective Agreement in the New Israeli Fund (20140203)  
Collective Agreement in Avidar (20140127)  
Collective Agreement in Yathir Capaim (20140247)  
Collective Agreement in Egik (20140228)  
Collective Agreement in Had Mahir (20140235)  
Collective Agreement Enviromental Service Company (20140260)  
Collective Agreement in T.A.G. Medical Products Agricultural Cooperative Association (20140275)  
Collective Agreement in Tambord (20150007)

Table 1. Income Security (Disability Insurance Provisions)

	Disability Insurance Provisions
Collective Agreements in the Public Sector (18)	100%
Collective Agreements in the Private Sector (38)	97%
Disability Insurance Provisions in Collective Agreements in the Private Sector, which Were Extended (38)	84%

Table 2. Adjusted work to workers with disabilities

	Provisions with regard to finding an adjusted job for a worker with disability
Collective Agreements in the Public Sector (18)	5%
Collective Agreements in the Private Sector (38)	47%
Adjusted Job Provisions in Collective Agreements in the Private Sector, which Were Extended (38)	5%

Table 3. Job Security

	Job Security Provisions
Collective Agreements in the Public Sector (18)	100 %
Collective Agreements in the Private Sector (38)	92 %
Job Security Provisions in Collective Agreements in the Private Sector, which Were Extended (38)	10 %