

RE-conceptualizing 'The Worker': Workers' Cooperatives and Unions fighting the new-old struggle for basic workers' rights in an age of out-sourcing and forced free-lance employment

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preface

The century and a half old struggle for basic workers' rights gained 'workers', or 'employees' a comprehensive frame of cogent right: minimum wage protected working conditions and social benefits in most developed countries. Rights and benefits enacted are almost impossible to annul, even in less favorable countries towards workers' rights.

These facts did not diminish the will of investors owned firms to maximize their profits on the expense of workers. Since the employment without rights path had been shut we had witnessed a broad range of innovative activities meant to bypass the capital oppressive labor law.

The most common path is through shipment of labor to less protective countries, but not all sorts of labor can be shift overseas. The processes we had witnessed within developed states included shifting from collective agreements to private contracts; employment via human resource companies (allowing two workers doing the same job in the same place be subject to different agreement and benefits) employment via out-source companies that exchanged hiring workers with purchase of service 0 allowing the used-to-be-employer to disconnect from responsibility or mere awareness for the people providing the service. The current step in the ladder is eliminating the worker all together – and I don't refer to technological developments – but to transferring from employing workers to engaging in contracts with private contractors, free-lancers or any other definition that glamorizes doing the same work that used to be done by employees, only without any protection or employers' responsibilities, without hours counting to calculate at least minimum wage and of course with no guarantee for a next paycheck.

This is the demise of the 'worker'. These are the new laborers that hold no basic rights due to their forced independent status.

Then there's the next stage, in which the free-lances and privet contractors arise and decide to organize and fight for their rights. When they do so – they often meet antitrust and competition laws and the General Director of Restrictive Trade Practice – warning them that their organizing would fall under restrictive trade practice – hence e-legal.

Thus we have returned to the struggles of the beginning of the 20th century – the struggle for the right to organize.

The paper hereinafter brings up preliminary thoughts and reflections regarding these new methods of exploitation - avoiding all together the workers' rights discourse.

The examples are based on the Israeli experience, but it seems quite similar processes can be identified almost is all markets dominated by capitalist notions.

The paper presents some suggestions for responses in the forms of new thinking of workers' organizations, formation of workers' cooperative and cooperation between those two forms.

Background – Organized Labor

At its peak the organized labor in Israel accounted to 86% of all employees. Today approximately 25% of employees enjoy the protection of collective agreements, but more than a hundred thousand of those are part time, hour based paid workers and dozens of thousands that are not considered as employees at all.

It is almost four decades process in which the Israeli economy went from socially oriented welfare state to an extreme neo-liberal economy. The biggest employer and the most dominant in changing the structure of the labor market is the state. As the state's employees, has one of the strongest unions, there was- and still continues - a planed process designated - by the ministry of finance - to weaken the union and workers. All the processes described started by the ministry of finance and were fast adopted by employers in the privet sector.

The weakening of organized labor started with hiring employees outside the scope of collective agreements – suggesting better conditions, higher salaries and no collective protection. The personal agreements were described as preferential treatment for

valuable workers. It took several years for those workers to realize that their agreements lack on different aspects compared to the collective agreements and that the main thing they signed up for was an easy firing process with no union to cover their backs. It took the courts a few years to come up with a decision that a personal contract can't provide less benefits than the collective agreement in order, but it didn't gain them union protection.

The next step introduced Human Resource Companies employees – not for short terms or substitute positions, but as a long term employer, allowing workers doing the exact same job to be subject to totally different systems of employment and entitled to different benefits. The Human Resource employees did not have any union affiliation, and the protection it beholds.

It was only in 1996 that the Israeli parliament approved an amendment requiring that employees working in the same position in the same place be entitled to the same conditions and benefits. It also determined that if a person is employed by a Human Resource company for a period of over 9 months, the actual employer would be required to employ him directly, or fire him.

As the labor market was given a preliminary period to adjust to those amendments, a new structure had come to rule the evasive path – out source companies. Complete fields of operation were taken out of the hands of internal employees and transferred to out side contractors. The actual employer no longer used employees – whether his or others' – but purchased services. The people behind those services became transparent. The main fields of operation that were taken out of direct employment were cleaning and security, but as time passed these arrangements acclaimed more and more professions – up to a call center for the national security service and even social workers.

The one consultation of all those offensive mechanisms was that at least the cogent conditions applied to these employees no matter who their employer was. At least legally – even though that practically many of them did not receive what were their legal rights.

While the most under-privileged workers – in cleaning or security – are privet contractors' employees so are legally entitle to basic labor rights (even though usually don't receive them) middle class professions are pushed into 'Free-lance' status.

The next generation of alluding workers' rights is no less offensive and much more difficult to deal with – since the worker is no longer no one's employee.

The new Workers' organizations

The old workers' organizations spent decades deserting the field of organizing workers – settling for negotiating members' conditions. As the market changed dramatically - new working places were opened and new forms of employment emerged – there was no one attending their needs.

In 2007 a new workers' organization was founded¹, putting its focus on organizing workers in working places that are relatively new and/or in which the workers were never organized². The new organizations drove the old ones back to a position of an organizing and starting new union (too often ending up in confrontations between unions for the right to represent).

But even the new unions don't deal with the 'non-employees'. As the workers in out source companies and privet contractors still hold an 'employee' status and thus are within the frame of the workers' organizations, the 'non-employees' are off screen all together. The workers organization discourse still segregates between people on the base of formal employment affiliation – so self-employed are still considered as e-relevant to the struggle.

The social protest of 2011 gave a huge push to public awareness, starting a wave of new unions – driving workers to realize this is their main instrument to promote their interests.

¹ Koach La'Ovdim – "Power to the Workers" started as an independent democratic workers' organization. Another workers' organization on smaller scales is Ma'an that started operating in the 1990's.

² There are now more than 10,000 members in Koach La'Ovdim.

The New Workers' Cooperatives

One the main outcomes of the social protest of 2011 was the start of a new cooperative movement, and within it a new rise of workers' cooperatives. This is still a small scale process, but with a promising future. It should be acknowledge that the worker's cooperatives that started by now are mostly of well educated, deeply aware workers. Such is a light and sound cooperative, several High Tech cooperatives, Artists cooperatives and a Psychologists Cooperative as well as a school field trips' guards cooperative. The main achievement is the awareness - different groups are considering or actually in the process of organizing in cooperatives – acknowledging this is their best way to protect their interests and create a safer economic future.

RE-constructing workers' Interests

In order to re-construct workers rights, workers must gain awareness and must organize. In many cases there can be a useful collaboration between the union and the cooperative paths.

The relevant path should be considered for each case and in some occasion as will be described hereinafter the best way is to do both. Unions get the role of negotiating both with employers and on regulation levels. Cooperatives can create alternatives within human resource dominated markets by starting workers' owned companies that erase the middle-maximizing profits-entity.

Here are some examples for new labor market conflicts of recent years – some ended up in some sort of organizational solution:

The case of the Scriptwriters to movies and television

The struggle started when scriptwriters realized their works are being broadcast again and again but they are not receiving any payments for that. Royalties are not the same as salaries and creative professional always had special payment arrangements, but on recent years different types of professions were diverted into the so called creative classification – but not necessarily, or usually without, the privileges used to accompany these sort of professions. The scriptwriters also realized they are being

paid less and less for their work, as there are very few broadcast companies that control the market, and can reduce the payments as they please.

The scriptwriters decided to organize and started the Scriptwriters Guild of Israel – demanding to negotiate collectively for their members' terms.

But then they found they are facing not only the broadcast companies but also the general director of restrictive trade practices – announcing their organization a restrictive arrangement. According to the opinion submitted to the court, the scriptwriters demand for a collective negotiating vis a' vis the television channels – is a traded restrictive practice. The fact that most of the work for scriptwriters is for 3 companies that control the market did not affect the legal argument that put these workers in a position of violation of law.

The non-employees, powerless scriptwriters had to struggle for the basic right to organize, against a legal structure that denied that right in the name of free competition.

It took more than a decade of struggles until December 1st 2014 in which the Israeli parliament approved an amendment to the Cinema Law determining the scriptwriters' right to collective management of rights in a cinematic creation.

The Guild had also been signing agreements for minimum payments for scriptwriters with some of the broadcast companies.

The Case of Pre-Nursery Operators

The Pre-Nursery Operators provide a public service given to under-privileged families for their under 3 year old children. In each pre-nursery care center there are up to 6 children that are sent by the local municipality. The service is funded by the ministry of economics that determines all safety and credential requirements and decides on the supervision mechanism. The pre-nursery operator receives a non-negotiable payment from the ministry according to the number of children she nurses.

The pre-nursery operators are considered as self-employed. They can be replaced from one year to the next, get no social benefits, has no one to replace them if they are sick, and do not receive any payments during the summer when the service is not provided.

They are not even working directly with the ministry of economics, but via companies that won a tender for operating the pre-nursery centers and are also in charge of supervising the service provided.

The pre-nursery operators joined the new Workers' organization, in order to try negotiate their terms of employment – hopefully gain an employee status – but all the protests, strikes and discussions in parliament lead to nothing.

With the help of the workers' organization' staff they applied to consider starting a cooperative, maybe try to replace at least the middle entity – but the criteria for participating in the tender require substantial capital guarantees that they could not afford and even if they could get it, and even if they could meet other problematic terms – the basic numbers would not change – this is a service which is under-funded and the government can provide it with such a limited budget only because it compromises workers' rights.

The case of subtitles translators

Another example of double retraction from the once employer is of the subtitles writers. The networks/T.V. channels rely on their skills but they don't employ them. They use sub-contractor – companies that provide translation services. The companies, on their end engage with hourly-based paid workers – hired for specific tasks - thus generating a constant bidding process between the translators - a race to the bottom that never ends.

As the payments are for a complete assignment, carried out in the workers premises – no one is required to pay for the actual time the assignment takes – which ends up, on many occasions in less than minimum wage.

The subtitles translators, who are not organized, went on strike during 2015 for more than a month but the networks were stronger and blacklegged workers allowed them to keep up – the strike ended up with nothing.

A group of translators tried to seek a solution in organizing in a cooperative that would employ the translators instead of the current companies so all the payment would turn to the workers and would try to negotiate better terms.

It was obvious that the TV networks would not be interested in negotiating with an organized group, as their only goal is profit maximization, but film festival managers, cinematheques and such showed real interest. But the group was not strong enough, and starting a cooperative takes a lot of time, efforts and commitment which it lacked.

The case of Crane Operators

Most of the crane operators in Israel are employed via human resource companies that engage in contracts with the construction contractors. Historically the crane operators are not a part of the collective agreements of the building industry. It's one of the few professions in the building industry that require a license and the equipment is of course, very expensive.

Due to the employment via human resource companies the salaries of the crane operators dropped and the safety regulations were not kept. Cranes that were supposed to stop operating a decade ago are still used, fake licenses are used for employment of un-skilled workers and there is no supervision to speak of. The amount of accidents rises all the time. Not only that the pay is low, the working conditions of crane operators are offensive – 12 hours straight on a crane is a normal day of work.

A group of crane operators decided to change the way things work. It decided to do two things in parallel – to start a union and to start a cooperative. The union is supposed to negotiate terms of a collective agreement and to assure the regulation would be updated and followed.

The cooperative is supposed to replace the human resource companies, as a workers' owned company that would engage directly with the building contractors – so there won't be a middle entity gaining profits.

Both processes are at their beginning and it is yet to realize what would the outcomes look like.

The case of school field trips guards

As most security guards, the school field trips guards all are employed by Human resource companies. The schools choose a company based on its prices, and the company chooses its workers preferring the ones willing to work for lower wages. It's a double race to the bottom, and the ones suffer the most are the workers that are being hired for specific missions with no certainty for terms of employment and changing conditions according to supply and demand.

Approximately two years ago a group of school field guards decided to organize in a cooperative – be its own employer and engage in contracts with schools without a middle entity maximizing its profits.

It is not an easy task in order to meet the required criteria of education institutions there must be a substantial capital guarantees and a proof of sufficient scope of operation. The cooperative just finished its first year of operation – successfully, but with a lot of difficulties and the other companies are trying to block its way.

Closing Comments

The basic conflict between workers and those who profit of their work is still a dominant presence in the labor market, but it became more sophisticated. The 'sides' to the conflict are not as clear as in the past. The demise of the 'worker' status lead to a labor market in which many are not considered as employees - thus are devoid of labor law and union protection.

Years of ongoing propaganda lead by privet owned media made many believe that workers' organizations compromise competition and restrict market advantages, as well as promoted the notion of self-employed advantaged. But when dealing in a capitalist market, self-employed is many times just a lonely worker, without any rights.

While the maximizing profits forces use innovative and ever-changing ways in order to reduce workers' advantages the workers class mechanisms are slow to response. It took workers' organizations years to understand the offensiveness of secondary employments and then they had to develop new relevant skills in order to organize and support them. Even the new workers organizations still use 'employees' discourse and are reluctant to acknowledge the masses of forced free-lancers that were swept out of the protected status into a rules-less market.

The definitions and the discourse must be updated. It is a matter of power – both economic and normative. There was more than three decades of process in which the workers class had eroded – workers' organizations got bad reputation, high wages workers – in High tech and others – didn't consider themselves as a part of a the working class and the narrative of independent-self-employed had spread.

Workers' cooperatives were almost gone altogether and the ones left had more hired employees than members.

But the social protest changed public opinion. As of the last four years the notion of collective power had become a household idea, the media deals with it, and the

outcomes are seen all over. Workers are organizing again – 13,000 in 2012 more than 25,000 in 2013 and over 50,000 in 2014.

Workers' cooperatives are still taking first and small steps, but the awareness is widespread through all layers of society – the term 'cooperative' is often used after disappearing from public discourse for decades and it mention as an alternative and just way of operating. There's a cooperative of sound and light for outdoor events, there are several high-tech cooperatives, artists' cooperatives, the fore mention school field trips guards and a very successful psychologist cooperatives.

The importance of both worker's organization and workers' cooperatives is wider than the very important role of protecting members' rights – it's the re-constructing of workers' identity and power – re-possessing the ability to make decisions, affect the future and act as effective political players. It in an ongoing, always changing, never ending struggle.