

**To:** CNS Process Review Committee  
**From:** Gary Fiske  
**CC:** Fred Rothstein  
**Date:** 9/9/09  
**Re:** What can we learn from the Tradition?

At the last meeting, I was tasked with looking for some guidance from the Tradition that might help us in assessing the existing and past review process for clergy and senior staff, and in formulating recommendations on how the process might be improved. My starting point was Professor Rabbi Steven Resnicoff. Dr. Resnicoff, who is also an attorney, is the Founding Co-Director of the College of Law's Center for Jewish Law & Judaic Studies at DePaul University in Chicago.

Dr. Resnicoff pointed to several principles of Jewish law which might apply to our case, and also to several primary and secondary sources. I found Aaron Levine's *Case Studies in Jewish Business Ethics* particularly useful, and I also used Jeffrey Rubinstein's *The Culture of the Babylonian Talmud*. I will try to share what I have learned, with the important caveat that I am by no means an expert in *halakhah* in general or in this area of *halakhah* in particular. If it is deemed useful, we certainly can look into these issues further.

None of these principles gives us detailed guidance for how personnel evaluation processes should proceed. But they do point to important Jewish legal and ethical concepts which should inform all such processes, especially those of a Jewish institution.

### **General Principles**

The Rabbis of the Talmud are extremely concerned with the hurt that can be inflicted on another person as a result of one's words. These issues are addressed in great detail in Tractate Bava Metzia beginning at p. 58b, where two related offenses are discussed.

#### אונאת דברים (Ona'at Devarim)

Roughly translated as 'wronging with words', this prohibition is derived from Lev.25:17 ('And a man shall not wrong his fellow'), which the Rabbis interpret as referring to this type of verbal wronging. The Talmudic prohibition of this kind of act is laid out in no uncertain terms, to wit:

- Verbal wronging is seen as a greater sin than monetary wronging.
- Verbal wronging is seen as 'affecting [the victim's] very self', whereas the other only affects his or her money.
- For monetary damages, restitution is possible; not for verbal wronging.
- All the heavenly gates [of prayer] are locked except for the gates of one who was verbally wronged.

#### הלבנת פנים (Halbanat Panim)

Literally a 'whitening of the face', this is the expression used in the Talmud to denote public embarrassment. Once again, this is deemed to be an extremely serious matter by the Rabbis. For example, the Talmud tells us:

- Whoever whitens the face of (embarrasses) another in public, it is as if he sheds his blood.
- It is better for a man to throw himself into a fiery furnace, and let him not whiten the face of his fellow in public.

There are three other relevant principles that may inform our work.

### לשון הרע (Lashon ha-Ra)

Literally translated as 'the evil tongue', it is discussed in many places in the Rabbinic literature. It is familiar to us as a warning against gossip and rumor-mongering. But Levine points out that the injunction against *lashon ha-ra* may also apply to accepting and acting upon complaints against an employee.

### לא תשנא את אחיך (Lo Tisnah et Achikha)

Literally, 'do not hate your brother.' It comes from Leviticus 19:17:

- Do not hate your brother in your heart; you must [instead] admonish him, and [in consequence] you will no longer ascribe to him sin.

### בקש שלום (Bakesh Shalom)

This translates as 'seek peace'.

## Implications

Levine draws the following implications of these principles for the employee performance appraisal process:

- A process that results in unnecessary mental anguish violates the prohibition against *ona'at devarim*. This applies both to anguish that is caused by action or by inaction on the part of the employee's superiors. Inaction could be a failure of an organization to institute an appropriate process.
- Levine cites the 18<sup>th</sup>-century Moroccan Rabbi Hayyim Ibn Attar, according to whom the biblical verse about 'hating your brother' means:

A should not withhold from expressing to B a complaint he harbors against him. Instead, A should openly confront B with the complaint. Doing so holds the prospect that A will no longer harbor his grievance against B. This is so because, in response to the complaint, B will either satisfactorily excuse his conduct or make amends and correct the objectionable conduct in question.

Levine draws from this that an employer must not "withhold from an employee a complaint he has against him. Instead the employer must provide his worker with negative feedback. The purpose of the negative feedback is, however, to give the employee a chance to correct the complaint and/or improve his performance." He also observes that the *halakhah* is clearly against what he calls the critical incident approach to performance appraisal. Under this approach, an employer keeps track of negative incidents to make a solid case for dismissal, but does not provide the employee with feedback along the way.

- Levine quotes a midrash<sup>1</sup> that points out that, of all the *mitzvot*, seeking peace is the one that we are required by the Torah to go out of our way to do. In the arena of labor relations, he concludes that this principle of *bakesh shalom* "urges an employer to institute performance appraisal in the workplace."
- According to Levine, it is improper to act on a complaint against an employee without first confronting the employee with the complaint and investigating its merits. This is true regardless of

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<sup>1</sup> Midrash Tanhuma

the motivation of the complainant, the halakhic status of his/her complaint, or its potential veracity. Further, according to Levine, dismissing an employee based solely on the *number* of complaints received is also a violation of *halakhah*.

In addition to the above, the prohibition of *halbanat panim* (public embarrassment) would seem to call for particular sensitivity for a very 'public' figure such as a rabbi or cantor. This may be even more true for one who has been in his or her position for a long time.

Finally, the Torah, in Exodus 22:20-23, shows particular concern for the stranger, and the widow and orphan. Maimonides ascribes the special concern for widows and orphans to their 'sense of dejection'. The medieval *Sefer ha-Hinukh* says that the concern with strangers is because of their vulnerability. The implication for our work is that personnel evaluation processes must show an extra measure of concern for those who may be particularly 'dejected' or 'vulnerable'.

Based on these halakhic principles, Levine concludes that an employee evaluation system which does not include 4 components may not be halakhically acceptable:

- Goal setting
- Performance appraisal
- Feedback to employee
- Opportunity to correct negative feedback

He describes each of these in some detail, but that goes beyond the scope of this summary.