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National Taskforce on Civil Liberties in the Workplace

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Hot Topic "Future Worker
Management"

STATEMENT OF THE AMERICAN CIVIL LIBERTIES UNION

LEWIS L. MALTBY
D I R E C T O R
NATIONAL TASK
F O R C E O N
CIVIL LIBERTIES IN
THE WORKPLACE

SUBMITTED TO

THE COMMISSION ON THE FUTURE OF WORKER-MANAGEMENT RELATIONS

September 8, 1994

There is little to say at this point about what is wrong with our labor laws and what needs to be done to fix them. But, perhaps, I can supply some sense of perspective and priority. We can't change everything that is wrong with our labor laws, at least not at once. And, since we can't, we need to think long and hard about what most needs to be changed and what it is possible to change.

In our view, the single most important change that is needed is to restore the right to organize. For reasons we all know, while this right exists in theory, workers who act as if it were real live to regret it.

FOR THE RIGHT TO ORGANIZE TO BE REAL, THREE CHANGES MUST OCCUR:

- 1) Enforcement of section 7 must be changed so that it is no longer cost effective for employers to deliberately violate the law. Employees who are fired for organizing must be provided with immediate reinstatement, before the intimidation kills the organizing drive. The penalties must also be increased. Restricting the penalty to the employee's economic loss has already reduced penalties to the point where they have no deterrent effect. With immediate reinstatement, this penalty will be reduced to pocket change. While the probability of killing the drive by firing the organizers will be reduced, the cost of failure will be so low that it will still be cost effective for employers to try. The penalties need not be draconian, but they need to be credible, and this cannot be achieved by restricting them to the employees'

case, an employee who makes any decisions, even the most minor day to day ones, is a supervisor. Given the way industry is involving employees in day to day operations, it won't be long before almost everyone is a supervisor under the NLRA, and no one has even the theoretical right to join a union.

The key to this change is eliminating the exception for supervisors under the NLRA, and modifying the exception for managers. While supervisors and managers owe their employer a duty of loyalty, this does not distinguish them from other employees. What does distinguish some senior executives is that they have significant individual bargaining power, and do not need collective bargaining to protect their interests. Rewriting the management exclusion around this concept would protect the legitimate interests of employers without denying the right join a union to those who need it.

These are the three critical problems which must be addressed. This is not to say that the only problems are those of organized labor. But the government cannot legislate everything, and, even if it could, it could never enforce that many rules. If there is to be justice in America's workplaces, a strong labor movement is the essential first step. Nor do I deny the problems that can occur even when there is a union in place. But the real strength of the union is that it gives the workers the ability to act collectively, to face their employer as a group and not alone. This right exists in theory. What is absolutely essential in labor law reform is that we make it real.