

United States: Unfair Advantage

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under International Human Rights Standards
Human Rights Watch August 2000*

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Key Recommendations

Here is a summary of recommended changes in U.S. labor law to address the problems cited above:

Interim Reinstatement; Tougher Remedies

A worker who is fired for union activity should be reinstated immediately while the case continues to be litigated. Only such an interim reinstatement remedy can overcome the devastating impact on individual workers who are dismissed and on the workers' overall organizing effort.

Remedies and sanctions should have a deterrent effect. Workers should receive full back pay regardless of interim earnings. They should receive punitive damages in cases of willful violations. In addition to paying workers victimized by violations, employers who repeatedly engage in discrimination against union supporters should pay substantial fines to the NLRB.

Equal Access to the Workplace

A principle of equal access should apply so that workers have access to information from union representatives in the workplace about their right to form and join trade unions and to bargain collectively. When employers require workers to attend captive-audience meetings, similar arrangements should be made for workers to meet with union representatives under parallel circumstances.

Tighter Scrutiny and Tougher Remedies

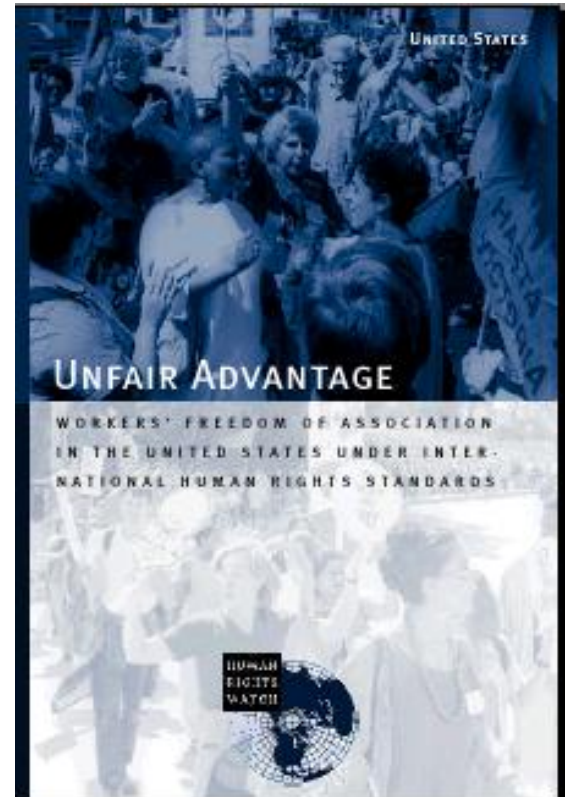
The NLRB should more closely scrutinize employers' anti-union statements for potentially coercive effect, removing the artificial distinction between "predictions" and "threats." Where it finds violations, the board should apply strong, swift remedies like additional union access to the workplace or bargaining orders where employers' conduct makes fair elections impossible.

Faster Elections; Bargaining Units Shaped by Workers' Needs

The NLRB should conduct an election as quickly as possible after the filing of a petition. The election should take place among workers in bargaining units they seek to form based on their evaluation of the "community of interest" (the legal standard for an appropriate bargaining unit) most responsive to their needs.

Legal Responsibility of the Dominant Economic Force

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Labor law must change to encompass the rights and interests of contingent workers, contract workers, and others involved in new occupations and industries. Congress should enact legislation cutting through the fiction of subcontracted employment relationships that are structured to avoid responsibility for recognizing workers' rights. Fixing responsibility should be based on a test of effective economic power to set workers' terms and conditions of employment, not on the formality of an employment relationship. The dominant economic entity in the employment relationship holding real power over workers' terms and conditions of employment should have legal responsibility to bargain with workers when a majority choose representation.

Expanded Use of Voluntary Card-Check Agreements

Human Rights Watch believes that secret-ballot elections should remain a standard method of determining workers' choice whether to bargain collectively with their employer. At the same time, experience demonstrates that where workers and employers can agree to use card checks - neutral verification that workers freely signed cards authorizing representation and collective bargaining - they can combine the benefits of freedom of choice and a mutually respectful relationship that carries over into collective bargaining. Public policy should encourage the use of voluntary card-check agreements as an alternative means of establishing workers' majority sentiment and collective bargaining rights.

Stronger Remedies for Surface Bargaining

Stronger remedies should be fashioned for willful refusal to bargain in good faith. For example, where workers have formed and joined a new union in a previously unorganized workplace and the employer is found to bargain in bad faith, workers should have recourse to first-contract arbitration as a remedy, where an independent arbitrator sets contract terms.

Average contract settlements in comparable industries or facilities can be used as guideposts for an arbitrator applying the first-contract arbitration remedy. Arbitration for a first contract gives workers an opportunity to establish a bargaining relationship that would most likely have taken shape had the employer bargained in good faith. It also provides a chance to demonstrate to the employer that both parties can act responsibly under a collective agreement, making good-faith negotiations more probable in subsequent bargaining.

Eliminate Statutory Exclusions; Protect All Workers' Organizing Rights

Congress should bring agricultural workers and domestic workers under NLRA coverage with the same rights and protections as all other covered workers. Legal reform should also subject employers' claims of workers' "independent contractor" status to strict scrutiny under standards that make the workers' real-life dependence on employers -- not how employers classify them -- the test for NLRA coverage.

In general, workers who *want* to organize and bargain collectively should have the *right* to organize and bargain collectively, except where there are manifestly no employers to bargain with or where the essence of such workers' jobs is so truly managerial or supervisory that they effectively would be bargaining with themselves.

Reverse the Permanent-Replacement Doctrine

Congress should enact legislation prohibiting the permanent replacement of workers who exercise the right to strike. The balance should be restored to a genuine equilibrium in which temporary replacements give way to employee strikers when the strike ends. In effect, prohibiting permanent striker replacements effectuates a "balance of pain" in a strike that promotes more rapid resolution of a dispute while respecting both workers' right to strike and management's continued operations.

More Protection for Immigrant Workers; Stronger Remedies

Congress should establish a new visa category for undocumented workers who suffer violations of their right to organize and bargain collectively, and the INS should exercise discretionary authority to allow them to remain in the United States. Workers who obtain a reinstatement order because their right to freedom of association was violated should be immediately reinstated and granted a work authorization card for sufficient time to allow them to seek renewed, extended, or permanent authorization under discretionary authority in such cases.

Mobility and Organizing Rights for H-2A Workers

The H-2A program should allow workers to seek work with a different employer if their employer violates their rights. Where workers are dismissed or discriminated against for exercising rights of association, a strengthened regime is needed to ensure swift reinstatement or placement with another employer who will respect their rights.

Labor department regulations governing the H-2A program should halt H-2A recruiters' characterizations of unions and legal services as "enemies" of H-2A workers. The H-2A program should instead require that workers be fully informed of their rights to organize and bargain collectively and have access to legal services and to the justice system, as they desire.

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A culture of near-impunity has taken shape in much of U.S. labor law and practice. All that awaits an employer determined to get rid of a worker who tries to form a union is a years-later reinstatement order the worker is likely to decline and a modest back-pay award. For many employers, it is a small price to pay to destroy a workers' organizing effort by firing its leaders.

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Photograph and background Image: Activists rally in May of 1999 at Asheville, N.C. to support freedom of association. ©1999 Keith Ernst, *Southern Exposure Magazine*.

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Introduction

Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

-International Covenant on Civil and Political Rights
(ratified by the United States in 1992)

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other mutual aid or protection.

-National Labor Relations Act (passed by Congress in 1935)

I know the law gives us rights on paper, but where's the reality?

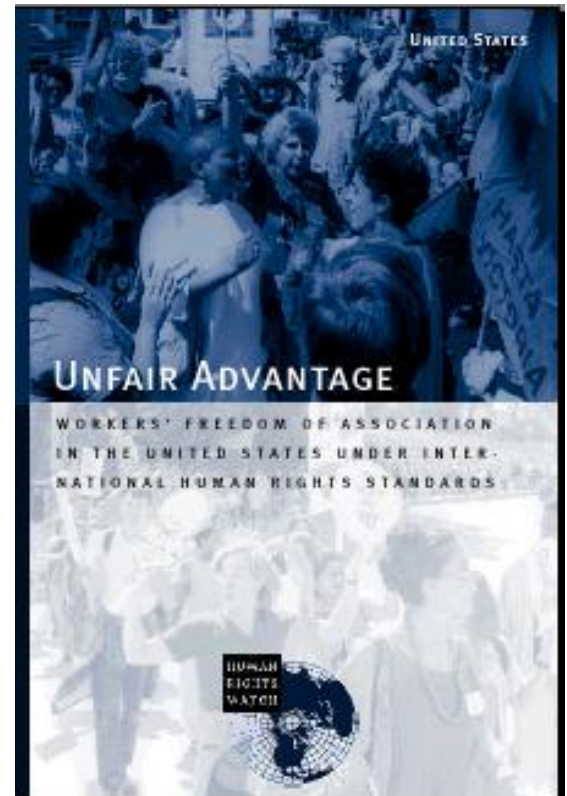
-Ernest Duval, a worker fired in 1994 for forming and joining a union (still fired and speaking in 1999)

Every day about 135 million people in the United States get up and go to their jobs in service, industry, agriculture, non-profit, government and other sectors of the enormous and complex American economy. Most of them are not business owners, top managers, or highly-paid professionals. Most workers depend on their wages and salaries and on employer-sponsored health insurance, pensions and other benefits for themselves and their families.

Under a wide-angle lens the American economy appears strong. In focus, though, there are alarming signals for Americans concerned about social justice and human rights. A two-tier economy and society are taking shape. Income inequality is at historically high proportions.¹ Worker self-organization and collective bargaining, engines of middle-class growth and social solidarity in the century just ended, have reached historically low proportions. Although trade unions halted a declining membership trend in 1999, slightly increasing the absolute number of workers who bargain collectively, the percentage of the workforce represented by unions did not increase.²

Workers' freedom of association is at risk in the United States, with yet untold consequences for societal fairness. This report discusses the unfair advantage in U.S. labor law and practice ceded to employers who

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violate workers' exercise of the right to freedom of association, and how this imbalance results in the failure of the United States to meet international human rights standards on workers' freedom of association.

International Labor Rights

A widely accepted body of international norms has defined standards for workers' freedom of association. They can be found in the Universal Declaration of Human Rights and other United Nations instruments, in conventions 87 and 98 of the International Labor Organization (ILO), in workers' rights clauses in regional trade agreements like the North American Agreement on Labor Cooperation (NAALC), and in other international compacts. All set forth freedom of association and the right to form and join trade unions as fundamental human rights.

The International Covenant on Civil and Political Rights declares: "[E]veryone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests."³ The United States ratified the International Covenant on Civil and Political Rights in 1992. The ICCPR requires ratifying states "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant" and "to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant." The ICCPR also constrains ratifying states "to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy."⁴

In 1998, the United States supported adoption of a landmark ILO Declaration on Fundamental Principles and Rights at Work stating that:

all Members, even if they have not ratified the Conventions in question, have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution [of the ILO], the principles concerning the fundamental rights which are the subject of those Conventions, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; . . .⁵

U.S. Labor Law . . .

American workers secured the right to organize, to bargain collectively, and to strike with passage of the National Labor Relations Act of 1935 (NLRA). The NLRA declares a national policy of "full freedom of association" and protects workers' "right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . ."⁶

The NLRA makes it unlawful for employers to "interfere with, restrain, or coerce" workers in the exercise of these rights. It creates the National Labor Relations Board (NLRB) to enforce the law by investigating and remedying violations. All these measures comport with international human rights norms regarding workers' freedom of association.

However, some provisions of U.S. law openly conflict with international standards on freedom of association. Millions of workers, including farm workers, household domestic workers, and low-level supervisors are expressly barred from the law's protection of the right to organize. U.S. law allows employers to permanently replace workers who exercise the right to strike, effectively nullifying the right. New forms of employment relationships have created millions of part-time, temporary, subcontracted, and otherwise "atypical" or

"contingent" workers whose freedom of association is frustrated by the law's failure to adapt to changes in the economy.

... and Practice

Even for workers covered by the NLRA, the reality of U.S. labor law enforcement falls far short of its goals. Many workers who try to form trade unions are spied on, harassed, pressured, threatened, suspended, fired, deported or otherwise victimized in reprisal for their exercise of the right to freedom of association.

A culture of near-impunity has taken shape in much of U.S. labor law and practice. Any employer intent on resisting workers' self-organization can drag out legal proceedings for years, fearing little more than an order to post a written notice in the workplace promising not to repeat unlawful conduct. Many employers have come to view remedies like back pay for workers fired because of union activity as a routine cost of doing business, well worth it to get rid of organizing leaders and derail workers' organizing efforts.

Private employers are the main agents of abuse. But international human rights law makes governments responsible for protecting vulnerable persons and groups from patterns of abuse by private actors. The United States is failing to meet this responsibility. As noted above, many groups of workers are unprotected by the law. And even when the law is applied for workers who come under its coverage, enervating delays and weak remedies invite continued violations.

1 See Center on Budget and Policy Priorities; Economic Policy Institute, "Pulling Apart: A State-by-State Analysis of Income Trends" (January 2000), showing that the average income of families in the top 20 percent of the income distribution was \$137,500, or more than ten times as large as the poorest 20 percent of families, which had an average income of \$13,000, and that throughout the 1990s the average real income of high-income families grew by 15 percent, while average income remained the same for the lowest-income families and grew by less than two percent for middle-income families - not enough to make up for the decline in income in the 1980s. See also Richard W. Stevenson, "In a Time of Plenty, The Poor Are Still Poor," *New York Times*, January 23, 2000, Week in Review, p.3; James Lardner, "The Rich Get Richer" What happens to American society when the gap in wealth and income grows larger?", *U.S. News & World Report*, February 21, 2000, p.38. 2 In 1999 more than sixteen million workers in the United States belonged to trade unions. For the workforce as a whole, 13.9 percent of all workers and 9.4 percent of private sector workers were union members. While more workers gained union representation by forming new unions than lost it through workplace layoffs and closures in 1999 for the first time in many years, the proportion of the total workforce represented by unions remained unchanged because of employment growth in firms and sectors with less union presence. In the 1950s such union "density" reached more than 30 percent of the total workforce and nearly 40 percent in the private sector. See Frank Swoboda, "Labor Unions See Membership Gains," *Washington Post*, January 20, 2000, p.E2.

3 International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 (art.22).

4 International Covenant on Civil and Political Rights, Article 2.

5 See ILO *Declaration on Fundamental Principles and Rights at Work and Its Follow-Up*, adopted by the International Labour Conference at its Eighty-sixth Session, Geneva, 18 June 1998, p. 7. The United States has not ratified ILO conventions 87 and 98, but has accepted international obligations under those instruments.

6 29 U.S.C. §§ 151-169, Section 7.

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Conclusion

Both historical experience and a review of current conditions around the world indicate that strong, independent, democratic trade unions are vital for societies where human rights are respected. Human rights cannot flourish where workers' rights are not enforced. This is as true for the United States as for any other country.

Labor rights violations in the United States are especially troubling when the U.S. administration is pressing other countries to ensure respect for internationally recognized workers' rights as part of the global trade and investment system - at the World Trade Organization, for example, or in the new Free Trade Agreement of the Americas. U.S. insistence on a rights-based linkage to trade is undercut when core labor rights are systematically violated in the United States.

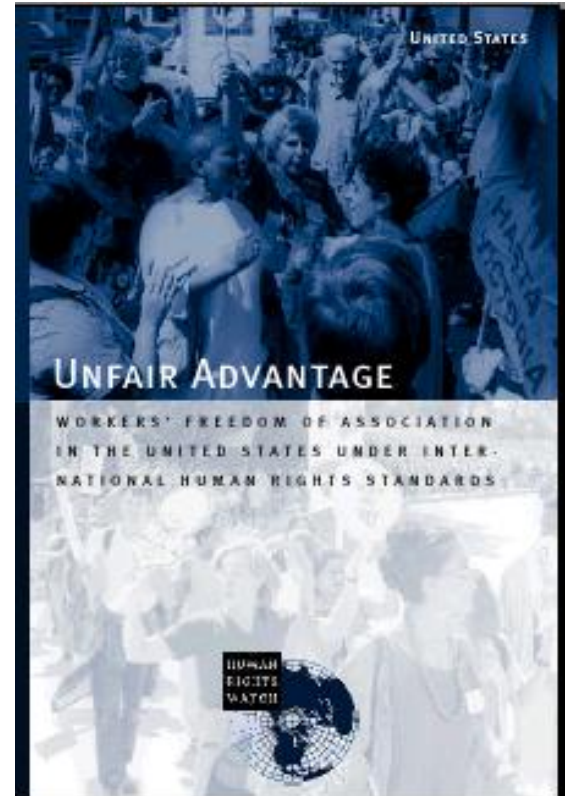
Without diminishing the seriousness of workers' rights violations in the United States, a balanced perspective must be maintained. U.S. workers generally do not confront gross human rights violations where death squads assassinate trade union organizers or collective bargaining and strikes are outlawed. But the absence of systematic government repression does not mean that workers in the United States have effective exercise of the right to freedom of association.

On the contrary, workers' freedom of association is under sustained attack in the United States, and the government is failing its responsibility under international human rights standards to deter such attacks and protect workers' rights.

So long as worker organizing, collective bargaining, and the right to strike are seen only as economic disputes involving the exercise of power in pursuit of higher wages for employees or higher profits for employers, change in U.S. labor law and practice is unlikely. Reformulating these activities as human rights that must be respected under international law can begin a process of change.

What is most needed is a new spirit of commitment by the labor law community and the government to give effect to both international human rights norms and the still-vital affirmation in the United States' own basic labor law of full freedom of association for workers. A way to begin fostering such a change of spirit is for the United States to ratify ILO Conventions 87 and 98. This will send a strong signal to workers, employers, labor law authorities, and to the international community that the United States is serious about holding itself to

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international human rights and labor rights standards as it presses for the inclusion of such standards in new global and regional trade arrangements.

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Findings and Case Studies

The following are Human Rights Watch's principal findings based on research into a variety of economic sectors in different regions of the United States. A representative case study - one of many contained in the full report - is cited to back up each finding.

Researching and writing a report like this is different from other international human rights investigations and reports carried out in zones of armed conflict, in refugee camps, or in countries without functioning legal systems. The United States has an elaborate system of constitutional, statutory and administrative labor law. In many of the cases studied here there are legal records and decisions by neutral adjudicators that produce an often extensive written record. Where such a record is available, Human Rights Watch relies on it to shed light on the nature and extent of workers' rights violations.

No Human Rights Watch assertion in this report is based on unfair labor practice *charges* against employers. Human Rights Watch begins relying on NLRB records with the issuance of *complaints* by the general counsel of the agency. Complaints are issued when an investigation finds merit in the charge based on detailed investigations.

The NLRB general counsel's method of interviewing witnesses, obtaining corroborating evidence, and giving employers an opportunity to respond before issuing a complaint is analogous to the standard research methods of Human Rights Watch and other organizations that seek to document human rights abuses. Human Rights Watch often carries out such research in areas of conflict where a legal system is inoperative, if it even exists. In the United States, however, succeeding stages of NLRB and federal court proceedings provide further foundation for Human Rights Watch's analyses in this report.

After the NLRB issues a complaint, a hearing is held before an administrative law judge with testimony and documents subject to the rules of evidence and related examination and cross-examination of witnesses.

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Factual disputes are usually hotly contested, and often are resolved by the administrative law judge's credibility findings. Administrative law judges' decisions are appealable to the NLRB's five-member board in Washington. Board rulings are then subject to appeals to a federal circuit court.

Where using administrative law judges' decisions and NLRB and federal court records as the basis for analyzing cases in terms of workers' freedom of association under international human rights standards, Human Rights Watch uses the "last best" documented evidence and factual determinations. However, some determinations were still pending on appeal as this report goes to press and could be reversed. Human Rights Watch uses information from documented legal proceedings to inform the analysis of workers' rights under international standards, not to assert conclusively that U.S. law was violated except where, in fact, there has been a final, conclusive determination to that effect under U.S. law.

The cases and the findings here are not exceptional and the accelerating pace of violations is not a new phenomenon. Congressional hearings in the 1970s and 1980s revealed extensive employer violations and ineffective enforcement of laws supposed to protect workers' rights. Other government studies and reports from independent commissions in the 1980s and 1990s reached similar conclusions.⁷ But those research efforts did not analyze violations in light of international human rights standards.

Finding: Discrimination Against Union Supporters

Firing or otherwise discriminating against a worker for trying to form a union is illegal but commonplace in the United States. In the 1950s, workers who suffered reprisals for exercising the right to freedom of association numbered in the hundreds each year. In the 1960s, the number climbed into the thousands, reaching slightly over 6,000 in 1969. By the 1990s more than 20,000 workers each year were victims of discrimination for union activity - 23,580 in 1998, the most recent year for which figures are available.⁸

An employer determined to get rid of a union activist knows that all that awaits, after years of litigation if the employer persists in appeals, is a reinstatement order the worker is likely to decline and a modest back-pay award. For many employers, it is a small price to pay to destroy a workers' organizing effort by firing its leaders.

Case Study: Nursing Homes in Southern Florida

At the Palm Garden nursing home in North Miami, managers forged signatures on warning notices against Leonard Williams, a key union activist. They backdated the notices, then fired Williams shortly before a union election in April 1996.⁹ The union lost the election 35-32. Soon afterward, the company fired Marie Sylvain, another organizing leader.

In January 1998, an administrative law judge ordered Palm Garden to offer Williams and Sylvain reinstatement to their jobs, with back pay from the date of their unlawful dismissal.¹⁰ The company refused to accept the ruling and appealed to the National Labor Relations Board in Washington, D.C. In March 1999, the NLRB upheld the judge's order. Palm Garden appealed to the federal court, where the case is still pending with years more of delays likely before any remedy takes hold. The judge also ordered a new election because of management's unlawful conduct. The company has appealed that ruling, and the election case is also tied up in courts for years to come.

"Why does it take so long?" asked Marie Sylvain. "I've been fired for more than three years" (now more than four years). "Everything takes too long. Where is the justice? Everything is at the boss's advantage with all these delays. The law gives you something with one hand then takes it away with the other hand." Asked if she

would accept reinstatement, Sylvain said, "I would like to come back for one week just to show them the union can win."[11](#)

Workers at the King David Center in West Palm Beach voted 48-29 in favor of union representation in an NLRB election in August 1994. "I had a determination to get respect," said Jean Aliza, the first of several workers fired for organizing activity at King David. "I am a citizen, and I deserve respect."[12](#)

According to the administrative law judge's decision in the case, King David management proceeded systematically to fire the most active union supporters.[13](#) Jean Aliza, Lude Duval, Marie Larose, Marie Pierre Louis, Michelle Williams, Carline Dorisca, and Ernest Duval were all fired on fabricated charges. They were ordered reinstated by the administrative law judge who heard testimony and reviewed documents, and the NLRB upheld the judge's order. In 1999 the workers were still not reinstated because of appeals to the courts.

Jean Aliza was "set up" by managers and fired early in the organizing effort, after a year-long "satisfactory" record suddenly became "unsatisfactory" based on warning notices he never saw.[14](#)

King David "was determined to rid itself of the most vocal union supporter from the beginning," said the administrative law judge's ruling, referring to Ernest Duval.[15](#)

Ernest Duval was still vocal about his union support when he spoke to Human Rights Watch in July 1999, but he was also frustrated. "I see the government protecting management," he said. "It's been four or five years now, and I've got bills to pay. Management has the time to do whatever they want."[16](#)

Finding: Forced Attendance at Captive-Audience Meetings

Almost without limits, employers can force workers to attend captive-audience meetings on work time. Most often, these meetings include exhortations by top managers that are carefully scripted to fall within the wide latitude afforded employers under U.S. law - allowing "predictions" but not "threats" of workplace closings, for example -to deter workers from choosing union representation. Employers can fire workers for not attending the meetings. They can impose a "no questions or comments" rule at a captive-audience meeting, and discipline any worker who speaks up.

Case Study: Food Processing Workers in Wilson, North Carolina

Smithfield Foods is the world's largest hog processing company. A Smithfield Foods plant in Wilson, North Carolina, employs some 300 workers who produce bacon, sausages, hot dogs and other retail pork items. Workers here tried to form a union in early and mid-1999, but they lost an NLRB election. Human Rights Watch interviewed workers who detailed threats by Smithfield managers in captive-audience meetings to close the plant if workers voted in favor of collective bargaining.[17](#)

Recounting management's captive-audience meetings with workers, shipping department employee Robert Atkinson said, "I saw about seven different videos on how the union just takes your dues, goes on strike, gets into fights and stuff. It really hurt us that the people only heard one side. It would be a lot fairer if the union could come in and talk to us. The company has a big advantage, making people come to meetings and showing videos. A lot of people don't come to union meetings. They're scared the company will know."[18](#)

Finding: "Predicting" Reprisals

Under U.S. law, employers and anti-union consultants they routinely hire to oppose workers' organizing have

refined methods of legally "predicting" - as distinct from unlawfully threatening - workplace closures, firings, wage and benefit cuts, and other dire consequences if workers form and join a trade union. A "prediction" that the workplace will be closed if employees vote for union representation is legal if the prediction is carefully phrased and based on objective facts rather than on the employer's subjective bias.

This fine distinction in the law is not always apparent to workers or, indeed, to anyone seeking common-sense guidance on what is allowed or prohibited. Unfortunately for workers' rights, federal courts have tended to give wide leeway to employers to "predict" awful things if workers vote for a union.

One prediction a court found to be "carefully phrased" was made by the owner of an Illinois restaurant where workers sought to form a union and bargain collectively. In a tape-recorded speech in a captive-audience meeting the owner stated, "If the union exists at [the company], [the company] will fail. The cancer will eat us up and we will fall by the wayside . . . I am not making a threat. I am stating a fact. . . . I only know from my mind, from my pocketbook, how I stand on this." The NLRB found this statement unlawful. A federal appeals court reversed the board, finding the employer's statement a lawful prediction that did not interfere with, restrain, or coerce employees in the exercise of the right to freedom of association.[19](#)

At an Illinois auto parts plant where workers began organizing, a supervisor told workers, "I hope you guys are ready to pack up and move to Mexico." Again, the NLRB found that the statement was a plant closing threat. And again, the appeals court overturned the finding by the NLRB . The court said the statement was "a joke, not a threat,"[20](#)

Case Study: Manufacturing Plant in Maryland

In the mid-1990s, a new company called Precision Thermoforming and Packaging, Inc. (PTP) employed more than 500 workers in a Baltimore, Maryland factory. The workers packaged and shipped flashlights, batteries, and computer diskettes. PTP's wages were \$5 - \$7 per hour. Health insurance cost employees \$36 per week from their paychecks - a benefit most of them declined, since they made only \$200-\$280 per week. There was no pension plan.

In mid-1995, a group of PTP workers began an effort to form and join a union. PTP management fired eight workers active in the union organizing effort. In addition to the firings, PTP managers and supervisors:

- C threatened to close the plant if a majority of workers voted in favor of the union;
- C threatened to move work to Mexico;
- C threatened to fire workers who attended union meetings;
- C threatened to fire anyone who joined the union;
- C threatened to transfer workers to dirtier, lower-paying jobs if they supported the union;
- C told workers to report to management on the activities of union supporters;
- C stationed managers and security guards with walkie-talkies to spy on union handbilling and report on

workers who accepted flyers;

C denied wage increases and promotions to workers who supported the union.

"I'd say I was the one who got the union going," said Gilbert Gardner, who began working at PTP in April 1993. "Then they fired me the day after I went to a hearing at the NLRB to set up the election," he told Human RightsWatch interviewers. Union supporters lost the NLRB election by a vote of 226-168. Before the vote, 60 percent of the workers signed cards authorizing the union to represent them in collective bargaining.

Finding: Delays in NLRB and Court Procedures

Delays in the U.S. labor law system arise first in the election procedure. NLRB elections take place at least several weeks after workers file a petition seeking an election. In many cases, the election can be held up for months by employers who challenge the composition of the "appropriate bargaining unit."

An employer can also file objections to an election after it takes place, arguing that the union used unfair tactics. It takes several months to resolve these objections. But even when the NLRB rules in workers' favor and orders the company to bargain with the union, the employer can ignore the board's order. This forces workers and the NLRB to launch a new case on the refusal to bargain, often requiring years more to resolve in the courts. In many of the cases studied for this report, workers voted in favor of union representation years ago, but they are still waiting for bargaining to begin while employees' appeals are tied up in court.

Long delays also occur in unfair labor practice cases. Most cases involve alleged discrimination against union supporters or refusals to bargain in good faith. Several months pass before the cases are heard by an administrative law judge. Then several more months go by while the judge ponders a decision. The judge's decision can then be appealed to the NLRB, where often two or three years go by before a decision is issued. The NLRB's decision can then be appealed to the federal courts, where again up to three years pass before a final decision is rendered. Many of the workers in cases studied here were fired many years earlier and have won reinstatement orders from administrative judges and the NLRB, but they still wait for clogged courts to rule on employers' appeals.

Case study: Shipyard in New Orleans, Louisiana

With more than 6,000 workers, Avondale Industries is Louisiana's largest private sector employer. The U.S. Navy is Avondale's biggest single customer, accounting for more than three-quarters of its business - \$3 billion in Navy contract awards in the past decade.

In 1993 Avondale workers launched an effort to form a union. Avondale management unleashed a massive campaign against the workers' organizing effort. "They told us they'd shut the door if the union came in, that we'd lose Navy contracts," said sheet metal worker Bruce Lightall, who has worked at the plant since 1979.[21](#) The company also fired twenty-eight union activists.

In a speech to assembled Avondale workers at a captive-audience meeting before the 1993 election, company president Albert L. Bossier, Jr. said, "If you really want to destroy Avondale, vote for the damn union. Those of you who don't want to destroy Avondale, you better make sure these whiners, malcontents and slackers don't even come close to winning this election . . . Secure your future by rejecting this union and its bosses."[22](#)

Despite management's threats and firings, the union won the election by a vote of 1,950-1,632. Avondale

management refused to accept the results and began a series of appeals to the NLRB. In April 1997 - nearly four years after the election - the NLRB certified the results and ordered Avondale to bargain with the union. The company still refused, appealing the board's order to the federal courts. In 1999 a federal appeals court overturned the election results because voter lists contained workers' first initials rather than their first names. No NLRB election had ever been overturned on such grounds before.[23](#)

In a 1998 decision, a judge characterized Avondale's behavior as "egregious misconduct, demonstrating a general disregard for employees' fundamental rights." The judge ordered Avondale to reinstate fired workers and to pledge not to repeat the unlawful conduct.[24](#) Avondale did not comply with this order, and the cases remained on appeal.

One fired worker, Donald Varnado, said he had no health insurance during most of his years away from Avondale. "I had Avondale's family medical insurance for \$25 a week out of my pay, but I lost that coverage when they fired me," he explained. "Since then, I had a lot of medical expenses that I had to pay out of my own pocket for me and my family."[25](#)

Frank Johnson, an Avondale machinist with twenty-five years in the yard, said in 1999, "After the election I thought we'd sit down after a week or so and start bargaining. Now it's six years later, and we're still waiting."[26](#) Echoing Johnson, Bruce Lightall said, "I thought we'd sit down after the election and negotiate a contract like reasonable people, to get some justice, respect, dignity. In time I found out how the law doesn't work for workers. It just helps the companies. They can appeal forever."[27](#)

Finding: Surface Bargaining, Weak Remedies

Even after workers form a union and bargaining begins, employers can continue to thwart workers' choice by bargaining in bad faith - going through the motions of meeting with the workers and making proposals and counterproposals without any intention of reaching an agreement. This tactic is called "surface bargaining." The problem is especially acute in newly organized workplaces where the employer has fiercely resisted workers' self-organization and resents their success.

Case Study: Telecommunications Castings in Northbrook, Illinois

Acme Die Casting, a division of Lovejoy Industries, makes a variety of small aluminum and zinc castings, mainly for the telecommunications industry. In October 1987, Acme employees voted 69-39 in favor of union representation. Jorge "Nico" Valenzuela became the head of the organizing committee and then the president of the shop union in 1987. "When we won the election we thought, 'Finally we can start making things better.' We elected a negotiating committee and asked management to start bargaining," Valenzuela said.[28](#) He and the other Acme workers did not know that years would go by before any bargaining would begin and that, when it did, bargaining would be futile.

After the election, the company filed objections to the election so unfounded that the NLRB dismissed them without a hearing. But Acme refused to accept the decision, forcing the union to file refusal-to-bargain charges and a new round of labor board and court proceedings.

Bargaining finally began in 1990, three years after the election. But management still failed to bargain in good faith with a sincere intention of reaching an agreement. In an April 1993 decision, a judge ordered Acme to "cease and desist" from refusing to bargain and to return to the table and bargain in good faith. The judge ruled that the company's violations "are repeated and pervasive and evidence on its part an attitude of total disregard

for its statutory obligations."²⁹

Acme management shifted to a strategy of appearing to bargain by making proposals and counterproposals to the workers on minor subjects. However, the company "made demands they knew would be suicidal for the union" in other areas, said union representative Terry Davis. The company proposed tiny wage increases and demanded enormous hikes in employee payments for health insurance that would far exceed any pay increase.³⁰ A carefully coached employer can nearly always frame such demands as "hard bargaining," which is legal, as long as it makes proposals and counterproposals in other areas.

Bargaining went nowhere for six years. In March 1999, the union sent a letter to Acme and to the NLRB disclaiming representation rights. "At this rate," said union negotiator Davis, "the company would still have deal-killers on the table twenty-five years from now."³¹

A top Acme official told Human Rights Watch, "[W]e worked long and hard for years to convince our employees that they're better off with us than with a union. The union did nothing but lie about us. People now believe they're better off with us than with a union."³²

These were years when, under the law, the company was supposed to be bargaining in good faith with the workers with a sincere desire to reach an agreement. The manager's statement shows how far from sincere the company's bargaining was. Yet in the end, its methods prevailed against workers' right to bargain collectively, and the legal structure supposed to protect workers' rights proved no impediment to these tactics.

Finding: Exclusion of Millions of Workers from Protection of Organizing and Bargaining Rights

International norms refer to the right of "every person" to form and join trade unions and to bargain collectively. Several of the cases examined for this report involved workers excluded from coverage by the NLRA, such as agricultural workers, domestic employees, and "independent" contractors who actually work in a dependent relationship with a single employer for years. Low-level supervisors and managers are also excluded from legal protection.

In all, millions of workers in the United States are excluded from coverage of laws that are supposed to protect the right to organize and bargain collectively. Workers who fall under these exclusions can be summarily fired with impunity for seeking to form and join a union. Even where the employer does not fire them, workers' requests to bargain collectively can be ignored.

Case Study: Household Domestic Workers

More than 800,000 officially reported "private household workers" held jobs as domestic employees in 1998. Nearly 30 percent were foreign migrant workers, and the vast majority were women.³³ Thousands of domestic workers have been brought into the United States by officials of multinational corporations, international organizations, and other elites residing in the United States.

Hilda Dos Santos was held as a "live-in slave" for nearly twenty years in a suburb of Washington, D.C. by an employer from her native Brazil. She was never paid a salary, was physically assaulted, and was denied medical care for a stomach tumor the size of a soccer ball. Her plight only came to light when neighbors acted at the sight of her tumor, and resulting publicity led to a successful prosecution.³⁴ Dos Santos's case illustrates the difficulty of uncovering such abuses. After twenty years of servitude, she was granted temporary legal status

to testify against her employer but was then subject to deportation. An unknown number of similar victims remain silent because exposure would mean deportation for them, too.³⁵

Whether or not they are enforced, minimum wage laws, overtime laws, and child labor laws apply to most domestic workers in the United States. But if they attempt to form and join a union, or exercise any freedom of association even without the intent of forming a union, they can be threatened, intimidated, or fired by their employer because of their exclusion from coverage by the NLRA. In contrast, unions of domestic workers have formed in a number of European Union (EU) countries, including France, the United Kingdom, Italy, Spain, and Greece.

Finding: Subcontracted and Temporary Workers are Denied Freedom of Association and Effective Remedies

Many employers can use subcontracting arrangements and temporary employment agencies to avoid any obligation to recognize workers' rights of organization and collective bargaining. This problem afflicts workers in the apparel manufacturing industry, in janitorial services, in high-technology computer services, and other sectors characterized by layers of subcontracting arrangements. Prime contractors often simply cancel the contracts of subcontractors whose employees form and join unions. The result is widespread denial of workers' freedom of association.

Case Study: High-Tech Computer Programmers in Seattle, Washington

The dilemma regarding freedom of association is stark for workers at temporary employment agencies, even at the high end of the economic ladder. Many temporary agency employees work for long periods at one place with none of the rights, benefits or protections afforded to regular employees, including the right to form and join a union to deal with the employer.

A recent example of temporary agency workers' dilemma is found at the cutting edge of the new economy. More than 20,000 workers are employed at Microsoft's Redmond, Washington campus and other facilities in the Seattle area. But 6,000 of them are not employed by Microsoft. Instead, they are employed by many temporary agencies supplying high-tech workers to Microsoft and other area companies. Many have worked for several years at Microsoft. They have come to be known as "perma-temps." Often they work side-by-side in teams with regular, full-time employees.

Some Microsoft perma-temps formed the Washington Alliance of Technology Workers (WashTech) in early 1998. But WashTech has a "Catch-22"-type problem. By defining perma-temps as contractors employed by various temporary agencies, Microsoft avoids being their employer for purposes of the NLRA's protection of the right to organize. Meanwhile, the agencies tell temps that in order to form a union that agency management will deal with, they have to organize other employees of the agency, not just those working at Microsoft.

"First we asked our Microsoft managers to bargain with us," said perma-temp Barbara Judd, describing an effort by her and a group of coworkers to be recognized by Microsoft.³⁶ Management refused. Responding to press inquiries, a spokesman for Microsoft said, "bargaining units are a matter between employers and employees and Microsoft is not the employer of the workers."³⁷

Attempts to be recognized by the temp agencies were equally unavailing. "We don't have to talk to you, and we won't" is what they told us," said Judd. "They told us we had to get all the temps that worked at other companies besides Microsoft. We had no way to know who they were or how to reach them. Besides, they had

nothing to do with our problems at Microsoft."[38](#)

In February 2000, Microsoft announced a new policy effective July 1, 2000 limiting temporary workers to one year's employment at a time and requiring a one-hundred-day break between each individual's assignment at the company. Under this policy, perma-temps would have to take one hundred days off beginning July 1, 2000. After one hundred days off, said a Microsoft manager, they would have to reapply for temporary work or request new jobs at a different company through their temporary employment agencies.[39](#)

Barbara Judd's permatemp post at Microsoft ended in March 2000 when the company announced it was abandoning the tax preparation software project that she and her coworkers developed.[40](#)

"We received two days notice" of being laid off, Judd told Human Rights Watch. Some workers moved to another tax preparation software company, but Judd decided to look for full-time employment. "I don't want to be a part of that system," she said. "Workers who take temp jobs do not realize there is a larger impact than just the absence of benefits. You essentially lose the ability to organize . . . [T]he legal system is just not set up to deal with these long-term temp issues."[41](#)

Case Study: Sweatshop in New York City

Under current U.S. labor law, retailers and manufacturers who profit from sweatshops' race to the bottom on labor standards are not held responsible for labor law violations committed by contractors or subcontractors, including violations of workers' organizing rights. U.S. Labor Department studies in 1997 and 1998 indicated that nearly two-thirds of garment industry shops in New York violated minimum wage and overtime laws.[42](#) A comprehensive study of the Los Angeles garment industry concluded in 1999 that "this important industry is plagued by substandard working conditions . . . There is widespread non-compliance with labor, health, and safety laws."[43](#)

In 1997 a group of workers at a mid-town Manhattan sewing shop called MK Collections formed a union. Mario Ramírez said that workers took action because they had not been paid for two months and "because the owners screamed at people."[44](#) Eduardo Rodríguez, who like Ramírez came to New York from Puebla, Mexico, was another union adherent. "We would talk outside before work and at lunchtime, but never in big groups," he explained.[45](#) Rodríguez estimated . . . union support at about forty workers, a majority of the sixty-five to seventy people working at MK Collections.

In January 1997, MK workers brought their organizing effort to a head with a work stoppage demanding back pay for work performed. At first, their movement bore fruit. Seven members of the organizing group signed a handwritten agreement with the owner recognizing the workers' union, setting a just cause standard for disciplinary action, promising to maintain clean bathrooms, and - besides paying wages on time - to pay an additional \$50 per week until full back pay was reached for each worker.

The agreement held up for only four months. The employer fired two committee members, who did not want to protest because of immigration fears. In early May 1997, the company closed, claiming that a manufacturer had canceled a production contract. According to Ramírez and Rodríguez, the owner reopened at a new location and hired a new workforce just a few days later.[46](#)

Their experience left a mark on Ramírez and Rodríguez. "I've thought about organizing in my new job," said

Ramírez, who found other work in the garment industry. "But I need to be guaranteed that I won't be fired."[47](#)
Rodríguez, who took a new job in a restaurant, said, "As long as there is no law to protect us better, I don't think it is likely that I will organize again."[48](#)

Finding: Nullification of the Right to Strike by the Permanent-Replacement Doctrine

Under U.S. labor law, employers can hire new employees to permanently replace workers who exercise the right to strike. This doctrine runs counter to international standards recognizing the right to strike as an essential element of freedom of association. Considering the U.S. striker replacement rule, the ILO's Committee on Freedom of Association determined that the right to strike "is not really guaranteed when a worker who exercises it legally runs the risk of seeing his or her job taken up permanently by another worker, just as legally" and that permanent replacement "entails a risk of derogation from the right to strike which may affect the free exercise of trade union rights."[49](#)

Case Study: Steelworkers in Pueblo, Colorado

Oregon Steel Co. permanently replaced more than 1,000 workers who exercised the right to strike at its Pueblo, Colorado steel mill in October 1997. Many of the replacements came from outside the Pueblo area, drawn by the company's newspaper advertisements throughout Colorado and neighboring states offering wages of \$13-\$19 per hour for permanent replacements. A company notice declared, "It is the intent of the Company for every replacement worker hired to mean one less job for the strikers at the conclusion of the strike."[50](#)

On December 30, 1997, three months after it began, Oregon Steel workers ended their strike and offered unconditionally to return to work. The company refused to take them back except when vacancies occur after a replacement worker leaves. Some workers returned under this legal requirement, but most of the Oregon Steel workers were still out of work in 2000 because the company permanently replaced them with new hires.

According to a judge who held an eight-month-long hearing on the case, the company was guilty of interference, coercion, discrimination and bad-faith bargaining.[51](#) Oregon Steel management's unfair labor practices before the strike began included:

- spying on a union meeting where bargaining strategies were discussed;
- threatening to close the plant and "reopen non-union in thirty days " if workers struck;
- assigning undesirable, dirty jobs cleaning arc furnaces and cooling towers to union supporters because of their support for the union;
- threatening to "bust" the union if workers struck (as one witness testified, a supervisor said, "within 15 minutes they would have two bus loads of people in the mill to do our jobs and the union would no longer exist");
- promising promotions to workers if they would cross the picket lines and return to work during a strike.

In all, said the judge, Oregon Steel's unfair labor practices "were substantial and antithetical to good faith bargaining."[52](#) Under this ruling workers are entitled to reinstatement, because a company that violates the law

loses the right to permanently replace strikers. However, the company has appealed the decision and has vowed to keep appealing for years before a final decision is obtained in the case. In the meantime, the workers remain replaced and without their means of livelihood for themselves and their families.

Joel Buchanan, a worker with twenty-nine years in the Oregon Steel plant, told Human Rights Watch, "Before the strike the company was pushing us for forced overtime. When we asked them to hire new people to give us some relief, they told us they couldn't find qualified workers anywhere in Colorado. But when we went out, suddenly they came up with hundreds of replacements."[53](#)

Finding: Special Vulnerability of Immigrant Workers

International human rights principles apply to all persons regardless of immigration and citizenship status. In the United States, Human Rights Watch found workers' rights violations with particular characteristics affecting immigrant workers in nearly every economic sector and geographic area examined in this report. For many, the vulnerability of their undocumented status and related fear of deportation are the most powerful forces inhibiting their exercise of the right to organize and bargain collectively.

During NLRB election campaigns employers commonly threaten to call the Immigration and Naturalization Service (INS) to have workers deported. Immigrant workers are often afraid to come forward to file unfair labor practice charges or to appear as witnesses in unfair labor practice proceedings because they fear their immigration status will be challenged.

Case study: Warehouse Workers in the Washington Apple Industry

Thousands of workers are employed in the warehouse sector of the Washington apple industry. Like apple pickers, many seasonal workers in the warehouses are migrants from Mexico.

Apple warehouse workers are not defined as agricultural workers. They are covered by the NLRA, which makes it an unfair labor practice to threaten, coerce, or discriminate against workers for union organizing activity. But when workers at one of the largest apple processing companies sought to form and join a union in 1997 and 1998, management responded with dismissals of key union leaders and threats that the INS would deport workers if they formed a union.[54](#)

Here is how one worker described the company's tactics:

At the meetings they talked the most about the INS. . . [T]he company keeps talking about INS because they know a lot of workers on the night shift are undocumented - I would guess at least half. . . It is only now that we have started organizing that they have started looking for problems with people's papers. And it is only now that they have started threatening us with INS raids . . . They know that we are afraid to even talk about this because we don't want to risk ourselves or anyone else losing their jobs or being deported, so it is a very powerful threat. . .[55](#)

The union lost the NLRB election even though a majority of workers had signed cards to join the union and authorize the union to bargain on their behalf.

Finding: Even Legal Immigrants Unprotected

About 30,000 temporary agricultural workers enter the United States each year under a special program called H-2A giving them legal authorization to work in areas where employers claim a shortage of domestic workers.

H-2A workers have a special status among migrant farmworkers. They come to the United States openly and legally. They are covered by wage laws, workers' compensation, and other standards.

But valid papers are no guarantee of protection for H-2A workers' freedom of association. As agricultural workers, they are not covered by the NLRA's anti-discrimination provision meant to protect the right to organize.

H-2A workers are tied to the growers who contract for their labor. They have no opportunity to organize for improved conditions and no opportunity to change employers to obtain better conditions. If they try to form and join a union, the grower for whom they work can cancel their work contract and have them deported.

Case Study: H-2A Workers in North Carolina

More than 10,000 migrant workers with H-2A visas went to North Carolina in 1999, making growers there the leading employers of H-2A workers in the United States.⁵⁶ North Carolina's H-2A workers are mostly Mexican, single young men, who harvest tobacco, sweet potatoes, cucumbers, bell peppers, apples, peaches, melons, and various other seasonal crops from April until November.⁵⁷

At home "there's no work," workers told Human Rights Watch as their main reason for emigrating.⁵⁸ Many of the workers come from rural villages in Mexico. Some spoke Spanish with difficulty, as in their village at home people mainly speak Misteco, a local Indian language. In most cases earnings in U.S. dollars from their H-2A employment are the only source of income for their families and for their communities.

Human Rights Watch found evidence of a campaign of intimidation from the time H-2A workers first enter the United States to discourage any exercise of freedom of association. Legal Services attorneys and union organizers are "the enemy," they are told by growers' officials. Most pointedly, officials lead workers through a ritual akin to book-burning by making them collectively trash "Know Your Rights" manuals from Legal Services attorneys and take instead employee handbooks issued by growers.⁵⁹

On paper, H-2A workers can seek help from Legal Services and file legal claims for violations of H-2A program requirements (but not for violation of the right to form and join trade unions, since they are excluded from NLRA protection). However, in this atmosphere of grower hostility to Legal Services, farmworkers are reluctant to pursue legal claims that they may have against growers. "They don't let us talk to Legal Services or the union," one worker told Human Rights Watch. "They would fire us if we called them or talked to them."⁶⁰

In December 1997, the U.S. General Accounting Office (GAO) reported that "H-2A workers . . . are unlikely to complain about worker protection violations fearing they will lose their jobs or will not be hired in the future."⁶¹ The fear of blacklisting is well-founded, according to a 1999 Carnegie Endowment study, which based its findings on interviews conducted in Mexico with current Mexican H-2A workers. The Carnegie study found that "[b]lacklisting of H-2A workers appears to be widespread, is highly organized, and occurs at all stages of the recruitment and employment process. Workers report that the period of blacklisting now lasts three years, up from one year earlier in the decade."⁶²

7 See, for example, Subcommittee on Labor-Management Relations of the House Committee on Education and Labor, 96th Cong., 2d Sess., "Report on Pressures in Today's Workplace" (1980); 98th

Cong., "The Failure of Labor Law: A Betrayal of American Workers" (1984); U.S. Department of Labor, Bureau of Labor-Management Relations, Report No. 134: "U.S. Labor Law and the Future of Labor-Management Cooperation" (1989); U.S. Department of Labor, U.S. Department of Commerce, Commission on the Future of Worker-Management Relations (Dunlop Committee), *Fact Finding Report* (1994).

8 See NLRB Annual Reports 1950-1998; 1998 Table 4, p. 137.

9 These and other unfair labor practices described here were confirmed by the NLRB in its Decision, Order, and Direction of Second Election, *Palm Garden of North Miami and UNITE*, 327 NLRB No. 195 (March 31, 1999), pp. 6-8, 13-14.

10 The ALJ's decision dated January 30, 1998 is incorporated in the NLRB Decision, March 31, 1999. Under NLRB rules, back pay is "mitigated" by any earnings the unlawfully fired worker obtains during the period after dismissal.

11 Human Rights Watch interview, July 22, 1999.

12 Human Rights Watch interview, Palm Beach, Florida, July 24, 1999.

13 See NLRB Decision and Order, *PVMI Associates, Inc. D/b/a King David Center et.al. and 1115 Nursing Home Hospital & Service Employees Union-Florida*, 328 NLRB No. 159 (August 6, 1999).

14 *Ibid.*, p. 13.

15 *Ibid.*, p. 18.

16 Human Rights Watch interview, Palm Beach, Florida, July 24, 1999.

17 These unfair labor practices are described in more detail in NLRB Region 11, Order Consolidating Cases, Complaint, and Notice of Hearing, *Smithfield Foods, Inc. and United Food & Commercial Workers*, Case No. 11-CA-18316 (January 21, 2000).

18 Human Rights Watch interview, Wilson, North Carolina, July 13, 1999.

19 See *NLRB v. Village IX, Inc.*, 723 F.2d 1360 (7th Cir. 1983).

20 See *Hunter-Douglas, Inc. v. NLRB*, 804 F2d. 808 (7th Cir. 1986).

21 Human Rights Watch interview, May 11, 1999.

22 Quoted in NLRB, Decision of administrative law judge David L. Evans in *Avondale Industries, Inc. and New Orleans Metal Trades Council*, Cases 15-CA-12171-1 et.al., February 27, 1998.

23 See *Avondale Industries, Inc. v. NLRB*, No. 97-60708, 1999 U.S. App. LEXIS 15036, July 7, 1999.

24 This is the standard NLRB remedy for unfair labor practices. Reinstated workers are entitled to back pay for time off the job, "mitigated" by subtracting all interim earnings the worker was able to obtain.

25 Human Rights Watch interview, May 13, 1999.

26 Human Rights Watch interview, May 11, 1999.

27 Human Rights Watch interview, May 11, 1999. Litton Industries purchased Avondale in late 1999. Litton agreed to recognize the union after a majority of workers signed cards authorizing representation and collective bargaining. However, Litton did not agree to reinstate fired workers. Their cases remain on appeal.

28 Human Rights Watch Interview, July 8, 1999.

29 See *NLRB v. Lovejoy Industries, Inc.*, 904 F.2d 397 (7th Cir. 1990).

30 Human Rights Watch interview, Chicago, Illinois, July 5, 1999.

31 Ibid.

32 Telephone Human Rights Watch interview, July 8, 1999.

33 U.S. Bureau of Labor Statistics, unpublished tabulations from 1998-1999 population survey, on file with Human Rights Watch.

34 See Ruben Castañeda, "Man Found Guilty in Slave Case; Md. Couple Brought Woman From Brazil," *Washington Post*, February 11, 2000, p. B1.

35 Ibid.

36 Human Rights Watch interview, Seattle, Washington, November 4, 1999.

37 See Leslie Helm, "Technology: 16 Microsoft Temps Organize into Bargaining Unit; Labor: Group Hoping for Improved Benefits Signs a Petition Seeking Representation by Local Union," *Los Angeles Times*, June 4, 1999, p. C3.

38 Judd Human Rights Watch interview.

39 See John Cook, "Microsoft Limits Amount of Time Temps Can Work; New Policy Could End Its 'Permatemp' Problem," *Seattle Post-Intelligencer*, February 19, 2000, p. B3.

40 See Paul Andrews, "Microsoft drops TaxSaver software; Workers on project call decision a shock," *Seattle Times*, March 24, 2000, p. D3.

41 Human Rights Watch telephone interview, April 25, 2000.

42 See Steven Greenhouse, "Two-Thirds of Garment Shops Break Wage Laws, U.S. Says," *New York Times*, October 17, 1997, p. A37.

43 See Report, Los Angeles Jewish Commission on Sweatshops (Los Angeles, January 1999); Patrick J. McDonnell, "Jewish Group Urges Reform of Sweatshops," *Los Angeles Times*, February 1, 1999, p. B1.

44 Human Rights Watch interview, New York City, June 15, 1999.

45 Human Rights Watch interview, New York City, June 15, 1999.

46 Ibid.

47 Ibid.

48 Ibid.

49 See International Labor Organization, Committee on Freedom of Association, *Complaint against the Government of the United States presented by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)*, para. 92, Report No. 278, Case No. 1543 (1991).

50 See, e.g., *Denver Post* classified advertising section, October 1, 1997; "Notice to Permanent Replacement Employees," Oregon Steel (notice distributed to replacement workers, 1997).

51 See Decision of ALJ Albert A. Metz, *New CF&I, Inc. and Oregon Steel Mills, Inc. and United Steelworkers of America*, Cases 27-CA-15562 et. al., May 17, 2000.

52 Ibid., p. 92.

53 Human Rights Watch interview, May 29, 1999.

54 See NLRB Region 19, Order Consolidating Cases, Consolidated Complaints and Notice of Hearing, *Stemilt Growers, Inc., Ag-Relate, Inc. and International Brotherhood of Teamsters*, Case Nos.19-CA-25403 et.al.; *Washington Fruit and International Brotherhood of Teamsters*, Case Nos. 25702 et.al. (1998).

55 Stemilt worker affidavit to NLRB.

56 See Leah Beth Ward, "N.C. Growers' Trade in Foreign Farm Workers Draws Scrutiny," *Charlotte Observer*, October 30, 1999, p. 1.

57 Human Rights Watch interview, Lori Elmer and Alice Tejada, staff attorneys of Legal Services of North Carolina, Farmworker Unit, Raleigh, North Carolina, July 13, 1999.

58 Human Rights Watch interview with migrant H-2A workers, near Mt. Olive, N.C., July 14, 1999.

59 See affidavit of Juan Carlos Vieyra Ornelas, intern with Farm Worker Project of Benson, North Carolina, August 10, 1999, on file with Human Rights Watch.

60 Human Rights Watch interview, near Mt. Olive, N.C., July 15, 1999.

61 Ward, "Growers' Trade," p. 30.

62 See Demetrios G. Papademetriou and Monica S. Heppel, *Balancing Acts: Toward a fair bargain on seasonal agricultural workers*, International Migration Policy Program, Carnegie Endowment for International Peace (1999), p. 13.



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UNFAIR ADVANTAGE

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