

ORGANIZING WAL-MART: THE CANADIAN CAMPAIGN

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Wal-Mart, the world's largest corporation, has recently been targeted by the American and Canadian labour movements as organizing target number one. There are no unionized Wal-Mart stores in the United States and only a few in Canada. The few Canadian shops that have been organized have not yet been able to secure a collective agreement. In short, as of August, 2005 Wal-Mart completely controls the conditions of work for all of its employees in Canada and the United States. It has vigorously pursued a strategy designed to keep out the union and, in those cases where that effort fails, to frustrate the union's attempt to win a collective agreement. Because it has developed a business model that depends, to a large degree, on low labour costs it is a threat to the gains won historically by unions not only in the retail sector but across the economy. "Wal-Martization," a concept that historian Nelson Lichtenstein (2005) believes may become "a template for 21st century capitalism," means low wages, short hours, little individual job security and aggressive denial of collective representation.

In addition to labour, Wal-Mart has become the critical target of a wide variety of groups including environmentalists, small business, feminists and anti-sweatshop advocates (see e.g., Head 2004). A good deal has been written about all of these issues. The primary object of this article, however, is on efforts by Canadian Wal-Mart workers to unionize. Since the efforts in Canada and the US are intertwined American developments will also be briefly reviewed.

Wal-Mart entered the retail scene in 1962 when Sam Walton opened his first store in Rogers, Arkansas. It quickly spread throughout the US south and then north and internationally. Its formula for business success has been to offer retail goods at prices, on average, considerably below competitors. It has been able to do so due to a combination of just-in-time logistics, sourcing its product aggressively at the lowest cost provider, operating primarily in rural areas where it has had less competition and by maintaining wages and benefits considerably

below competitors. It has achieved the latter by nurturing an aggressive anti-union, anti-representation stance.

In the United States, the United Food and Commercial Workers Union began to target Wal-Mart for organizing in the late 1990s¹. In 2000 a unit of meat cutters was certified in Jacksonville, Texas but within a week the company announced that it would henceforth purchase pre-processed meat and shut down its meat cutting units. That action sent a message to potential union members that organizing would be a risky process. Since then although there have been several representation votes all of them have gone against the union. In the US, Wal-Mart has a very sophisticated unit, known as its People Division, whose function is to keep out the union. The company has also indicated a willingness to spend generously on high-priced legal talent to come up with strategies for frustrating union organizing attempts. It places a high priority on training its managers to identify unionization campaigns and counter them using a range of techniques that test legal boundaries. On numerous occasions, it has been found guilty of violating statutes designed to protect worker organizing rights but that experience has not convinced the company to change its behaviour.

Recently a majority of the workers in a small unit in Colorado signed union authorization cards but after Wal-Mart sent in its union-free experts to hammer home the company's anti-union message to each employee one-on-one the vote went overwhelmingly against certification. In 2002 Wal-Mart announced that it was going to move into the California food retailing business. The result was that several California companies who had union contracts in effect with the UFCW demanded wage and benefit concessions. That action produced a huge strike/lockout that drained the union treasury (Green 2004).

Faced with what appears to be an almost insurmountable barrier to organizing on a shop by shop basis, American labour has changed its tactics. Recently two major campaigns have been set in motion to rally a broad range of forces determined to compel Wal-Mart to abandon its low labour cost strategy. Both Wal-Mart Watch, sponsored by the Service Employees International Union (SEIU) and Wake Up Wal-Mart sponsored by the Union of Food and Commercial Workers (UFCW) are making use of tactics developed in the recent Democratic Party primary election and both campaigns have hired political pros to help organize their campaigns (Featherstone 2005). These efforts have achieved a good deal of public attention and have forced Wal-Mart to publicly defend its practices. The early 1990s campaign against Nike Corporation's supply chain practices went through a similar progression before Nike began to correct the deficiencies highlighted by the campaigners.

Wal-Mart entered Canada in 1994 when it purchased 122 of 144 Woolco stores. None of the stores that it purchased was unionized although in about half of those not purchased the employees had union representation. The first union

to take a run at Wal-Mart in Canada was the Retail, Wholesale Division of the United Steelworkers.

Organizing first began in 1996 in Windsor, Ontario and in 1997 the union had sufficient support to file for certification by the Ontario Labour Relations Board (McCormick 1998). The Board held a vote that the union lost badly but, in the aftermath, it claimed that Wal-Mart had engaged in overt unfair labour practices that prevented a true test of employee preferences. The Labour Board agreed and, under the statute then in effect, certified the union. As it would do in essentially all of the cases that went in favour of the union, Wal-Mart appealed the decision. It was unsuccessful but it established the pattern of using the law to the maximum to avoid union certification.

In the meantime negotiations began and a tentative agreement was reached. That agreement was, however, rejected by the members of the bargaining unit. About a month later what was essentially the same agreement was again sent to the workers for a vote which, the union claimed, was ratified by the majority. A group of disgruntled employees, however, gathered testimony from a large number of people who asserted that they had voted to reject. These employees hired a lawyer and contested the contract in court and, with its legality in doubt, its terms never took practical effect (Douglas and Burkett 2001). This phenomenon of apparently independent employee groups opposed to unionization has repeatedly appeared in Wal-Mart stores. Although hard evidence is not available, union organizers claim that these efforts are deliberately set in motion by the company and that experts in the company's employ help them to formulate strategies for thwarting unionization.

In 1999 the USWA's Retail Wholesale Division moved from Steel to the Canadian Auto Workers Union and, amidst rising legal costs with no agreement in sight, in 2000 CAW agreed voluntarily to give up its bargaining rights (OLRB 2000).

One of the results of this effort was that a very labour-unfriendly Conservative Ontario government was prompted to pass legislation taking away the power of the Labour Board to certify unions victimized by illegal activity. The statute came to be known as the Wal-Mart Act (Tucker 2005). In more recent years Wal-Mart has been aggressively campaigning to compel Canadian jurisdictions that still permit card-check certification to switch to a mandatory vote. Recent research has demonstrated that it is much more difficult for unions generally to become certified under mandatory vote systems than it is under card check (Slinn 2004). In this quest to put in place a legal model that it has proven to be able to manipulate to its advantage, Wal-Mart has won the support of a substantial part of the business community.

The United Food and Commercial Workers in Canada first began to target Wal-Mart in 2002. It did so for the same reasons as its American branch. A prime consideration was defense of conditions in unionized food stores that were

considerably better than in non-union Wal-Mart. UFCW-Canada's first campaign unfolded in Quesnel, British Columbia. Wal-Mart aggressively opposed this effort and was, as a result, found guilty of committing unfair labour practices and was ordered by the Labour Board to read a summary of the decision to the employees and permit officials from Local 1518 to address the employees. Unlike the situation at Windsor, Ontario, the Board did not have the power to certify a union without a majority regardless of the circumstances. The BC Labour Relations Code had been changed in 2002 to require a vote in all certification cases. Board-ordered remedies for ULP's short of certification have not proven to be very efficacious (McCormick 1998) and that was the case in BC. Wal-Mart's public determination to avoid unionization had its intended impact and the union was unable to recruit a sufficient number of employees to compel a vote.

In 2003 the UFCW was able to sign up enough workers at the Thompson, Manitoba Wal-Mart store to force a vote. But, faced with strong company opposition, the vote was lost. A year later a second vote at Thompson was also lost.

In Quebec, which is generally considered to have Canada's most labour-friendly legal regime, the UFCW has been very active. In December of 2003 UFCW Local 503 filed a certification application to represent workers at Jonquière in the Saguenay region. As in the other jurisdictions, Wal-Mart challenged the union's proposed bargaining unit arguing that department managers had little responsibility over personnel and thus ought to be included in the bargaining unit. The Quebec Labour Relations Commission was unimpressed by that argument and ordered a vote in the unit proposed by the union. In April 2004 a vote was held and narrowly lost but in August of that year the union was certified on the basis of membership evidence.

Shortly before negotiations were about to get underway, Wal-Mart announced that the store was "not meeting profit targets" and might have to close. After several face-to-face negotiating sessions and the appointment of a conciliator little progress towards an agreement had been made. On February 1, 2005 UFCW applied to the Minister of Labour for first contract arbitration. Eight days later, Wal-Mart announced that it would close the store in May 2005 but actually shut down on April 29 one week earlier than scheduled. UFCW asked the Labour Board to declare Wal-Mart a runaway shop and require the company to reopen but, citing recent Supreme Court Decisions, it refused to do that.

However, in September 2005, the Labour Board reversed its decision and found that the closing was an anti-union action that, indeed, did violate the labour code. The reason for the reversal is that in the initial proceeding the burden was on the union to prove that the company's actions were for something other than business reasons and it was not able, definitively, to do that. In the later proceeding, employees claimed that they lost their jobs because of their union activities. In such circumstances the burden of proof shifts to the employer

and Wal-Mart was unable to convince the board that anti-unionism was not behind the dismissal of those employees.²

The Jonquière development had a huge chilling effect on UFCW's organizing effort. While events were unfolding in Quebec, the UFCW in Ontario filed an application for a vote at the once-organized store in Windsor. A few days later it charged the company with a litany of unfair labour practices. A vote was held on March 8, 2005 but in the wake of the Jonquière closing the union lost badly. The ULP charges are as yet unresolved.

On April 1, 2005 UFCW lost another post-Jonquière vote, this time in Brossard, Quebec.

As these events were unfolding, in 2004 Local 1518 in British Columbia made an effort to organize Wal-Mart's store in Terrace, BC. The union believed that it had signed up a sufficient number of the employees to compel a vote. Wal-Mart challenged both the union's evidence and the union's proposed bargaining unit. A vote was held and the ballot box sealed. Unlike its Quebec counterpart, the BC Board ruled that department managers should be part of the bargaining unit. That made it more difficult for the union to achieve the 45 percent of bargaining unit membership it needed to have the vote counted. Nevertheless, it believed that it had met that threshold. The Board, however, disagreed. Although the union appealed twice, the Board would not change its position.

Also in 2004 the BC UFCW signed up enough workers in seven car services units to require a vote and the ballot box was sealed pending the resolution of legal issues raised by Wal-Mart. After protracted hearings the ballot box was opened and the votes were counted. The UFCW narrowly lost by a 32-28 count.

In Saskatchewan, where it is still possible for a union to be certified on the basis of union membership evidence, the UFCW has three certification applications pending. In March 2004, Local 1400 submitted an application to represent workers at Wal-Mart's North Battleford store and in April, 2004 an application was submitted to represent workers in the Weyburn store. At North Battleford and Weyburn both Wal-Mart and dissenting groups of employees asked to appear before the Board. Determination of the applications has been held up because of Wal-Mart's legal challenges to Board procedure. The union asked that the Board subpoena company documents including Wal-Mart's infamous "Manager's Toolbox for Remaining Non-Union." The company asserted that this was an infringement of its constitutional free speech rights and appealed to the courts. The Saskatchewan Queen's Bench upheld Wal-Mart's challenge but the Court of Appeal overruled it and in April 2005 the Supreme Court refused to review that decision. Labour Board hearings on the applications are due to recommence in the fall of 2005.

The third application is a bit of a long shot. One of the unionized Woolco stores that Wal-Mart decided not to purchase when it entered Canada was

located in Moose Jaw. That store closed but a few years later Wal-Mart opened a non-union store in the same city. UFCW is claiming that by refusing to buy a union store and later opening a non-union store, Wal-Mart has committed an unfair labour practice. UFCW is arguing that the new store should be considered a continuation of the old one and that UFCW bargaining rights should be reinstated (Cox 2004). Hearings on this case resume early in 2006.

While Jonquière was unfolding, UFCW got some better news from other Quebec organizing efforts. In October 2004, the union filed an application to represent employees at St. Hyacinthe near Montreal and in January 2005 the unit was certified. Wal-Mart, in its public pronouncements, referred to the process as undemocratic and, following its now common pattern, appealed to the Quebec Superior Court, unsuccessfully, to overturn the certification. Negotiations continued and in May 2005 UFCW applied for conciliation. Very likely this case will end up at first contract arbitration. The UFCW claims that this store is making a lot of money so if it closes prior to a collective agreement going into effect, Wal-Mart's claim that it took the action for economic reasons will have even less credibility than did that claim in reference to Jonquière. A Pollara poll taken shortly after the announcement of the shutdown at Jonquiere indicated that most people were not buying Wal-Mart's claim of financial woes as its prime motivation for shutting down the store. Over 75% stated their belief that the prime motivation for the shut-down was to chill interest in unionization (Marotte, 2005).

In May 2005 a separate union of tire and lube employees was certified at St. Hyacinthe and shortly thereafter two tire and lube express units in the Gatineau area were certified on the basis of cards. An application to represent all of the employees of one of the stores has been filed and a decision is expected during the fall of 2005.

Campaigns to organize additional Wal-Mart stores continue. UFCW estimates that there is organizing activity underway at about 25 Wal-Mart locations across the country. The UFCW is one of the more aggressive organizing unions in Canada. A review of the organizing efforts of 8 major Canadian unions between 1998-2003 found that only the Canadian Auto Workers and the Canadian Union of Public Employees filed more certification applications in that period (Perlmutter 2004). During the 1990s UFCW decided to increase its organizing effort. It significantly expanded the number of full-time union organizers and also put into effect a Special Project Union Representatives (SPUR) program in which it has trained some 200-300 part-time organizers. In part the logic behind this effort is the notion that unorganized employees are likely to respond favorably to organizers similar to themselves (see e.g. Yates, 2000, 2002).

UFCW has assigned one of its full-time organizers, Andrew Mackenzie, specifically to Wal-Mart. About three times a year he updates a Wal-Mart

pamphlet that is (ideally) distributed at all Wal-Mart stores across Canada. This effort commonly produces several hundred responses most of which are casual. When individuals willing to spend time and effort on union recruitment appear, an inside organizing committee is established. In order to counter expected employer resistance, North American unions commonly keep organizing campaigns secret for as long as possible. However, because of Wal-Mart's well developed protocol for identifying and countering union recruitment efforts, no attempt is made to maintain secrecy. Union organizers believe that, in the Wal-Mart case, they are better able to protect employees from victimization if the campaign is open than if it is secret. Most campaigns consist of union organizers visiting the homes of Wal-Mart employees to explain their rights and the advantages of union representation. Special Project Union Representatives are commonly involved in Wal-Mart organizing efforts. In one recruitment campaign in Quebec full-time union organizers, not only from UFCW but also from other Quebec unions, were involved in the effort to sign up as many people as possible in the shortest period.

Martinello and Yates (2004) have found that direct contact such as home visits is the most effective form of organizing. They also found, however, that when the company uses face-to-face anti-union counter tactics, as Wal-Mart routinely does, the union advantage is commonly blunted. Although it is often found to be in violation of the law, Wal-Mart has proven willing to stretch the limits in order to get its "union-free" message out to its employees. As suggested by the contents of its "Toolbox" (which Wal-Mart claims was intended only for US managers), the key message is that the union can do nothing unless the company agrees and that the company will strongly defend its "business model." When a unionization campaign is identified, Wal-Mart commonly counters it by sending in a team of experts well-trained in the art of denying certification. Wal-Mart officials have also made it clear that if the union is successful in forcing the company to alter its business plan (through first contract arbitration for example) the result might well be an uneconomic operation that it will have to shut down. At Jonquière the union demanded regularized scheduling and increased guaranteed hours for full-timers to the industry norm (Gondziola 2005). Wal-Mart spokesman, Andrew Pelletier, referred to this proposal as an unacceptable attempt to change the basic business model.

Rather than the instrument for the establishment of democracy in industry, Wal-Mart characterizes unions as a form of business--one that thrives on management unresponsiveness to employee concerns. In its view, if the company avoids overt employee dissatisfaction, then employees do not need collective representation. To control dissatisfaction, the company operates an open door policy and insists that managers promptly investigate and resolve employee complaints. In its view, the appearance of a union organizing campaign is an overt indicator that its store managers are not doing their job

properly. In practice, store managers are put under great pressure to do whatever it takes to head off unionization.

In embracing this philosophy, Wal-Mart is part of a larger American "union-free" movement (Adams forthcoming). Research suggests that Canadian employers generally, like their American counterparts, are opposed to unionization (Bentham 2002). However, the general consensus seems to be that unlike the Americans, and Wal-Mart in particular, Canadian strategies historically have been more subtle and muted. Because of its huge public presence, Wal-Mart's behaviour may well be having the effect of moving Canadian management in a more aggressively anti-union direction.

In addition to its shop-by-shop unionizing campaign UFCW has recently joined with the National Union of Public and General Employees to promote the concept and philosophy of labour rights as human rights. In March of 2005 the two unions published a study reviewing the international human rights status of a group of core labour rights including the Right to Organize and Bargain Collectively and the failure of Canadian governments effectively to promote compliance with international standards and, in their capacity as employers, to abide by those standards. The study provides evidence that Canadian governments frequently violate the norms that they have promised to promote. The study also reviews the recent Supreme Court Case regarding agricultural workers in Ontario in which the Court effectively imported several aspects of international human rights law into Canada. In its 2001 *Dunmore* Decision, the Court ruled that, according to the Canadian Constitution, all Canadian workers (whether represented by a certified exclusive agent or not) have the right to organize, select their own leaders, develop their own program and make "representations" to their employer with the expectation that their employer will recognize those representatives and will deal fairly with them with a view towards working out issues in dispute (Fudge and Brewin 2005).

Wal-Mart clearly is in violation of these international and constitutional norms and one part of the UFCW/NUPGE alliance is aimed at exposing the company's illicit human rights and constitutional behaviour. The *Dunmore* decision implies that any employer who refuses to recognize and deal with the legitimate representatives of even a minority of its employees (as Wal-Mart does as a matter of company policy) is offending Canadian constitutional law. Even where it is unable to become certified as exclusive agent of all employees in a given unit, UFCW might demand constitutional recognition as the agent of its Wal-Mart members. It has not yet decided to take that step, however. In its *Dunmore* decision the Supreme Court did not require the Ontario government to invest agricultural workers with a right to strike or any other means of compelling a recalcitrant employer to negotiate in good faith. As a result, organized labour broadly rejected the decision as a significant step forward. In fact, the UFCW has appealed to the Court claiming that the new Ontario law

regulating agricultural employment relations does not comply with the Constitution.

In addition to its general effort to promote respect for labour rights as human rights, NUPGE has signed a specific protocol committing it to assisting UFCW in its effort to organize Wal-Mart. Jointly, the two unions have put up substantial funds to produce a film (to be completed in 2006) aimed at popularizing knowledge of the company's anti-social behaviour.

As a matter of conscious choice UFCW-Canada has refrained from devoting resources to a Canadian equivalent of the Wake Up Wal-Mart campaign in the US. The prime object of the Canadian effort is to secure a collective agreement and any potential action is assessed against that goal. Nevertheless, the UFCW-Canada has been alert to construct alliances as appropriate. Thus when a group of students organized a "Wal-Town Tour" in 2004 that went across Canada drawing attention to many of Wal-Mart's anti-social activities, the UFCW lent its support and encouragement. In the spring of 2005 when SPHRE, the Society for the Promotion of Human Rights in Employment, (an international organization dedicated to promoting awareness of core labour rights as human rights) circulated a letter protesting the Jonquière shutdown on human rights grounds, UFCW supported that effort and helped to publicize the results. Over 200 professors, many from prominent universities such as Harvard, Stanford, Oxford and Cambridge, signed the document demanding that Wal-Mart respect the human rights of its employees to organize and bargain collectively. In May of 2005 UFCW worked with the Canadian Labour Congress to organize a "Day of Greeting" Wal-Mart customers at stores across the country. Customers were given pamphlets outlining the union's complaints, local unionists attended rallies and interviews were provided to the press.

CONCLUSION

UFCW-Canada is confident that eventually, most likely through first-contract arbitration, it will secure a contract for one of Wal-Mart's Canadian stores, and once it does, that it will be able to use that contract as a model to organize other stores not only in Canada but the U.S. as well. If a first agreement is imposed on Wal-Mart at St. Hyacinthe, the company will have a much more difficult time justifying a shut-down than it did at Jonquière. If the company was forced to negotiate in Canada, it would not be a first. It already deals with unions overseas in, for example, the United Kingdom and Germany and, most recently, China. However, Canadian negotiations might reverberate throughout North America and begin to move the company away from its business model and, instead, adopt practices that are more of the industry norm. That is precisely the union's aim but Wal-Mart has proven to be a very robust adversary.

The more recent campaign by NUPGE and UFCW to promote the notion of Labour Rights as Human Rights has the potential for changing the world of industrial relations in ways that may have an even greater long term effect than busting Wal-Mart's "template for 21st century capitalism." In continental Europe, collective representation is considered to be every worker's right and laws and customs are in place that make that right effective for the large majority. In Canada, on the other hand, collective representation is enjoyed by only a minority of workers and its practice is on the wane even as Canadian governments promise on the international stage to promote its use. Fully embracing collective bargaining as a human right means that the goal becomes effective, independent representation for all workers and its absence a disgrace, as objectionable as the continuation of overt racism. By initiating a "Labour Rights are Human Rights" campaign UFCW and NUPGE have begun public dialogue on this issue but bringing about compliance on the ground will take a long, sustained and well-focused effort.

NOTES

- ¹ Much of the information on UFCW's Wal-Mart campaign is available on the internet. Facts gleaned from internet searches were reviewed with UFCW staff for accuracy. Additional documentation was provided by the UFCW. Special thanks are due to Brian McArthur and Andrew Mackenzie of the UFCW for their assistance with this project.
- ² The Board's decision may be accessed at:
<http://www.lancasterhouse.com/decisions/2005/sept/qlrc-bourgeois.pdf>

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