

The Campaign to Organize Wal-Mart in Canada

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The Food and Commercial Workers Union (UFCW) began to target Wal-Mart for organizing in 2002. It has had more success than its U.S. counterpart in that it has been able to certify several bargaining units. However, despite devoting significant resources to the effort, as of early June 2006 the UFCW-Canada has not been able to win a collective bargaining agreement. Wal-Mart has been willing to spend freely on lawyers to delay and frustrate the union's efforts by filing legal challenges at every available opportunity. In its most widely reported act of resistance to unionization, Wal-Mart shut down a store in Jonquière, Quebec in which the UFCW had won bargaining rights while the issues in dispute were being considered by an arbitrator. The result was enough to send a huge chill through organizing efforts elsewhere. Within a month, two Wal-Mart certification votes, one in Ontario and another in Quebec, went strongly against the union.

From an American perspective, card check certification and first contract arbitration are the major advantages that Canadian union organizers have over their American counterparts. Unlike the U.S., the provinces rather than the federal government have prime responsibility for labor relations. Card check, which exists in some but not all, jurisdictions permits the union to certify a bargaining unit on the basis of membership evidence rather than a vote. This system reduces significantly the ability of the employer to engage in overt opposition. Canadian research has indicated that where card check exists the probability of a successful organizing drive is substantially better than in those jurisdictions that require a vote. And that is so even though the Canadian voting system is a vast improvement over that in the U.S. Most jurisdictions require that a vote be held within days of an application being filed, often with the ballot box being sealed pending the settlement of bargaining unit issues such as the inclusion or not of supervisors. Compared to the U.S. this system also reduces the amount of overt employer opposition.



Despite these significant distinctions, Canadian labor law and practice in the private sector has been, historically, much like that in the U.S. The Wagner-Act legal framework was imported from the U.S. in the 1940s and the pattern of organizing became much like that south of the border. Commonly unorganized workers either contact or are approached by an established union and an organizing campaign commences. Unfair labor practices are similar but, as in the U.S., companies and consultants have become expert at walking the fence between illegal and legal intimidation. As in the U.S. nearly all employers make it known that they don't want their unorganized employees to organize. But Canadian employers are generally considered to be less aggressive in their anti-unionism than their American counterparts. Wal-Mart is, of course, the exception and indeed may be making Canadian employers bolder by example. Since entering Canada it has lobbied several provinces with card check certification to switch to a voting system and it has won lots of allies in the business community to that cause.

Nevertheless, recent research makes it clear that most employers use some combination of tactics to oppose unionization and the most aggressive, of which Wal-Mart is one, are the most successful.

Quebec has one of the strongest union movements in Canada and is generally regarded as having the best labor law with both card check and first contract arbitration. The UFCW was able to make use of card check in certifying the Jonquière store, another store in St. Hyacinthe and a few tire and lube operations in the province. At another store in Brossard it was unable to sign enough people for card check certification but was able to recruit enough to get a vote. After the Jonquière shutdown it lost the vote badly. An application was recently filed to certify a store in the Gatineau region.

Despite its certification success, the UFCW has not yet been able to win a collective agreement. At Jonquière, the company engaged in some surface bargaining but made it known that it was unwilling to change its well known “business model” which calls for low wages and benefits and short hours. The union’s request for first contract arbitration was quickly approved and the process was underway when it shut down the store. The company claimed that the store was not “meeting profit targets.” That was interpreted by the press as meaning that it was losing money—but surveys indicated that most Quebecers did not buy the company’s story of financial problems. Almost all respondents agreed that the move was intended to crush the union drive and create fear among workers elsewhere who might consider organizing.

Subsequently, after much legal maneuvering on the part of both the union and the company, Wal-Mart was found to have fired the employees because of their union involvement. The authorities would not, however, require the company to re-open the store stating that its decision was based on a Supreme Court doctrine that “an employer maintains the right to close down its business, whatever the reasons.” Wal-Mart challenged the union certification at St. Hyacinthe in the courts but in a decision announced in April, 2006 it lost and first arbitration hearings, which had been suspended pending the outcome of the court case, resumed. The store at St. Hyacinthe is a very busy one and the company is making no claim that it is not successful. Nevertheless, there is real fear within the labor movement that, rather than accede to a collective agreement that busts its business model, the company will shut down that store too. Anticipation of the St. Hyacinthe arbitration decision and Wal-Mart’s reaction to it is very high.

In addition to Quebec, the UFCW has also been actively working to organize Wal-Mart stores in Manitoba, Saskatchewan and British Columbia. In Manitoba it narrowly lost two elections at the same store in Thompson. In Saskatchewan, another card check province, three applications are pending. Wal-Mart’s legal maneuverings have delayed them for about two years. In B.C. the UFCW won votes at a few tire and lube operations and negotiations are underway. Currently an aggressive leafleting campaign is being conducted in Ontario.

Wal-Mart’s tactics in Canada have followed a general pattern, much like the one it first honed in the U.S. First, it makes it clear to all of its employees that it does not want to negotiate with any union. It doesn’t say that publicly. Advised by savvy lawyers who know the system, it says that it believes its “associates” don’t need “outside representation.” Its union avoidance intentions are obvious nonetheless. In its infamous “Toolbox to Remaining Union Free” it makes union avoidance a central duty of its managers. In lieu of a union Wal-Mart has an “open door” policy and managers are trained to look for signs of disgruntlement that might provoke a union drive and to deal with it right away. The company makes it clear to its managers that they are the “first line of defense” against unionism and that if a store is unionized they will be held accountable. By referring continually to its determination to defend its business model, the company sends a clear message that unionization is futile.

If, despite those steps a store or other unit is still organized, the company’s policy has been to pursue every legal angle to frustrate the union’s effort to negotiate a collective agreement. No estimates of its legal bill in Canada have been made but the accumulated cost must be many millions of dollars at this point. Wherever a union gains a foothold, it is also common for “loyal” employees to form a committee to oppose unionization. Such committees have appeared in several campaigns including those, for example, at stores in Ontario and Saskatchewan. Although they have not been able to come up with a smoking gun, UFCW organizers are convinced that Wal-Mart management is behind these committees. In Saskatchewan Wal-Mart has filed unfair labor practice charges against the union claiming that some employees were being illegally pressured to join the union.

If legal stalling and anti-union committees do not sufficiently whither the will of the workers and they hang tough to get to first contract arbitration, the company has made it known that it will go as far as shutting down stores rather than alter its "business model." If legislatures cannot find a way around the Supreme Court's dictum then they may continue to do that no matter how illicit their reasons for doing so. There will be nothing except an empty conscience and a few bucks to stop them.

How this will all play out is, as yet, uncertain. In some other countries (U.K., Germany) Wal-Mart has been compelled to negotiate with unions. In Canada, at some point it may decide that the costs of continually fighting unionization are worse than negotiating in good faith. A "labour rights are human rights" movement has gotten off the ground recently which may further raise the stakes for the company. When the Jonquière store was shut down, several hundred human and labor rights academics signed onto a letter accusing the company of fundamental human rights violations. This effort attracted considerable press coverage in Quebec.

The right to organize and bargain collectively was reaffirmed as a fundamental human right, equivalent to other civil rights, by the International Labour Organization in 1998. Since then compliance with international labor rights norms has been pushed hard by the United Nations. Most recently the World Bank's commercial lending arm, the International Finance Corporation issued a set of guidelines for prospective clients requiring that they "not discourage workers from forming or joining workers' organizations of their choosing or from bargaining collectively, and will not discriminate or retaliate against workers who participate, or seek to participate, in such organizations or bargaining collectively." Clearly, if this standard were fairly applied, Wal-Mart would not qualify for a loan from the IFC. Other international financial institutions have indicated that they are likely to follow the IFC's lead. If so, this standard may eventually become the new normative expectation for large corporations.

If this "shaming" approach is effectively able to further tarnish the company's image it may yet decide that the cost is not worth it. The UFCW is a member of the four-union coalition promoting the labour rights are human rights agenda but labor rights has not yet become a serious political issue in Canada. Whether or not labor rights make it onto the political agenda will probably be determined by the Canadian Labour Congress and the social democratic parties that exist nationally and in each province. To date there has been no rush by these organizations to take up that challenge.

Unlike the United States, no major media campaign similar to Wake-Up Walmart has been undertaken in Canada. The strategy has been to focus resources on getting a collective agreement. The UFCW estimates that it has already spent over two million dollars on the Wal-Mart campaign. If it does not bear fruit soon, however, tactics may have to change.

In a decision handed down in 2001 the Canadian Supreme Court established that the freedom of association guarantee in Canada's constitution means that, whether in a certified unit or not, all Canadian workers have the right to organize and to make demands on their employers and employers have a constitutional duty to recognize and deal with those organizations. These newly established rights to organize outside of the labor relations statutes and compel the employer to come to the table provide an opening for the UFCW to negotiate even where it is unable to win a majority. Uncertified worker organizations do not have a protected right to strike, however, and so some unions have dismissed the new doctrine as no more than a right to talk. But using these new constitutional rights, the UFCW could organize uncertified locals and use tactics such as picket lines, boycotts, community alliances, etc. to bring pressure on the company to make concessions. In Florida, Wal-Mart workers have formed a non-certified association to pursue this strategy (The Wal-Mart Workers' Association) and have scored some victories but, for now, the UFCW-Canada is focused on getting more units certified and winning a government ordered first contract.

One episode in Canadian labor history provides a bad precedent. In the 1970s several bank branches were organized but the banks operate common personnel policies across the country and they simply refused to alter their Canada-wide practices of, for example, revising wages once a year at a particular time. Indeed, the union branches found their conditions frozen while stuck in negotiations. The end result was that, after a few years, the union branches decertified in frustration. On the other hand a collective

agreement with better terms than those now provided by Wal-Mart might prove a strong incentive for more Wal-Mart workers to organize. That is what the union is banking on.

The inability of the UFCW to win a Wal-Mart collective agreement in Canada should send a warning signal to U.S. unionists who have placed high hopes on the success of the Employee Free Choice Act that is now making its way through Congress. The main innovations in EFCA are card check certification, first contract arbitration and stronger penalties against employer illegality in the organizing process. These innovations are all modeled on Canadian practice. The Wal-Mart case to date indicates how a determined employer with deep pockets may frustrate that legal regime despite these labor-friendly elements. Perhaps, as I have argued elsewhere, both Canadian and American labor need to seriously rethink the whole Wagner-Act legal regime rather than pursue modest modifications of it.

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