

# A Wal-Mart Workers Association?

## An Organizing Plan

### By Wade Rathke

#### Breakthrough in China?

A 2004 news alert flashes in from China. An understated release, carefully crafted by the company, indicates that Wal-Mart will conform to Chinese law and recognize unions in its stores in that country, when “associates” request such action. The face-saving part of the release tries to assert an “if” after the “when,” as if this were not a done deal. “Should associates request formation of a union, Wal-Mart China would respect their wishes.”<sup>1</sup> After pressure by the All-China Federation of Trade Unions and threats to sue Wal-Mart and other multi-nationals, Wal-Mart acknowledged the pressure and its change of course in China.

This is a victory for workers! Right?

Reaction in the U.S. is mixed however. An article in the *New York Times*<sup>2</sup> indicates a range of views, from the optimism of Rochester Institute of Technology marketing professor Eugene H. Fram, who called it a “watershed event” because it was the “first time they’ve given acceptance without saying ‘let’s go to a union vote,’” to the skepticism voiced by Greg Denier, speaking for the United Food and Commercial Workers in Washington, who said that “Wal-Mart always tries to deny workers a voice in the workplace, so let’s see what happens.”<sup>3</sup>

*New York Times* reporter David Barboza speculated tellingly that “...it was unclear whether Wal-Mart...intended to allow a *real union* to take shape here or whether a *strong union* could even be created, given the current status of labor organizations in China.”<sup>4</sup> Dear Mr. Barboza, please immediately send list of “real unions” which are also “strong unions” to 90,000,000 unorganized workers in the United States.

The buzz words then become whether the union is “government supported” or “independent.” Without a shred of information we are supposed to make a lot of judgments here. The government supports unions in China – a bad thing! The government fights unions in the United States – a good thing?

A friend in the AFL-CIO International Affairs Department speculated that the deal with the government probably represented Wal-Mart’s belated submission to the law and an agreement to recognize the All China Federation of Trade Unions (ACFTU) in exchange for the company’s ability to enter the Shanghai market and build another 20-30 stores there. That’s leverage! Isn’t it? Earlier in the fall of 2004 Wal-Mart had announced that it had received governmental permission to open another 30 odd stores, so perhaps this recent exchange of union friendly press releases was but a footnote to the earlier agreement, delayed sufficiently so as not to reveal the club’s mark on the body of the company. Sure enough in January 2005, the company also announced a joint-venture in China to open 200 new stores in coming years.

Who knows? Maybe a dozen people, maybe a hundred in the world? I am not sure. But let’s not be distracted from the main issue. For the sake of this discussion, let’s assume that these Chinese unions are worker organizations in name only. From there we can move forward, because the question here is first about Wal-Mart, and then about the character of any union organization that might arise within that giant corporation.

The problem we face in developing an organizing strategy for Wal-Mart and its 1.2 million U.S. workers is exclusively a national, or perhaps a North American, rather than an international phenomenon. Ironically, and despite Wal-Mart’s virulent anti-union reputation and the pains the company has taken to maintain this public posture, Wal-Mart workers are in fact working union in virtually every other country where Wal-Mart has stores. Certainly that is the case in much of the United Kingdom, where Wal-Mart purchased stores that were already unionized, and according to the union, the GMB – The General Workers Union of Great Britain, it

has kept them that way and has been reasonable as a collective bargaining partner. In Mexico, Wal-Mart employees are under contract with the CTM – the Confederacion de Trabajadores en Mexico -- no matter what one might think of that federation. In Argentina Wal-Mart was required to be union, and in Germany the powerful trade unions there have fought the Arkansas-based company tooth and nail under that nation's industry-wide bargaining regime. And now there will some kind of union at Wal-Mart in China.

Another way of stating the point is that the institutional labor movement, such as it is, has been able to actually unionize Wal-Mart beyond North America, while this goal has eluded trade unions living north of the Rio Grande. Why has the North American labor movement failed to accomplish the same goal?

### Minority Unionism

Presumably, in the United States we have “real” and “strong” unions. Yet, the litany of our trials and tribulations are now repeated so frequently that they are almost rendered banal. To recite the lowlights, we have now fallen to less than 13% of the non-agricultural workforce with about 13 million members; in the private sector our density is now hovering just over 8% and falling; we lack any organizing program or record of unionization in many new and growing occupations and industries, as well as among the burgeoning millions of contingent and part-time workers. No large new private sector firm employing over 20,000 workers has been completely organized during the last 30 years. Indeed, the labor movement’s cost of acquisition of new members through either traditional or innovative strategies is an estimated \$1,000 per new member, prohibitive for any kind of mass movement. Union certifications under the federal labor law are minuscule. Not unexpectedly, trade union membership is also falling in absolute numbers, which translates into a reduction of capacity and resources for organizing and political action. And, finally, the strike weapon seems bankrupt, which is one reason that so few large strikes have been called or won in recent years.<sup>5</sup> Add to this current witches’ brew the fact that we are also fragmented as a movement and divided both internally and externally about strategies for either change or growth, and we have a labor movement in almost total disarray.

It is not simply a question of leadership, as many would wager. At heart is a fundamental limitation on the basic model of unionization in the United States. We have created an organizational system which is hugely successful in delivering real improvements in wages and benefits to workers in only a very small number of situations and sectors – largely, and importantly, where wages have been taken out of competition – but this system works only at a prohibitive cost in terms of the money, time, and sheer effort required even to maintain the status quo.

The organizing model is also totally unsustainable for most established labor organizations, which is part of the reason they are stagnating and shrinking. The sad case of the International Association of Machinists (IAM) is but one example. Thirty-five years ago, the IAM had one million members, but in 2005 it reported 380,000 active members, admitting that 100,000 of its members had been lost in the short period from 2000-2004.<sup>6</sup> Recapturing more than 600,000 members would require a war chest of \$600,000,000 – truly unimaginable – coupled with a will and a vision, neither of which may now exist.

Today, it is easier for the rich man to get into heaven than for a poor, working stiff to get into the union under a collective bargaining agreement and then stay employed under the contract for a decade or more.<sup>7</sup> Studies estimate that less than 50% of the workers are able to win certification under the National Labor Relations Board and less than 50% of that number ends up under a collective bargaining agreement. And only half of them are still under contract ten years later.<sup>8</sup> This has become a situation where the abysmal state of federal labor law and its perverse and politicized enforcement has created a legal system that acts as a break upon workers rights. Given Republican domination of the Congress, the chance of progressive labor law reform is negligible. And a Republican-dominated NLRB has also moved to outlaw many of the most promising union organizing techniques, while most Southern and Mountain states enforce an “open shop” environment hostile to stable unionism. So even that lucky stiff formally covered by a collective bargaining contract may not actually be a dues paying union member. As a “business model,” therefore, contemporary unionism in the United States is completely dysfunctional.<sup>9</sup>

## Majority Unionism?

Workers still want unions! Or, at least, something much like them. Surveys indicate that a significant minority of unorganized workers would still vote for a union, if they had the opportunity. Furthermore, a significant majority of workers – almost 2/3rds -- are clear that they want representation on the job by some kind of association or other organizational formation that looks, smells, and tastes like a union – though this may not be the same as the “real” or “strong” unions of our dreams. They are willing to fight, but they don’t want a war. They want agreements, but the majority of the workers surveyed want to figure out a way to work *with* the company on some mutual program, rather than to be in a contentious relationship.<sup>10</sup>

This is all controversial. Are these sentiments to find fulfillment in an independent union, a collaborationist, management-supported institution, or in some sort of hybrid institution? Labor advocates have begun to experiment with different kinds of organizations at various worksites around the country. In difficult to organize workplaces, such as nursing homes, day care centers, and on the farm, unionists have built organizations that emphasize institution building and membership above all, rather than establishment of a bargaining relationship to the employer. The emerging, half-million-strong, job classification of “home day care worker,” virtually created by Bill Clinton’s “welfare reform” initiative, is an excellent example. Organizing drives among these poorly paid women all started with grassroots efforts – mainly by ACORN -- to build voluntary, autonomous organizations of home day care workers, even in the absence of a legal framework that might have sustained collective bargaining with their employer, which was usually some level of state or municipal government. ACORN, followed by SEIU and AFSCME, undertook the painstaking work of signing up members, lobbying in legislatures for reimbursement increases, and fighting to get checks to providers on time. Starting in 1996, Chicago SEIU Local 880 pioneered this union-building project, creating the political and organizational context that made it possible for Governor Ron Blagojevich to sign a 2005 executive order that enabled SEIU to become the bargaining representative for 49,000 home health care workers in the state.

Are such formations nothing more than “company unions” or “Chinese unions” with an inseparable relationship to the state or the corporation, and therefore worthy of little more than contempt? Do these terms still have the same meaning in modern U.S. organizing? Given the weakness of labor in sector after sector, market after market, firm after firm, one could make a credible argument that for many unions to survive they have by necessity entered into corporatist arrangements with the employer which allow management to set wage and benefit conditions in critical areas. This was the case at Saturn in Springhill, Tennessee, where the United Auto Workers allowed General Motors to rewrite an auto industry collective bargaining contract that had been refined over more than half a century. Likewise, in the janitorial sector and in California nursing homes, success of the Service Employees International Union (SEIU) was predicated upon a set of preliminary contract concessions that enabled the union to get its foot in the door and, over time, build the kind of market density and organizational infrastructure that would pay off in the long run.

Today, there are very few industries remaining in which the unions can fight off a concerted managerial effort to eliminate them. At the airlines, once a model of high wage, high density collective bargaining, unions are holding on by their fingernails, negotiating huge, tragic, and unimaginable decreases in pay and benefits. Since the early 1990s, when United and American Airlines went into bankruptcy, airline unions have found themselves engaged in a protracted set of negotiations that have combined wage givebacks, corporate reorganizations, and big layoffs. It has not been a pretty sight, but perhaps necessary. By February 2005 unionized workers at USAir had agreed to takeaways that had some of the workers “making less than Wal-Mart cashiers.”<sup>11</sup>

Does this make them company unions? Certainly not! Where there is no choice, how can it be a disgrace to survive? This is the essence of the famous Melenian debate,<sup>12</sup> which has long been a popular training exercise among community organizers. The ancient Melenians faced a conundrum when they found themselves at the mercy of a superior Athenian army. The Athenians argued that the Melenians should

surrender and survive, rather than fight, in which case they would be killed or enslaved. Unlike the Melenians, who did choose battle and death, the airline unions elected to surrender in hopes of fighting another day.

Indeed, many “company” unions, which were often established by management in the 1930s and 1940s as part of the corporate counteroffensive against the Congress of Industrial Organizations, have transformed themselves into “real” trade unions. The modern, militant, Communications Workers of America (CWA) began more than 50 years ago as a company-organized union in the Bell system. Certainly it is not that today! And the story of the CWA is not unique. During the late Depression years the CIO took over the company supported employee representation plans in the steel industry to create the powerful United Steelworkers of America; likewise at Chrysler, the celebrated militancy of the workers at Dodge Main and Jefferson Avenue had important roots in the dense system of shop steward representation first established by Chrysler management itself, which sought to forestall independent unionism. In more recent years this has often been the situation with public employee associations in state, local, and educational jurisdictions, which often have histories of management domination or political cronyism. Thus SEIU Local 660 emerged out of the transformation of the old Los Angeles County Employees Association, and in Ohio the American Federation of State County and Municipal Employees (AFSCME) gained a robust and effective affiliate when the state employees association there voted to join nearly a million other state and municipal workers who were part of the house of labor.

Simply stated, how can workers build power in particular firms, across industries and sectors, and in the realm of politics, if they do not adopt a majoritarian strategy? As a fundamental and permanent shift in strategy and objectives, the American labor movement seems to have no choice but to recast its basic organizing model, change, and embrace *majority unionism*.

As organizers, we need to take the dare and create an organizing plan that in fact gives workers what they want. Do we have a choice?

At the heart of this dilemma is the redefinition of the meaning of trade unionism and the character of its functions. Are “real” or “strong” unions only those who engage in arms-length collective bargaining? I think not. Within the 13 million AFL-CIO are a good number of workers, particularly in the public sector, who are union members but not covered under collective agreements, or they are covered by agreements where wages and benefits are statutorily excluded from bargaining, or they may be in unions that are allowed some economic bargaining yet are legally denied the right to strike. Certainly, this is the case in all federal sector unions, as well as in many other public employee unions, including many locals of AFSCME, SEIU, the American Federation of Teachers, and the National Education Association. Another telling example can be found in the bargaining dilemma created by the greatest organizing triumph of the 1990s, among home health care workers, where unions “invented” hundreds of thousands of hybrid employees and then bargained with a set of state and county authorities over a severely limited number of issues. There can be no “one size, fits all” in the labor movement of the contemporary United States.

### The Wal-Mart Organizing Problem

We need to think about new and alternative organizing models, and nowhere is this a more vital necessity than when we consider Wal-Mart, the retail phenomenon that is doing so much to reshape the social and economic life of the nation. In the United States there are more than 3,500 individual Wal-Mart stores employing 1.2 million workers. In Canada there are almost 300 stores. Wal-Mart is the largest private sector employer in these countries, as well as in Mexico.

The United Food and Commercial Workers has been active organizing Wal-Mart Canada on a store-by-store basis, taking advantage of the more union-friendly climate in some Canadian provinces. In Canada union density, even in the private sector, approaches 35% of the entire working population, which means that most Canadians see unionism as commonplace within the workplace, a normality that is enormously helpful to organizers at anti-union firms like Wal-Mart. Even more important, in Quebec and Ontario the “cards do walk and talk,” because workers can get their bargaining unit certified through “card check,” in which a majority of

all workers at a single worksite merely have to sign authorization cards, rather than participate in an election, where experience demonstrates that employer coercion is almost always present. The UFCW program in Canada has therefore been serious, extensive, and aggressive, deploying scores of organizers in blitz operations and pulling in recruits from throughout the country.

An organizing breakthrough seemed on the horizon in 2004. The UFCW established itself in two Quebec Wal-Marts and became certified as the bargaining agent among workers in a unit the union carved out of a half-dozen auto departments in the Wal-Marts of British Columbia. These breakthroughs followed fledgling efforts in another five stores across Canada where the UFCW has contended for representation rights and been embroiled in legal disputes with the company.<sup>13</sup> The UFCW has been proud of this program, asserting that Wal-Mart workers will organize if they are afforded legal protection from corporate retaliation and if the union on the scene is sufficiently aggressive.

But even in union-friendly Canada the UFCW strategy seems doomed. Early in 2005, five months after the union began bargaining with Wal-Mart at a store in Jonquiere, 240 miles northeast of Montreal, the corporation abruptly announced that it would permanently shutter the entire store because of the UFCW's "unreasonable demands" over scheduling and staffing. This draconian level of hostility to unionism was reminiscent of Wal-Mart's response to the eleven butchers who voted to join the UFCW in a Jacksonville, Texas Wal-Mart in 2000. That organizing foothold was obliterated when Wal-Mart declared that henceforth it would purchase only pre-wrapped meat, thereby eliminating the job of meat cutter in every one of its several hundred Supercenters.<sup>14</sup>

The UFCW has gotten the message, certainly in the United States where the labor law is now stacked so heavily against trade unionism. Since his election in 2004, UFCW President Joe Hansen has largely pulled back from a store-by-store organizing strategy. Where the union once had field organizers targeting Las Vegas and other markets in a leafleting and outreach program to Wal-Mart workers, Hansen has re-oriented the union towards a broader corporate-campaign in the United States, even while he continues to support the Canadian organizing drive.

Indeed, there is no reason to believe that in the United States a store-by-store unionization strategy would have any possibility of success at Wal-Mart. Without a company declaration of genuine neutrality or the emergence of a real mass movement among the kind of people who are employed as Wal-Mart "associates" the obstacles are insurmountable. There are just too many workers spread among too many stores for one to believe that even a modestly successful drive could succeed with any reasonable time frame. If the UFCW organized 30 stores a year it would still take more than 100 years to unionize the existing Wal-Mart system! This would not be an organizing plan, but a death sentence.

The ruthlessness of the company also argues against a unit by unit strategy. Despite his folksy ways, Sam Walton was bitterly hostile to trade unionism, employing an early generation of anti-union consultants to break Teamster and Retail Clerks organizing efforts in Missouri and Arkansas.<sup>15</sup> Today, Wal-Mart maintains a staff of 200 in its labor relations department, many available to fly to any store when the U.P.I – Union Prevention Index – hits a prescribed set of bells. This does not mean that workers in any given Wal-Mart are actually attempting to organize; rather the U.P.I. is keyed to diverse factors measuring morale, complaints, turnover, and other problems. Of course, when a real unionization effort is detected, Bentonville springs into action with all necessary resources. For example, in February 2005 when 18 tire-and-lube shop workers in a Loveland, Colorado Wal-Mart prepared for an NLRB election, headquarters flew in a team of labor relations experts who hammered away at the luckless young workers for more than a week. "It wasn't a fair fight," complained Joshua Noble, the 21 year old union sparkplug. "Every day they had two or three antiunion people from Bentonville in the garage full time, showing antiunion videos and telling people that unions are bad." Not unexpectedly, the union lost 17-1.<sup>16</sup>

Despite the U.P.I program, Wal-Mart has been unable, or unwilling, to train store managers to obey the labor law. After surveying 41 regions where Wal-Mart operated its stores, the UFCW found, over a five year

period, massive evidence of NLRB-certified unfair labor practices or illegal terminations. Wal-Mart does not like unions, the company is clear about it, and store managers are not afraid to show it.

We cannot expect to counter Wal-Mart's full court press with the existing strength of our unions, no matter how militant. These two institutions, the union movement on the one side and Wal-Mart on the other, exist in parallel universes. For more than 40 years Wal-Mart management concentrated stores and distribution centers in the South and the nation's midsection, with small towns and some of the newer exurbs as favored sites. The unions, on the other hand, have their strength in the big cities and the older suburbs. And in coastal America, these cities are Wal-Mart's last frontier. Only about 30% of the largest U.S. cities host one of the company's big boxes. Thus the high-profile "site-fights," in Inglewood, South Chicago, Queens, and Contra Costa County, have been defensive battles instigated by the UFCW and a shifting coalition of progressive community groups and the labor-liberal politicians who still retain some influence in local government. The UFCW is less interested in "organizing" Wal-Mart in these conflicts, than it is in protecting the relatively high-wage contracts that unionized grocery workers enjoy in urban America. Given the life and death stakes, these site-fight battles are often waged with remarkably tenacity. In Philadelphia, for example, the president of UFCW Local 1776 reported that his local union had spent more than \$7 million in a decade-long campaign to keep Wal-Mart and other non-union discount firms from expanding into the retail market served by members of his big local.<sup>17</sup>

Thus it would be pure delusion to contend that a handful of isolated election successes in individual Wal-Mart stores would give workers significant power to bargain decent contracts with this giant, alien corporation. A strike threat would hardly be effective, and an actual strike would be job suicide for workers and an early exit from their misery for most local unions. Sitting at the bargaining table and having to live through the discussion of issues like dues check-off, much less union shop, would be an exercise in futility.

If organizing Wal-Mart workers can only be defined in terms of the collective bargaining paradigm, we will not be able to get these poor men and women into heaven. That is the plain and simple truth.

### Organizing a Wal-Mart Workers Association

So, what is to be done? Unionizing Wal-Mart is the great organizing problem of our time, and it seems inescapable that to envision organizing hundreds of thousands of Wal-Mart workers means imagining something quite different for the labor movement. As an organizer evaluating this challenge, two innovations are essential. First, the union movement must give workers what we have had every reason to believe they want: an association where Wal-Mart "associates" can act in a concerted way with their co-workers to engage their employer around issues and concerns, or even just talk to each other, since at Wal-Mart management considers talking on the job as "time-theft." And secondly, we condition membership of the association not on the permission and consent of the employer, which is at the heart of the current labor relations scheme in the United States, but on the sole decision and individual action of the worker.

Within the range of these fundamental principles, I would argue for the creation of a Wal-Mart Workers Association. This association should be *rights-based*, rather than benefits based.

Wal-Mart breaks the law. The relentless pressure exerted by Bentonville upon store managers insures that labor law violations at hundreds of stores are unavoidable. The company has created a centralized command and control structure which gives local managers just enough discretion to ensure corporate deniability for any gross violations of the labor, immigration, or civil rights laws. Such a structure easily produces the a well-documented, increasingly litigated pattern of abuse: workers toiling off the clock, cleaning crews locked in at night, the abuse of immigrant workers in a host of situations, and sex discrimination in wages and promotions. Despite Wal-Mart's media-savvy public relations campaign, which emphasizes the good jobs and careers available at the corporation, working conditions are predatory, with a turnover rate that averaged 46% in 2003 and quite possibly 100% among new hires in particular locations. Rather than upgrade the work

and benefits to secure a stable workforce, the Wal-Mart employment strategy is to discard and recycle more than half a million workers each year.

A Wal-Mart workers' organization would make clear that rights exist, regardless of the strength of the employer, and that these rights must be asserted and protected rather than allowed to wither when these citizens and residents of the U.S. work for the largest private employer in the nation. Indeed, most U.S. employees believe that they have a set of rights on the job that cannot be taken away. "I've got my rights" is an Americanism that has survived even Wal-Mart's totalitarian embrace. The labor movement's task is to help workers realize that organizing actively around their rights has full – and active -- support in their community and among many of those who shop at Wal-Mart. Such an understanding will shatter the atmosphere of fear, intimidation, and deference propagated by Wal-Mart and other labor-intensive retailers. Instead of operating "underground," union-oriented workers and their supporters need to revive the highly visible, direct action tactics pioneered by the civil rights movement.

In New Orleans, for example, we found encouraging results with such a strategy in the hospitality industry, which dominates the labor market for low-wage work. In the late 1990s we developed HOTROC – the Hotel, Hospitality and Restaurant Organizing Committee – a multi-union effort that was able to mobilize thousands in the street, pack governmental hearings, and picket recalcitrant employers, thus moving the political structure of the city to mandate an increase in wages and benefits at many of the city's high-profile hotels and restaurants. With the assistance of Mayor Marc Morial, later of the National Urban League, and much of the City Council, HOTROC leveraged the city's political infrastructure to require minimum standards and a form of union recognition from any developer or investor who sought to build a new hotel or other hospitality enterprise. Such a strategy was successful in unionizing the first newly built hotel in 50 years and it generated commitments for the development of several other projects, until all building plans were put on hold in the wake of the 9/11 attacks.

Governance of a Wal-Mart Workers Association could be a problem – and an opportunity. Would the Wal-Mart Workers Association be a legally defined labor organization under the terms of the Landrum-Griffin Act or a free standing, voluntary association, like the National Rifle Association, ACORN, or the Sierra Club? Does such an organization have a relationship to the AFL-CIO as a directly affiliated labor union, a DALU, which was a commonplace organizational vehicle in the early 1930 when the American Federation of Labor chartered thousands of independent union locals? What relationship would the Wal-Mart Association maintain with the UFCW or the SEIU, who might well have their own organizing projects on tap?

Dues would be nominal, but the certainty that Wal-Mart would refuse to deduct them from each worker's paycheck is actually the kind of obstacle that the Association can turn to its advantage. In any organizing drive, including those of the CIO in the 1930s and the teachers and farm workers in the 1960s, the conversations that took place necessary to convince a worker to part with his or her hard earned cash prove invaluable to the creation of a deeply felt union consciousness and commitment to the organization. At Wal-Mart this kind of talk can be equally radical, transforming "associates" into union brothers and sisters.

If a relatively small proportion of all Wal-Mart workers joined such an association, they would nevertheless constitute a sizable organization. The new organization would enroll some 12,000 workers if just one percent joined. If such an organization could recruit 10 percent of all Wal-Mart employees then we are talking about an association of more than 100,000 members. This would make the new organization larger than most AFL-CIO affiliates. It could then begin to act and speak as an effective, independent voice for the entire Wal-Mart workforce. But let's not get carried away by mathematical speculation – every member will be hard won and hard earned in any new association of workers within this corporation.

A rights-based association might well have a potent public policy voice, pushing for increases in the minimum wage, for more generous family health coverage, and as an advocate for the hundreds of thousands of women and immigrants who suffer the most from Wal-Mart's employment policies. Although the Impact Fund lawyers who are suing Wal-Mart on behalf of Betty Dukes and other female employees have collected hundreds of employment narratives detailing gender discrimination at Wal-Mart, the public impact of this legal action

would be magnified if an actual association of Wal-Mart workers were a party to the suit. Indeed, in the realm of union-side public relations, an organization of actual or retired Wal-Mart employees would have a huge impact. It is not preposterous to imagine that such an organization of workers and former workers might have an important voice in any possible resolution of the many legal actions that are now pending against the giant corporation. A Wal-Mart Workers Association should have a seat at any table in which lawyers and plaintiffs reach a settlement.

Most people don't realize that workers are almost always engaged in some kind of organizing within America's larger companies. In my experience as an organizer, I have found that in any campaign there is *always* a pre-history of worker action around some kind of grievance, whether it is an unjust firing, a missed promotion, or an inequitable wage adjustment. Unionism need not be on the agenda, but that does not mean that collective action of some sort is not underway. Many of these skirmishes turned into shop floor lore, and the individual heroes and heroines that arose – or more often fell – in these hidden battles inspired others to stick out their neck.

Thus whenever I talk to “unorganized” workers I have always been able to find and locate the history of something that passed for struggle and sometimes success: a firing prevented, overtime stopped, a lunch period extended, a pay mistake righted, a hastily drawn petition circulated about the office, a hand waved in the air and a voice raised at injustice. Norma Rae was something for the movies, but men and women in thousands of situations stand up and court job suicide. In the constant guerilla warfare that characterizes the modern workplace, courageous workers are often fired or demoted, but sometimes they actually win a small victory, thus preparing the ground for yet another contest. We need to seed these struggles in stores all over the country.

This is what we call “majority” unionism. In these times of labor weakness we need to examine self-critically any strategy that does not engage and benefit the maximum number of people. For example, SEIU invested at least ten million dollars in an organizing program for lower wage nursing home workers that successfully unionized several thousand workers in Florida. But despite some NLRB election successes, the effort did not significantly boost union density in the state's nursing home industry. Many workers were unable to win collective bargaining agreements at their worksite, and those that did won but a modest wage increase, largely because SEIU had failed to take wages out of competition.

On the other hand, ACORN's Florida campaign to increase the minimum wage in the state proved a stunning success in the 2004 elections, even as George Bush put Florida solidly in the red state camp. The one dollar an hour boost, with future increases indexed to inflation, will cost employers \$250,000,000 within the next year and deliver raises directly and indirectly to 700,000 workers, most in the service sector, and not a few in the same nursing homes SEIU tried so hard to organize. Neither project was possible without extensive organization and resources, nor were any but the most talented professional organizers involved in both campaigns. Yet one campaign proved a relative failure, the other a considerable success. This is the core of the debate between “minority” and “majority” unionism. Are we going to organize mass constituencies or simply privilege small, tightly organized groups. As our strength decreases, progressives in and out of the union movement will have to choose.

Would such an approach “sentence” non union workers to sub-standard pay and benefits? The default answer is that the current implicit insistence on an organizing model that cannot prevail is already an on-the-job death sentence. The real answer, though, is that there is still real power in non-exclusive, non-certified, but active and aggressive on-the-job workers organizations. The ability of such associations to maintain consistent activity, advance demands, and represent their members is the bedrock of any possible worker organization, including the classic union formation. When you have workers moving together and “organized” in the most fundamental fashion, their power trumps collective bargaining, which is simply the engineering of labor peace in exchange for a temporarily defined scale of wages and benefits.

Building an organization has always been the prelude, not the consequence, of collective bargaining. This was the situation before passage of the Wagner Act as well as in the dynamic union-building era right afterwards. Then, union recognition for “members only” was commonplace, almost as routine as the

“exclusive” representation of all workers by one union, which became the norm in the 1940s and the decades afterward. But today, with union density even lower than that of the early 1930s, we should once again explore an organizational form put in place under Franklin Roosevelt’s National Industrial Recovery Administration, the idea of building workplace unions that vigorously represent their members but which do not claim to speak for or enroll a majority of all workers in any given worksite. The legal basis for such an organization, then and now, is Section 7 of the NIRA whose essential language was transposed to the Wagner Act and to every subsequent legislative reinterpretation of that law. Section 7 asserts that “employees shall have the right to self-organization, to form, to join, or assist labor organizations...and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection.” In other words, the labor law encourages collective bargaining, but it also protects “concerted activities” by workers seeking to advance their “mutual aid or protection.” Section 7 does not mandate that a union have majority status, or that there even be an official union. It merely requires that workers seek to better their condition and make that aspiration known to their employer, in order to come under the protection of the labor law.<sup>18</sup>

Thus the first contract that John L. Lewis negotiated with U.S. Steel in March 1937 was a members-only agreement, as were 85 percent of all the early SWOC agreements and 64 percent of those signed by local units of the United Automobile Workers. Indeed, in the late 1930s members-only contracts, signed by both AFL and CIO affiliates, were just as common as majority-exclusive agreements.<sup>19</sup> Today, the experience of the 1930s is largely forgotten and the courts have put some restrictions on the use of Section 7, but the labor law’s defense of “concerted activities” for “mutual aid and protection” has hardly been abolished. Indeed, I would argue that if employers are forced to confront such members-only organizations they will find themselves on the defensive, because such employee organizations rely not only upon the labor law for their legitimacy, but are also protected under the First Amendment rights of assembly, speech, and petition. And if such “unions” demonstrate sufficient strength within the workforce, employers will be forced to treat with them.

The experience of the Communications Workers of America at one General Electric plant is a case in point. Like Wal-Mart, GE is militantly anti-labor. No union has organized a GE facility for more than 20 years, and today only about 10 percent of all GE workers are unionists. So the CWA adopted an organizing strategy called Working at GE, or WAGE. The perspective was long-term: building a sense of collective empowerment on the shop floor would be central to success, while preparing for an NLRB election would be far down on the CWA agenda. WAGE participants paid dues of \$10 a month and they became voting members of the parent union.

CWA set up WAGE committees at a variety of GE plants, but the most successful initiative came at an Auburn, Maine circuit breaker factory. It was a “hot shop” but the spirited WAGE committee there sought to exercise power without going the union recognition route. They got their chance a year after 9/11 when Ken Townsend, a toolmaker reservist, returned to the plant only to find his employment slot downgraded to a production job at lower pay. GE was in technical compliance with the law protecting the jobs of servicemen called to temporary duty, but the Auburn workforce seethed at GE’s patriotic hypocrisy.

Instead of using the incident to get union authorization cards signed, Auburn WAGE sought to use the specter of public criticism to shift management behavior. WAGE drafted a letter to Maine’s U.S. senators and got 130 workers to sign it, a large majority of the plant workforce. Like a strike or other job action, the letter’s greatest effectiveness was as a threat: if management did not back down, they might face public criticism on an issue tinged with patriotism and ethical conduct. The tactic produced results within a week, and Townsend soon got his old job back along with a check for back pay.

Victories of this sort were not uncommon at GE plants where WAGE committees were active. But the jump to full unionization was a parlous one. The WAGE committees participated effectively in CWA’s 2003 GE contract campaign: surveying their members about bargaining issues, sending representatives to the New York City negotiating table, circulating contract language from unionized shops. But when the Auburn WAGE committee attempted to transform itself into a union, GE knew just how to respond. Like Wal-Mart, the company had its seasoned staff of union avoidance experts who rushed to the factory, circulated hostile and

divisive literature, and polarized the workforce. WAGE soon lost much of the goodwill it had earned and the CWA lost a bitter NLRB election battle.<sup>20</sup>

### *The Importance of Organizing Ex-Workers*

Wal-Mart eats up its workers and spits them out. The current claim by the company is that its turnover rate is down to 40% per year. These are big numbers, though, when you have 1.2 million workers. Giving the devil its due on the turnover rate, that still means finding 480,000 new workers every year just to keep even. Hiring more workers each year than any other U.S. company employs is a huge undertaking, but the very size of the ex-employee labor pool also creates a huge source of unhappy workers who are potentially susceptible to a certain kind of “organizing.”

To reform Wal-Mart, we have to organize this huge pool of ex-workers who constitute a sizable part of the retail labor market. To grow, even to maintain an adequate workforce, Wal-Mart depends on their good will, as well as the desperation of those who return to work for the company again and again. Ex-employees are a “Wal-Mart experienced” constituency that is no longer subject to the fear that exists within the four big box walls. They have a direct interest in the various employment related lawsuits that are working their way through the courts and they have the most contacts with the people who are still working at Wal-Mart. Thus an organization of these ex-workers would create a vital, potentially strategic link between the public, the community, and the main body of employed Wal-Mart workers.

But unions in the United States do not organize ex-workers. This may seem an immutable rule, even though it casts aside a huge reservoir of support that can be deployed for political campaigns and community mobilizations. Ex-workers give weight and credibility to calls for change and heighten the urgency of the organizing project with their own stories of pain and peril. Union retirees have long been given status and recognition, but workers who simply quit or are fired, even after years working for the same firm; exist in a kind of limbo. This is because U.S. unions are defined not by the workers who are enrolled, but by the act of working. Thus it requires an employer’s consent for a worker to join an American trade union. Not only must a collective bargaining agreement be in force, but the individual worker must stay on the payroll of a specific firm in a particular location. The unemployed, laid-off, retired, and injured – including many part-time, contingent, and casual workers -- can no longer find a home within the house of labor. Their disenfranchisement must end.

### *Building a Community Alliance to Support Worker Organizing*

Although U.S. unions will not be able to organize Wal-Mart in a traditional fashion, they do have allies, actual and potential, that help them redefine the playing field so that it extends well beyond the four corners of any of the corporation’s huge Supercenters. Environmentalists and community activists are concerned about the impact of big-box sprawl on traffic, tax policy, land use, and residential concentration. Small business people are worried about being squeezed out of the marketplace. Community organizations often focus upon long term planning for their neighborhoods, preferential hiring programs, and guarantees against store abandonment. Women’s organizations are rightly concerned about sex discrimination in hiring and promotions, while civil rights groups have noted that Wal-Mart’s managerial culture retains a white, Southern flavor.

Anti-sweatshop activists have grown alarmed at Wal-Mart’s squeeze on its overseas suppliers, while those involved in the national debate over health care financing protest that Wal-Mart’s expensive and restrictive health benefit coverage pushes many employees to seek taxpayer funded health assistance from thinly stretched state and municipal programs. And it is just possible that the Democrats have finally come to realize that their fate is tied to that of labor’s revival in the red states. As Michael Tomasky, the executive editor of American Prospect, put it in a post mortem on the 2004 elections, “To me, the effort to organize Wal-Mart is what it’s all about. That’s a very hard fight that could take 20 years, but if the unions can organize the Wal-Mart stores that would be a titanic historical victory, like organizing the coal mines in the past.”<sup>21</sup>

So Wal-Mart stands at the cross roads. It is the obstacle, the swampy low-wage terrain that stands athwart so many progressive initiatives in contemporary American politics and social life. The transformation of the Wal-Mart business model, let alone the organization of its employees, would have a transformative impact within the United States. And it is Wal-Mart's very size and visibility that has turned the company into such a focus of concern for so many who stand on the left, or even at the center, of our politics. The sheer size and multifaceted involvement of the company in so many issues of pressing social and economic concern give it a gravitational weight that pulls together a countervailing set of interests and social elements within the U.S. population.

The key to building a large community/labor alliance is coming to agreement on a common set of *rules of engagement* for the coalition and its work in convening all of these disparate formations. Such rules would include an agreement by all organizations not to settle at inferior terms until there is a more "global" settlement that includes protections and advancement for Wal-Mart workers. Such rules would need to address the kind of tactics deployed against the retail giant, holding in check the impulse of some liberals to attempt a boycott of Wal-Mart, which, as Barbara Ehrenreich has pointed out, might well divide one part of the progressive coalition from the Wal-Mart clerks and working-class consumers who have found the company an indispensable part of their daily routine. The point is to reform Wal-Mart, its business model, and its posture in our cities and suburbs.

This was the perspective taken by labor, ACORN, and minority politicians in Chicago when Wal-Mart sought to locate two stores within the inner city early in 2004. This labor/community coalition did not seek to deny the company entry to Chicago but sought to force it to operate on principles sustaining a set of "community benefits"<sup>22</sup> that included health care coverage, a high starting wage, and employment of local residents. This approach blunted the force of Wal-Mart's usual urban argument: it would bring hundreds of permanent jobs to desperate intercity neighbors that were poorly served by existing retail outlets. Thus Wal-Mart had to bow out of the Chicago site fight. The company could not re-position itself as a good corporate citizen against a simple, but persuasive argument that Wal-Mart was welcome, but had to meet community standards. This approach has actually been institutionalized in Los Angeles where the city council passed a municipal ordinance in 2004, mandating that the largest big box stores pay for an "economic impact assessment" before they win zoning approval. As in Chicago, this is just the sort of initiative that will make Wal-Mart's employment policies subject to political debate and potential reform.

Living wage campaigns are themselves among the best tactical gambits because they define what constitutes fair and adequate employment, making Wal-Mart and its practices stand out in embarrassing relief. And such campaigns embolden Wal-Mart workers. If these campaigns are highly visible and well-endorsed by clerics, environmentalists, and civic leaders, they can serve to focus and legitimize the heretofore inchoate aspirations of the Wal-Mart "associates" themselves.

Although a consumer boycott would be counterproductive at Wal-Mart, the growth of a "boycott" by potential workers is a real possibility. When companies get a bad reputation, the quality of the labor market from which it draws new recruits may well decline. And given Wal-Mart's huge turnover rate, and its outsized appetite for new hires, this very phenomenon seems to have begun to impact Wal-Mart's expansion plans. Executives of the company have declared, in depositions taken as part of the Impact Fund's gender discrimination suit, that Wal-Mart has the capacity to open more than 300 stores a year if they could hire enough management and line workers to staff the new facilities. This is an Achilles heel for the company and a critical place where our strategy of community, citizen, and worker engagement should focus.

Polarizing the marketplace is a brutal, hardball process, which often does not favor progressive forces, but certainly does not favor Wal-Mart either. "Site fights" in themselves, for example, have very little value in stopping the company or its expansion program. Wal-Mart will open hundreds of stores each year, even if they are not located in precisely those urban areas that resist the company with the greatest determination. But site fights do put the company, its practices and plans squarely in front of the entire public, and polarize public sentiment for and against Wal-Mart's labor practices.

Does the company understand this? Absolutely! Just walk into the entry way of any Wal-Mart store and observe the giant wall murals celebrating the local high school or other popular local institution. And more to the point, Wal-Mart now devotes the bulk of its radio and TV advertising budget to institutional spots that tout, not the firm's "always low prices," but the good careers and friendly people found at the giant company.

Indeed, when CEO H. Lee Scott told more than 20,000 "associates" attending the 2004 Wal-Mart annual meeting in Fayetteville, that the company would pay store managers their bonuses based not just on store profits, but on managerial adherence to the labor law, top executives were making a concession to the public uproar over Wal-Mart's skirt-the-law business model.<sup>23</sup> But Scott has also made clear that he understands the ideological stakes at play in the Wal-Mart public relations counteroffensive. Speaking in Los Angeles, which may be the epicenter of resistance to Wal-Mart's invasion of coastal California, Scott declared in early 2005 that it was not just the UFCW that was "seeking to create public confusion" about company wages and benefits. Rather, "our critics seem to have a broader and, I believe, more troubling aim: to warp the vital debate the country needs in the years ahead about the proper role of business and government in assuring that capitalism creates a decent society."<sup>24</sup>

### What is to be Done?

The American trade union movement recognizes that organizing Wal-Mart, or at least pressuring the company to substantially modify its low-wage, low-benefit employment strategy, is far too large a task to be left to any one union.

This became absolutely clear in the wake of the devastating defeat suffered by the UFCW in 2003 and 2004 during a 15 week-long strike in Southern California designed to prevent wages and benefits in the unionized grocery markets there from falling to Wal-Mart levels. The AFL-CIO has singled out the Wal-Mart as uniquely important and pernicious, and the SEIU has put at least a million dollars on the line to start building a national coalition capable of reforming Wal-Mart's employment policies and inaugurating a long-term unionization project.

Perhaps this is all just posturing, more about tactics than strategy. But increasingly there seems to be real traction and commitment in the ranks of labor and its allies that goes back to the founding principle that an "injury to one is an injury to all." Wal-Mart is too big to be ignored. It is injuring everyone in the house of labor. To put these ideas and theories to field tests and trial runs – or any real organizing plan – will take a huge commitment of resources, both dollars and staff. These are not easy to find in George Bush's America, but this seems to be the time, and if it is not the right time, it still may be our last, best opportunity.

At the end of the day it still comes down to whether or not workers will move and engage the company. It is clear that Wal-Mart workers – and the vast majority of American workers – are voting with their feet right now, and moving nowhere. Workers organize and act when they believe that they have a chance not just to fight, but also to win. American labor is ready to assist them in building organizations that meet their demands in these difficult times. If we stumble on the right combination that meets the challenge of a Wal-Mart and those that would mimic its operations, then something very "real" and very "strong" indeed will once again be built by and for American workers.

As the back of the blue vest in every Wal-Mart store says, "Can I help you?" If we can, something different and powerful will happen here!

---

<sup>1</sup> Wal-Mart Press Release, [www.walmart.com](http://www.walmart.com), November 23, 2004.

<sup>2</sup> David Barboza, "Wal-Mart Bows to Trade Unions at Stores in China," *New York Times*, November 25, 2004, p. C1.

<sup>3</sup> Ibid.

<sup>4</sup> Emphasis added.

<sup>5</sup> Arguably the 1997 United Parcel Service - Teamsters Strike was among the last national strikes that at least felt victorious.

<sup>6</sup> Matt Bai, "The New Boss," The New York Times Magazine, January 30, 2005, 40-47

<sup>7</sup> Steven Greenhouse, "How Do You Drive Out a Union? South Carolina Factory Provides a Textbook Case," New York Times, December 14, 2004, A30 reports the painful, but true, tale of the thwarted and expensive efforts on one group of workers to prevail in South Carolina.

<sup>8</sup> Check for source and accuracy.

<sup>9</sup> For a longer treatment of the argument see Wade Rathke, "Majority Unionism," Social Policy, Volume 35, #3 (Spring 05) or an earlier piece done for the International Executive Board of the Service Employees International Union, Seattle, June 2003, available at [www.chieforganzier.org](http://www.chieforganzier.org)

<sup>10</sup> In one survey 44 percent of workers said they wanted an organization "strongly independent" of management, while another 43 percent wanted to be members of a "somewhat independent" group. Richard Freeman and Joel Rogers, What Workers Want (Ithaca: Cornell University Press, 1999), 147.

<sup>11</sup> New York Times, February 5, 2005.

<sup>12</sup> Melian Debate, Thucydides. Get better cite. History of Greek Wars.

<sup>13</sup> Information received by the author in a personal interview with Mike Fraser, Canadian Director, UFCW, Toronto, July 2004.

<sup>14</sup> Adam Geller, "Canadian Wal-Mart Seeking Union to Close," February 9, 2005, AP Business Wire.

<sup>15</sup> See particularly, In Same We Trust, by Bob Ortega.

<sup>16</sup> Steven Greenhouse, "At a Small Shop in Colorado, Wal-Mart Beats a Union Once More," New York Times, February 26, 2005, A7.

<sup>17</sup> Philadelphia Business Journal, January 2005.

<sup>18</sup> Judy Atkins and David Cohen, "A Proposal for a 21<sup>st</sup> Century Trade Union Education League," Working USA (Winter 2004), .

---

<sup>19</sup> Charles Morris, The Blue Eagle at Work: Reclaiming Democratic Rights in the American Workplace (Ithaca: Cornell University Press, 2005), 5-6. Of course, most unions thought they could deploy more bargaining power if they were the exclusive representative of the workers, preferably under a union-shop contract.

<sup>20</sup> Paul Bouchard, "Organizing: Union Takes the Long, Bottom-Up Route at GE" Labor Notes (July 2002), 6.

<sup>21</sup> "Left Behind: Can the Democrats Become a Majority Party Again? A Discussion," New York Times Book Review, March 6, 2005, 15.

<sup>22</sup> A recent potential breakthrough in community benefits agreements may be the landmark \$500M set of concessions to community and labor partners in Los Angeles around the expanded construction of the LAX airport facility.

<sup>23</sup> Constance Hays, "Wal-Mart Plans Changes to Some Labor Practices," New York Times, June 4, 2004, C2.

<sup>24</sup> "Wal-Mart and California: A Key Moment in time for American Capitalism," An address by Lee Scott, President & CEO, Wal-Mart Stores, Town Hall Los Angeles, February 23, 2005 at [www.walmartfacts.com](http://www.walmartfacts.com).