

Wal-Mart's Great Fight North

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For years, Wal-Mart's North American stores have been entirely free of unions. That's changed very quickly over the past weeks. On Dec. 17, more than 150 Wal-Mart workers in Hull, Quebec, became members of the United Food and Commercial Workers [1] when a provincial labor board awarded them the right to do so. On Dec. 8, in a similar decision, a labor board certified a union in Weyburn, Saskatchewan, after a four-year battle between the union and the Bentonville, Ark.-based retailer.

These are certainly dramatic developments, but unions—even in relatively pro-union Canada—have a very tough time when up against giants like Wal-Mart. Compared with U.S. labor law, Canadian labor law is far friendlier to workers seeking to join unions. While the United States requires a Byzantine and contentious election process, Canada requires an employer to recognize a union after enough workers sign cards or take a quick vote. Canada also places far more restrictions on employers' anti-union campaigning.

Yet in recent years, when Canadian labor has tried to take on famously anti-union U.S.-based multinationals like Wal-Mart [2] and McDonald's, the unions have nearly always lost in the end. Why is that? And what does the record bode for U.S. labor, which has staked nearly all its hard-earned political capital on a piece of legislation called the Employee Free Choice Act, which would legally put the U.S. on a footing similar to Canada's?

Nelson Lichtenstein, a history professor at the University of Santa Barbara who is working on a book about Wal-Mart and has extensively studied both U.S. and Canadian unions, is not terribly optimistic about the newly organized Wal-Marts. "Wal-Mart is going to stonewall," he told *The Big Money*, "and they have the option to close the store." Indeed, the last time Wal-Mart workers in Canada voted to join a union—in Jonquiere, Quebec, in 2005—the company did exactly that [3].

Canadian efforts to unionize low-wage U.S. giants have been consistently thwarted. The Canadian Auto Workers, which has organized several fast-food chains in British Columbia, unionized a McDonald's [4] store in 1998. But less than a year later, the company succeeded in decertifying the union [5]. It fired an unpopular manager (thus removing one reason for organizing), threw parties for the mostly teenage work force, and wore the employees down through myriad legal challenges. In St. Hubert, Quebec, the previous year, McDonald's closed a restaurant after a large majority of its workers voted to join the Teamsters.

Less than a handful of anti-union U.S. companies have been significantly unionized in Canada. Workers at some Kentucky Fried Chicken outlets in British Columbia are represented by the Canadian Auto Workers, but Roger Crowther, a former CAW organizer, told TBM this only happened because KFC acquired White Spot, a Canadian company that

was already unionized, and under provincial law those employees could be grandfathered into a union. Crowther's local did make significant inroads at Starbucks [6] in the late 1990s. At one point the union represented 12 shops in British Columbia, but all of these have since been decertified.

In the land of socialized medicine where unions represent 18 percent of the private work force—twice the unionization rate in the U.S.—why can't labor beat these U.S. Goliaths?

Partly, it's because the companies hold the ultimate trump cards. Closing the store, or threatening to do so, says Crowther, is the most powerful weapon in a company's arsenal. Although using closures as retaliation for organizing is against the law in both Canada and the United States, it's a violation that, according to Crowther, "the trade union movement on both sides of the border is usually unable to prove." Once the threat is made—or a store is closed in one location to send a message to workers elsewhere—employees feel their jobs are in danger, and "it's very different to unring that bell," Crowther explains. "It has a real chilling effect." Labor courts generally accept the companies' explanations for store closings—that is, that the decision was made for reasons unrelated to the union—even when they seem transparently false. Paul Meinema, president of UFCW Local 1400, which just won the favorable decision in Saskatchewan, derided Wal-Mart's usual store-closure defenses: "It's a very profitable company, and coincidentally the one store that is unionized is 'not profitable.' "

Many of these battles, Crowther observes, have been lost because the newly unionized workers can't get the company to agree to a first contract. The workers then feel the union isn't doing anything for them and, reasonably, don't want to pay dues out of their low wages. Meaningful labor-law reform in both Canada and the United States, he says, would allow a labor board to impose that first contract if a company is not bargaining in good faith.

Still, the laws and their scattershot enforcement are not the whole story. "The problem," explained Sam Gindin, former chief economist and assistant to the president of the Canadian Auto Workers and now a professor at York University, "is not just the law but the state of the union movement." When companies are determined to fight unions, it takes creativity and dedication to beat them no matter what the legal environment. Some, Gindin noted, "give up too easily if they're uncertain about the cost-benefit analysis of getting low-dues, high-maintenance workers." Workers at U.S.-based retailers or fast-food chains earn low wages and endure plenty of rights violations, creating a lot of problems for a union to resolve in exchange for not much revenue in membership dues. As a result, Gindin says, many Canadian unions don't fight very hard for such workers.

Gindin also observes that unions in Canada don't work together on these big campaigns; if they did, they'd have a better chance of winning. Labor victories like those in Hull and Weyburn are hard-won, but they won't last unless they become part of a much broader North American movement in which many more people are willing to organize to defend workers' rights. "This is not like the 1930s," Lichtenstein points out, "when there was a real crescendo, a cavalcade of labor organizing." Lichtenstein, also the author of *State of the Union: A Century of American Labor*, points out that civil rights activists in the 1960s were effective not just because they passed new laws but because those laws were accompanied by a "transformation in American mores." When activists convinced enough Americans that racism was morally unacceptable, it became politically unwise for employers to discriminate; in his book, Lichtenstein argues that workers' rights need to become the

center of a social movement in the same way.

It's too soon to tell, but it's possible that we're seeing the beginnings of similar agitation on both sides of the border. Workers in Chicago earlier this month occupied a factory—an event essentially unprecedented in this country since the Depression. Not only was this action supported by the president-elect of the United States, but both Bank of America and JPMorgan Chase acted quickly to meet the workers' demands. After 15 years of fighting the company, Smithfield workers in Tar Heel, N.C., finally voted to join the United Food and Commercial Workers. Even pilots at JetBlue, long regarded as the Wal-Mart of the skies, will be voting this month on whether to unionize. These could be early signs, Lichtenstein says, of a "shift in the general sentiment." Without such a shift, he says, the Canadian experience shows that labor-law reform would be "just more work for lawyers."

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