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Checking Out: The Rise of Wal-Mart and the Fall of Middle Class Retailing Jobs

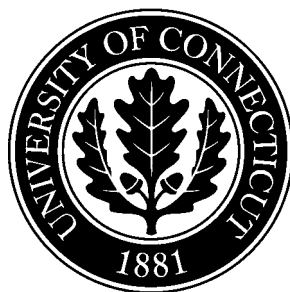
ERIN JOHANSSON

The following Article examines the labor standards at Wal-Mart, including the poor compensation, difficult working conditions, and most importantly, the company's ability to remain union-free, which I argue is primarily the result of a companywide strategy to prevent and quash union efforts.

The second part of the Article focuses on Wal-Mart's impact on the grocery industry, which it now dominates. Our communities and elected leaders mourn the loss of good manufacturing and technology jobs, but retail jobs are dismissed as low-wage, dead-end jobs. Yet middle-class standards that have characterized grocery jobs, won through decades of collective bargaining, are being lost under Wal-Martization. This Article illustrates the devastating toll on workers and their communities as wages and benefits are slashed and once secure jobs are lost. The Article serves as an example for how the retail giant threatens to wipe out middle-class jobs and the American dream as we know it.

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Checking Out: The Rise of Wal-Mart and the Fall of Middle Class Retailing Jobs

ERIN JOHANSSON*

I. INTRODUCTION

Wal-Mart's image as an employer has suffered tremendously in 2006. The company repeatedly made news with its plans to expand its part-time workforce at the expense of full-time positions, its stringent new attendance policy, and wage caps that prevent longtime employees from receiving raises.¹ A jury awarded "\$78.4 million to thousands of Wal-Mart employees . . . forced to work . . . off the clock."² Turmoil continued as hundreds of employees at a Florida store organized a protest against a plan to cut their hours.³ And Ron Galloway, director of a pro-Wal-Mart film, recently resigned from Working Families for Wal-Mart over the company's decision to impose wage caps.⁴

These troubling headlines of Wal-Mart's employment policies have rightly generated concern among Americans who want to see better treatment for the company's 1.3 million employees. Yet Wal-Mart's labor standards are a problem for more than just its employees. As the nation's largest private employer, Wal-Mart is the General Motors (GM) of this generation, setting standards for not just its workers, or the retail industry, but for workers in a myriad of industries and occupations across the country. GM created family-supporting jobs that inspired other employers to follow—a result achieved through decades of collective bargaining by employees.

But unlike GM, Wal-Mart employees have no union and, therefore, are without the democratic structure allowing them to demand better pay and

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¹ Steven Greenhouse & Michael Barbaro, *Wal-Mart to Add More Part-Timers and Wage Caps*, N.Y. TIMES, Oct. 2, 2006, at A1, available at LEXIS, News Library, NYT File; Kris Hudson & Kris Maher, *Wal-Mart Adjusts Attendance Policy*, WALL ST. J., Oct. 14, 2006, at A3, available at LEXIS, News Library, WSJNL File.

² Hudson & Maher, *supra* note 1.

³ Steven Greenhouse, *Florida Wal-Mart Workers Stage Protest*, N.Y. TIMES, Oct. 17, 2006, at C9, available at LEXIS, News Library, NYT File.

⁴ Abigail Goldman, *Wal-Mart Fan Disagrees With Its Wage Caps*, L.A. TIMES, Oct. 11, 2006, at C3, available at LEXIS, News Library, LAT File.

working conditions. Consequently, as go Wal-Mart jobs, so go American jobs—low standards without union representation to lift them. This is why we must pay attention to Wal-Mart.

This Article examines the labor standards at Wal-Mart, including poor compensation, difficult working conditions, and most importantly, the company's ability to remain union-free. I will argue that Wal-Mart's ability to remain union-free is primarily the result of a company strategy to prevent and quash union efforts.

The second part of the Article focuses on Wal-Mart's domination of the grocery industry. Our communities and elected leaders mourn the loss of good manufacturing and technology jobs, but retail jobs are dismissed as low-wage, dead-end jobs. Yet middle-class standards that characterize grocery jobs—characterization won through decades of collective bargaining—are eroding under "Wal-Martization." This Article illustrates the devastating toll on workers and their communities as wages and benefits are slashed and secure jobs are lost. The case study serves as an example for how the retail giant threatens to wipe out middle-class jobs and the American dream as we know it.

II. DRAGGING DOWN U.S. LABOR STANDARDS

A. *Wal-Mart: The General Motors of the 21st Century?*

Today, with 1.3 million employees in the United States, Wal-Mart is this country's largest private employer.⁵ Given the retail giant's size, it is no surprise that comparisons are drawn between it and another legendary U.S. corporation, GM. Because of demands made by employees through the United Auto Workers (UAW), GM helped build a solid middle class. Employment standards at GM improved through decades of negotiations with the UAW. For example, between 1947 and 1973, employees were guaranteed annual increases above the cost-of-living, causing the real income of these workers to double in that time.⁶ Other workers also benefited from these gains. Because GM was the nation's largest employer, its good employment standards were mimicked by other manufacturers, regardless of whether they were union-represented.⁷

But the standards set by Wal-Mart stand in sharp contrast to GM. In 1950, GM CEO Charles Wilson earned 135 times what an assembly worker earned, and in 2003, Lee Scott earned 1450 times what a full-time

⁵ WAL-MART FACTS, CORPORATE FACTS: WAL-MART BY THE NUMBERS, http://www.walmartfacts.com/FactSheets/7262006_Corporate_Facts.pdf (last visited Feb. 2, 2007).

⁶ Nelson Lichtenstein, *From General Motors to Wal-Mart: Templates for an Era*, Address at the University of California, Santa Barbara Conference: Wal-Mart: Template for 21st Century Capitalism? 5 (Apr. 12, 2004) (transcript on file with Connecticut Law Review).

⁷ *Id.*

hourly Wal-Mart employee earned.⁸ According to the latest company figures, the average hourly wage of a full-time Wal-Mart worker is \$10.11,⁹ which is nearly half the U.S. average of \$18.21.¹⁰ Wal-Mart also pales in comparison in its health-care coverage for employees. In 2002, Wal-Mart spent an average of \$3500 on health benefits per covered employee, which is 40% less than the average U.S. corporation spent and 30% less than the industry average.¹¹ Now only 46% of Wal-Mart's employees are covered by the company's health insurance plan.¹²

Wal-Mart is not just setting standards for Wal-Mart though—its practices threaten to lead other employers down the low road in more sectors of the economy. Aaron Bernstein warns of the “Wal-Martization” of the economy, in which “America had already embraced Wal-Mart-like stratagems to control labor costs, such as hiring temps and part-timers, fighting unions The result has been an erosion of one of America's most cherished values: giving its people the ability to move up the economic ladder over their lifetimes.”¹³ So Wal-Mart may very well be the new GM. But instead of moving the country forward, Wal-Mart is driving our workers in reverse.

B. *Utter Disrespect: Work Life at Wal-Mart*

Wal-Mart has been embroiled in numerous lawsuits over charges of widespread violations of federal employment laws. In 2001, to settle federal charges of discrimination Wal-Mart was required to pay over \$6 million to settle thirteen federal discrimination lawsuits brought by disabled applicants who the company failed to hire.¹⁴ In 2005, the company settled federal charges in three states for allowing at least eighty minors to use hazardous machinery.¹⁵ In the past year, a Pennsylvania jury

⁸ *Id.* at 6.

⁹ Emily Kaiser, *Wal-Mart Could Hike Pay and Keep Prices Low: Study*, REUTERS, June 15, 2006, available at LEXIS, News Library, REUNWS File.

¹⁰ U.S. Dep't of Labor, Bureau of Labor Statistics, May 2005 National Occupational Employment and Wage Estimates, http://www.bls.gov/oes/current/oes_nat.htm#b00-0000 (last visited Feb. 2, 2007).

¹¹ Bernard Wysocki Jr. & Ann Zimmerman, *Bargain Hunter: Wal-Mart Cost-Cutting Finds a Big Target in Health Benefits*, WALL ST. J., Sept. 30, 2003, at A1, available at LEXIS, News Library, WSJNL File (citing estimates made by Mercer Human Resource Consulting).

¹² Kris Hudson, *Wal-Mart to Trim Options for Health Coverage*, WALL ST. J., Sept. 28, 2006, at B2, available at LEXIS, News Library, WSJNL File.

¹³ Aaron Bernstein, *Waking-Up From the American Dream*, BUS. WK., Dec. 1, 2003, at 54, available at LEXIS, News Library, BUSWK File.

¹⁴ GEORGE MILLER, STAFF OF COMM. ON EDUCATION AND THE WORKFORCE, 108TH CONG., EVERYDAY LOW WAGES: THE HIDDEN PRICE WE ALL PAY FOR WAL-MART, REPORT ON WAL-MART'S LABOR RECORD (2004), available at <http://www.mindfully.org/Industry/2004/Wal-Mart-Labor-Record> 16feb04.htm.

¹⁵ Ritu Kalra, *Wal-Mart Fined Over Child Labor*, HARTFORD COURANT, June 18, 2005, at A1, available at LEXIS, News Library, HTCOUR File.

awarded thousands of Wal-Mart employees \$78.4 million because the company illegally forced them to work through meal breaks and “off the clock.”¹⁶ Similarly, in a California court, the company was ordered to pay \$172 million in damages for failing to provide meal breaks.¹⁷ According to Wal-Mart’s 2006 Annual Report, the company is facing numerous wage and hour lawsuits.¹⁸

Currently, the company is the defendant in the largest civil rights class-action suit filed against a private employer. The pending case, *Dukes v. Wal-Mart, Inc.*, charges that women are systematically denied promotions, receive lower pay, and are not given the same training and job assignments that men receive.¹⁹ In 2001, women comprised 65.2% of hourly employees and only 33.2% of salaried management at Wal-Mart.²⁰

The certification of so many class action lawsuits, and the presence of similar violations in multiple states, indicate that these problems are systemic rather than isolated acts of a few bad managers. But even lawful employment practices trouble some Wal-Mart’s employees. According to workers in stores across the country, Wal-Mart expects employees to be at its beck and call.²¹ Employees at a store in West Virginia were informed that they would be fired if they could not commit to working any shift between 7 a.m. and 11 p.m., seven days a week.²² Employees at a store in Florida recently organized a protest in response to the loss of consistent schedules.²³ And in the beginning of 2007, further removing any predictability for its employees, Wal-Mart announced its use of a new computerized system to schedule staff based on the number of customers in the store.²⁴

¹⁶ Hudson & Maher, *supra* note 1.

¹⁷ Lisa Alcalay Klug, *Jury Rules Wal-Mart Must Pay \$172 Million Over Meal Breaks*, N.Y. TIMES, Dec. 23, 2005, at A22, available at LEXIS, News Library, NYT File.

¹⁸ WAL-MART, 2006 ANNUAL REPORT: BUILDING SMILES 42–43 (2006), available at http://media.corporate-ir.net/media_files/irol/11/112761/2006_annual_report.pdf.

¹⁹ *Dukes v. Wal-Mart, Inc.*, 474 F.3d 1214 (9th Cir. 2007) (holding that expert opinions, factual evidence, statistical evidence, and anecdotal evidence presented significant proof of discrimination); see also *Dukes v. Wal-Mart Stores, Inc.*, 222 F.R.D. 137, 153–69 (N.D. Cal. 2004) (describing in detail the alleged discrimination at Wal-Mart). For a comprehensive examination of gender discrimination at Wal-Mart, see LIZA FEATHERSTONE, *SELLING WOMEN SHORT: THE LANDMARK BATTLE FOR WORKERS’ RIGHTS AT WAL-MART* 97–98 (2004).

²⁰ Expert Report of Dr. William T. Bielby, *Dukes v. Wal-Mart Stores, Inc.*, 222 F.R.D. 189 (N.D. Cal. 2004), available at <http://www.walmartclass.com/staticdata/reports/r3.html>.

²¹ See Greenhouse, *supra* note 3 (reporting that employees at a Florida Wal-Mart wrote a letter to their manager, complaining that there is “no consistency” in their schedules); Greenhouse & Barbaro, *supra* note 1 (reporting that some Wal-Mart workers have said that “some managers have insisted that they make themselves available around the clock”).

²² *Wal-Mart Store Orders Workers to Work Any Shift or Face Dismissal*, ASSOCIATED PRESS, June 15, 2005, available at LexisAcademic, Wire Services.

²³ Greenhouse, *supra* note 3.

²⁴ Kris Maher, *Wal-Mart Seeks New Flexibility in Worker Shifts*, WALL ST. J., Jan. 3, 2007, at A1, available at LEXIS, News Library, WSJNL File.

Ellen Rosen of Brandeis University interviewed Wal-Mart managers and employees who complained of the company's expectation that employees must work 24/7.²⁵ Bill Thomas, a former manager, told Rosen that no employee could sustain such a commitment of availability: "After two to three weeks of working like a dog and figuring out alternative babysitters and daycare and trying to juggle their life around, they come and say they've either got to quit or they've got to change their availability."²⁶

Wal-Mart claims to demand scheduling flexibility in order to staff stores during the busiest times.²⁷ Yet, a leaked memo revealed the company's plan to create a heavily part-time workforce and rid itself of what it viewed as more expensive longtime employees.²⁸ With an apparent lack of regard for employee loyalty, it is no surprise that the company witnessed turnover among full-time employees increase from 30 to 45% in 1995 to almost 56% in 2000.²⁹ This turnover has a price: the cost of replacing the 600,000 to 700,000 employees that leave Wal-Mart per year is estimated at \$1.4 billion.³⁰

For the employees who still need or like their job, few options exist for trying to improve their pay, scheduling, or working conditions at Wal-Mart. With the extremely centralized management of Wal-Mart, employees have little influence over their work-life. High-level managers at the company's Bentonville, Arkansas headquarters exercise a huge amount of control over the employment practices in stores across the country. According to James Hoopes of Babson College, the "invisible hand" of Wal-Mart's centralized management governs both broad employment practices and minute details of employees' work schedules.³¹ With centralized information on when sales rise and fall in a given store, Bentonville pressures store managers to continuously adjust work schedules and issue hiring and firing orders.³²

²⁵ Ellen I. Rosen, Technology, 'People Policy' and the Quality of Work at Wal-Mart, Address at the University of California at Santa Barbara Conference: Wal-Mart: Template for 21st Century Capitalism? 8 (Apr. 12, 2004) (transcript on file with Connecticut Law Review).

²⁶ *Id.* at 4, 8.

²⁷ *Wal-Mart Store Orders Workers to Work Any Shift or Face Dismissal*, *supra* note 22.

²⁸ Steven Greenhouse & Michael Barbaro, *Wal-Mart Memo Suggests Ways to Cut Employee Benefit Costs*, N.Y. TIMES, Oct. 26, 2005, at C1, available at LEXIS, News Library, NYT File.

²⁹ Douglas P. Shuit, *People Problems on Every Aisle*, WORKFORCE MGMT., Feb. 2004, at 27.

³⁰ *Id.*

³¹ James Hoopes, Growth Through Knowledge: Wal-Mart, High Technology, and the Ever Less Visible Hand of the Manager, Address at the University of California at Santa Barbara Conference: Wal-Mart: Template For 21st Century Capitalism? 21 (Apr. 12, 2004) (transcript on file with the Connecticut Law Review).

³² Carlos Tejada & Gary McWilliams, *New Recipe for Costing Savings: Replace Highly Paid Workers*, WALL ST. J., June 11, 2003, at A1, available at LEXIS, News Library, WSJNL File.

If Wal-Mart's store managers have little power to change the working conditions of their employees, how are employees themselves suppose to? Given the countless problems facing employees at Wal-Mart, forming a union would seem logical. Yet, for all of Wal-Mart's 3900 stores and 1.3 million employees in the United States, there are no unions.³³

C. *Wal-Mart's Union-Free State*

"[Wal-Mart] had everybody scared to death if you even mentioned union."

– Joe Hendricks, former Wal-Mart meat cutter

Unions provide members with job security, higher wages, good benefits, and a voice on the job, so why are Wal-Mart workers not organizing? Given that 53% of non-union workers say they would form a union in their workplace tomorrow if they could,³⁴ how does Wal-Mart explain its entirely union-free state? According to the company, its employees do not want union representation. "Our associates tell us they don't want to spend extra money to do something they now can do for free, to discuss ideas and concerns openly with management."³⁵

Wal-Mart's argument simply does not hold water in the face of evidence of pervasive union-busting. Between 1998 and 2003, 288 unfair labor practice charges were lodged against Wal-Mart accusing the company of interfering with its employees' freedom of association.³⁶ Of these charges, at least ninety-four resulted in formal complaints brought against Wal-Mart by the National Labor Relations Board (NLRB).³⁷ Among the NLRB complaints were forty-one charges of terminating employees for union activity, fifty-nine charges of surveillance of union activity, and fifty-nine charges of interrogation.³⁸ The agency's

³³ Wal-Mart Facts, Employment and Diversity, <http://www.walmartfacts.com/FactSheets/> (follow "Employment and Diversity" hyperlink) (last visited Feb. 8, 2007).

³⁴ PETER D. HART RESEARCH ASSOCS., AFL-CIO, LABOR DAY 2005: THE STATE OF WORKING AMERICA 6 (2005), available at http://www.aflcio.org/aboutus/laborday/upload/ld2005_report.pdf.

³⁵ Erik C. Huey, *Ex-worker, Union Take on Wal-Mart*, LAS VEGAS REV. J., Jan. 17, 2004, at 1D, available at LEXIS, News Library, LVRJNL File (quoting Wal-Mart spokesperson, Christie Gallagher).

³⁶ Memorandum from the NLRB to Erin Johansson (June 28, 2005) (on file with Connecticut Law Review) [hereinafter NLRB Memorandum]; Memorandum from the United Food and Commercial Workers Union (UFCW) to Erin Johansson (June 28, 2005) (on file with Connecticut Law Review) [hereinafter UFCW Memorandum]. The NLRB list only included closed cases. The list provided by the UFCW included all the charges the union filed, both closed and open cases. The two lists combined may be missing charges filed by another union or an individual that are still open.

³⁷ NLRW Memorandum, *supra* note 36; UFCW Memorandum, *supra* note 36.

³⁸ NLRW Memorandum, *supra* note 36; UFCW Memorandum, *supra* note 36.

prosecution of unfair labor practices resulted in at least eleven rulings against the company and twelve settlements.³⁹

According to former NLRB General Counsel, Leonard Page, who served under the Clinton Administration, “[t]here were 5 or 6 different organizing drives at different stores that showed a common pattern of illegal conduct. It appeared to involve, ah, rather high officials of Wal-Mart stationed in Bentonville.”⁴⁰ Yet, despite the sheer size of Wal-Mart’s file and evidence of a centralized strategy, the Bush Administration has not pursued a company-wide investigation of labor law violations. It is not unprecedented for the NLRB to investigate and pursue remedies based on company-wide anti-union practices, such as it did with Beverly Enterprises.⁴¹

Washington Post business columnist, Steven Pearlstein, questioned the NLRB’s conclusion that there was not enough evidence to open an investigation of Wal-Mart’s corporate-wide anti-union practices.⁴² Pearlstein asserted, “[w]hat the Wal-Mart case signals to every employer and worker in America is that the right to form a union is now a cruel joke and an empty promise.”⁴³

Despite Wal-Mart’s apparent willingness to violate labor law, the company does not even need to break the law to stay union free. It is not illegal for a manager to call the company’s ‘Union Hotline’ upon the first mention of the word “union” in the store. It is not illegal for Wal-Mart to fly in top-level managers from Bentonville to visit the store and force employees to participate in anti-union presentations. It is not illegal for the company’s supervisors to hold one-on-one meetings with workers to advise them against choosing union representation. Such maneuvers—working within the confines of the spineless National Labor Relations Act—have likely contributed to Wal-Mart’s union-free status.

D. *Open Door or Out the Door Policy?*

Wal-Mart founder, Sam Walton, was resoundingly anti-union and boasted in his 1992 autobiography that “we’ve never lost a union

³⁹ NLRW Memorandum, *supra* note 36; UFCW Memorandum, *supra* note 36.

⁴⁰ *NOW: Off the Clock* (PBS television broadcast Nov. 8, 2002), available at http://www.pbs.org/now/transcript/transcript_walmart.html.

⁴¹ Recently, the Seventh Circuit upheld an NLRB order for Beverly Enterprises to cease and desist violating its employees’ rights to organize in all of its facilities, not just those involved in the specific case. This remedy was based on the high number of violations committed at multiple locations, and given the centralized control of its human resource policies. *Beverly Cal. Corp.*, 326 N.L.R.B. 153 (1998), *aff’d*, 227 F.3d 817 (7th Cir. 2000).

⁴² Steven Pearlstein, *Workers’ Rights are being Rolled Back*, WASH. POST, Feb. 25, 2004, at E1, available at LEXIS, News Library, WPOST File.

⁴³ *Id.*

organizing election” at Wal-Mart.⁴⁴ A key element of Sam Walton’s union-prevention strategy is to identify factions of malcontented employees and address their grievances before they decide to form a union.⁴⁵ Wal-Mart goes as far as providing its managers with a handbook titled, *The Manager’s Toolbox to Remaining Union Free*, guiding them on how to prevent and respond to unions in their stores.⁴⁶ The handbook refers to the company’s “Open Door” policy as “our greatest barrier to union influences trying to change our corporate culture and union-free status.”⁴⁷

Walton’s strategy to appear responsive to workers’ grievances was clearly at work when meat department employees at a Palestine, Texas Wal-Mart attempted to form a union beginning in 1999. In the two months leading up to the union election, a manager from Bentonville spent considerably more time at the store than usual.⁴⁸ The Bentonville manager went as far as working alongside employees discussing working conditions and the union with them.⁴⁹ In what appeared to be an effort to ameliorate employee grievances, the store manager purchased new knives and a knife sharpener for the meat cutters and installed a refrigerator and microwave for the break room.⁵⁰ The employees later voted six to five against the union,⁵¹ not surprising given the outpouring of gifts.

Wal-Mart store managers can implement feel-good measures to temporarily address workers’ problems. Through these actions some employees may be appeased and others may believe their store managers genuinely listen to them. But the “Open Door” policy does not really extend to the doors of power in Bentonville, where the very centralized company makes major human resource decisions. So, from time to time, employees express the need to form a union that will give them the collective power to bargain with Wal-Mart over meaningful terms of their employment. Wal-Mart is well-prepared for when that happens.

E. *The Science of Staying Union-Free*

Leaving little to chance when it comes to labor relations, Wal-Mart developed a systematic method of tracking employees who have

⁴⁴ SAM WALTON & JOHN HUEY, *SAM WALTON: MADE IN AMERICA: MY STORY* 129 (1992).

⁴⁵ *See id.* at 130–31.

⁴⁶ WAL-MART, *A MANAGER’S TOOLBOX TO REMAINING UNION FREE 1*, available at http://www.ufcw.org/issues_and_actions/walmart_workers_campaign_info/relevant_links/anti_union_manuals.cfm (follow “Click here to view documents listed below” hyperlink) (last visited Apr. 3, 2007).

⁴⁷ *Id.* at 3.

⁴⁸ Wal-Mart Stores, Inc., No. JD(ATL)-37-03, 2003 NLRB LEXIS 302, at *30 (June 10, 2003).

⁴⁹ *Id.* at *21–23, *30–31.

⁵⁰ *Id.* at *23.

⁵¹ *Id.* at *2.

grievances that could lead them to form a union. “The Union Probability Index (now termed ‘Unaddressed People Issues’, UPI) is a tactic the company uses to identify any potential hotbed of union activity.”⁵² From the results of an annual internal survey of employee attitudes about working conditions, the UPI rates stores by their level of employee dissatisfaction. According to a company document, unfavorable responses to certain questions “have been shown by research to indicate low morale and potential interest in third-party representation.”⁵³ Stores that score unfavorably must take steps to respond to employees’ issues to prevent them from seeking help from a union.⁵⁴

Wal-Mart also provides managers with tips to identify the types of employees that are more likely to organize. A manual given to supervisors warns of the “happy-go-lucky” employee who lives with her parents and can afford the financial risks of going on strike, the “anti-establishment” employee who is opposed to all management, and the “overly-qualified” employee who is highly educated and earned more money in a previous job.⁵⁵ While the manual is not explicit and the law does not prevent employers from stereotyping in this manner, one can assume that managers are to avoid hiring such types or keep watch over current employees who fit the profiles.

On an employee’s first day at work, Wal-Mart’s anti-union message is communicated through the orientation video, *You’ve Picked a Great Place to Work*.⁵⁶ In the account of her experience working at Wal-Mart in *Nickle and Dimed*, writer Barbara Ehrenreich describes the video: “[V]arious associates testify to the ‘essential feeling of family for which Wal-Mart is so well-known,’ leading up to the conclusion that we don’t need a union. . . . [W]e are warned that ‘unions have been targeting Wal-Mart for years.’ Why? For the dues money of course.”⁵⁷

When these preventative measures fail to stop a union effort, Wal-Mart has a plan in place. The *Manager’s Toolbox* orders managers to call the “Union Hotline” at the first sign of union activity.⁵⁸ Just what are the warning signs managers should be on the lookout for? According to the *Toolbox*, they include extensive socializing among co-workers, more complaints lodged against managers by employees, and “increased

⁵² NoSweatg, Briefing: Wal-Mart’s Anti-Union Practices, <http://www.nosweat.org.uk/node/32> (last visited Feb. 15, 2007).

⁵³ *Id.*

⁵⁴ WAL-MART, *supra* note 46, at 1–4.

⁵⁵ ORSON MASON, LABOR RELATIONS AND YOU AT THE WAL-MART DISTRIBUTION CENTER #6022, 9–10 (1991), available at http://www.ufcw.org/take_action/wal-mart_workers_campaign_info/relevant_links/anti_union_manuals.cfm.

⁵⁶ BARBARA EHRENREICH, NICKEL AND DIMED: ON (NOT) GETTING BY IN AMERICA 144 (2001).

⁵⁷ *Id.* at 144–45.

⁵⁸ WAL-MART, *supra* note 46, at 1.

curiosity” in employment policies.⁵⁹ Of course, when union activity is identified, the *Toolbox* assures, “[t]he Labor Relations Team has developed action plans for all types of union activity.”⁶⁰

Wal-Mart’s extensive preventative strategies have seemingly worked to thwart most union activity. But in the rare instances when workers have tried to form a union, the company’s response illustrates the great lengths Wal-Mart will go to send a message to its associates that a union will never be welcome.

F. *The Quashed Mutiny in Texas*

Only five U.S. Wal-Mart stores have held union representation elections since the United Food and Commercial Workers’ (UFCW) national organizing effort began in 1998.⁶¹ Of the five elections, only once did workers choose union representation. That successful vote occurred in 2000, in Jacksonville, TX, where meat department workers voted seven to three to be represented by the UFCW.⁶²

Some of these workers had previously worked in union grocery stores and appreciated the professional treatment and good wages and benefits they received as skilled union butchers. Joe Hendricks was one of those experienced butchers, having worked at Safeway grocery store for over twenty-five years. He began there as an apprentice butcher and ended up managing the meat market until his store closed in 1992.⁶³ Joe explained: “[Safeway] took care of you. It was a great place to work. Wal-Mart was different. We was more of a number, you know?”⁶⁴

When organizing efforts began in 1999, Joe’s coworkers sought his opinion about forming a union. “I told them it was time that we make some changes. And maybe we can have some union stores. If we do, at least we know the meat department will be treated right.”⁶⁵

In 1999, the UFCW started a nationwide effort to organize Wal-Mart’s meat department employees. And that same year, Wal-Mart’s People Division—the department which handles anti-union efforts—jumped from twelve employees to nearly seventy.⁶⁶ So when word spread of the union effort in Jacksonville, Wal-Mart was clearly prepared to act. According to

⁵⁹ *Id.* at 20–21.

⁶⁰ *Id.* at 22.

⁶¹ Interview with George Wiszynski, Assistant General Counsel of the United Food and Commercial Workers (UFCW) (June 21, 2005) (transcript on file with Connecticut Law Review).

⁶² *Id.*

⁶³ Telephone Interview with Joe Hendricks, Former Wal-Mart Employee (July 24, 2005) (transcript on file with Connecticut Law Review).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Pankaj Ghemawat et al., *Wal-Mart Stores in 2003*, at 14 (Harvard Bus. Sch. Working Paper No. 9-704-430, 2004) (on file with Connecticut Law Review).

a complaint issued by the NLRB (which later resulted in a settlement with Wal-Mart), the company engaged in numerous illegal activities to thwart the Jacksonville union effort, including interrogating employees, telling them that Wal-Mart had gone through their files to determine whether they were for or against the union, and purchasing new equipment to influence their vote against the union.⁶⁷

Despite this heavy-handed pressure from Wal-Mart, the workers in Jacksonville voted to form a union on February 17, 2000.⁶⁸ As Joe opined, “They would never have voted union if they respected Wal-Mart. And we had a lot of guts . . . [Wal-Mart] had everybody scared to death if you even mentioned union.”⁶⁹

But, despite their vote, the Jacksonville workers never got their seat at the bargaining table. A mere eleven days later, Wal-Mart announced out of the blue that it was discontinuing all meat-cutting operations nationwide and would instead stock its stores with wrapped meat.⁷⁰ The company then refused to recognize and bargain with the UFCW, arguing that the Jacksonville meat department employees were no longer an appropriate unit for organizing, separate from the rest of the store.⁷¹

Two years later, an NLRB Administrative Law Judge issued a ruling requiring Wal-Mart to bargain over the effects of the discontinued meat-cutting operations.⁷² The judge, however, did not require Wal-Mart to negotiate a contract with the UFCW.⁷³ Both the UFCW and Wal-Mart appealed the ruling to the Board in Washington, DC, which finally issued a decision, six years after the workers first voted for a union. The board simply ordered Wal-Mart to bargain with the union over the effects of its move to discontinue meatcutting.⁷⁴

All of the workers who originally voted for the union are now gone from the store—some fired soon after the vote.⁷⁵ Joe was one of the casualties. Before the union effort, Joe had never called in sick and was never disciplined. After the vote, he was written up for cursing and for ordering a meal before his break so it would be ready when he was free. But as Joe points out, they waited to fire him until the store had phased in pre-cut pork, which was his job as a butcher.⁷⁶ Joe and three other fired

⁶⁷ Second Order Consolidating Cases, Consolidating Complaint and Notice of Hearing ¶¶ 7–10, 12, Wal-Mart Stores, Inc., Nos. 16-CA-20298, 16-CA-20321, 16-CA-20723, 16-CA-20951, 16-CA-21276, NLRB (Nov. 5, 2001) (on file with Connecticut Law Review).

⁶⁸ Wal-Mart Stores, Inc., No. JD(ATL)-37-03, 2003 NLRB LEXIS 302, at *3–4 (June 10, 2003).

⁶⁹ Hendricks Interview, *supra* note 63.

⁷⁰ *Wal-Mart Stores*, 2003 NLRB LEXIS 302, at *3–4, *56.

⁷¹ *Id.* at *4, *68–69, *74.

⁷² *Id.* at *130–31.

⁷³ *Id.* at *130–34.

⁷⁴ Wal-Mart Stores Inc., 348 NLRB No. 16 (2006).

⁷⁵ Hendricks Interview, *supra* note 63.

⁷⁶ *Id.*

meat department employees eventually received a settlement with Wal-Mart after the NLRB issued a complaint against the company.⁷⁷

G. *A Canadian Store Risks the Odds*

After Jacksonville, Wal-Mart had managed for four years to thwart efforts by its American workforce to organize. It was not a U.S. store that broke the union-free streak, rather, it was our neighbors to the North that did the unthinkable.

Wal-Mart opened its Jonquière, Quebec, store in 2001. Citing frustration over favoritism and stagnant wages, employees approached the UFCW to start an organizing drive.⁷⁸ In April 2004, the Quebec Labour Relations Board held a union election, and the workers voted against union representation by a margin of only nine votes.⁷⁹

Sylvie Mavoie, a former employee active in the union drive, believes her coworkers voted against the union out of fear.⁸⁰ She witnessed threatening and intimidating behavior by managers, some of whom tried to keep her apart from the other employees so she could not communicate with them about the union. Gaetan Plourde, another former employee who supported the union, recounts being harassed by managers: “when they realized that I was one of the union leaders, I was followed. The surveillance cameras were focused on me. They even hired someone to follow me and report on my activities and determine how I was able to carry on my organizing activities.”⁸¹

But ultimately, the employees of Wal-Mart would not be cowed, and soon after the election, more and more workers signed union authorization cards. In August 2004, when presented with cards signed by a majority of the store’s eligible employees, the Labour Board certified the UFCW as the employees’ representative.⁸²

⁷⁷ Steven Greenhouse, *Trying to Overcome Embarrassment, Labor Opens a Drive to Organize Wal-Mart*, N.Y. TIMES, Nov. 8, 2002, at A28, available at LEXIS, News Library, NYT File.

⁷⁸ Telephone Interview with Louis Bolduc, Assistant to the National Director of UFCW Canada (Sept. 14, 2005) (transcript on file with Connecticut Law Review).

⁷⁹ *Id.*

⁸⁰ Telephone Interview with Sylvie Mavoie, Former Wal-Mart Employee (Dica Adotevi trans., July 18, 2005) (transcript on file with Connecticut Law Review).

⁸¹ Telephone Interview with Gaetan Plourde, Former Wal-Mart Employee (Dica Adotevi trans., July 19, 2005) (transcript on file with Connecticut Law Review).

⁸² Bolduc Interview, *supra* note 78. Quebec law grants workers union representation after a majority signs cards. Susan Johnson of Wilfrid Laurier University in Ontario has studied union organizing success through card check and mandatory elections in Canada. She found that between 1978–1996, mandatory elections reduced the success of union certification by nine percentage points below what it would have been under card check. Susan Johnson, *Card Check or Mandatory Representation Vote? How the Type of Union Recognition Procedure Affects Union Certification Success*, 112 ECON. J. 344, 344, 358 (2002).

Throughout the fall and early winter, Wal-Mart and the UFCW bargained for a contract. It eventually became clear to the UFCW that Wal-Mart would not agree to any contract. In February 2005, the union asked the Quebec Ministry of Labour to name an arbitrator to impose a contract under the binding arbitration provision offered by law in Quebec.⁸³ This left Wal-Mart with only one way to avoid operating with a collective bargaining agreement: one week after the union's request, the company announced it was closing the Jonquière store, claiming that it was not profitable.⁸⁴

After the store closing, sixty-eight of the former Jonquière employees filed a complaint with the Quebec Labour Relations Board, claiming that Wal-Mart closed the store in retaliation for organizing a union.⁸⁵ In September 2005, the Board ruled that the closure was intended as retaliation against employee organizing, and three months later, the Board ordered Wal-Mart to compensate a number of the former employees.⁸⁶

H. *From Quebec to Colorado: A Message from Wal-Mart*

News of the Jonquière store closing made headlines and spread to Wal-Mart workers far and wide. However, few heard Wal-Mart's anti-union message more clearly than the company's tire and lube employees in Loveland, CO. Two weeks after the Jonquière announcement, the Loveland employees voted 17–1 against union representation.⁸⁷

Joshua Noble, a tire and lube technician since 2002, initiated the union effort in Loveland. He was frustrated by what he saw as a major understaffing problem, which created a high workload and forced workers to miss lunches and breaks.⁸⁸ When Noble broached the subject of organizing to his coworkers, the response was initially negative. "Some said, 'Oh no, you can't do that at Wal-Mart, Wal-Mart is different.' And I was like, 'Why can't you?' And they said, 'Oh, Wal-Mart doesn't allow it.'"⁸⁹ But Noble was not deterred, and after the first few weeks of union meetings, nine of his sixteen coworkers had signed union authorization

⁸³ Bolduc Interview, *supra* note 78; see also Labour Code, R.S.Q. ch. C-27 §§ 93.1–93.9 (2006).

⁸⁴ Chris Daniels, *Wal-Mart Wars*, TIME CAN., Feb. 28, 2005, at 26, available at LEXIS, News Library, TIME File.

⁸⁵ Kerry Macgregor, *Quebec Law Gives Union David Best Shot at Retail Goliath*, OTTOWA CITIZEN, Mar. 22, 2005, at F1.

⁸⁶ Dan Thomas, *Wal-Mart Pays the Price for Unionisation Store Closure*, PERSONNEL TODAY, Dec. 19, 2005, available at <http://www.personneltoday.com/Articles/Article.aspx?liArticleID=33148&PrinterFriendly=true>.

⁸⁷ Interview with Joshua Noble, Wal-Mart Employee (June 27, 2005) (transcript on file with Connecticut Law Review).

⁸⁸ *Id.*

⁸⁹ *Id.*

cards.⁹⁰ Unfortunately, obtaining union recognition was not that simple due to obstacles from the NLRB and Wal-Mart.

In November 2004, the tire and lube employees filed a petition for a union election with the NLRB. It took the agency three months to schedule an election—more than twice as long as usual according to the NLRB’s annual report.⁹¹ Much of the delay centered on the issue of whether the tire and lube employees could form their own unit, separate from the store. Interestingly, the NLRB had already determined that the workers could organize separately in four previous elections at Wal-Mart,⁹² raising questions about why the agency was dragging its feet this time.

The delay in the election process demoralized the organizing drive—as Noble described, “people thought it was a lost cause.”⁹³ The delay also provided Wal-Mart with the opportunity to pressure employees to vote against the union. According to Noble, the day after talk of the union spread, Wal-Mart flew in a team of staffers from Bentonville.⁹⁴ He recounts that they forced employees to sit through presentations and videos which suggested that unions hurt peoples’ jobs and take money out of their paychecks without letting them know.⁹⁵ Employees were even shown fictional depictions of union organizers scaring people into signing union authorization cards.⁹⁶ However, nothing Wal-Mart could do to intimidate employees had more of an impact than its announcement of the closure of the store in Quebec. To Noble, that was the nail in the coffin of the organizing drive: “That just totally freaked people out. Even the people that had already signed union cards, they wanted to know what they had to do to back out.”⁹⁷

And so the tire and lube employees voted resoundingly against the union. And Wal-Mart was not charged with any illegal activity as the company had not technically broken the law by sending in an anti-union squad from Bentonville, holding countless mandatory meetings where they shared misinformation about unions, or sending a message through the Quebec store closing.

⁹⁰ *Id.*

⁹¹ NLRB, FY 2003 ANNUAL PERFORMANCE REPORT 17–18 (2004).

⁹² Wal-Mart Stores, Inc., No. 27-RC-8356, NLRB (Jan. 28, 2005) (on file with Connecticut Law Review); Wal-Mart Stores, Inc., No. 6-CA-31556, 2003 NLRB LEXIS 727, at *2, *5 (Nov. 12, 2003) (acknowledging that Tire Lube Express workers at a Wal-Mart store in New Castle, Pennsylvania, may unionize separately from the rest of the workers); Wal-Mart Stores, Inc., No. 28-CA-16832, 2003 NLRB LEXIS 86, at *10 (Feb. 28, 2003) (acknowledging that Tire Lube Express employees at Wal-Mart in Kingman, Arizona, may unionize separately from all workers at the store).

⁹³ Noble Interview, *supra* note 87.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

The organizing efforts in Jacksonville, Jonquière, and Loveland illustrate that Wal-Mart's employees do not have the freedom to choose a union without fear of reprisal. When Jacksonville meat department employees voted union, the company eliminated the positions nationwide.⁹⁸ Then the company retaliated against its entire store in Jonquière when it shut down soon after the employees organized.⁹⁹ So it is no surprise that employees in Loveland decided to vote against the union soon after hearing that workers in Jonquière lost their jobs after they organized. And thus through the power of example—backed by a near-scientific system of union prevention—Wal-Mart has remained union free.

As long as Wal-Mart is non-union, there is no real “open door” for its employees to demand higher standards. As long as Wal-Mart only seems willing to address employee grievances and concerns as a counter to union organizing, low morale and high turnover will persist. And as long as Wal-Mart fails to pay family-supporting wages and benefits, it threatens to bring down labor standards in industries where it has expanded. One such sector is the grocery industry—a source of middle-class jobs that is now threatened by this Wal-Martization.

III. PUTTING MIDDLE-CLASS JOBS ON THE CHOPPING BLOCK

*“The Wal-Mart supercenter . . . is a nonunion dagger aimed at the heart of the traditional American supermarket, nearly 13,000 of which have closed since 1992.”*¹⁰⁰

A. Grocery Workers Gain Through Collective Bargaining

There were 2.4 million grocery store workers in 2005, accounting for 2% of the total U.S. workforce.¹⁰¹ These men and women earned an average hourly wage of \$10.79,¹⁰² which is close to the average wage at Wal-Mart of \$10.11,¹⁰³ and lower than the national average of \$18.21.¹⁰⁴ Considering supermarket wages are lower than average in this country, how have grocery workers achieved middle class standing for decades? The compensation package negotiated by unions enabled grocery workers

⁹⁸ Wal-Mart Stores Inc., No. 16-CA-20391-001-0, 2006 NLRB LEXIS 425, at *3–4 (Sept. 28, 2006).

⁹⁹ Ian Austen, *Quebec Rules Against Wal-Mart in Closing of Unionized Store*, N.Y. TIMES, Sept. 20, 2005, at C7, available at LEXIS, News Library, NYT File.

¹⁰⁰ Anthony Bianco & Wendy Zellner, *Is Wal-Mart Too Powerful?*, BUS. WK., Oct. 6, 2003, at 100, available at LEXIS, News Library, BUSWK File.

¹⁰¹ U.S. Dep't of Labor, *supra* note 10.

¹⁰² *Id.*

¹⁰³ Kaiser, *supra* note 9.

¹⁰⁴ U.S. Dep't of Labor, *supra* note 10.

to earn enough to raise families, have a stable path into retirement, and take part in the American dream.

What distinguishes supermarket employment from the rest of the retail sector is its high level of union representation. In the retail industry as a whole, only 6% of employees were union-represented in 2005.¹⁰⁵ Yet union density is considerably higher among supermarket employees. In 2004, the UFCW represented eleven of the top twenty U.S. supermarket operators, which represent 52% of supermarket sales.¹⁰⁶ As a likely result of this union presence, grocery store employees have similar rates of employer-offered health coverage as the average American employee, according to 2005 data from the Current Population Survey.¹⁰⁷ Grocery employees are also just as apt as other occupations to have employers that pay the full or partial costs of health benefits.¹⁰⁸ And grocery employees are more likely than other occupations to have an employer-provided pension plan, and to have their dependents covered by an employer-provided or joint union/employer-provided health plan.¹⁰⁹

The effects of higher union density in the grocery industry as compared to the entire retail sector are illustrated by a consistent wage gap. In 1972, the average hourly wage for grocery store employees was \$15.12 (in 2005 dollars), which was \$2.29 higher than average wage for the retail industry.¹¹⁰ In 1982, that gap jumped to \$4.78.¹¹¹ But by 1992, the gap had slipped to \$0.73 and to \$0.21 in 2002.¹¹² What happened during that time? In 1988, Wal-Mart unveiled its combination discount and grocery store format.¹¹³ The Wal-Mart “Supercenter” was designed to attract increased customer traffic to its general merchandise department through the sale of food.¹¹⁴ Wal-Mart’s Supercenter model proved popular and successful. By 2002, Wal-Mart grew to become the country’s largest seller of groceries. Wal-Mart’s grocery sales topped \$98 billion in 2005, and

¹⁰⁵ U.S. Dep’t of Labor, Bureau of Labor Statistics, Union Affiliation of Employed Wage and Salary Workers by Occupation and Industry, <http://www.bls.gov/news.release/union2.t03.htm> (last visited Feb. 17, 2007).

¹⁰⁶ Data from a UFCW analysis of membership and sales figures, Sept. 2005 (on file with Connecticut Law Review). Figures exclude warehouse stores like Costco and Sam’s Club, but include Wal-Mart Supercenters.

¹⁰⁷ U.S. Census Bureau, Current Population Survey (March 2005 Supplement), generated by Erin Johansson using DataFerrett (Sept. 7, 2005), <http://dataferrett.census.gov> (on file with Connecticut Law Review). Analysis controlled for employees’ gender, race, ethnicity, educational attainment, age, and full-time status.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ U.S. Dep’t of Labor, Bureau of Labor Statistics, National Employment, Hours and Earnings (SIC), <http://www.bls.gov/ces/cesoldsic.htm> (last visited Apr. 3, 2007).

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ Ghemawat et al., *supra* note 66.

¹¹⁴ *Id.*

accounted for 24% of supermarket sales for the top fifty companies.¹¹⁵ Three union grocery stores followed behind: Kroger with sales of \$58.5 billion, Albertsons with sales of \$36.2 billion, and Safeway with sales of \$32.7 billion.¹¹⁶ As of fiscal year 2006, Wal-Mart had 100 “Neighborhood Markets” (junior Supercenters designed for dense urban markets) and 1980 Supercenters in the United States—an increase of 267 Supercenters from the previous year.¹¹⁷

Despite its dominance in the grocery industry, Wal-Mart has certainly not increased its compensation to match that of the major supermarket chains. In their research on the San Francisco Bay Area grocery industry, Marlon Boarnet of the University of California at Irvine and Randall Crane of the University of California at Los Angeles examined the compensation gap between Bay Area supermarkets and Wal-Mart.¹¹⁸ As Table 1 illustrates, Wal-Mart compares poorly to union-represented supermarkets among all the benefits offered.

Table 1. Comparison of Employment Standards Between Wal-Mart and Union Supermarkets in the San Francisco Bay Area

	Wal-Mart	Supermarkets
Hourly wages	\$9.60	\$15.30
Percent employees covered by employer-provided health plan	46%	95%
Health plan eligibility	180 days for those working at least 34 hours a week	60 days for those working a minimum of 64 or 72 hours per month
Health plan premium paid by employees	Between \$338 to \$3081 per year	No premium

¹¹⁵ *The Super 50: Taking the Lead*, PROGRESSIVE GROCER, May 1, 2006, at 30, 32, available at http://progressivegrocer.com/progressivegrocer/images/pdf/Super_50_PG_2006.pdf.

¹¹⁶ *Id.*

¹¹⁷ WAL-MART, *supra* note 18, at 18, 24.

¹¹⁸ See Marlon Boarnet et al., Supercenters and the Transformation of the Bay Area Grocery Industry: Issues, Trends, and Impacts 43 n.22 (2004), available at <http://www.bayeconfor.org/pdf/PPRSCscreen11.2.pdf> (noting that based on the regional wage data presented in Richard Drogin, Statistical Analysis of Gender Patterns in Wal-Mart Workforce (2003), available at <http://www.walmartclass.com/statistiddata/reports/r2.pdf>, the national average wage at Wal-Mart is a good estimate of the average wage in the Bay Area). For the national percentage of Wal-Mart employees enrolled in company health care plans, see Hudson, *supra* note 12. For the union figure, which is statewide, see Arindrajit Dube & Ken Jacobs, *Hidden Cost of Wal-Mart Jobs: Use of Safety Net Programs by Wal-Mart Workers in California* 6 (UC Berkeley Briefing Paper Series, 2004), available at <http://laborcenter.berkeley.edu/retail/walmart.pdf>.

	Wal-Mart	Supermarkets
Retirement plan	401K for employees after 1 year and 1000 hours; company contributes \$.22 per hour towards plan	Defined benefit pension and 401K after 375 hours; employers contribute \$1.35 per hour towards plan
Paid holidays	6 days per year	9 days per year
Vacations	1 week after 1 year, 2 weeks after 2 years, 3 weeks after 7 years	2 weeks after 1 year, 3 weeks after 5 years, 4 weeks after 15 years, 5 weeks after 20 years
Sick leave	Approx. 4 hours per month	6 hours per month
Total compensation value per hour	\$11.95	\$23.64
Total annual compensation value	\$21,552	\$42,552

The difference between health benefits for Wal-Mart employees and union supermarket employees is stark. While union employees pay no premium, Wal-Mart employees pay an average of one-third the cost of their health care.¹¹⁹ An analysis of Wal-Mart's latest plan by the UFCW found that the average full-time employee would have to spend 7–25% of her income on premiums and deductibles for single coverage, and 22–40% of income for family coverage.¹²⁰ Boarnet and Crane estimated that the total compensation package for Bay Area union supermarkets is twice that of area Wal-Mart workers.¹²¹ This difference may explain why a Wal-Mart worker's average tenure is four years, in comparison to nine years for a Bay Area supermarket worker.¹²²

B. *When Wal-Mart Comes to Town*

“[Wal-Mart says] they are creating jobs, and they are creating jobs. They're creating after-school jobs for high

¹¹⁹ Reed Abelson, *States Are Battling Against Wal-Mart Over Health Care*, N.Y. TIMES, Nov. 1, 2004, at A1, available at LEXIS, News Library, NYT File.

¹²⁰ See Wake-Up Wal-Mart, *The Real Facts About Wal-Mart: Wal-Mart and Health Care*, <http://www.wakeupwalmart.com/facts/> (last visited Feb. 18, 2007).

¹²¹ BOARNET ET AL., *supra* note 118, at 2.

¹²² *Id.* at 40.

school students. And in doing that, they're taking away the jobs that are paying the kids' parents."

– Stephenie Massey, employee of Vons in Anaheim, CA¹²³

All across the United States, stores sit dark and empty, left in the path of retail destruction paved by Wal-Mart. When Wal-Mart plunges into an area, it does not simply co-exist with existing businesses and eat from a larger retail pie. According to Sam Walton, Wal-Mart's expansion strategy is designed "to saturate a market area by spreading out, then filling in."¹²⁴ It is Wal-Mart's saturation strategy, as documented by researchers for decades, which causes competitors to lose market share, close down stores, or fold.

Kenneth Stone of Iowa State University has done extensive, long-term research on the effects of Wal-Mart's entry into rural areas. He uncovered that when Wal-Mart expanded into small towns in Iowa between 1983 and 1993, 7326 stores closed.¹²⁵ Wal-Mart's expansion of its Supercenter model has inflicted particular damage on the grocery industry. Stone found that in Mississippi counties where a Supercenter opened, food stores in those counties lost 19% of sales within five years.¹²⁶ This may be just the beginning for grocery competition, as a Retail Forward study predicted that "for every new supercenter that Wal-Mart opens, two supermarkets will close"¹²⁷

Wages also suffer when Wal-Mart comes to town. Researchers at University of California at Berkeley recently found that when Wal-Mart opens a store in an urban or suburban county, average wages in general merchandise and grocery sectors fall by 0.8% over three years.¹²⁸ Accounting for changes in employment, total earnings of retail workers fell by approximately 1.3% over the same period.¹²⁹ Wal-Mart's presence is likely reducing total earnings of American retail workers by \$4.7 billion annually.¹³⁰

¹²³ Telephone Interview with Stephenie Massey, Vons Employee (May 27, 2005) (transcript on file with Connecticut Law Review).

¹²⁴ WALTON & HUEY, *supra* note 44, at 109–10.

¹²⁵ See Kenneth E. Stone, *Impact of Wal-Mart Stores on Iowa Communities: 1983–93*, 13 ECON. DEVEL. REV. 60, 67 (1995).

¹²⁶ KENNETH E. STONE ET AL., OFFICE OF SOC. AND ECON. TREND ANALYSIS, THE ECONOMIC IMPACT OF WAL-MART SUPERCENTERS ON EXISTING BUSINESSES IN MISSISSIPPI 10–11 (2002), available at http://www.seta.iastate.edu/retail/publications/ms_supercenterstudy.pdf.

¹²⁷ Bianco & Zellner, *supra* note 100, at 108.

¹²⁸ See Arindrajit Dube et al., *Impact of Wal-Mart Growth on Earnings Throughout the Retail Sector in Urban and Rural Counties 1* (Institute of Industrial Relations, Working Paper iirwps-126-05, 2005), available at <http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1124&context=iir>.

¹²⁹ *Id.*

¹³⁰ *Id.*

Wal-Mart clearly inflicts damage to workers and communities when it moves into an area, often replacing good union jobs with substandard jobs, as the following example of the closure of Furr's illustrates. This grocery chain built a regional presence, created good, union jobs, and inspired loyal customers. And yet it was unable to stay afloat once Wal-Mart moved into the neighborhood.

C. *Hello Wal-Mart, Goodbye Furr's*

The union-represented grocery chain Furr's, New Mexico's oldest grocery chain, employed 5000 in seventy-one supermarkets when it filed for bankruptcy in February 2001.¹³¹ There were several factors that led to the demise of this company, including inventory problems that led to gaps in shelves and poor management decisions to expand the store, causing the company to run out of cash.¹³² But another factor contributed to Furr's decline: Wal-Mart's entrance into the regional grocery market. In 1999, while Furr's struggled to raise capital and expand, Wal-Mart opened its first Supercenter in Albuquerque, NM, and began to aggressively expand throughout the area.¹³³ As former Furr's President Steve Mortensen recalled at a court hearing, "[w]ith Wal-Mart pumping \$300 million into that market, it's tough for anybody to make it."¹³⁴

When Furr's went bankrupt, only thirty-six of its seventy-one stores were purchased by other grocery chains—the rest closed down, resulting in thousands of layoffs.¹³⁵ Furr's closing hit its employees hard, especially for longtime Furr's staff, like Linda Winter. Linda noted: "You spend all those years doing something that you really enjoy and somebody [sic] can just come along and wipe it out."¹³⁶ In 1970, Linda started as a waitress in the cafeteria of Furr's supermarket in Albuquerque.¹³⁷ Over the next thirty years, she moved into jobs in the bakery and later the meat department, earning a raise with each promotion. By 2001, she made close to \$16 an hour as a meat wrapper, and enjoyed good benefits and a pension. She raised her son as a single mother and could still afford to buy her own house and a car through her job at Furr's. When the chain closed, Furr's employees struggled to find comparable employment. Despite heeding the

¹³¹ Diane Velasco, *Chain's Demise Blamed on Leadership, Competition*, ALBUQUERQUE J., Sept. 2, 2001, at A8, available at LEXIS, News Library, ALBJNL File.

¹³² Dan Mayfield, *Good Times, Bad Times*, ALBUQUERQUE TRIB., July 30, 2001, at Bus. 3, available at LEXIS, News Library, ALBTRB File.

¹³³ *Id.*; UFCW, *Analysis of Trade Dimensions Market Share Data* (on file with Connecticut Law Review).

¹³⁴ Velasco, *supra* note 131.

¹³⁵ UFCW, *supra* note 133.

¹³⁶ Telephone Interview with Linda Winter, Former Furr's Employee (July 12, 2005) (transcript on file with Connecticut Law Review).

¹³⁷ *Id.*

state unemployment officials' advice and acquiring higher-level computer skills, Linda could only find work at a car dealership. She makes half of what she earned at Furr's, with no health benefits and a retirement plan she cannot afford to contribute toward.¹³⁸

In 2000, Furr's had 30% of the grocery market share in El Paso, TX, and approximately 26% in Albuquerque.¹³⁹ At that time, Wal-Mart was still new to the region, with only 6% market share in El Paso and 5% in Albuquerque.¹⁴⁰ By 2005, Wal-Mart had clearly capitalized on Furr's closure, as its market share jumped to 44% in El Paso and 29% in Albuquerque.¹⁴¹ While it is only logical for stores to profit off a competitor closing down shop, was it simply a zero-sum when Furr's jobs were lost and Wal-Mart jobs increased? Not when workers lose so much ground in the process.

Under the Furr's union contract, employees who worked an average of twenty-four hours per week were eligible for health benefits after three months with no employee contribution.¹⁴² In 2001, Wal-Mart's company-wide policy required employees to work at least twenty-eight hours per week to be eligible for the benefit plan, and employees covered 42% of the cost of their health care.¹⁴³ At Furr's, employees had defined wage increases of as much as \$1 an hour after six months on the job, and were eligible for apprenticeships which offered training and sizeable wage increases as skills advanced.¹⁴⁴ Not so at Wal-Mart. Without a union contract at any Wal-Mart store, employees have no guarantees of predictable wage increases or clearly defined ladders for advancement. Further, if Wal-Mart employees believe they have been unfairly denied a promotion, they lack a grievance procedure to address the situation. Such a grievance procedure was available to Furr's employees, and is a standard staple of union contracts.

The fact that Furr's compensated its employees well was not the result of benevolence, but years of collective bargaining. The UFCW began organizing Furr's employees in New Mexico in the early 1970s, and eventually came to represent the majority of the company's employees.¹⁴⁵ But Furr's closure led to a huge drop in the number of secure, middle-class union grocery jobs in New Mexico and West Texas. UFCW Local

¹³⁸ *Id.*

¹³⁹ UFCW, *supra* note 133.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² Collective Bargaining Agreement Between Furr's Supermarkets, Inc. and UFCW Local 1564, Effective Dates: Nov. 1, 1998–Oct. 27, 2001 at 15 (on file with Connecticut Law Review); Telephone Interview with Greg Frazier, Secretary-Treasurer of UFCW Local 1564 (June 20, 2005) (transcript on file with Connecticut Law Review).

¹⁴³ MILLER, *supra* note 14.

¹⁴⁴ Frazier Interview, *supra* note 142.

¹⁴⁵ *Id.*

1564 and 540 estimate that they lost 4400 union members after the company liquidated.¹⁴⁶

D. *The Invisible Hand of Wal-Mart*

Wal-Mart does not even have to actually move into town to pose a threat to middle-class jobs. When the three major Southern California supermarket chains began joint negotiations with the UFCW over a new contract, Wal-Mart was the 800-pound gorilla in the room. Although the nation's largest grocer was not a presence in the region, Wal-Mart was a top competitor for the three chains nationally. And this competition compelled the chains to follow Wal-Mart's lead by fundamentally lowering standards for supermarket jobs.

For over three decades, the UFCW has represented supermarket workers in Southern California. Other than a brief strike in 1978, contracts were negotiated amicably. According to the union, grocery employees steadily accrued the level of wages and benefits matched by white-collar workers.¹⁴⁷ Yet when negotiators for the UFCW sat down to bargain in September 2003 with the supermarket chains that represent their 70,000 members in 900 Southern California stores, Albertsons, Kroger (which owns the Ralphs chain), and Safeway (which owns the Vons chain) decided to try and make their benefits more on par with Wal-Mart.¹⁴⁸ The supermarkets' proposal was focused on cuts to the UFCW member health benefits, administered through a fund run jointly by the UFCW and the employers.¹⁴⁹ Prior contracts mandated that employers fully fund the plan, but in their latest contract proposal, the employers wanted to cap their contribution and require employees to pay the remaining costs.¹⁵⁰

How much money did the supermarkets expect employees to kick in? Glen Melnick, a healthcare finance analyst at the RAND Corporation, noted that as health costs rise, employees would have to assume the majority of the cost burden. "Basically, . . . [the employers are] saying, 'We're going to pay X amount and you bear all the risk.' . . . If I were advising the union, I'd say, 'Wait a minute.'"¹⁵¹ The UFCW concluded that the employees' contribution would be close to \$70 per month in order

¹⁴⁶ Telephone Interview with Bill Quintana, Business Representative, Local 1564 (July 27, 2005) (transcript on file with Connecticut Law Review).

¹⁴⁷ Frank Green, *Wal-Mart's Shadow Dims Contract Hopes*, SAN DIEGO UNION-TRIB., Sept. 26, 2003, at C1, available at LEXIS, News Library, SDUT File.

¹⁴⁸ Telephone Interview with Greg Conger, Union President, UFCW Local 324 (May 25, 2005) (transcript on file with Connecticut Law Review).

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ Nancy Cleeland, *The Supermarket Strike: Clash Focuses on Co-Pays, Premiums—and Risk*, L.A. TIMES, Oct. 23, 2003, at C1, available at LEXIS, News Library, LAT File.

to keep the plan afloat, in addition to paying higher co-pays.¹⁵² While the UFCW acknowledged members' willingness to share in the costs of rising health care in this round of bargaining, they were not ready to accept such a drastic cost increase. The employees had agreed in previous contracts to accept smaller-than-normal wage increases in order to maintain good health benefits in the face of rising costs. And so with these sacrifices over the years, they reacted with anger to the employers' proposal.

In addition to the cuts in benefits proposed in bargaining, the UFCW and its members also objected to the two-tier wage and benefit structure the employers sought to institute. Under this plan, new employees would start at a lower wage scale and would never reach the level of wages that current employees receive.¹⁵³ These "lower tiered" employees would also have to wait longer to receive benefits.¹⁵⁴ While current employees would not be hurt by this two-tier system unless they wanted to move into a new position at the store, the structure threatened to move grocery jobs out of the middle class, making wages and benefits more on par with Wal-Mart.

Once the UFCW members who worked at the three chains had a chance to review the proposal, 97% rejected the offer.¹⁵⁵ They instead voted in favor of striking in protest of the proposal. On October 11, 2003, a week after the contract expired, the UFCW called a strike at Vons.¹⁵⁶ In an aggressive show of employer 'solidarity,' Ralphs and Albertsons locked out their employees as soon as the Vons employees went on strike.¹⁵⁷

E. *A Victory for All Workers—But at a Cost*

Despite an outpouring of community support provided for those on the picket lines, the strike/lockout took a heavy toll on the workers. Many grocery workers had to support their families solely on the union's strike pay, which dipped below \$150 a week toward the end of the strike/lockout.¹⁵⁸ In all, it is estimated that the grocery workers lost \$800 million in foregone wages from the strike/lockout.¹⁵⁹

The strike drained the three chains as well, as it cost them billions in sales. It is not likely that the chains anticipated that employees were willing to fight for so long, or that so many customers would refuse to

¹⁵² Andrew Galvin, *Grocery Strike Looks Likely*, ORANGE COUNTY REG., Oct. 7, 2003, available at 2003 WLNR 10889667.

¹⁵³ Conger Interview, *supra* note 148.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ Dennis Romero, *A War with No Winner*, L.A. CITY BEAT, Jan. 8, 2004, available at <http://www.lacitybeat.com/article.php?id=549&IssueNum=31>.

¹⁵⁹ Jack Katzanek, *Grocery Strike: One Year Later, Employees Notice Changes*, PRESS ENTER., Mar. 5, 2005, at A1, available at LEXIS, News Library, PRSENT File.

cross the picket lines. Yet compared to their workers, the employers were more able to sustain the longest strike in the history of the supermarket industry. So four-and-a-half months after the strike/lockout first began, grocery employees overwhelmingly voted to ratify the latest contract proposal on March 1, 2004.¹⁶⁰

According to the UFCW, the key reason the workers settled was that the employers agreed not to create a different health and pension fund for new hires separate from the joint union-employer fund for current employees.¹⁶¹ Funneling new hires into a separate benefit plan, as many analysts predicted, would have decimated the benefits for the current employees who are a part of the joint fund.¹⁶² And while the UFCW members put up fierce resistance and managed to stave off major damage to the health and pension plans, many other concessions were made. The employers were able to win their two-tier system, where current employees maintain the level of wages and benefits they have (with the exception of higher co-pays), while new hires top out at wages that are \$2–\$3 less per hour than what current employees can earn.¹⁶³ The two-tier system also changed the eligibility for new employee benefits. Before the contract, new hires were eligible for health benefits after five months. Now the new hires must wait one year for single coverage and two-and-a-half years for family coverage.¹⁶⁴

While many contracts negotiated since the strike include caps on employer contributions to health care,¹⁶⁵ George Whalin, President of Retail Management Consultants, asserted that the grocery chains “failed in their larger strategy, which was to implement a two-tiered system across the country.”¹⁶⁶ It appears that the chains were unwilling to endure another costly strike.

F. *The Lingering Effects of the Strike*

In Southern California, the effect of the strike/lockout has not dissipated. Analysts estimate that the three chains lost close to \$3 billion

¹⁶⁰ Naush Boghossian, *Supermarkets Filling Up Again*, DAILY NEWS OF L.A., Mar. 7, 2004, at N3, available at LEXIS, News Library, LAD File.

¹⁶¹ Leslie Berestein, *Grocery Strike Settlement Came ‘Day by Day,’* SAN DIEGO UNION-TRIB., Mar. 4, 2004, at C1, available at LEXIS, News Library, SDUT File.

¹⁶² Cleeland, *supra* note 151.

¹⁶³ ARINDRAJIT DUBE & ALEX LANTSBERG, UC BERKELEY CTR. FOR LABOR RESEARCH AND EDUC., WAGE AND HEALTH BENEFIT RESTRUCTURING IN CALIFORNIA’S GROCERY INDUSTRY 11 (2004), available at http://laborcenter.berkeley.edu/retail/grocery_fullreport.pdf.

¹⁶⁴ *Id.* at 12.

¹⁶⁵ Mark Hamstra, *The New Workforce*, SUPERMARKET NEWS, Feb. 14, 2005, at 12, available at LEXIS, News Library, ALLNWS File.

¹⁶⁶ David Washburn, *Grocery Strike’s Benefits Realized in Bay Area*, COPLEYS NEWS SERVICE, Jan. 30, 2005, available at LEXIS, News Library, COPNWS File.

in sales up to the beginning of 2005.¹⁶⁷ And Ralphs is still paying a price, recently agreeing in federal district court to pay \$70 million in fines and compensation to workers and the union for illegally rehiring employees during the lockout.¹⁶⁸

The effects of the two-tier system also appear to have taken a toll on the operation of the stores. All of the employees interviewed for this report indicated major turnover problems at their stores. Kristine Dall noted that Ralphs started setting up tables in their stores to recruit new employees, something she never witnessed prior to the strike.¹⁶⁹ Stephenie Massey used to hand out about twenty-five welcome packets for new union members in one year, and now she distributes twenty-five every two weeks.¹⁷⁰ Twila Mandella, who spent eight years as a clerk at Albertsons, described the high turnover at her store: “Since the strike—they can’t keep the employees at the rate they’re paying them now. It used to be something that you go into as a career.”¹⁷¹

Stephenie Massey, who had hoped to move up in the store from a meat clerk to a meat cutter, is not sure it is worth it for her to stay in the industry now. It will now take her seven years to progress into the position and earn \$15 an hour, whereas before, she could become a meat cutter and make \$20 an hour after two years of training.¹⁷²

G. *Competing with Wal-Mart: Taking the High or Low Road*

On the day the grocery workers voted to ratify their contract and end the strike/lockout, the first Wal-Mart Supercenter opened in California. Wal-Mart CEO Lee Scott’s plan is to “roll out supercenters fairly aggressively in California,”¹⁷³ and as of September 2006, there were nineteen Supercenters in the state.¹⁷⁴

The three grocery chains clearly had a legitimate reason to fear competition from Wal-Mart, if not in California then nationwide. But were they right to compete by cutting wages and benefits to try and meet the low level provided to Wal-Mart’s employees? Many on Wall Street were

¹⁶⁷ *Id.* at *1.

¹⁶⁸ Press Release, U.S. Dep’t of Justice, Ralphs Agrees to Plead Guilty and Pay \$70 Million for Illegally Rehiring Workers During Labor Action (June 30, 2006), available at <http://www.usdoj.gov/usao/cac/pr2006/090.html>.

¹⁶⁹ Telephone Interview with Kristine Dall, Ralphs Employee (May 26, 2005) (transcript on file with Connecticut Law Review).

¹⁷⁰ Massey Interview, *supra* note 123.

¹⁷¹ Telephone Interview with Twila Mandella, Former Albertsons Employee (May 26, 2005) (transcript on file with Connecticut Law Review).

¹⁷² Massey Interview, *supra* note 123.

¹⁷³ Abigail Goldman, *The Wal-Mart Effect*, L.A. TIMES, Nov. 23, 2003, at A32, available at LEXIS, News Library, LAT File.

¹⁷⁴ Wal-Mart Facts, *Wal-Mart Opens Rosemead Supercenter; Closest Yet to Downtown L.A.*, <http://www.walmartfacts.com/articles/4448.aspx> (last visited Feb. 6, 2007).

happy with the concessions made in the Southern California contract and believe that it will help the companies bridge the gap in labor costs, allowing them to compete with Wal-Mart. When the strike/lockout first began, shares of all three chains outpaced the rest of the market, and Wall Street analysts cheered the hard line towed by the companies in negotiations.¹⁷⁵ But not all the industry analysts agreed with the chains. Sandra Skrovan of Retail Forward has studied the impact of Wal-Mart on the supermarket industry and argued: “[The three chains] can talk about lowering wages and lowering prices, but that doesn’t do anything to help them better compete with Wal-Mart They need to compete with Wal-Mart on something other than price.”¹⁷⁶ JP Morgan analyst Steve Chick added a similar sentiment: “I’m not sure if adding more part-time workers and lowering labor costs really cuts to the heart of the problem, which is improving sales productivity and traffic”¹⁷⁷

The supermarket chains chose to compete by following Wal-Mart’s path down the low road, and in Southern California, that decision will reverberate for years to come. The chains likely lost many loyal customers among those billions in lost sales. Anecdotal evidence points to pervasive problems of low morale and high turnover in the workforce since the strike/lockout, likely results of the two-tier system.¹⁷⁸ And the costs of this strategy are even higher when you consider that Southern California lost a solid source of middle-class jobs as new hires replace current employees with a lower level of pay and benefits.

Wal-Mart’s dominance in the grocery sector is threatening those good middle-class jobs, whether by replacing those jobs when businesses can no longer compete, or by tempting competitors to follow its model of low employment standards. And what is happening in supermarkets is merely one example of the Wal-Martization of this country’s workplaces.

IV. CONCLUSION: THE POWER OF PUBLIC SCRUTINY

“We now know that the more people—the public in general—are informed, the more they can affect Wal-Mart.”

– Gaetan Plourde, former employee of Wal-Mart in Jonquière, Quebec¹⁷⁹

¹⁷⁵ Frank Green, *Both Sides in Grocery Strike Stand Ground*, SAN DIEGO UNION-TRIB., Oct. 14, 2003, at A1, available at LEXIS, News Library, SDUT File.

¹⁷⁶ Melinda Fulmer & Abigail Goldman, *Cornered Grocers May Have to Be What Wal-Mart Isn’t*, L.A. TIMES, Oct. 27, 2003, at A1, available at LEXIS, News Library, LAT File.

¹⁷⁷ Hamstra, *supra* note 165.

¹⁷⁸ See Dall Interview, *supra* note 169; Mandella Interview, *supra* note 171; Massey Interview, *supra* note 123.

¹⁷⁹ Plourde Interview, *supra* note 81.

This Article has demonstrated that Wal-Mart's impact on American jobs has extended far beyond its own employees. Decades of collective bargaining helped secure middle-class standing for millions of workers in supermarkets. Yet when Wal-Mart dominated this sector, secure jobs were lost and competitors slashed wages and benefits.

Does it have to be this way? Can Wal-Mart use its position as the industry leader to lift standards for retail jobs the way GM did for manufacturing jobs in its heyday? Lee Scott has responded to this comparison with GM, arguing before a media gathering in 2005: "[R]etailing doesn't perform that same function in the economy as G.M. does or did."¹⁸⁰ But author Beth Shulman points out:

[T]here was nothing inherently high-wage about the automobile industry. General Motors didn't always pay good wages and benefits. It became a "good" employer after workers organized and collectively bargained with the company for better wages and benefits. Likewise, there is nothing inherently low-wage about retail. . . . And Wal-Mart is not constrained by global competition in its wages and benefits. These on-site retail jobs must be done here in the United States.¹⁸¹

As the nation's largest private employer, with profits in the billions, Wal-Mart has the ability to raise employment standards and inspire other employers to do the same. A study by the Economic Policy Institute estimated that *without raising prices*, Wal-Mart could maintain a profit margin 50% higher than competitor Costco and raise benefits and wages for non-supervisory employees by \$2000.¹⁸² And as industry-leading companies like Cingular Wireless and Harley-Davidson have done, Wal-Mart can decide to remain neutral in allowing its employees to choose union representation.

Companies facing competition from Wal-Mart also have a choice to make—whether to follow Wal-Mart's low-road model as an employer or to take the high road. Joel Rogers of the University of Wisconsin at Madison and Daniel Luria of the Michigan Manufacturing Technology Center explain these distinct paths:

¹⁸⁰ Steven Greenhouse, *Wal-Mart's Chief Calls Its Critics Unrealistic*, N.Y. TIMES, Apr. 6, 2005, at C11, available at LEXIS, News Library, NYT File.

¹⁸¹ Beth Shulman, *As Goes Wal-Mart*, TOMPAINE.COM, May 3, 2005, http://www.tompaine.com/Archive/others/as_goes_walmart.php.

¹⁸² JARED BERNSTEIN & L. JOSH BIVENS, ECON. POL'Y INST., THE WAL-MART DEBATE: A FALSE CHOICE BETWEEN PRICES AND WAGES, ISSUE BRIEF #223, at 1 (2006), available at <http://www.epi.net.org/issuebriefs/223/ib223.pdf>.

Low-road firms compete by keeping prices down, which means keeping costs down—beginning, typically, with wages. Applied across the economy, low-road strategies lead to sweated workers, economic insecurity, rising inequality, poisonous labor relations, and degraded natural environments Generalized, high-road strategies are associated with higher productivity, higher pay and better labor relations, reduced environmental damage, and greater firm commitment to the health and stability of surrounding human communities (needed to attract and keep skilled workers and managers). Firms can make money on either path, but social gains are vastly greater on the high road.¹⁸³

Costco, which successfully competes with Wal-Mart's Sam's Club while paying union wages and benefits, demonstrates that the high-road model is viable. But until more employers follow Costco's lead, other forces are necessary to reclaim decent job standards in America.

To start with, reforming federal labor law could vastly improve the playing fields for workers—at Wal-Mart and elsewhere—to freely choose union representation and demand better standards. Passage of the Employee Free Choice Act¹⁸⁴ is an important first step. This congressional bill would require employers to recognize unions when a majority of workers sign authorization cards, streamlining a delay-ridden process that subjects employees to coercion.¹⁸⁵ In addition, the bill would impose tougher penalties on employers that violate labor law, and ensure that employers and their union-represented employees can negotiate a contract within a reasonable period of time.¹⁸⁶

Local governments are also taking important action to stem the Wal-Martization of their economies. The cities of Chicago and New York both passed laws setting a minimum floor for compensation by large retailers.¹⁸⁷ Such laws can help fill the void of collective bargaining at non-union retailers by lifting employment standards, and can stem race-to-the-bottom competition over wages and benefits.

¹⁸³ Daniel D. Luria & Joel Rogers, *A New Urban Agenda*, BOSTON REV., Feb./Mar. 1997, available at <http://bostonreview.net/BR22.1/luria.html>.

¹⁸⁴ Employee Free Choice Act, H.R. 1696, 109th Cong. § 2 (1st Sess. 2005).

¹⁸⁵ *Id.* For evidence of less coercion under card checks than elections, see ADRIENNE EATON & JILL KRIESKY, AM. RIGHTS AT WORK, FACT OVER FICTION: OPPOSITION TO CARD CHECK DOESN'T ADD UP (2006), available at <http://www.americanrightsatwork.org/docUploads/IBFactOverFictFinal2%2Epdf>. For evidence of a direct correlation between election delays and votes against the union, see MICHAEL GOLDFIELD, THE DECLINE OF ORGANIZED LABOR IN THE UNITED STATES 201–02 (1987).

¹⁸⁶ Employee Free Choice Act § 4.

¹⁸⁷ Erik Eckholm, *Chicago Orders 'Big Box' Stores to Raise Wage*, N.Y. TIMES, July 27, 2006, at A1, available at LEXIS, News Library, NYT File; Press Release, Brennan Ctr. for Justice at NYU Sch. of Law, NYC Council Overrides Veto of Health Care Expansion (Oct. 11, 2005), available at http://www.brennancenter.org/press_detail.asp?key=100&subkey=9445.

The key impetus for such policy solutions, and for Wal-Mart and its competitors to choose to raise standards, is public scrutiny and outrage. Public outcries over unfavorable corporate practices have inspired many positive changes. McDonald's replaced its Styrofoam packaging with more environmentally-friendly paper products; Gap and Nike began addressing sweatshop labor conditions in their factories; Starbucks began selling "Fair Trade" coffee that ensured farmers a living wage.¹⁸⁸

Americans should see the connection between their declining working conditions and Wal-Mart's hostility towards workplace democracy, and should demand an end to it. If Wal-Mart's 1.3 million U.S. employees were free to collectively bargain and create jobs with family-supporting wages, benefits and an opportunity to retire comfortably, we may be able to salvage our middle class.

¹⁸⁸ David P. Baron, *Facing-Off in Public*, STAN. BUS., Aug. 2003, available at http://www.gsb.stanford.edu/news/bmag/sbsm0308/feature_face_off.shtml; Marc Gunther, *How Companies Fight Sweatshops*, FORTUNE, May 3, 2006, available at http://money.cnn.com/2006/05/03/news/international/pluggedin_fortune/; Patrick McMahon, *'Cause Coffees' Produce a Cup with an Agenda*, USA TODAY, July 26, 2001, at 1A, available at LEXIS, News Library, USATDY File.