

## Supreme Court not the place for Wal-Mart, union debate

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Sam Walton is the epitome of the American success story. Over his lifetime, the legendary founder of Wal-Mart transformed one small dime store in Bentonville, Ark., into what is now the world's largest employer and most successful retailer.

In doing so, Walton made a profit. The kind of whopping big profit that makes North American unions crazy. As a result, the unions have spent much of the past decade trying to get in on the action by aggressively targeting Wal-Mart stores for a union takeover.

Unions haven't had any success in the U.S. The United Food and Commercial Workers of Canada (UFCW) has had some success in pushing union certification in the province of Quebec, but it certainly hasn't produced any beneficial results for unionized Wal-Mart employees.

In 2005, a Wal-Mart store in Jonquiere was one of the first to obtain union certification in North America, but union demands made in the process of collective bargaining (such as hiring an additional 30 employees) apparently made it clear that the store would no longer be profitable.

So Wal-Mart exercised its entrepreneurial right to close the Jonquiere store prior to signing a union contract.

Three years later, the battle continues. Was Wal-Mart's move union-busting or was it good, common-sense capitalism to close a store that can't turn a profit?

Last week, the Supreme Court of Canada announced it would hear the cases of two ex-employees who say Wal-Mart violated the Quebec Labour Code and their right to freedom of association. According to the Code, Quebec businesses can't fire employees for joining a union, unless it can show that it has "good and sufficient reason."

Almost surprisingly, Quebec's labour commission ruled in 2006 Wal-Mart's closure was lawful and its reasons for terminating employment were both "good and sufficient." That decision was later upheld in a Quebec Superior Court, and in the Quebec Court of Appeal, based on past Supreme Court decisions.

With three rulings upholding Wal-Mart's actions, one has to wonder what the Supreme Court is hoping to accomplish by inserting itself into this debate.

Private business would be destroyed if Canada's courts ordered a business to stay open for any reason, let alone when it isn't profitable to do so.

The announcement comes as unionized employees at the Ste. Hyacinthe Wal-Mart are in the process of binding arbitration and union leaders claim Wal-Mart is about to shut down its oil and lube garage in Gatineau, where workers are now awaiting an arbitrator's imposed collective agreement.

The Gatineau contract could become the second union contract at a Wal-Mart in North America, but while unions hope it would open the doors to unionization at other stores, it will most likely backfire by pushing another Wal-Mart store out of business.

Did unionization push Wal-Mart to lose money? It may be a stretch to believe that the newly unionized Jonquiere store was suddenly in the red, but it also doesn't make a lot of sense for a large retailer to shut down a successful, money-making business just to spite the union.

Still, Walton never believed his employees needed a union and, in his autobiography, he insightfully (or "incitefully" when considered in light of current events) writes, "(the unions) put management on one side of the fence, employees on the other, and themselves in the middle as almost a separate business, one that depends on division between the other two camps."

According to Canadian employees, Walton may have been right.

In 2005, a national employee survey showed 92 per cent of Canadian Wal-Mart workers looked forward to their jobs each day and Wal-Mart was ranked as the eighth best company to work for in Canada.

In 2007, Wal-Mart was named as one of the 50 best employers in Canada for the fifth time in six years. (The rankings are based on anonymous employee surveys).

So much for the perception of Wal-Mart as an evil, mean-spirited employer that exploits its workers and supposedly, in Joni Mitchell language, "paved paradise and put up a parking lot."

Perhaps this is the real reason that unions have had such a difficult time winning over Wal-Mart employees. Even Jonquiere employees rejected unionization when given a democratic, secret ballot vote. It was only when the UFCW took advantage of a Quebec law that allows unions to use the intimidating process of signing up employees individually that the union succeeded in gaining sufficient support for certification.

In fact, Wal-Mart employees have never certified a union by a vote -- only by undemocratic process of card signing.

What should worry Canadian workers is that the Supreme Court is now in charge of their future. In a 2007 labour law decision on B.C. Health Services, the court stunningly reversed 20 years of its own jurisprudence by stating that its "prior decisions no longer withstood principled scrutiny."

It's not hard to imagine that the current case could lead to more of this discombobulated reasoning. If so, it will only serve to hamper our economic competitiveness and keep Canada's labour laws even further behind every other developed nation -- to the great detriment of our workers.

Susan Martinuk's column appears Friday on the Herald's Editorial Page.

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