

# Update

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## WAL-MART YET AGAIN: MIXED RATIFICATION/STRIKE VOTES

We are all aware of the great damage inflicted by the Harris government in its passage of the Bill 7 amendments to the *Labour Relations Act*. That wasn't enough for the Tories and last summer they followed up with Bill 31, commonly known as 'the Wal-Mart Bill'. Bill 31 ended the ability of unions to obtain certification without a representation vote where illegal employer conduct prevented the 'true wishes' of employees from being expressed. RW/Steelworkers had succeeded in organizing a retail Wal-Mart store in Windsor which remains still the only unionized Wal-Mart store in the world.

What is not as well known is that the organizing fight of RW/Steelworkers with Wal-Mart never really ended. Most people heard that RW/Steelworkers reached a first contract with the company.

Unfortunately however, Wal-Mart refused to accept this result and has tied the matter up before the OLRB for the last year.

The issue Wal-Mart chose to fight on was the RW/Steel's choice of a mixed ratification/strike vote question on the ballot given to unit members. The question on the ballot read:

**YES I accept the Company offer**

**NO I do not accept the Company offer & I instruct the Negotiating Committee to call a strike if necessary in order to attain a proper agreement**

Wal-Mart objected to the question and argued before the OLRB that, now that Section 44 of the *Labour Relations Act* made ratification votes mandatory, the question had to be a straight yes/no option. It was argued by the company that "principles of democracy require the presentation of a clear and unfettered choice".

Jim Hayes of the firm represented RW/Steel. He argued that a simple yes/no ballot would serve no purpose and that the company's position would represent a "direct intrusion into what has historically been a matter of internal union affairs". He also submitted that a trade union must be permitted to provide employees with the realistic choice: do you want what's on the table or are you prepared to authorize a strike to do better? He relied upon longstanding jurisprudence from the Board and noted that Bill 7 made ratification votes mandatory but did not regulate the form of the question to be asked.

This issue is of great significance to the labour movement as the question chosen by

RW/Steel is one which has been used by many other unions for decades. Particularly in anti-union first contract situations it reduces the risk that unions may effectively lose bargaining rights: in some cases employees have been known both reject a contract and also to refuse to strike. More generally, even with mature relationships it is necessary to move the bargaining process off centre and to prevent stalemate.

The OLRB released a lengthy decision in late December 1998 which upheld the position of RW/Steelworkers in all respects. The Board decided that:

**“In our view, there is absolutely nothing ‘undemocratic’ about a ballot that requires a choice between the ‘realistic’ options that the Board has said present themselves when collective bargaining has reached an impasse, i.e. to accept the proposed agreement or to reject it and authorize a strike to do better. These are the alternatives that can move the collective bargaining process forward; their presentation on the ballot is consistent with the central purpose of the Act; and the absence of the ‘no-no option’ ensures that the new statutory requirement of majority support for a proposed agreement or to go on strike will not be used to defeat the process of bargaining a collective agreement itself.”**

This decision has been of immediate comfort to OPSEU which will be conducting a mixed ratification/strike vote for the largest bargaining unit in the province in early 1999 as it has done in the past. The decision will also be reassuring to many other unions which have traditionally used this form of ballot. RW/Steel had used this very question for decades.

We have now been served with an application for judicial review by Wal-Mart which continues to advance so-called democratic arguments. We leave it to our readers to judge how interested Wal-Mart

really is in democracy as opposed to continuing its effort to deprive the union and its members of a proper union contract.

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