



COMMENT

By
**Mary Cornish
and Crystal
Stewart**

Wal-Mart and the struggle for global labour justice

fining workers in the factory until the work was completed.

Although Wal-Mart has a Code of Conduct indicating its commitment to adequately monitor labour practices at supplier factories, Bama noted the lack of effective independent monitoring mechanisms and the reality that the required low labour price expectations of stores like Wal-Mart makes it difficult for suppliers to also meet the labour standards promised by Codes of Conduct.

Wal-Mart is also increasingly being taken to court in Canada and the U.S. either for violations of domestic workplace standards or in order to obtain collective bargaining rights.

Joseph Sellers, a Washington lawyer with Cohen, Milstein, Hausfeld & Toll updated CALL members on the class action lawsuit, *Betty Duke et al v. Wal-Mart Stores* that his firm, along with 2 other firms and 3 non-profit groups has brought. Filed in June 2001, this suit alleges widespread patterns of sex-based discrimination by Wal-Mart in its 3600 U.S. stores. After 2.5 years of discovery with 180 depositions, a federal court judge in San Francisco certified the class action suit on June 22, 2004, allowing Betty Dukes, the lead plaintiff and a greeter at a Wal-Mart store in California to proceed with her law suit. The class is expected to comprise over 1.6 million past and present women workers in the U.S.

Sellers noted that the key to victory at the certification stage was using Wal-Mart's strength – that is its well-known, highly controlled corporate practices – to

show that employment practices across its 3600 U.S. stores were based on centrally controlled and influenced employment practices. Using data ordered to be produced by Wal-Mart in the discovery process, plaintiff lawyers arranged for a study of the employment data for Wal-Mart's U.S. workforce which was filed on the certification motion. Sellers explained that the data showed that women working for U.S. Wal-Mart stores are paid less than men holding the same jobs and that women get a fraction of the promotions men get. Wal-Mart has appealed the class certification decision.

The final speaker, Louis Bolduc, Executive Assistant to the Canadian Director of United Food and Commercial Workers Union and QFL Vice President discussed UFCW's ongoing legal battle to unionize Wal-Mart workers in Canada.

The UFCW has been certified at three Wal-Mart stores in Quebec – Jonquiere, Saint-Hyacinthe and in Gatineau – with 12 certification applications pending across the country. Bolduc reviewed the legal actions being taken by the UFCW to hold Wal-Mart accountable including their legal actions to oppose Wal-Mart's shutdown of the Jonquiere store during the midst of first contract labour negotiations on the basis of alleged unprofitability.

Two hundred employees lost their employment when the store closed on April 19, 2005. Bolduc spoke of the importance of non-legal strategies which has included getting the backing of the Quebec Federation of Labour for providing unemployed Jon-

quiere workers with financial assistance and job placement services.

In Ontario, the UFCW's Toronto counsel James Hayes and John Stout of Cavalluzzo Hayes Shilton McIntyre and Cornish also filed unfair labour practice charges against Wal-Mart one day before employees at the Windsor store voted against certification. The UFCW charged before the Ontario Labour Relations Board that the Jonquiere store closing was meant to and did intimidate workers in all Wal-Mart stores from exercising their right to union representation.

The UFCW has called for wide-ranging labour remedies to rectify Wal-Mart's unlawful labour practices including ordering a second vote at the Windsor store, if necessary and requiring Wal-Mart to permit the union to hold meetings with employees during working hours on paid time at all of Wal-Mart's Ontario stores to discuss unionization and the circumstances of the Jonquiere closing.

With legal strategies being pursued on a global, national and local basis, it is clear that corporations such as Wal-Mart will face increasing pressure to bring their labour practices into lawful compliance with conventional labour norms accepted by many of their competitors.

Mary Cornish and Crystal Stewart are lawyers with the national labour and human rights firm, Cavalluzzo Hayes Shilton McIntyre & Cornish which represents the UFCW Canada. Mary Cornish chaired the CALL panel.

Lawyers working with trade unionists and other activists are developing many different legal strategies to force transnational corporations such as Wal-Mart to abide by international and domestic labour standards.

Wal-Mart is now the world's largest employer, and its unfair labour practices have a powerful negative effect not only on its own employees but also on employees in its vast global supply chain and in competitors' workplaces.

In June 2005, participants at the Canadian Association of Labour Lawyers annual conference in Montreal heard from three speakers who shared their experiences and insights into legal battles over labour standards with Wal-Mart and other transnational corporations. These labour standards which are International Labour Organization Conventions include the right to collective bargaining, the right to equality in employment and the right to fair and humane working conditions.

Starting with global strategies, International Labour Rights Fund Deputy Director Bama Athreya highlighted how the inadequacy of labour standard mechanisms in developing countries led her Washington-based advocacy organization to develop US-based legal strategies.

Based on holding American corporations accountable under U.S. law for their overseas wrongful labour practices, the ILRF has used the little known *U.S. Alien Tort Claims Act*. This year, the ILRF reached a groundbreaking settlement under this law of its 1996 lawsuit against Unocal where it had claimed damages on behalf of Burmese workers alleged to have been forced at gunpoint to work on a Unocal pipeline.

While the ILRF is currently pursuing similar actions against other transnationals, this legal tool is limited in scope as the conduct under the *Alien Tort Claims Act* must be in the nature of a crime against humanity, such as killing, torture or forced labour.

As a result, the ILRF is now considering new legal strategies to hold corporations such as Wal-Mart accountable in the United States for violations of their Corporate Codes of Conduct in their global supply chain factories and stores.

The ILRF has been gathering evidence on substandard labour practices of transnational corporations in countries such as Bangladesh, Nicaragua, Indonesia and China, ranging from failure to pay for overtime hours worked to forcibly con-

CORRECTION

In the July 8 issue of *The Lawyers Weekly* we incorrectly reported that David Thomas of Fraser Milner Casgrain LLP was recently appointed to the Alberta Court of Queen's Bench.

In fact, it was Dennis R. Thomas who was appointed to the Bench. *The Lawyers Weekly* editors sincerely regret the error.

New sanctions and penalties for charities

By **Karen J. Cooper**

Bill C-33, a second Act to implement certain provisions of the budget tabled in Parliament on March 23, 2004, received Royal Assent on May 13, 2005, and is now in force with a new regulatory regime for charities. The amendments to the *Income Tax Act* (the "Act") in Bill C-33 implement new rules concerning the taxation

and administration of charities set out in the 2004 Federal Budget. The new rules generally apply to taxation years beginning after March 22, 2004, with some exceptions being in effect 30 days after Royal Assent.

Prior to the 2004 Federal Budget, the only sanction available to the Canada Revenue Agency ("CRA") in regulating registered

charities was the revocation of a charities registration. Revocation occurred sometimes inadvertently as a result of a failure by the charity to file an information return or because the charity was being discontinued. It was invoked only rarely by CRA in situations of serious non-compliance and

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