

Behind the 'Wal-Mart Bill'

Desperate Labor Unions Seek State-Mandated Health Care Benefits

By Ryan Ellis

Summary: Labor union leaders, desperate to organize new members, view gargantuan retailer Wal-Mart as both an elusive prize and a scapegoat for worker anger over rising health care costs. But expensive union campaigns to tarnish Wal-Mart's reputation have largely failed. Now union leaders and their allies in state legislatures are trying to legally mandate minimum health insurance benefits—again, with limited results.

Organized labor isn't what it used to be. Once it represented more than a third of the private-sector workforce, but now it "fights for" fewer than one in 12 workers. The costly pension and health care plans that were once the boast of Big Labor increasingly are a thing of the past, having dragged down many companies that agreed to them. And more and more individual workers now tailor innovative benefit plans to their own personal needs. Union collective bargaining rules only get in their way.

Worst of all, from the union point of view, workers no longer line up to be organized, their signed card-checks eagerly in hand. This especially frustrates union



Wal-Mart CEO Lee Scott doesn't face an employee revolt over salaries, benefits or working conditions. Employees have repeatedly rejected union representation. Union-friendly legislators hope to change that.

organizers when there are such large prizes as Wal-Mart filled with lower-paid non-union workers. The Service Employees International Union (SEIU) and the United Food and Commercial Workers (UFCW) have tried for years to pressure Wal-Mart to agree to unionize—all for naught. Union "Wal-Mart Watch" and "Wake Up Wal-Mart" campaigns have gone nowhere.

Perhaps that's because the union anti-Wal-Mart campaigns employ Marxist class warfare rhetoric, a hallmark of union corporate campaigns for decades. Wal-Mart is accused of discriminating against women, employing children in sweat-

shops, paying poverty-level wages, shipping jobs overseas, and so on. There is even an anti-Wal-Mart DVD cleverly entitled, "Wal-Mart: The High Cost of Low Prices," produced by the UFCW. Wal-Mart has become the monster looking to gobble up everything in America that's good and pure.

Union corporate campaigns over the years have become dependent on this sort of hyperbole. They are tireless—and tiresome. Even a compliant mainstream media can't attract public attention to the unions' cause or persuade Wal-Mart employees to join a union. The anti-Wal-Mart cam-

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paigns have failed.

Glimmer of Hope

But lately unions have begun to try a different tack, one that has actually borne fruit. Dubbed the “Wal-Mart Bill” strategy, it involves getting state legislatures to pass bills requiring companies that exceed a certain employee-size to spend a percentage of their payroll costs on health care. If an employer does not comply, it must pay the difference to the state’s Medicaid fund. Usually the minimum size for the employer defined in the proposed legislation turns out to be not much smaller than Wal-Mart, which just happens to be the largest single employer in many states.

Maryland is labor’s first test state for this legislative strategy. What’s called the “Fair Share Act” requires that any employer in Maryland with at least 10,000 employees must spend at least eight percent of its payroll costs on health care. Now there are only four employers in Maryland with at least 10,000 employees, and the anti-Wal-Mart legislators have tailored the law so that Wal-Mart is the only private employer to come under its provisions. Wal-Mart insists that it already spends about eight percent of payroll on health care, but the unions and their supporters say the law applies to it. The “Fair Share Act” is a foot in the door that has been closed to union demands for many years.

The “Wal-Mart Bill” has almost nothing to do with covering the uninsured in Maryland. According to the U.S. Cham-

ber of Commerce, a majority (55 percent) of uninsured Americans work for small employers with ten or fewer workers. In Maryland, fewer than one-half of one percent of the state’s 786,000 uninsured residents work for Wal-Mart. The argument that uninsured Wal-Mart employees are crowding onto the public health dole is as absurd as the claim that the law will save Maryland taxpayers great sums of money that go into Medicaid spending. Both are red herrings.

What the legislative strategy really accomplishes is to give pro-union legislators a “free” vote. They get to poke big, bad Wal-Mart in the eye, appease labor lobbyists, and keep union cash and election-day volunteers rolling into their campaigns. Wal-Mart is unlikely to be financially damaged to any serious extent, but its public image will be tarnished. More importantly, Wal-Mart workers may conclude that they are not getting a fair shake from their employer, making it easier for the unions to organize individual Wal-Mart stores. Consider this telling comment by Maryland Delegate Anne Healy (D-Prince Georges County): “We don’t want to kill this giant. We want this giant to behave itself. We want this giant not to be a bully.”

But not everyone in Maryland considers their vote “free.” Senator E.J. Pipkin (R) of Queen Anne’s County said, “This is crossing a bridge. Annapolis is telling private business in the private marketplace what to do.” Once the government gets involved in mandating employee health benefits, there is always the danger that it will expand its mandates into new areas. Indeed, if Wal-Mart does not meet union demands, the law stands as an example of how legislators can ratchet up the pressure by damaging a specific company’s reputation. The state legislature could just as easily adjust its provisions to target other large companies with fewer employees than giant Wal-Mart.

Maryland’s legislature passed the “Fair Share Act” in the spring of 2005. No doubt some in the legislature voted for the bill expecting that the Republican governor would veto it, and they relished their “free” swipe against Wal-Mart. But the legislators who went down this primrose

path in support of a “phony” bill had their expectations upended. In late 2005, Governor Bob Ehrlich did indeed veto the bill, properly labeling it a stealth “tax increase” on employers. But the state legislature overrode his veto in January 2006, and the Fair Share Act is now law.

There is a silver lining. Wal-Mart fought vigorously against the efforts to tarnish its image; at no point did it surrender to the unions. The retailer hired a dozen lobbyists in Annapolis and it will spend millions of dollars more to fight the law in the courts. Although it has been unsuccessful, Wal-Mart learned some valuable lessons that will prove invaluable in other states where the measure is being introduced.

National Campaign

The victory in Maryland has greatly emboldened nonprofit advocacy groups like the union-backed Families USA and others that have caused similar bills in 14 other states to be introduced in the most recent legislative sessions. Anti-Wal-Mart front groups for the UFCW and SEIU are springing into action. Thus far, the results are mixed. Bills died in California and Mississippi and are lost in the legislative process in other states, but there is still the possibility that one or two bills might be approved this year in the Northeastern states.

Christie Raniszewski Herrera of the free market-oriented American Legislative Exchange Council, a policy group for conservative state legislators, has compiled a chart of the provisions of this year’s state “fair share” bills. (See chart on next page.) The chart shows that on average, the bills would require affected employers to provide health care benefits equivalent to 7.11 percent (nonprofit) and 8.31 percent (for-profit) of payroll. Most bills copy Maryland in applying the new rules to employers that have more than 10,000 workers, but the scope of the bills varies. An Ohio bill would raise the employee level bar to 30,000; a Massachusetts bill applies to any employer with 100 or more workers!

It is the Massachusetts version of the Wal-Mart bill which should most trouble defenders of the free market. By over-

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Bill Tracking By State: Fair Share Health Care Campaign

State	Bill Number	Name of Bill	% Payroll Dedicated To Workers' Health Benefits		Employee Threshold	# Mandated Benefits	Mandated Benefits Rank in the U.S.
			Non-profit	For-profit			
FL	H 813	Fair Share Health Care Fund	7	9	>=10,000	50	#5
FL	S 1618	Fair Share Health Care Fund	7	9	>=10,000	50	#5
KS	H 2579	Employer Health Care Costs	6	8	>=10,000	37	#13
KY	BR 194	Fair Share Health Care Fund	NA	8	>=10,000	33	#16
KY	H 98	Fair Share Health Care Fund	NA	8	>=10,000	33	#16
KY	H 493	Health Care	10	10	>=10,000	33	#16
MD	H 1284	Fair Share Health Care Fund Act	6	8	>=10,000	58	#2
MD	S 790	Fair Share Health Care Fund Act	6	8	>=10,000	58	#2
MA	H 4622	Quality Affordable Health Care Act (Initiative Petition)	NA	NA	>100: 7% of payroll; <100: 5% of payroll	40	#10
MA	S 695	Employer Provided Health Care			>=99	40	#10
MI	S 734	Fair Share Health Care Fund	6	8	>=10,000	25	#21
MN	H 2573	Health	8	10	>=10,000	60	#1
MS	S 2684	Mississippi Fair Share Health Care Act	6	8	>10,000	27	#20
NH	H 1704	Health Care Fund	8.5	10.5	>=1,500	34	#15
NY	A 9534	Fair Share Health Program & Fund	6	8	>=10,000	43	#9
OH	H 471	Health Care Coverage	6	8	>=30,000	25	#21
OH	S 256	Health Care Coverage	6	8	>=10,000	25	#21
OH	S 258	Employer Contributions to Medicaid	8	8	>=10,000	25	#21
OK	H 2678	Poor Persons	8	9	>=3,000	35	#14
RI	H 6917	State Affairs and Government	8	8	>=1,000	40	#10
RI	H 6984	Human Services	8	6	>=1,000	40	#10
RI	S 2201	State Affairs and Government	8	8	>=1,000	40	#10
WA	H 2517	Minimum Labor Standards	7	9	>=5,000	48	#6
WA	S 6356	Health Care	7	9	>=5,000	48	#6
WV	H 4024	Fair Share Health Care Act	6	8	>=10,000	35	#14
WV	S 147	West Virginia Fair Share	6	8	>=10,000	35	#14

(Source: Christie Raniszewski Herrera of American Legislative Exchange Council; first published in the Heartland Institute's Health Care News in March 2006, <http://www.heartland.org/Article.cfm?artId=18589>)

shooting their target, proponents of the Bay State's version revealed their ultimate objective: universal health care. The union rallying cry in Maryland was, "Mega-employers have a social responsibility to give health care to their employees—especially if they are not unionized." But the Massachusetts anthem is: "Any moderately-successful employer has a social responsibility to give health care to its employees—especially if they are not unionized." Making matters worse is the fact that there are already no fewer than 40 different health care mandates in Massachusetts, including a new law that requires every individual to be insured for medical expenses. Recently, ehealthinsurance.com reported that Massachusetts was the only state in which it could find no market to sell high-deductible health insurance compatible with health savings accounts (HSAs).

Massachusetts is not alone in seeking mandatory health coverage for small- to medium-sized employers. Many New Hampshire legislators want to require that any for-profit employer spend 10.5 percent of payroll on health care if its workforce exceeds 1,500 employees. Employer size tends to vary in relation to state population. For a "fair share" bill in Washington State the employer must have 5,000 employees; in Oklahoma, 3,000 employees; in Rhode Island, 1,000 employees. A pernicious bill introduced in the Kentucky House would burden the nonprofit sector with a 10 percent benefit mandate on employers with more than 10,000 workers.

But what counts as employer "health care spending"? What if an employer sets up a high-deductible health plan and chooses to put the bulk of the company's contribution in a health savings account or a health reimbursement arrangement—does that count toward the requirement? Suppose the employees decline coverage? Can paying for non-insurance-related health costs count towards the spending mandate (e.g., on-site gym memberships, health fairs, wellness classes, etc.)? When legislators start "firing with real bullets," they will have to be straight with voters as to what they are trying to accomplish.

Kill the Golden Goose

Union members ought to stop and consider what's behind "fair share" legislation. Instead of working to improve the pay, benefits and working conditions of their current members, labor unions push "fair share" bills as political and public relations ploys to sign up more members. Attention Wal-Mart shoppers: If you are a union member, why should your dues be used to orchestrate a legislative campaign targeting the store at which you shop? Your dues money would be better spent on the discounted goods that you need.

These campaigns against Wal-Mart are not working. Except in Maryland and possibly one or two more states, the union campaigns appear to have stalled. Not one U.S. Wal-Mart store has been organized by a union—ever. As Wal-Mart puts it, unions "may be right for some companies, but there is simply no need for a third party to come between our associates and their managers."

Recently the U.S. Department of Labor (DOL) set out rules requiring labor unions to disclose the amount of money they spend on politics, and this information is to be made available online. Anyone, whether he or she is a union member or not, can now go to the DOL website (www.union-reports.dol.gov) to find out what percentage of a union's member dues is spent on political activities—or, at any rate, on activities the union is willing to count as openly political.

A quick check of the 2005 LM-2 forms for the SEIU and UFCW reveals extensive spending on politics. For instance, SEIU reported collecting nearly \$219 million in member dues, agency fees and per capita tax in 2005. It spent \$26 million (11.8 percent of income) on politics. It is likely that this would not include any political spending hidden in the categories of "contributions, gifts, and grants" or "general overhead."

SEIU dues money comes from grocery store baggers and high school janitors. But it gave \$20,000 to the North Carolina Democratic Party and a whopping \$250,000 to Americans United to Protect Social Security, an advocacy group that opposes President Bush's proposed per-

sonal retirement accounts.

Or what about the \$70,000 that the UFCW gave Jesse Jackson's Rainbow/PUSH Coalition? SEIU gave Rainbow/PUSH \$152,000 and it handed over \$10,000 to the National Gay and Lesbian Task Force. It also reports that it put aside \$500,000 to help organize Wal-Mart.

Union members can finally see how their dues money is spent. They may want to assert their *Beck* rights and demand the return of the percentage of their dues that is spent for politics unrelated to union representation. Union members lucky enough to be in one of the 17 "Right-to-Work" states might want to consider whether they want to stay in such unions.

The idea that private employers of a politically-determined size have a social—and legal—obligation to provide health insurance coverage is at the heart of the "fair share" legislation that targets Wal-Mart. The political Left considers Wal-Mart an exploiter of workers in Red State America. But most Wal-Mart employees believe the alternative to working at Wal-Mart is a less-desirable job or unemployment. And most other Americans think Wal-Mart serves the American consumer by keeping its prices low.

Wal-Mart provides jobs and affordable goods to large numbers of workers and consumers. Wal-Mart has a phenomenal tight-margin, just-in-time inventory system that has made it a fantastic success story. To have state governments require the company to pay for health insurance beyond its current benefits would kill the goose that lays the golden eggs.

Maryland Benefits

Besides, Wal-Mart already gives plenty to the community. In Maryland, for instance, it gives 15,681 people jobs. Full-time Wal-Mart associates in Maryland earn about \$20,000 per year—more than double the poverty line for a single person, and enough to keep a single mother with three children out of poverty. To put this in context, there are more than 400,000 people in Maryland who live below the official poverty line. That number would be far worse if it were not for Wal-Mart jobs.

Wal-Mart matches employee 401(k)

contributions up to four percent of salary. A lifetime employee working from age 18 to 67 making the Maryland salary of \$20,000 and contributing four percent of salary would have enough money at retirement for a \$24,000 annual pension plus Social Security—even if the employee never invested his contribution in the stock market (all in current dollars).

Wal-Mart employees have a choice of 18 different health care plans to meet differing household needs. Historically, Wal-Mart has contributed up to two-thirds of the cost of health insurance. An employee who wants first-dollar coverage can pay more in premiums, or employees can choose a high-deductible HSA plan.

That's not all that Wal-Mart provides to Maryland. In 2004, the company spent more than \$678 million on 661 Maryland suppliers. It paid more than \$120 million in sales taxes and nearly \$17 million in income taxes to the state. Wal-Mart donated more than \$3 million in cash charitable contributions and more than \$600,000 in in-kind donations in Maryland. It sponsors "Safe Neighborhood Heroes Grants," literacy grants, community scholarships and the annual Wal-Mart Maryland "Teacher of the Year" award.

None of this is to say that Wal-Mart is saintly or deserves special recognition. However, the company clearly gives back to its employees' communities in many ways: It provides lower prices, jobs, tax revenues, benefits for workers and charitable contributions. Attacks by Maryland politicians and union officials amount to little more than a thinly-disguised attempt shake-down the company and force its employees into a union they do not choose to join.

The anti-Wal-Mart bills ignore the enormous transformation taking place in the health care system today. The post-World War II paradigm of large, industrial employers providing one-size-fits all, zero-dollar deductible, no-cost health insurance coverage is dead. What is slowly but steadily replacing it is a more flexible and portable system that can be tailored to the individual. Inevitably, this will require more employee cost-sharing of premiums and higher deductibles or co-pays.

Unions of the Future?

The fastest-growing manifestation of this new health care paradigm is health savings accounts (HSAs). They combine a high-deductible, catastrophic health insurance plan with a tax-advantaged savings account to pay for routine medical costs. These "defined contribution" health care plans are growing rapidly in popularity. According to America's Health Insurance Plans, there are now more than 3 million Americans covered by an HSA-qualified health plan. Hewitt Associates, an employer benefits consulting firm, reports that a majority of large employers are planning on offering HSAs in the near future.

In the future, it's likely that the relation between where you work and your health insurance will not be any stronger than the relation between where you work and your car insurance. Both will be purchased on the open market, portable and reserved for catastrophic events. All routine spending (checkups, oil changes, physicals) can be handled on a cash basis with full price transparency.

There is nothing the unions can do about these changes in health care, which are part of the many changes affecting our economy and society. To devote union resources to the Wal-Mart bill is to fight yesterday's war.

What the SEIU and the UFCW ought to be doing is getting into the high-deductible health insurance market. They could partner with an insurance company to offer high-deductible health insurance to all comers, union members and non-members alike. They could partner with a financial services firm to offer an HSA product, complete with their own version of "socially conscious" mutual funds. Instead of wasting their members' resources on futile attempts to organize Wal-Mart, unions could be making profits by shrewdly entering markets they cannot hope to stop.

This proactive strategy would actually provide a membership benefit. For instance, the SEIU could announce that it is partnering with an insurance company to offer high-deductible health insurance to any American. Coverage would be through the market, but sponsored by

SEIU, whose members would receive a discount on premiums. Affiliated non-members could buy into a discount program. (It could include gym membership subsidies, wellness programs and the like.) SEIU already provides health insurance coverage for its own employees through Cigna, a good place to start.

SEIU could also leverage its position as a major pension manager and partner with a national banking and brokerage firm to offer the HSA product. Amazingly, SEIU offers a 401(k) plan to its top brass—the same type of "risky" pension plan the union denies its rank-and-file members in collective bargaining agreements. This relationship with Prudential Securities could be expanded to house HSAs. SEIU could offer an incentive package to members. Those in Right-to-Work states that choose to stay in the union could be given a "re-enlistment" bonus to their HSAs every year. A suite of mutual fund offerings could make extra money for both Prudential and the SEIU.

This brief sketch shows that it is possible to imagine a proactive, thinking and growing union committed to helping its members. The current dues-grabbing, knee-jerk, Left-thinking approach leads nowhere. It is just too bad that union leaders are willing to take their members down that road, with or without sustainable health care plans.

Ryan Ellis is Director of the Alliance for Worker Freedom and Federal Affairs Manager at Americans for Tax Reform.

Please remember Capital Research Center in your will.

Labor Notes

SEIU's Stern Joins Hunger Strike

Service Employees International Union president Andrew Stern joined a hunger strike in late April at the University of Miami to support striking janitors. The standoff ended last month with the university conceding to the union authority to bypass an employee vote for union representation in favor of a "card check" election. In return, the janitors dropped their exaggerated legal claims against the university. Writes Stefan Gleason of the National Right to Work Legal Defense Foundation in *National Review*: "This shakedown of employers to agree to card check is the wave of the future because union officials know that workers won't vote for unions like they used to."

Pro-Immigration Coalition Opposes National Guard Troops

A new coalition of 41 unions and pro-immigration advocacy groups called the We Are America Alliance is opposing President George W. Bush's plan to dispatch National Guard troops to the Mexican border. The coalition plans demonstrations in Washington, D.C., and a voter registration drive to sign up a million legal immigrants. Hispanic groups involved with organizing recent marches and boycotts, however, accuse unions and large organizations of abandoning forceful action. This despite the heavy union participation in May Day rallies and an immigrant work boycott. In Los Angeles, a march to City Hall was organized by SEIU Local 1877 and the American Federation of State, County and Municipal Employees, which raised the majority of funds for Los Angeles events.

Gettelfinger Faces Dissent for Cooperation With Auto Makers

A *Washington Post* profile of United Auto Workers (UAW) president Ron Gettelfinger touts him as a pioneer in a new "era of cooperation" with executives in the auto industry. "Ron saw down the road before most of us," said Ed Hardesty, a retired UAW leader who watched Gettelfinger rise to prominence as the Detroit auto makers declined. "We both had to change or we wouldn't have a future." But the Post reports a "rising dissident movement" in the UAW, including workers angered by job cuts and repeated concessions negotiated by Gettelfinger. His opponents blame him for the UAW's membership decline from 1.5 million in the 1970s to 557,000 in 2005, and the union's inability to organize successful plants owned by Honda, Hyundai, Nissan and Toyota.

Complaint Filed Against Wisconsin Teachers Union

Landmark Legal Foundation has filed a complaint with the Internal Revenue Service against the Wisconsin Education Association Council (WEAC) for unreported political contributions that may violate federal tax law. Landmark says it has identified \$430,000 in contributions WEAC made to the Democratic Legislative Campaign Committee from 2000 through 2002 that do not appear on WEAC's tax filings or on reports from WEAC's political action committee. Landmark has made earlier complaints against National Education Association affiliates in California, Florida and New Jersey. IRS and Labor Department investigations are ongoing.

Republicans Meet With Union Leaders

Republican National Committee chairman Ken Mehlman recently met with union leaders in three separate meetings to urge financial support for Republican candidates and oppose union donations to Section 527 committees, which were instrumental to the Democrats in 2004. Republican strategists reportedly see potential in a more friendly relationship with labor unions, especially in support of pro-union Republican incumbents.

Union Activists 'Quarantine' Wal-Mart

During Wal-Mart's annual shareholder meeting on June 2, union activists across the country dressed in hazmat suits "quarantined" Wal-Mart stores with yellow caution tape. The action, organized by Jobs With Justice and other labor groups, was intended to pressure shareholders with claims of corporate mistreatment of Wal-Mart employees.