



FIGHTING FOR A VOICE

WALMART WORKERS SPEAK OUT DESPITE SYSTEMATIC LABOR ABUSE



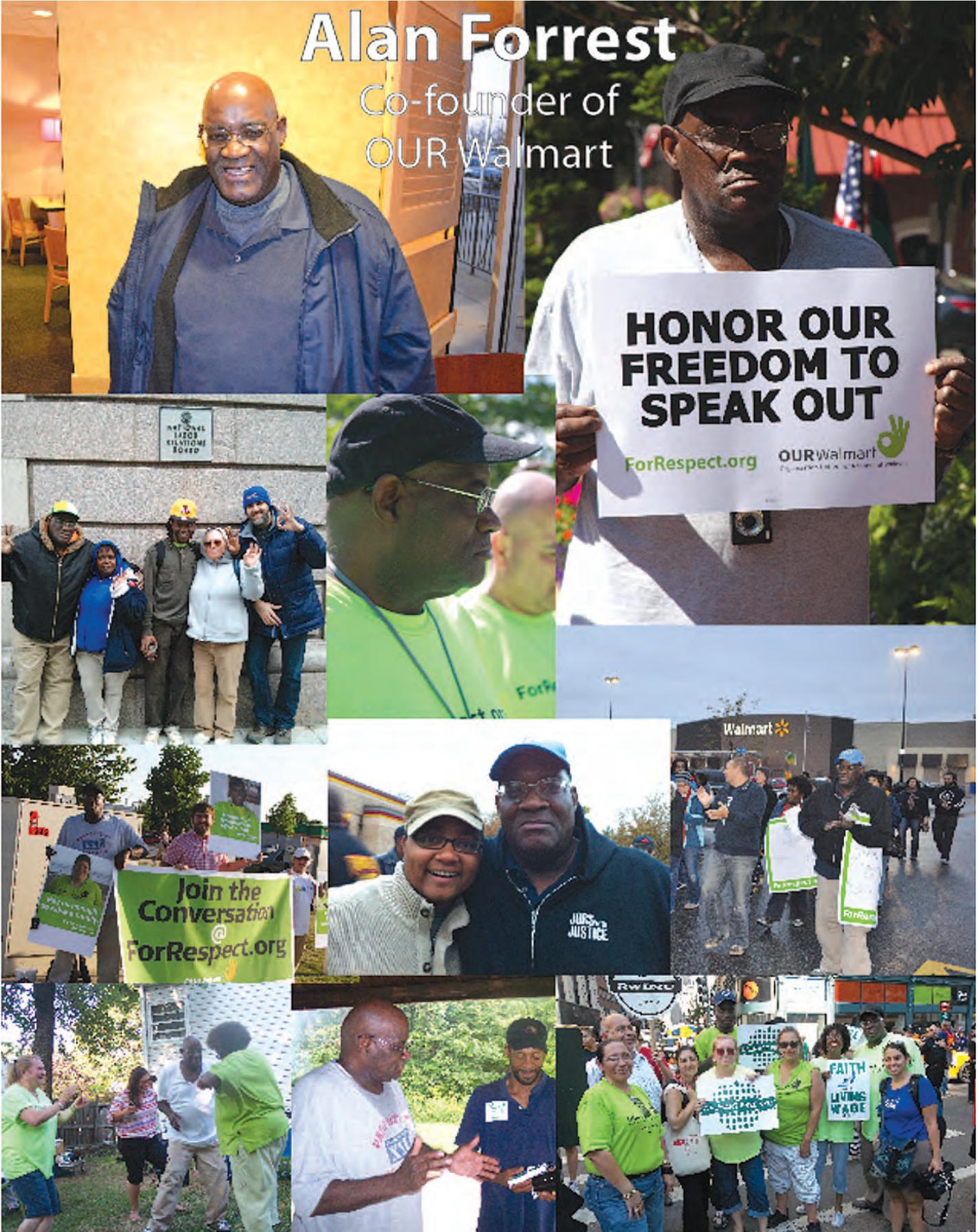
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In Memoriam

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Co-founder of
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Executive Summary

This report documents Walmart’s efforts to deter lawful activities by the company’s workers since the founding of the Organization United for Respect at Walmart (OUR Walmart) in June 2011. The National Labor Relations Act (NLRA) gives most private-sector employees the right to act collectively in order to improve working conditions. The law also expressly prohibits coercive or intimidating actions by employers to interfere with workers’ “protected concerted activity.” However, some Walmart associates who have joined OUR Walmart, or otherwise acted collectively to address concerns about working conditions, report being targeted by management with harassment, threats, changes to their jobs and working conditions, and retaliatory discipline, including termination. OUR Walmart says it has received reports of more than 150 individual incidents where workers allege their rights were violated.¹ Our findings strongly suggest that Walmart continues to target those workers who speak out and act collectively.

The workers’ stories on which this report is based provide compelling evidence that Walmart continues its well-documented historical practice of using unlawful tactics to curb workers’ rights to address workplace concerns. When workers have nonetheless demonstrated the courage to act publicly, the response from the company has often been forceful. Several “first-wave” OUR Walmart leaders were fired and others have experienced varying degrees of management pressure. When the company refused to stop retaliating against and attempting to silence publicly-identified OUR Walmart members, the organization called for a wave of protests and an unfair labor practice strike on Black Friday 2012. Despite threats from store-level and corporate management, more than 500 workers went on strike and many more participated in over a thousand protest actions at Walmart stores across the country. In the wake of this action, Walmart increased retaliation, though workers continue to speak out.

As OUR Walmart members initiated an unprecedented wave of activity last summer, allies in the community helped them expose the company’s poor record on labor relations. Individuals and organizations around the country participated in rallies and press conferences at Walmart stores, leafleted customers to inform them about workers’ concerns, and helped organize more than a thousand protest actions on Black Friday. Walmart has responded to growing community support for Walmart workers by filing trespass lawsuits in Arkansas, California, Florida, and Washington. In these lawsuits, Walmart names as defendants a number of organizations, including OUR Walmart, the United Food and Commercial Workers (UFCW), and allied community groups. In addition, Walmart names as defendants a number of individuals, including former Walmart workers who were terminated by the company after becoming involved with OUR Walmart. Rather than address worker and community concerns about retaliation, the company has launched a legal campaign to curb freedom of speech and assembly in and around its stores. This aggressively litigious response pits low-wage workers against a \$470 billion company with an army of lawyers.

¹ This report is based on a review of more than 150 incidents reported to OUR Walmart by Walmart workers and OUR Walmart organizers.

As this report makes clear, workers targeted by employers like Walmart have limited success redressing illegal actions through the enforcement procedures delineated in the NLRA and administered by the National Labor Relations Board (NLRB). It is very difficult for workers to prevail in these proceedings, even when they have clearly been targeted after participating in protected activity. Further, even when the NLRB does find that Walmart has violated the law, the consequences for the company are negligible. As a result, Walmart has little incentive to follow the law. On the other hand, workers face enormous pressure to remain silent and avoid being identified as leaders, members, or even sympathizers of OUR Walmart. Nevertheless, workers' calls for change at Walmart have only grown louder in the face of retaliation from the company.

Key findings of this report include the following:

- As Walmart workers increased their activity since 2011, the company responded aggressively, using many of the same tactics that it has deployed in the past to deter legally protected activity by workers. When activists and leaders emerged over this period, they often faced retaliation.
- Managers at both the store and corporate level implement pervasive forms of intimidation which Walmart has good reason to believe will not provoke action by the NLRB. Evidence suggests that Walmart managers disguise acts of retaliation against workers as legitimate discipline or routine enforcement of company policy.
- Walmart has launched an aggressive legal campaign to isolate Walmart associates from their communities through trespass lawsuits. These lawsuits seek to curb freedom of speech and assembly by having Walmart stores and surrounding property declared off-limits to critics of the company.
- The NLRB does not effectively protect Walmart workers' legal right to act collectively to address workplace concerns. For example, in cases where a manager threatens a worker with no witnesses present, the Board is unlikely to issue a complaint. As a result, the number of complaints issued against Walmart by the NLRB is not an accurate reflection of the severity or scope of the company's retaliation against workers.





Introduction

As workers step up, Walmart retaliates

Over the past two years, Walmart workers have stepped up their efforts to win respect and better working conditions at a company that is known for its aggressive and unlawful efforts to deter worker action. In June 2011, Walmart workers publicly launched the Organization United for Respect at Walmart (OUR Walmart). The new organization issued a Declaration of Respect, which expressed associates' dissatisfaction with wages and working conditions and called on Walmart to stop retaliating against associates who speak out about workplace issues.² Confronted by one hundred workers at Walmart Home Office in Bentonville, Arkansas, the company's Senior Vice President of Global Labor Relations Karen Casey promised the company would not retaliate against workers for engaging in protected activity.³ Yet, workers report that Walmart continues to employ coercive and intimidating tactics, ranging from subtle threats to illegal firings, in order to deter its workers' lawful activities.

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities."

-Sec. 7, National Labor Relations Act

The National Labor Relations Act (NLRA) gives most private-sector employees the right to act collectively to improve working conditions. The NLRA expressly prohibits "unfair labor practices" – coercive or intimidating actions by employers to retaliate against or attempt to silence workers who speak out. Despite these legal protections, American Rights at Work and Human Rights Watch have previously documented Walmart's extensive efforts to suppress lawful worker organizing.⁴ In response to recent reports by OUR Walmart members of unfair labor practices, we decided to re-visit Walmart's record. We found that, as workers have increased their activity since 2011, the company has ramped up its response, relying on many of the same tactics that it has used in the past. The overall impact of Walmart's efforts has been to create a climate of fear in which many workers find it difficult to exercise their legal rights.

Walmart tactics pose broad threat to freedom of speech and assembly

While our investigation reveals continuities with the past, we also identify some new developments. For the first time in history, Walmart workers in the United States have established a growing national organization that challenges Walmart to publicly commit to improving its labor standards. Thousands of Walmart workers in hundreds of stores and nearly every state have joined OUR Walmart. Using Facebook, web-based conference calls, and other forms of social media, the organization has been able to create a national structure and coordinate their efforts beyond the store level. With support from the United Food and Commercial Workers union

² OUR Walmart Timeline. Retrieved 8 May 2013, from www.forrespect.org/our-walmart/timeline/

³ Casey's comments were filmed and posted online. Retrieved 17 May 2013, from www.youtube.com/watch?v=0sAVwQnqrEw

⁴ Pier, Carol. 2007. "Discounting Rights: Wal-Mart's Violation of U.S. Workers' Right to Freedom of Association," Human Rights Watch. Retrieved 8 May 2013, from www.hrw.org/reports/2007/04/30/discounting-rights; Johansson, Erin. 2007. "Checking Out: The Rise of Wal-Mart and the Fall of Middle Class Retailing Jobs," 39 Conn. L. Rev. 1461. May.

(UFCW) and a broad coalition of community allies, workers are directly challenging Walmart's suppression of lawful activity. As Walmart workers become more vocal, and as community allies help workers to focus public attention on Walmart's questionable practices, the company finds itself increasingly on the defensive. Consequently, Walmart has extended its aggressive workplace tactics to the public arena—launching a broad effort through the courts and the NLRB to restrict freedom of speech and assembly in and around Walmart stores. These restrictions appear intended to isolate workers from community supporters and OUR Walmart organizers, thereby facilitating Walmart's fear-based regime of worker control.

NLRB complaints don't tell the whole story

The existing framework for enforcement of U.S. labor law has proven inadequate to the task of protecting workers when employers use their economic and political power aggressively.⁵ Under the law, workers and worker organizations may enforce their NLRA-defined rights by filing an unfair labor practice charge against an employer with the National Labor Relations Board (NLRB). NLRB personnel investigate the charge and make a determination as to its merits. If a charge is deemed to have merit, the agency will typically attempt to arrange an informal settlement or may direct the parties to settle. If no settlement is forthcoming, the NLRB may issue a complaint, followed by further attempts to have the parties settle. If these attempts fail, an administrative hearing is held, the outcome of which is subject to various administrative and judicial appeals. The process may take years and while it is ongoing, workers do not receive any relief. For example, a worker who has been unlawfully terminated may not receive back pay or an offer of reinstatement until the employer exhausts all of their options for appealing an NLRB decision.

In her 2007 report, Carol Pier of Human Rights Watch argued that the enforcement of rights guaranteed under the NLRA has broken down for two main reasons: 1) employers face no punitive consequences for violating U.S. labor laws; and 2) excessive delays in enforcement in many cases render the already weak remedies for labor law violation virtually meaningless.⁶ For the reasons outlined above, many of the coercive employer actions reported to us by workers have not, and will not, result in action being taken by the NLRB. Sometimes this is because witnesses are too afraid to come forward. And sometimes workers simply calculate that the limited penalties imposed on employers are not worth the risks and headaches of pursuing an NLRB charge. The result is that *even pervasive unlawful action by an employer such as Walmart will not be reflected in the record of complaints issued by the NLRB.*

In order to fully understand Walmart's response to workers' call for the company to publicly commit to improving labor standards, it is necessary to go beyond the NLRB record. It is necessary to revisit patterns of corporate behavior which have previously been exposed by American Rights at Work, Human Rights Watch, and others, and to see how these patterns continue in the present, *as reported by workers*. The second section of this report identifies the range of tactics deployed by Walmart over the past year or so to deter workers, and illustrates these tactics with representative worker stories. In the third section we discuss how Walmart's attempts to silence workers have recently evolved into a broader campaign to limit freedom of speech and assembly in and around Walmart stores. In the fourth section we briefly discuss efforts by Walmart workers to challenge the company's unlawful practices through the NLRB. The report concludes with several recommendations about how to better protect Walmart workers' rights going forward.

5 Bronfenbrenner, K. 2009. "No Holds Barred – The Intensification of Employer Opposition to Organizing." Economic Policy Institute. Washington DC. Retrieved 8 May 2013, from www.epi.org/publication/bp235/

6 Pier, 2007

SECTION 1

Walmart's Record of Interference with Workers' Lawful Activity

OUR Walmart is not seeking to organize a union of Walmart workers. Rather, its purpose is to have Walmart publicly commit to improving labor standards. However, the company has responded to OUR Walmart by reviving a pattern of anti-worker behavior it developed in the past to thwart unionization. In her groundbreaking 2007 report, Carol Pier of Human Rights Watch (HRW) documents Walmart's consistent practice of interfering with worker organizing and freedom of association. She found that many of Walmart's actions contravened both international human rights standards and U.S. labor law. However, she concluded that Walmart relied heavily on tactics that are not expressly prohibited by U.S. law but which nonetheless "coercively interfere with workers' internationally recognized right to decide freely for themselves whether to organize."⁷ Rather than crude mass firings and store closings, Walmart's interference more often took the form of "myriad more subtle tactics that, bit by bit, chip away at – and sometimes devastate" workers' rights.⁸ While many employers oppose worker organizing, Pier found that Walmart "stood out for the sheer magnitude and aggressiveness" of its approach.⁹

The following lawful tactics to counter worker organizing were identified by Pier:

Anti-Union Training. Walmart engaged in "[P]roactive worker and manager training, a central part of which frequently involves setting out the company's aggressive anti-union stance" and instructing managers on techniques to prevent worker organizing.¹⁰ In addition to providing practical tools for combatting worker organizing, this training sent a message to managers and workers alike that organizing efforts at their store could have negative repercussions for them.

Open Door Policy. Management explicitly cited the company's purported willingness to listen to workers in Open Door meetings as an alternative to "third-party representation" (i.e. worker organizations). "At its core, the Open Door Policy is motivated by Wal-Mart's hostility to worker organizing. The company implemented the policy in the 1970s at the suggestion of John Tate, who has been described as a 'professional union-buster.'"¹¹

⁷ Pier, 2007. Pp 4-5

⁸ Ibid, 4.

⁹ Ibid, 4.

¹⁰ Ibid, 5-6.

¹¹ Ibid, 79.

Trained to Clamp Down on Organizing

Adrian Montgomery, a former assistant manager at Walmart, has written that assistant managers were trained to respond to anything that looked remotely like worker organizing. According to Montgomery, even a sign for a "baby shower committee" was supposed to draw an aggressive response—the mere use of the word "committee" made such a sign suspect in management's eyes: "[A] manager would have to find the person who made the sign, find out why they used that word, then determine if the action got a warning or a write-up.... They called it unlawful Walmart language, unbecoming a Walmart employee—words like 'committee', 'organize', 'meeting.' Even 'volunteer' was an iffy word, and they would raise an eyebrow at 'group'."

Source: Adrian Montgomery. (2011, August 31). How Walmart Trains Managers. Labor Notes. Retrieved 30 April 2013, from <http://www.labornotes.org/blogs/2011/08/how-walmart-trains-managers>

Ongoing Monitoring and Rapid Response to Organizing. Store managers were required to report any activity that resembled worker organizing via the “Union Hotline.” In such cases, Walmart’s corporate office rapidly dispatched a Labor Relations Team to “implement an aggressive anti-union campaign.”¹² These campaigns typically included “captive audience meetings” where managers emphasized the company’s opposition to organizing and showed an anti-union video complete with a violent picket line.

Pier’s report for Human Rights Watch found that Walmart’s lawful tactics created a “climate of fear” in which workers believed they would face retaliation if they expressed pro-union views or even listened as others did so.¹³ Additionally, her report identified a wide range of *unlawful* tactics deployed by Walmart management to deter workplace organizing, including:

- Selective enforcement of company policies in order to provide a pretext for disciplining or terminating activists
- Selective enforcement of the company’s solicitation policies in order to limit workers’ access to information about the benefits of organizing
- Illegal threats that workers would face serious consequences if they organized, including economic losses
- Illegal manipulation of store staffing in order to dilute support for organizing and union representation in the run-up to a union election
- Illegal information gathering including coercive interrogation, eavesdropping, and remote monitoring of workers via security cameras

Our own research on Walmart, published in the *Connecticut Law Review* in 2007, revealed a similar pattern of tactics deployed by the company to interfere with its employees’ organizing efforts.¹⁴ The illegal activity, including firings, surveillance, and interrogations, resulted in 94 complaints brought against the company by the NLRB between 1998 and 2003. The NLRB general counsel at the time, Leonard Page, recognized a “pattern of illegal conduct” linked to officials at the company’s headquarters.¹⁵ However, just as Human Rights Watch documented, we found that Walmart used a wide range of tactics to stifle concerted activity. For example, managers were given tools to decipher signs of collective action and rate the level of employee dissatisfaction in a given store, in order to determine the likelihood of collective action by employees. Manuals identified the types of employees likely to lead their co-workers in an organizing effort, such as the “anti-establishment” employee or the “over qualified” employee. By 2007, Walmart had not only shut down pockets of worker activity in Texas, Quebec, and Colorado, but the company had seemingly perfected the science of preventing their employees from organizing altogether.

Fast forward to 2013, and the recent rise of collective action at Walmart has exposed the limitations of the company’s strategies. Yet it has also revived the company’s centralized pattern of tactics to suppress lawful worker activity. As we document below, the company has reopened its playbook on fighting collective action and deployed many of the same tactics documented in prior research.

¹² Ibid, 6.

¹³ Ibid, 8.

¹⁴ Johansson, Erin (2007). “Checking Out: The Rise of Wal-Mart and the Fall of Middle Class Retailing Jobs,” *Connecticut Law Review*, Vol 39, No. 4.

¹⁵ *NOW: Off the Clock* (PBS television broadcast Nov. 8, 2002). Retrieved 18 May 2013, www.pbs.org/now/transcript/transcript_walmart.html

SECTION 2

Walmart's Continued Efforts to Create a Climate of Fear

As OUR Walmart has grown over the last year or so, workers and organizers report that the company has subjected them to a range of coercive and intimidating tactics. The list below, based primarily on reports by workers, summarizes these tactics and reveals a striking continuity with past Walmart practices identified by Human Rights Watch.

Walmart tactics which typically violate U.S. labor law

- Firing workers on the basis of selective or pretextual enforcement of company policies
- Disciplining workers on the basis of selective or pretextual enforcement of company policies
- Altering wages or benefits of workers
- Imposing onerous assignments or schedules on workers
- Isolating or bullying workers, or tolerating workplace bullying of targeted workers
- Making coercive statements, including threats of termination, discipline, and store closings
- Interrogating workers regarding protected concerted activity
- Surveilling workers engaged in protected concerted activity
- Denying access to OUR Walmart members and organizers for purposes of protected concerted activity
- Prohibiting workers from distributing literature
- Promising or granting benefits in exchange for refraining from involvement in protected concerted activity

Walmart tactics which are coercive but typically fall outside the scope of the NLRA

- Use of "Open Door" policy as a means of refusing to allow workers to act collectively
- Mandatory captive audience meetings
- Videos, postings, and other communications that express negative statements about OUR Walmart

Walmart tactics that seek to curb organizational and community support for associates

- Use of injunctions, trespass charges, and unfair labor practice charges to block worker activities and prohibit expressions of community support for workers

Reports from Walmart workers

The reports compiled here will help the reader to understand how the tactics listed above play out in the real lives of workers, who risk their livelihoods just to exercise their legal rights. Each of these stories is based on reports from Walmart workers or OUR Walmart organizers. In most cases we preserve the anonymity of the workers in question, and we often withhold certain details that might put a worker at risk or hinder the worker's ability to pursue a charge against Walmart at the NLRB. As the narratives below indicate, some workers have been able to hold Walmart accountable by pursuing charges with the NLRB. Attorneys working with OUR Walmart activists continue to investigate violations and prepare new charges. In the last section of this report, we provide summary information on NLRB charges filed on behalf of OUR Walmart members.

Walmart has responded to the emergence of OUR Walmart by firing “first-wave” leaders

It is unlawful to discipline or terminate workers for engaging in protected concerted activity. However, determined managers can often disguise their unlawful interference with protected concerted activity as routine disciplinary action or enforcement of company policy. At the national level and in local markets, Walmart has at times responded aggressively to the emergence of outspoken OUR Walmart members. Here, we recount the stories of a number of “first-wave” leaders who have been fired by the company.

Girshriela Green. Terminated July 2012.¹⁶

Girshriela Green worked at the Crenshaw Walmart in Los Angeles for two years before an on-the-job injury forced her to take an extended medical leave of absence. Green, who was frustrated by the working conditions at Walmart, joined OUR Walmart during her leave of absence. At one point during her leave period, Walmart offered her a light-duty assignment but then ultimately failed to make it available to her. In June of 2012 Green was shown on television, marching at the head of a 15,000-strong Los Angeles protest against Walmart's labor policies. Less than a week later, Walmart sent Green a letter terminating her. Despite the timing of Green's involvement in protected concerted activity and Walmart's change of heart with respect to her return to work, the NLRB refused to issue a complaint on the basis of Walmart's assertion that it was enforcing its existing leave policy.

Angela Williamson. Terminated May 2012.¹⁷

Angela Williamson had been working at a Walmart in Pensacola, Florida for a year when she became an outspoken member of OUR Walmart. As a mother of three on a Walmart wage, Williamson was living from paycheck to paycheck. She was motivated to get involved by the fact that Walmart consistently asked associates to stay past their shifts during the week but then would cut their hours later in the week. She also spoke out about Walmart scheduling practices which made it impossible for associates to count on a consistent income. Williamson was ostensibly terminated for taking too many sick days, even though a manager had approved the absences for both her own illness and for her to care for an ill grandmother. When Williamson contested her termination, Walmart's specific claims about her attendance record shifted. Specifically, the company changed its story after Williamson exposed errors in their documentation. The absence that Walmart ultimately claimed put Williamson over the threshold for termination occurred when she was in the hospital with a severe kidney infection. Accepting Walmart's claim that Williamson's termination was consistent with company policy, the NLRB dismissed the charge.

¹⁶ Reported to OUR Walmart.

¹⁷ Reported to OUR Walmart.

Alex Rivera. Terminated September 2012.¹⁸

The case of Alex Rivera, who was the only OUR Walmart member at his store in Orlando, Florida, is highly instructive. The NLRB actually issued a complaint against Walmart for illegally threatening to fire Rivera. When Walmart made good on this threat, however, the company was able to avoid further sanction by the NLRB. Rivera worked at Walmart for four years in the inventory control department. On July 20, 2012, he and other OUR Walmart members distributed leaflets outside his store. When Rivera went back to work the next day he was called into the office by a manager who told him that Walmart does not tolerate that kind of action and that he was violating company policy, even though he was off the clock. Management also prohibited him from handing out literature in front of the store and told him that he could only do so at the outskirts of the parking lot. Weeks later, Rivera distributed literature to co-workers at a Subway restaurant inside the Walmart. This time, the store management disciplined and threatened to fire him, which ultimately prompted the NLRB to issue a complaint on his behalf.

Walmart eventually *did* fire Rivera, however. Recall that Rivera went public as an OUR Walmart member when he distributed leaflets at his store on July 20, 2012. As it turns out, Walmart started monitoring Rivera's time cards and looking for discrepancies the *very next day*.¹⁹ Two months later, they fired him over issues about how he recorded his time. It is important to understand that it is common practice at Walmart for associates to make adjustments to the computerized records which indicate how many hours they have worked. This is because associates may be required to work different hours than those for which they have been scheduled. In order to adjust their paid time accordingly, associates must get approval from a manager. In this case, Rivera's adjustments were indeed approved, as they had been for years. And the only adjustments that were counted against him were those starting from the day after he went public as an OUR Walmart member. Walmart claimed Rivera's termination was consistent with company policy, and the charge related to his termination was withdrawn when the NLRB indicated that it would not issue a complaint on that issue.

Cindy Lee. Terminated November 2012.²⁰

Cindy Lee, a Walmart employee since 2008, worked the overnight shift at her store in Cassville, Missouri. She joined OUR Walmart in October 2011 and was the only public member of the organization in her store. Lee did not hide her support for OUR Walmart. She traveled with the organization to the Walmart shareholder meeting in June 2012, and at work she wore an OUR Walmart "Respect" bracelet and OUR Walmart buttons.

One evening in November 2012, Lee went to work despite the fact that she was not feeling well. She informed her manager that she was sick. At the nightly meeting, she was assigned the grocery aisle, a physically demanding job. She told her manager that she didn't think she could do the work. Lee walked away from the meeting for a minute, before returning to tell the manager that she could not do the assigned job due to illness. The manager encouraged her to go home and get some rest, and even offered to let her "call out" from the store phone. When she got home, Lee followed the standard procedure for calling in sick and received a confirmation number from Walmart's employee sick line.

¹⁸ September 2012. Reported to OUR Walmart.

¹⁹ Walmart's own documentation, given to Rivera at the time of his termination, reveals this pattern.

²⁰ November 2012. Reported to OUR Walmart.

When she finally spoke with a manager, he told her that she had been fired. According to the documentation that Walmart gave Lee, she was terminated because she had “walked off the job.” Lee had not received any notice from management. She had a perfect record for three years and was a model employee. And contrary to Walmart’s policy of progressive discipline, Lee was terminated without first being issued a warning or lesser form of discipline. Lee lives in a small town and is still looking for work six months after being fired by Walmart. OUR Walmart filed an unfair labor practice charge on her behalf, which the Board is currently investigating.

Carlton Smith. Terminated May 2013.²¹

Carlton Smith is a 17-year Walmart associate in Paramount, California who worked his way up to Department Manager in housewares. Concerned about deteriorating working conditions at the company, Smith joined OUR Walmart in October 2011 and became a vocal and public presence in the organization. He participated in the Black Friday strike in November 2012 and traveled to Bentonville to protest at Walmart Home Office. In April 2013 he led a delegation of his fellow workers to raise concerns with store managers. On May 8, 2013, Smith was terminated. He is now fighting for reinstatement before the NLRB.

Walmart claims they fired Smith for repeatedly failing to complete his work. However, a closer look at the story of his termination reveals the kind of maneuvering that often lies behind instances of severe discipline given to OUR Walmart leaders. In the first place, Smith says that management’s concerns about his work performance only surfaced after his involvement with OUR Walmart became public. Prior to this, his evaluations were typically in the “meets” or “exceeds expectations” category. In addition, Walmart policy is to terminate an associate after the fourth “coaching” (a form of discipline) in a year for a similar violation, and an individual violation is supposed to “fall off” an associate’s record after one year.²² In Smith’s case, however, Walmart appears to be counting a coaching that is more than a year old. Further, the coaching that Walmart is counting as Smith’s fourth in one year was delivered on May 8, 2013—*exactly one day before* a coaching he received on May 9, 2012 *would have* fallen off his record. Finally, there is the fact that Smith was named Associate of the Month in December 2012, which contradicts Walmart’s claim that he was having chronic performance problems.

Aaron Lawson. Terminated (Reinstated).²³

Kentucky Walmart Associate Aaron Lawson was the first OUR Walmart member who was terminated but returned to work after filing a charge with the NLRB. Lawson was terminated after becoming involved with OUR Walmart and traveling with the group to protest at Walmart’s headquarters in Bentonville, Arkansas. Lawson, who has a disability, must take occasional leaves, which are protected by the Family Medical Leave Act (FMLA). After Lawson returned from Bentonville, he was terminated on the pretext of failing to call in to request leave for an FMLA-covered absence. Lawson believed that the real cause was his public involvement with OUR Walmart. While the NLRB was investigating Lawson’s unfair labor practice charge, Walmart offered to reinstate him with back pay. Lawson signed a settlement agreement on October 1, 2012 and returned to work shortly thereafter.

²¹ May 2013. Reported to OUR Walmart.

²² Walmart. “Coaching for Improvement.” Updated April 19, 2012.

²³ Reported to OUR Walmart.

Walmart has fired activists

As reported above, after OUR Walmart went public, Walmart terminated a number of key leaders. These are not the only cases in which Walmart managers have sought opportunities to get rid of workers who spoke out about working conditions or showed a willingness to talk with OUR Walmart members. In Texas, Missouri, California, and Kentucky, workers have been fired, laid off, or forced to quit their jobs after engaging in protected concerted activity.

James Vetato. Constructive Discharge.²⁴

After a Walmart manager at a Kentucky store heard James Vetato talking about the need for workers to come together to improve working conditions, he experienced ongoing harassment by the manager. This harassment included sexual comments regarding Vetato's teenage daughter by the manager. Vetato's efforts to resolve the situation through official channels got no response. One day, the manager told Vetato that he could end the harassment by having his daughter engage in a sexual relationship with the manager. Vetato understandably became very upset and quit. Under the NLRA, when an employer creates a hostile work environment so untenable that it drives an employee to quit, it is equivalent to firing the worker and known as "constructive discharge." However, because Vetato only learned of his right to file charges with the NLRB after the six-month deadline for doing so had passed, he was not able to get his job back.

EXAMPLES OF WORKERS FIRED BY WALMART AFTER ENGAGING IN PROTECTED CONCERTED ACTIVITY	
<i>Triggering Event</i>	<i>Management Action</i>
An Associate accepted an OUR Walmart leaflet	A worker was terminated after ignoring a manager's order to refuse a leaflet from an OUR Walmart organizer. After filing a charge with the NLRB, the worker was reinstated. (Texas) ²⁵
Management found out about Associate's OUR Walmart activity	A five-year Walmart pharmacy tech was fired after a co-worker reported to management that he was a member of OUR Walmart. The NLRB issued a complaint against Walmart. (Texas) ²⁶
Participated in a lawful unfair labor practice strike	Temporary workers who had been promised permanent jobs were all laid off after they engaged in protected concerted activity. Walmart hired new temporary workers to take their place. (California) ²⁷
Associate seen talking with an OUR Walmart organizer in her store	The associate, a 13-year Walmart employee with an excellent record, was fired two weeks later. (California) ²⁸

²⁴ October 2011. Reported to OUR Walmart.

²⁵ October 2012. Reported to OUR Walmart.

²⁶ December 2012. Reported to OUR Walmart.

²⁷ October 2012. Reported to OUR Walmart.

²⁸ September 2012. Reported to OUR Walmart.

Walmart has retaliated against OUR Walmart members with disciplinary action

While employers have wide latitude to manage the workplace, the NLRA prohibits them from using company policies as a pretext for discriminatory discipline against workers who engage in protected concerted activity. Some Walmart workers, however, report that they have been subjected to retaliatory discipline by management after speaking out about working conditions.

Gerardo Paladan.²⁹

OUR Walmart leader Gerardo Paladan worked at Walmart in Federal Way, Washington, for over six years as an overnight stocker. At one point last year, Paladan spoke with his manager about a problem with broken pallet-jacks that made his work unsafe. The problem was never fixed, however, and shortly thereafter, Paladan was injured on the job using a broken pallet-jack. When Paladan returned to work he sought to speak with his supervisor about safety issues, but the supervisor ignored him. In response, Paladan and 21 co-workers signed a petition calling for the store manager to address the broken equipment and make employee safety a priority. When Paladan tried to speak for the group, the manager called him “disrespectful” and said that he needed to schedule an “open door” meeting to talk about his concerns privately. She then told the group that if workers were disrespectful, they would be terminated. When Paladan attended the open door meeting, the manager told him that he was paid to work, not to mouth off and complain. She then assigned him extra work for the evening and threatened further discipline. Paladan filed a charge against Walmart with the NLRB, which issued a complaint on his behalf. The case was subsequently settled and Walmart posted a notice saying that it would no longer threaten to discipline workers for speaking out about safety concerns or participating in protected concerted activity.

EXAMPLES OF WORKERS SUBJECTED TO RETALIATORY DISCIPLINE BY WALMART	
<i>Triggering Event</i>	<i>Management Action</i>
Knowledge of Associate’s OUR Walmart membership	Contrary to store practice, a worker known to be an OUR Walmart supporter was disciplined after receiving a customer complaint. (California) ³⁰
Knowledge of Associate’s OUR Walmart membership; Associate filed an Unfair Labor Practice charge	Contrary to standard practice, management called the worker at home to read her evaluation over the phone. The evaluation was dated the day after the worker had filed an unfair labor practice, and it reflected a significant drop in the Associate’s ratings. (California) ³¹

²⁹ Reported to OUR Walmart

³⁰ June 2012. Reported to OUR Walmart.

³¹ November 2012. Reported to OUR Walmart.

Walmart has surveilled and interrogated workers who took part in protected concerted activity

It is unlawful for employers to surveil workers while they are engaging in protected activity or to question workers about protected activities, including their own membership or participation in an organization such as OUR Walmart. In fact, the NLRB has held that actions which merely give the impression of surveillance may be unlawful when they discourage workers from exercising their rights. Nonetheless, workers and OUR Walmart organizers report incidents of both surveillance and interrogation by Walmart managers. This is particularly the case in California, where OUR Walmart has grown rapidly.

EXAMPLES OF WORKERS AND OUR WALMART ORGANIZERS SUBJECTED TO SURVEILLANCE AND INTERROGATION BY WALMART	
<i>Triggering Event</i>	<i>Management Action</i>
OUR Walmart organizer walked through store	Management follows OUR Walmart organizers when they enter stores and keeps track of which workers talk with them. (Multiple incidents, California) ³²
OUR Walmart members engaged in protest actions or unfair labor practice strikes	Management, or employees directed by management, have photographed and videotaped OUR Walmart members taking part in lawful work actions (e.g. strikes to protest unfair labor practices) or protests. (Multiple instances, California) ³³
Unfair labor practice strike	After an unfair labor practice strike at his store, a manager demanded to know whether certain associates were OUR Walmart members and claimed to have a list of members.(California) ³⁴
Workers wore OUR Walmart “Respect” bracelets to work	A manager stood by the time clock recording the names of workers wearing OUR Walmart bracelets imprinted with the word “respect.” (California) ³⁵
An off-duty worker talked with an OUR Walmart organizer outside the store	A manager directed the organizer to leave the property. He told the worker and the organizer that “we have you on tape” handing out leaflets. Then, the manager started to clean nearby as a pretext for surveillance. Management also brought an undercover asset protection worker to surveil the worker and the organizer. (California) ³⁶

³² 2012. Reported to OUR Walmart.

³³ 2012. Reported to OUR Walmart.

³⁴ October 2012. Reported to OUR Walmart.

³⁵ June 2012. Reported to OUR Walmart.

³⁶ April 2013. Reported to OUR Walmart.

Walmart distributes videos, postings, and other communications that express negative statements about OUR Walmart

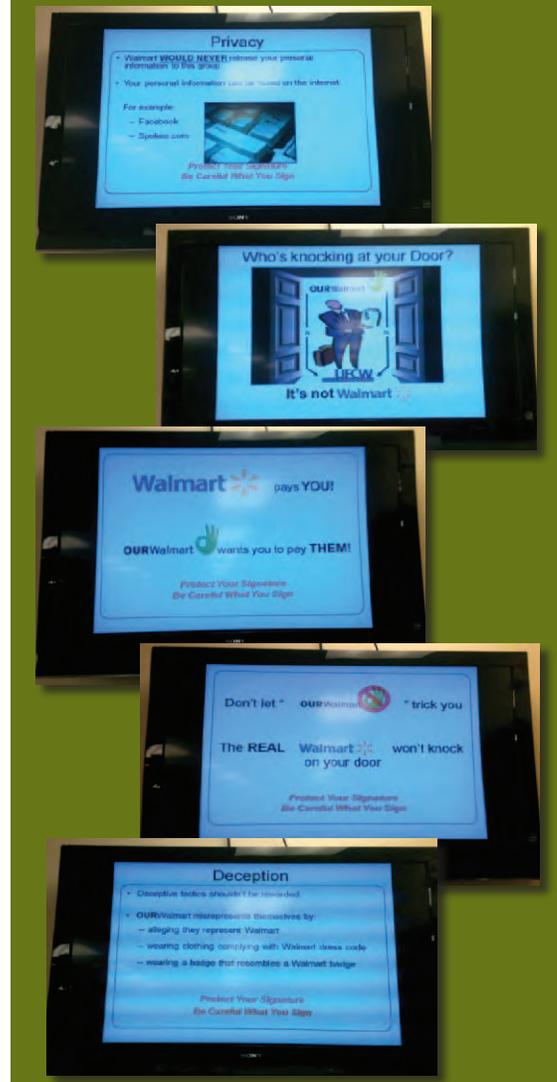
While Walmart makes it difficult for workers to speak with each other about collective action to improve working conditions, the company aggressively communicates its opposition to OUR Walmart. Employers have broad “free speech” rights to express their opinions about worker actions. While such communications do not necessarily violate the law, they do reflect the very uneven playing field that the law permits. Walmart may communicate with workers on a daily basis, while simultaneously taking actions that deny workers the ability to communicate with OUR Walmart members and organizers while they are at work. Walmart uses this power over access to “poison the well” — creating an atmosphere in which workers understand that participation in OUR Walmart could have negative consequences.

Walmart intimidates and threatens workers to deter them from engaging in protected activity

The NLRA prohibits managers from making statements that threaten, coerce, or intimidate workers because of their support for, or involvement with, protected activity. The law also gives workers the right to take action, including strikes, to protest unfair labor practices by employers. OUR Walmart members nonetheless report multiple incidents of coercive or threatening statements by managers.

Threats Directed at Black Friday Strikers. In late autumn of 2012, OUR Walmart members determined that management’s unlawful attempts to silence workers who spoke out for change demanded an assertive response. They decided to initiate coordinated protest actions at Walmart stores culminating in a nationwide unfair labor practice strike and protest on “Black Friday”—the day after Thanksgiving.³⁸ As early as October, workers in some markets began going out on strike. OUR Walmart members and supporters report that Walmart executives and managers attempted to threaten and intimidate associates in order to prevent them from. For example, Walmart spokesperson David Tovar, appearing on national television in November 2012, threatened associates with potential disciplinary action if they engaged in job actions on Black Friday.³⁹

These images are photos of a slide show that was played on the video monitor placed near the time clock at a Walmart store in Orlando, Florida.³⁷



37 Photographs provided by a Walmart associate.

38 The day after Thanksgiving is known as “Black Friday” because it is typically the biggest shopping day of the year – and the day when many retailers cross the threshold into profitability for the year.

39 David Tovar appearance on Fox News. Video retrieved 17 May 2013, from www.mediamatters.org/embed/static/clips/2012/11/19/27810/fnc-yourworld-20121119-walmart

A Walmart worker in Sapulpa, Oklahoma, was inspired by the first-ever strike of Walmart workers in October 2012, at a store in California. He and a couple of his co-workers held their own strike on October 14, 2012. On October 16, managers called him into the office and unlawfully told him that he might lose his job for this action. OUR Walmart filed a charge against Walmart and the NLRB agreed that Walmart violated the Associate's rights.⁴⁰

EXAMPLES OF COERCIVE ACTIONS BY WALMART TO DETER WORKERS FROM PARTICIPATING IN LAWFUL UNFAIR LABOR PRACTICE STRIKES AND OTHER PROTECTED ACTIVITIES	
Triggering Event	Management Action
Unfair labor practice strike	Management threatened to fire all OUR Walmart members who walked off the job in an unfair labor practice strike. (California) ⁴⁰
Unfair labor practice strike	A Walmart remodel manager threatened associates who were returning from a strike. The manager shouted that he would shoot the activists. (California) ⁴¹
Unfair labor practice strike	An Associate who had told co-workers she was going to participate in the Black Friday strike was called into the office and accused by a manager of stealing a 99-cent package of bobby pins. She told management she had a receipt for her purchase of the bobby pins. They did not ask to see the receipt and they did not discipline her. Another OUR Walmart member perceived this incident as an attempt to intimidate the worker, and ultimately decided not to strike. (Texas) ⁴²
Unfair labor practice strike	A worker who participated in the Black Friday strike reports that a Walmart personnel manager told him that she was "disappointed" in him because he joined the protests. His hours were subsequently reduced. (California) ⁴³
Unfair labor practice strike	After OUR Walmart announced the Black Friday strike, Walmart managers promised associates three hot meals and a 10 percent discount if they worked their full shifts on Thanksgiving and Black Friday. It is unlawful to promise or grant benefits to workers in exchange for refraining from participation in protected concerted activity. (Multiple locations) ⁴⁴
Unfair labor practice strike	Walmart managers in Maryland, Kentucky, Florida and other states told Walmart workers that the strikes and work actions organized by OUR Walmart on Black Friday violated the law and that any future attempts to strike would be illegal and subject to disciplinary action. (Multiple locations) ⁴⁵

⁴⁰ October 2012. Reported to OUR Walmart.

⁴¹ October 2012. Reported to OUR Walmart.

⁴² October 2012. Reported to OUR Walmart.

⁴³ November 2012. Reported to OUR Walmart.

⁴⁴ November 2012. Reported to OUR Walmart.

⁴⁵ February 2013. Reported to OUR Walmart.

⁴⁶ Reported to OUR Walmart.

Alan Forrest. General threats.⁴⁷

Alan Forrest, who passed away in March 2013, was a soft-spoken man, but a vocal OUR Walmart member at his store in Maryland. During the last year of his life, Forrest stood up for his co-workers, whether they were involved with the organization or not. At one point, when Forrest advocated for a co-worker, a manager warned him not to “stick his nose” into others’ business. The manager told Forrest that he was not allowed to complain about working conditions, hours or wages to other employees or to speak to other workers about OUR Walmart while working. Forrest knew that the manager’s statements were unlawful and he filed an unfair labor practice charge with the NLRB. Ultimately, Walmart settled Forrest’s charge and posted a notice informing workers that they have the right to speak about working conditions at work.

EXAMPLES OF WALMART MANAGEMENT’S COERCIVE, THREATENING, OR INTIMIDATING STATEMENTS	
<i>Triggering Event</i>	<i>Management Action</i>
Knowledge of OUR Walmart membership	A 9-year Walmart Associate and active OUR Walmart member reports being called into the office with two managers who threatened to fire her and close the entire store if she joined a union. (California) ⁴⁷
OUR Walmart presence in store	A worker reports that managers told associates they were not allowed to participate in OUR Walmart meetings. (Texas) ⁴⁸

Captive Audience Meetings. Walmart pays workers to attend mandatory sessions where managers express the company’s opposition to OUR Walmart. While these “captive audience meetings” may feel coercive to workers, they do not, in and of themselves, violate the law. However, workers have reported unlawful coercive and threatening statements by managers during these meetings. Also, some active members report having been excluded from the meetings so that management could disseminate their anti-OUR Walmart messages without being challenged.

“Open Door” Meetings. As Human Rights Watch has pointed out, Walmart claims that “open door” meetings provide an adequate venue for workers to express their concerns. Some workers say, however, that open door meetings do not generally provide an opportunity for meaningful input into store or company policy. And according to some workers, managers have refused to hold open door meetings with more than one worker present.⁵⁰ For example, in January 2013, seven Walmart workers initiated an open door meeting with an assistant manager to discuss issues of cashier understaffing. The assistant manager refused to listen to the group’s concerns and instead split them up and listened to concerns individually.⁵¹ This practice may be unlawful since it denies workers the right to engage in protected concerted activity by taking lawful collective action to improve working conditions.

⁴⁷ Reported to OUR Walmart.

⁴⁸ October 2012. Reported to OUR Walmart.

⁴⁹ July 2012. Reported to OUR Walmart.

⁵⁰ November 2012. Reported to OUR Walmart.

⁵¹ January 2013. Reported to OUR Walmart. Additionally, and contrary to Walmart’s stated policy, the assistant manager refused to allow an OUR Walmart leader to clock in for the meeting, despite the fact that everyone else was on the clock.

Closed-door Meetings. While Walmart managers will typically limit open door meetings to one worker, OUR Walmart members report that it is not uncommon for multiple managers to be present when they are called into the office—creating an intimidating atmosphere for the worker.

WORKERS SUBJECTED TO COERCIVE AND INTIMIDATING STATEMENTS DURING MEETINGS WITH WALMART MANAGERS	
Setting	Management Action
Captive audience meeting	During a “captive audience meeting” in July 2012, a manager ordered a worker to remove an OUR Walmart button, even though workers are allowed to wear other types of buttons. (Texas) ⁵¹
Captive audience meeting	After she spoke out during a captive audience meeting at a Florida Walmart, four managers approached the worker and interrogated her about her plans to engage in protected concerted activity. (Florida) ⁵²
“Open Door” meeting	An OUR Walmart member reports that Walmart management significantly cut her hours (from 30 to 12) after she insisted on having co-workers as witnesses at an “Open Door” meeting to discuss her working conditions. (California) ⁵³
Closed door meeting	After finding an OUR Walmart leaflet in their department, a manager called two workers into his office with four other managers (five total) and told them the leaflets were not allowed in any department. (California) ⁵⁴
Closed door meeting	A manager collected OUR Walmart pens that associates had used at their registers. During a closed door meeting with an OUR Walmart member, the manager systematically broke each pen. (California) ⁵⁵

⁵² July 2012. Reported to OUR Walmart.

⁵³ Reported to OUR Walmart.

⁵⁴ September 2012. Reported to OUR Walmart.

⁵⁵ September 2012. Reported to OUR Walmart.

⁵⁶ September 2012. Reported to OUR Walmart.

Walmart managers manipulate schedules to retaliate against workers

U.S. labor law prohibits employers from adversely changing any term or condition of a worker's employment because of their support for, or involvement in, protected activity. Nonetheless, OUR Walmart members report that Walmart unlawfully discriminates against them by giving them onerous assignments, changing their schedules to conflict with personal obligations (e.g. classes, caring for relatives, and second jobs), and denying their reasonable requests for additional hours and scheduling accommodations. Workers report multiple incidents of managers using their power over scheduling to practice a subtle form of retaliation. For low-wage workers who are often likely to have complicated transportation routines and family obligations, this kind of discrimination can create serious hardships.

EXAMPLES OF WALMART ASSOCIATES SUBJECTED TO ADVERSE CHANGES TO THEIR WORKING CONDITIONS AFTER THEY ENGAGED IN LAWFUL PROTECTED ACTIVITY	
Triggering Event	Management Action
Associate known as an OUR Walmart supporter	In January, 2013, management cut an OUR Walmart supporter's hours from 40 to 35. Similarly situated workers who were not involved with OUR Walmart, continued to receive 40+ hours. (California) ⁵⁶
Associate requested an Open Door meeting to discuss retaliation	Management cut the OUR Walmart member's hours from 32 to 24. (California) ⁵⁷
Associate participated in an unfair labor practice strike	Management refused to continue the practice of accommodating the worker's school schedule and told him he would have to work whatever random schedules were posted. This resulted in a significant loss of hours and pay. (California) ⁵⁸
Associate participated in an unfair labor practice strike	Walmart scheduled the Associate to work on Saturdays, which conflicted with his availability. The Associate had previously been allowed Saturdays off as he uses the day to practice with his church band. (Oklahoma) ⁵⁹
Associate participated in an unfair labor practice strike	When the worker asked for a day off to attend to a family matter, she was directed by her manager to "call out" (i.e. take an absence) instead. Management typically accommodates similar requests from workers who are not OUR Walmart supporters. (California) ⁶⁰
Associate participated in an unfair labor practice strike	When the worker requested additional hours, management offered the hours only if she worked the overnight crew. The worker cares for her elderly mother and needs to be home with her at night. In addition, she relies on public transportation, and there are no buses from her residence to the store at night. As a result, she was forced to spend \$300 per month on cab fare. The overnight premium rate was barely enough to offset this cost. However, she needed the additional hours and accepted the overnight assignment. (California) ⁶¹

⁵⁷ March 2013. Reported to OUR Walmart.

⁵⁸ September 2012. Reported to OUR Walmart.

⁵⁹ November 2012. Reported to OUR Walmart.

⁶⁰ November 2012. Reported to OUR Walmart.

⁶¹ December 2012. Reported to OUR Walmart.

⁶² November 2012. Reported to OUR Walmart.

Walmart singles out outspoken workers

U.S. labor law prohibits employers from retaliating against workers who engage in protected concerted activity. Workers nonetheless report multiple incidents in which Walmart managers have retaliated against them. In some cases, managers have attempted to socially isolate worker activists, which may also serve as an effective tool for intimidating other workers. For example, associates in Missouri, Illinois, and California report being told by managers not to associate with OUR Walmart members or supporters. An OUR Walmart activist in California reports being pulled by her store manager into a meeting with a second Associate to discuss that Associate's negative feelings about OUR Walmart.⁶³ In other cases, managers have failed to respond when an OUR Walmart member sought help to deal with threats or harassment in the workplace. For example, an OUR Walmart member in Kentucky reports that Walmart management failed to intervene effectively when she was threatened with violence by other workers.⁶⁴

Walmart manager to a Walmart Associate in Missouri: "As a friend, you should be careful who you hang out with because if OUR Walmart gets any bigger, Walmart will shut down the store."⁶⁵

Another case, from Texas, illustrates how management may take advantage of conflicts in the workplace to retaliate against workers who engage in protected concerted activity.⁶⁶ Stacey Cottongame, an outspoken member of OUR Walmart, went to the company's Bentonville, Arkansas, headquarters to protest in October of 2012. Less than a week later, management called Cottongame into the office and advised her that a co-worker had accused her of causing him physical harm. Management told Cottongame that someone had also accused her of grabbing a co-worker's rear end and kicking another in the shin, and using profane language. Cottongame denied being physical with anyone but admitted that she had used bad language a few times to co-workers who were harassing her. Cottongame said that she had previously reported the harassment to management but nothing was done about it. Management directed her to prepare a written statement and said they would look into it. A few weeks later, Walmart management called Cottongame into the office and terminated her for gross misconduct. Cottongame filed a charge against Walmart with the NLRB. The NLRB accepted Walmart's claims that its actions were consistent with policy and did not issue a complaint against the company.

63 November 2012. Reported to OUR Walmart.

64 November 2012. Reported to OUR Walmart.

65 September 2012. Reported to OUR Walmart.

66 October 2012. Reported to our Walmart.

Walmart prohibits distribution of OUR Walmart literature, restricts discussions of OUR Walmart among workers, and blocks workers' access to OUR Walmart members and organizers

Under the NLRA, if workers are allowed to discuss other non-work topics while on the job, managers cannot prohibit discussions about working conditions, and cannot single out protected concerted activity as a prohibited topic. Further, the NLRA generally protects retail workers' rights to talk with customers about labor issues. The NLRA also protects the right of workers to interact with the members and organizers of organizations such as OUR Walmart, including receiving literature and signing up for membership on company property. Nonetheless, workers and OUR Walmart organizers report numerous instances of Walmart seeking to block workers from interacting with OUR Walmart or even talking with each other about working conditions.

EXAMPLES OF WALMART PROHIBITING DISCUSSION OF WORKING CONDITIONS AND BLOCKING WORKERS' ACCESS TO OUR WALMART MEMBERS AND ORGANIZERS	
Triggering Event	Management Action
OUR Walmart organizers leafleted at store	Walmart management unlawfully prohibited workers from talking with OUR Walmart organizers by calling the police and requiring the organizers to leave the property. (Illinois) ⁶⁶
Associate leafleted at his own store	Walmart management unlawfully disciplined an OUR Walmart member for distributing leaflets and told him that he had to get permission from management to give literature to his coworkers. (California) ⁶⁷
Leaflets found in store	Walmart managers confiscated OUR Walmart leaflets and reprimanded workers for having the materials inside a worker-only area of the store. (California) ⁶⁸
Leafleting at stores (general)	After OUR Walmart activity increased in the Chicago area, Walmart posted "No Trespassing" signs at some stores. An OUR Walmart member reports being told by a manager that the signs are there to keep the organization out. (Illinois) ⁶⁹
OUR Walmart organizers conversed with a worker in a store	An OUR Walmart organizer who had been talking to a worker in a store was approached by a manager. The manager said to the OUR Walmart organizer that he had overheard their conversation. The manager told the OUR Walmart organizer that he could not converse with workers, despite the fact that customers routinely talk with workers while they are on the sales floor. The manager also told the OUR Walmart organizer that he had been talking about things to associates that he shouldn't talk about. (California) ⁷⁰
OUR Walmart organizers conversed with a worker in a store	Management ordered the organizer to leave the store, knocked a cell phone out of the organizer's hand, and called the police to evict the organizer. (California) ⁷¹

67 October 2012. Reported to OUR Walmart.

68 October 2012. Reported to OUR Walmart.

69 September 2012. Reported to OUR Walmart.

70 Reported to OUR Walmart.

71 April 2013. Reported to OUR Walmart.

72 April 2013. Reported to OUR Walmart.

Using Trespass Statutes to Block Access. Walmart has begun using trespass statutes in an attempt to block workers, OUR Walmart organizers, and community allies from discussing workplace concerns in and around Walmart stores. Workers and OUR Walmart organizers report threats nationwide to remove them from Walmart property – including many incidents in which Walmart management called the police. In some cases, these threats involved leased property to which Walmart clearly does not have the right under law to order people away. In St. Cloud, Florida a manager had the police issue a trespass citation to an OUR Walmart member who was engaging in lawful activity in the parking lot. Although Walmart subsequently asked the police to remove the warning, other workers were never informed of this, creating the impression that the worker’s activity was unlawful.⁷³ Walmart, through its attorney, has told employees who have been terminated and whose terminations are the subject of ongoing unfair labor practice charges that they are prohibited from coming on company property. To enforce this prohibition, Walmart has called the police and sought trespass warnings for individual workers.

⁷³ November 2012. Reported to OUR Walmart.; Jamieson, D. (2012, November 21). Walmart Strikes: Lone Worker Walks Out, Receives Trespass Warning Ahead Of Black Friday. *Huffington Post*. Retrieved 18 May 2013, from http://www.huffingtonpost.com/2012/11/21/walmart-strikes-black-friday_n_2174166.html

From Silencing Workers to Silencing the Community

In response to increased activity by workers and growing support for workers from community allies, Walmart has moved aggressively to restrict freedom of speech and assembly in and around its stores. Walmart's intentions in this regard became evident last autumn, when OUR Walmart called for unfair labor practice strikes and community protests at Walmart stores on Black Friday. Walmart responded by filing an unfair labor practice charge and threatening workers in an attempt to stop the demonstrations. More recently, the company has filed lawsuits in Florida, Arkansas, California, and Washington state, seeking to prohibit OUR Walmart members and supporters from coming in or near Walmart stores to demonstrate and discuss worker concerns.

Walmart first threatened to pursue trespass actions against OUR Walmart and community allies, including our organization, in the weeks leading up to Black Friday. As Josh Eidelson reported in *The Nation*:⁷⁴

In a letter addressed to several affiliates of the UFCW and to two chapters of the labor group American Rights at Work and Jobs with Justice, an attorney for Walmart said the company “reserves the right to pursue appropriate remedies with local law enforcement...” He said non-employees had entered “Walmart owned or controlled parking lots, sidewalks” and “stores” to picket or leaflet, and “created a significant disruption to Walmart’s sales and service to its customers.”

Then, in a last-ditch effort to stop the Black Friday actions, Walmart filed a charge against OUR Walmart with the NLRB. In both cases the intent was to pre-empt strikes, work actions, picket lines, and protests at Walmart stores.

Walmart's NLRB charge claimed that OUR Walmart's actions leading up to Black Friday constituted unlawful “recognitional picketing.”⁷⁵ In the days leading up to the strike, workers were also subjected to captive audience meetings at which managers, apparently reading from a script, told workers the planned strike was illegal.⁷⁶ This message was echoed by Walmart executives in media appearances. In a statement reported by CBS News and others, Walmart spokesperson David Tovar said that “there could be consequences” for workers who participated in the unfair labor practice strike.⁷⁷ In an appearance on Fox News, Tovar called the Black Friday strike illegal. When asked if workers who participated in the strike would be fired, Tovar responded by saying, “It’s gonna depend on the situation. We’re gonna take each of those on a case-by-case basis. But

74 Eidelson, Josh (2012, October 10). Walmart's Black Friday ultimatum. *Salon*. Retrieved 2 May 2013, from www.salon.com/2012/10/10/walmart_strikers_raise_the_stakes_with_black_friday_ultimatum/

75 OUR Walmart rejected Walmart's claims, arguing that the worker actions were in fact lawful responses to unfair labor practices by Walmart. In January, OUR Walmart settled the charge by agreeing to refrain from picketing at Walmart stores for 60 days. Shortly after the end of the day 60-day period, Walmart withdrew the charge.

76 Eidelson, Josh. (2012, November 20). Worker group alleges Walmart told store level managers to threaten workers about strikes. *The Nation*. Retrieved 17 May 2013, from www.thenation.com/blog/171389/walmart-worker-mandatory-meeting-management-sent-message-we-could-get-disciplined-striki#

77 Tracy, Ben. (2012, November 19). Walmart workers plan Black Friday protests. Retrieved 20 May 2013, from *CBS News*. www.cbsnews.com/8301-18563_162-57552153/walmart-workers-plan-black-friday-protests/

look, we expect our associates to, if they're scheduled to work, to show up and do their job."⁷⁸ Another Walmart executive, Duncan McNaughton, appeared on the Today Show on November 21, 2012 and left open the possibility that associates could be disciplined for striking.⁷⁹ OUR Walmart filed an unfair labor practice charge against Walmart in response to Tovar's statements, saying they were designed to interfere with workers' rights and stifle lawful protected concerted activity.

In spite of the NLRB charge and the threats, the Black Friday strike went forward. And afterwards, some workers began to challenge the company's unlawful tactics with a new sense of determination. The *Orlando Weekly* reported recently about one such case, involving an OUR Walmart associate named Lisa Lopez, who participated in the Black Friday strike.⁸⁰

Three times in the next few months, Lopez was called into her manager's office and written up. It was mostly small stuff, she says. Once, she cut her finger and was cited for recklessness. Another time she was chastised for wearing earrings.

Lopez believed that Walmart was retaliating against her for striking. As the *Orlando Weekly* goes on to report, however, store managers were forced to back down when Lopez and OUR Walmart challenged the retaliation directly.

[On February 28, Lopez and six supporters] marched to the front of Lopez's store and demanded the company stop 'harassing' her. It worked, she says. Or, rather, it worked for her.

Lopez' story demonstrates that, when OUR Walmart members have access to broad community support, they *can* successfully challenge the company's efforts to intimidate and isolate them at the store level. The increasing assertiveness of workers like Lopez, however, has apparently prompted Walmart to broaden its tactics in an effort to neutralize the impact of community allies. To do this Walmart has turned to the courts. The four trespass lawsuits Walmart has filed so far seek to restrict freedom of speech and assembly in and around its stores by explicitly denying access to OUR Walmart organizers and community allies who seek to raise issues related to the company's labor practices.

The lawsuits allege repeated instances of trespassing by the defendants, including UFCW, OUR Walmart, supporting community organizations, and former Walmart workers who have remained active in OUR Walmart after being terminated by the company. Walmart seeks to prohibit the named organizations and individuals from entering Walmart property in order to raise criticisms of the company's record on labor and other issues.⁸¹ In response to these lawsuits, OUR Walmart and the UFCW have filed a charge with the NLRB. The charge states that the lawsuits are unlawful because they seek to interfere with protected concerted activity by workers and supporters.⁸²

78 Video retrieved 17 May 2013, from www.mediamatters.org/embed/static/clips/2012/11/19/27810/fnc-yourworld-20121119-walmart

79 Today Show interview. (2012, November 21). Transcript retrieved 17 May 2013, from <http://video.today.msnbc.msn.com/today/49914793/#49914793>

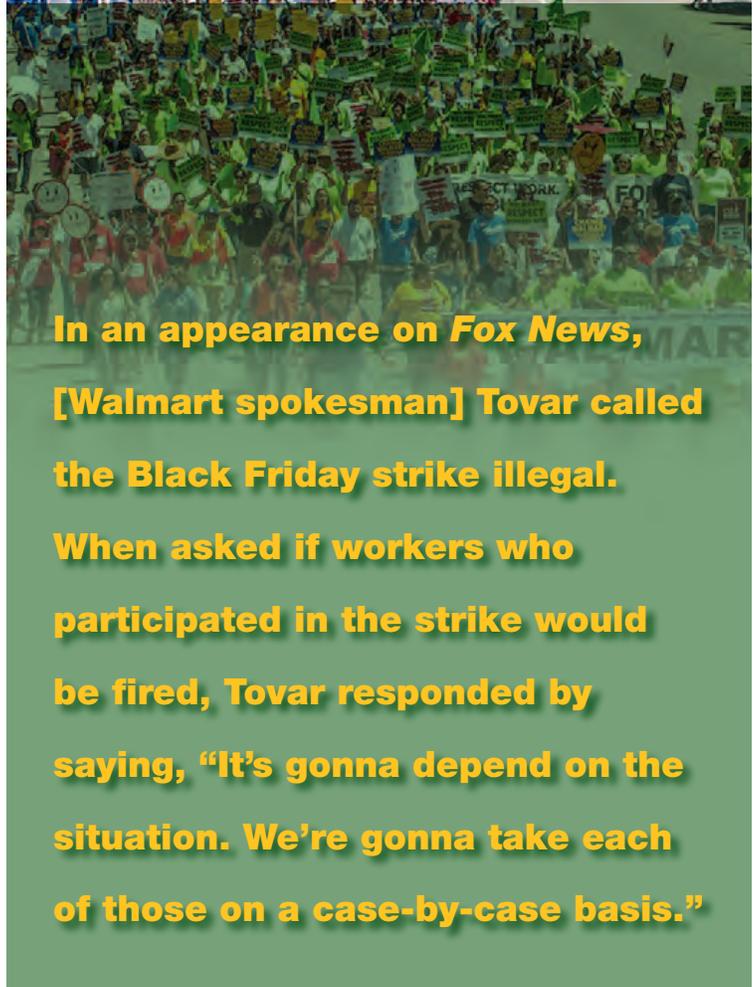
80 Billman, J.C. (2013, May 1). Want to complain about Walmart's working conditions? That's a lawsuit. *Orlando Weekly*. Retrieved 2 May 2013, from www.orlandoweekly.com/news/soapboxer-1.1481924

81 Gullo, K. (2013, March 26). *Bloomberg*. Wal-Mart Sues Union in Florida Over Demonstrations. Retrieved 1 May 2013, from www.bloomberg.com/news/2013-03-25/wal-mart-sues-union-in-florida-over-demonstrations.html; Billman, J. 2013, May 1. *Orlando Weekly*. Soapboxer: Want to complain about Walmart's working conditions? That's a lawsuit. Retrieved 2 May 2013, from www.orlandoweekly.com/news/soapboxer-1.1481924

82 Becker A. (2013, April 5). *Thomson Reuters*. Labor groups say Wal-Mart trespass lawsuit is unfair labor practice. Retrieved 2 May 2013, from http://newsandinsight.thomsonreuters.com/Legal/News/2013/04_-_April/Labor_groups_say_Wal-Mart_trespass_lawsuit_is_unfair_practice/

In addition to pursuing trespass lawsuits, on March 1, 2013, Walmart filed a charge with the NLRB against OUR Walmart and the UFCW, alleging that the organizations' efforts to communicate with associates at stores constitute unlawful coercion of workers. In addition, in a letter sent to the UFCW and OUR Walmart, the company states that any non-associate affiliated with the UFCW or OUR Walmart is prohibited from coming onto "Walmart-owned or controlled parking lots, sidewalks (adjacent to Walmart facilities), or facilities wherever located in the United States to solicit, distribute literature, or otherwise engage in any demonstration."⁸³ Further, "Any violation of this directive shall constitute trespass and Walmart revokes any license of permission they may have had as members of the general public to be in or on a Walmart facility, sidewalk, or parking lot."

Walmart's effort to deter worker action through lawsuits and overarching NLRB charges reflects a broadening of the company's core strategy of instilling fear in workers. This course of action can best be understood as a legal effort to isolate associates from organizers and community supporters. The intent appears to be to block those activities that have proven effective at neutralizing Walmart's fear-based strategy for curbing protected concerted activity by workers. If the courts and the NLRB uphold Walmart's claims, it would adversely impact activities that are central to the exercise of workers' rights to act collectively to address workplace concerns.



⁸³ Letter dated March 1, 2013. On file with United Food and Commercial Workers.

SECTION 4

Summary of OUR Walmart Charges at the National Labor Relations Board

OUR Walmart workers and organizers have reported more than 150 incidents of coercive employer activity, most of which have occurred since June 2012. At least 45 charges have been filed against Walmart with the NLRB, encompassing more than 80 alleged violations of the law. Workers continue to report additional violations and OUR Walmart expects to file charges on many of those. However, more than a dozen charges have been withdrawn, often because witnesses fear giving testimony, or because the NLRB refuses to act when there is only a single workers' testimony and management denies the allegation. In other cases, Walmart has been able to avoid legal responsibility by disguising retaliation as routine disciplinary action, up to and including termination.

Despite the limitations of the NLRB process previously discussed in this report, the Agency has issued four complaints against Walmart, and one charge has been settled without a complaint being issued. These complaints and the one settlement involve serious unlawful conduct by the company, including threats, discriminatory discipline, and termination. On one additional charge, the Board has issued a "merit dismissal." This means the Board agrees a violation has occurred but it believes the violation was of an isolated and "*de minimis*" nature. In this case, the Board stated that it would not issue a complaint against Walmart if the store in question refrained from committing additional violations for six months. Some fifteen additional charges, encompassing an estimated 40 individual violations are currently under, or pending, investigation by the NLRB. And OUR Walmart has indicated that, as this report goes to press, it is prepared to file an additional 15 charges, alleging dozens of violations.



Conclusion: Walmart Must Cease its Interference with Collective Activity

Joining together with your co-workers to improve your working conditions should not be an act of bravery. But the women and men who stand together at Walmart, demanding an end to retaliation and attempts to silence those who speak out, put themselves at risk of the company harassing them, disciplining them, demoting them, and even firing them. As has been documented over the years, Walmart operates from a central playbook and uses a myriad of tactics to prevent and quash protected concerted activity by workers. And, as the evidence in this report demonstrates, Walmart shows no sign of backing off from this aggressive suppression of its workers' freedom of association. Whether by targeting individual leaders, or sending a message to its entire workforce on national television, Walmart's campaign against its workers' protected activities shows no signs of abatement.

It is simply unacceptable for our country's largest private employer to get away with this widespread and blatant interference with the right of its 1.4 million employees. We are calling on Walmart to discontinue tactics that blatantly break the law, and also those "subtle tactics," in the words of Human Rights Watch, "that, bit by bit, chip away at – and sometimes devastate" – workers' right to engage in protected concerted activity. Walmart's Board of Directors and shareholders must demand that CEO Mike Duke and officials in Bentonville stop retaliation against workers and attempts to silence those who speak out for better jobs.

Our communities need Walmart jobs to be good, family-sustaining jobs. There is no reason this powerful company can't set a higher standard for the retail sector and the economy as a whole. But that will only happen when workers are able to speak out without fear of retaliation. If their voices are shut down, we all continue to suffer the consequences. For that reason, we're calling on community, faith, and elected leaders to stand with Walmart employees when they speak out. We can't rely exclusively on the government to protect Walmart employees' rights —our communities need to hold Walmart accountable when the company intimidates and harasses employees and their community allies.



American Rights at Work conducts vital research, executes public education campaigns, and build coalitions to help promote and guarantee the freedom of workers to organize unions and bargain collectively. The nonprofit organization works to advance the critical issues affecting America's working families by exposing the inadequacy of U.S. labor law and advocating for commonsense reforms.



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