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Holding Wal-Mart Accountable

The road to unionized Wal-Mart runs through obscure towns where workers are abused in hidden warehouses.

HAROLD MEYERSON | September 6, 2010

Nobody, it seems, is responsible for the conditions of work in the warehouses of Fontana -- even though warehouse work is mainly what Fontana has to offer. The Los Angeles exurb is part of California's Inland Empire, which boasts the world's largest concentration of warehouses, to which thousands of trucks make a daily 70-mile trek from the ports of Long Beach and Los Angeles, carrying Asian-made goods for market. Thousands more trucks depart daily from Fontana, carrying those goods, re-sorted and repackaged, to Wal-Marts, Targets, Loews, and Home Depots up to a thousand miles away. Close to 90,000 people work in those warehouses. But no one is responsible for the conditions of their work.

Homero Lovato loaded trucks for several years in one of the many warehouses containing goods bound for Wal-Mart's shelves. With one other worker, he loaded three or four truckloads a day, making \$42.50 per truckload. Even before unemployment began to skyrocket, he says, the terms of work were hard and degrading: "If people get sick, they have to stay on the job. If people have to go to the bathroom, they have to wait until the break." It was, he says, a rush job, with workers frequently falling behind the loading schedules and then racing to finish their tasks.

Workers in other Fontana warehouses tell similar stories. Blanca Cortes, who worked in quality control at a warehouse for UPS Mail Innovations, a nonunion subsidiary of United Parcel Service, once fainted on the job when she was six months pregnant. The warehouse wasn't air-conditioned even though temperatures in Fontana frequently exceed 100 degrees. "There were about 10 faintings that year," she recalls. "They wouldn't even buy a fan." Olga Romero, who worked in a warehouse that shipped shoes to Wal-Mart, also remembers the heat -- and the cold. "It would be over 100 in the summer and in the 40s in the winter," she says. "Something's wrong when you have to work with a couple of jackets."

Fontana's warehouse workers never made a decent wage, even when the economy was robust. Cortes made \$9.50 an hour with no benefits, until she was replaced last year by a new hire who was paid \$7 an hour. In their 2008 book, *Getting The Goods: Ports, Labor and the Logistics Revolution*, Edna Bonacich and Jake B. Wilson report that direct hires at Fontana's Target warehouses started at \$12.80 an hour and could work their way up to \$17, while temps started at \$8.50 and maxed out at \$12. (Of course, these figures date from the bubble years. Today, unemployment in the Fontana area is close to 15 percent.) And by one estimate, 53,000 of the 90,000 Fontana warehouse workers -- even though they may hold down the same job year after year -- are temps.

When you drive through Fontana on Interstates 10 or 15, it doesn't seem hard to tell whose warehouse is whose. One warehouse has hundreds of Wal-Mart trucks lined up at its bays; another, hundreds of Home Depot trucks. But, as far as Wal-Mart, Home Depot, and the law are concerned, these are not the companies' warehouses.

The warehouses, in fact, are part of an elaborate system enabling Wal-Mart and its competitors to keep their prices low and their revenues high by depressing wages and labor costs all along their supply chains -- and to protect outfits like Wal-Mart from responsibility for working conditions. The giant retailers that have come to dominate

much of the American economy don't own many of the hundreds of warehouses in Fontana or anyplace else.

In Fontana, the warehouses are owned by local commercial realtors and operated by logistics companies. But the logistics companies don't formally employ a majority of the warehouse workers, either. Rather, the workers are employed by some of the region's 270 temp agencies. The way a famously demanding employer like Wal-Mart ensures that the warehouses are running as it sees fit is to contract with a few large logistics companies (Wal-Mart likes Exel, a British firm), which in turn contract with a few large temp agencies (Exel likes Staffmark).

Thus are the goods moved with dispatch, while workers receive low pay, no benefits, can't readily join a union, and can be let go at a moment's notice. There is a situation that the workers themselves -- almost entirely Hispanic, largely immigrant, and between a quarter to 40 percent of them, in the assessment of one union organizer, undocumented -- cannot easily remedy. And there is a situation for which their real employers -- the Targets, the Sears, and above all the Wal-Marts -- can and do deny all responsibility.

The warehouse workers of Fontana constitute a key link in both the global supply chain and the American political economy. For the American labor movement to experience a rebirth and American workers to enjoy a rising share of the nation's wealth, it's imperative that unions make gains among America's new working class and its dominant and standard-setting employer: Wal-Mart. And the road to a unionized Wal-Mart runs straight through Fontana: Shut down the temp warehouses, and Wal-Mart's shelves will soon be bare.

Last year, the Change to Win labor federation waged an ambitious campaign to organize Fontana's warehouse workers, a campaign it then wound down after local unemployment soared and Congress failed to pass the Employee Free Choice Act. But Change to Win has not given up on Fontana, much less Wal-Mart, and is looking at ways that the government can help the warehouse workers ease their plight.

It's not an easy task. By the standard of common sense, the tens of thousands of full-time warehouse workers who are employed by temp agencies are misclassified. Clarissa Lua, who worked alongside Blanca Cortes at UPS Mail Innovations, went through 10 staffing agencies in the five years she worked there. Or rather, the agencies went through her, since UPS, not she, switched her agencies. At each agency the job was always the same: "Sometimes we didn't even know which agency we worked for," she said.

Like millions of American workers, Lua was a perma-temp, trapped in a work arrangement common not only to bottom-feeders like Wal-Mart but to such presumably high-end employers as Microsoft. So while unionists and other worker advocates are asking President Barack Obama's Department of Labor and Middle Class Task Force to remedy misclassification violations at major employers, it's tricky to apply that remedy to warehouse workers unless they can be shown to be permanent workers misclassified as temps. Neither can the government deny contracts to the middlemen -- the logistics firms or employment agencies -- for these companies don't have government contracts.

Instead, the unions are asking the government for two things: First, to enforce the Fair Labor Standards Act (FLSA) rigorously inside the warehouses, tallying and fining them for violations of minimum-wage and maximum-hours laws. And second, to hold accountable not the temp agencies or the logistics companies or the local real-estate companies but, rather, the big-box retailers -- the companies that structured and benefit from this byzantine system.

"At the very least," one union official says, the Department of Labor can "enforce the FLSA on warehouse workers not being paid for overtime. The temp agencies can fudge on this by not listing hours-worked on their paychecks." In fact, at the direction of Labor Secretary Hilda Solis, the department hired 250 new wage and hour investigators last year, an increase that brings the Wage and Hour Division, after years of neglect, close to its all-time high.

"The department is willing to spend more on enforcement: It's asking for \$25 million more in the president's 2011 budget," another union official says. "The question is where they'll focus their resources. They haven't yet said they're going after the biggest offenders. They need to go after Wal-Mart and FedEx, not some bodega owners."

There's a precedent for targeting the retailers who design and control the supply chains. In 1996, at the direction of Labor Secretary Robert Reich (yes, *our* Robert Reich), the Wage and Hour Division began a "No Sweat" campaign, which held retailers responsible for the sweatshop wages and conditions its inspectors had found in the small garment factories (chiefly in Los Angeles) that turn out their products. When the contractors and subcontractors who employed the seamstresses were unable to come up with money for the back-pay settlements that the division had ordered them to make, the Labor Department held the retailers -- in this case, Macy's -- liable for the payments. To persuade Macy's to settle with the workers, Reich threatened to seize the Macy's-bound garments they had sewn, under the "hot goods" provision of the FLSA that permits the department to take goods produced under conditions prohibited by the act. Macy's settled, and, with Target, then signed an agreement taking responsibility to see that the working conditions all along their supply chains conformed to the FLSA's standards.

"Invoking 'hot goods' is the nuclear option," one union staffer says. "But we want Labor to be open to using it. We want them to go after the top of the food chain."

Going after the top of the chain to improve working conditions should fit comfortably within President Obama's stated economic goals, paramount among which is reversing the long-term decline of jobs and worker compensation in America. An administration trying to bolster green jobs and green manufacturing cannot remain indifferent to jobs in the service and retail sectors, which employ far more people than manufacturing and construction combined.

Raising the Wal-Mart wage -- and the Wal-Mart wage is paid not just to the company's direct employees but to many of its competitors' employees and, in one form or another, to all those who work along its, and its competitors', supply chains -- is a key step in re-creating the broadly shared prosperity America once enjoyed. To that end, the president supported the Employee Free Choice Act. To that end -- all the more because EFCA failed to become a law -- he should support enforcement actions that compel Wal-Mart to become a more responsible employer.

Wal-Mart is not the only company at the top of its respective food chain, of course. Another is FedEx, which as a point of both law and common sense looks to be misclassifying its 30,000 "ground drivers," who pick up and deliver packages that are not shipped by air, as independent contractors, not eligible for benefits, though their routes, hours, pay, and vacations are all determined by FedEx. The Teamsters union, which represents truck drivers at rival UPS, was stymied by the hostility of the George W. Bush administration (FedEx CEO Fred Smith is a Republican mega-donor). So the Teamsters over the past decade succeeded in getting roughly 30 state attorneys general to investigate FedEx's misclassification of drivers.

With a number of those attorneys general closing in, FedEx has shifted its employment model in several states -- not to one in which it finally assumes responsibility for its workers, however, but to a system of "super contractors" who purchase multiple routes and then hire drivers who travel them -- all under FedEx's careful, if unacknowledged, supervision. Organized labor wants the administration to build on the work of the state attorneys general, to determine on its own that FedEx is misclassifying 30,000 employees, and then to declare that violations of labor law -- such as misclassification -- constitute grounds to reduce or terminate its business with companies guilty of such practices. (See "A Long Haul" by David Bensman and Molly Greenberg, Page A9.)

In taking on the Wal-Marts and FedExes, of course, the administration would be challenging some of the most

powerful institutions in the land. Then again, in the America that Obama has pledged to rebuild, someone should always be responsible for the conditions of work.



Harold Meyerson is the editor-at-large at *The American Prospect* and a columnist for *The Washington Post*. [Click here](#) to read more about him.