

Steven D. Wheelless
602 257 5234
swheelless@steptoe.com



201 East Washington Street
Suite 1600
Phoenix, AZ 85004-2382
602 257 5200 main
www.steptoe.com

November 16, 2012

VIA FAX AND U.S. MAIL

Deborah J. Gaydos
Assistant General Counsel
UFCW International Union
1775 K Street, NW
Washington DC 20006-1598

Re: **NLRA § 8(b)(7)(C) Charge**

Ms. Gaydos:

As counsel to Mr. Schlademan, the agent responsible for and in charge of the UFCW's "Making Change at Walmart" and its "OURWalmart" subsidiary (collectively, the UFCW), please find attached an Unfair Labor Practice Charge filed by Walmart yesterday against the UFCW with the National Labor Relations Board (NLRB) in Region 26.

Walmart filed the Charge under NLRA § 8(b)(7)(C) based on the UFCW's continued recognitional picketing (conducted by the OURWalmart subsidiary), where the UFCW seeks to force Walmart to meet and bargain with the union over employee terms and conditions of employment, without its associates ever having had an opportunity to vote on whether they wish to unionize and affiliate with your organization. Walmart respects its associates' right to choose if they wish to have union representation and to do so within the congressionally established process of secret ballot elections, supervised by the NLRB.

The National Labor Relations Act (NLRA) prohibits recognitional picketing, as conducted by the UFCW and its OURWalmart subsidiary in ongoing actions at our facilities, for any period in excess of 30 days without the filing of a representation petition. As you also know, the NLRA requires the NLRB to seek a federal court injunction against such activity.

Over the past year – or longer, the UFCW has orchestrated numerous pickets, mass demonstrations, flash mobs, and other confrontational activities both inside and outside Walmart facilities in support of its bargaining and recognition demands. These have caused disruptions to Walmart's business, resulted in misinformation being shared publicly about our company, and created an uncomfortable environment and undue stress on Walmart's customers, including families with children.

Now, with the busiest shopping season of the year just days away, the UFCW is openly orchestrating and promoting attempted mass disruptions of Walmart's customer shopping experience, nationwide, on Black Friday. In pursuing that illegal, recognition-driven, and confrontational activity, the UFCW is intentionally seeking to create an environment that could

directly and adversely impact safety for Walmart's customers and associates. It is Walmart's intent that the UFCW will be held accountable, bearing the burden of any liability for personal injury or property damage that happens to take place on Black Friday or any other day, as a result of actions or activities orchestrated by the UFCW, OURWalmart or any of the union's other affiliates.

As we have previously communicated to you, and reiterate here, the UFCW is on notice that Walmart will hold the UFCW accountable for UFCW-orchestrated trespass actions involving Black Friday or other trespass or illegal interference with Walmart's business. We are prepared to and will take all appropriate legal actions to enforce our property rights, protect our business, and ensure the safety of our customers and associates, on Black Friday and in the future.

As part of that commitment, any non-associate affiliated with or supporting the UFCW or its OURWalmart subsidiary may not at any time come 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. Any violation of this directive shall constitute trespass and Walmart revokes any license or permission they may have had as members of the general public to be in or on a Walmart facility, sidewalk, or parking lot. We reserve all rights to pursue legal liability (including with local law enforcement) against the UFCW and its OURWalmart subsidiary for unlawful conduct to protect our customers and business operations.

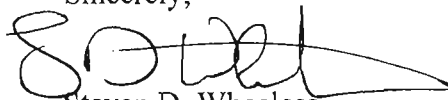
The UFCW does Walmart associates no service by enlisting them in orchestrated schemes to disrupt Walmart's business operations by telling them that federal labor law protects their participation in the UFCW's plan to engage in hit-and-run, intermittent work stoppages. As you know, federal labor law does not protect employees from the consequences that flow from participating in a common plan of intermittent work stoppages. For example, as the Supreme Court made clear many years ago in *NLRB v. Insurance Agents*, "the employer could have discharged or taken other appropriate disciplinary action against the employees participating in these . . . unprotected disloyal tactics." 361 U.S. 477, 493-94 (1960). The National Labor Relations Board uniformly applies that same rule in its "intermittent work stoppage" cases. *Embossing Printers, Inc.*, 268 NLRB 710, 710 n.3 (1984) ("Inasmuch as the Respondent lawfully disciplined its first-shift employees for engaging in unprotected intermittent walkouts by locking them out, they had no preferential rights to be recalled.").

Walmart honors and respects its associates' federally protected right to make their own choice about how they will express any concerted ideas, suggestions, comments, and concerns. But Walmart will also act to protect its associates and customers from illegal and unprotected conduct that threatens safety or business operations.

Please direct members and employees of the UFCW, including its OURWalmart subsidiary and its agents, to respect Walmart's private property rights and to carefully avoid any conduct that might create a threat to the safe shopping experience of Walmart's customers.

Should you have any questions regarding this matter, please direct them to my attention.

Sincerely,

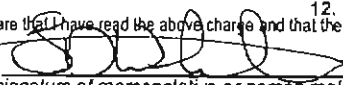
A handwritten signature in black ink, appearing to read "SD Wheelless", written over a horizontal line.

Steven D. Wheelless
Walmart Counsel

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
**CHARGE AGAINST LABOR ORGANIZATION
OR ITS AGENTS**

| DO NOT WRITE IN THIS SPACE | |
|----------------------------|------------|
| Case | Date Filed |

INSTRUCTIONS: File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

| | | | |
|---|--|---|-------------|
| 1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT | | | |
| a. Name United Food & Commercial Workers International Union ("UFCW") | | b. Union Representative to contact | |
| c. Address (Street, city, state, and ZIP code) 1775 K Street NW Suite 360 Washington, DC, 20006-1502 | | d. Tel. No. (202) 223-3111 | e. Cell No. |
| | | f. Fax No. | g. e-Mail |
| h. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (list subsections) <u>8(b)(7)(C)</u> of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act. | | | |
| 2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) SEE ATTACHED | | | |
| 3. Name of Employer Wal-Mart Stores, Inc. 702 SW 8th Street Bentonville, AR 72716 | | 4a. Tel. No. (479) 273-4000 | b. Cell No. |
| | | c. Fax No. | d. e-Mail |
| 5. Location of plant involved (street, city, state and ZIP code) Multi-state | | 6. Employer representative to contact Steven D. Wheeless (602) 257-5200 | |
| 7. Type of establishment (factory, mine, wholesaler, etc.) Retailer | 8. Identify principal product or service Consumer goods | 9. Number of workers employed 1,000,000 + | |
| 10. Full name of party filing charge Wal-Mart Stores, Inc. | | 11a. Tel. No. (479) 273-4000 | b. Cell No. |
| | | c. Fax No. | d. e-Mail |
| 11. Address of party filing charge (street, city, state and ZIP code.) 702 SW 8th Street, Bentonville, AR 72716 | | | |
| 12. DECLARATION I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief. By <u></u> Steven D. Wheeless (signature of representative or person making charge) (Print/Type name and title or office, if any) | | Tel. No. (602) 257-5200 | |
| | | Cell No. | |
| | | Fax No. (602) 257-5299 | |
| Stepcoe & Johnson LLP Address 201 E. Washington Street, Suite 1600, Phoenix, AZ 85004 (date) <u>11/15/12</u> | | e-Mail swheelless@stepcoe.com | |

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

2. Basis of the Charge

Prior to and during the last six months, the above-named labor organization, the UFCW, directly and through its subsidiaries, affiliated organizations, and agents, including that labor organization known as "OURWalmart," has violated and continues to violate Section 8(b)(7)(C) of the National Labor Relations Act by picketing and threatening to picket Walmart headquarters and numerous Walmart stores and other facilities in various states, together with mass demonstrations, in-store "flash mobs," and trespass on Walmart property, intimidating Walmart customers and employees, where an object thereof is forcing or requiring Walmart to recognize and/or bargain with the Union as the representative of Walmart employees, or forcing or requiring Walmart employees to accept or select the UFCW as their collective bargaining representative, without being certified as such, and where such picketing and threats to picket, including the aforementioned unprotected activities, have been conducted without a representation petition being filed within a reasonable period of time from the commencement of such picketing, threats, and misconduct.

For all the foregoing reasons, Charging Party requests that, pursuant to Section 10(l) of the Act, a preliminary investigation of this Charge be made forthwith, with priority over other cases, as specified in that Section, and that, if the Board determines that there is reasonable cause to believe such Charge is true and that a Complaint should issue, the Board seek immediate injunctive relief in the appropriate Federal District Court.