An inside job—US Labor Department and Wal-Mart's secret agreement on child labor

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Sometimes the intimate collaboration between government and business in the United States is remarkable even to those well schooled in the corruption of American capitalism. Such is the case with the recent agreement between retail giant Wal-Mart and the Labor Department, an agreement that came to light following an audit by the Labor Department's inspector general.

The two parties reached the secret agreement in January 2005 in the wake of investigations into Wal-Mart's suspected violation of child labor laws. The company agreed to pay $135,000 in fines to settle charges that it used young workers, between 16 and 17 years old, to work with hazardous equipment in three states. The fine amounted to something less than small change for a company pulling in nearly $300 billion in annual sales.

The agreement with the Labor Department was supposed to ensure that the company did not violate labor laws again. It was in fact geared to ensuring that Wal-Mart would not get *caught* violating the law again, and if it did happen to get caught, to guarantee that there would be no adverse consequences.

Most importantly the agreement included a provision that the government would give the company a 15-day notice "of any audit or investigation at the stores covered" by the agreement. In case this did not give the company adequate time to put on hold any illegal activities, the agreement also gave Wal-Mart a 10-day grace period to address any violations and avoid monetary penalties.

If one had any doubt that this was an agreement tailored to serve the interests of Wal-Mart, the report also noted that it "contained significant provisions that were principally authored by Wal-Mart attorneys and never challenged by" the Labor Department's Wage and Hour Division.

The report noted with a considerable degree of understatement, "The Wal-Mart agreement may adversely impact wage and hour division's authority to conduct future investigations and issue citations or penalty assessments." The inspector general did not state that the agreement violated the law; however, it said that several of the provisions violated Labor Department policy.

In defending the agreement, the Labor Department issued a statement claiming that it "only" covered violations of child labor laws. In fact, the agreement was much broader, with the inspector general report noting that "the plain language of the advance notification clause applies to any potential violations, not just child labor violations."

Victoria Lipnic, the assistant secretary for employment standards at the Labor Department, said that the company agreed to take certain measures, including auditing its facilities and training its managers to comply with the law. "Most of these measures never would have been implemented in the absence of the agreement," she said. But all of these measures were simply to ensure that Wal-Mart was in compliance with the law, which it had to do anyway. The agreement, the inspector general noted, required little from the company "beyond what it was already doing or required to do by law." In exchange for an empty pledge from Wal-Mart to follow the law, the government essentially agreed to do nothing to enforce it.

The Labor Department also claimed that the agreement was nothing new, that it was in line with other agreements that the Labor Department routinely reaches with companies. This seems less a defense than a damning admission.

According to the inspector general, "Nothing came to our attention indicating evidence of influence or pressure from internal or external sources being applied in the negotiation, development, or approval of the agreement." If one assumes this to be true, that no pressure was applied on the government by the company, it is only because there was no need to apply it. The door was already open.

Indeed, the Labor Department agreement with Wal-Mart is only one of the more egregious examples of the way in which the halls of government have been opened for business. It is not uncommon in America for legislation to be written by corporate lobbyists in Washington, which now number upwards of 35,000. Individual members of the ruling elite routinely go from business to government and back again, serving the same interests in different posts. The line between corporate America and the government has become much less distinct since the Bush administration came to office, but this is a long-term trend that has developed under the leadership of both parties.

Though somewhat less visible than the likes of ExxonMobil, Halliburton or Enron in its days of glory, Wal-Mart itself has come to exercise a dominant influence over society, economy and government. By revenues, it is the world's largest company, dwarfing the other major retailers in size and sales. It has 1.4 million employees, mainly in the United States. Last year the company brought home profits of $10.5 billion on sales of $285 billion, or about 2 percent of the entire GDP of the United States.

Millions of people shop at Wal-Mart because of its lower costs relative to other retailers. The flip-side of these low costs is the notoriously low wages it pays its workers. A recently leaked internal company memo highlighted the ongoing attempts within the company to extract more from its workers for less, and focused particularly on health care costs.

According to an article in the *New York Times*, the memo, written by Susan Chambers, the executive vice president for benefits, "called for cutting 401(k) contributions to 3 percent of wages from 4 percent and cutting company-paid life insurance policies to $12,000 from the current level, equal to an employee's annual earnings." In spite of a publicity campaign attempting to portray Wal-Mart workers as high-paid with good benefits, the memo "acknowledged that 46 percent of the children of Wal-Mart's 1.33 million United States employees were uninsured or on Medicaid."

A full-time Wal-Mart employee earns an average of $17,500, more than $1,000 below the federal poverty level for a family of four. The average pay for a sales clerk is $8.50 an hour, or about $14,000 a year. The internal memo raised concerns, however, that the company was paying too much, particularly for older workers. "The cost of an associate with seven years of tenure," it noted, "is almost 55 percent more than the cost of an associate with one year of tenure, yet there is no difference in his or her productivity." Wal-Mart already has a very high employee turnover, a result of overwork, but this was more or less a call to find ways to get rid of older workers.

A December 2004 article in the *New York Review of Books*, "Inside the Leviathan" by Simon Head, described how Wal-Mart ensures that labor costs are kept low by perpetually understaffing its stores. "When deciding how many workers to employ," Head noted, "Wal-Mart management relies on a formula guaranteeing that the growth of the labor budget will lag behind the growth in store sales, so that every year there will be more work for each employee to do."

The constantly understaffed conditions of the stores push managers to overwork employees.

Certainly some have done well by this policy, above all the Walton family itself. The heirs of company-founder Sam Walton currently occupy half the slots in the list of the top 10 richest Americans, thanks to a family fortune topping $90 billion. This is about $64,000 for every man and woman (and child) working at the company. Wife Helen, daughter Alice and sons John, Sam and S. Robson each have fortunes valued at $18 billion.