

WORKER REPRESENTATION UNDER THREAT? THE MCDONALD'S CORPORATION AND THE EFFECTIVENESS OF STATUTORY WORKS COUNCILS IN SEVEN EUROPEAN UNION COUNTRIES

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This paper presents some of the preliminary findings from an on-going comparative case study, which examines the employee relation's practices of the American multinational enterprise (MNE), the McDonald's Corporation, in several European countries. In particular, the paper examines the way in which McDonald's deals with a number of different national level systems of statutory worker representation. The analysis centers on the extent to which McDonald's appears to have either adapted to or operated independently of these institutions over time and the outcomes for employee rights and employee interest representation.

Compared with most mainland European countries, worker representation in the United Kingdom and the United States are, at present, still largely based on voluntarism and collective bargaining, although there are some statutory mechanisms in relation to health and safety issues in the United Kingdom. In mainland Europe, there are a variety of legislatively underpinned national-level institutional arrangements that were established to encourage democratic decision-making in the workplace and they usually include a strong element of worker interest representation. In some cases, these arrangements have historical roots that go back well into the nineteenth century and, although there is considerable variation in these institutions, they often take the form of some kind of works council and/or union or employee representative. For example, some works councils provide workers with co-determination rights while others offer consultation

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and information rights; some are based on legislation and others are based on national collective agreements.¹

Legislatively underpinned works councils arguably provide powerful constraints on the employee relation's practices of employers, perhaps even challenging the integrative globalization efforts of MNEs.² This, it has been suggested, is because such institutions are deeply rooted in national industrial relations systems and their societal frameworks.³ However, it has also been suggested that MNEs are increasingly developing organization-based employment systems that "question" the relevance of different national industrial relations systems,⁴ and also suggest that MNEs are able to transmit employee relation's practices across national and cultural borders. The possibility that MNEs may be able to operate independently of societal frameworks raises questions about the ability of statutory works councils and other employee representation mechanisms to protect employee rights in practice. This may be particularly pertinent where such institutions appear to represent a direct threat to a corporation's mode of operation. For example, in some countries, works councils frequently allow trade unions to gain a foothold in businesses.

McDonald's is well known for its non-union approach to the management of the employment relationship.⁵ McDonald's interpretation of worker representation is that it is about improving "communication" and "employee involvement."⁶ These include, for example, "RAP sessions," crew meetings, suggestion schemes and performance review procedures. Theoretically, at least six monthly or quarterly RAP sessions allow workers to air their grievances,

1. Wolfgang Streeck, *Works Councils in Western Europe: From Consultation to Participation*, in WORK COUNCILS: CONSULTATION, REPRESENTATION AND COOPERATION IN INDUSTRIAL RELATIONS (Joel Rogers & Wolfgang Streeck eds., 1995).

2. H. Ramsey, *Fools Gold? European Work Councils and Workplace Democracy*, 28 INDUS. REL. J. 4, at 314-22 (1997).

3. Paul Marginson & Keith Sisson, *The Structure of Transnational Capital in Europe: The Emerging Euro-Company and Its Implications for Industrial Relations*, in NEW FRONTIERS IN EUROPEAN INDUSTRIAL RELATIONS (Richard Hyman & Anthony Ferner eds., 1994).

4. Paul Marginson & Keith Sisson, *European Collective Bargaining: A Virtual Prospect?*, 36 J. COMMON MKT. STUD. 505-28 (1998); Paul Sparrow, R. Schuler & S. Jackson, *Convergence or Divergence: Human Resource Practices and Policies for Competitive Advantage Worldwide*, 2 INT'L J. HUM. RESOURCE MGMT. 268-99 (1994).

5. JOHN F. LOVE, MCDONALD'S BEHIND THE ARCHES (1995); JOHN VIDAL, MCLIBEL: BURGER CULTURE ON TRIAL (1997); Tony Royle, *The Reluctant Bargainers? McDonald's, Unions and Pay Determination in Germany and the U.K.*, 30 INDUS. REL. J. 135-50 (1999) [hereinafter Royle, *The Reluctant Bargainers?*]; TONY ROYLE, WORKING FOR MCDONALD'S IN EUROPE: THE UNEQUAL STRUGGLE? (2000) [hereinafter ROYLE, WORKING FOR MCDONALD'S].

6. Mick Marchington, *Involvement and Participation*, in HUMAN RESOURCE MANAGEMENT: A CRITICAL TEXT (J. Storey ed., 1995).

however, in-practice grievances are rarely acted upon, “difficult” workers are not invited and sometimes they do not take place at all.⁷ These forms of “participation” are not about providing workers with a form of independent representation based on “rights” of the sort found in mainland Europe. How then does an MNE like McDonald’s respond when confronted with a variety of statutory European institutions in practice? What do the findings suggest about the efficacy of such statutory mechanisms in different European countries?

I. RESEARCH METHODS

The findings are based on over six years of empirical research using a variety of methods. These include periods of observation, for example, working in German and U.K. restaurants, the distribution of questionnaires, a large number of qualitative interviews and an analysis of documentation. The bulk of the findings presented here are primarily based on the interview material, which were semi-structured and on average two hours in length. The first few years of the study focused on Germany and the United Kingdom, but later additional countries were included eventually covering 13 European countries, including Austria, Belgium, Denmark, Finland, France, the Netherlands, Ireland, Italy, Norway, Spain and Sweden. Approximately 200 interviews have been carried out that included McDonald’s senior management, restaurant management, franchise operators and a large number of employees, including works councilors and trade unions representatives, trade unions, trade union federations, international trade union organizations and national and international employer’s associations. This paper focuses on just seven of these countries: Germany, Austria, Denmark, France, the Netherlands, Spain and Italy.

II. McDONALD’S IN EUROPE

McDonald’s is not just a very large MNE. In 1996, it was voted the best-known brand in the world, knocking Coca-Cola off its perch⁸ and, in 1998, its worldwide turnover topped \$40 billion. It is the largest food service operation in the world in terms of system-wide sales. By October 2002, McDonald’s was operating around 30,000

7. ROYLE, WORKING FOR McDONALD’S, *supra* note 5.

8. Management Brief, *Johannesburgers and Fries*, THE ECONOMIST, Sept. 27, 1997, at 107-8.

restaurants in 121 countries and employing at least 1.5 million people around the globe. McDonald's is the biggest fast food employer in Europe and market leader in most countries. McDonald's currently employs over 200,000 people in around 4,000 restaurants in the seventeen countries of the European Economic Area. McDonald's first came to Europe in 1971; it opened its first restaurant in the Netherlands and then Germany, later in the same year. Restaurants were opened in the United Kingdom in 1974, Austria in 1977, France in 1979, Denmark in 1981, Spain in 1982, and Italy in 1985. Some 70% of its restaurants around the world are operated as franchises; in Europe, this figure is closer to 65%. However, although its franchisees are legally separate entities, we have argued elsewhere that they are economically dependent on and tightly controlled by the corporation, becoming in practice defacto subsidiaries of the corporation.⁹ As we shall see in later sections of this paper, the issue of the corporation's structure, and, in particular, its use of franchise operations, appears to create significant problems for unions and for legislatively underpinned systems of employee representation.

A. *McDonald's in Germany*

In addition to works councils, the German model of codetermination also provides for employee representation on supervisory boards (*Aufsichtsräte*) in larger firms. The 1952/1972 Works Constitution Act and the 1976 Codetermination Act govern these institutions for private businesses outside the coal and steel industries. The former legislation deals with supervisory boards of limited liability companies with over 500 employees and works councils at plant, company or group level. The 1976 Act is concerned with employee representatives on the supervisory boards of companies with over 2,000 employees.¹⁰ With over 50,000 employees, one might expect that McDonald's in Germany would have employee representatives sitting on a supervisory board. However, this is not the case. The main reason for this is that McDonald's in Germany has retained American registration; it is a wholly owned subsidiary of the American McDonald's Corporation registered in Oak Brook, Illinois.

9. ROYLE, WORKING FOR McDONALD'S, *supra* note 5.

10. CHRISTEL LANE, MANAGEMENT AND LABOUR IN EUROPE: THE INDUSTRIAL ENTERPRISE IN GERMANY, BRITAIN AND FRANCE (1989); F. Fürstenberg, *Structure and Strategy in Industrial Relations*, 21 BULL. OF COMP. LAB. REL. 1-199 (1991) [hereinafter *Structure and Strategy*]; Walther Müller-Jentsch, *Germany: From Collective Voice to Co-Management*, in WORKS COUNCILS: CONSULTATION, REPRESENTATION, AND COOPERATION IN INDUSTRIAL RELATIONS (J. Rogers & Wolfgang Streeck eds., 1995).

This arrangement is permitted under the German-American Trade Agreement of 1954, which means that the usual obligation for a supervisory board, according to either of the 1952 and 1976 Acts, cannot be imposed.

However, the issue of the German works council is not quite so straightforward. The 1952/72 Works Constitution Act provides for a works council in all businesses with 5 or more employees, aged 18 or over. The works council cannot call a strike, but it can sue management for any alleged breach of rights. The council must meet with management every four weeks and the law grants the councils with a broad range of rights to information consultation and codetermination. According to Fürstenberg,¹¹ these rights give employees considerable scope for influence over the management of the business. In addition, in any business or unit with 300 employees, a works council member can be released from his or her normal duties to work full-time on works council business. The number of these full-time works councilors increases in proportion with the size of the organization. This Act also provides for a "central" works council at company-level (*Gesamtbetriebsrat*—GBR) where there are two or more works councils in the same business. Similarly, where there are a group of companies with works councils, a group-level or concern-level works council (*Konzernbetriebsrat*—KBR) can be established, but only if this is requested by the works councils of subsidiaries employing at least 75% of the group's workforce. The works councilors represented on the GBR or KBR are also quite likely to be the same representatives on the supervisory board where this exists.¹²

In early 2002, McDonald's in Germany had approximately 50,000 employees and over 1,150 restaurants; some 65% of which are franchise operations, leaving approximately 400 company-owned restaurants with about 20,000 employees. McDonald's operates some of its 400 "company" restaurants through a number of holding companies; these are called *Anver* companies. The typical McDonald's restaurant has between 50 and 100 employees, so in theory, there could be a works council in every McDonald's restaurant in Germany. One might also expect that there would be a company-level works council (GBR) or possibly a concern-level works council (KBR). In early 2002, there were around 50 works councils in the 1,150 restaurants, no KBR and, until four years ago, there was no

11. Fürstenberg, *Structure and Strategy*, *supra* note 10.

12. Müller-Jentsch, *supra* note 10; Otto Jacobi, Berndt Keller & Walther Müller-Jentsch, *Germany Facing New Challenges*, in *CHANGING INDUSTRIAL RELATIONS IN EUROPE* (Anthony Ferner & Richard Hyman eds., 1998).

GBR either. Both the issue of works councils and the establishment and legitimacy of the GBR have been, and still are, the focus of considerable conflict between McDonald's and the German trade union for food, tobacco, hotel and restaurant workers, the NGG.¹³ NGG officials and McDonald's workers allege that over the years, the corporation has used some rather extreme measures to stop the establishment of works councils in the restaurants; for example, unfair dismissals, the use of management flying squads to persuade employees that there is no need for such institutions, transferring restaurant ownership to interfere with works council elections, the "buy-out" of works councilors and their supporters and the nomination of management candidates to capture works councils for a management sponsored agenda.¹⁴

Indeed, the conflict over the issue of works councils has escalated over the last 5 years. Some reports in *Der Spiegel*¹⁵ and some other German national newspapers focused on the issue of the company level works council (GBR). It appeared that two separate GBRs with two different chairmen were both claiming to be the legitimate body to represent McDonald's German workers. Union officials argue that after years of trying to block or nullify the union-supported GBR, McDonald's Germany had now decided to establish its "own" GBR. Over a few months in early 1997, McDonald's "sold" a number of restaurants with union supported works councils to holding companies and franchises. Then, in July 1997, in what the NGG describe as a "Putsch," a number of works council representatives who were not supported by the union effectively "took over" the next GBR meeting. Some 20 new works councils, which were not backed by the union, had recently been established and, at this meeting, they were apparently led by an allegedly "company-friendly" employee. The leader of these works councils turned out to be a salaried assistant manager, the same individual who the company had supported for election as EWC employee representative.¹⁶ With the support of the new works councils, this manager had the majority of votes at the meeting; these workers put forward a motion to cast out the existing works council chairman and elect this salaried manager. Despite the

13. Tony Royle, *Avoidance Strategies and the German System of Co-Determination*, 6 INT'L J. HUM. RESOURCE MGMT. 1026-47 (1998).

14. A more detailed analysis of these early conflicts is available in F. DUVE, UNTERNEHMERMETHODEN GEGEN BETRIEBSRATSWAHLEN (REPORTAGEN AUS GRAUZONEN DER ARBEITSWELT) (1987); Royle, *id.*; Royle, *The Reluctant Bargainers?*, *supra* note 5.

15. *McDonald's Selbst Gebacken*, DER SPIEGEL, April 27, 1990, at 140.

16. Tony Royle, *Where's the Beef? McDonald's and the European Works Council*, 3 EUR. J. INDUS. REL. (1999) [hereinafter Royle, *Where's the Beef?*].

protests of the existing GBR chairman and his supporters, a vote was then held and the salaried manager was elected as the new GBR chairman.

The trade union (NGG) took the case to the labor court in April 1998. McDonald's denied that it had tried to influence the election in favor of the salaried manager. However, the court argued that in its opinion, the re-election was a clear violation of the Works Constitution Act. *Der Spiegel* states that the surprise de-selection of the union-supported chairman was "obviously planned."¹⁷ The court also noted that McDonald's had been responsible for the separate travel and accommodation arrangements for the two separate groups of works councilors. In its settlement, the court decided that neither candidate could be reinstated and that the GBR election would have to be re-held on July 23, 1998. This decision reflected the formal nature of the legislation on German works councils; in this case, following the letter of the law meant that all parties had to be allowed to take part in the election.

In the few months before the new election, the corporation carried out a media blitz with a full-page spread of their candidate in a number of high circulation and youth magazines; for example, *Stern*, *Focus*, *Brigitte*, *Impulse* and others. The salaried manager was pictured smiling and clasping a McDonald's "M" to his chest with the caption "I am McDonald's." In addition, the corporation sent individual letters to all employees to be involved in the coming election, allegedly painting the NGG-supported candidate in a negative light. The salaried manager candidate was relieved from his normal duties on full salary in order to work full-time on the campaign and his "works council" activities, and was given a company car to conduct his campaigning. McDonald's did not, however, relieve the union-supported candidate, an hourly-paid employee, from his work duties. In fact, the union candidate allegedly even had trouble claiming his public transport travel expenses from McDonald's. In addition, two weeks before the July election, McDonald's transferred the ownership of three restaurants with union-supported works councils into McDonald's holding companies, the so-called *Anver* Restaurants. The effect was that the works council representatives in these restaurants were unable to vote for the GBR in the July election. McDonald's response for this action was that these restaurants had been "sold" because they were not very profitable. This made the union-supported candidate's chances of re-election

17. See *supra* note 15.

rather unlikely. Unsurprisingly, the “McDonald’s candidate” and another salaried manager won the second election and became the chairman and deputy of the new GBR respectively. The original GBR chairman was relegated to a place on the finance committee (*Wirtschaftsausschuß*). This result also appears to legitimate the salaried manager’s position as EWC employee representative. However, most of the McDonald’s German workforce could not take part in the election of their GBR/EWC employee representative. This is because they were either employed in *Anver* holding companies, franchise restaurants or simply because they did not have a works council in their company restaurant. This GBR, therefore, only represented about 5% of the German McDonald’s workforce. Since that time, the GBR has effectively been captured for a management sponsored agenda. In fact, the corporate agenda appears to have been to do nothing at all; since 1998, the GBR has not provided the workforce with any meaningful information, consultation, or co-determination. The GBR was due for reelection in the summer of 2002, but so far McDonald’s has shown no interest in reestablishing it. In view of their past experiences with this institution, NGG union officials are perhaps beginning to wonder whether trying to establish an independent GBR is a realistic possibility. Indeed, NGG officials report that the 2001 amendments to the German works council legislation are unlikely to give them any additional leverage in this case.¹⁸ In the meantime, McDonald’s has continued its battle against restaurant-level works councils and is continuing to use its old, tried and tested “avoidance strategies” to good effect,¹⁹ in particular, “buying-off” workers, interfering in election processes, and changing the ownership of restaurants where necessary.

B. *McDonald’s in Austria*

McDonald’s came to Austria in 1977, and by 1999, had approximately 80 restaurants and 4,000 employees. Some 80% of these restaurants (about 65) are franchise operations. It appears that here also McDonald’s experienced considerable conflict with the trade unions. Although McDonald’s was automatically covered by collective agreements from the first day it began business in Austria until the mid-1990s, the corporation refused to deal with the trade unions. As the union officials at the HGPD (the trade union

18. *New Works Constitution Act Enters Into Force*, 333 EUR. INDUS. REL. REV. 27 (2001).

19. *See supra* note 13.

representing the Hotel and Restaurant industry) stated, "... the only conversations we had with McDonald's were when we attacked each other in the newspapers." The unions suggest that McDonald's were losing the public relations battle and therefore finally changed their line. In 1994, some 17 years after opening their first restaurant in Austria, the McDonald's senior Austrian human resource manager was replaced. Since that time, McDonald's appears to be taking a more pragmatic approach towards the unions and the relationship with the unions has apparently improved considerably with union officials able to state that, "... the war is now over." However, this improved relationship with the company owned restaurants does not necessarily extend to the franchise restaurants, nor does it mean that works councils have been established.

As in Germany, Austrian law distinguishes between collective labor relations at the employer level and at multi-employer level. In the private sector, Austrian works councils are regulated by the Works Constitution Act (*Arbeitsverfassungsgesetz—ArbVG*). They can be established in any business with at least five permanent employees, provided the workforce wishes it. The numbers of works council members increases as the number of employees in the business increases. In multi-plant companies, each works council is entitled to elect a number of its members to a central works council (*Zentralbetriebsrat*). Since the 1986 amendment of the Works Constitution Act, employees are also entitled to representation at group level where there are a group of companies. In a similar manner to German works councils, at each of the above-mentioned levels, Austrian works councils enjoy considerable rights to information and consultation, including the opportunity to conclude a formal plant agreement with management. Their co-determination rights are restricted to a narrow range of social and personnel matters. Management requires works council approval for such things as the introduction of control systems that affect human dignity, performance related pay, internal transfers and the downgrading of employees in the business. The law specifies which matters can be delegated from collective to plant agreement, but collective agreements can also stipulate issues for regulation by plant agreement. According to Traxler,²⁰ the system of employee representation in Austria resembles the German model, with the main difference being that Austrian works councils have fewer rights.

20. Franz Traxler, *Austria: Still the Country of Corporatism*, in *CHANGING INDUSTRIAL RELATIONS IN EUROPE* (Anthony Ferner & Richard Hyman eds., 1998).

Despite the fact that there could be, on paper at least, a works council in every McDonald's restaurant in Austria, there are none. The McDonald's Austrian workforce appears to be very similar to that found in Germany. It is made up of a large proportion of foreign workers, with the remainder being made up of students over 18 years old and second income earners such as housewives. Union officials estimate that some 60 to 70% of McDonald's employees in Austria are foreign workers. This high proportion also reflects trends in wider Austrian society. In June 1990, the Austrian parliament amended the law to increase the proportion of legal allowed foreign workers in the total Austrian workforce to 10%. In addition to the fact that foreign workers are less likely to be aware of their rights regarding representation in works councils, they are also less likely to question managerial authority.

However, there is an additional problem for the establishment of works councils in Austria. Candidates for works council office must be Austrian citizens or citizens of EU member states. For the last 27 years, Austria has been the only European country to restrict employee representation on the basis of citizenship. There has been little if any attempt to give foreign workers equal rights and with the exception of some union pressure groups ("*Sesam öffne dich!*") and smaller unions like HGPD, even the big unions and the main union confederation (*Österreichischer Gewerkschaftsbund*) have done little in practice to support their cause.²¹ Moreover, anyone who wishes to be elected to the works council must have worked at the company for at least 6 months. Large proportions of the McDonald's workforce do not enjoy EU citizenship and, as elsewhere, many others do not stay long enough with the corporation. In these circumstances, it is hardly surprising that no works councils have been established at McDonald's in Austria. This poor outcome for Austrian works councils also has a "domino effect" as far as the employee representation on the supervisory board is concerned. One-third of the seats on the Austrian supervisory board are reserved for employee representatives and they have the same legal status as shareholder members, although their rights are restricted over the election and dismissal of management board members. Although employee representatives are normally appointed by the trade unions, only

21. The issue of works council rights ("*das passive Betriebsratswahlrecht*," paragraph 53 of the ArbVG) for non-EU citizens may be a particularly controversial issue in Austria at the moment, especially in view of the recent election success of Jörg Haider and his far-right Freedom Party and its hard line anti-immigrant stance. Eric Frey & William Hall, *Big Gain for Right in Austrian Elections*, FINANCIAL TIMES, Oct. 4, 1999, at 9.

works council members may be nominated and then only those are entitled to vote in works council elections. This automatically excludes union officials who might normally be found sitting on Austrian works councils. As such, there is no employee representation on the supervisory board.

The relationship between McDonald's and the union has undoubtedly improved; union membership is increasing and the union officials expect that it will continue to do so. However, HGPD officials are not optimistic about the prospects of establishing works councils. High turnover, apathy among students and foreign workers unable to stand for election make it highly unlikely that works councils will be established. There is also a clear distinction between the behavior of franchises and McDonald's company owned restaurants towards employees. The corporation has become much more concerned about its public image and has subsequently become more careful about the management of employees in its "own" restaurants. The relationship with the franchise restaurants is much more like the old relationship with the corporation and this is significant because they operate 80% of McDonald's restaurants. As there is no provision for workplace representatives outside the institution of the works council in Austria, the union's ability to monitor collective agreements is lost. This is a particularly important function where there are large numbers of foreign workers who are often poorly informed about their rights and entitlements.

C. McDonald's in Denmark

There are approximately 4,000 employees at McDonald's in Denmark employed in about 80 restaurants, 74 of which (over 90%) are franchise operations. McDonald's first came to Denmark in 1981, and it was not long before they ran into trouble with the unions. After some 8 years of conflict with McDonald's, things finally came to a head in 1989. Employees and unions went on strike and boycotted McDonald's restaurants. Eventually, the RBF (the Danish union for the hotel and restaurant workers) managed to get McDonald's to negotiate a sector-level collective agreement. However, the relationship between McDonald's and the unions have remained cool. Furthermore, this success has not translated into effective employee representation in the restaurants in terms of either trade union representatives (*tillidsrepraesenter*), the Danish version of the works council, the co-operation committee (*Samenarbedsudvalget*), or employee representation on McDonald's board of directors.

As in Germany and Austria, Danish works councils can also be established at either group or company level in larger businesses. In any company with more than 50, employees have the right to elect at least two representatives and up to a third of the members of the board of directors. Employee representatives exist on about 35% of the companies in Denmark that could have them. The rules for workers participation are not set out in the law, but in national level framework agreements negotiated between the Danish union confederation (LO) and the Danish employers federation. The cooperation committee and its members are usually made up of union representatives, other elected employees and an equal number of management representatives. The senior management representative chairs the committee with the deputy chair coming from the employee representatives. These committees can be established in any company where there are 35 or more employees, where they are requested by the employer or a majority of employees. The cooperation committee has information and consultation rights, but it does not have the kind of veto powers associated with Austrian and German works councils, and it is explicitly excluded from any role in negotiating collective agreements on pay or other issues dealt with by employers and unions. It is entitled to information on the financial position of the business, its future prospects including future sales and production issues, employment outlook, major changes or planned reorganization and the impact of new technology. These information rights can really be seen as consultation rights. This is because the committee should receive this information early enough so that employee representatives can put forward viewpoints, ideas and proposals before any decision is made. It is also the body through which both employer and employee representatives can attempt to reach agreement on a number of policy principles, including company personnel policy and human relations, use of personal data, production methods, training and retraining for new technology, equal opportunities and any major business changes.²²

Theoretically, there could be between 1 and 3 union representatives in every McDonald's Danish restaurant (depending on the number of employees in the restaurant), which means at least 80 union representatives. At present, there is just one union representative in Denmark. In addition, there could be 80 cooperation committees, one in every McDonald's restaurant in

22. Steen Scheuer, *Denmark: A Less Regulated Model*, in *CHANGING INDUSTRIAL RELATIONS IN EUROPE* (Anthony Ferner & Richard Hyman eds., 1998).

Denmark with the possibility of a company level committee. However, there are no cooperation committees at McDonald's in Denmark. Similarly, one-third of the board of directors could be employee representatives, but there are none at McDonald's. According to the Danish restaurant workers union (RBF), the main problem in establishing cooperation committees is in getting union representatives and this depends to some extent on gaining an adequate level of union membership. Union membership at McDonald's is a problem in most countries.²³ The RBF estimates union membership at McDonald's is around 7%. In 1999, the union only had one union representative for all the 80 or so restaurants: a student. McDonald's in Denmark has the same high levels of labor turnover experienced in many other countries, between 100 and 200%. In addition, the union representative states that there are the same kinds of problems with the workforce identified in other countries in what the author has termed as an "acquiescent workforce."²⁴ In Denmark, this is typified by a workforce mostly made up of young workers who do not stay long and who have little knowledge and/or interest in their rights or awareness of union activities.

Without adequate numbers of union members, there are less likely to be enough members working long enough at the company to commit themselves to be union representatives. The union representative reports that he has problems trying to get paid time off to undertake his union duties (something that would normally be negotiated by a cooperation committee) and he simply does not have enough time to establish a cooperation committee on his own. Furthermore, it is difficult enough to get workers to become union representatives and without union representatives, cooperation committees are a non-starter. In these circumstances, it is hardly surprising that there are no cooperation committees and no representation on the board of directors.

The RBF suggests that McDonald's is very adept at persuading workers that there is no need to join the union and are therefore able to keep unions out of the restaurants. The whole point of cooperation committees is for the workforce to have a voice independent of management and for both sides to then discuss and cooperate over issues that concern the workforce. Where there is no will on the side

23. ROYLE, WORKING FOR MCDONALD'S, *supra* note 5.

24. Tony Royle, *Recruiting the Acquiescent Workforce: A Comparative Analysis of McDonald's in Germany and the UK*, 21 EMPLOYEE REL. 540 (1999).

of management to engage in this kind of cooperation, attempts to establish such committees are likely to be an uphill struggle. The absence of cooperation committees and the lack of representation at board level are of some concern to the union. However, it is the low level of membership and the lack of union representatives that is the major issue; without adequate numbers of representatives, establishing committees is a non-starter. The importance of union representatives should not be underestimated. Both the existing representative and the RBF report regular infringements of the collective agreements and that these infringements are only the "tip of the iceberg," and most simply go unreported because there is no union presence in the majority of restaurants.

D. McDonald's in France

The French system of employee representation is based on a variety of different structures representing both trade union and employee interests. Individual trade unions can each establish a trade union section (*section syndicale*), which can bring its workplace members together. These union sections can be established regardless of the numbers of union members in the business and they have specific rights under the law. Secondly, in workplaces with over 50 employees, unions have the right to appoint a trade union delegate (*délegué syndical*) who has a role in representing the union and the interests of employees. In addition, two separately elected bodies that have specific rights and duties represent the whole workforce. First, in businesses with at least 11 employees, the workforce is entitled to an employee delegate (*délegués du personnel*). Second, for all companies with more than 50 employees, the workforce is entitled to a works council. Unlike German works councils, the establishment of French works councils does not rely on the instigation of employees. However, in smaller companies with less than 200 employees, management can decide that there should be no separate works council and that employee delegates should undertake both roles. Works councils can be established either as a *comité d'entreprise* or as a *comité d'établissement*. Employee delegates and works councils are normally separate, but individuals can be elected to both. Rather like the German model, in large companies with several "plants" each with their own works council, a company-level works council (*comité central d'entreprise*) should be established. In companies with several plants and more than 2,000 employees, the unions can also have a central trade union delegate. For businesses with several companies,

a group-level works council (*comité de groupe*) should be established.²⁵

French works councils are not employee only bodies as in Germany, but they are joint management-employee bodies. A representative of management chairs the French works council, but the secretary is an employee representative. Councils should meet once a month in companies with over 150 employees, but normally only once every two months in smaller companies. Trade union delegates often co-exist with works councils (they may be the same individuals) and their role is not only to see that existing rules and agreements are applied properly, but also to try to improve existing arrangements. Union delegates must be involved in negotiations over pay, training and working time and these negotiations should take place every year. They should also receive a range of detailed information on actual pay levels in the company or plant, as well as other information on the workforce. Works councils are also entitled to be informed about social, economic and financial issues. However, their consultation rights are not so extensive and the employer has to consult the works council in advance if measures are planned which significantly affect the size and structure of the workforce, working time and working conditions. Although the rights of the French works councils are not as substantial as in Germany, they do provide the French unions with the advantage that only they (as "representative" trade unions) can nominate a list of candidates in the first round of elections. If these candidates get more than half of the votes, they are then elected and the seats are then allocated on a proportional basis. Only if these candidates get less than half the votes is a second round held in which non-union employees can stand. Works councils are also entitled to use financial experts; such experts can be called in at the company's expense to examine annual accounts and examine large-scale redundancy proposals. In companies with more than 300 employees, they can examine financial forecasts and the council can also call in technology experts. Tchobanian suggests that the 1982 Auroux reforms have put works councils in a central position in the systems of worker's collective action, reaffirming the central role of the unions in worker representation.²⁶

25. Income Data Services, Institute of Personnel Development, *European Management Guides: Industrial Relations and Collective Bargaining* (1996).

26. Robert Tchobanian, *France: From Conflict To Social Dialogue?*, in *WORKS COUNCILS: CONSULTATION, REPRESENTATION AND COOPERATION IN INDUSTRIAL RELATIONS* (Joel Rogers & Wolfgang Streeck eds., 1995.)

The French system of works councils, employee and union representatives would certainly appear to face MNEs with a considerable number of constraints in their employment relations practices. However, up until the mid-1990s, it appears that McDonald's operated almost independently of these institutions. Union officials at the *Confédération Française Démocratique du Travail* (CFDT) state that McDonald's refused to recognize the unions, adopting an empty chair policy in the fast-food employers' association (SNARR) during its first 15 years in France.²⁷ In addition, the unions had found it almost impossible to establish either works councils or union delegates at McDonald's. In many cases, their delegates simply disappeared and dismissals were taken to court, but although the union won in most cases, it did not improve the situation. McDonald's would pay compensation, but workers were not usually reinstated, so it was extremely difficult to retain any union delegates in the company. A similar situation arose with the works councils. By law, the union must notify the company who the candidates for works council election will be; once the company was notified, union candidates "disappeared." The unions allege that either they were dismissed or "bought out" in a similar way as in Germany.²⁸ An additional problem in establishing union delegates and works councils is the calculation of employee thresholds. Businesses must have over 10 full-time employees for a union delegate and over 50 full-time employees for a works council. Many of McDonald's workers are, of course, part-time. These workers' hours can be included in the calculation of thresholds, but it might take two or three part-timers to make one "full-time employee." It may be difficult to obtain accurate and up-to-date information on workers' hours, so together with employer opposition and high labor turnover, establishing works councils is problematic.

This open conflict with the unions continued until the mid-1990s, but by 1994, McDonald's had an increasingly significant public profile and 250 restaurants in France. It was around this time that the most surprising and well-publicized case of conflict hit the headlines being reported in both the French and U.K. newspapers.²⁹ On the morning of July 6, 1994, 12 McDonald's managers were arrested at their place of work, imprisoned and put under judicial investigation. They were

27. *McDonald's Serves Up Improved Social Relations*, 279 EUR. INDUS. REL. REV. 19-21 (April 1, 1997).

28. Royle, *supra* note 13.

29. A. Sage, *France Puts Fire on Big Mac*, THE OBSERVER, July 10, 1994, at 16; A. Lyon, *Ca Ne Se Passe Pas Comme Ca Chez McDonald's*, LIBÉRATION, July 6, 1994, at 8.

accused of impeding union rights and impeding the election of a works council. This conflict concerned 12 franchise restaurants in Lyon and the CFDT union argued that because all 12 franchises were run by the same franchisee, they should be considered as a single business or “economic and social unit” (*unité économique et sociale*—UES). Having the restaurants defined as an UES would then have allowed the establishment of a *comité d'entreprise*. McDonald's argued against this and took its case to the French high court (*Tribunal de Grande Instance*). Nevertheless, the court decided in favor of the CFDT. Ten of the 12 were charged with violating the exercise of union rights and interfering with the election of a works council and were forbidden to return to their restaurants.

Elections for the Lyon works council then went ahead, but came up with some strange results. In the first vote, when only union representatives could be elected, only 38 from 458 employees actually voted. In the second vote where anyone can stand, 260 employees voted; only non-union representatives came out on top. The CFDT allege that management told workers that anyone voting for the union would be sacked. The result was that a non-union works council was elected. Although this was a defeat for the unions, the CFDT now decided to focus its activities in Paris where most of the restaurants are wholly owned and the corporation has a higher public profile. In 1995, further elections for union delegates and works councils were held. The CFDT states that the same kind of voting manipulation also took place here to begin with. However, with the increasing amount of bad publicity, it appeared that this overtly anti-union approach was about to change. In 1995, a new senior HRM manager was appointed and McDonald's declared itself to be a driving force in the field of social relations and that it wished to integrate itself into the “social landscape.”³⁰ A CFDT official states that, on one level, the relations with the company have improved since the new HR manager took over in 1995. One of the first moves of this new approach was to agree to the establishment of a *comité central d'entreprise* in April 1996. In June 1996, the corporation also concluded a pay agreement with the CFDT for the company-owned restaurants. In October 1996, McDonald's then signed an agreement with the CFDT on the recognition of union rights. This agreement also covers all other trade unions represented in the company. However, like the other agreements, this recognition agreement only covers its wholly owned restaurants. It does not include the 90% of restaurants operated as

30. See *supra* note 27.

franchises or joint ventures. The CFDT suggests that the pay element of the agreement was not that significant, but that the recognition agreement has had an impact on the union's ability to establish both union delegates and works councils in the company-owned restaurants.

By early 1999, McDonald's had over 720 restaurants in France and around 35,000 employees. The situation in 1999 was that there were 5 works councils (*comité d'entreprise*) and one central works council (*comité central d'entreprise*) representing the company owned restaurants. Since the problems at Lyon in 1994, McDonald's has bought back the franchise restaurants in Lyon and Nice. Four of the 5 *comité d'entreprise* are union controlled and in 3 of these, the CFDT has the majority of members. One of the four *comité d'entreprise* represents managers and some office workers and is organized by the professional and managerial staff federation (*Confédération Générale des Cadres*—CGC). The fifth is non-union and represents around 10 restaurants, all managed by one franchise operator. This means that of the total of over 720 restaurants, the approximately 80 or so company owned restaurants are represented by two *comité d'entreprise* and a number of *délegué syndical*. In addition, one *comité d'entreprise* represents workers in 20 restaurants operated by a joint venture (90% owned by McDonald's). This means that the approximately 620 remaining franchise and joint-venture restaurants have no trade union representation whatsoever. The 10 seats in the *comité central d'entreprise* in 1996 contained some non-union members. However, this has changed in the more recent round of works council elections and they are now made up as follows: CFDT 6; *Confédération Générale du Travail* (CGT) 1, *Force Ouvrière* (FO) 1, and CGC 2. The central or principal union delegate is a CFDT member, secretary of the *comité central d'entreprise* and the EWC employee representative.

Since the Auroux laws introduced in 1982 (amended in 1986), there is also the worker's right of expression or *group d'expression*, in which workers have the right to express their views about their working conditions. McDonald's has not instigated any such groups because it says that their workers can already express their views in the McDonald's style rap sessions. However, experience of such rap sessions in several European countries suggests that managers carefully select workers attending such meetings, weeding-out union members and when grievances are raised, little or no action is ever taken. French law also provides for two or four representatives of the works council (depending on the number of managers employed) to

attend board meetings (or supervisory board meetings where these exist). These representatives only have a consultative role, but there are none at McDonald's.

However, the recognition of the unions in the company-owned restaurants has had some impact on the establishment of works councils. In accordance with the works council legislation, the employer must provide exclusive use of an office and all equipment necessary for it to function effectively, together with a budget amounting to 0.02% of the total wage bill. In addition, union representatives, works councilors and employee delegates are entitled to paid time off for their activities, depending on their range of responsibilities and the number of employees in the business.³¹ Since the recognition agreement, the principal union delegate has been able to obtain 50% paid time off to carry out his union duties and the works council representatives/union delegates now have a budget and the use of an office with fax and telephone. The more union positive approach and change of HR manager has also had a small but significant outcome in terms of the McDonald's EWC. Despite the fact that the unions normally appoint EWC employee representatives, without the recognition agreement it seems unlikely that a union supported employee representative would have got on the EWC. The experience of the election of EWC employee representatives in other countries suggests that any election without union involvement would probably have resulted in the election of a "management sponsored" representative and probably a salaried manager, not an hourly-paid worker.³²

Nevertheless, in terms of improving the representation of the vast majority of French workers and works councils being able to exercise any real influence over the corporation's decisions, the result has been disappointing. Even in the smaller number of company-owned restaurants, many managers are still outspokenly anti-union and they do not welcome employees asking questions about the calculation of their pay entitlement or their rights to representation. If the restaurant does not have a union delegate, employees are often too "shy" to question managers about their rights. Union delegates also report that a number of unfair dismissals relating to union activities are still going on and that there are frequent examples where the national collective agreements are not adhered to correctly.

31. See *supra* note 25; J. Goetschy, *France: The Limits of Reform*, in CHANGING INDUSTRIAL RELATIONS IN EUROPE (Anthony Ferner & Richard Hyman eds., 1998).

32. Royle, *Where's the Beef?*, *supra* note 16.

The effectiveness of the existing works councils may also have been undermined by the continuing rivalry that often exists between the different union federations.³³ In this case, there were some disagreements between union officials of different union federations and different regional offices in the same federation about who should be appointed as the principal trade union delegate and the more influential positions on the company-level works council (*e.g.*, secretary and treasurer). Representatives and union officials suggest that the corporation has also attempted to exploit these differences. In one case, management allegedly spread rumors that one union confederation was doing deals with McDonald's to exclude the other unions. Similar events also took place in Germany where management allegedly attempted to divide individual works councils.³⁴

The company-level works council established in 1996 has had only limited practical effect. It has allowed union representatives from different regions to meet face-to-face and it has also been useful in terms of obtaining a better picture of how the corporation is organized. This is important because it also allows the works councils and unions to appoint additional union representatives at the right level and, if they do not do so, the company can simply refuse the appointment arguing that it is invalid. It can do nothing for the majority of workers employed in franchise operations. McDonald's had stated in 1996, that it "hoped" that the franchisees would adopt similar practices and establish works councils; indeed, it arranged a number of two-day seminars for franchisees, to explain the reasoning behind the corporation's changes.³⁵ However, in the three years since that time, there has been virtually no response from franchisees. In early 1999, there was only one works council representing franchise restaurants and a non-union works council representing just 10 or so of the close to 650 franchise restaurants. A CFDT official has recently stated that the new HR manager appointed in 1995 may be genuinely trying to improve relations with the unions, but he is very much on his own at McDonald's. The changes introduced in 1996, have yet to achieve concrete improvements for the majority of workers and with hindsight, these changes look increasingly more like a clever public relations exercise than any real desire to be "integrated into the social landscape."

33. Goetschy, *supra* note 31.

34. Royle, *supra* note 13.

35. *See supra* note 27.

The negative impression that there is still no real change in McDonald's policies towards its workforce has also been reinforced by continuing allegations about staff exploitation. On a number of occasions, this had led workers to go on strike with the result that prime location restaurants, like the one on the Champs-Élysées, have been closed. In fact, more recently on October 24, 2001, French McDonald's workers went on strike at the Saint-Denis outlet in Paris. The strike, probably the longest in McDonald's history, went on for 115 days before a settlement was reached in February 2002.

E. McDonald's in the Netherlands

According to union officials at the FNV affiliated HORECABOND, the relationship between McDonald's and the union was also very poor from when it entered the Dutch market in 1971, until the mid-1980s. Although, they also suggest that this may be in part a result of the activities of some left-wing youth groups associated with the Voedingsbond FNV in Holland. After losing a number of court cases involving infringements of the national collective agreement in 1986, there was once again a change in senior management and, after 14 years, McDonald's finally adopted a less outspokenly anti-union policy in the Netherlands. The corporation made public pronouncements that it would thereafter agree to recognize the trade unions and take part in and adhere to collective agreements.

Since that time, the public image of the corporation in the Netherlands has improved a good deal. The unions also confirm that their relationship with the corporation has improved. The corporation has also benefited from positive publicity in working with the union in encouraging more people to take up part-time work. Benders and Mol³⁶ suggest that the improvement in this relationship could be explained by a more consensual orientation prevalent in Dutch society.³⁷ However, they also point out that a major part of FNV's policy has been to redistribute work by encouraging part-time employment, fighting unemployment and increasing access to work for ethnic workers and women; precisely the kind of employment generally offered by McDonald's.

36. J. Benders & B. Mol, *How Strong is Convergence? McDonald's in the Netherlands*, paper presented to the 16th International Labour Process Conference, University of Manchester, April 7-9, 1998.

37. P. D'IRIBARNE, *LA LOGIQUE DE L'HONNEUR: GESTION DES ENTERPRISES ET TRADITIONS NATIONALES* (1989).

Visser suggests that Dutch unions have typically organized at industry level in a way in which union activity at plant level (or in this case, restaurant level) is neglected, leading to a power balance in favor of employers.³⁸ Visser also suggests that unionization is particularly low in the Netherlands amongst women and young workers in the service sector.³⁹ HORECABOND officials suggest that in 1997, from the 12,000 or so McDonald's employees, only 80 were union members. However, after a six month campaign ending in early 1998, the union successfully increased its membership to close to 400 members; nevertheless, this is still a tiny proportion of the total workforce. Despite the cooperation with McDonald's management, union officials state that many problems have surfaced, including for example, unfair dismissals and a lack of adherence to the collective agreements. This has been particularly so with the franchise operators who run over 90% of the 214 Dutch restaurants. In an attempt to deal with these kinds of problems, the corporation agreed to meet with the union at least twice per year or more to try to iron out any difficulties.

However, in a survey conducted by the union in late 1997 and early 1998, it was clear that a considerable number of problems still remained. In particular, there was a general complaint that relations between managers and workers was not good, that there was inadequate notice of working hours, incorrect sick pay calculations and a considerable problem with McDonald's classifying workers into a lower pay grouping of "apprentice fast food worker." This "grade" does not exist in terms of the collective agreement. Union officials state that these problems frequently occurred in the franchise restaurants. McDonald's claimed that the survey was unrepresentative because it did not include salaried employees and did not match the results of their own survey. Nevertheless, McDonald's stated that it would take the claims seriously and the details were also reported in the Dutch press.⁴⁰

These kinds of problems highlight the importance of establishing union representatives and/or works councils (*Ondernemingsraden*) in every restaurant. While union representatives are seen as an important mechanism for gaining a foothold in separate plants, it is still the works council that is seen as the most effective institution for

38. Jelle Visser, *The Netherlands: The Return of Responsive Corporatism*, in CHANGING INDUSTRIAL RELATIONS IN EUROPE (A. Ferner & R. Hyman eds., 1998).

39. Jelle Visser, *European Trade Unions in the Mid-1990s*, in INDUSTRIAL RELATIONS JOURNAL: EUROPEAN ANNUAL REVIEW (B. Towers & M. Terry eds., 1998).

40. *Medewerkers McDonald's Ontevreden Over Naleving CAO*, ALGEMEEN DAGBLAD, May 24, 1998, at 7; *Werknemers McDonald's Klagen Over Naleving CAO*, DELFTSE COURANT, May 24, 1998, at 9.

employee representation in the Netherlands.⁴¹ The 1971 law on works councils (*Wet op de Ondernemingsraden*) gave works councils a dual role in representing worker's interests and better functioning of the firm.⁴² The 1979 Works Councils Act finally removed the employer from the council's chair. Since then, there have been further amendments in 1981, 1990 and more recently in March 1998. The 1998 amendments have simplified the existing arrangements. Previously, the legislation had allowed for one type of works council to be created where there were 35 or more employees and another works council with more extensive rights where businesses employed more than 100 employees. This distinction has now been done away with and now there is one type of works council to be established in firms with 50 or more employees. In companies with less than 50 employees, works councils can still be established, but only on a voluntary basis.⁴³ In effect, the employer must set up some form of employee representation with more limited rights if this is the will of the majority of the employees, usually in some form of consultation meetings that must take place at least twice per year. The establishment of Dutch works councils does not depend on the instigation of the workforce as in Germany and, under Dutch law, each independent plant is classified as an undertaking. Since the 1979 amendment, Dutch works councils have been employee-only bodies with members being elected by the whole workforce.⁴⁴ The councils usually meet once per month and the numbers of members vary in size, depending on the numbers in the workforce and the council then elects its own chair and one or more deputies. Dutch works councils are not normally involved in collective bargaining and, in fact, the rights enjoyed by works councils are quite similar to those found in Germany. They fall into three categories: information rights, consultation rights and approval rights. In addition, the councils can make proposals to which the employer must respond.

Management is automatically obliged to provide the works council with information on a range of financial and economic issues. This includes the structure and organization of the company, its links with other companies and the structure of management, trends in employment and social policy, the company's own report and

41. Visser, *supra* note 38.

42. Jelle Visser, *The Netherlands: From Paternalism to Representation, in WORKS COUNCILS: CONSULTATION, REPRESENTATION AND COOPERATION IN INDUSTRIAL RELATIONS* (Joel Rogers & Wolfgang Streeck eds., 1995).

43. Income Data Services Employment Europe, *The Netherlands: Works Council Reforms Revealed* (1998).

44. Visser, *supra* note 42.

accounts (annually), investment plans and prospects (twice a year), and details of long term corporate plans. The consultation rights relate to economic questions, but focus on those matters that directly affect the workforce. For example, plans to sell off all or part of the company, take over other companies, changing or ending significant parts of the company's activities, relocations, large-scale recruitment, major investments, technological changes and environmental issues. The approval or, as Visser describes them, codetermination rights cover a range of matters.⁴⁵ These include retirement, profit sharing or savings, hours worked and annual leave, salary and wage scales and job classification schemes, the position of young workers, health and safety, recruitment, dismissal and promotion, training, staff assessment, social assistance for employees, consultation at shop floor level and complaints handling. The 1998 amendments further extended these rights to include staff files, systems to check employee presence and sickness and absence rules.⁴⁶

Regulations on these issues cannot be introduced, changed or ended without the approval of the works council unless they are covered by a collective agreement. If there is disagreement, the law is designed to ensure that all avenues for conflict avoidance are exhausted. However, employers can appeal to industry-level joint union management commissions and then the district courts if works councils do not give its approval to any measure. These courts allow employers to carry out their proposed action if the works council's refusal is considered to be "unreasonable," or if the proposed decision "is based on important organizational, economic, or social considerations."⁴⁷

McDonald's attitude towards union recognition may have improved, but their attitude so far towards works councils has not been that positive. Union officials state that the corporation's general response has been that works councils would merely represent an unnecessary burden, particularly as they already have their own mechanisms for employee "communication," the ever present RAP sessions and crew meetings. Without some union presence in the restaurants, the union simply does not know whether the collective agreement is being correctly adhered to or not. Equally, where there is a union representative or works council, it is more likely that the collective agreement will be properly implemented. By November

45. *Id.*

46. Income Data Services, *supra* note 25.

47. *Id.*; Visser, *supra* note 42.

1998, union officials state that there were 31 union representatives in Dutch McDonald's restaurants. Although the numbers of representatives has increased considerably since the survey and "awareness campaign" conducted in 1997-1998, the majority of restaurants are still without a "union presence."

In fact, the unions have found it extremely difficult to establish works councils under the works council legislation prior to the 1998 amendments. Although the threshold was technically lower, 35 instead of the current 50, the 35 workers had to be full-time employees, that is, work more than 13 hours per week. This was a particular problem in the fast-food industry with so many employees working part-time. The result under the old legislation was that there were just four works councils representing a small number of restaurants. Furthermore, of these four, only one contained union supported representatives and this was a works council representing five franchise restaurants run by one franchise operator in The Hague. Of the other three works councils, two represented employees in a small number of franchise restaurants and one represented some company-owned restaurants. All three were non-union. Union officials report that, in any case, the one union works council was not that effective. The franchise operator simply refused to provide it with meaningful information and adopted a highly paternalistic approach, stating to the union that, "... I work with children, why should I give them information?"

In 1996, the union had tried to persuade the corporation to accept a kind of company-level works council to represent all McDonald's in both franchise and company owned restaurants. The corporation disagreed with this and said it might consider two works councils representing franchises and company restaurants separately. Nothing materialized from these discussions. Union officials state that the reason for this is quite simple: The corporation does not want works councils and wants to control the process of "communication" itself. It does not want bodies that have specific codetermination and consultation rights enshrined in law, especially where such bodies reveal sensitive financial information.

Although the union was also able to gather statistics on the numbers of employees in every McDonald's restaurant and the hours they worked, it could be argued that the pre-1998 legislation was inadequate in that it was not designed to take workers in this "new" kind of industry. However, union officials are optimistic about the future situation. The new legislation on works councils, introduced in April 1998, should make it much easier for the unions to establish

more works councils. Nevertheless, there are still practical difficulties. Theoretically, there could be a works council in nearly every restaurant in the Netherlands, but this would involve too many individuals and be somewhat unwieldy. Union officials state that they will try to negotiate with the company to develop a suitable works council structure for the company-owned restaurants first and then move on to work on a suitable structure for the franchises. However, it is the franchises where the majority of workers are employed and it is these restaurants that are likely to be problematic.

Although the works councils can be imposed under the law, the unions emphasize the importance of having union candidates. McDonald's is likely to reject the union's proposal for one big works council covering all restaurants and they may try to side-step the union by simply encouraging the election of non-union works councils. If this were the case, the works council could be rendered ineffectual and, once again, the union would be kept out of the restaurants unless they have a union representative. Union officials hope that the new legislation will help to increase union membership and the numbers of union representatives in the restaurants. Union representatives are therefore essential in establishing an effective structure for works councils, but employer opposition, high labor turnover and workforce characteristics suggest that obtaining adequate numbers of union representatives will be difficult. The Dutch unions have as yet been unable to draw on the significant power resources that are in theory provided by the Dutch works council legislation. McDonald's has as yet largely been untroubled by works councils or any real "interference" in terms of their employee relations policies in the restaurants and whether this will change in the future remains to be seen. In 2002, negotiations between the HORECABOND and McDonald's over the issue of works councils were still going on.

F. McDonald's in Spain

McDonald's arrived in Spain in 1982, and by early 1999, had approximately 160 restaurants, some 80% of which (130 restaurants) are franchise operations. As appears to be the pattern in most countries, the majority of McDonald's company-owned restaurants are located in or around the capital city, in this case Madrid. In early 1999, McDonald's in Spain employed approximately 8,000 employees. FECOHT, the trade union for the food and drink industry, is affiliated to the CCOO union federation. FECOHT states that that they have

been unable to establish any kind of meaningful relationship or dialogue with the company. In fact, they suggest that McDonald's actively try to prevent the presence of trade unions in its restaurants. FECOHT officials also state that none of the other trade unions have had any success either. They calculate that only about 1% of McDonald's workers are union members.

Spanish legislation provides for employee delegates (*delegados de personal*) in small firms with ten or more employees. However, employee delegates can be established with as few as six employees, where the majority wants this. Works councils (*comité de empresa*) can be established in firms with 50 or more employees. The rights and duties of the works councils and the employee delegates are the same. The Spanish works council is an employee only body, but two groups normally elect it: manual and non-manual employees. Neither the works councils nor the employee delegates depend on union involvement, but where unions are well organized, they usually play a central role. Unions normally dominate works council elections, nominating some 90% of elected representatives. As in France, the unions are also entitled to establish trade union sections (*secciones sindical*), which are entitled to bring together all the members of a particular union in the workplace. Companies with over 250 employee members of each union with seats on the works council have a legal right to elect a trade union delegate.⁴⁸

Spanish works councils have rights to information and consultation. For example, they must be informed of economic and financial matters, such as sales figures and profits. They also have the right to be informed of the type and number of new employment contracts, together with statistics on absenteeism, accidents and illness. In the areas of production transfer, restructuring, changing working hours, payments systems and training, the works council must be informed in advance and be able to comment. The works council also has some protective functions for individual employees. For example, if the employee wishes, it has the right to be present when an employment contract is ended and also where there are any cases of gross misconduct or punishments. The works council has a duty to monitor that the employer is complying with the law. However,

48. Modesto Escobar, *Spain: Works Councils or Unions*, in *WORKS COUNCILS: CONSULTATION, REPRESENTATION AND COOPERATION IN INDUSTRIAL RELATIONS* (Joel Rogers & Wolfgang Streeck eds., 1995); Miguel Martinez Lucio, *Spain: Regulating Employment and Social Fragmentation*, in *CHANGING INDUSTRIAL RELATIONS IN EUROPE* (Anthony Ferner & Richard Hyman eds., 1998).

providing the employer has not broken the law, they cannot prevent management acting as it wishes in the final instance.⁴⁹

National level collective agreements are still relatively rare in Spain, but in recent years, some have been negotiated to deal with key issues in the Spanish labor market. Such agreements have not dealt with pay since the mid-1980s, but Spain does have a statutory minimum wage that is normally upgraded each January. Sectoral or company agreements often cover such issues as pay and working time. Indeed, there is a sectoral level agreement for the broader hotel and restaurant industry, but it only covers job classifications, training, discipline and sanctions for non-compliance. In this industry, therefore, improving basic rates of pay is very much dependent on achieving a company level agreement.

Despite the fact that the Spanish works council does not enjoy any co-determination rights, it is still a key institution in terms of employee representation. Unlike their counterparts in some other European countries, Spanish works councils are often involved in collective bargaining. They can negotiate binding collective agreements covering pay and conditions in their company. In fact, this is what has happened at McDonald's, and in two cases, company-level "agreements" have been agreed with works councils, one covering a group of franchise restaurants in Madrid and one covering the 30 or so wholly-owned company restaurants in the Madrid area. However, rather than this being a positive factor for the Spanish unions and Spanish workers, it appears to work against them. FECOHT officials suggest that both of these "agreements" are remarkably similar in that they offer very little to the employees. Neither they nor any other union have been able to get involved in either of these "agreements." FECOHT officials suggest that no real negotiations took place and the works council representatives simply signed an "agreement" that was presented to them.

FECOHT officials state that there is currently some 33 separate works councils established in both franchise and company owned restaurants, but only in two of these works councils has it been possible for the union to nominate candidates and elect any delegates. In fact, they currently have just two union delegates, one in a franchise restaurant and one in a company owned restaurant. Nominations for positions on the works councils are made on the basis of lists for all the members of the works council and they can be drawn up by either unions or groups of individual employees. This is

49. *Id.*

providing that the number of voters supporting a list is three times greater than the number of places to be filled. Those lists that receive less than 5% of the vote are eliminated and any disputes can be referred to the labor court and elections take place every four years. In fact, union involvement in works councils is the norm in Spain with something like 90% of all works council representatives being proposed by the trade unions.⁵⁰

Union officials suggest that the reason that there is such a tiny proportion of union delegates at McDonald's is because the corporation has been very successful in promoting the election of non-union candidates who will only represent company interests, not the interests of the employees. In many cases, works council representatives at McDonald's in Spain are salaried managers. Union officials suggest that McDonald's groups a number of its restaurants together for the purpose of elections and this ensures that a large works council, not just a delegate, has to be elected. Typically, this would be five or so restaurants with total of between 250 and 350 employees. Most workers do not know other workers working in other restaurants and when the list of candidates is presented, workers often have no idea who to vote for. The union states that it would be much easier to get union delegates elected in individual restaurants where there may be less than 50 workers and no works council is required. The problem for the union is not in attaining the 5% of votes, but in being able to nominate union candidates early enough. The result is that the union often has no candidate or that workers do not know his/her identity and McDonald's management usually acquires the majority of votes for the candidates it would prefer. The union suggests that there is no contact or coordination between the existing works councils and the union has yet to come across an incident where there has been a disagreement between works council representatives and the corporation.

There is no technical difference between the rights of a union delegate and those of the works council. In firms with more than 250 employees, the unions have the right to appoint union delegates if they have a seat on the works council. McDonald's employs approximately 1,500 employees in its company-owned Spanish restaurants. FECOHT could therefore nominate union delegates because they do have a minimum level of representation and a small number of union members. However, without representation on the works council, such delegates would not have the legal right to time

50. Income Data Services, *supra* note 25; Escobar, *supra* note 48.

off for union activities. In this situation, union officials state that such nominations would be pointless and would not allow any meaningful union influence.

Spanish law also allows for company level works councils to be established in firms with more than one plant (*comité intercentros*). However, this can only take place where this is provided for in collective agreements. As the unions have been unable to get involved in the two agreements that do exist, no *comité intercentros* has been established. Even if a company level works council were established, it is unlikely to be of any real value as a mechanism for employee interest representation as the situation stands at present. In sum, the Spanish system of works councils appears to be totally ineffective as far as the representation of employee interests at McDonald's is concerned. The works councils that do exist have effectively been "captured" by management and the union has been unable to elect adequate numbers of delegates.

G. *McDonald's in Italy*

The first form of "works council" in Italy dates back to the early 1900s, and it was known as *commissione interna* or internal commission. These "councils" were closer to the European tradition in that they were not union bodies, but did represent the whole workforce. By the 1970s, the unions regularly criticized these institutions as ineffective and bureaucratic and other models of representation eventually replaced them. The 1970 Workers' Statute authorized workers from the most representative unions to establish workplace union representation. These bodies were known as RSA (*rappresentanze sindacali aziendali*), but in practice, they assumed a variety of forms. The increase in worker mobilization during the 1970s also led to the introduction of another form of representation, the *consiglio di fabbrica* (factory council) or the *consiglio dei delegati* (council of delegates). Although these bodies performed reasonably well, they engendered a good degree of uncertainty and unpredictability.⁵¹ The whole system was finally reformed in July 1993, with the Tripartite Accord where the social partners opted for a single body in all workplaces. These new bodies were given a new name RSU—unified trade union committee (*rappresentanze sindacali unitarie*)—which was chosen to emphasize that this new institution

51. Ida Regalia & Marino Regini, *Italy: The Dual Character of Industrial Relations*, in *CHANGING INDUSTRIAL RELATIONS IN EUROPE* (Anthony Ferner & Richard Hyman eds., 1998).

was recognized by the unions. These arrangements are still in place despite being threatened by smaller left- and right-wing groupings in a referendum held in June 1995.⁵² Italian RSUs are not wholly independent bodies and are not based on the kind of statutory mechanism found in Germany or France. Although the whole workforce elects them, they are predominantly union committees and based on trade union rights acquired under the 1970 Workers' Statute.

RSUs are employee-only bodies and can be created in any company employing more than 15 people. The whole workforce directly elects two-thirds of the "seats" on the RSU, but only the unions can nominate them. In order to nominate seats, a union must either have signed the July agreement,⁵³ or signed a national agreement covering that workplace, or the union must be properly constituted and be able to present a list of candidates supported by at least 5% of the eligible workforce. For the election to be valid, at least 50% of those able to vote must do so. The remaining one-third of the representatives are elected or appointed by the unions. The trade unions themselves agree the rules governing the operation of the RSU, but it is normally chaired by the leading figure in the largest union in the workplace. However, employers and unions at industry level need to reach agreement before the process can start. The key function of the RSU is to negotiate with the employer at workplace level and the agreement that establishes them gives them the power to negotiate binding agreements. Most of the issues on which the RSU has to be informed and consulted by the employer depend on the agreement reached either at industry or company level. However, by law, employers must inform and consult RSU representatives on matters such as health and safety, the use of public funds for industrial restructuring, large-scale redundancies and business transfers.⁵⁴

In early 1999, McDonald's had 220 restaurants in Italy, but by mid-2002, this had increased to 325. About 70% of McDonald's restaurants are franchises (about 176 in Spring 1999, and about 225 in 2002). On average, McDonald's management estimates they employ between 50 and 60 employees in each restaurant; at present, they probably have around 16,000 employees. In a typical RSU in a McDonald's restaurant, there would be 3 representatives. In larger

52. Income Data Services, *supra* note 25; Ida Regalia, *Italy: The Costs and Benefits of Informality*, in *WORKS COUNCILS: CONSULTATION, REPRESENTATION, AND COOPERATION IN INDUSTRIAL RELATIONS* (Joel Rogers & Wolfgang Streeck eds., 1995); Regalia & Regini, *id.*

53. The three main union confederations, CGIL, CSIL and UIL, have all signed the agreement.

54. Income Data Services, *supra* note 25; Regalia & Regini, *supra* note 51.

firms, there can be larger numbers of representatives. For example, 6 representatives in firms with over 200 employees, 3 more for every 300 additional employees, and after 3000 employees, 3 extra seats for every 500 additional employees. According to union officials at the three main union federations, there are now some 90 RSUs in the 325 restaurants. Union officials also estimated that union membership was around 20% in 1999. This is one of the highest union density figures for McDonald's anywhere in the world. However, the main reason for this relative success is firstly, a fairly strong legislative system, which allows unions easy access to workers at the workplace. Secondly, many of the workers at McDonald's were already unionized because McDonald's took over 80 unionized restaurants from the Burghy chain in the mid-1990s. The main reasons for relatively small numbers of RSUs appears to be a combination of continuing opposition from local managers (especially franchisees), high labor turnover, and a lack of interest amongst some employees, particularly students.

Just as in other countries, the union delegates/works councils are an important mechanism for increasing union membership in Italy. The bulk of the union membership is mostly in the restaurants where RSUs have been established. Most are located around the cities of Rome, Bologna, Genoa and Milan. At the local level, RSUs can negotiate with management to bargain for improvements on such issues as working time organization and working conditions, over and above the minimum standards agreed at national level. In fact, one such local agreement has been reached with local McDonald's management in Rome over working hours for part-time workers. Representatives are elected for three years. They enjoy legal protection from unfair dismissal, and anti-union behavior is unlawful. However, despite these protections, both workers and RSU representatives state that they often suffer from regular harassment precisely because they are union members and, in some cases, have been threatened with dismissal. This appears to be more extreme in franchise restaurants. Union delegates report that they are constantly under pressure from management and especially so shortly before visits of senior management to the restaurant. In some cases, union representatives have been demoted shortly before a senior management visit took place. Union representatives also state they are rarely, if ever, asked to attend meetings of the corporation's preferred method of "worker participation"—the "RAP session." In addition, they claim that management will not give union representatives adequate notice of their shifts; some reporting that

they do not know what hours they will be required to work until the day beforehand. These kind of problems have led to a number of strikes by Italian McDonald's workers over the last few years. In fact, various infringements regarding union rights and health and safety matters have gone to the labor courts and have usually resulted in court rulings in favor of the unions and these have been reported in the Italian press.⁵⁵ Once again, the bulk of these problems appear to be in the franchise restaurants where 70% of workers are employed.

The Italian system also provides for a form of company level works council called a *coordinamento*. These company level councils can be established where there are several companies in a group or several workplaces in a single company. RSUs send delegates to the *coordinamento* and this body then meets with the national trade union secretariat to discuss the main concerns of the employees in that company. These discussions would then feed into national level collective bargaining. Where a company level agreement is in place, the *coordinamento* could also take part in negotiations with the national union secretariat and the employer. There is also a *coordinamento* at McDonald's, but until 2000, its effectiveness had been rather limited because McDonald's repeatedly delayed union proposals to negotiate a company-level collective agreement. Since then, the unions have had some success in bringing McDonald's to the table. However, McDonald's has continued to rule out a company-level agreement that would cover both the company-owned and franchise restaurants, where the majority of workers are employed. In addition, the *coordinamento* has had no success in getting a union supported employee representative onto the European Works Council. The EWC employee representative would normally be elected from the *coordinamento*, but McDonald's has ignored this procedure despite several requests from the unions.⁵⁶

III. TIME FOR RE-REGULATION?

The above analysis suggests that McDonald's has had to endure a good deal of overt conflict over many years, perhaps undergoing a form of learning process in each country before it has made some pragmatic adaptation to national institutional frameworks. However, in every case it appears that adaptation is limited and driven by the need to protect its public image. There are differences in the length of

55. *Antisindicale: Il Pretore Condanna McDonald's*, L'UNITA, Apr. 23, 1998, at 6.

56. Royle, *Where's the Beef?*, *supra* note 16.

time, manner and extent of the adaptation to local institutions. For example, 18 years went by in Germany, 15 years in France and almost 8 years in Denmark before McDonald's accepted either a company-level or sectoral-level agreement. In Austria, it was 17 years before McDonald's "recognized" the unions and after 16 years, there is still no union recognition in Spain. In Italy, it was 15 years before some kind of company-level agreement was established.

Of the seven countries examined here, McDonald's currently appears to have the least adversarial relationship with the unions in the Netherlands. However, although a sectoral collective agreement was in place in the Netherlands from the beginning, McDonald's was often in conflict with the unions in the early years of its operations. It may be that the agenda of the Dutch unions in recent years is that their focus on job creation and promotion of part-time work closely matches the corporation's own requirements. However, it could also be that McDonald's managers perceive industry level collective bargaining over pay and conditions as less threatening than the day-to-day "interference" of Dutch works councils. Indeed, there may be some clear advantages to accepting collective agreements; first, because they provide McDonald's with a more positive public image and second, because they can have the effect of taking wages out of competition. In recent years, the Netherlands have experienced very low levels of unemployment and employers may think twice before treating workers poorly and coming into conflict with the unions. By 1999, McDonald's had been operating in the Netherlands for 28 years and employed some 12,000 workers, yet at that time, the unions had been unable to establish a company-level works council and had only established 3 or 4 restaurant-level works councils in the 180 McDonald's restaurants then in existence. This situation has now changed somewhat, partly due to a concerted effort on behalf of the unions, but largely due to the amendments to the Dutch works council legislation that took place in 1998. These amendments have made life much easier for the unions to establish works councils in companies, which employ large numbers of part-time workers. After 3 years of negotiations, McDonald's appears to have accepted that it will have to accept works councils in the Netherlands and, at the time of writing, a comprehensive system of works councils looks set to be established. Of course, the situation in the Netherlands is a far cry from the much bigger fast-food market in Germany.

This may be because in Germany there is much more money at stake (1,150 restaurants) and, of course, some systems of national works councils may be perceived as more "threatening" than others.

Some may be easier to avoid, some may have no codetermination rights, some are more easily “activated,” and some may entail more severe sanctions for management obstruction. However, we have already suggested that even German works councils are vulnerable to a wide range of “avoidance strategies,” such as legal or illegal measures, regulatory loopholes, “co-option” or “capture,” “bypass,” “coercive comparison,” and “recruited acquiescence.”⁵⁷ In most countries, works councils are also an important mechanism in increasing trade union membership, raising notions of “solidarity,” and awareness of the union’s activities. Hege and Dufour argue, for example, that French and German works councils are much more effective when they have close links with strong unions.⁵⁸ Where there is no or little union organization, such workplace institutions tend to have little effect and lose legitimacy in the eyes of employees, frequently being relegated to purely social activities.

In Austria, the relationship between McDonald’s and the unions seems to have improved, but as we have seen, there are no works councils in Austria. The small numbers of works councils that exist in France almost exclusively represent 10% of company-owned restaurants. The French “company-level” works council has not yet been properly established and the main union delegate has so far been unable to engage McDonald’s management in any effective way. In addition, there have been an increasing number of strikes due to continuing conflicts over pay and conditions. In Germany, Denmark, Spain, and Italy, the relationship with the unions is either non-existent or still largely confrontational. In Spain, works councils have been exclusively captured for a managerially sponsored agenda and there is no relationship or dialogue with the unions. After considerable conflicts in both Germany and Denmark, McDonald’s now takes part in sectoral level negotiations for collective agreements. Nevertheless, there are no works councils in Denmark and only one workplace union representative in the 80 or so restaurants. In Germany, along with concerns about the failure to comply adequately with collective agreements, the issue of the works councils remains the focus of considerable conflict and tension between McDonald’s and the unions. In Italy, there are continuing problems with the harassment of union representatives and there have been a number of recent strikes resulting in the closure of some restaurants on consecutive Saturdays.

57. See Royle, *supra* note 13.

58. A. Hege & C. Dufour, *Decentralization and Legitimacy in Employee Representation: A Franco-German Comparison*, 1 EUR. J. INDUS. REL. 1, at 83-99 (1995).

Italian legislation makes it more difficult for McDonald's to avoid union delegates and works councils altogether, but works councils are not established everywhere and mostly they are concentrated in and around the northern Italian cities and Rome.

The absence of works councils and union representatives means that there is no effective mechanism in place to ensure that the collective agreements are properly adhered to and it is very difficult to monitor health and safety issues and day-to-day working conditions. Additionally, even the "weaker" national European works council models, if well organized, have the potential to interfere in management decision-making at both workplace and, perhaps more significantly, at boardroom level. By its very nature, the McDonald's system does not allow for codetermination or cooperative decision-making because it functions on the basis that the decisions have already been made. The Post-Fordist concept of a "new era" in which employers will promote meaningful participation in order to seek a mutual accommodation of interests at the point of production obviously overlooked the fast-food industry. McDonald's "success" in this regard appears, in part, to rely on the passive acquiescence of the workforce in employer decisions, with participation taking the form of, at best, a paternalistic consultation regime. This "acquiescence" is fostered by the distinctive nature of the workforce characteristics and mode of work organization in the industry, predominantly, ethnic minority, young or foreign workers, high labor turnover and low-skilled work.⁵⁹ McDonald's organizational structure with its high proportion of franchise operations also undermines employee representation systems. In practice, it is extremely difficult to establish one central or company level works council to cover the entire McDonald's workforce in any country. It also makes it difficult to establish plant level works councils for every restaurant. As we have argued elsewhere, the "separation" between McDonald's and its franchisees is a legal, not an economic distinction and McDonald's has effective control over virtually all aspects of franchise operations.⁶⁰ However, this distinction allows the corporation to distance itself from the employee relations' practices of individual franchise operators. Furthermore, franchise operations allow for an extremely paternalistic form of management, one that allows the close monitoring of individual employees and one that is often associated with a non-

59. Royle, *supra* note 24; ROYLE, WORKING FOR MCDONALD'S, *supra* note 5.

60. ROYLE, WORKING FOR MCDONALD'S, *id.*

union management style.⁶¹ In this regard, the issue of the McDonald's European Works Council (EWC) is instructive; none of McDonald's approximately 130,000 European workers employed in its franchises are covered by the EWC directive.⁶²

With the trend towards more decentralization of collective bargaining in most European countries,⁶³ the works council is often seen as the institution on which more responsibility will fall.⁶⁴ This analysis suggests that the legislation underpinning works councils in most countries may not be adequate for this task. The growth in service sector employment is currently eclipsing that in manufacturing, and the fast-food industry is one sector at the vanguard of this employment boom. Taken together, this kind of employment growth and the findings presented in this paper suggest that there will be considerable implications for worker's rights to representation and for the future regulation of labor markets. If national governments are serious about protecting workers rights and democracy in the workplace, perhaps it is now time for policy makers to look again at the adequacy of existing legislation. Rather than pursuing more deregulation, we may need to re-regulate the national systems already in place in order to take account of these decentralizing trends and new forms of employment.

61. A. RAINNIE, *INDUSTRIAL RELATIONS IN THE SMALL FIRM: SMALL ISN'T BEAUTIFUL* (1989); Brian Abbott, *Small Firms and Trade Unions in Services in 1990's*, 24 *INDUS. REL. J.* 4, at 308-17 (1993).

62. Royle, *Where's the Beef?*, *supra* note 16; ROYLE, *WORKING FOR MCDONALD'S*, *supra* note 5.

63. Anthony Ferner & Richard Hyman, *Introduction: Towards European Industrial Relations?*, in *CHANGING INDUSTRIAL RELATIONS IN EUROPE* (1998).

64. Tchobanian, *supra* note 26.

