News

Striking McDonalds workers demanding a $15 minimum wage demonstrate in Las Vegas June 14, 2019. If a new federal labor ruling goes into effect on Feb. 26, 2024, millions of franchise employees and contractors will find it easier to form or join unions and will almost certainly demand higher wages and other benefits they currently lack from the national corporations behind local franchises. (OSV News photo/Mike Segar, Reuters)

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People who have looked closely as their order was passed to them through a drive-in window may have noticed a sticker or sign announcing the location serving them is a franchise of a national, or even international, brand.

Until now, that business arrangement -- widespread in a number of service industries -- has perhaps seemed unremarkable, or even seen as a proud emblem of American industry.

But if a new federal labor ruling goes into effect in late February, millions of franchise employees and contractors will find it easier to form or join unions -- a right guaranteed by the 88-year-old National Labor Relations Act -- and they will almost certainly demand higher wages and other benefits they currently lack from the national corporations behind local franchises.

"This rule has the possibility to be one of the most significant things to have emerged in the world of labor and employment relations in the past couple of decades, if it's able to go forward," said Joseph McCartin, executive director of the Kalmanovitz Initiative for Labor and the Working Poor at Georgetown University in Washington. "It could really have a huge impact."

In announcing the ruling Oct. 26, the National Labor Relations Board explained that "for the purposes of collective bargaining, once an entity is deemed a joint employer by virtue of its control over one or more essential terms and conditions of employment, it will be required to bargain over those particular essential terms and conditions as well as all other mandatory subjects of bargaining that it possesses or

exercises the authority to control. It will not be required to bargain over subjects that it does not have authority to control."

Implementation -- previously scheduled for Dec. 26 -- has been pushed to Feb. 26. The NLRB noted the delay is meant "to facilitate resolution of legal challenges with respect to the rule. The new standard will only be applied to cases filed after the rule becomes effective."

Michael Layman -- senior vice president for government relations and public affairs at the International Franchise Association -- denounced the ruling in a statement also issued Oct. 26.

"This overreaching and unworkable joint employment policy is designed to change the rules in the middle of the game for hundreds of thousands of franchise owners and turn them into middle managers in their own businesses," Layman said. "What's worse, we have seen this misguided policy before and it resulted in hundreds of thousands in lost job opportunities, billions in increased costs for franchised business, and a doubling of lawsuits."

Labor scholars, however, disagree.

"Many large employers have turned to franchised and contracted labor to create dramatic cuts in labor costs that are devastating to the well-being of ordinary workers," explained John Trumpbour, research director at Harvard Law School's Center for Labor & A Just Economy.

Both McCartin and Trumpbour referred to Boston University Professor David Weil's 2017 book "The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It" (Harvard University Press).

The promotional copy for "Fissured Workplace" outlines a counterpoint to the contentions of the IFA, which have found bipartisan support from Sens. Joe Manchin, D-W.Va.; Bill Cassidy, R-La.; Mitch McConnell, R-Ky.; Kyrsten Sinema, I-Ariz.; and Mark Kelly, D-Ariz.; and Reps. John James, R-Mich.; Virginia Foxx, R-N.C.; and House Speaker Mike Johnson, R-La.

"From the perspectives of CEOs and investors, fissuring -- splitting off functions that were once managed internally -- has been a phenomenally successful business strategy, allowing companies to become more streamlined and drive down costs,"

the book's description says.

"Despite giving up direct control to subcontractors, vendors, and franchises, these large companies have figured out how to maintain quality standards and protect the reputation of the brand," it continues. "They produce brand name products and services without the cost of maintaining an expensive workforce. But from the perspective of workers, this lucrative strategy has meant stagnation in wages and benefits and a lower standard of living -- if they are fortunate enough to have a job at all."

McCartin seconds that assertion.

"What this rule does, I think, is take a step toward really rectifying that problem. It's been a problem in our labor law for a long time now," he said. "This rule is an attempt to bring the law's functioning up to the needs of the current workforce -- and especially people who work in these sectors where exploitation can be pretty significant, like fast food."

"In effect," McCartin added, "it brings closer together the contractor and the subcontractor. In a lot of these relationships, it's the contractor that has the power."

That imbalance would remain if the ruling doesn't take effect, said Clayton Sinyai, executive director of the Catholic Labor Network.

"In both Catholic social teaching and U.S. law, unions exist to bargain with employers over the terms and conditions of employment. But major corporations like McDonald's, Google and Amazon often evade responsibility for bargaining by making a franchise owner, subcontractor, or temp agency the workers' employer of record," Sinyai said.

"The labor board's proposed joint employer rule would make the right to organize real again for such workers by obliging all companies setting terms and conditions of work to sit down and bargain with the representatives their workers have chosen," he added, emphasizing "all."

The right to unionize and seek workplace equity is fundamental to Catholic social teaching.
Pope Francis echoed it last year, telling members of the Italian General Confederation of Labor, "There is no union without workers, and there are no free workers without a union."

In his 1891 encyclical "Rerum Novarum," Pope Leo XIII urged workers to organize "societies for mutual help," emphasizing "the most important of all are workingmen's unions."

St. John XXIII, St. Paul VI, St. John Paul II and Pope Benedict XVI have all expounded upon "Rerum Novarum" in various ways.

Likewise, the U.S. Conference of Catholic Bishops' 1986 "Economic Justice for All: Pastoral Letter on Catholic Social Teaching and the U.S. Economy" states: "The church fully supports the right of workers to form unions or other associations to secure their rights to fair wages and working conditions."

The USCCB declined an OSV News request to comment on the latest NLRB ruling.

"The new joint employer ruling will provide a tool for workers to fight back," said Trumpbour, also a steering committee member of Catholic Scholars for Worker Justice. "But more workers will have to get organized and bring pressure on a failed political system that otherwise mobilizes small franchise owners to mask the billions vacuumed up by global Goliaths like Amazon and McDonald's."

As legal and political challenges continue, a clear outcome remains uncertain.

"It has the potential to be a very major development," McCartin said. "How it gets implemented will be the whole story."