

Just vote no! Union-busting in the European fast-food industry: the case of McDonald's

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This paper examines the problem of effectively regulating the labour relations practices of multinational corporations. It focuses on the activities of the McDonald's Corporation in a number of European countries. The findings suggest that public and private codes of conduct have a very limited effect and that determined and well-resourced corporations can not only undermine regional forms of regulation—such as that provided by the European Union—but also, and to a considerable extent, national-level regulation. This is particularly evident in the area of independent trade union representation. Although its aim of avoiding collective bargaining and union recognition wherever possible is only partially successful, McDonald's appears to have developed a number of highly effective strategies for limiting the presence of trade unions at restaurant level, particularly in avoiding or undermining statutory works councils and union representation rights.

Introduction

Most mainland European countries still provide workers with considerable rights to trade union and other forms of independent representation. However, these rights appear to be increasingly under threat from the growth of American managerial ideology and the growing influence of neo-liberal economics. This ideology appears to be increasingly being adopted in many European countries, a dominant feature of which is often the promotion of non-unionism (Carpenter and Jeffries, 2000; Royle, 2000). This is arguably driven by America's political-economic leverage over the glo-

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bal economy and regulatory institutions such as the International Monetary Fund (IMF) and the World Bank, which have shaped the competitive conditions often eroding the influence of employees. For example, the changes in Russian labour law made in July 2001 increasing the working week to 60 hours, allowing child labour, limiting the right to strike and making it easier to fire workers were a result of pressure from the IMF and international investors. The World Bank is also allegedly putting the Mexican government under pressure to introduce similar changes to its labour law (Reyes, 2001). Multinational corporations (MNCs) are often behind such moves, but of course they do not always get their own way. For example, MNC opposition did not stop the strengthening of workers' participation and co-determination in Europe in the 1970s and the strengthening of Germany's system of co-determination in 2001 [*European Industrial Relations Review* (EIRR), 2001; Lane, 1989]. Nevertheless their continuing opposition to employment regulation has arguably been effective in 'watering down' such legislation.

At the same time, trade unions and national governments have been at a loss in trying to protect workers rights in MNCs. Early attempts to regulate the activities of MNCs focused largely on public codes of conduct such as Organization for Economic Cooperation and Development (OECD) Guidelines, acting directly upon MNCs or indirectly through encouraging national regulation of corporate behaviour via International Labour Organization (ILO) conventions. The ILO's recent initiatives include the core standards of its Declaration on Fundamental Principles and Rights at Work (1998). However, the problem with these public codes is that there are no sanctions to ensure that MNCs will comply with even the ILO's minimal core labour standards¹ let alone 'core plus' standards regulating minimum pay, health and safety at work, and employment benefits. Such codes also exclude any interference with national employment laws at a time when the regulatory influence of national governments is arguably limited by globalisation (Hepple, 1999) and, as we shall see in this paper, the actions of MNCs themselves. In addition, the ILO has no legal sanctions to interfere with powerful international agencies such as the IMF, the World Bank and the World Trade Organisation (WTO), which, as we have noted above, often sideline and sometimes undermine employment rights. In recent years, there has, however, been a trend towards companies establishing private codes of conduct which commonly claim adherence to the ILO's core standards. Indeed, in the USA, all of the Fortune 500 companies, which includes NIKE, Reebok and Levi's, have private codes of conduct. However, the reasons for the popularity of such codes, appears to be much more to do with protecting corporate reputations and attracting customers and little to do with the pay and conditions of workers (Maitland, 1999).

At a national level, US employers have enjoyed considerable success in flouting the ILO's core standards and marginalising trade unions, to the point where the US labour movement is struggling even to survive. One US employment lawyer has described the US labour movement as being 'flat on its back' and a country in which workers would have to be, '*insane to go on strike*' (Geoghegan, 1992: 5). Indeed the union-busting techniques of fast-food employers seem to have been developed into something of an art form in North America, where, despite numerous unionisation attempts, fast-food employers have kept unions at arm's length (Royle and Towers, 2002). One instance in Ontario, Canada, which took place in 1993, illustrates such techniques. After working conditions had worsened in one McDonald's restaurant in Toronto, more than the required 55 per cent of workers had signed union cards,² so certification should have been automatic. However, in a 'McFlurry' of legal actions McDonald's used the courts to stop the recognition process, charging that there had been irregularities in the election. In the meantime, the company temporarily

¹ That is: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; (d) the elimination of discrimination in respect of employment and occupation (ILO, 1998: 7)

² Before 1995, a card-based system for certification had been in place in Ontario, allowing for automatic certification with 55 per cent of the employees signing union cards.

improved conditions in the restaurant, allegedly harassed and intimidated union supporters, distributed 'just vote no' badges and 'no union' tee-shirts. Thirty-five days of hearings and five months later, the Labour Board ordered a new election. McDonald's hosted a party for the workers on the weekend before the new union election and held paid captive audience meetings to 'explain' about the 'dangers' of unionisation. Needless to say, the unionisation attempt failed and working conditions returned to the way they had been before the union drive began (Reiter, 2002). In recent years, there have been other attempts to unionise McDonald's restaurants in Canada and the USA, but none had enjoyed any lasting success. In this context, it is perhaps unsurprising that American fast-food employers entering Europe have been optimistic that non-unionism would be just as successful in Europe as it has been in North America.

However, employers arguably face a more formidable and different set of hurdles in Europe than they do in the USA and Canada, not only at national level but also at supranational level through the European Union (EU). This paper therefore deals with McDonald's employment practices at two levels: first its interaction with national-level regulation and national trade unions; and, secondly, its interaction with European-level regulation, in particular the European Works Council (EWC) Directive. However, we initially provide some details of the research undertaken in this study followed by a brief overview of the McDonald's Corporation itself.

Research methods

The findings are based on over seven years of empirical research examining labour relations in the European fast-food industry. The study began by focusing on the McDonald's Corporation but more recently the study has begun to examine the operations of other fast-food and quick-service restaurants. A variety of methods have been utilised in the study, including periods of direct observation; as, for example, the author's experience of working in German and UK restaurants. Questionnaires were also distributed, and these were complemented by a large number of qualitative interviews and an analysis of documentation provided by managers and franchisees and union officials. The bulk of the findings presented here are, however, primarily based on the McDonald's interview material. Interviews were taped, semi-structured and between half and hour and two hours in length and were conducted in a large number of countries including Germany, the UK, Austria, Belgium, Denmark, Finland, France, the Netherlands, Ireland, Italy, Spain and Sweden. Over 100 interviews were carried out with McDonald's employees, senior management, restaurant management, franchise operators, works councillors, trade unions representatives, trade union officials, national trade union federations, international trade union organisations, and national and international employer's associations.

The McDonald's Corporation

The McDonald's Corporation employs well over 2 million people in around 29,000 restaurants world-wide. It is the most well-known brand in the world, the largest food service system in terms of sales and is valued at over \$40bn. McDonald's plans to open between 2,500 and 3,200 new restaurants every year, the equivalent of one new restaurant every three hours or four hours. If this rate of expansion is maintained, the corporation will have more than doubled in size from over 25,000 restaurants at the start of 2000 to over 50,000 restaurants by 2010. The USA has a smaller population than the EU, yet US citizens have between three and four times as many McDonald's restaurants per head compared with their European counterparts, suggesting that there will still be room for considerable expansion in Europe. At the start of 2000, McDonald's employed over 200,000 people in the 17 countries of the European Economic Area (EEA) in around 4,000 restaurants. McDonald's first came to Europe in 1971, it opened its first restaurant in Holland and then Germany

later in the same year. Restaurants were then opened in Sweden in 1973, the UK in 1974, Ireland in 1977, Belgium in 1978, France in 1979, Denmark in 1981, Spain in 1982, Norway in 1983, Finland in 1984 and Italy in 1985.

On average, some 65 per cent of McDonald's European restaurants are run as franchise operations. As we have argued elsewhere (Royle, 2000), although franchises are legally distinct entities, in economic terms and for all practical purposes they are tightly controlled by the corporation, providing the corporation with considerable cash flows and acting as its *de facto* subsidiaries. This control is achieved by a combination of stringent process of selection, training, socialisation, financial incentives and other controls. Nevertheless, despite these tight controls, the corporation frequently reiterates its claim that franchisees are independent operators, and therefore the corporation cannot be made responsible for their actions. If MNCs are determined to avoid union involvement and statutory mechanisms of worker representation, then this legal 'separation' can be extremely useful at both national and supranational levels.

McDonald's employment practices in four EU countries

McDonald's has a long track record of anti-unionism going well back to the 1960s and 1970s, when the corporation frequently used lie-detector tests to weed out trade union sympathisers in its US operations. In its expansion into Europe, McDonald's has often had to learn the hard way that avoiding industry-level collective bargaining with unions is not always feasible (Royle, 1999a, 2000). Nevertheless it still fights hard to avoid company-level agreements where it can and tries to keep unions out of the restaurants. Avoiding statutory forms of workers' participation is not straightforward in mainland Europe, however, where there is a considerable degree of national regulation and custom and practice.

McDonald's preferred approach to worker participation is what we would term as 'McParticipation', that is 'participation' based on 'communication' and akin to 'employee involvement' (Marchington, 1995). This is not an approach that provides workers with rights to consultation, information or co-determination. It comprises such things as newsletters suggestions schemes, team briefings and RAP (Real Approach to Problems) sessions. The latter are meetings called by management, and, in theory at least, employees are allowed to express their views and grievances. However, in practice, workers' complaints are rarely acted upon, and many workers are not invited to such sessions at all (especially if they are union members). In sum, 'McParticipation' of this kind is at best a management-dominated, paternalistic consultation regime. However, most countries of mainland Europe have statutory mechanisms that provide workers with rights sometimes to co-determine decisions with management but more often than not, at least to provide workers with rights to information and consultation over management decisions which affect them. This is a particularly important issue because, without either works councils or union representatives in every restaurant, there is no way for unions to check whether collective agreements are being properly adhered to. Indeed, the research carried out in this study suggests that collective agreements are not being applied properly in a whole range of areas. These include such things as incorrect basic pay levels, inadequate notice of shifts, incorrect calculation of holiday pay, cleaning of uniforms and a range of health and safety issues. The unions ability to help establish and support statutory mechanisms of worker representation therefore takes on an increased significance in this context. The following sections indicate how McDonald's has dealt with such mechanisms in practice in four countries.

Germany

The German model of co-determination provides for employee representation on works councils and supervisory boards in larger firms. There are two models of

supervisory board possible for private business outside the coal and steel industries. The 1952/72 Works Constitution Act provides for supervisory boards of limited liability companies with over 500 employees, whereas the 1976 Codetermination Act is concerned with employee representatives on the supervisory boards of companies with over 2,000 employees (Müller-Jentsch, 1995). With over 50,000 employees, one might expect that McDonald's Germany would have employee representatives sitting on a supervisory board; however, this is not the case. McDonald's Germany has retained American registration; it is a wholly owned subsidiary of the American McDonald's Corporation registered in Oak Brook, Illinois, and under these circumstances, the German-American Trade Agreement of 1954 stipulates that a supervisory board cannot be imposed.

However, the issue of the German works council is not quite so straightforward. Works councils can be established in all businesses with five or more employees, they enjoy a broad range of rights to information consultation and co-determination and have the right to meet with management every four weeks. Works council members enjoy extra protection from dismissal and, in any business or unit with 200 employees, a works council member can be released from his/her normal duties to work full time on works council business. The number of these full-time works councillors increases in proportion with the size of the organisation. The works council can sue management for any alleged breach of rights. The legislation 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 is a group of companies with works councils, a group-level or concern-level works council (*Konzernbetriebsrat*—KBR) can be established (Jacobi *et al.*, 1998; Müller-Jentsch, 1995).

The typical McDonald's restaurant has between 45 and 100 employees. In theory, therefore, there could be a works council in every one of the over 1,000 McDonald's restaurants in Germany; however, this is not the case. There are only between 40 and 50 works councils in the 1,000 or more restaurants and a GBR, which was established under dubious circumstances. How can we explain such a low numbers of works councils? Part of the explanation for this small number of works councils is that some 65 per cent or more of McDonald's German restaurants are franchise operations. This means that only about 350 (employing about 18,000 workers) are operated directly by the corporation. McDonald's also operates some company restaurants through a number of holding companies, called *Anver* companies. This fragmented 'ownership' disrupts the legal system of representation so that for example, a GBR cannot cover franchise-holding companies or company-owned companies. GBRs can only represent workers owned by the same franchise or the same holding company and so on. There have also been a number of occasions where the corporation has arranged the sale or purchase of restaurants, changing their 'ownership' in order to interfere with the election of works councils. In fact, McDonald's German operation seem to be so concerned about the establishment of works councils in their restaurants that they have a set procedure which management is expected to follow. A McDonald's management handbook issued to its German restaurant managers '*Practical help in dealing with works councils*', states that employees' attempts to establish works councils are a serious problem and a failure of management. It states that the reactions of managers to any such initiative must be carefully handled, Munich head office must be immediately informed and will issue instructions to managers (p. 8):

You must never talk with union representatives without first having authority from head office . . . (and) . . . never give employees the impression that you are against the trade unions or the works council. The incentive to lead someone to do something is much greater than you think.

The German *Stern* magazine (1999) states that a restaurant manager was demoted to assistant manager for allowing his workers to elect a works council in his restaurant in 1997. The normal train of events is for a management 'flying squad' to arrive at the restaurant and 'talk' to the 'troublemakers'. In the 1980s and 1990s, many of these

'squads' were lead by 'Commando Mueller' a very experienced senior manager who was apparently very effective in persuading workers not to establish a works council. In many cases where persuasion does not work, changes of shift and duties are introduced sometimes followed by dismissals or effective dismissals, where workers are only scheduled for small numbers of hours. Although workers have the right to take their cases to the labour courts, most workers settle out of court, and no longer wish to be reinstated. The corporation is also quite happy simply to buy out troublesome workers who establish and take part in works councils. In 1995 alone, McDonald's spent close to £250,000 to buy-out 46 works councillors (Langenhuisen, 1995; Royle, 2000). More recently, a works council chairman in Wiesbaden was allegedly offered DM 200,000 (almost £70,000) to leave McDonald's. He refused and, according to the same sources, management have since tried to block his works council activities by various means

The corporation has also become increasingly adept at capturing works councils for their own agenda by successfully getting management candidates elected over those supported by the union. This tactic was very effective in capturing the GBR established in 1998. The unions had already helped establish a GBR representing all company-owned restaurants in Germany. However, McDonald's consistently refused to recognise it. Finally, the corporation engineered the establishment of its own GBR; both claimed to be the legitimate body to represent McDonald's German workers. The court ruled that that the corporation had not acted correctly and that therefore the GBR election would have to be re-held. After what could be described as more 'underhand' tactics (Royle, 2000), the corporation managed to get their preferred candidates elected. According to union officials, these kinds of activities appear to be on the increase rather than subsiding. Union officials state that, in 1999 in particular, the few existing union-supported works councils have been put under enormous pressure from management.³

It is also interesting to note that no works councils have so far been established in the old East German states. Union officials state McDonald's workers in the new federal states are not so familiar with the works council legislation but, in any case, the high level of unemployment in the East means that workers are much more afraid of 'upsetting' management. In 2001, the German government strengthened the law on works councils, but whether this will have any significant impact on works councils at McDonald's is as yet unknown.

France

French works councils are joint management-employee bodies not employee-only bodies as they are in Germany. A representative of management chairs the French works council, but the secretary is an employee representative. The French system is not just based on works councils but also on trade union sections, employee delegates and union delegates. Individual trade unions can each establish a trade union section that 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. In workplaces with over 50 employees, unions have the right to appoint a trade union delegate 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; and secondly, 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.

³ A more detailed analysis of the various 'avoidance strategies' is available in Royle (1998; 2000).

Rather like the German model, in large companies with several 'plants' each with their own works council, a company-level works council 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 should be established (IDS, 1996).

Councils should meet once a month in companies with over 150 employees, but normally only once every two months in smaller companies. Union delegates must be involved in negotiations over pay, training and working time, and these negotiations should take place every year. Although the rights of the French works councils are not as substantial as in Germany (there are no co-determination rights), 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 (1995) 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.

Despite some of the advantages of the French system, the French unions have found it very difficult to establish either works councils or union delegates at McDonald's. In many cases, their delegates simply disappeared. 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. An additional problem in establishing union delegates and works councils is the calculation of employee thresholds. Businesses must have over ten 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', and it is often difficult to obtain accurate and up to date information on workers' hours.

On the morning of 6 July 1994, 12 McDonald's managers were arrested at their place of work and put under judicial investigation. They were accused of impeding union rights and impeding the election of a works council. This conflict concerned 12 franchise restaurants in Lyon. The CFDT (French Democratic Confederation of Labour) 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. Nevertheless, the court decided in favour 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 could stand, 260 employees voted; only non-union representatives came out on top. CFDT officials 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' (EIRR, 1997a: 20). 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 company-level works council 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 per cent of restaurants operated as franchises or joint-ventures. The CFDT suggest that the pay element of the agreement was not that significant, but that the recognition agreement has had small 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 five works councils and one central works council 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 five *comité d'entreprise* are union controlled and in three of these the CFDT has the majority of members. One of the four works councils represents managers and some office workers and is organised by the professional and managerial staff federation (*Confédération générale des cadres*—CGC). The fifth is non-union and represents around ten 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 *délégué syndical*. In addition, one works council represents workers in 20 restaurants operated by a joint venture (90 per cent owned by McDonald's). This means that the approximately 620 remaining franchise and joint-venture restaurants have no trade union representation whatsoever. The ten seats in the company-level works council 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; CGT 1; FO 1; CGC 2. The central or principal union delegate is a CDFT member, and he is also 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, as we have already suggested, RAP sessions appear to offer very little for employees in practice. 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 were this exists). 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 per cent of the total wage bill. In addition, union representatives, works councillors 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 (Goetschy, 1998; IDS, 1996). Since the recognition agreement, the principal union delegate has been able to obtain 50 per cent 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.

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 correctly adhered to.

The effectiveness of the existing works councils may also have been undermined by the continuing rivalry that often exists between the different union federations (Goetschy, 1998). 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 (eg. secretary and treasurer). Representatives and union officials suggest that the corporation has also attempted to exploit these differences. In one case, management allegedly spread rumours 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 (Royle, 1998).

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 organised. This is useful because it also allows the works councils and unions to appoint additional union representatives at the right level; 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 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 (EIRR, 1997a). 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, a non-union works council representing just ten 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'.

Spain

Spanish legislation provides for employee delegates 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 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. Although works councils and employee delegates do not depend on union involvement, where unions are well organised they usually play a central role. In fact, Spanish unions normally dominate works council elections, nominating some 90 per cent of elected representatives. As in France, the unions are also entitled to establish trade union sections to bring together all the members of a particular union

in the workplace. In companies with over 250 employees, members of each union with seats on the works council have a legal right to elect a trade union delegate. Works councils have rights to information and consultation and also have some protective functions for individual employees. The works council has a duty to monitor whether the employer is complying with the law. However, providing the employer has not broken the law, they cannot prevent management acting as it wishes in the final instance (Escobar, 1995; Martinez Lucio, 1998).

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 labour market. Such agreements have not dealt with pay since the mid-1980s but Spain does have a statutory minimum wage which is normally revised 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: 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. Trade union officials at FECOHT (Hotel, Catering and Restaurant Workers Union) 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.

McDonald's has approximately 160 restaurants in Spain, employing about 8,000 workers. FECOHT officials state that there are 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, they can be drawn up either by unions or by groups of individual employees. This is 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 per cent of the vote are eliminated, any disputes can be referred to the labour court and elections take place every four years.

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 Spain are salaried managers. Union officials suggest that McDonald's groups a number of its restaurants together for the purpose of elections; this ensures that a large works council not just a delegate has to be elected, typically this would be five or so restaurants with a 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 per cent 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 co-ordination 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-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. 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 company-level works council 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. Furthermore, the works councils that do exist have effectively been 'captured' by management, and the union has been unable to elect any significant numbers of delegates.

Sweden

There is no separate channel providing a voice for employees outside the traditional union-employer bipartite system, as this would not be compatible with the Swedish model, which is based on collective bargaining. There is therefore no elected works council structure as one finds in Germany and other European countries. Indeed, the current system was established to avoid institutions similar to works councils of which Swedish unions have tended to be very sceptical.⁴ It is the trade unions who provide employee representation for Swedish workers both centrally and at local level. In theory at least, there is no absence of monitoring and enforcement arrangements at the workplace. Co-determination councils, health and safety committees and board representatives ensure that rules are observed. The trade union's powers in this area are based on the Co-determination at Work Act (MBL) 1977 together with collective agreements that aim to increase union influence over company decisions. The most important of these in the private sector is the 1982 Framework Agreement on Efficiency and Participation (*Utvecklingsavtalet*—UVA) which was concluded by SAF (Swedish Employers' Confederation) and LO (Swedish Federation of Trade Unions). The agreement states that (Brulin, 1995: 199):

the forms of participation and co-determination shall be adapted to local circumstances at the workplace. The local parties have a joint responsibility for developing suitable participation and co-determination practices.

The agreement also states that there are three possible forms of co-determination and local agreements must clearly indicate which form of co-determination is chosen. However, Brulin (1995) suggests that in reality very few local agreements have been concluded, although the parties often act as if they have a local agreement. Joint consultative bodies are created for dealing with a particular problem or union representatives are inserted in the ordinary line of management. This appears to be the situation at McDonald's Sweden, where it seems that the McDonald's and the Swed-

⁴ In fact, Sweden did operate a system of works councils between 1946 and 1977, but they were never very strong, and the unions withdrew from the agreement in the late 1970s (IDS, 1996).

ish HRF union agreed some time ago to establish a union representative working full-time on union matters in the head office of the McDonald's Corporation in Stockholm. Workers are also supposed to be represented by union representatives. Theoretically, this could mean one or more union representative in every restaurant. In fact, Brulin (1995) suggests that arrangements of this kind are viewed by both parties as bipartite 'participation and information bodies' or 'line negotiations'. However, they have no formal legitimisation, and the juridical status of these arrangements is therefore unclear.

The Co-determination Act gives all unions and employers or employers' organisations the right to negotiate—but not necessarily to come to an agreement on any question affecting the employment relationship. In particular, employers are obliged to consult local unions before implementing decisions that involve major changes which affect either employees in general or an individual employee. For other, less important matters, unions have the right to demand consultation. If agreement cannot be reached at a local level, the matter can be referred to national level, and employers can be made to pay damages if they fail in their duty of consultation (IDS, 1996). However, the unions having been informed and consulted in the proper way, must in the end, accept an employer's decision. Brulin (1995) also points out that, in cases where employee representation is weak, as may be the case at McDonald's, unions get only minimum information in line with the Act and central agreements. In this situation, the employer does not let the unions take part in the planning and monitoring of change processes. McDonald's has approximately 150 restaurants in Sweden, employing about 7,500 workers. The main problem for union representation at McDonald's is that, although they have a full-time union representative at head office, there are very few union representatives in the restaurants. One union representative estimated that there were only between five and ten union representatives in the 150 or so restaurants. The danger is that the senior union representative located at headquarters may often be out of touch with what is going on in the restaurants and may also experience problems of role identification. Without a representative in every restaurant, the head office representative must rely on ordinary union members or other employees to bring problems to his/her attention. The low levels of union membership tend to turn this into a vicious circle; without an adequate number of union members, there are likely to be fewer workers willing to take on the role of union representative in the restaurant. In this scenario, there is no need for the corporation to take much active opposition to union representatives. Nevertheless, some union representatives report that some restaurant management are openly hostile to some of the few union representatives who exist. It may be that the unions themselves feel that the struggle to appoint union representatives in the majority of restaurants in this industry would require too many resources and that more effective outcomes can be achieved by focusing on collective bargaining arrangements. However, without union representatives on the ground, frequent infringements of such agreements are increasingly likely.

McDonald's and the European Works Council Directive

The EU can readily point to the availability of legally binding directives in important areas such as: discrimination, health and safety, working time and parental leave; institutions deriving from directives extending information and consultation rights, ie. EWCs; and the legally based, EU-wide framework agreement processes of the Social Dialogue.

However, it is not apparent that the weaknesses of international regulation have been largely excluded under the regional arrangements within the EU. There are a number of reasons for this. First, the development of maximum competition within the single market is not conditional upon the parallel development of employment rights. Secondly, EU Directives are not intended to impose detailed, supranational regulation on national systems. Thirdly, the number of Directives arising from the Social Dialogue has been disappointing (Keller and Sörries, 1999). The Social Dia-

logue is any case designed to seek compromises over conflicts of interests rather than advancing *social rights per se*. Fourth, the legal scope of EU Directives, under the Treaties, excludes them from the regulation of most core and core plus rights such as freedom of association, access to collective bargaining and the right to strike, and minimum pay and benefits. Finally, MNCs have demonstrated their ability to avoid important provisions in EU and host country regulatory systems and practices.

The EWC Directive is a good example of the limitations of EU legislation in the promotion and regulation of employment rights. It was intended to provide employees with some voice in the decision-making process of MNCs operating in more than one European country, but the directive which finally emerged in 1994, after many earlier attempts had failed, was a greatly watered-down version of its earlier predecessors. Streeck (1991) had already predicted that the outcome of any European legislation in this area was likely to be of a 'menu' character, in other words legislation which would offer businesses a menu of alternative rules and structures from which they can choose. In other words, the specific framework of each EWC would be the result of a complex bargaining process reflecting the relative bargaining power of employee representatives, unions and the employer.

Despite the inherent weakness of the proposed Directive, initial reactions from UK and American companies remained hostile. Nevertheless, many companies that were initially opposed to the Directive, such as the Japanese companies Sony, Honda and Matsushita, later decided to move quickly and implement voluntary EWC agreements under Article 13 (Schulten, 1996). However, as Barrie and Milne (1996) and we argue in the following analysis, the decision for companies to opt for voluntary EWC agreements was more likely to have been driven by the possibility of capturing the EWC for a managerially sponsored agenda. Streeck and Vitols (1995) had earlier suggested that the 'menu' approach inherent in the directive would be very acceptable to most European employers, but the high profile Renault case indicated otherwise. Its remarkable disregard of its EWC, when it closed its plant at Vilvoorde in Belgium in 1997, ignored both ILO and OECD procedures as well as national codes of conduct, and European and national legislation on collective redundancies and works council rights (EIRR, 1997b).

An examination of the McDonald's EWC reveals a number of problems. It seems that, as far as the corporation is concerned, the EWC means 'business as usual', with the EWC perceived as a mechanism to be captured for management. Of course, McDonald's is not the only American multinational that perhaps sees the EWC as an unwelcome interference, the EWC at PepsiCo being a case in point (Eurofood, 1996; Overell, 1996). In addition there have been a number of other EWCs where companies have attempted to marginalise trade union representation, for example Marks and Spencer, BP, Unilever and Honda (Barnett, 1996; LRD, 1995). Both Schulten (1996) and Marginson *et al.* (1998) are of a similar view; EWCs are likely to fall into two categories: first, those where there is some form of independent co-operation on the employee side and the EWC is an *active institution*; and secondly, where the EWC is merely a formal *symbol* or *procedure*, where there is little or no influence over management decisions—exactly the kind of situation that has arisen here.

There are several reasons for this evaluation. First, the majority of employee representatives are not really 'employees' in the sense one might have assumed was intended by the directive, but salaried managers. As such, it is questionable whether they can really claim to represent the interests of the predominantly part-time and/or hourly-paid employees who make up over 90 per cent of the workforce. Secondly, pre-meetings for employees require the consent of management and appear to have been ruled out on the grounds of 'cost'. Without such meetings, how are the employee representatives expected to develop a meaningful employee-side strategy? Thirdly, despite the supposed joint agenda-setting, in practice, the structure and organisation of meetings are largely determined by management. Fourthly, there is the low- or non-inclusion of trade union-backed members as employee representatives and, in the majority of cases, dubious election processes. In this area, a combi-

nation of weak EU legislation and loopholes in national-level legislation have undermined election processes. One needs look no further than the establishment and the election of the German EWC employee representative. In that case, McDonald's Germany successfully side-stepped the existing union-backed GBR chairman by an organised capture of the GBR election procedures. The result was that the company candidate who had already been selected by management kept his seat on the EWC and in technical terms appeared to have legitimacy. A closer inspection of the election procedures revealed that this was far from the case (Royle, 1999b). Fifthly, international sectoral trade union organisations have been kept out of the process, and outside 'experts' can only be brought in with the permission of management. A sixth issue is that there is no effective means by which the employee-side can feed back their concerns or their interpretation of the meetings to the majority of employees. Finally, there is the question of franchise operations and holding companies, something like 65 per cent of McDonald's 200,000 European workers employed in these companies are not covered by the directive and have no representation whatsoever. The franchise arrangement appears to be something that has not been adequately addressed in the directive's provisions. In theory, employees could challenge the agreement in the European labour courts, requesting a special negotiating body to be set up under Article 5. If the corporation refused, the case could then go to the courts, but in view of the nature of the industry and the workforce characteristics (Royle, 1999c), it seems unlikely that such a challenge will be mounted.

However, the EWC directive was under review by the social partners until September 1999. The European Trade Union Confederation (ETUC) had set out a number of proposals such as reducing the employee thresholds. There is one brief mention of franchises under the question of joint ventures, where they are referred to as 'contracts of domination'. The ETUC state that there is scope within the directive to address this issue. Much of the emphasis on the interpretation of the directive has centred on the definition of 'ownership'. However, the ETUC argue that this is too narrow and that the focus should be on the issue of the 'controlling undertaking', which is covered under Article 3.1 of the directive. The key issue would be to prove in each case that one organisation had a 'dominant' influence over another, by virtue, for example, of ownership, financial participation or the rules that govern it. Part of the problem is that the law applicable in order to determine whether an undertaking is a 'controlling undertaking' has to be the law of the Member State, which governs that undertaking. Even if a legal solution were forthcoming, it may not get past the various practical difficulties that remain. For example, the individual competence of employees to be able to deal with a powerful management group and the ability to develop a cohesive employee-side strategy are considerable obstacles. In addition to the problems already outlined, there is the problem of an in-balance in education, and secondly, a need for training in language and negotiating skills (Miller and Stirling, 1998). Finally, finding individuals willing to commit themselves over the long term with the necessary maturity to be able to confront management in an effective manner at this level is likely to be an added difficulty in this industry.

The aim of the EWC directive is to ensure that management consults and provides information to the workforce on a wide range of issues. Whilst it is not directly intended to provide collective bargaining at a European level, management perhaps fears that it will interfere with their decision-making process, or that there may be some capacity to reinforce collective bargaining through improved intelligence of company operations and international labour networking. However, the above analysis suggests that there is very little 'beef' in the directive as it stands at present; even the substantive requirements of the directive are not that extensive, and it is clear that the Article 13 arrangements are a particular weakness. There seems little doubt that this voluntarist approach to regulation allows an exit for employers (Streeck and Vitols, 1995). Paradoxically therefore, even if the directive is 'beefed-up', in many cases the directive may remain a symbolic rather than a practical threat to managerial prerogative.

Conclusion and discussion

The research suggests that McDonald's has been to some extent able to impose its normal mode of operation on a number of disparate European industrial relations systems. Despite the acknowledged difficulty of imposing MNC practices across national borders (Marginson and Sisson, 1994), McDonald's illustrates the degree to which MNCs can transmit policies and practices operating to some extent independently of regulatory systems. This is particularly evident in the area of employee interest representation, whilst McDonald's have had to make some accommodation regards industry-level collective bargaining, the corporation has been very successful at keeping effective union representation out of its restaurants. By its very nature, the McDonald's system does not allow for co-determination or co-operative decision making, because it functions on the basis that the 'decisions' have already been made. The post-Fordist notion 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 is rather questionable in this kind of industry.

Part of the explanation of McDonald's 'ability' to avoid workplace representation may be in the role of the organisation's corporate culture, which successfully moulds the required responses from management. Willmott (1993) argues, that strong corporate cultures 'exclude and eliminate' other values, such as in this case the acceptance of unions. The McDonald's 'culture' appears to be one that encourages managers to see unions as an unwarranted interference, which will 'destroy' the corporation and the 'good' management practice they carry out. Another part of the explanation may also lie in the impact of competitive pressures on labour costs. Effective union representation in the workplace would almost certainly raise these costs, for example by ensuring that collective agreements were correctly adhered to. Another factor is that the trade unions find it difficult to organise an 'acquiescent' labour force, usually, but not always, in the context of high labour turnover (Royle, 1999c, 2000). In many cases, unions appear to have abandoned attempts to recruit in workplaces because of the resources it would demand and the practical difficulties involved. Even where unions have succeeded in establishing works councils, the supporting legislation is usually inadequate. In most cases, legislation on worker representation, designed during the post-war period, is unable to deal with these newer forms of employment and increasingly determined and more sophisticated employer opposition.

McDonald's has also found advantages in its large proportion of franchise operators. Indeed, McDonald's can reap considerable benefits from the legal separation yet tight control of franchisees. Despite having effective control over virtually all aspects of franchise operations, McDonald's can, when appropriate, distance itself from the employee relations practices of individual franchise operators, as for example when they fail to apply collective agreements or interfere with the establishment of works councils and union delegates. McDonald's high proportion of franchise operations also makes it extremely difficult to establish plant-level works councils in every restaurant and even more so by establishing one central or company works council covering the entire McDonald's workforce in any country. Finally, 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-union management style in 'small' firms (Abbott, 1993; Rainnie, 1989).

It is not just US MNCs that are often in conflict with the kind of legislatively underpinned systems of workers' interest representation found in Europe. However, it may be that American companies find such systems particularly hard to accept in view of the frequently pro-employer employee relations environment of their home operations in the USA (Kochan and Weinstein, 1994; Towers, 1999b). Yet even in Europe, when confronted with powerful and determined MNCs, highly regulated national and regional employment relations systems are not enough. Neither have the sophisticated 'legislative' and 'negotiated' tracks of the EU's Social Dialogue been very successful so far. Indeed, Keller and Sörries (1999) suggest that a better route

towards regulation through collective bargaining may lie in sectoral rather than supranational dialogue. It is also clear from this analysis that if 'hard' forms of legal and quasi-legal regulation are inadequate, then voluntary codes are unlikely to be of real value in regulating MNCs in practice. Furthermore, the endemic 'short-termism' of Anglo-Saxon approaches to management, fuelled by economic liberalism and the need to return maximum short-term gains to shareholders, also sits uneasily with mainland European notions of social partnership supported by legally underpinned rights at work.

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