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McDonald's Attorney Says Company is Victim of Union Attack on Brand

Move comes as pressure builds to give low-wage workers raises



A key question in the dispute is when a corporate brand owner like McDonald's becomes jointly responsible for labor violations at its franchisees. PHOTO: GETTY IMAGES

By **JACOB GERSHMAN**

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As legal proceedings got under way in a labor dispute that could upend the relationship between big retailers and their franchisees, an attorney for McDonald's Corp. told a federal administrative judge the company is the victim of a union-orchestrated attack on its brand.

At issue in the hearings that began Monday is whether companies like McDonald's share responsibility for the actions of their franchisees, particularly regarding complaints about low wages paid to fast-food workers.

The National Labor Relations Board's general counsel, an Obama administration appointed lawyer with wide authority to prosecute unfair labor practices, determined in July that in the case of McDonald's, the answer is yes. He later issued complaints alleging the fast-food company and several franchisees violated the rights of restaurant workers who participated in activities to improve their wages and working conditions.

The moves were the latest in a fraught relationship between U.S. firms and the labor board, and they came as pressure is building to give low-wage workers raises.

Depending on how the case plays out, the dispute could make it easier for labor unions to organize fast-food workers, negotiate wages and expose franchisers in a range of industries—including auto parts and tax preparation—to greater liability in labor matters.

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Forward, a group backed by the Service Employees International Union, has organized protests at McDonald's and other fast-food restaurants, demanding a \$15 hourly minimum wage and the right to unionize without retaliation.

A key question in the dispute is when a corporate brand owner like McDonald's becomes jointly responsible for labor violations at its franchisees. Traditionally a parent company would have to have direct and immediate control over personnel matters like hiring and firing. This case could decide whether the franchiser has sufficient control over employees—through quality requirements, brand management and training—to be considered a joint employer, according to Christopher Calsyn, a labor and employment attorney at Crowell & Moring LLP.

Monday's proceeding in Manhattan was the first of several consolidated hearings to address the general counsel's legal contention. Others are scheduled in Chicago and Los Angeles. Judge Lauren Esposito, a former NLRB field attorney and labor-union lawyer, is presiding over all of them.

An issue that flared on Monday was whether McDonald's should be allowed to subpoena

firms retained by the union to help investigate and promote the worker-rights campaign. The company argued that it has the right to know more about the motives behind the campaign.



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“We believe we have the right to defend our company from these relentless attacks,” Jones Day partner Willis Goldsmith, who represents McDonald’s, told Judge Esposito.

Attorneys representing the NLRB’s general counsel, SEIU and companies the union hired to assist with its worker-rights campaign told the judge McDonald’s didn’t have a right to the documents. The judge didn’t rule on whether the company’s subpoena should be revoked.

David Dean, a member of SEIU’s legal team, said in an interview that McDonald’s scrutiny of the firms shows that it “has in essence been caught involving [itself] intimately in labor relations at [its] franchise stores.” The unions contend McDonald’s qualifies as a joint employer under the current legal standard.

McDonald’s maintains that its franchisees, which own 90% of McDonald’s over 14,000 U.S. restaurants, set their own wages and control working conditions. It has wielded that argument as it faces intensifying labor protests and mounting lawsuits over worker conditions.

Trade groups such as the International Franchise Association say that treating franchisers as joint employers undermines a long established and good business model that gives store owners autonomy. They also worry it would make fast-food and other industries more vulnerable to campaigns by union-backed groups that seek to organize workers.

Businesses and unions are also awaiting a ruling in a separate joint-employer case before the NLRB that involves sub-contracted workers at a recycling processing facility and could set a broader precedent that could influence the judge and the board’s decision in the McDonald’s cases.

If Judge Esposito rules against McDonald’s, the company is expected to appeal the dispute to the NLRB’s full five-member board in Washington. The battle could then head

to a federal appeals court and may ultimately be decided by the U.S. Supreme Court.

—Melanie Trottman contributed to this report.

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