On Monday, July 29, workers staged a series of one-day strikes in seven cities across the country at some of the nation’s best known and most profitable fast-food restaurants. The protesters are calling for a living wage of $15 an hour. The effort is part of the increasing use of “workers centers” in lieu of formal union affiliation.

To offset the continuing decline in union density, which is now at 6.6% in the private sector, unions and other workers’ rights advocates have turned to new forms of representation. One such phenomenon are “workers centers,” which provide a variety of services short of collective bargaining, but including advocacy on issues such as compensation, employment, lobbying labor policy, and community organizing. Like traditional labor unions, workers centers engage employers on wages, hours, and the terms and conditions of employment. They organize and coordinate community rallies and protests against individual employers in which they call upon workers to walk off the job in protest of workplace conditions or wages.

Currently, there are over 200 workers centers in 32 states, and their numbers are increasing. Workers centers are organized around a single company, such as Organization United for Respect at Walmart (OUR Walmart), or an entire industry, such as the Restaurant Opportunities Centers United (ROC-United) and the Retail Action Project (RAP). Workers centers may be national or local, such as the Koreatown Immigrant Workers Alliance (KIWA), which focuses on organizing grocery store, garment, and restaurant workers in the Koreatown neighborhood in Los Angeles.

Scratch the surface of workers centers and it will expose unions as their founders and supporters. OUR Walmart, for example, is closely aligned with the United Food and Commercial Workers International Union (UFCW), which claims it as a subsidiary in the union’s filings with the U.S. Department of Labor. ROC-United is closely associated with UNITE HERE, and RAP is closely connected to the Retail, Wholesale and Department Store Workers Union (RWDSU) and its parent, the UFCW.

Why do unions create these new organizations and what do they mean for employers? One reason, of course, is that they provide an alternative to traditional unions, which are considered to be and are regulated as “labor organizations” under the National Labor Relations Act and the Labor-Management Reporting and Disclosure Act (LMRDA). Free from the laws’ election rules, unfair labor practice regulations, and reporting requirements, workers centers can operate more freely. Also, while most workers centers do not provide formal collective bargaining rights, they earn their members’ dues for other services which may one day lead to
traditional representation. Ultimately, unions use workers centers to pressure employers as part of a “corporate campaign” to force neutrality and card-check recognition of the union without a secret ballot election, or capitulation to union bargaining demands.

The issue of whether, in fact, workers centers constitute “labor organizations” is not without controversy. On July 23, for example, Reps. John Kline (R-MN) and Phil Roe (R-TN), who are Chairman and Subcommittee Chairman, respectively, of the House Education and the Workforce Committee wrote a letter asking new Secretary of Labor Thomas Perez for an official determination as to whether worker centers constitute labor organizations under the LMRDA and are therefore subject to the law’s reporting and disclosure requirements.

The definition of “labor organization” under section 402(i) of the LMRDA is an organization:

engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.

If, indeed, workers centers are simply a disguised form of labor organizations, they will be required to report and disclose financial and other arrangements, just as employers and outside third parties are required to disclose information under the LMRDA’s “persuader activity” regulations when they go beyond the law’s “advice exemption.” Of course, the Labor Department has proposed significant revisions to the current “advice exemption,” virtually eviscerating the exemption and requiring reporting and disclosure of attorney-client confidences by employers and their outside counsel during union organizing campaigns and collective bargaining. The proposed regulations are scheduled for final action in November. It will be interesting to see whether the new Secretary of Labor exempts “workers centers” from reporting and disclosure, but virtually eliminates the advice exemption for employers and their outside counsel.