

Wars of Attrition

***Vietnam, the Business Roundtable, and the
Decline of Construction Unions***

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Multi-Employer and Regional Bargaining

[F]acing labor is now not a localized employer group...but a group of organized employers, bound together nationally...with a unified point of view. ... Furthermore, they are better prepared to go outside of the ranks of the industry itself to join with the employers in other industries in a movement aimed finally at undermining labor standards and pushing American industrial life back to the chaos of 1929-1933.¹

The construction industry, as the Roundtable noted, was “grotesquely fragmented”: 70 percent of firms employing seven or fewer workers employed 20 percent of the labor force, while the two percent employing 100 or more accounted for 75 percent of construction work.² Such size-structural fragmentation, reflected in and amplified by geographic collective bargaining fragmentation, prompted a spate of proposals for strengthening employers’ negotiating positions. These efforts culminated in the introduction on October 20, 1971, by Representative (and later presidential candidate) John B. Anderson (R. Ill.) of a short bill, the Construction Industry Stabilization Act of 1971, which would have directed the CISC to prepare a plan for reforming the industry’s bargaining structure with a view to expanding and consolidating collective bargaining units on an areawide basis. However, it died without any congressional action.³

Similarly stillborn was a much more detailed bill that Anderson introduced three weeks later (the Construction Industry Bargaining Stabilization Act), which would have empowered a tripartite Construction Industry Bargaining Commission to create geographic bargaining areas; failure to negotiate within such areas would have become an employer and union unfair labor practice under the NLRA. It would also have been an unfair labor practice for employers during negotiations to lockout unless they locked out all unions representing workers subject to the negotiations; similarly, unions would have committed an unfair labor practice by engaging in a strike during negotiations unless all workers subject to the negotiations struck.⁴

Crucial to the success of Anderson’s plan were the dual provisions of expanded collective bargaining units and common contract expiration dates, which,

¹Building Trades Department, A. F. of L., *Negotiating the Construction Code: History of Participation by Building Trades Organizations in Code Making Under NRA 25* (n.d. [1936]) (prepared by Solomon Barkin).

²BR, “Efficiency at the Construction Job Site: Final Report” at 3 (Dec. 1977), in BR, 1977 CCH, File: CICE.

³H.R. 11387, 92d Cong., 1st Sess. § 3 (1971).

⁴H.R. 11716, 92d Cong., 1st Sess. (1971).

according to Anderson, jointly “would reduce considerably the current ability of unions to strike in one area and then travel to another county to work until employers are forced to capitulate.” He observed that the bill was even more important for entitling employer groups to “bargain collectively without the constant threat that unions will settle on the side with weaker members of the group and undermine their bargaining position.” The bill’s attractiveness also lay in enabling employers to “keep wage rates in line without the heavy-handed intervention of the government.”⁵

The very brief congressional life of Anderson’s bills belies the long and intense pre-legislative and extra-congressional struggles among numerous employer organizations over the issue of larger bargaining units. Examining this background sheds light on the crucial role that this subject played in employers’ strategies and the sharp conflicts among them that it triggered.

To understand this aspect of the debate it is necessary to recall that collective bargaining in construction was decentralized by area and craft. Nevertheless, a “remarkably standard pattern” resulted: “Unlike other industries, few contracts are negotiated directly by a local union representative with a single employer. In most situations, employers in a relatively confined geographic area have banded together to form an association to represent contractors...in a particular craft operation. Generally, the structure of bargaining is on a city-by-city, craft-by-craft basis.” The areas encompassed by these bargaining amalgamations may have encompassed a city, metropolitan area, several counties, or parts of a state. An employer association representing only one craft may have been unconcerned with the impact of its collective bargaining agreement on other crafts, but to the extent that its members employed several crafts, the association may have tried to coordinate bargaining. The decentralizing forces on the union side were much more prominent. National unions rarely took part in local negotiating, although they may have consulted if they foresaw a settlement as creating a pattern that might have decisively influenced other agreements.⁶

Though fragmented—1,400 collective agreements were set to expire in 1971—not all construction industry bargaining was localized. Elevator constructors and sprinkler fitters engaged in national bargaining while boilermakers and operating engineers bargained regionally and statewide respectively. A further peculiarity of the industry was national contractors’ infrequent participation in wage negotiations with local contractors, the results of which they generally accepted. However, national firms did enter into “national contracts’ with the International President of a craft union.” Such agreements insured firms that abiding by locally

⁵“Anderson Introduces Bill in Congress to Mandate Regional Bargaining Law for Construction Industry,” *CLR*, No. 841, Nov. 3, 1971, at A-9, A-10.

⁶U.S. BLS, *Work Stoppages in Contract Construction, 1962-73*, at 10-11 (Bull. 1847, 1975).

negotiated wages would immunize them against strikes. This capacity to work through local strikes and thus to provide employment for craftsmen, in turn, exerted pressure on local contractors to settle with striking unions.⁷ When national agreements permitted national contractors to work during a strike against local contractors over terms of a new agreement, the national contractor was obliged to pay the new wage rate back to the date of the strike or the date from which the new rates became effective in the locality.⁸ Large local unions also often opposed national agreements because they deprived locals of the ability to secure terms from the national contractor that they could extract from local contractors.⁹

Intervention to broaden the scope of collective bargaining was in large part designed to undermine the efficacy of strike action by cohesive and democratically structured local unions. As Dunlop's "principal disciple,"¹⁰ Mills, pointed out in early 1971: "rank-and-file union members have been willing to support lengthy strikes, and to sustain them until their demands are met. Union leadership has often been reluctant to press wage demands which seem exorbitant by past practices, but, facing re-election and a militant membership, they have been unwilling to counsel moderation. The suggestions of public officials regarding wage restraint are far less heeded by the rank and file than by union leadership, and in the largely democratic local building trades unions the rank and file dominate wage policy."¹¹ Since local building trades unions' peculiar power derived from "the decentralized structure of the construction labor market,"¹² it was unclear how legislative mandates to bargain regionally or nationally could succeed without a prior broadening of those labor markets to encompass more than the large city or several-county area within which most contractors operate. Thus greater mobility by firms was a prerequisite.¹³

⁷Michael Moscow [untitled speech], in 117 Cong. Rec. 24389, 24390 (1971).

⁸John Dunlop, "The Industrial Relations System in Construction," in *The Structure of Collective Bargaining: Problems and Perspectives* 255-77 at 266 (Arnold Weber ed., 1961).

⁹Mills, *Industrial Relations and Manpower in Construction* at 36-37; Mills, "Chapter 2: Construction" at II-32. The rise of large national construction firms in the late nineteenth century produced other patterns. Their ability to "organize migration constituted a grave threat in every locality in which they obtained work. [W]hen the Omaha local union of bricklayers entered into a general strike for the eight-hour day in 1888, the local bosses obtained the support of Norcross Brothers, which was currently engaged in the construction of a court house in Omaha...and which found that it could not obtain local bricklayers.... The Norcross manager and the local contractors advertised for bricklayers 'all over the country.'" National firms could also "avail themselves of the existence of lower standards in the localities in which they obtained contracts in order to depress the terms of employment of workers whom they hired directly elsewhere and whom they sent into the localities where the work was to be performed." Ulman, *Rise of the National Trade Union* at 56.

¹⁰John Dunlop and CISC Allay Feverish Collective Bargaining," *ENR*, July 6, 1972, at 25.

¹¹D. Q. Mills, "Wage Determination in Contract Construction," 10 (1) *IR* 72-85 at 75 (Feb. 1971).

¹²DOL, Manpower Administration, *Training and Entry into Union Construction* at 38.

¹³Kenneth McCaffree, "Regional Labor Agreements in the Construction Industry," 9 *ILRR*

The movement for wide-area collective bargaining can be traced back to the energetic efforts of John C. Garvin, the labor relations consultant, whose relentless promotion of regional bargaining began in 1966.¹⁴ In September, 1970, Garvin, who also never missed a chance to tout his seminal role,¹⁵ sent a copy of a talk on rectifying the imbalance in collective bargaining he had just given to yet another group of builders to the vice president of Kaiser Industries, an NCA member. Given the overwhelming support the participants had given his proposal, Garvin told Walter Farrell that it was time for the Roundtable to join the effort. Noting that he was “getting a little bit tired of pleading for support,” Garvin added that with or without this help, “John Garvin will organize a National Federation....”¹⁶

Beginning about 1967, various national contractors organization began drafting wide-area, multi-employer bargaining proposals. Interest in such legislation may have been intensified by the experience in British Columbia. There, in the wake of union success in divide-and-conquer, whipsaw tactics, which led to contractors’ being “badly whipped” in 1968 and large wage increases, more than 850 firms assigned their collective bargaining functions to the Construction Labour Relations Association of British Columbia; in 1970, the association persuaded the provincial government to enact legislation creating a limited form of certification of an employers organization as its members binding bargaining agent.¹⁷

The San Francisco management-side labor law firm of Littler, Mendelson & Fastiff was heavily involved in drafting legislation.¹⁸ One of its clients was the Plumbing-Heating-Cooling Contractors of California, for which it drafted a multi-employer certification bill in 1970, which the firm also furnished to R. Eric Miller, vice president in charge of labor relations at Bechtel. The bill would have amended the NLRA to make it an employer unfair labor practice to fail or refuse to bargain exclusively through such a certified multi-employer agent or to negotiate directly

595 (1956).

¹⁴See above chapter 1. For confirmation of Garvin’s role, Thomas Dailey, “Multiemployer Bargaining’s Demise,” *ENR*, Nov. 15, 1984, at 28 (Lexis).

¹⁵On Oct. 21, 1969, he gave a handwritten note of his plan to Secretary Shultz in Los Angeles. NACP, RG 174: General Records of the Labor Dept., Office of the Secretary, Records of Sec. George P. Shultz, 1969-1970, Box No. 53: Commissions, Folder: 1969-Commissions CICBC (Oct.).

¹⁶Letter from John C. Garvin to Walter Farrell (Sept. 30, 1970), in SP, Box 5, File-Construction-Multi Employer Bargaining. Garvin’s plan was noteworthy in providing for “a union shop clause in all labor Agreements....” John C. Garvin, “Review and Update of a Plan for Regional Bargaining in the Construction Industry” at 10, in *id.*

¹⁷Construction Labour Relations Association of B.C., “Background” (quote at 2) (n.d. [ca. 1973]), in SP, Box 5, File-Multi-Employer Bargaining.

¹⁸By 1999, Littler, Mendelson purported to be the largest U.S. law firm devoted exclusively to labor and employment law with more than 400 lawyers and numerous offices around the country. <http://www.littler.com>. In 1970, it had been an eight-lawyer firm. 1 *Martindale-Hubbell Law Directory* 1288B (1970).

with a labor union; correlatively, the proposal would have made it a union unfair labor practice to fail to bargain with such a multi-employer agent. This draft would also have directed the NLRB to determine an appropriate bargaining unit designed to assure an effective unit to the employers in the construction industry; the NLRB would have been required to include in the unit all local and national contractors that had or might seek to have a contractual relationship with unions representing the contractors' employees in a single trade or craft within the unions' area or jurisdiction. If a multiemployer entity filed a petition with the Board alleging that it had collective bargaining relationships with unions in a specific geographic area or that it represented a representative number of local and national contractors in that area, then the Board was required to certify it as the exclusive representative if it found the allegations to be true.¹⁹

In the accompanying letter to Miller, the law firm explained that the proposal would "require that national agreement contractors participate in local bargaining and bind such contractors to the locally negotiated agreement. It is my understanding that the NCA has objected to participating in local negotiations and being bound by the local agreements. However, you have indicated that this position is being reconsidered and that NCA members may wish to participate in, and be bound by, local negotiations. I am cognizant of the fear that local contractors may attempt to discriminate against national contractors." To allay such fears, the law firm offered, if necessary, to "impose express statutory standards...for insuring fairness on the part of the agent to all contractors which it represents"—in other words, a statutory counterpart to the judicially created union duty of fair representation. Littler, Mendelson conceded that the amended NLRA would "supersede the terms of the national agreements which authorize...contractors to continue working during a strike, and the multi-employer agent could require that contractor lock out in support of the local bargaining position." However, the proposal would also protect such contractors who engaged in a lockout or were otherwise delayed by a labor dispute by prohibiting the project owner from penalizing or replacing them with nonunion firms. While recognizing the "restraints on the freedom of decision" that the legislation would impose on contractors, the law firm urged Miller to regard them as the "quid pro quo for enhanced power in the employers' relationship with the construction unions."²⁰

A more explicit explanation of the role of national contractors was included in the law firm's memorandum. The proposal commented on there made it an unfair labor practice for a national contractor to authorize its employees to work through a lockout lawfully ordered by the multi-employer agent. Littler, Mendelson

¹⁹Littler, Mendelson & Fastiff, "Draft Legislation Re Multi-Employer Certification" (Apr. 10, 1970), in SP, Box 5, File-Construction-Multi Employer Bargaining.

²⁰Letter from [], Littler, Mendelson to R. Eric Miller at 2, 3, 5 (Apr. 10, 1970), in SP, Box 5, File-Construction-Multi Employer Bargaining.

revealed that this proposal was “intended to...bring the national contractors’ power to the aid of the employers in a strike-lockout situation while allowing them to continue their bargaining relationship with the national unions rather than local unions.” Although the draft legislation neither required national contractors to participate in local bargaining nor bound them to locally negotiated agreements, it did subject them to the multi-employer agent’s control in case of a strike or lockout, thus superseding national agreements authorizing national contractors to work through local strikes.²¹

Toward the end of April, the law firm wrote to its client, the Plumbing-Heating-Cooling Contractors of California, enclosing letters that it had received from the Mechanical Contractors Association of America (MCAA) and the National Electrical Contractors Association (NECA) reacting to the California initiative. Whereas the MCAA was supportive, the NECA took the position that the drafts that national organizations of specialty contractors had been working on for three years had already drafted the best possible bill, enactment of which the Californians would only delay. The law firm, however, detected several defects in the specialty contractors’ draft, of which the MCAA and NECA were the principal backers in addition to the International Association of Wall and Ceiling Contractors, Mason Contractors Association of America, Ceiling and Interior Systems Contractors, National Association of Plumbing-Heating-Cooling Contractors, Painting and Decorating Contractors of America, Sheet Metal and Air Conditioning Contractors National Association, as well as the AGC. These groups characterized their members as comprising “the reasonable employers who employ the great majority of workers” in the BCTD. In contrast, the nonunion sector of the AGC opposed it.²²

First, the draft authorized only the NLRB to enforce breaches of the obligation to bargain exclusively through the certified multi-employer agent rather than conferring a private right of action on contractors. Second, the specialty contractors would have made the multi-employer agent’s jurisdiction coterminous with that established by the unions. Counsel, however, insisted that unions would

²¹[], Littler, Mendelson, “Memorandum Re Proposed Legislative Changes to Authorize Effective Multi-Employer Bargaining” 2-3, 8-10 (Apr. 1, 1970), attachment to letter from Blough to Members of Coordinating Committee (July 17, 1970), in SP, Box 5, File-Construction-Multi Employer Bargaining.

²²Letter from [] to James Carter (Apr. 21, 1970); letter from [] to James A Carter (Apr. 23, 1970); “Associations Supporting Multi-Employer Legislation,” attachment to letter from Roger Blough to Members of Coordinating Committee (July 17, 1970) (quote), in SP, Box 5, File-Construction-Multi Employer Bargaining. The California-based movement included the Lathing & Plastering Contractors, Roof Contractors Association, Associated Roofing Contractors, Plumbing-Heating & Air Conditioning Council, Plumbing-Heating-Cooling Contractors Association of the Greater Bay Area, San Francisco Electrical Contractors Association, as well as the AGC of California. Memorandum from James R. Lucas to Western Industrial Contractors Association (May 12, 1970), in SP, Box 5, File-Construction-Multi Employer Bargaining (including the reference to opposition by the nonunion segment of the AGC).

seek to gerrymander such areas to benefit themselves. Worse still, the law firm revealed that lack of employer class solidarity was a major obstacle that the specialty contractors' proposal did nothing to alleviate: "it could be expected that those employers who are presently a thorn in the side of employer associations would continue to be so if the unions and such employers have the opportunity to carve out such jurisdictions." This acute problem of collective action also formed the draft's third weakness: by failing to make financial support for the multi-employer agent mandatory, it ensured that the employers' side would "remain plagued by the 'free-loaders' who refuse to participate in the financial support of employer associations...." The only other non-statutory methods of financing were also counterproductive: hinging it on union agreement to establishing industry funds or risking the acrimony that would be engendered by authorizing multi-employer agents to sue free riders. Consequently, Littler, Mendelson saw no viable alternative to statutory-compulsory funding. The fourth and final weakness was potentially fatal: the specialty contractors ignored the difficulties created by construction firms bound by national contracts. When the law firm raised this issue, the NECA vice president replied that "we would never be able to secure the cooperation" of the NCA on this legislation. While agreeing that this prognosis might ultimately prove correct, counsel urged that "we must make every effort to meet with representatives of NCA to see whether a mutually acceptable approach is possible." The reason was obvious: "The Under Secretary of Labor, Hodgson, told me categorically that multi-employer legislation could not be adopted over the opposition of the NCA.... I am also informed that NCA opposes the legislation as proposed by the national associations." The law firm therefore requested its client's authorization to meet with various associations, including both the NCA and Blough or Graney of the CUAIR, to determine whether the specialty contractors' proposal "should be amended prior to its presentation to the Administration and eventual introduction in the House and Senate."²³

By mid-1970 the Roundtable began taking an intense interest in these multi-employer bargaining proposals. At a meeting in early July, Blough asked an executive of Morrison-Knudsen Company, a large international construction firm and NCA member, to furnish him with material on the AGC's position on the issue. On July 17, Blough sent to Coordinating Committee members materials on the AGC's as well as on the subcontractors' and Californians' proposals.²⁴

The AGC's position was straightforward: it wanted parity between unions and employers under the NLRA. Under the AGC's proposal, the multi-employer

²³Letter from [], Littler, Mendelson to J. D. Mack (Apr. 27, 1970), in SP, Box 5, File-Construction-Multi Employer Bargaining.

²⁴Letter from [], Morrison-Knudsen Co., to Roger M. Blough (July 14, 1970); letter to Members of Coordinating Committee from Roger Blough (July 17, 1970), in SP, Box 5, File-Construction-Multi Employer Bargaining.

group with the longest continuous history of collective bargaining with unions in a specific geographic area “would have the right to bargain for certain kinds of union construction in the locality of a local union. This would be done by making it an unfair labor practice for a...union...to make an agreement with others that deviates from the historic groups.” Unions would also be prohibited from striking the historic group members without striking all other employers performing the same kind of work with the union’s members.²⁵ Finally, the AGC proposal, which included a controversial common national expiration date for agreements, dispensed with member ratification of agreements and entitled employers to refuse to employ strikers who sought work outside of the jurisdiction of the unions on strike.²⁶

The subcontractors’ proposal emphasized a somewhat different concern. Surprisingly, rather than focusing on unions’ leapfrogging tactics, these specialty contractors noted that requiring all local unions to negotiate through one multiemployer representative “eliminates the disrupting influence on collective bargaining resulting from employers who are or seek to be signatories to a contract with the union from seeking a preferential collective bargaining agreement to that enjoyed by other union signatories. Such preferential agreements, whether providing greater or lesser benefits to the employees involved, create unwarranted pressures on other employers....” The specialty contractors were willing to let the geographic scope of these bargaining units correspond to the jurisdiction of the union involved whether it covered a metropolitan area or an entire state: “The employees of all employers in a particular trade have a close community of interest which transcends the particular employer for whom they happen to be working at any given time. Thus, differences in the wages, hours, and other terms and conditions of employment of employees in the unionized portion of this industry cannot be justified by the fact that an employee happens to be working for one union employer one week and a different union employer another week.”²⁷

As activity surrounding the draft legislation became more intense in late 1970, the CUAIR began to pay more attention to it. On October 5, the day before the Roundtable was to take up the issue, some of its key members met with several executives of Union Carbide, du Pont, and others at the Harvard Club in Manhattan. Even within this small group unanimity did not prevail. It was reported that with Dunlop’s assistance the Nixon administration would probably create a commission

²⁵“Section 1,” attachment to letter from Blough to Members of Coordinating Committee (July 17, 1970), in SP, Box 5, File-Construction-Multi Employer Bargaining.

²⁶[AGC], “An Outline of Proposed Legislation for Restructuring Construction Industry Collective Bargaining” (Aug. 7, 1970), in CUAIR, CC, Minutes, Oct. 6, 1970, in BR, 1970-Vol. II: Minutes.

²⁷“Section 2: Explanation of Proposed Legislation,” attachment to letter from Blough to Members of Coordinating Committee (July 17, 1970), in SP, Box 5, File-Construction-Multi Employer Bargaining.

to form larger collective bargaining units: “the AGC favored multiple bargaining, after initial opposition, and they may be in bed with Dunlop on all of this. It is a blow to the NCA who appear to be against multiple bargaining.” At least one consideration favoring wider bargaining units was the experience, according to a du Pont construction official, that “there was no way to win a strike nowadays without multiple bargaining” in construction. He mentioned that when 500 pipefitters had recently struck his firm for several weeks in Wilmington, Delaware, only 30 were unemployed: “He particularly specified the interstate highway system and low unemployment rates as advantages to relocation of strikers.” When one Roundtable member stressed the “role of the open shop in combating union power,” the du Pont official responded that “contractors, particularly in the southeast, probably couldn’t do 20% of their work on an open shop basis, primarily because of lack of police protection.” In response to a remark that contractors unanimously favored wage and price controls, another member stressed the construction and transportation industries’ support for controls and multiple bargaining stood in opposition to basic manufacturing’s position: “and all these stem from the union power problem which requires basic legislation long-range. The problem here is one of immediacy which legislation cannot correct over night.”²⁸

The next day an outline of one of the proposed bills was circulated and discussed at length at the meeting of the Roundtable Coordinating Committee. Representatives of contractors associations attended the October 6 meeting to discuss the proposals. The NCA representative, explaining that the organization wanted to eliminate whipsawing, wished to discover whether it could count on users’ support.²⁹ As one key Roundtable figure explained to Kenneth McGuiness, associate and acting general counsel of the NLRB during the Eisenhower administration and head of Labor Policy Association—yet another antiunion big business group, which represented the Roundtable in labor matters³⁰—the situation was fluid, complicated, and even confused, yet the CUAIR was very critical of wide-area bargaining as a means of combating union control of the labor market:

[T]he construction industry is still pushing toward area-wide and industry-wide bargaining on a multi-employer basis, and in the process is probably accelerating union power at a rate beyond what they envision. True, they do get away from the anarchy of local union power, but in turn move from the frying pan to the fire by transferring responsibility to the international union, or at least that is their hope. Granted that the structure of the construction industry and the premises from which their logic takes off are different from

²⁸[], “File Memorandum: Roger’s Round Table” (Oct. 5, 1970), in SP, Box 5, File-CUAIR 1969-1970.

²⁹CUAIR, CC, Minutes, Oct. 6, 1970, at 4-5 (Phillip Lyon), in BR, 1970-Vol. II: Minutes.

³⁰David Jacobs, “Labor and Social Legislation in the United States: Business Obstructionism and Accommodation,” 23 (2) *LSJ* 52 (June 1998) (Lexis).

those on the manufacturing side of industry, the trend is ominous from our point of view.

This subject obviously involves union power, on which LPA is working. This is an immediate manifestation of the problem and may require special attention by LPA. ... [T]hose proposing the bill, the contractors associations, are at odds among themselves on the subject just as we are on the construction users side. This is a clear and present danger since the Administration will shortly be coming out with some similar centralized form of bargaining in the construction industry, to, be administered by a board or commission.³¹

While the CUAIR continued to study various legislative proposals,³² an ad hoc subcommittee on multi-employer certification of the Council of Construction Employers (CCE), a horizontal association of national specialty contractors and the AGC,³³ met in September and October, issuing an internal interim report documenting the “sharpness of disagreement” among its member organizations. “The only areas of agreement,” as the report put it, included: a ban on selective strikes or lockouts; inapplicability of the legislation to nonunion firms; a ban on ratification of final agreements by either union or employer membership; opposition to making it an unfair labor practice for employers to refuse to employ, or continue to employ, employees engaged in bargaining unit strikes; permitting separate project agreements subject to approval by multi-employer agent; and employers’ entitlement to refuse to employ strikers on work outside the striking unions’ jurisdiction. The members could not agree on these points: a common expiration date for all labor agreements; whether the statute’s provisions should be enforced by the NLRB or courts; whether the Secretary of Labor or the NLRB should be authorized to establish the geographical bargaining areas; the size of these areas; whether to certify a single entity to represent all local unions and employers or existing general and specialty bargaining units.³⁴

On the last day of 1970, a high-ranking member of the CUAIR Coordinating Committee, who also served on the Chamber of Commerce task force on industry-wide bargaining, sent a letter to Soutar and others commenting on Nixon’s December 4 speech before the NAM in which the president had called for consolidated regional bargaining in construction. Noting that he and other corporate executives had been anticipating such administration endorsement for two

³¹Letter from [] to Kenneth C. McGuiness (Oct. 6, 1970), in SP, Box 5, File-Construction-Multi Employer Bargaining.

³²Letter with attachment from J. M. Graney to Coordinating Committee Members (Oct. 21, 1970), in SP, Box 5, File-Construction-Multi Employer Bargaining.

³³According to Cullen & Feinberg, *The Bargaining Structure in Construction* at 21, the CCE had existed informally since August 1968, but did not go public until May 1972; designed to become the voice of unionized construction firms, it was dissolved in 1978.

³⁴Council of Construction Employers, “Interim Report of Ad Hoc Subcommittee on Multi-Employer Certification Legislation” (Oct. 28, 1970), in SP, Box 5, File-Construction-Multi Employer Bargaining.

months, he added: "Those of us who have resisted coalition or industry-wide bargaining were concerned lest our union friends take such a plan for construction as encouragement for their efforts to broaden bargaining units in the rest of industry."³⁵ The apprehension that such initiatives for construction might later be imposed on manufacturing firms continued to haunt Roundtable executives, especially ones who ran corporations that prided themselves on having prevented company-wide organization by resisting or bargaining with unions plant by plant. As a subordinate Roundtable participant noted in analyzing a wide-area bargaining bill: "I don't like federal policy which escalates industrial conflict even if only in construction. We in General Electric wouldn't like such a policy to 'spill over.'"³⁶

At the end of August, Blough circulated to Coordinating Committee members a copy of the latest draft of the bill, which proved to be almost identical to the one that Representative Anderson filed in November as H. R. 11716. It turned out to be the only such bill introduced (together with the shorter bill he filed in October). Blough called the subject "one which constantly comes to our attention," and suggested that the Roundtable "again consider it from a policy point of view."³⁷ Blough and other Roundtable officials had met in July with Anderson, who was chairman of the House Republican Conference, and other House Republican members of the Task Force on Labor Management Relations, to discuss CUAIR's work.³⁸ Nevertheless, the CUAIR disagreed fundamentally with the focus of wide-area bargaining in general and Anderson's bill in particular. One CUAIR participant found it even "more defective in its procedures and safeguards" than some of the other drafts. Significantly, he singled out its lack of adequate protection for nonunion contractors. But his reasons for recommending that the Roundtable oppose the bill went to the core of all proposals for wide-area bargaining legislation:

First, it represents a belief that big bargaining is the answer. What we need is lower, not fewer, settlements.... Second, I think fooling around with bargaining unit sizes diverts us from our basic tasks. The hiring hall is the real problem; small work forces not small bargaining units is what's wrong. Congress would do better to start there.³⁹

³⁵Letter from [] to James Davenport and others, copy to R. Blough and others (Dec. 31, 1970), in SP, Box 5, File-Construction-Multi Employer Bargaining.

³⁶Memo from [] to [] (Sept. 20, 1971), in SP, Box 5, File-Construction-Multi Employer Bargaining.

³⁷Blough to Members of the Coordinating Committee (Aug. 31, 1971), in SP, Box 5, File-Construction-Multi Employer Bargaining.

³⁸Letter from [] to Representative Sherman P. Lloyd (July 27, 1971), in SP, Box 5, File-Construction-Multi Employer Bargaining.

³⁹Memo from [] to Virgil Day (Sept. 20, 1971), in SP, Box 5, File-Construction-Multi Employer Bargaining.

The Roundtable not only lacked control over the drafting of Anderson's bill, it was not even well informed as to when Anderson would file what and on behalf of which groups he was acting. On October 19, the day before Anderson filed his first bill, Trumbull Blake, the director of the construction division at du Pont—a firm at the forefront of the corporate movement to support large-scale nonunion industrial construction—and a member of the CUAIR task force on the Anderson bill, wrote Soutar that as he understood the situation, Anderson was “marking time to give AGC, NCA, NECA and MCA[A] an opportunity to take a common position supporting the legislation or, alternatively a common position recommending changes.” Blake did not know whether the unions supported the bill or not.⁴⁰ The Roundtable was apparently so far removed from congressional inner workings that two days after Anderson had actually introduced his first bill, Bechtel's and the NCA's liaison with the CUAIR circulated an out-of-date draft of the bill to Blough, Day, and Bechtel's principal owner, S. D. Bechtel, Jr., with the annotation that Anderson was reported to be considering attaching it as an amendment to another bill and to introduce it as in independent bill. Four days later he sent the same memo to Soutar.⁴¹

After having had six weeks to study the longer version of Anderson's bill, the Roundtable remained unpersuaded of its usefulness. As its in-house consultants, Graney and McGlaun, informed Soutar, the bill “seems to embrace the premise that larger bargaining groups in construction would eliminate the principal impediment to unequal bargaining strength.... It would not come to grips with what in our opinion are the real problems, such as the hiring hall and manpower in construction.”⁴²

The bills that Anderson introduced had undergone a long gestation period lasting more than a year and including “extensive consultations” with the AGC, MCAA, NCA, as well as the CCE and the BCTD. Preliminary work began in 1970 after the NCA had “indicated a willingness to give up its national agreement protection against economic strikes if a system of area-wide (as against local) bargaining could be developed on a multi-craft basis and if NCA would be accorded a role in bargaining process and retain the right to employ men directly.”⁴³ In September 1971, *ENR* reported that the bill, which was still circulating within the construction industry, would not be introduced until management agreed to it.

⁴⁰Letter from T. Blake to Douglas Soutar (Oct. 19, 1971), in SP, Box 5, File-Restructuring Bargaining in Construction Industry.

⁴¹Memo from [] to J. F. O'Connell (Oct. 22, 1971); Memo from [] to D. H. Soutar (Oct. 26, 1971), in SP, Box 5, File-Restructuring Bargaining in Construction Industry.

⁴²Memorandum from J. M. Graney and W. McGlaun to Douglas Soutar (Dec. 27, 1971), in SP, Box 5, File-Construction-Multi Employer Bargaining.

⁴³John E. Quinn, “Construction Industry Bargaining Stabilization Act,” *NCA Bulletin* #71-276, at 1 (Aug. 16, 1971), in SP, Box 5, File-Restructuring Bargaining in Construction Industry.

While the AGC sought to achieve that unanimity, Anderson's staff continued to meet with Dunlop and the CICBC.⁴⁴ Two months before the bill was introduced, the NCA had learned that Anderson "had been persuaded to delay introducing the legislation while the wage freeze is in effect. The reason given for the delay is that, if introduced now, the Building Trades Union would vigorously oppose it to the extent that the Administration might feel it necessary to disavow any support, thus assuring almost certain defeat of the Bill." The author of the NCA memorandum added that he could not "completely follow this reasoning."⁴⁵ Just a few days before Anderson introduced the shorter CISC bill, *ENR* had reported that he was filing it first because, as an economic stabilization measure, it would be referred to the House Banking and Currency Committee, thus avoiding the House Labor Committee, where the longer bill, which still lacked management's unanimous support, might get lost.⁴⁶ In the event, both bills were referred to the Labor Committee and Congress took no action on either one.

A regional bargaining bill that the CICBC was reported as having been preparing during its almost two-year existence was never introduced,⁴⁷ but a draft was circulated within the construction industry and the Roundtable. Thus in response to a telegram that a well-placed CUAIR official sent on February 15, 1972 to several CUAIR participants requesting their comments and positions regarding the Anderson bill and "the new draft bill" in time for the February 18th Roundtable

⁴⁴"Construction Gets Areawide Bargaining Bill," *ENR*, Sept. 23, 1971, at 45.

⁴⁵"Construction Industry Bargaining Stabilization Act (Anderson Bill)," undated memo sent to Douglas Soutar by [], NCA (Oct. 20, 1971), in SP, Box 5, File-Restructuring of Bargaining in Construction Industry. Anderson lacked specific recollection of the bills, but when prompted, agreed that it was plausible that they came to naught because the Nixon administration did not want to antagonize the construction unions. Telephone interview with John B. Anderson, Washington, D.C. (Mar. 30, 1999).

⁴⁶"Stabilization Committee May Get a Bigger Job," *ENR*, Oct. 14, 1971, at 65.

⁴⁷The initiative was purportedly beset by constitutional and administrative difficulties. "Anderson Introduces Bill in Congress to Mandate Regional Bargaining Law for Construction Industry," *CLR*, No. 841, Nov. 3, 1971, at A-9, A-10. The report that Secretary of Labor Hodgson transmitted to Nixon in March 1972 seemed to suggest that, apart from having met 17 times, the CICBC had accomplished very little. Following Nixon's speech on Dec. 4, 1970, it prepared several draft proposals to modify the geographic scope of collective bargaining, but as of January, 1972, the time at which the report ended, it was still drafting. "Report of the CICBC September 1969 to January 1972," at 2, 8-9 (Mar. 30, 1972), in NPMS, WHCF, Subject Files, EX FG 257: CICBC [1969-1970], Box 1, Folder 2: (1969-1970). The impression that the CICBC accomplished little is reinforced by a memo that Under secretary of Labor Hodgson sent to CEA chairman McCracken in mid-1970 lamenting that his efforts to interest the CICBC in issuing a statement on construction wage settlements "were not rewarding." Memorandum from Hodgson to McCracken (May 28, 1970), in NACP, RG 174: General Records of the Labor Dept., Records of the Secretary of Labor George P. Shultz, 1969-1970, Box No. 173: International Committee-Cabinet Committee on Oil Imports, Folder: 1970-Committee: CCC (Except May 5).

meeting on this subject,⁴⁸ a Bechtel official telegraphed back:

we favor some legislation to reshape bargaining process in construction including wide area multi-craft, multi-employer bargaining. Anderson bill not perfect but better than CICBC draft which has following deficiencies from our viewpoint. Firstly eliminates craft board concept. Secondly dependent on voluntary action. Thirdly does not allow national contractor participation in bargaining process to extent needed. [W]ith the imbalance [sic] of bargaining strength and existing fragmentation of the construction bargaining process the problems will not be alleviated through voluntary means.⁴⁹

The demise of Anderson's bill may have been linked to the ambivalence that both employers and unions displayed toward larger bargaining units. Why employers might seek such units when faced with tight local labor markets was clear. A study of consolidated bargaining in California in the mid-1960s observed that construction employers around 1940, "[i]n taking a long-run view...may well have considered that regional bargaining was one way to cope with the power that the building trades might again acquire in the circumstances of a boom."⁵⁰ The AGC, which complained that industry stabilization disappeared when, some time after the Korean War, "international unions lost control over their locals," supported Anderson's bill.⁵¹ Nevertheless, both the CUAIR Coordinating Committee and its contractors task force were divided over areawide bargaining in general and Anderson's bill in particular even before it had been introduced.⁵² Despite the risks associated with construction unions' locally based power—whose "demands...are formulated and struck for locally"⁵³—employers were also skeptical of wider units. For example, at the time that the Eightieth Congress was developing antiunion legislation that resulted in the Taft-Hartley amendments to the NLRA in 1947, one of the bills would have curtailed industry-wide bargaining by making it an unfair labor practice to bargain with respect to places of employment not located within the same labor market.⁵⁴ In 1968, too, the Chamber of Commerce-sponsored

⁴⁸Telegram from [] to Trumbull Blake, Walter Farrell, James Graham, and [] (Feb. 15, 1972); in SP, Box 5, File-CUAIR; draft memo from Blough to coordinating committee members (enclosing draft of CICBC bill) (undated, mid-Feb. 1972), in SP, Box 5, File-Restructuring of Bargaining in Construction Industry.

⁴⁹Telegram from [] to [] (Feb. 16, 1972), in SP, Box 5, File-Construction Multi-Employer Bargaining.

⁵⁰Gordon Bertram, *Consolidated Bargaining in California Construction: An Appraisal of Twenty-Five Years' Experience* 7 (1966).

⁵¹*Economic Stabilization Legislation: Hearings Before the Senate Committee on Banking, Housing and Urban Affairs*, 92d Cong., 1st Sess. 279 (1971) (statement of William Dunn, executive director, AGC).

⁵²CUAIR, CC, Minutes, Oct. 7, 1971, at 3 (Roger Blough), in BR, 1971, Vol. II-Minutes.

⁵³"The Wages of the Building Zoom," *BW.*, July 19, 1969, at 89, 90.

⁵⁴Robert Rankin & Winfried Dallmayr, *Freedom and Emergency Powers in the Cold War*

meeting heard suggestions that broader-based bargaining was not a panacea: Herbert Northrup warned that it “tends to bring all wages and benefits to the top, adding to the inflationary impact.”⁵⁵ (Even at the end of the 1970s, Mills remained skeptical of regional bargaining, observing that if it merely substituted “large, crisis-creating work stoppages for several separate and more tolerable stoppages,” it could hardly help stabilize the industry.)⁵⁶

After “intensive consideration” over a period of months, the CUAIR candidly, for internal consumption, set forth the advantages and risks of broadening the scope of collective bargaining. Anderson’s approach was designed both to “prevent advantages accruing to workmen who strike contractors in Area A while working conveniently in adjacent Area B” and to “prevent contractors in the area from working during strikes or subsequently under arrangements at variance with that concluded by the single bargaining agencies.” However, opponents within the Roundtable pointed to:

Apprehension that the area to be determined by legislated procedures and the bargaining to be enforced upon all contractors and unions in the area by certification may promote undesirable local bargaining results, may restrict competition from outside the area, may adversely react against competition from non-union contractors, and may tend to result in bargaining areas which are unnecessarily large and which may even extend to industry-wide bargaining, which they consider highly undesirable.⁵⁷

The salient point here was that some Roundtable members feared that an exclusive focus on improving contractors’ position in collective bargaining would detract from promoting the nonunion sector. In addition, the larger the area, the greater the risk that more production might be stopped by a strike; thus, perversely, the end result might be even greater union power and larger rather than smaller settlements. Ultimately, the Coordinating Committee was apparently unable to overcome its members’ divergent views; the policy that it proposed internally in March 1972 was so platitudinous that it presumably satisfied no one: encouragement of more comprehensive local bargaining but only voluntarily and without legislative intervention; support for “geographical areas of sufficient size to accomplish a livable economic result from the standpoint of unions, employees, and contractors both during and after possible work stoppages.” Its most forthright stand favored national contractors’ participation in local bargaining. The

101(1964).

⁵⁵“Men for All Seasons?” *BW*, Dec. 7, 1968, at 117, 188 (quoting Herbert Northrup).

⁵⁶Daniel Quinn Mills, “Labor Relations and Collective Bargaining,” in *The Construction Industry: Balance Wheel of the Economy* 59-82 at 74 (Julian Lange & Daniel Quinn Mills eds., 1979).

⁵⁷“Roundtable Policy re Broadening Area Collective Bargaining in Construction” at 1 (Mar. 27, 1972), in CUAIR, CC Meeting, Mar. 17, 1972, attached to Minutes, in SP, Box 5.

Coordinating Committee was so deadlocked that it took several revisions before it could even agree on deleting the word “organized” from the proposal to encourage local user groups to “assist [organized] local contractor groups to increase total effectiveness in contract negotiation and...administration.”⁵⁸

The CUAIR appreciated the legislation’s obvious purpose to roll back “the power of unions in running labor relations,” but after “long, intense consideration” by its Coordinating Committee, the group objected to governmental imposition of regional bargaining on the ground that it might “promote undesirable local bargaining results,...restrict competition from contractors outside the area,...adversely react against competition from non-union contractors....”⁵⁹ The CUAIR’s skepticism toward government controls flowed from its argument that only structural changes could deal with root causes. Perhaps an even stronger impediment to CUAIR acceptance of legislated area-wide construction bargaining was the concern that it would spill over into the industrial sector, forcing users—many of which had energetically prevented unions from organizing all their plants—to engage in such geographically expanded collective bargaining as well.⁶⁰

The Roundtable’s rejectionist position diverged even from that of the NCA, which among construction employer groups was most closely aligned with it and had come to accept the need for some form of compulsory wider-area bargaining. The most plausible explanation for this divergence is two-fold: first, regardless of its potentially salutary impact on the construction industry, industrial employers did not want to set a precedent for federal imposition of wide-area bargaining units on the manufacturing sector, in which many large firms pursued a strategy of confining unions to individual plants rather than expanding bargaining units; and second, whereas unionized construction firms focused on the goal of increasing their bargaining power vis-à-vis unions, the Roundtable’s dual-track strategy was equally dedicated to expanding the nonunion construction sector, a goal that the NCA and specialty contractor associations did not yet share in 1970-72. Later, however, when “the stampede-like growth of the open shop...rendered Garvin’s dream an idea whose time has come and gone,”⁶¹ the Roundtable’s intransigence seemed prescient.

⁵⁸“Roundtable Policy re Broadening Area Collective Bargaining in Construction” at 1-2 (Mar. 27, 1972), in CUAIR, CC Meeting, Mar. 17, 1972, attached to Minutes, and Minutes at 6, in SP, Box 5. The statement was also published in CUAIR *Report*, No. 72-4 at 1-2 (Apr. 11, 1972).

⁵⁹“Construction Users Roundtable Urges Area Bargaining—But Not Legislated Solution,” *CLR*, No. 872, June 14, 1972, at A-12, A-13, A-16.

⁶⁰CUAIR, CC, Minutes, Feb. 18, 1972, at 6, in BR, 1972: Vol. II-Minutes.

⁶¹Thomas Dailey, “Multiemployer Bargaining’s Demise,” *ENR*, Nov. 15, 1984, at 28 (Lexis) (vice president of Perini Corporation).