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# **Wars of Attrition**

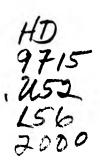
## Vietnam, the Business Roundtable, and the Decline of Construction Unions



**Second Revised Edition** 

Fănpihuà Press Iowa City 2000





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Suggested Library of Congress Cataloging Linder, Marc, 1946—

Wars of attrition: Vietnam, the Business Roundtable, and the decline of construction unions/by Marc Linder. 2nd ed., rev.

xix, 434 p. 23 cm.

Includes bibliographical references and index.

ISBN 0-9673899-5-X

- 1. Construction industry—U.S. 2. Industrial relations—U.S.
- 3. Construction unions—U.S. 4. Construction workers—U.S.
- 5. Employers' associations—U.S.

HD9715.U52L498 2000

338.4'7'6900973---dc21

Library of Congress Control Number: 00-093286

Publication of this edition was made possible in part by grants from the International Brotherhood of Electrical Workers; IBEW Local 948, Flint, MI; IBEW Local 58, Detroit, MI; and the Michigan Chapter of the National Electrical Contractors Association.



### The Nixon Administration's Wage Controls

"We may have killed the goose that laid the golden egg...."

On July 23, 1970, soon after he had succeeded George Shultz as the Secretary of Labor, James Hodgson prepared talking points for Nixon's meeting that day with the CICBC. He noted that the principal sensitive issue for the CICBC was wage controls: most employer representatives wanted them, whereas unions were "chilly" toward selective controls applied only to the construction industry. Whatever differences separated management and labor on this issue: "All realize the Administration opposes the controls concept." As if concluding that controls were a dead end, Hodgson stressed to Nixon that the administration had to double or triple the flow of manpower into construction in order to undercut the basis of the wage increases.<sup>2</sup>

Big business, however, preferred not to wait for the long-term effects of an increased supply of construction labor. At the October 1970 meeting of the elite Business Council, expressing concern that wage increases were exceeding productivity increases, corporate executives were "particularly concerned with what [Westinghouse board chairman Donald] Burnham called 'exorbitant' increases in the wages of construction workers. He said these wage increases spilled over into other areas of the economy." The president of Continental Can Company created a concrete image of the infection mechanism by reporting at the closed-door session that "plumbers, electricians and other construction union members who came into industrial plants to work were making \$2.70 to \$4 an hour more than the regular employees of the plant. That 'creates pressure' for wage increases in industry...."

A sense of an onrushing convergence of views was reinforced by the speech that John Dunlop gave to the AGC midyear board meeting on Oct. 14, 1970. Even Dunlop, known in his capacity as international union leaders' strongest supporter as "the Hardhats' Machiavelli," deemed wage increases in 1969-70 "outrageous."

<sup>&</sup>lt;sup>5</sup>Telephone interview with John T. Dunlop, Harvard University (Jan. 7, 1999).



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<sup>&</sup>lt;sup>1</sup>Haynes Johnson & Nick Kotz, *Unions* 131 (1972) (quoting Martin Ward, president of the Plumbers Union).

<sup>&</sup>lt;sup>2</sup>Secretary of Labor to Dwight Chapin (July 23, 1970), in NPMS, WHCF, SF, Ex FG 257 CICBC [1969-1970], Box 1, Folder 1 [1969-1970].

<sup>&</sup>lt;sup>3</sup>Eileen Shanahan, "Business Group Asks U.S. to Discourage Pay Rises," NYT, Oct. 18, 1970, at 1, col. 2, 54, col. 1.

<sup>&</sup>quot;John Dunlop and CISC Allay Feverish Collective Bargaining," ENR, July 6, 1972, at 25, 27.

He therefore announced that he had reluctantly concluded that an industry with almost a million employers lacked the capacity to control behavior at full employment; accordingly, national legislation would be required to restructure bargaining.<sup>6</sup> He proposed legislation to broaden the geographic scope of collective bargaining in order to combat the tendency of localized bargaining to encourage strikes and leap-frogging wages, intensify imbalance of bargaining power under full employment, limit mobility, and prevent local units from "having a proper perspective of national and regional interests." When the CUAIR Coordinating Committee discussed Dunlop's initiative a few weeks later, Bechtel's labor relations manager agreed that legislation was necessary because the private sector had proved unable to solve the problem.<sup>8</sup> And the next month Blough reported to the committee that Dunlop had told him that the ease with which striking workers could get other jobs was a cause of inflation that could be reduced by letting the NLRB structure bargaining units and national union presidents bring their constructive influence to bear on national settlement methods.<sup>9</sup>

In fact, a draft bill to broaden the geographic scope of collective bargaining in construction was circulating at this time in the Nixon administration. In transmitting the draft to the Secretary of Labor, the executive director of the CICBC, Michael Moskow, noted that Dunlop had stated that national contractors would go along with it if they deemed the geographic bargaining areas wide enough to serve their interests. The draft bill's congressional finding struck a note that resonated with employers: mobility in the industry had reached such an extent that "when a work stoppage occurs in one locality the parties have access to work opportunities in neighboring localities, thus reducing normal economic pressure for resolving their differences" and promoting high wage settlements. The collective bargaining commission that the draft would have established was empowered to broaden the scope of collective bargaining "to balance the power between the parties." Only one collective bargaining agreement would have been authorized in each geographic area, and strikes and lockouts during negotiations would have to have been area-wide. 10

<sup>&</sup>lt;sup>10</sup>Draft Bill to Broaden Scope of Collective Bargaining in Construction Industry and Create Collective Bargaining Commission, §§ 2(a), 5(d), 9(a), 10(a), in NACP, RG 174: General Records of the Labor Dept., Office of the Secretary, Records of Sec. James D. Hodgson, 1970-1972, 1971, Box No. 20: Boards, Folder: 1970-Commissions CICB (October). In early 1972 Blough circulated for comment to the members of the CUAIR Coordinating Committee a confidential copy of this bill (dated



<sup>&</sup>quot;Speech by Dr. John T. Dunlop on Restructuring Bargaining in the Construction Industry," *DLR*, No. 236, at E-1, E-2 (Dec. 7, 1970). The BCTD reported in November on Dunlop's "personal views," which were focused on overcoming fragmentation. "Dunlop Says Construction Bargaining 'Fragmented," 23 (11) *BCTB* (Nov. 1970).

<sup>&</sup>lt;sup>7</sup>"Dunlop Sketches Views on Machinery to Restructure Collective Bargaining," *CLR*, No. 786, Oct. 14, 1970, at A-9.

<sup>&</sup>lt;sup>8</sup>CUAIR, CC, Minutes, Nov. 4, 1970, at 5, in BR, 1970-Vol. II: Minutes.

<sup>&</sup>lt;sup>9</sup>CUAIR, CC, Minutes, Dec. 1, 1970, at 5, in BR, 1970-Vol. II: Minutes.

In the event, the administration never introduced such a bill and no such provisions were ever enacted.

Animated perhaps by the CEA's "Second Inflation Alert" focusing on the "huge" 22.1 percent increase in third-quarter first-year construction wage-bargaining settlements as a cause of unemployment among 324,000 workers, "Nixon's initiative toward the end of 1970 seemed to assume a more concrete form ready for codification. In explaining his administration's economic policy to restrain warrelated inflation to the annual meeting of the NAM on December 4, 1970, Nixon illustrated the wage side by reference to the construction industry, "in which one out of three negotiations has led to a strike" and "major construction wage settlements are more than double the national average for all manufacturing." He announced that "[u]nless the industry wants government to intervene in wage negotiations on Federal projects to protect the public interest," "the structure of collective bargaining must be changed." Specifically he called for the replacement of destabilizing craft-by-craft and city-by-city patterns by "more consolidated bargaining" of regional scope. 13

In connection with Nixon's NAM speech, the business press reported that a "formula for braking runaway construction wages by creating areawide bargaining units will almost certainly be the first Administration-sponsored labor bill to go before the new Congress. The bill's No. 1 position reflects the Nixon Administration's order of priorities. Slowing down the headlong pace of wage increases in the building trades is essential to curbing inflation, Administration spokesmen emphasize." Business Week reported that the bill's outlines were embodied in a report that Dunlop had submitted to the CICBC. Its key feature was the creation of a National Labor-Management Commission, which would have recommended, independently of the NLRB, the size of construction industry bargaining units; the point would have been to overcome the fragmentation that "limits both the employer's ability to resist local union demands and the international union's ability to influence local union decisions." The proposal's most radical provision would have barred contractors from operating in a certified bargaining area during a construction strike: "Such a bar would make it impossible for striking construction workers to find jobs with a competitor who has not been struck, a current practice that eases the pressure on the striking construction worker

<sup>&</sup>lt;sup>13</sup>"Remarks at the Annual Meeting of the National Association of Manufacturers," in Nixon, *Presidential Papers: 1970* at 1088, 1092.



Dec. 16, 1971), calling it the first draft of a new bill prepared by the DOL apparently as a substitute for Anderson's bill. Memorandum from Roger Blough to Members (Feb. 7, 1972), in BR, CCH: 1972.

<sup>11&</sup>quot; Second Inflation Alert'—A Report by the President's Council of Economic Advisers," *CLR*, No. 793, Dec. 2, 1970, at E-1, E-2. The construction wage data were based on a small number of settlements.

<sup>&</sup>lt;sup>12</sup>Michael Moskow, "New Initiatives in Public Policy for the Construction Industry," IRRA, *Proceedings of the Twenty-Fourth Annual Winter Meeting* 25-33 (1971).

while increasing it on his employer." Business Week noted that this section would give legal force to the efforts by the Roundtable to persuade large corporations voluntarily to close their construction projects during strikes in solidarity with construction employers.<sup>14</sup>

Such state intervention could have disadvantaged NCA members, which, as national firms, worked through local strikes, creating a clear conflict with local contractors, but would have been an effective means for aiding certain sectors of the industry by interdicting some of local unions' central defensive tools. That such a program also played into the hands of the national construction unions made its enactment more plausible. Nevertheless, *Business Week* reported, "few people connected with the industry appear to take the threats very seriously." Moreover, administration and industry sources stated that the proposals "would have, at most, only long-range impact on construction wages. They also note that Nixon would not do anything too drastic without the approval of the building trades because of their political clout." <sup>16</sup>

The press also reported at the time on a possible repeal of the Davis-Bacon Act, which since 1931 had provided for locally prevailing (generally union) wages to be paid by contractors operating under federal government construction contracts.<sup>17</sup> Local officials had been beseeching Nixon to suspend the law. In July, 1970, for example, the mayor of Kansas City had included such a request in a letter to the president explaining that after contractors had agreed to 137 percent wage

<sup>&</sup>lt;sup>17</sup>40 U.S.C. §§276a-276a-5; Calame, "Growing Inflation in Building Trades." See generally. D. Gujurati, "The Economics of the Davis-Bacon Act," 40 (3) JB 303-16 (July 1967); John Gould, Davis-Bacon Act: The Economics of Prevailing Wage Laws (1971). Amusingly, one of the most severe charges that antiunion critics leveled was: "Decreased morale arises when nonunion workmen who had been working on a Davis-Bacon job complete it and go back to working for a company at decreased pay rates." Armand Thieblot, The Davis-Bacon Act 86 (1975). Despite craft unions' traditional voluntarist or anti-statist stance, even before the Great Depression, William Hutcheson, the president of the Carpenters union, urged members to urge Congress to pass a prevailing wages law. United Brotherhood of Carpenters and Joiners of America, Proceedings of the Twenty-Second General Convention 61 (1928). Yet in 1936 he still opposed the AFL's call for a government mandated 30hour week. Louis Stark, "A.F. of L. Demands 30-Hour Week Law," NYT, Nov. 28, 1936, at 1, col. 6. See generally, George Higgins, "Voluntarism in Organized Labor in the United States, 1930-40" (Ph.D. diss., Catholic U., 1944); Michael Rogin, "Voluntarism: The Political Functions of an Antipolitical Doctrine," ILRR, 15 (4):521-35 (July 1962). Voluntarism rests on the principle that capital and not the state should be the major addressee of labor's demands "because legislation could affect the lives of men at work in a very few points—and those not vitally important for progressively improving conditions." Samuel Gompers, 1 Seventy Years of Life and Labor 210 (1925).



<sup>&</sup>lt;sup>14</sup> A Way to Fence In Construction Pay," BW, Dec. 5, 1970, at 53; see also Byron Calame, "Growing Inflation in Building Trades Is Under Scrutiny," WSJ, Dec. 7, 1970, at 2.

<sup>&</sup>lt;sup>15</sup>Michael Moscow, "The Wage-Price Dilemma in Construction," 117 Cong. Rec. 24,389 (1971). See also Calame, "Growing Inflation in Building Trades Is Under Scrutiny," WSJ, Dec. 7, 1970, at 2.

<sup>&</sup>lt;sup>16</sup> Building Trades Don't Scare Easily," BW, Dec. 12, 1970, at 15.

increases on government supported projects, laborers had struck for similar raises on private work.<sup>18</sup> Arthur Burns, the new chairman of the Federal Reserve Board, who favored an incomes policy, had urged Nixon to suspend the Davis-Bacon Act to "wave a big stick at the building trades unions to hold down their unconscionably inflationary wage settlements...." Nixon had included an announcement of this suspension in a draft of his NAM speech, but deleted it at the suggestion of George Shultz, Nixon's former Secretary of Labor and then director of the Bureau of the Budget, "who argued that antagonizing the hard-hat unions would be bad politics." <sup>19</sup>

That the administration's restraint was overdetermined was clear from a memo that Hodgson sent to Shultz at the end of 1970 on wage stabilization in construction: "Attempts to establish wage controls are doomed to ultimate failure. They work only in a period of unified national purpose...." Such objections did not mean that these measures would not have had capital-friendly effects, but merely that they were not effective short-term anti-inflation tools (since only wages were relevant from the perspective of wage cost-push inflation). If the objections were accurate, then the Nixon administration was possibly pursuing longer-term aims—otherwise the whole program would have to be dismissed as pure rhetoric.

Instead of introducing the Dunlop bill during the first months of 1971, the Nixon administration engaged in the maneuvering that led to creating the Construction Industry Stabilization Committee (CISC).<sup>22</sup> A hint of changes to come emerged in blunt comments by Labor Secretary Hodgson on January 8. His department may have had a "hands-off policy...as far as saying what wage increases are justified," but "I only say what is not justified and I am damn sure that the construction industry is not entitled to the wage increases it has been getting." Exactly how to end "the 'chaos'" in construction collective bargaining was, however, not easy to determine. Repeal of the Davis-Bacon Act would have little impact since private industry bargaining, which encompassed the vast bulk of construction work, set prevailing wages. One major reason that construction wages could "have gone beyond what is good for the nation, for the economy, for the industry itself" was that: "because of the small size of bargaining units...a

<sup>&</sup>lt;sup>22</sup>For an insider account, see Mills, "Construction Wage Stabilization" at 350-65.



<sup>&</sup>lt;sup>18</sup>Letter from Ilus Davis to Nixon (July 13, 1970), in NACP, RG 174: General Records of the Labor Dept., Office of the Secretary, Records of Sec. James D. Hodgson, 1970-1972, 1971, Box No. 21: Commissions-Construction, Folder: 1970-Commissions CICB (August).

<sup>&</sup>lt;sup>19</sup>Rowland Evans, Jr. & Robert Novak, Nixon in the White House: The Frustration of Power 370-71 (1971).

<sup>&</sup>lt;sup>20</sup>Memorandum from Hodgson to Shultz re Implementation of Construction Industry Wage-Stabilization Concept (12/31/71 [sic; must be 1970]), in NACP, RG 174: General Records of the Labor Dept., Office of the Secretary, Records of Sec. James D. Hodgson, Box No. 20: Boards, Folder: 1970-Commissions: CICBC (October).

<sup>&</sup>lt;sup>21</sup>Paul Samuelson, Economics 807 (8th ed. 1970).

construction worker can now go on strike in one town and then commute to a job in another town near by until the employer is forced to capitulate." But the kinds of union curbs that might have remedied this problem (such as statewide bargaining) would not be forthcoming from a Congress controlled by Democrats.<sup>23</sup> Exposed to such strike power—one insider observed that "the 'strike' during which the union's members are all at work" was "rather bizarre, but common" in construction<sup>24</sup>—no wonder that the Council of Construction Employers had urged creation of a national stabilization agreement including a no-strike pledge and arbitration.<sup>25</sup>

Despite Hodgson's admission that repealing the Davis-Bacon Act would serve little purpose, the suggested talking points that he prepared for Nixon's meeting on January 18 with the CICBC included the warning that if the parties failed to devise a voluntary plan to lower wage settlements, the administration would have to consider measures such as suspending the law.<sup>26</sup> At his meeting with the CICBC and other union and management officials, Nixon appealed to them to devise a plan within 30 days that would "seriously modify the wage-price spiral" in construction. Hodgson, who was also chairman of the CICBC, emphasized that Nixon considered the 15.7 percent construction wage increases during the first nine months of 1970 in tandem with an 11 percent unemployment rate a "crisis" requiring immediate action.<sup>27</sup> Later in January, Hogdson returned to the theme: "The continued high level of strikes and the continued high settlements have convinced us that there is something wrong and that the whole industry bargaining structure is in need of revision. The cries of anguish and indignation that we hear, both from inside and outside the industry, confirm this conviction."<sup>28</sup>

<sup>&</sup>lt;sup>28</sup>"Labor Secretary Hodgson Cautiously Optimistic over Prospects for Coming Year in Construction," CLR, No. 801, Jan. 27, 1971, at A-16, A-17.



<sup>&</sup>lt;sup>23</sup>Philip Shabecoff, "Hodgson Says President Seeks Curbs on Construction Wages," NYT, Jan. 9, 1971, at 12. In 1971, private construction accounted for 72.8 percent of the \$110.0 billion of value of new construction put in place; federally owned projects accounted for only 3.6 percent, and state and locally owned for the rest. Economic Report of the President tab. C-38 at 292 (1975). By 1977, projects directly covered by the Davis-Bacon Act accounted for only 4.3 percent; some of the remainder was indirectly covered. General Accounting Office, The Davis-Bacon Act Should Be Repealed 3 (HRD-79-18, 1979).

<sup>&</sup>lt;sup>24</sup>D. Quinn Mills, "Chapter 2: Construction," in *Collective Bargaining: Contemporary American Experience* II-42 (Gerald Somers ed. 1979).

<sup>&</sup>lt;sup>25</sup>"Nixon Makes Appeal to Building Industry on Wage-Price Spiral," WSJ, Jan. 19, 1971, at 8 (the CCE appeal was made in June 1970).

<sup>&</sup>lt;sup>26</sup>Memorandum from Hodgson for the President Re January 18, 1971 meeting with the CICBC (Jan. 16, 1971), in NACP, RG 174: General Records of the Labor Dept., Records of Sec. James D. Hodgson, 1970-1972, 1971, Box No. 94: Commissions, Folder: 1971-Commissions CICBC (Secretary's Working Papers).

<sup>&</sup>lt;sup>27</sup>"Nixon Makes Appeal to Building Industry on Wage-Price Spiral," WSJ, Jan. 19, 1971, at 8.

Within days of the January 18 meeting, the CICBC set up a working group to propose something like a stabilization board. Since Dunlop, the key member of the working group, had publicly endorsed adoption of the approach used by the 1961 Missile Site Construction Commission, of which he had also been a member, observers surmised that a similar approach would be worked out: unions and employers would agree to refrain from strikes and lockouts for a set period, during which they would try to reach a collectively bargained settlement at the local level. If they failed, a tripartite commission would propose its own settlement; even if the parties did reach a settlement on their own, the commission would still review it for its potential inflationary impact, and require further bargaining or offer its own settlement. In exchange for such a restriction of their bargaining power, unions reportedly sought two concessions: a "promise of no Federal threats to force the unions to speed up the acceptance of black and other minority group apprentices" and retention of the Davis-Bacon Act. For their part, contractors sought a conflicting measure—a modification of the Davis-Bacon Act so that prevailing wages reflected average (rather than the highest) contract settlements.<sup>29</sup>

Construction workers and their unions suffered a propagandistic set back at the end of January when the president of the United Automobile Workers, Leonard Woodcock, proposed the creation of a wage-price review board before which dominant unions and firms would have to justify wage and price increases. In this connection he observed that "there is no question that the wage increases

<sup>&</sup>lt;sup>29</sup>Philip Shabecoff, "Building Leaders Move to Control Pay-Price Spiral," NYT, Jan. 22, 1971, at 1, col. 5, at 15, col. 1-2. Later and throughout the remainder of the twentieth century employers pushed to weaken or repeal the Davis-Bacon Act. Although the Reagan administration introduced several regulatory changes, Congress failed to act. See generally, GAO, The Davis-Bacon Act Should Be Repealed (HRD-79-18, 1979); Center to Protect Workers' Rights, The War on Wage Protection: The Business Offensive (1979); Center to Protect Workers' Rights, The GAO on Davis-Bacon: A Fatally Flawed Study (1979); Building & Construction Trades Dept, AFL-CIO v. Donovan, 712 F.2d 611 (D.C. Cir. 1983); Building & Construction Trades Dept, AFL-CIO v. Martin, 961 F.2d 269 (D.C. Cir. 1992); Center to Protect Workers' Rights, The Davis-Bacon Act: A Response to the Cato Institute's Attack (n.d. [1993]); CUH, Oct. 1993, at 1 (urging repeal). In a masterpiece of ambiguity, the Roundtable stated that although repeal remained the primary objective, "this objective should not be misconstrued as an attempt to push back wages to inequitably low wages." BR, 2 Coming to Grips with Some Problems in the Construction Industry 25-26 (1978). To the extent that nonunionism has become the norm, union rates no longer prevail—especially since the Reagan administration promulgated a revised regulation that eliminated the rule in effect since 1935 under which the rate paid to 30 percent of the workers of a certain class in a certain area was defined as prevailing if no rate was paid to 50 percent; absent a 30 percent wage rate, a weighted average was used. Since 1983, if no rate is paid to 50 percent, the weighted average becomes the prevailing wage. 29 CFR § 1.2(a). Test surveys of construction wages that the BLS carried out in 1998 revealed that only 5 percent of construction workers in Tucson and 17 percent in Jacksonville, Florida were unionized. BLS, Tucson, AZ Wages and Benefits: Construction Industry Test Survey, April 1998, at 2 (Bull. 2510-2, 1998); BLS, Jacksonville, FL Wages and Benefits: Construction Industry Test Survey, April 1998, at 2 (Bull. 2510-1, 1998).



in the construction industry are excessive." Like the Westinghouse chairman, he supported the claim by reference to the fact that outside electricians working on projects in UAW plants sometimes received wages two or three dollars higher than UAW electricians, who often were more skilled.<sup>30</sup>

Nixon's hard line at the January 18th meeting was supposed to "give the union leaders, many of whom privately were agreeable to a stabilization program, the political cover to take some meaningful steps." However, because the BCTD was divided over a voluntary stabilization of wages, it preferred leaving it up to the administration to impose controls. At his February 17th news conference, Nixon, characterizing construction as "a sick industry" with 16 percent annual wage increases, stated that in the absence of a voluntary plan to restrain wages and prices, the federal government would take action. By this time it was clear that "[f]or many observers, particularly in the business sector, construction wages were the fuse on an already unstable labor market situation that posed the threat of a classic wage-push inflationary spiral." On February 23, less than a month after the first national conference of the Construction Action Council of the U.S. Chamber of Commerce focused on the need for repeal or suspension, Nixon issued a presidential proclamation suspending the Davis-Bacon Act in an effort to "weaken union bargaining positions and reduce wage increases."

<sup>&</sup>lt;sup>36</sup>Moskow, "Construction Industry Wage Controls During the Nixon Administration" at 186. D. Q. Mills, "Construction Wage Stabilization: A Historic Perspective," 11 (2) IR 350-65 at 352, 353 (Oct. 1972), reported that discussions on collective bargaining reform under the auspices of the CICBC "reached their culmination" at the AFL-CIO Executive Council's February 1971 meeting: "Draft documents were prepared embodying the concept of an Executive Order very similar" to the one that Nixon issued in March, "but with somewhat more stringent provisions...." The discussions revealed that "substantial government action was necessary" because "national leadership in the industry was incapable of applying effective restraints to local collective bargaining." Although "the stage was set for federal action to stabilize bargaining in construction through a tripartite board acting under federal law..., without prior notice to the industry leadership, the Administration" suspended the Davis-Bacon Act. Nine years later, days after Reagan's election, even the president of the NCA proposed urging the new administration, which had already declared that it would not repeal Davis-Bacon, to "use the threat of repeal to extract a concession from the building trades that we enter some sort of national



<sup>&</sup>lt;sup>30</sup>Philip Shabecoff, "A Wage-Price Review Board Is Recommended by Woodcock," NYT, Jan. 27, 1971, at 13, col. 1.

<sup>&</sup>lt;sup>31</sup>Michael Moskow, "Construction Industry Wage Controls During the Nixon Administration," IRRA, *Proc. of the Fiftieth Annual Meeting*, 1:182-90 at 186 (1998).

<sup>&</sup>lt;sup>32</sup> Building Unions Decline to Move on Nixon's Plea for a Wage-Price Plan," WSJ, Feb. 12, 1971, at 2.

<sup>&</sup>lt;sup>33</sup>"The President's News Conference of February 17, 1971," in Richard Nixon, *PPPUS:* 1971, at 158, 165 (1972).

<sup>&</sup>lt;sup>34</sup>Arnold Weber & Daniel Mitchell, *The Pay Board's Progress: Wage Controls in Phase II* 2 (1978).

<sup>&</sup>lt;sup>35</sup>"U.S. Chamber Conference Discusses Repeal or Suspension of Davis-Bacon," *CLR*, No. 802, Feb. 3, 1971, at A-17.

The sea change in construction employers' attitude toward government labor regulation was symbolized by the fact that just a few years earlier the high degree of employer organization had been regarded as the basis of employers' acceptance of Davis-Bacon as removing wages from competition on government projects.<sup>37</sup> In the meantime, however, "[d]espite the President's romance with the hard hats after the Cambodian venture, 'the mess in construction,' as Administration officials referred to it, was becoming increasingly painful."38 The presidential proclamation adduced the following interrelated elements as constituting the national emergency justifying suspension:

Construction industry collective bargaining settlements are excessive and show no signs of decelerating.

Increased unemployment and more frequent and longer work stoppages in the construction industry have accompanied the excessive and accelerating wage demands....

The excessive and accelerating wage settlements in the construction industry have affected collective bargaining in other industries, thus contributing to inflation in the overall economy.

This combination of factors in the construction industry has threatened the basic stability of the construction industry and thus the Nation's economy.

Construction industry employers and employee representatives have been unable voluntarily to agree upon any arrangement which would ameliorate these conditions.

The Federal Government is planning to expand its direct and financially-assisted construction, in part to reduce unemployment....

The Federal Government anticipates that a larger portion of total resources will be devoted to construction activity as the economy expands.

The Davis-Bacon Act...frequently require[s] contractors...to pay the high negotiated wage settlements...thereby sanctioning and spreading the high rates and thus inducing further acceleration contributing to the threat to the Nation's economy.<sup>39</sup>

In his accompanying statement, Nixon underscored that the fragmented bargaining structure "makes competition between local unions for higher wages particularly intense. It makes strikes on particular projects more likely since alternative work is often available nearby." To be sure, the president portrayed construction workers as the chief losers in the inflationary vicious cycle as the higher wages they sought to compensate for increased unemployment merely

<sup>&</sup>lt;sup>39</sup>Proclamation 4031, 36 Fed. Reg. 3457-58 (1971).



bargaining program to get some control over wages." "Wage Restraint: What Next?" ENR, Nov. 27, 1980, at 72 (quoting Maurice Mosier).

<sup>&</sup>lt;sup>37</sup>David Johnson, "Prevailing Wage Law," Labor, Management and Social Policy 231-62 at 233 (Gerald Somers ed., 1963).

<sup>&</sup>lt;sup>38</sup>Harry Lenhart, Jr., "Construction Wage-Stabilization Efforts Provide Tests for Nixon's Phase 2," 3 NJ 2209-23 at 2215 (Nov. 6, 1971).

slowed down building, thus disemploying even more workers.<sup>40</sup>

Generally construction firm associations were dissatisfied, calling the suspension inadequate and ineffective.<sup>41</sup> In particular the AGC, which preferred a wage freeze rolling construction wages back to those in place at the end of 1970,42 labelled the suspension, which the Nixon administration hoped would impel unions and employers to develop a stabilization plan voluntarily, "disappointing, inadequate and totally ineffective in bringing stability to the construction industry."43 But the AGC did avail itself of what it perceived as heightened public awareness of construction inflation, which the Davis-Bacon Act suspension had intensified, to propose a Construction Labor Relations Act. The same annual convention in early March 1971 that acted to "expand its efforts to help contractors organize and maintain open shop operations," proposed removing the construction industry from the NLRA and placing it under a new federal statute that would have repealed Davis-Bacon outright, prohibited exclusive hiring halls, required multitrade and multiemployer bargaining, eliminated restrictive practices, and precluded union rank and file ratification of labor contracts.<sup>44</sup> The AGC's initiative was, however, overshadowed by the construction wage stabilization regime that Nixon announced only a few days later.45

The limited impact of the suspension of the Davis-Bacon Act was signalled the next day by the Secretary of Transportation, who observed that in large metropolitan areas only few nonunion contractors were large enough to bid on federal projects in any event. John Volpe also bluntly warned that if the suspension failed to exert the requisite "psychological impact," "wage-price controls would

<sup>&</sup>lt;sup>45</sup> A Labor Bill for Construction," *ENR*, Mar. 18, 1971, at 200 (editorial); "The Trouble with Labor is Management," *ENR*, Feb. 24, 1972, at 64 (editorial). No such bill appears to have been introduced in Congress in 1971.



<sup>&</sup>lt;sup>40</sup> Statement on Suspending Davis-Bacon Act Provisions for Federal Construction Projects," in Nixon, *PPPUS: 1971*, at 199, 200-201.

<sup>&</sup>lt;sup>41</sup>"Davis-Bacon Suspension Draws Mixed Reactions from Unions and Contractors Around the Country," *CLR*, No. 805, Feb. 24, 1971, at AA-7. Mills recognized that the Nixon administration "apparently believed its suspension would weaken the building trades unions and result in lower wage increases in 1971 negotiations," but stated categorically that "no national construction employer or union leader believed that suspension...could have more than a marginal effect on 1971 negotiations. Quite the contrary, employer representatives stated that the suspension would be of no value in the most organized areas, especially the large cities of the North and West...." Mills, "Construction Wage Stabilization" at 353.

<sup>&</sup>lt;sup>42</sup>"AGC Prods Nixon and Paves Way to Industry Labor Reform," *ENR*, Mar. 18, 1971, at 55; "AGC Chief Healy Will Press Labor on Its 'Fair Day's Work' Pledge," *ENR*, Mar. 18, 1971, at 64, 65.

<sup>&</sup>lt;sup>43</sup>"President Takes First Firm Step to Stop Building Costs Escalation," WSJ, Feb. 24, 1971, at 3.

<sup>44&</sup>quot;AGC Prods Nixon and Paves Way to Industry Labor Reform," ENR, Mar. 18, 1971, at 55.

have to be imposed...."<sup>46</sup> The Roundtable vigorously applauded the suspension, calling it "politically courageous."<sup>47</sup>

Following suspension, Nixon found himself "picketed by angry groups of construction workers" around the country. "Suspension of Davis-Bacon," reported the *Wall Street Journal*, "seemed to have undone all the administration's careful cultivation of the blue collar vote." While workers expressed a "bewildered and resentful feeling of betrayal," Peter Brennan, president of the Building and Construction Trades Council in New York, erstwhile Nixon favorite, and soon to become his Secretary of Labor, called the suspension outright "union busting." The NCA and AGC believed that suspension would have little impact on bargaining during 1971; both major employers organizations "expressed bitter disappointment over Nixon's refusal to resort to controls to halt the wage spiral." 50

A few days after the suspension of Davis-Bacon, Carl Madden, chief economist of the Chamber of Commerce, addressed the annual meeting of the ABC. With great rhetorical gusto he lambasted the "labor anarchy" threatening to break out of the construction industry and to engulf the entire economy and society: "The wage push in building amounts to an unabashed and unique giant consumer robbery. Recently, one State Building Trades president said, 'There is no reason why a union man should not be earning \$30,000 a year. ... If Ralph Nader and his co-workers...really want to protect consumers from exploitation, they could do no better than train their big guns on the wage monopoly in our nation's biggest industry." Distraught by the unaccustomed experience of being on the short end of the labor market's supply-demand lever "artificially created" by unions, the Chamber official, citing Heath Larry, the vice chairman of U.S. Steel, characterized the issue as "whether a democracy predicated upon a free market economy, can really cope with the problem.' The problem of skyrocketing construction settlements is incredible; it is pulling settlements sought in other industries upwards like a magnet...."51

Having succeeded in gaining attention for the "crisis" in construction,<sup>52</sup> one

<sup>&</sup>lt;sup>52</sup>A Nixon cabinet member offered this explanation to the Roundtable as to why Nixon restored the law after a month. CUAIR, Members Meeting, June 3, 1971, Minutes at 20. Secretary



<sup>&</sup>lt;sup>46</sup>"Volpe Warns Firms, Unions of Controls Unless They Agree to Curb Building Costs," WSJ, Feb. 25, 1971, at 10, col. 1.

<sup>&</sup>lt;sup>47</sup>CUAIR *Report*, May 28, 1971, at 2 (Blough); CUAIR, Members Meeting, June 3, 1971, Minutes at 8, 12, in SP, Box 5.

<sup>&</sup>lt;sup>48</sup>John Pierson, "Wage-Price Curbs for Building Industry Are Nixon Victory, But Impact Is Unclear," WSJ, Mar. 30, 1971, at 3, col. 1, at 2.

<sup>&</sup>lt;sup>49</sup>Robert Tomasson, "Nixon Now Target of U.S. Hard Hats," NYT, Mar. 17, 1971, sect. 1, at 18, col. 1.

<sup>&</sup>lt;sup>50</sup> The Hard Hats Are Talking Tougher," BW, Mar. 13, 1971, at 105.

<sup>&</sup>lt;sup>51</sup>Carl Madden, "Construction Wages: The Great Consumer Robbery," *CLR*, No. 808, Mar. 17, 1971, at E-1, E-2.

month after suspending the Davis-Bacon Act, Nixon revoked his suspension<sup>53</sup> on the same day (March 29) that he issued Executive Order 11588 establishing the CISC. The statutory warrant for the president's creation of the CISC was the Economic Stabilization Act of 1970, which the Democratic Congress had enacted the previous August as an amendment to the Korean War-era Defense Production Act of 1950—more to embarrass the Nixon administration than in the expectation that it would be implemented.<sup>54</sup> It authorized the president to issue orders and regulations that "he may deem appropriate to stabilize prices, rents, wages, and salaries at levels not less than those prevailing on May 25, 1970," and empowered him to provide for "such adjustments as may be necessary to prevent gross inequities."<sup>55</sup>

The executive order recited that suspension of the Davis-Bacon Act had induced "national leaders of labor and management" to agree to "participate with the Government in fair measures to achieve greater wage and price stability," but that they had been "unable to agree on any voluntary arrangement." Union leaders, according to the Wall Street Journal, were prepared to submit to the controls voluntarily, "but wanted government pressure to convince their rank-and-file." Indeed, six weeks earlier The New York Times had reported that the national construction union officers had "made it clear that they could not impose a wage freeze on their own members even if they wanted to, since their unions are largely decentralized...." They were, in effect, telling the Nixon administration that it "must impose any solution on the construction industry...." Accordingly, "[t]he real question," the Times editorialized a few days after Nixon had issued his executive order, "is still whether the local unions, long accustomed to grabbing everything in reach, can be persuaded to moderate their appetite," while other wages and prices

<sup>&</sup>lt;sup>58</sup>Philip Shabecoff, "Building Unions Expect a Freeze on Pay and Prices," *NYT*, Feb. 16, 1971, at 1, col. 1, at 49, col. 1. For further assertions by national union leaders that "their members...would not allow them to" accept wage controls voluntarily, see Philip Shabecoff, "Nixon Expected to Order Building Wage-Price Curb," *NYT*, Mar. 27, 1971, at 1, col. 1.



of Labor Hodgson told Nixon that the CISC's successes in reducing wage increases and strikes "testify to your wisdom in suspending the Davis-Bacon Act. Without this action the parties would never have given the subject the necessary attention." Hodgson to Nixon (n.d.), in NPMS, WHCF, SF Ex FG 315, Box 1, Folder 8: [Ex] FG 315, CISC [1971-1972].

<sup>&</sup>lt;sup>53</sup>Proclamation 4040, 36 Fed. Reg. 6335 (1971).

<sup>&</sup>lt;sup>54</sup>Arnold Weber, In Pursuit of Price Stability: The Wage-Price Freeze of 1971, at 5 (1973).

<sup>&</sup>lt;sup>55</sup>Economic Stabilization Act of 1970, Pub. L. No. 91-379, § 202, 84 Stat. 796, 799-800 (1970).

<sup>&</sup>lt;sup>56</sup>EO 11588, 36 Fed. Reg. 6339 (1971). For a detailed description of the CISC's initial operations, see Lenhart, "Construction Wage-Stabilization Efforts."

<sup>&</sup>lt;sup>57</sup>John Pierson, "Wage-Price Curbs for Building Industry Are Nixon Victory, But Impact Is Unclear," WSJ, Mar. 30, 1971, at 3, col. 1.

remain uncontrolled and "living costs continue to soar." In the event, the CISC gave national union presidents "considerably more influence" over locals. 60

This power struggle and divergence of interests between national and local unions were not new. Going back to the nineteenth century, the building trades unions' "peculiar political organization...differ[ed] from practically all other American trade unions in the small degree to which centralization of function in the national union...developed." The national unions' weakness and inability to control local unions were rooted "in the method used to enforce their policies on the employers"—namely, the joint closed shop locally organized by city building trades councils.<sup>61</sup> Immediately following World War II, too, construction union leaders, according to Dunlop, had shared building employers' wish "to prevent construction wage rates from exploding.... [B]ut the absence of all wage controls would make it almost impossible to hold local unions in line who were in a strong bargaining position to extract very substantial increases from their local contractors." National union leaders were motivated not by "altruism," but by "attention to longer run selfinterest. This self-interest could more easily be achieved with the sanction of government controls than in its absence when local unions would be most difficult to control."62

Nixon's order provided that "Associations of contractors and national and international unions shall jointly establish craft dispute boards...to determine whether wages and salaries are acceptable." The standard of acceptability was "adjustments...normally considered supportable by productivity improvement and cost of living trends, but not in excess of the average of the median increases in wages and benefits...negotiated in major construction settlements in the period 1961 to 1968." The executive order also permitted the CISC to consider "[e]quity adjustments...to restore traditional relationships among crafts in a single locality and within the same craft in surrounding localities." These boards were then required to inform the tripartite (union-employer-public) CISC of all their actions. Implementation of any wage increase before the board and/or the committee approved it was a violation of the executive order. If the board or the CISC found a wage increase unacceptable, the Secretary of Labor and the states were prohibited from taking into consideration any such excess increase in making wage

<sup>&</sup>lt;sup>62</sup>John Dunlop & Arthur Hill, The Wage Adjustment Board: Wartime Stabilization in the Building and Construction Industry 43 (1950).



<sup>&</sup>lt;sup>59</sup> Rocky Road to Pay Stability," NYT, Apr. 2, 1971, at 38, col. 1 (editorial). See also A. H. Raskin, "Construction: Controls of a Sort for a Runaway Industry," NYT, Apr. 4, 1971, sect. 4, at 2, col. 4.

<sup>60&</sup>quot; John Dunlop and CISC Allay Feverish Collective Bargaining" at 25.

<sup>&</sup>lt;sup>61</sup>George Barnett, "The Causes of Jurisdictional Disputes in American Trade Unions," 9 (4) *HBR* 400-408 at 404-405 (Apr. 1931).

determinations under Davis-Bacon or similar federal or state statutes.<sup>63</sup> This prohibition, by effectively freezing the existing Davis-Bacon wage rate for the craft and locality in question, permitted nonunion contractors to pay lower wages on government projects.<sup>64</sup>

Tying wage increases to productivity increases presupposed, as do all incomes policies, that wage workers were willing to "accept that the existing division of wealth and income derived from it was basically fair." Such acquiescence was tantamount to acknowledgment by the union movement of a overriding community of interest between labor and capital transcending conjunctural disputes. Yet as one of the CISC managers noted later, the reason that the private sector in the United States did not implement wage-price controls without government intervention was precisely the lack of labor-management cohesion or trust necessary to enforce such stabilization. 67

Such lack of trust vis-à-vis employers and government regulators soon seemed fully justified. After the CISC had been busy for weeks stabilizing wages, the Nixon administration was still only "slowly...preparing to place some restraints on construction prices and on the compensation received by management in the industry." Even after unions complained about this blatant inequity, the Wall Street Journal reported: "Some of those involved in carrying out the order have conceded that the restraints to be applied to management probably would be tough enough only to ensure continued union participation in the overall scheme." When the

<sup>&</sup>lt;sup>68</sup>Byron Calame, "New Controls on Building Industry Prices, Management Pay Readied by



<sup>63</sup>EO 11588, §§ 1, 2, 3(a), 4(c), 5(a), 6(a), 6(b), 36 Fed. Reg. at 6339-41. Approval by a board of wage increases had to be unanimous. 36 Fed. Reg. 19580, 19582 (1971) (to be codified at 29 C.F.R. §2001.42(a)). When Nixon issued another executive order in October to create the machinery to administer Phase II of the general wage and price stabilization program that he had put into effect in August, he brought the CISC within the framework of the new regime; this order also repealed § 6 of EO 11588, which contained the guidelines for wage increases. EO 11627, § 14, 36 Fed. Reg. 20139, 20144 (1971). The NCA wrote to Nixon urging not only that the NCA be represented on the CISC (which it was), but that John R. Van de Water be considered for chairman and John Garvin for one of the public members. Letter from J. R. Fluor to Richard Nixon (Apr. 6, 1974). in NPMS, WHCF, SF Ex FG 315, Box 1, Folder 8: [Ex] FG 315 CISC [1971-1972]. Van de Water, a management consultant who advised employers on how to resist unionization, became NLRB chairman under Reagan. Gross, *Broken Promises* at 249-50. For a list of CISC members and alternates, see Lenhart, "Construction Wage-Stabilization Efforts" at 2210.

<sup>&</sup>lt;sup>64</sup>John Pierson, "Wage-Price Curbs for Building Industry Are Nixon Victory, But Impact Is Unclear," WSJ, Mar. 30, 1971, at 3, col. 1.

<sup>&</sup>lt;sup>65</sup>Andrew Shonfield, Modern Capitalism: The Changing Balance of Public and Private Power 217 (1969 [1965]).

<sup>&</sup>lt;sup>66</sup>Leo Panitch, Social Democracy and Industrial Militancy: The Labour Party, the Trade Unions and Incomes Policy, 1945-1974, at 3-4 (1976).

<sup>&</sup>lt;sup>67</sup>Daniel Quinn Mills, Government, Labor, and Inflation: Wage Stabilization in the United States 90-91 (1975).

Interagency Committee on Construction finally proposed regulations at the end of June, the *Journal* observed that they seemed to "Be Weak on Policing" because they "[f]orced the buyers of private construction to take legal action on their own to make contractors pass along any savings resulting from the stabilization committee's disapproval of inflationary union wage settlements."<sup>69</sup>

Employer reaction was mixed. The AGC "completely and wholeheartedly" supported the initiative, although it would have preferred "a stronger measure such as a wage-price freeze...." Big business industrial users, however, had been dissatisfied with Nixon's approach even before he announced it. In February the CUAIR Coordinating Committee perceived great danger that government-imposed controls might spread to other industries. In March, "[w]hen there were strong indications that the CISC would be formed and blessed by the Nixon administration, opposition...developed in management quarters outside the construction industry. This opposition was expressed most vocally by Roger M. Blough...." The CUAIR leader "met with President Nixon to express his concern over establishing a wage stabilization agency for the construction industry that ceded authority to the parties to the problem," but "was unsuccessful in dissuading Nixon...." All Blough got for his troubles was a "Dear Roger" letter from the president assuring him that the administration had not become complacent about inflation.

Only a few weeks after the CISC's creation, *The New York Times* found "near unanimity" among construction workers that the Nixon administration's criterion limiting noninflationary wage increases to 6 percent (the average increase in union contract wages and benefits between 1961 and 1968) was "was unfair and unworkable and would be resisted." Both Labor Secretary Hodgson and CISC chairman Dunlop declared that Executive Order 11588 did not impose a fixed ceiling on negotiated wage increases, which would all have to be evaluated individually. Rather, the CISC's objectives were to moderate wage increases below the average 18 percent for the first year of contracts recorded in 1970 and to reduce

<sup>&</sup>lt;sup>74</sup>"Construction Men Seem Confused on Wage Order," NYT, May 4, 1971, at 26, col. 3.



Nixon Panel," WSJ, June 16, 1971, at 6, col. 3.

<sup>&</sup>lt;sup>69</sup> Romney Panel Proposes Curbs on Construction Prices and Bosses' Pay," WSJ, June 28, 1971, at 3, col. 2. Two months later, after the general wage-price freeze had gone into effect, the committee had still not implemented regulations. Byron Calame, "Construction-Industry Panel May Be Model for Stabilizing Pay, Prices After Nov. 12," WSJ, Aug. 18, 1971, at 30, col. 1.

<sup>&</sup>lt;sup>70</sup>Pierson, "Wage-Price Curbs for Building Industry."

<sup>&</sup>lt;sup>71</sup>CUAIR, CC, Minutes, Feb. 16, 1971, at 4, in BR, 1971-Vol. II: Minutes.

<sup>&</sup>lt;sup>72</sup>Weber & Mitchell, *The Pay Board's Progress* at 23. The authors, who were, respectively, a public member and chief economist of the Nixon Pay Board, offered no source to document this meeting.

<sup>&</sup>lt;sup>73</sup>Letter from Richard Nixon to Roger [Blough] (June 15, 1971), in NPMS, WHCF, SF Ex FG 315, Box 1, Folder 8: [Ex] FG 315 CISC [1971-1972].

the incidence of strikes from one-third of all construction negotiations to 5 to 10 percent.<sup>75</sup> Hodgson stated that it would be impossible until 1973 at the earliest to hold wage increases down to 6 percent. He characterized the media's exclusive focus on that criterion as "'distorting'" because it neglected the other guideline—applying equity to preserve or restore traditional relationships between wages in various construction unions.<sup>76</sup>

Initially, big business did not uniformly judge the CISC a success. As early as April, the chairman and CEO of General Electric complained to Nixon that equity adjustments could lead to a continual ratcheting up of wages. Thinking of the impact on his own company's profits, Fred Borch noted that in renegotiating all of its major metal agreements that year, GE would have little chance of achieving reasonable settlements "if 'outsized' annual increases in construction bear an apparent federal stamp of approval."77 In June, the chairman and CEO of du Pont wrote to the Cabinet Committee on Construction, complaining about the CISC decision involving painters in Little Rock. Charles B. McCoy asserted that the decision brought to a halt meaningful bargaining by unions "while they pick new high targets for 'equity judgments.'"78 In his sharp-tongued reply, Herbert Stein, a member and soon to become chairman of the CEA, informed McCoy that he had thought that the CISC's purpose was precisely to halt the outcome of the "meaningful collective bargaining' that we had been getting." He then lamented that in response to businessmen's urging of a cogent incomes policy without controls—the administration should tell unions what was right—it had created the CISC and "we've had nothing but complaints about it from businessmen ever since." Finally Stein asked rhetorically whether businessmen thought that the government could set up a voluntary or involuntary wage control system without

<sup>&</sup>lt;sup>78</sup>McCoy to Cabinet Committee on Construction (June 21, 1971), in NPMS, WHCF, SF, EX FG 315, Box 1, Folder 8: [EX] FG 315, CISC [1971-1972].



<sup>&</sup>lt;sup>75</sup>"Stabilization Order Sets No Fixed Limits on Negotiated Boosts, Dunlop and Hodgson Assert," CLR, No. 817, May 19, 1971, at AA-1, AA-2. That same day Congress amended the Economic Stabilization Act to prohibit the president from exercising his authority "with respect to a particular industry or segment of the economy unless the President determines, after taking into account the seasonal nature of employment, the rate of employment or underemployment, and other mitigating factors, that prices or wages in that industry or segment of the economy have increased at a rate which is disproportionate to the rate at which prices or wages have increased in the economy generally." Act of May 18, 1971, Pub. L. No. 92-15, § 3(a)(2), 85 Stat. 38 (1971).

<sup>&</sup>lt;sup>76</sup> 'Hodgson Says Construction Pay Curbs Are Working," NYT, May 18, 1971, at 78, col. 3-6.

<sup>&</sup>lt;sup>77</sup>Letter from Fred Borch to Richard Nixon (Apr. 13, 1971), in NACP, RG 174: General Records of Labor Dept., Office of the Secretary, Records of Secretary James D. Hodgson, 1970-72, 1971, Box No. 105: Committees to Interdepartmental (Miscellaneous to Construction Industry Stabilization), Folder: 1971-Committee: Construction Industry Stabilization (June-). Secretary Hodgson's reply of June 14, 1971, failed to engage Borch's criticisms. *Id*.

union participation.<sup>79</sup> The fact that du Pont, a key Roundtable member and pioneer in "patronizing open shop contractors and loudly espousing their virtues,"<sup>80</sup> was at odds with the Nixon administration over so central an element of wage controls as the cooptation of unions reveals the limits of capital's capacity for implementing its agenda. The president of the NCA, too, conveyed to Nixon his serious concern about the slow pace of the wage stabilization program especially in light of its request earlier in the year for an outright wage and profit freeze.<sup>81</sup> Blough reported to the members of the Coordinating Committee in September 1971 that the executive order establishing the CISC contained nothing that attempted to cure the industry's chronic problems.<sup>82</sup>

In the event, the CISC took credit for having reduced the average increase in settlements to 11 percent in 1971 and the number of strikes by two-thirds. First-year wage increases in major union settlements declined from 17.6 percent in 1970 to 12.6 percent in 1971, 6.9 percent in 1972, and 5.2 percent in 1973. In the wake of general wage and price controls introduced by Nixon on August 15, 1971, convergence between construction and the rest of the economy was reflected in the corresponding increases for manufacturing—8.1, 10.9, 6.6, and 5.9 percent. Similarly, life-of-contract wage increases in construction amounted to 14.9, 10.8, 6.0, and 5.2 percent in 1970, 1971, 1972, and 1973, respectively; in manufacturing the corresponding increases were 6.0, 7.3, 5.6, and 4.9 percent. By 1972, collectively bargained wage increases in construction had fallen below those in the rest of the economy. This convergence may have defused complaints by industrial

<sup>\*\*</sup>Weber & Mitchell, *The Pay Board's Progress*, tab. 10-11 at 302. See also Clark Ross, "The Construction Wage Stabilization Program," 17 *IR* 308-14 (1978). The *Wall Street Journal* nevertheless complained editorially: "Wages aren't going up quite as fast as they were before the committee began business, but an observer has to look closely to see the difference." "Stability in



<sup>&</sup>lt;sup>79</sup>Herbert Stein to C.B. McCoy (June 25, 1971), in NPMS, WHCF, SF, EX FG 315, Box 1, Folder 8: [EX] FG 315, CISC [1971-1972].

<sup>&</sup>lt;sup>80</sup> Man of the Year: H. Edgar Lore: Moving an Industry Toward Unity," ENR, Feb. 15, 1979, at 34-40 at 38.

<sup>&</sup>lt;sup>81</sup>Letter from Benjamin Forst to Richard Nixon (June 22, 1971), in NPMS, WHCF, SF Ex FG 315, Box 1, Folder 8: [Ex] FG 315 CISC [1971-1972].

<sup>&</sup>lt;sup>82</sup>Memorandum from Roger Blough to Members (Sept. 20, 1971), in BR, CCH: 1971.

<sup>83&</sup>quot;CISC Public Members Assert Construction Wage Increases Down Due to Stabilization Committee," CLR, No. 849, Jan. 5, 1972, at A-21. The CISC's mission was both easier and more complicated than that of its counterparts during World War II and the Korean War because wage controls in 1971 were imposed "in the aftermath of a construction boom (not prior to the expansion), in the context of a very rapid wage inflation (not prior to its development), in a period of falling demand and loosening labor markets (rather than the opposite), and in the context of a very badly distorted wage structure." Mills, "Construction Wage Stabilization" at 355-56.

<sup>\*\*</sup>Oversight on Economic Stabilization: Hearings Before the Subcommittee on Production and Stabilization of the Senate Committee on Banking, Housing and Urban Affairs, 93d Cong., 2d Sess. 466 (1974) (statement of John Dunlop).

unions that the CISC was allowing construction workers larger wage increases than the Pay Board was authorizing for manufacturing workers. Industrial union leaders charged that such discrimination was a payback for construction unions' support for the Republican party.<sup>86</sup>

Because international union presidents were appointed to the craft boards, the latter were regarded as "a device that will give the general presidents of the building trades unions more leverage over their locals."87 Indeed, this "long-sought control over rebellious local building-trades barons," coupled with a warning that the union leaders, during the post-freeze Phase II after November 1971, "would be thrown to the mercy of the less sympathetic Nixon Pay Board if they didn't cooperate," was the chief means by which Dunlop succeeded in inducing them to acquiesce in the scaled-back wage increases.<sup>88</sup> By mid-1972, Business Week could report that "the building-trades leadership has gone on an offensive against high wage demands and restrictive work practices. The controls program has given the union leaders a clout they did not have before. They can now insist on a moderation that they consider necessary for the welfare of the industry—and for workers' jobs...."89 The industry's leading magazine, ENR, rhapsodized that a "fantastic aspect of CISC is hearing a top AFL-CIO official close to the workings of CISC openly boast of the way it has been knocking down excessive demands of locals...."

As a device designed to empower the national union bureaucracies to prevent workers and their local unions from continuing to secure above-average wage increases, the CISC functioned as the paradigm of an "incomes policy to thwart or reverse episodes of worker militancy and, in so doing, to reduce real wages...." Pursuit of a policy violative of "the traditional trade union objective of advancing the real incomes of members" was acceptable to national union officials only by virtue of a "quid pro quo" in the form of "measures of institutional protection designed to compensate unions for the loss of support of their members

<sup>&</sup>lt;sup>90</sup> John Dunlop and CISC Allay Feverish Collective Bargaining," *ENR*, July 6, 1972, at 25, 27.



Construction," WSJ, Dec. 6, 1971, at 12, col. 1 at 2.

<sup>\*\*</sup>Berry Flint, "Big Construction Raises Backed by Panel in Secret," NYT, Jan. 28, 1972, at 15, col. 1; Philip Shabecoff, "Pay Unit Reports Accord on Construction Wages," NYT, Jan. 29, 1972, at 17, col. 1; "Construction Panel Told to Give Data," NYT, Feb. 29, 1972, at 15, col. 1; "Abel Heats Up an Ancient Union Feud," BW, Mar. 11, 1972, at 106. Philip Ross, "The Influence of the Construction Unions on the Wage-Price Freeze," in Negotiation-Arbitration '72, at 67-74 (Luke Power et al. eds., 1972), argued that the CISC was merely window dressing.

<sup>&</sup>lt;sup>87</sup>Lenhart, "Construction Wage-Stabilization Efforts" at 2223.

<sup>&</sup>lt;sup>88</sup>Byron Calame & James Gannon, "John Dunlop Is Likely to Stress Pay Control, Back Room Bargaining," WSJ, Jan. 15, 1973, at 1, col. 6, at 19, col. 2.

Row New Ideas Shake Building Trades," BW, May 13, 1972, at 124.

with increased organization authority...."91

Despite the CISC's success in slashing construction wage increases, some free-market economists opposed the CISC's operation. For example, Hendrik Houthakker, who had resigned as a member of Nixon's CEA in July 1971, called the "whole organization...just an extension of the unions.... All these labor arbitrators are aligned with the unions...." Consequently, the CISC accepted as a given the structure that Houthakker saw as producing the "inflationary wage settlements"—namely, the lack of free entry into the unions, which held back the labor supply. 92

In the period after the introduction of wage controls the rate of increase of nominal wages slowed down; in that sense the intervention into construction wages could be interpreted as a trial balloon since the post-August 15, 1971 general wage controls produced a similar effect.<sup>93</sup> After that date the government considered using the CISC—which continued in force<sup>94</sup>—as a model for other industries, but

<sup>™</sup>EO No. 11627, § 14 (Oct. 15, 1971); "Stabilization Committee Remains in Business," CLR, No. 830, Aug. 18, 1971, at AA-1. The Pay Board authorized the CISC to administer Pay Board policies by amended order No. 2, which, inter alia, required the CISC to apply its policy on economic adjustments to the money value of changes in work rules. CUAIR Report, Jan. 28, 1972; "CISC, Pay Board Reach Accord on 'Substantive Policies," CLR, No. 853, Feb. 2, 1972, at AA-1. Publication was delayed at the CISC's request until the Pay Board published it unilaterally. 37 Fed. Reg. 8140-41 (1972); Arnold Weber & Daniel Mitchell, The Pay Board's Progress: Wage Controls in Phase II at 228 n.22 (1978). On the antagonistic relationship between the two entities, see id. at 226-32. Virgil Day of the Roundtable was one of three Pay Board representatives on the joint subcommittee



<sup>&</sup>lt;sup>91</sup>Robert Flanagan, David Soskice, & Lloyd Ulman, *Unionism, Economic Stabilization, and Incomes Policies: European Experience* 37 (1983).

<sup>92</sup>Lenhart, "Construction Wage-Stabilization Efforts" at 2222.

<sup>&</sup>lt;sup>93</sup>Mills, "Construction Wage Stabilization" at 355-56; Philip Shabecoff, "Hodgson Says President Seeks Curbs on Construction Wages," NYT, Jan. 9, 1971, at 12; "Nixon Makes Appeal to Building Industry on Wage-Price Spiral," WSJ, Jan. 19, 1971, at 8; "Building Unions Decline to Move on Nixon's Plea for a Wage-Price Plan," WSJ, Feb. 12, 1971, at 2;"President Takes First Firm Step to Stop Building Costs Escalation," WSJ, Feb. 24, 1971, at 3; "Volpe Warns Firms, Unions of Controls Unless They Agree to Curb Building Costs," WSJ, Feb. 25, 1971, at 10; Philip Shabecoff, "Nixon Expected to Order Building Wage-Price Curb," NYT, Mar. 27, 1971, at 1, col. 1-2; "A Destructive Misunderstanding," WSJ, Mar. 25, 1971, at 8, col. 1 (editorial); "Construction Men Seem Confused by Wage Order," NYT, May 4, 1971, at 26, col. 3; "First Approval of Building Industry Pay Settlement Is Given by Wage-Price Panel," WSJ, Apr. 9, 1971, at 2, col. 3; "Hodgson Says Construction Pay Curbs Are Working," NYT, May 18, 1971, at 78, col. 3; Byron Calame, "New Controls on Building Industry Prices, Management Pay Readied by Nixon Panel," WSJ, June 16, 1971, at 6, col. 3; "Construction Pay Panel Refuses to Sanction 31.6% Plumbers Boost," WSJ, June 24, 1971, at 15, col. 6; "Romney Panel Proposes Curbs on Construction Prices and Bosses' Pay," WSJ, June 28, 1971, at 3, col. 2; Elliot Carlson, "Panel nears Pay Stabilizing Breakthrough; Philadelphia Carpenters Average 11% Raise," WSJ, July 9, 1971, at 3, col. 2; "Stability in Construction," WSJ, Dec. 6, 1971, at 12, col. 1 (editorial); "U.S. Bid to Stabilize Construction Wages Menaced by Dispute over Deferred Wages," WSJ, May 5, 1971, at 3, col. 2. On the operation of the controls, see Economic Report of the President ch. 2 (1973).

### fundamental differences became manifest:

The government's construction setup...had something to offer the national leaders of the building-trades unions in return for their cooperation in the scheme. They were assured of a key role in the running of the individual review board for their craft.... And this has enabled many of them to exercise greater control over troublesome locals and rebellious local leaders who have traditionally made life difficult for national construction union officials.

The stabilization-committee approach would have much less appeal to the heads of major industrial unions such as the United Auto Workers Union or the United Steelworkers Union.... While few building-trades unions have agreements that are negotiated by their president, for instance, the heads of the UAW and USW regularly handle the major bargaining for their members.<sup>95</sup>

Michael Moskow, Deputy Under Secretary of Labor for Economic Affairs and Program Coordination and executive director of the CICBC, characterized the CISC in June 1971 as a "system of self-regulation with implicit but real sanctions"—"a halfway house between purely voluntary restraint and outright controls." Instead of prescribing rigid guidelines or fixed wage increases, this regime permitted "equity adjustments' in order to restore traditional differentials with other crafts in the same locality and with the same crafts in neighboring localities." The Nixon administration, aiming to "turn a race into an orderly procession...at a slower pace" but to insure that everyone would "end up in the traditional order," wished to avoid "serious morale and productivity problems...to say nothing of the likelihood of strikes against the government." The CISC viewed the construction industry as beset by structural wage distortions: derangement of customary relationships among crafts during the 1960s had triggered a destabilizing process of "competitive readjustment." The result was a "leapfrogging process" that generated wage increases "well out of line with the rest of the labor market."97

<sup>&</sup>lt;sup>97</sup>Weber & Mitchell, The Pay Board's Progress at 112.



established to assure conformity between the Pay Board and the CISC. CUAIR Report, Jan. 25, 1972, at 1. The CISC was also continued for Phase III of the Economic Stabilization Program by EO No. 11695, § 5 (Jan. 11, 1973). In late 1971, Congress again amended the Economic Stabilization Act, requiring the president to "issue standards as a guide for determining levels of wages, salaries, prices...." These standards "shall...provide for...such general exceptions and variations as are necessary to foster orderly economic growth and to prevent gross inequities, hardships, serious market disruptions, domestic shortages of raw materials, localized shortages of labor, and windfall profits" and "call for generally comparable sacrifices by business and labor...." Economic Stabilization Act Amendments of 1971, Pub. L. No. 92-210, § 2, 85 Stat. 743, 744 (1971).

<sup>&</sup>lt;sup>95</sup>Byron Calame, "Construction-Industry Panel May Be Model for Stabilizing Pay, Prices After Nov. 12," WSJ, Aug. 18, 1971, at 30, col. 1 at 2.

<sup>&</sup>lt;sup>96</sup>Untitled speech *reprinted in* 117 Cong. Rec. 24,388-90 (1971).

High ranking government officials privately remarked in 1971 that the plan was to "squeeze the equity adjustments out of the system as quickly as possible and then get down to the six percent figure by the end of next year or early in 1973." Equity adjustments, however, proved to be complicated. The root of the perceived conflict was so-called coercive comparisons, which created "an interdependence between some wage rates so strong that if the traditional connection is broken, the consequences—often in the form of a strike—are nearly always detrimental to the efficiency of the labor market." For example, where the wage rates of plumbers and electricians in a town had been the same for decades, the CISC viewed limiting the electricians to a 6 percent increase when the plumbers had bargained for 15 percent the previous year as counterproductive. The intra-working class equity question was exacerbated by the belief that "wage rate connections in the construction industry are, perhaps, the most coercive in the economy."

Despite the fact that by late 1972 the CISC was still holding to wage increases of about 6 percent, the CUAIR's skepticism, at least for internal consumption, seemed to be based on the suspicion that some sort of sleight-of-hand was at work since that "6% figure represents an actual savings in cents per hour of only 5 cents compared to the construction wage record of the 1967-1971 period; during that period...wages [increases] averaged approximately 52 cents per hour compared to the present figure of 46 cents to 47 cents...." This revelation prompted the Coordinating Committee to conclude that a cents-per-hour standard would be a more appropriate measure for purposes of controlling construction wages, although it might be inappropriate as a general wage standard because it reduced wage "desired wage differentials" based on skill, experience, education, and responsibility. 100

After the CISC had been operating for two years, Nixon reminded the national conference of the BCTD that at the time he had established the CISC "the top international presidents, who are always in there fighting for that last buck right down the line, said, we have got to do a better job" because "exorbitant" wage increases had been "driving jobs away from organized labor into nonunion labor." Now, however, Nixon could certify that with reduced wage rate increases construction had become "responsible" and was "no longer a sick industry." <sup>101</sup>

As Phase III of the control program progressed, the CISC began to relax its wage standards. An informal ceiling of 35-cent per hour building trade wage increases in early 1973 soon gave way to efforts to limit raises to 45 cents as unions

<sup>&</sup>lt;sup>101</sup>"Remarks at the National Conference of Building and Construction Trades Department, AFL-CIO," in Richard Nixon, *PPPUS: 1973*, at 290, 291-92 (Apr. 16, 1973 [1975]).



<sup>98</sup>Lenhart, "Construction Wage-Stabilization Efforts" at 2215.

<sup>99</sup>Lenhart, "Construction Wage-Stabilization Efforts" at 2217 (quoting Moskow).

<sup>&</sup>lt;sup>100</sup>CUAIR, CC, Minutes, Nov. 2, 1972, at 3-5, in BR, 1972, Vol. II-Minutes.

pointed to the absence of tightened controls in other sectors. 102 At the same time, Representative Anderson introduced yet another bill to promote area-wide collective bargaining, but it too died without action. 103 A year later, in the wake of Congress's failure to extend construction wage controls and the expiration of the CISC on April 30, 1974, Dunlop and Mills warned of renewed "massive leapfrogging." Freed of government constraints, unions, according to Business Week, began engaging in "unusually militant negotiating." To the extent that "a few significant moves by unions to cede away restrictive rules for more pay and fringes" emerged, the reason was "the same everywhere: Open-shop construction, a few years ago limited to home-building, is now spreading through all forms of commercial and industrial construction. Largely because of the high costs of restrictive rules, contractors using only union labor are losing construction projects to competitors who meet union wage scales but are not bound by rules that add to manpower needs and reduce productivity."104 As controls expired in 1974, reports surfaced of union leaders' fear that a "militant rank-and-file will push them to settlements so high that employers will have new opportunities to recruit nonunion hands at wages below the new, higher union scale."105 Nevertheless, just a few weeks earlier, the BCTD had voted unanimously against extending wage controls. 106 That year the differentials in median wage rates between union and nonunion contractors ranged from 50 percent to well over 100 percent in various trades and regions. 107

The Roundtable agreed with many that it was "unthinkable" to end all controls. But, as Virgil Day, chairman of the group's Construction Committee, observed, another national tripartite board would be acceptable only if it strengthened and extended coordinated bargaining and eliminated "insupportable practices...." Regardless of what arrangements replaced the CISC, Day insisted that

<sup>&</sup>lt;sup>107</sup>Northrup, Open Shop Construction Revisited, tab. XI-14 at 499.



<sup>&</sup>lt;sup>102</sup> Building Pay: A Leaky Ceiling," BW, June 9, 1973, at 82.

<sup>&</sup>lt;sup>103</sup>H. R. 8298, 93d Cong., 1st Sess (May 31, 1973). It would have authorized the CISC to devise a reform plan. The same fate befell the much more complex bill that he introduced six years later; H.R. 3779, 96th Cong., 1st Sess. (1979).

<sup>104&</sup>quot;An End to Labor Stability in Building Wages," BW, June 29, 1974, at 46. See also Leonard Silk, "Labor's Turn at Bat," NYT, June 19, 1974, at 61, col. 7; "A Grudging Retreat from Work Rules," BW, June 2, 1975, at 20-21. Dunlop stated later that Congress had simply grown tired of controls and refused to consider his plans for retaining controls only in a few sectors such as construction and health care. Telephone interview with John Dunlop, Cambridge, Mass. (Jan. 7, 1999).

<sup>&</sup>lt;sup>105</sup>Edward Cowan, "Controls Ending in High Inflation," NYT, Apr. 28, 1974, at 1, col. 6, at 42, col. 5. See also Edward Cowan, "Democrats Favor Price-Curb Action," NYT, Apr. 25, 1974, at 1, col. 4, at 17, col. 1.

<sup>&</sup>lt;sup>106</sup>Philip Shabecoff, "Meany Attack on Nixon Cheered by Construction Union Leaders," NYT, Apr. 2, 1974, at 14, col. 1.

coordinated wide-area bargaining "in the hope of making the contractor co-equal with labor" remained the most important component. 108 By early 1974 the Roundtable and contractors' groups were still unable to attain unanimity concerning the optimal post-CISC approach. Among the possibilities considered by the Construction Committee were repeal of the Davis-Bacon Act and "strengthening open shop contracting through legislation directed at union violence." The committee also noted that "unions need legislated controls to maintain control over their locals."110 Day, who remained chairman of the Construction Committee even after he left GE to become associated with the corporate law firm of Vedder, Price, warned at the February 19 meeting that if a new construction wage explosion occurred, it might become "an imminent necessity for major users to consider again all their options including the possibility of mounting their own construction forces...." Despite the CISC's impending demise, members could articulate no objective more concrete than that construction wage controls should be continued, but only if accompanied by a strengthening of collective bargaining: "'Otherwise,' as one contractor asserted, 'we might as well forget controls.""111

The Roundtable was unable to achieve any of its desiderata legislatively or administratively, but its spectacular success in the immediate and middle-term in promoting the antiunion sector and shrinking the union sector of construction proved to be far more valuable and enduring. Perhaps this perspective explains why in the Roundtable's annual meeting summary report Blough, despite complaining about wage increases and hundreds of strikes in the preceding year, offered no plan other than voluntary action such as a stronger national alliance of contractor associations.<sup>112</sup>

<sup>&</sup>lt;sup>112</sup>RR, June 17, 1974, at 2.



<sup>&</sup>lt;sup>108</sup> RR, No. 73-10, at 3 (Oct. 29, 1973). The Construction Committee expressed similar views in 1974. RR, No. 74-2, at 2-3 (Feb. 28, 1974); RR, No. 74-4, at 2 (Apr. 26, 1974).

<sup>&</sup>lt;sup>109</sup>BR, CC, Minutes, Jan. 16, 1974, at 6, in BR, CCH: 1974.

<sup>&</sup>lt;sup>110</sup>BR, CC, Minutes, Mar. 1, 1974, at 6, in BR, CCH: 1974.

<sup>&</sup>lt;sup>111</sup>BR, CC, Minutes, Feb. 19, 1974, at 2, in BR, CCH: 1974.

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