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Wars of Attrition

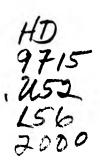
Vietnam, the Business Roundtable, and the Decline of Construction Unions



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Part V

The Outcome

"The nonunion competition is devastating to us and anyone who doesn't think so is a total idiot."

¹Haynes Johnson & Nick Kotz, *Unions* 144 (1972) (quoting Edward Carlough, president of the Sheet Metal Workers Union).



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The Unions' Failure to Stave Off the Open Shop Legislatively During the Ford Interregnum

In the past the building trades unions were led mostly by chiefs of advanced age who politically were somewhat to the right of William McKinley.

The deep recession of 1974-75, which undermined what some viewed as burgeoning rank and file insurgence outside of construction,² seemed at first to render the expiration of wage controls moot. Yet by 1975, a year after the CISC had been terminated, 18 percent construction unemployment did not deter unions from seeking 6 to 8 percent wage increases.³ Business Week complained editorially: "The trouble is that the international headquarters of the unions cannot get the word through to the locals that do the actual bargaining. After years of maintaining tight control of construction labor supply through their hiring halls, the locals see no reason to give up what they consider a good thing."4 A construction employers' association official agreed: "The irony of the thing is that at the international level, the unions recognize the situation...but the locals are willing to commit suicide, though they are starting to see that the problem affects them at the local level."5 And with understanding for the predicament of local construction firms, Professor Albert Rees, the director of the Council on Wage and Price Stability during the Ford administration, explained wage movements as rooted in a lack of employer solidarity: "'[I]t's hard for employers to show backbone,' when in some areas—such as Washington state—giant contractors sign national agreements and employ workers who are on strike against local contractors."6

Nationalizing the scope of collective bargaining and empowering national

⁶"The Hidden Dynamite in Construction Wages," BW, May 5, 1975, at 34. Congress established the Council, which had no enforcement powers, shortly after the end of wage controls to study, hold hearings on, monitor, and alert the government and public to inflationary developments. Pub. L. No. 93-387, 88 Stat. 750 (1974).



¹Philip Shabecoff, "Picketing the Issue in Construction Fight," NYT, Mar. 13, 1977, sect. 3, at 2, col. 3 at 6.

²Kim Moody, An Injury to All: The Decline of American Unionism 83-94 (1996 [1988]).

³James Hyatt, "Construction Workers, Despite Dearth of Jobs, Still Seek Pay Boosts," WSJ, Apr. 10, 1975, at 1, col. 6.

^{4&}quot;Stranglehold on Building," BW, June 2, 1975, at 80 (editorial).

⁵"The Hidden Dynamite in Construction Wages," BW, May 5, 1975, at 33, 34 (quoting Dwight Hall, labor relations director of a builders' group in Ohio and Pennsylvania).

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union officials to check the demands and strike-happiness of workers and their local unions continued to preoccupy Dunlop after he became Secretary of Labor in the Ford administration. Arguably he was seeking to induce union leaders to act in the unions' long-term interest. In any event, management regarded his efforts to facilitate area-wide bargaining—which the unorthodox new president of the Carpenters advocated, believing that depression-like conditions in the mid-1970s would weaken members' resistance to the restructuring—as an attempt to "salvage what's left of the unionized segment of the industry."

Dunlop's ability to refocus state management of labor relations was amply on display in June 1975 when he testified before Congress on a bill (H.R. 5900) to amend the NLRA to exempt construction union action (common situs picketing) against general contractors who operated with nonunion subcontractors from the statute's ban on secondary pressure. He tried to make the amendment, which the unions had unsuccessfully been pursuing for a quarter-century, more palatable by introducing "the principle that authorization of such picketing by the appropriate national union be required."

In the aftermath of demonstrations in April 1975 by thousands of union construction workers in Washington, D.C. for government relief of the depression-level unemployment, ENR reported on the "atmosphere of confusion generated by a surprise proposal," which it interpreted as "the opening thrust in a major new campaign to strengthen the control of the building trades international unions over their locals." Employers, who had expected Dunlop to support the original bill, were "pleased" because they "felt the injection of a completely new issue into the debate would slow the legislative process." The Roundtable Construction Committee, which as early as April had engaged in intense discussion of the new common situs picketing drive and decided that the Roundtable should undertake an immediate program to counter it (including reenergizing the campaign against the

^{104.} Situs Picketing Legislation Faces Some New Obstacles," ENR, June 12, 1975, at 8.



⁷"Dunlop Warned on Labor Pact Talks," ENR, Aug. 19, 1976, at 14, 15 (quoting management attorney Lawrence Zimmerman); "Carpenters' Sidell Calls for Better Construction Bargaining," ENR, Mar. 13, 1975, at 25. This judgment overlaps with that of a late 1960s' left-wing period piece, which called him one of the "most powerful...underground lobbyists...commonly regarded as chief spokesman in Washington for the construction trades unions. Dunlop is credited with having devised the strategy which brought these warring unions together, and won them unprecedented wage increases." James Ridgeway, The Closed Corporation: American Universities in Crisis 76 (1968).

⁸Equal Treatment of Craft and Industrial Workers: Hearings Before the Subcommittee on Labor-Management Relations of the House Committee on Education and Labor, 94th Cong., 1st Sess. 10 (1975). See also "Dunlop Asks Congress to Broaden Rights of Unions Picketing Construction Sites," WSJ, June 6, 1975, at 4.

[&]quot;Construction Workers Mass in Capital to Demand Jobs," NYT, Apr. 22, 1975, at 19, col.

Davis-Bacon Act),¹¹ was also surprised by Dunlop's qualification of the bill, but still found it damaging.¹²

Union leaders, in contrast, were put in "an immediate bind. Privately they support Dunlop's goal of centralizing power in the internationals, but they are afraid to speak out for fear of creating serious political problems with their local unions." One reason some local union leaders could have been expected to acquiesce in or support area-wide bargaining was its potential for reducing competition for higher wage demands, which threatened the re-electability of those officials who failed to negotiate increases as high as those gained by neighboring locals or other trades. ¹⁴

At the end of his prepared statement to the House committee Dunlop, who had been associated with virtually every federal government initiative involving construction labor relations since World War II, added this personal observation:

I have come to the conclusion over the past decade that the legal framework of collective bargaining in the construction industry is in need of serious review. ... A vastly enhanced role for national unions and national contractor associations, working as a group, is essential...if the whipsawing and distortions of the past are to be avoided and if the problems of collective bargaining structure, productivity, and manpower development are to be constructively approached....¹⁵

Specifying his position in the course of questioning, Dunlop—who was also chairman of the Collective Bargaining Committee in Construction, which Ford had established on April 1, 1975 and was charged with facilitating local coordinated and larger area bargaining ¹⁶—testified that "until collective bargaining gives a greater role to national unions and national employer organizations you will not mitigate this tendency of the industry to have an upward rise in wage and benefit levels which is greater than other industries [sic]."¹⁷ A month later Dunlop repeated his statement at parallel Senate hearings.¹⁸

¹⁸Equal Treatment of Craft and Industrial Workers, 1975: Hearings Before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, 94th Cong., 1st Sess.



¹¹BR, CC, Minutes, Apr. 22, 1975, at 4, in BR, CCH: 1975.

¹²BR, CC, Minutes, June 17, 1975, at 4-5, in BR, CCH: 1975 (Jack Turner).

¹³"Situs Picketing Legislation Faces Some New Obstacles," ENR, June 12, 1975, at 8.

¹⁴Paul Hartman & Walter Franke, "The Changing Bargaining Structure in Construction: Wide-Area and Multicraft Bargaining," 33 (2) *ILRR* 170-84 at 175 (Jan. 1980).

¹⁵Equal Treatment of Craft and Industrial Workers: Hearings Before the Subcommittee on Labor-Management Relations of the House Committee on Education and Labor, 94th Cong., 1st Sess. 11 (1975).

¹⁶EO 11849, 40 Fed. Reg. 14887 (1975). Blough opined that the CBCC could have gotten a little more authority, "but perhaps the unions wanted it that way." BR, CC, Minutes, Apr. 22, 1975, at 4, in BR, CCH: 1975.

¹⁷Equal Treatment of Craft and Industrial Workers at 37.

The impetus that Dunlop's energetic involvement gave to the new initiative prompted intense and wide-ranging debate at the Roundtable's Construction Committee. On June 17 Blough reported that Dunlop wanted legislation that would both tie down local bargaining in an area to prevent a single contractor from going over the edge and setting a precedent for the whole area and give national union presidents more authority over the locals. Luckenbill of Shell Oil used the opportunity to stress that the Roundtable's position on the Anderson bill in 1972 was still valid: mandatory multi-employer bargaining certification was well conceived, but it created the counterbalancing problem of giving unions a high degree of power. For that reason voluntary action was superior and multicraft bargaining should be confined to reasonably small geographic areas with high-density populations. The basis for the Roundtable's preference for voluntarism soon became evident: when Douglas Soutar warned that Dunlop's objective of legislating the restructuring of collective bargaining in construction would set a precedent that other industries might not want, Blough added: "You're looking at a piece of the new philosophy of national planning; no question about that." The reason for the Roundtable's ambivalence toward more centralized bargaining transcended the issue of government intervention. As Blough and Construction Committee vice chairman Rex Reed (of AT&T) observed, "intense thinking would be required to resolve the dichotomy between desiring greater power for the national leaders of the building trades and strengthening bargaining at the local level."19 The members then heard D. Quinn Mills, who was invited to attend this meeting, counter the thrust of the discussion by arguing that it was not possible for national unions and contractor organizations to affect local negotiations on a voluntary basis.²⁰

At the same meeting the Construction Committee also delved into the common situs picketing question. At this point the Roundtable was so pessimistic that when it heard Peter Cockshaw—the publisher of a construction labor newsletter whom it had invited—declare that the bill had a good chance of passage, Blough asked: "Then shall we fold our tent?" Seeing some hope, Cockshaw urged the group to drop everything else to fight the bill. Nor did Cockshaw omit the larger context against which that struggle had to be understood. The establishment by union contractors of nonunion affiliates and the development of strong open-shop competition in areas where it had never been expected prefigured a "tremendous shake up" nationally: "Open-shop work has become too attractive, and offers the user such cost savings, that it cannot be overlooked as an alternative to unionized work." Relativizing this movement, Luckenbill "interposed that there were not yet many

²⁰BR, CC, Minutes, June 17, 1975, at 10, in BR, CCH: 1975.



^{8-9 (1975).}

¹⁹BR, CC, Minutes, June 17, 1975, at 3-4, in BR, CCH: 1975. Earlier, too, the Roundtable had supported wide-area, but opposed regional bargaining. BR, CC, Minutes, Oct. 4, 1973, at 12, in BR, 1973-Vol. II: Minutes.

open shop contractors equipped to take on major industrial construction in the northeastern region of the nation."21

The Construction Committee resumed its intense discussion of legislative and voluntary approaches to construction labor-management relations at its next meeting on July 15, but members were preoccupied with the situs picketing bill, on which the group formed a task force. The possible spillover of such picketing against non-construction firms prompted several members (such as Goodyear and International Paper) to take action on their own. Pittsburgh Plate Glass, for example, paid for an advertisement in the Washington Post.²²

In response to a request from the House committee, Dunlop submitted language incorporating his suggestion into the common situs picketing bill.²³ At the same time, the subcommittee chairmen having expressed their enthusiasm, Dunlop also transmitted a draft bill that the Wall Street Journal touted as bolstering international union leaders' "control over their often rambunctious locals."24 On the eve of the bill's introduction in September as the Construction Industry Stabilization Act of 1975 (H.R. 9500) and the Construction Industry Collective Bargaining Act of 1975 (S. 2305), Business Week wildly exaggerated it as potentially leading to a "voluntary, but permanent incomes policy for the building trades unions," which national union leaders would be willing to accept "in exchange for greater power over their members."25

In fact, however, the bill was a very modest initiative creating a mechanism through which "responsible leaders...can meet to discuss" industry problems. As the House Education and Labor Committee report stressed, the bill's "principal force lies in the power of persuasion...." Its limited scope did not encompass nonunion employers, and participation was "essentially voluntary," the only sanction being a 30-day delay of the right to strike or picket; it contained no unfair practices or prohibitions. The bill would have created a tripartite (labor-management-neutral) Construction Industry Collective Bargaining Committee (CICB Committee). Local labor unions would have been required to give notice to their national organizations 60 days before expiration of local collective bargaining agreements; if the CICB Committee took jurisdiction of a dispute, the parties were not permitted to strike or

²⁵"Incomes Policy Breakthrough," BW, Sept. 8, 1975, at 87.



²¹BR, CC, Minutes, June 17, 1975, at 5,7 in BR, CCH: 1975. Cockshaw also stated that Vice President Rockefeller favored enactment of the situs picketing bill.

²²BR, CC, Minutes, July 15, 1975, at 3-4, in BR, CCH: 1975. On the legal advice that Roundtable received that ambiguities in the bill could trigger shut-downs of user operations, see BR, CC, Minutes, Oct. 21, 1975, at 5-6, in BR, CCH: 1975.

²³Equal Treatment of Craft and Industrial Workers, 1975: Hearings Before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, 94th Cong., 1st Sess. 8 (1975).

²⁴Walter Mossberg, "Overhaul of Construction Bargaining Is Aim of Bill Labor Agency Is Drafting," WSJ, July 25, 1975, at 2.

lockout for 30 days.²⁶ Once the CICB Committee took jurisdiction, the bill specified that no new collective bargaining agreement between a local union and employer "shall be of any force or effect unless such new agreement...is approved in writing" by the national union.²⁷ Republican opponents belittled the bill's allegedly principal achievement: national unions, they argued, already had "the power to intervene in local disputes and to veto local settlements through their constitutional prerogatives." That they refrained from exercising that power "is possibly dictated by internal political pressures, which this does nothing to remove."²⁸

These Republican skeptics identified a significant political weakness of this approach. Even Dunlop in his congressional testimony conceded this point albeit concealed behind three exceptions: "In general, with the exception of the Electrical Workers, the negotiation and enforcement of collective bargaining agreements and the conduct of strikes (except where strike funds are requested) are carried on by local unions or district councils and local chapters of contractor associations, except where the separate and diverse constitutional powers and procedures of the national unions to intervene may be exercised."29 And earlier, too, Dunlop had asserted that construction unions "are strongly centralized in the sense that the national union can practically control the local unions within wide limits. The traditions of discipline are well established. The national union may have to authorize any strike to be legal under the constitution; the national may place a local in supervision for violation of policy. There are important exceptions to this generalization even in the most centralized union. Some locals are recalcitrant. Political considerations within the national union may dictate caution on the part of the national officers." Nevertheless, looking back at the experience of government controls during World War II, Dunlop had noted that the "strong centralization of most unions in the

²⁹Construction Industry Collective Bargaining Act of 1975: Hearings Before the House Committee on Education and Labor, 94th Cong., 1st Sess. 3 (1975) (statement of John Dunlop). Dunlop's associate and student, Mills, stated in 1972 that most of the international building trades unions had constitutional authority "to approve local strikes (and thus the issues over which strikes may occur), but in many unions such authority can be exercised only when strike benefits are requested." Mills, Industrial Relations and Manpower in Construction at 32. In 1979 he noted again that "most of the eighteen international unions have authority in their constitutions to approve local strikes (and thereby the issues over which the strike may occur), but in many the authority exists only when strike benefits are requested." Daniel Quinn Mills, "Labor Relations and Collective Bargaining," in The Construction Industry: Balance Wheel of the Economy 59-82 at 68 (Julian Lange & Daniel Quinn Mills eds., 1979).



²⁶H.R. Rep. No. 509: Construction Industry Collective Bargaining Act of 1975, 94th Cong., 1st Sess. 3-5 (1975). Mike Davis, *Prisoners of the American Dream: Politics and Economy in the History of the US Working Class* 133, 134 (1987 [1986]). sensationally but incorrectly described this initiative as a "sweeping settlement" imposing "the sacrifice of the rights of local members to strike...."

²⁷H. R. 9500, 94th Cong., 1st Sess. § 5(c) at 7 (Sept. 10, 1975).

²⁸H.R. Rep. No. 509: Construction Industry Collective Bargaining Act of 1975, at 12 (minority views of Rep. John Ashbrook).

industry was utilized in the Wage Adjustment Board to require all applications of local unions for wage increases to be submitted through the national union."³⁰

In fact, the CICBC reported in 1970 that 13 of 18 national construction unions had authority to approve local strikes, although five of them possessed this power only if locals requested strike funds.³¹ Several construction unions had a long tradition of national union control of local strikes.³² For example, the Bricklayers, going back to the nineteenth century, developed such structures "as a protection for contractors whose business operations extended over the entire country. In return for union wages and working conditions, the union "promised that if grievances affecting a national contractor could not be settled locally they should be referred to the international union, work continuing until a decision was given. As a result, [t]he business agent, shop steward, or dissatisfied worker no longer had the power to 'pull the job.'"³³ In the 1970s, the union constitution provided that the executive board "shall have full and complete power over all strikes..."³⁴

The IBEW, too, had long insured that locals not engage in strikes too often by using a constitutional procedure: if the executive board did not sustain a strike decision, the local could appeal by seeking approval by two-thirds of the locals, thus making the strike legal and forcing the issue of strike funds; by 1893, the constitution was amended to prohibit locals from soliciting funds from other locals without the executive board's authorization.³⁵ In the early 1960s, the IBEW's revocation of the charter of a Baltimore local for striking without the international president's approval and in defiance of his repeated orders to return to work was judicially upheld. The Fourth Circuit observed that: "The calling of a strike is such a momentous step in a labor controversy that it is usually subjected to strict control by international unions. The strike is a weapon that can bring the employer to his

³⁵Michael Mulcaire, "The International Brotherhood of Electrical Workers: A Study in Trade Union Structure and Functions" 103-104 (Ph.D. diss., Catholic U., 1923).



³⁰Dunlop & Hill, Wage Adjustment Board at 9-10. In the mid-1950s, a BLS study of the constitutions of 133 national unions revealed that 97 (with 85.5 percent of all union members) either required national organization authorization before locals could strike or made strike benefits dependent on such authorization. "Strike-Control Provisions in Union Constitutions," 77 MLR 497-500, tab. 1 at 498 (1954).

³¹"Report of Staff Committee on Improving Collective Bargaining Process in Construction Industry," *CLR*, No. 749, Jan. 28, 1970, at X-1, X-3.

³²The Electrical Workers and Hod Carriers were exceptions. George Janes, *The Control of Strikes in American Trade Unions* 15-51 (1916). But see Theodore Glocker, *The Government of American Trade Unions* 118 (1913) (stating that strike funds were usually controlled locally in the building trades).

³³William Haber, Industrial Relations in the Building Industry 288 (1930).

³⁴Bricklayers, Masons and Plasterers International Union of America, 1972 Constitution and Rules of Order, art. IV, sect. 2, at 16.

knees; but the effect on the employer can be too devastating for the union's own good. ... It is widely felt that vesting control in the international over the strike weapon assures that generally only intelligent and responsible use of it will be made after the greater interests of the international and the general economy have been considered."³⁶ The IBEW constitution in the 1970s provided that no local "shall cause or allow a stoppage of work in any controversy of a general nature before obtaining consent of the I[nternational]. P[resident]."³⁷

The Sheet Metal Workers' constitution provided that the "authority or consent of the International Association shall not be required for a local union to call a strike following the termination or expiration of a collective bargaining agreement," but two-thirds of the members present at a special meeting had to approve local strikes by secret ballot. With respect to disputes not arising out of a notice to terminate or reopen an agreement, the general president was empowered to order locals and their members to refrain from striking or to return to work "if, in his judgment, such strike or threatened strike" violated an existing collective bargaining agreement or the union constitution. Payment of strike benefits was, moreover, discretionary with the president.³⁸ The Operating Engineers constitution stated merely that strike benefits "shall continue for such period of time as in the judgment of the General President may be necessary."³⁹

In contrast, the provisions relating to strike and lockout law in the Painters' constitution did not confer any substantive powers on the international.⁴⁰ The Carpenters' constitution required a majority of the affected members to vote for a strike and empowered the general executive board to terminate strike support if it believed that support for the strike had ceased. It also required locals to try to meet with and "bring about an adjustment," while a vague but capacious provision also empowered the general president to "take such action as may be necessary in the interests" of the union after he himself failed to "adjust the trouble by negotiation or arbitration."⁴¹

In the event, at the September 10th hearing on H.R. 9500 before the House Education and Labor Committee, Secretary Dunlop presented a wide-ranging justification for the need to modify the structure of collective bargaining in construction. The expiration of the Economic Stabilization Act on April 30, 1974,

⁴¹Constitution and Laws of the United Brotherhood of Carpenters and Joiners, sect. 59A, H, I, M, P at 61-64 (1971).



³⁶Parks v. IBEW, 314 F.2d 886, 905 (4th Cir. 1963), cert. denied, 372 U.S. 976 (1963).

³⁷IBEW, Constitution, art. 17, sect. 13, at 63 (1974).

³⁸Constitution & Ritual of the Sheet Metal Workers' International Association, art. 30, sect. 2(a), at 136 (quotes), sect. 3(b) at 137 (1974).

³⁹International Union of Operating Engineers, Constitution, art. 19, sect. 3, at 70 (1972).

⁴⁰Constitution of the International Brotherhood of Painters and Allied Trades sect. 252-58 at 129-30 (1970).

"without provision for an orderly transition to a period without controls," had led, in the context of the Nixon impeachment proceedings, to "disrespect for national leadership," a 60 percent increase in construction strikes from 1973 to 1974, and a recrudescence of "excessive wage and benefit increases." Consequently, in 1974, not only did wage increases in major construction collective bargaining agreements exceed those in manufacturing, but renewed "distortions" in some crafts and localities were "preparing the way for a return to the excessive wage inflation of the late 1960's to the detriment of the industry, its workers and enterprises, and to the country as a whole." The chief defect in the bargaining structure, according to Dunlop, lay in its failure to consider "wider interests in local bargaining, resulting in whipsawing negotiations, distortions of appropriate wage relationships, inefficient manpower utilization, and costly strikes."

Associations of employers operating under union contracts generally supported the legislation. The CCE, an association of 12 national employers' associations, suffering under the coexistence of "leapfrog bargaining," "horrendous unemployment," and the "ever-increasing inability" of union contractors to "obtain work," argued that both labor and capital were structurally incapable of extricating themselves from their self-created dilemma and required state intervention: "Although the majority in both labor and management are aware that economic suicide is being committed, little can be done about it without remedial legislation." "⁴³

As an association of the country's and world's largest construction firms, operating in national and international markets, the NCA may have lacked standing to press such grievances, but its support for the bill derived from its desire to deal with the "chaotic conditions" caused by the combination of unions' "propensity" to outdo one another's wage demands and their "immense power" in contrast to that of contractors. Whatever glimmer of hope the NCA saw in the bill was rooted in the possibility that it "may provide a basis for the shifting of power from the local level, where such power, in many cases, has been demonstrably abused, to a national level, where a far more responsible application of the power can be expected. With national contractor organizations and international unions injecting themselves into the local negotiations, the process can be expected to be conducted in a far less provincial, self-interested manner." But the NCA was acutely aware of the bill's shortcomings: "A real solution...requires a major infusion of more power into the management side. The ability of the building and construction trades to fragment the power of the contractors, and to strike one contractor while the strikers work for other contractors must be significantly reduced. Contractors

⁴³Construction Industry Collective Bargaining Act of 1975: Hearings Before the House Committee on Education and Labor, 94th Cong., 1st Sess. 47, 49 (1975) (statement of Harry Taylor, president, CCE).



⁴²Construction Industry Collective Bargaining Act of 1975: Hearings Before the House Committee on Education and Labor, 94th Cong., 1st Sess. 4, 5 (1975) (statement of John Dunlop).

must be permitted to bargain as units and to arrive at their settlements with the unions as one. Only then will a reasonable parity exist in the bargaining power of the two parties, and only then will the industry begin to stabilize."44

However, not all employer organizations supported the initiative. The AGC insisted on the insertion of a variety of other provisions that it had unsuccessfully sought to enact during the Nixon administration.⁴⁵ The most far-reaching of them would have conferred exclusive bargaining agent status on multiemployer bargaining groups so that all employers of union workers working on like work would have been covered. This measure would have barred employers from continuing to employ workers whose union was striking other members of the multiemployer group. The AGC's goal was to bar interim, national, and project agreements, which "prejudice the ability of the multi-employer bargaining group to reach a reasonable settlement with the union." Nor did Dunlop gain many converts when he told the Roundtable's annual national conference of local user groups in November that the common situs picketing bill's net effect would not be great. He argued that it would simply make union jobs more completely unionized and nonunion jobs more exclusively nonunion.⁴⁷

Among the hostile antiunion reactions to the bill by far the most radical and even bizarrely ideological came from the Chamber of Commerce. In his testimony before the Senate Labor Committee, the chairman of the Chamber's Labor Relations Committee attacked the transfer of power to national unions on the grounds that: "It seems to imply to me that we do not really believe in democracy in the trade union movement, that the local people who are closer to the constituency in the unions, either will not or do not exercise restraint, I would assume because of the pressures of constituency, and therefore we are going to turn it over to national leaders who are less susceptible to the pressures." The image of the Chamber of Commerce as the defender of grassroots union militance, which construction employers, industrial capital, and the state had all been decrying as destroying itself and the economy, may defy belief, but it underscores employers' bind: they saw their profits and macroeconomic stability threatened by the bargaining power associated with democratic control of local unions, but they also feared the consequences that might result from restricting members' legal rights

⁴⁸Construction Industry Collective Bargaining Act of 1975: Hearings Before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, 94th Cong., 1st Sess. 124 (1975) (statement of Robert Thompson).



⁴⁴Construction Industry Collective Bargaining Act of 1975: Hearings Before the House Committee on Education and Labor at 79-80 (letter of Maurice Mosier, exec. vice president, NCA).

⁴⁵See above chapter 12.

⁴⁶Construction Industry Collective Bargaining Act of 1975: Hearings Before the House Committee on Education and Labor at 54-55 (statement of Laurence Rooney, exec. committee, AGC). ⁴⁷CUH, Nov. 1975, at 2.

against union officials.⁴⁹ Similarly, the NCA, whose members were the premier firms operating in and creating a national market and collective bargaining, attributed "many of the construction industry's basic problems to the Landrum-Griffin law that...shifted to local unions much of the power previously vested in the parent international unions."⁵⁰

While Business Week repeated its assertion about a "voluntary, but permanent, incomes policy" immediately after the bill was introduced,⁵¹ it also reported that even employers' groups supporting the bill expressed disappointment that it failed to mandate the kind of wide area and multicraft coordinated bargaining that Anderson's bill had included in 1971: "These moves would have reduced intraregional wage competition and would have protected contractors against whipsaw tactics by different craft unions." The business and trade press quoted an administration official as perceiving the bill's deepest flaw in its failure to deal with the industry's basic structural bargaining problems:

"You need an approach that gives contractors more power in bargaining.... You have to allow contractors to join together effectively in negotiating and that would take an antitrust exemption. You have to deal with the unions' ability to divide and conquer. You have to prevent situations where a union can strike a contractor and then its members work elsewhere during a strike. It is the feeling of local contractors that this is largely an AFL-CIO-approved bill."⁵³

^{53&}quot;Dunlop Bill Seeks Voluntary Wage Stability," ENR, Sept. 11, 1975, at 10. The same



⁴⁹Similarly, five years earlier, when the AGC proposed that unions be prohibited from submitting labor agreements to their membership to ratify because frequent rejections forced management to make higher offers, the Roundtable observed that many industrial managers "would prefer to retain this element of union democracy while conceding the occasional hardship the contractors cite." CUAIR, "Report - Legislative Issues" at 3 (n.d. [ca. 1970]), in SP, Box 5, File-CUAIR 1969-1970. Bechtel's current vice president and labor relations manager still expressed skepticism about the AGC's proposal. Telephone interview with Kenneth Hedman, San Francisco (Mar. 12, 1999).

⁵⁰"Single Labor Law Suggested for Construction," *ENR*, July 10, 1975, at 57. D. Q. Mills, "The Construction Industry," 21 *LLJ* 498, 500 (1970), agreed with the NCA that Landrum-Griffin, 29 U.S.C. §§ 401-531, had restrained international unions' use of their power to intervene in local negotiations. As the Roundtable formulated the intra-employer dispute: "A number of observers have concluded that the Landrum-Griffin provision allowing union members to bring suit for damages against their union officials has been a deterrent to more aggressive action by international union officials in restraining irresponsible and disruptive actions by local unions." Nevertheless, "some elements of the industry" did not support a proposal to revise the law to limit the right to sue. BR, "The Impact of Local Union Politics" 7 n.1 (Rep. C-7, Mar. 1993 [June 1982]).

^{51&}quot;Dunlop's Attack on 'Leapfrogging," BW, Sept. 15, 1975, at 28.

⁵²"Dunlop's Attack on 'Leapfrogging,'" *BW*, Sept. 15, 1975, at 28; see also "Dunlop Bill Seeks Voluntary Wage Stability," *ENR*, Sept. 11, 1975, at 9, 10. According to *Business Week* the regional bargaining provisions were deleted "because union objections would have prevented quick passage." "Dunlop's Attack on 'Leapfrogging,'" *BW*, Sept. 15, 1975, at 29.

Although even its chief sponsor conceded that the bill was a modest beginning,⁵⁴ the House report clearly stated its ultimate goal: "The national organizations are in effect being conscripted to perform a function that furthers the national labor policy. Their functions will often be to restrain the subordinate bodies and their members. The actions taken might well be politically unpopular."⁵⁵ The NCA believed that such actions would be more than merely unpopular. While agreeing that internationals "act more responsibly than the locals," it questioned whether the provision conferring "veto power over out-of-line settlements has real teeth. 'I find it hard to believe that an international union is going to say 'no' to an agreement that a local union and local contractor have reached."⁵⁶

Since construction employers opposed relaxation of the ban on common situs picketing that would have enhanced unions' ability to shut down construction sites⁵⁷—and that would, in *ENR*'s words, have been the greatest threat to the expansion of the open shop⁵⁸—the deal that had been worked out with President Ford entailed enactment of both H.R. 5900 and H.R. 9500. As late as October Virgil Day explained to the Roundtable that it was unrealistic to have great expectations that the bill would fail.⁵⁹ Yet even after Congress met Ford's demand by passing a bill that merged both bills and retained Dunlop's language requiring national unions to authorize common situs picketing,⁶⁰ employers' opposition to the picketing provision (forcefully backed by Ronald Reagan, Ford's rival for the Republican presidential nomination) prompted Ford to break the deal and veto the bill, unleashing a scathing response from the labor movement and Dunlop's

⁶⁰H.R. 5900, § 101(c), in H. Rep. No. 697: Economic Rights of Labor in the Construction Industry, 94th Cong., 1st Sess. 3 (1975).



quotation appeared in "Dunlop's Attack on 'Leapfrogging," BW, Sept. 15, 1975, at 29.

⁵⁴121 Cong. Rec. 32,082 (1975) (Rep. Frank Thompson).

⁵⁵H.R. Rep. No. 509: Construction Industry Collective Bargaining Act of 1975, 94th Cong., 1st Sess. 4 (1975).

⁵⁶"Dunlop's Attack on 'Leapfrogging,'" BW, Sept. 15, 1975, at 28 (quoting Maurice Mosier, NCA executive vice-president).

⁵⁷The NCA, for example, had opposed an earlier situs picketing bill. Situs Picketing: Hearings Before the Special Subcommittee on Labor of the House Committee on Education and Labor, 91st Cong., 1st Sess. 86-87 (1969). Interestingly, District 50 of the United Mine Workers, which had several thousand members in heavy and highway construction, opposed the bill on the same grounds as so-called independent unions—namely, that it would enable the building trades unions to pressure contractors to get rid of them. Id. at 85, 133-42 (testimony of Don Mahon, exec. Secretary, National Federation of Independent Unions, and Elwood Moffett, president of District 50).

⁵⁸"50 to 60% of U.S. Construction May Be Open Shop," *ENR*, Sept. 18, 1975, at 41. Nevertheless, *ENR* conceded editorially: "Clearly, building trades' president Robert A. Georgine and the unions he represents have a legitimate complaint against the legal niceties of labor law that let contractors use corporate entities and contractual arrangements as shields against labor disputes they have knowingly invited or created." *ENR*, July 31, 1975, at 56.

⁵⁹BR, CC, Minutes, Oct. 21, 1975, at 6, in BR, CCH: 1975.

resignation. Ford's economic advisers' argument that the proposed wage stabilization provision could be dispensed with "because a depressed market would help keep construction wage increases down" seemed misplaced given the coexistence of 20 percent unemployment and average wage increases of 10 percent in new collective bargaining agreements.⁶¹

Union firms working with the Roundtable hoped that now that unions had lost common situs picketing, collective bargaining could be strengthened.⁶² Unions, however, had not abandoned the issue. And the Roundtable, which began reorganizing opposition to the bill in July 1976 after presidential candidate Carter embraced picketing,⁶³ resolved to use "the fullest possible resources" to oppose the new bill.⁶⁴ The unions' loss of influence by the late 1970s was symbolized by the defeat of the bill, refiled in 1977 after Carter's election, in the House 217-205.⁶⁵ The NCA also opposed the bill on the grounds that common situs picketing rights were too high a price to pay for the weak collective bargaining provisions.⁶⁶ Republicans still objected to the collective bargaining provisions as ineffective and not giving national unions any powers they did not already possess.⁶⁷ Construction unions' lobbying failure was a harbinger of much harsher defeats.

⁶⁷H. Rep. No. 96: Equal Treatment of Craft and Industrial Workers, 95th Cong., 1st Sess. 50 (1977).



⁶¹¹²¹ Cong. Rec. 42,015-6 (1975); "Too Much Union Power," BW, Dec. 8, 1975, at 94 (editorial); Edward Cowan, "9 Labor Leaders Quit Ford Panel," NYT, Jan. 9, 1976, at 1, col. 5; "Building Unions Quit Bargaining Panel Set Up by Ford, Warn of Primaries Fight," WSJ, Jan. 9, 1976, at 2; "Ford's Veto Sends Labor into a Fury," BW, Jan. 12, 1976, at 24-25 (quote). For extended coverage of the veto and its aftermath, see CLR, No. 1053, Dec. 31, 1975, at AA-1-10. The vast majority of the mail that Ford received urging a veto resulted from a campaign by the antiunion National Right to Work Committee. A. H. Raskin, "Hard Hats and Their Focal Role," NYT, Jan. 4, 1976, sect. 3, at 1, col. 1., at 9, col. 5-6.

⁶²BR, CC, Minutes, Jan. 20, 1976, at 3, in BR, CCH: 1976 (Donald Grant of Atkinson Co.).

⁶³BR, CC, Minutes, July 20, 1976, at 6, in BR, CCH: 1976.

⁶⁴BR, CC, Minutes, Feb. 15, 1977, at 3, in BR, CCH: 1977.

⁶⁵¹²³ Cong. Rec. 8713 (1977) (H.R. 4250).

⁶⁶Equal Treatment of Craft and Industrial Workers, 1977: Hearings Before the Subcommittee on Labor of the Senate Committee on Human Resources, 95th Cong., 1st Sess. 574-622 (1977) (statement of Maurice Mosier, NCA president). See also Philip Shabecoff, "Picketing the Issue in Construction Fight," NYT, Mar. 13, 1977, sect. 3, at 2, col. 3. The Times editorially adopted this view: "Stabilized Construction," NYT, Sept. 4, 1975, at 34, col. 1; "One Labor Bill...That Should Be Two," NYT, Nov. 22, 1975, at 28, col. 2. The Times continued to oppose the bill because it would have legalized secondary boycotts: if the unions wished to avoid this constraint, they were free to merge into a single union, thus rendering their picketing permissible primary activity. "An Uncommonly Bad Bill," NYT, Mar. 12, 1977, at 22, col. 1.