

# **Wars of Attrition**

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

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## Cycles of Open-Shop Drives

The current predicament of the seventeen building trades unions is both astonishing and portentous. A dozen or so years ago they were enthroned in what seemed like an impregnable monopoly position. They ran the U.S. construction industry, the nation's largest, like a conquering army. Today they are in disorderly retreat...preparing to do battle for their existence.<sup>1</sup>

Since the 1960's, unionized construction has declined from about 80 percent to about 20 percent of the total market. ... We have observed the virtual de-unionization of many construction markets, with calamitous results for builders, owners, users, customers, unions and workers. ... The erosion of union strength has unleashed a chaotic and destructive competition throughout the industry.<sup>2</sup>

The antiunion drive that large industrial customers organized in the Roundtable initiated in the late 1960s raises the issue of the conditions under which such strategies can succeed. To shed light on the question, earlier twentieth-century movements to oust construction unions will be analyzed. This retrospective is all the more appropriate since Lefkoe, whom Roundtable members hired to analyze the industry, in the course of making ominous predictions about the consequences of intervention by larger users, referred to the domination of the construction industry in San Francisco by large corporate customers in the 1920s as an example of what inevitably happens when contractors request help from their customers in dealing with unions. His conclusion was that contractors in San Francisco and Chicago "[u]nfortunately...did not understand any better than contractors do today that if the business community is going to provide money (directly or in the form of losses due to shutdowns) and other forms of assistance, it is also going to make sure that its assistance is used properly and for its benefit. This help, regardless of the original intent, is likely...to result in substituting one 'dictatorship' for another."<sup>3</sup>

During that earlier period, open-shop drives in construction, far from being initiated by small contractors or even large metropolitan commercial firms, were

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<sup>1</sup>Gilbert Burck, "A Time of Reckoning for the Building Unions," *Fortune*, June 4, 1979, at 82.

<sup>2</sup>Jeffrey Grabelsky & Fred Kotler, "Unions Impose Stability on a Turbulent Construction Industry," *NYT*, Oct. 31, 1994, at A14, col. 4-6 (letter to editor).

<sup>3</sup>Lefkoe, *The Crisis in Construction: There Is an Answer* 115-20 (quote at 119-20) (1970). In a footnote, Lefkoe added that after he had written the quoted passage the CUAIR was formed, but that he did not expect that it would accomplish much on its own because it would fail to deal with the construction industry's basic problems. *Id.* at 120 n. \*\*.

the instruments of nonconstruction capital.<sup>4</sup> The most significant aspect of these early drives to attain “[n]othing less than the entire destruction of the power of the unions” in construction relates to their origins: the initiating, motive, and financial force behind these movements lay, for the most part, outside of the industry itself, in national or local general employers’ associations.<sup>5</sup> Chief among them was the Citizens’ Industrial Association of America, an arm of the NAM. In 1903 it launched “a mass attack upon unionism which partook of a crusade against unionism in general” and which by 1908 “had stopped unionism in its tracks” especially in smaller towns.<sup>6</sup> This historical review of successful campaigns against construction unionism underscores the ahistorical nature of partisan attacks in the late 1960s and early 1970s that spoke of “the closed-shop practices the building unions have been making ironclad since the days of the medieval guilds.”<sup>7</sup>

One of the earliest versions of the movement in construction emerged in San Francisco in 1904 in the wake of an earlier drive against waterfront workers; after losing momentum on account of the large amount of reconstruction work following the 1906 earthquake, the open-shop movement was taken over by the Chamber of Commerce before passing into the hands of the Law and Order Committee and finally the Industrial Association of San Francisco (IASF) during the 1910s.<sup>8</sup> Of the employers behind the Law and Order Committee the U.S.

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<sup>4</sup>William Haber, *Industrial Relations in the Building Industry* 252 (1930), noted that it was often claimed that if influenced by capitalists from other branches, contractors would endorse the closed shop more widely. The aggressive open-shop campaign directed by the National Erectors’ Association against the International Association of Bridge and Structural Ironworkers (beginning in 1906) did not contradict this claim insofar as the erection firms were closely connected to and supported by steel firms well known for their extreme antiunion views and actions. Luke Grant, *The National Erectors’ Association and the International Association of Bridge and Structural Ironworkers* (1971 [1915]); Haber, *Industrial Relations* at 454; Clarence Bonnett, *History of Employers’ Associations in the United States* 137-50 (1956).

<sup>5</sup>F.W. Hilbert, “Employers’ Associations in the United States,” in *Studies in American Trade Unionism* 183-217 at 217 (quote), 208-17 (Jacob Hollander & George Barnett eds., 1906). Robert Christie, *Empire in Wood: A History of the Carpenters’ Union* 155-69 (1956), argued that contractors in large cities launched an open shop movement in the first decade of the twentieth century not to destroy unions, but to regulate their racketeering and extortionism and to ensure that employers not be victimized by them.

<sup>6</sup>Selig Perlman & Philip Taft, *History of Labor in the United States, 1896-1932*, at 129, 136 (1935) (quote); Albion Taylor, *Labor Policies of the National Association of Manufacturers*, in 16 (1) *UISSS* 121 (Mar. 1927); U.S. Senate, Committee on Education and Labor, *Violations of Free Speech and Rights of Labor*, Report No. 6, Pt. 6: *Labor Policies of Employers’ Associations*, Pt. III: *The National Association of Manufacturers*, 76th Cong., 1st Sess. 27-32 (1939); Philip Foner, 3 *History of the Labor Movement in the United States: The Policies and Practices of the American Federation of Labor, 1900-1909*, at 32-60 (1964).

<sup>7</sup>A. H. Raskin, “Unused Inflation Curb,” *NYT*, Mar. 1, 1971, at 29, col. 1.

<sup>8</sup>U.S. Senate, Committee on Education and Labor, *Violations of Free Speech and Rights of Labor*, Report No. 1150, Pt. 2: *Employers’ Associations and Collective Bargaining in California*, Pt.

Secretary of Labor reported in 1919 that the basic motive underlying their internationally infamous campaign to prosecute and impose capital punishment on the militant labor unionist Tom Mooney was the desire to operate their businesses on an open-shop basis.<sup>9</sup> The IASF was responsible for the most vigorously enforced of the second wave of open-shop drives, which took place during the years following World War I.<sup>10</sup> This broad antiunion movement was launched in the midst of the aftershocks of the war and the deep cyclical crisis of 1921: "Many employers,...preparing for a war of extermination against organized labor...seized their opportunity the moment production and prices began to fall and unemployment reduced the bargaining power of the workers."<sup>11</sup> The NAM's postwar Open Shop Movement, which was "predicated upon a coming boom in real estate, which had already given an indication of attaining great momentum,"<sup>12</sup> was given both "a running start" and a "tone" by the steel oligopolies' "success in smashing" the steelworkers' 1919 strike.<sup>13</sup> A contemporary history adduced the following reasons for the success of this second open-shop drive:

Firstly, the employers had enriched themselves enormously during and immediately after the war, and did not lack the funds for fighting organized labor. Secondly, never before in the history of the United States was the government so completely in the hands of big business, trusts, and corporations, as after the war. Thirdly, by the end of 1920 the army recruited for the war was demobilized and millions of soldiers came back to the factories

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II: *Organized Antiunionism in California Industry Prior to the Passage of the National Labor Relations Act*, 77th Cong., 2d Sess. 79-91 (1942); U.S. Senate, Committee on Education and Labor, *Hearings on S. Res. 266: Violations of Free Speech and Rights of Labor*, Pt. 60, 76th Cong., 3d Sess. 21,943-73, 22,111-48 (1940); San Francisco Chamber of Commerce, *Law and Order in San Francisco* (1916); Robert Knight, *Industrial Relations in the San Francisco Bay Area, 1900-1918* (1960).

<sup>9</sup>*Connection of Certain Department of Labor Employees with the Case of Thomas J. Mooney: Letter from the Secretary of Labor*, H. Doc. No. 157, 66th Cong., 1st Sess. 15 (1919). See generally, Philip Foner, *7 History of the Labor Movement in the United States: Labor and World War I, 1914-1918*, at 74-95 (1987).

<sup>10</sup>For accounts of events in San Jose, California and Minnesota, see "Extracts from Secretary Dobson's Supplementary Report, Delivered to the Saratoga Springs, N.Y., Convention: So-Called 'Open-Shop' Warfare," 27 (11) *BMP* 241-42 (Nov. 1924).

<sup>11</sup>George Soule, *Prosperity Decade: From War to Depression: 1917-1929*, at 200 (1968 [1947]).

<sup>12</sup>Senate Committee on Education and Labor, *Violations of Free Speech and Rights of Labor*, Rep. No. 1150 Pt. 2 at 91.

<sup>13</sup>Irving Bernstein, *The Lean Years: A History of the American Worker 1920-1933*, at 148 (1966 [1960]). See generally, Savel Zimand, *The Open Shop Drive: Who Is Behind It and Where Is It Going?* (1921); "Who Is Paying for the Open Shop Movement?" 28 (5) *JEWO* 239 (May 1929); Allen Wakstein, "The Origins of the Open-Shop Movement, 1919-1920," 51 *JAH* 460-75 (1964); *idem*, "The National Association of Manufacturers and Labor Relations in the 1920s," 10 (2) *LH* 163-76 (Spr. 1976). On the strike, see Commission of Inquiry, the Interchurch World Movement, *Report on the Steel Strike of 1919* (1920).

looking for their old jobs.<sup>14</sup>

The objective pressures of the business cycle sufficed to weaken the labor movement as the steep rise in unemployment was accompanied by a sharp fall in wages. Table 24 shows this development during World War I and its aftermath. Alone from 1920 to 1921, real wages fell by more than 13 percent as unemployment more than quadrupled.<sup>15</sup> This "liquidation...was extensive and thorough"; the increase in productivity and decline in wages "helped to protect profit margins and to restore confidence.... In the construction industry the decrease in costs evidently played an important role. While high building costs had tended to cause postponement of construction projects in 1919-20, the reduction in costs in 1920-21...led to an early recovery in construction."<sup>16</sup>

In view of this cyclical development as well as of the renewed entrepreneurial onslaught, it is not surprising that the growth in union membership, which had been almost uninterrupted since the turn of the century, was suddenly converted into a 26-percent plunge from 1920 to 1923: 1920—5,110,800; 1921—4,815,000; 1922—4,059,400; 1923—3,780,000.<sup>17</sup> The even sharper fall in wages in nonunion firms put unions under greater pressure to accede to employers' demands for increased physical productivity.<sup>18</sup>

Nor had the preceding years, as the BLS noted, been golden for construction workers: "The great discrepancy in the increases of prices of building materials and the cost of living as compared with wage rates in the building industry during the years 1913 to 1920 was reflected in the decrease in the number of suitable workingmen's dwellings available during that period."<sup>19</sup> Despite this clear empirical refutation, employers' open-shop propaganda in the 1920s sought to inflame public opinion against construction unions by attributing the housing shortage to their work rules and high wages.<sup>20</sup> Such rhetoric constituted another

<sup>14</sup>Anthony Bimba, *The History of the American Working Class* 293-94 (1936 [1927]).

<sup>15</sup>See generally, V.W. Lanfear, *Business Fluctuations and the American Labor Movement 1915-1922* (1924). On declining real wages during World War I, see DOL, Div. of Public Works and Construction Development, *Economics of the Construction Industry* 186 (1919).

<sup>16</sup>R.A. Gordon, "Cyclical Experience in the Interwar Period: The Investment Boom of the 'Twenties," in Universities-National Bureau Committee for Economic Research, *Conference on Business Cycles* 163-215 at 173 (1951).

<sup>17</sup>Leo Wolman, *The Growth of American Trade Unions 1880-1923*, at 33 (1924). See also *idem*, "Labor," in President's Conference on Unemployment, *2 Recent Economic Changes in the United States: Report of the Committee on Recent Economic Changes* 425-93 at 480-82 (1929).

<sup>18</sup>Lloyd Ulman, "The Development of Trades and Labor Unions," in *American Economic History* 395 (Seymour Harris ed., 1961).

<sup>19</sup>"Trend of Wages, Prices of Materials, Cost of Living in the Building Industry," 15 (6) *MLR* 1277-79 at 1277 (Dec. 1922).

<sup>20</sup>Lewis Lorwin, *The American Federation of Labor: History, Policies, and Prospects* 203

similarity between the American Plan and the antiunion movement of the 1970s.<sup>21</sup>

Year	Full-Time Equivalent Earnings (\$)	% of Time Lost by Unemployment	Money Earnings (\$)	Cost of Living (1910-14=100)	Real Earnings (in 1910-1914 \$)
1916	826	4.2	791	111.2	711
1917	956	3.8	920	130.8	703
1918	1,107	4.3	1,059	153.5	689
1919	1,260	6.9	1,173	176.8	663
1920	1,448	5.0	1,376	204.7	672
1921	1,347	21.0	1,064	182.4	583
1922	1,330	14.4	1,138	171.0	665

Source: Stanley Lebergott, "Earnings of Nonfarm Employees in the U.S., 1890-1946," 43 (241) *JASA* 76 (Mar. 1948).

The local expression of the open-shop movement of interest here arose in the San Francisco construction industry. The IASF, formed on November 8, 1921, embodied the determination of "[l]arge employers in the city in the building materials, manufacturing, retailing, railroad, banking, and insurance industries, as well as the Chamber of Commerce...to destroy the powerful building trades, the decisive element in the local labor movement. Since they considered the contractors unreliable on the open shop, they established a permit system...."<sup>22</sup> Thus the peculiarity of the American Plan in its application to construction—and at the same time the aspect that constitutes its historical relevance for the analysis of the 1970s—is that not construction firms but, rather, their large industrial and finance customers, drove the movement.<sup>23</sup>

(1933).

<sup>21</sup>"Because of the housing shortage and the high rents the building trades were a particularly vulnerable point for an attack which needed the support of public opinion. It was charged that the high cost of building was due to the wages paid and to the restrictive union rules and practices of the various craft unions...." Soule, *Prosperity Decade* at 202.

<sup>22</sup>Bernstein, *Lean Years* at 154.

<sup>23</sup>Christie, *Empire in Wood* at 235; Louis Adamic, *Dynamite: The Story of Class Violence*

Nor was this structural relationship unique to San Francisco. A similar development also began in 1921 in Chicago. There a "Citizens' Committee" of antiunion industrial and finance capitalists recommended to a group of national building companies, which had feared strikes in other cities if they complied with the decisions of this antiunion committee, that they either submit or temporarily withdraw from the Chicago construction market. To be sure, the Citizens' Committee to Enforce the Landis Award never achieved the degree of control in Chicago that the IASF secured in San Francisco. Its genesis was also more serendipitous, and its reign, which included the importation of more than 25,000 workers, was briefer.<sup>24</sup>

The particular virulence of the intervention in San Francisco may be explained by the earlier development of the construction industry and class conflict there. In the period from 1849 to 1869, this growth was, as in other cities, relatively slow: "The master retained a fairly permanent force of men. Moreover, he worked with them, and directed the task himself. The line that divided master and journeyman was relatively indistinct." The city's rapid growth during the last third of the nineteenth century (1869-1896) transformed the industry: "Building construction was one of the first industries in San Francisco to feel the effects of large-scale production. Large construction projects called for contractors with considerable capital and large forces of workers." This transformation led to the ouster of the old masters by general contractors who insured that "the customary relationships of master and journeyman" disappeared.<sup>25</sup>

As a result, construction unions became autonomous vis-à-vis the general labor movement. This separation found its organizational expression in the Building Trades Council (BTC) headed by the leader of the United Brotherhood of Carpenters and Joiners. During the period from the turn of the century to the

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*in America* 264 (rev. ed., 1934).

<sup>24</sup>Royal Montgomery, *Industrial Relations in the Chicago Building Trades* 235, 275-309 (1927); Haber, *Industrial Relations in the Building Industry* at 387-99. By 1929, it was estimated that 81 percent of building trades workers in Chicago were organized—the city's highest. Carroll Christenson, "Collective Bargaining in Chicago: 1929-30: A Study of the Economic Significance of the Industrial Location of Trade-Unionism," tab. 1 at 2 (Ph.D. diss. U. Chicago, 1931), reprinted in *Collective Bargaining in Chicago 1929-30: Social Science Studies*, No. 27 (1933). An in some respects deviant movement took place in Seattle in 1919-20. Led by the Associated Industries, the open shop American Plan encompassed virtually all industries. Although the "core" of the drive was the plan "to destroy the unions altogether, and with them workers' collective control over the work process," the Associated Industries consciously sought to accommodate "some of the needs unions sought to meet for their members, specifically the financial erosion of working-class living standards after the war." The Seattle Master Builders' Association, for example, after eliminating the closed shop, actually increased carpenters' wages. Dana Frank, *Purchasing Power: Consumer Organizing, Gender, and the Seattle Labor Movement, 1919-1929*, at 100 (1994). This account does not describe the changes that occurred after construction employers seized control over the work process.

<sup>25</sup>Frederick Ryan, *Industrial Relations in the San Francisco Building Trades* 9, 13 (1935).

founding of the IASF, the BTC enjoyed “a bargaining advantage over the employers in that changes were instituted by the workers.”<sup>26</sup> Here it is necessary to distinguish between the union members and the organization that P. H. McCarthy led effectively but autocratically.<sup>27</sup> Construction employers’ acquiescence was explained by the fact that they “would organize readily into trade associations from which immediate benefits in limiting competition...could be derived, but to form a central organization to oppose the demands of the workers appeared to be a useless endeavor so long as an increase in costs could be passed on to the builder.”<sup>28</sup>

Counterforces opposed to this arrangement stemmed from two sides: industrial and finance capital in San Francisco, which feared that the city would soon be overtaken by Los Angeles as the economic center of California,<sup>29</sup> and union members themselves, whose standard of living had suffered under the BTC’s rule. After construction wages had remained almost unchanged from 1907 to 1917, the situation came to a head in 1920 during the next set of collective bargaining negotiations. Although the cost of living had risen 96 percent between 1913 and 1920 compared to a 71.7 percent rise in wages, employers demanded a nominal reduction in wages in view of the depressed economy. After the Chamber of Commerce and contractors made it clear to the BTC that “employers would receive the support of the bankers and industrial leaders” if the unions refused to agree to arbitration, McCarthy yielded. The Arbitration Board—the chief arbitrator was the archbishop of San Francisco although the Catholic church was one of the city’s largest building customers—issued an award reducing wages by 7.5 percent. McCarthy’s withdrawal from the arbitration proceedings triggered a lockout, in the course of which the BTC accepted the arbitration award. This action, in turn, prompted the membership, in its first referendum in 17 years, to reject the proposal by a two-thirds majority. The newly formed Conference Committee of the Allied Building Trades Unions called for a general strike, to which workers outside of the

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<sup>26</sup>Ryan, *Industrial Relations in the San Francisco Building Trades* at 15, 112 (quote). See generally, Michael Kazin, *Barons of Labor: The San Francisco Building Trades and Union Power in the Progressive Era* 82-107 (1989).

<sup>27</sup>Commission on Industrial Relations, 6 *Industrial Relations: Final Report and Testimony*, Sen. Doc. No. 415, 64th Cong., 1st Sess. 5, 169-401 (1916); Ira Cross, “Collective Bargaining and Trade Agreements in the Brewery, Metal, Teaming, and Building Trades of San Francisco, California,” 4 (4) *UCPE* 233-364 at 331-42 (1918); L. O’Donnell, “The Greening of a Limerick Man: Patrick Henry McCarthy,” 9 (2) *Eire-Ireland* 119-28 (1976).

<sup>28</sup>Ryan, *Industrial Relations in the San Francisco Building Trades* at 118.

<sup>29</sup>The *Wall Street Journal* reported in 1922 that earlier contractors had been “ready to resist the tyranny of McCarthy, but a majority of local bankers, who were for industrial peace at any price, coerced them into submitting to the czar’s exactions....” “Dethronement of a Czar,” in [Wall Street Journal], *A History of Organized Felony and Folly: The Record of Union Labor in Crime and Economics* 99-101 at 100 (1923 [1922]).

building trades remained indifferent.<sup>30</sup>

By early August, *ENR* reported that the “American Plan is now an accepted fact in San Francisco except among certain unions and the building trades council leaders....”<sup>31</sup> Even as the workers voted to end the strike on August 27, five-sixths of them also voted against adopting the American Plan.<sup>32</sup> The following month the Building Construction Branch of the Rank and File Federation of Workers was established, the preamble to whose constitution declared: “This organization is founded upon the understanding that the industrial society of today is divided into two classes, the working class and the master class, and that as long as these two classes exist, there shall be a neverceasing struggle between them.” Its “ultimate aim” was “complete control of the natural resources of the earth and of the machinery of production in order that those who toil shall reap the full product of their labor,” but its more immediate goal was the abolition of organization along craft lines by means of transferable working cards, which would eliminate jurisdictional disputes. Although the revolt “had stirred up reactions within the workers that were entirely foreign to the philosophy of ‘business unionism,’” what had united the workers was opposition to McCarthy’s autocratic methods, and when he resigned in January 1922, the workers returned to the old unions.<sup>33</sup>

It was in the context of this strike activity that the American Plan originated in San Francisco. The tradition of a city-wide militant antiunion employers’ association went back to the turn of the century, and, under the name Citizens’ Alliance of San Francisco, turned its attention to the building unions in 1904. Such organizations were typical of the period when rapid urban growth, fueled by unrestricted immigration and the development of concentrated large industry sustained such demand for urban construction that building workers attained a “unique bargaining position.” Many of the large corporate sponsors of the IASF were identical with those forming the Law and Order Committee of the Chamber of Commerce formed in 1916 to destroy unionism in San Francisco. Their complaints focused on restraints that union rules had imposed on the construction industry, leading to higher costs and higher prices, and preventing the requisite flow

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<sup>30</sup>Ryan, *Industrial Relations in the San Francisco Building Trades* at 132-61, 144 (quote): “Builders in Lockout Against San Francisco Unions,” 86 (22) *ENR* 970 (June 2, 1921); “Lower Wages in Building Industry at San Francisco,” 86 (15) *ENR* 660 (Apr. 14, 1921).

<sup>31</sup>“San Francisco Building Situation Gradually Improving,” 87 (6) *ENR* 259 (Aug. 11, 1921).

<sup>32</sup>“San Francisco Building Situation Clears Up,” 87 (16) *ENR* 427 (Sept. 8, 1921).

<sup>33</sup>Ryan, *Industrial Relations in the San Francisco Building Trades* at 221 (quote). 163 (quote), 164-65. Emblematic of McCarthy’s rule was his reaction to a painters’ strike in 1914 that the BTC had not authorized: he urged the Building Trade Employers’ Association to threaten a lockout of all unions. *Id.* at 127. See also Commission on Industrial Relations, 6 *Industrial Relations* at 5,473-84.

of capital into building.<sup>34</sup>

To induce building contractors to derecognize the unions as collective bargaining partners, the IASF reimbursed them for all monetary losses. Many large industrial customers such as Standard Oil Company of California offered additional premiums to encourage construction firms to hire nonunion workers. In order to overcome the resistance of numerous contractors who either were themselves former union members or allegedly feared union countermeasures, the IASF had two means of pressure at its disposal: denial of credit and withholding of construction materials.<sup>35</sup> The IASF then entered into form contracts with the individual workers, which required them to “produce a full day’s output” defined as “that amount of work which would ordinarily be performed by a skilled, experienced [worker] devoting his entire time, energies, and attention to his work” despite the fact that the contract provided that, if injured, the worker could not sue the IASF; instead, his recourse was merely to file a workers’ compensation claim against “the immediate employers” to whom the IASF had assigned him.<sup>36</sup>

In order to execute the American Plan, the IASF “had to flood the labor market with nonunion labor.” It achieved this end by importing workers and introducing “virtually unlimited apprentices.”<sup>37</sup> By mid-1924, the IASF’s trade schools had graduated 1,000 apprentices and were training 700 more; by the next year, painters, plasterers, and plumbers were suffering from their low-wage competition.<sup>38</sup> The American Plan’s initial success can be gauged by the fact that by 1922 the building industry was almost 100 percent covered.<sup>39</sup> In addition, from 1920 to 1923 the manual trades in San Francisco were transformed from more than 90 percent organized to 85 percent open shop.<sup>40</sup>

The IASF’s withholding of construction materials from contractors who continued to operate union shops ultimately led to a series of state and federal prosecutions, which culminated in a decision handed down by the U.S. Supreme Court in 1925. In November 1923, a federal district court for the Northern District of California, in an action brought by the United States Government to restrain the

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<sup>34</sup>Senate Committee on Education and Labor, *Violations of Free Speech and Rights of Labor*, Rep. No. 1150 Pt. 2 at 83-90, 84 n.46 (quote); Ryan, *Industrial Relations in the San Francisco Building Trades* at 134-38.

<sup>35</sup>Haber, *Industrial Relations in the Building Industry* at 415-19.

<sup>36</sup>“Building Trades—San Francisco: Bonus Contract of the Industrial Association of San Francisco,” 16 (1) *MLR* 107-109 at 108 (Jan. 1923).

<sup>37</sup>Senate Committee on Education and Labor, *Violations of Free Speech and Rights of Labor*, Rep. No. 1150 Pt. 2 at 96.

<sup>38</sup>Ryan, *Industrial Relations in the San Francisco Building Trades* at 190

<sup>39</sup>1 (2) *AP* (Oct. 1922) (no pagination).

<sup>40</sup>Robert Dunn, *The Americanization of Labor: The Employers’ Offensive Against the Trade Unions* 48-49 (1927).

IASF, the Builders' Exchange, and other entities, from executing a conspiracy in restraint of interstate commerce, issued a decree enjoining the IASF and other defendants from "requiring any permit for the purchase of materials or supplies produced without the state, and coming here in interstate commerce, or for making, as a condition for the issuance of a permit, any regulation that will interfere with the free movement of plumbers' or other supplies produced without the state."<sup>41</sup>

Two years later, however, the U.S. Supreme Court unanimously reversed the decree. The U.S. Government had pleaded that the purpose of the conspiracy "was to take away from employers the right to employ men upon any other terms than those of the so-called American Plan." The defendants' power to "coerce manufacturers outside of the State to withhold the materials manufactured by them from anyone within the State who did not submit to the will of the conspirators" was evidenced by the fact that "90 percent of the new building work in San Francisco was being done by members of the defendant."<sup>42</sup> The Court's recitation of the background focused on the fact that unions, which represented 99 percent of all building workers, had enforced "many restrictions...which the employers, and a large body of other citizens, considered to be unreasonable, uneconomic and injurious to the building industries, resulting...in decreased production, increased cost and generally retarded progress." These restrictions included the number of apprentices, amount of work, use of labor-saving devices, and "interfering with the legitimate authority of the employer." After the failure of efforts to persuade strikers to return to work in 1921, "mass-meetings were held by representative citizens in large numbers and from all walks of life. At these meetings it was resolved that the work of building must go forward..." The Supreme Court reversed the lower court, however, because the IASF's aim was not restraint of interstate trade, "but was a purely local matter, namely, regulation of building operations within a limited local area, so as to prevent their domination by the labor unions." Moreover, the means used did not implicate interstate commerce, in part because most of the building materials were produced in California.<sup>43</sup>

To "crush the building trades unions completely," the IASF used its initial fund of \$1,250,000, which consisted of contributions from members including large oil companies, banks, railroads, and utilities such as Standard Oil, Wells Fargo Bank, Southern Pacific Railroad, Pacific Gas and Electric, and the Emporium, whose capital in large part consisted of buildings and structures and which were therefore particularly interested in establishing a new order in the San Francisco

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<sup>41</sup>United States v. Industrial Ass'n of San Francisco, 293 F. 925, 928 (D. N.D. Cal. 1923). See also "Federal Court in San Francisco Finds Builders' Exchange 'Guilty' in 'American Plan' Conspiracy Case," 26 (12) *BMP* 269-72 (Dec. 1923).

<sup>42</sup>Industrial Association of San Francisco v. United States, 268 U.S. 64, \*\*\*7, 10 (1925) (Brief of United States).

<sup>43</sup>Industrial Association of San Francisco v. United States, 268 at 72-84.

building industry.<sup>44</sup>

The IASF's demagogic character, which it shared with other antiunion movements before and since, emerged clearly in its assurance from the outset that the American Plan "is not aimed at the destruction of unions, but has adopted the fundamental policy that dealings shall be with individual employees only and agreements will not be made with unions."<sup>45</sup> In fact, however, as contemporaries understood: "It was born to defeat the unions. Its work has been primarily to recruit and protect strike breakers...."<sup>46</sup> Significantly, as early as 1922 the IASF itself called attention to the fact that: "If the open shop is to be a complete success it is absolutely necessary that it be universally adopted. An open-shop policy in one city and a closed-shop policy in an adjoining city tends to demoralize building conditions in both places."<sup>47</sup> To this end, the IASF held a conference in Salt Lake City, reinforcing the spread, by October 1921, of the American Plan to Los Angeles and other west coast cities.<sup>48</sup>

An overall evaluation of the IASF is confronted with contradictory material. A prevalent opinion takes the position that the IASF failed to replace the control functions that unions necessarily exercise in a modern industrial society: "With the elimination of union control, the stabilizing influences and functions, which have been attributed to building trade unions, were no longer available. ... Although the attempt was clearly made to remove wages and other economic conditions from competition, under the American Plan no effective substitute for the trade unions was developed."<sup>49</sup> This position is inconsistent—an inconsistency, to be sure, inherent in the American Plan itself—insofar as the elimination of these special union functions would have had to be linked to a restructuring of the construction industry, which was not even contemplated.

Two especially important functions are self-supervision at work and responsibility for supplying the requisite quantity and quality of labor power.

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<sup>44</sup>Senate Committee on Education and Labor, *Violations of Free Speech and Rights of Labor*, Rep. No. 1150, Pt. 2, at 94 (quote); Haber, *Industrial Relations in the Building Industry* at 431, 575 n.39.

<sup>45</sup>"American Plan Probable Result of San Francisco Strike," 87 (3) *ENR* 128 (July 21, 1921).

<sup>46</sup>Haber, *Industrial Relations in the Building Industry* at 432.

<sup>47</sup>Brief for Appellee, *Industrial Association of San Francisco v. United States*, 268 U.S. 64 (1925) (quoting from official IASF publication dated Apr. 13, 1922, at 114).

<sup>48</sup>87 (17) *ENR* 711 (Oct. 27, 1921); "A \$100,000,000 Year: Los Angeles an Open Shop Town," *Constructor*, 4 (1):55 (Jan. 1922); "Open Shop Thriving: Lack of Jurisdictional Craft Disputes Effect Large Saving," *Constructor* at 86 (efficiency in Tucson rose 30 to 40 percent by virtue of using unskilled labor where closed shop demanded skilled labor); "Open Shop Working Well," 5 (6) *Constructor* 53-54 (June 1923) (Duluth); "Labor Situation: Work Successfully Manned Under Open Shop," 5 (10) *Constructor* 46 (Oct. 1923) (AGC "licked" unions in New Orleans).

<sup>49</sup>Gordon Bertram & Sherman Maisel, *Industrial Relations in the Construction Industry* 26-27 (1955).

Whereas unions' retention of the former function depends on the craft character of the labor processes, the second is rooted in the relatively low level of capital accumulation and centralization. Since the IASF failed to intervene in the immediate process of production at all—"[a]lthough the initiative and directing control in determining wages, hours and working conditions is no longer with the employers...the employers in the building trades still have complete freedom in conducting their business"—it was scarcely surprising that it had to "depend on the voluntary assistance of the unions in policing the job. ... The Industrial Association seems to have taken advantage of the opportunity to use the unions as 'job stewards.' The unions complain to the Association and the latter chastizes the employer if it sees fit. The position of the union is not unlike that of the minority party in a government. Its function is to spy on industrial conditions and, on any violation of the code of conduct, to make a protest to the party in power."<sup>50</sup> In this context, the IASF, feeling "strong enough to dominate the local industry monopolistically without the cooperation of the trade union leaders," could be viewed as a forerunner of a version of fascist corporativism.<sup>51</sup>

To be sure, one essential element was lacking: the American Plan arose at a time when construction unionists in San Francisco were fighting an autocratic bureaucracy, which was not even able to achieve a wage increase to compensate for the rate of inflation. The very fact that a frontal attack on unions would solidarize the membership would have to have given pause.

It is characteristic of class-oriented movements such as the American Plan that they attempt to portray themselves as standing above the classes whose interests coincide with those of society as a whole.<sup>52</sup> Thus in 1923 the IASF, after a jury had acquitted 34 building material dealers on charges of having violated the state antitrust law by having refused to sell to union contractors, declared that the result "should redound materially and permanently to the benefit of every community that seeks to free its industry from autocratic class control and to secure the ultimate good of all labor, union and non-union, as well as of industry itself." The IASF asserted that the jury, to whom the defendants had argued that San Francisco had prospered under the American Plan, had upheld the "doctrine that the general good of the whole community must be put above advantage to any one class."<sup>53</sup> In claiming that civic improvement was its sole motivation, the IASF portrayed itself as having acted reluctantly only after conditions in the construction

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<sup>50</sup>Haber, *Industrial Relations in the Building Industry* at 437, 434.

<sup>51</sup>William Z. Foster, *Misleaders of Labor* 194 (1927). Cf. Paul Crosser, *Ideologies and American Labor* 152 (1941); Franz Neumann, *Behemoth: The Structure and Practice of National Socialism 1933-1944*, at 337-40 (1966 [1942]).

<sup>52</sup>Lefkoe, *Crisis in Construction* at 114.

<sup>53</sup>"San Francisco Material Dealers Acquitted of Charges," 90 (22) *ENR* 977 (May 31, 1923). The article erroneously referred to a jury trial before the California Supreme Court.

industry had reached the point at which “intervention of some outside party that had strength enough to whip both employers and workers into shape was inevitable....”<sup>54</sup>

The long-term practical effect of the American Plan, even in San Francisco, is less clear. As the national president of the Bricklayers union wrote three decades later: “By 1924, the building boom had created such a demand that all union men had no difficulty in getting work at the union scale, although no agreements were concluded until 1926. By that time the influence of the Association was on the wane and subsequently was reduced to a paper organization.”<sup>55</sup> Although the IASF agreed to suspend its permit system in 1927, its “almost complete domination of labor” continued until 1933, when federal legislation began to confer collective bargaining rights.<sup>56</sup> Nationally, too, the open-shop campaign “in the long run...had little influence on the membership and status of the building unions....”<sup>57</sup>

Nevertheless, writing a few years after the IASF’s demise, the Senate Committee on Education and Labor affirmed that it was

an example par excellence of local association success in denying labor its collective-bargaining rights. From a local viewpoint, it achieved what so many of its predecessors had failed of accomplishment, namely, the destruction of effective organization among the city’s two most unified groups of workers and, consequently, the complete dominance of all organized labor. Alone of all the local employers’ associations, through its relentless enforcement of the permit plan, it achieved complete restraint not only of labor, but also of the entire building industry.<sup>58</sup>

The view that the American Plan was ultimately a failure neglects the influence that the effective displacement of union counterpower had on the wage formation process. Table 25 compares the development of hourly wages, the cost of living, and real wages of construction workers in San Francisco and nationally, clearly showing that San Francisco construction workers’ nominal hourly wages stagnated during the decade after the introduction of the American Plan, whereas nationally construction workers experienced a 46 percent increase (until the high point in 1931). While wage costs in San Francisco were favorable to enterprises there, the workers’ real hourly wages rose much more slowly than nationally and, especially after 1924, only as a result of the decline in the cost of living.<sup>59</sup> In

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<sup>54</sup>Ryan, *Industrial Relations in the San Francisco Building Trades* at 170-71.

<sup>55</sup>Bates, *Bricklayers’ Century* at 204.

<sup>56</sup>Senate Committee on Education and Labor, *Violations of Free Speech and Rights of Labor*, Rep. No. 1150, Pt. 2, at 95. The IASF collapsed in 1937. *Id.* at 89.

<sup>57</sup>Soule, *Prosperity Decade* at 202.

<sup>58</sup>Senate Committee on Education and Labor, *Violations of Free Speech and Rights of Labor*, Rep. No. 1150, Pt. 2 at 98.

<sup>59</sup>The real hourly wage data must be used cautiously since they ignore unemployment and short hours, which are vital determinants of wages during depressions. The average annual earnings

absolute terms, the IASF “maintained a wage scale lower than that of any closed-shop city in the country.”<sup>60</sup>

Table 25: Construction Wages in San Francisco and the United States, 1920-1933						
Year	San Francisco			United States		
	Hourly Wages	Cost of Living	Real Hourly Wages	Hourly Wages	Cost of Living	Real Hourly Wages
	1913=100					
1920	177	185	96	194	203	96
1921	158	163	97	198	181	109
1922	160	158	99	185	169	109
1923	162	162	100	205	172	119
1924	168	160	105	221	173	128
1925	170	164	104	230	177	130
1926	172	161	107	245	179	137
1927	172	160	107	253	175	145
1928	172	161	107	255	173	147
1929	172	160	107	258	173	149
1930	172	151	114	269	169	159
1931	172	138	125	270	154	175
1932	162	128	127	230	138	167
1933	156	110	142	224	131	171

Source: Ryan, *Industrial Relations in the San Francisco Building Trades* at 182; William Haber & Harold Levinson, *Labor Relations and Productivity in the Building Trades* at 205.

per full-time construction employee attained in 1920 were not definitively surpassed until 1942: “The effect of the depression was so comprehensive, so catastrophic...that real earnings in 1930-34 were almost identical with those in 1890-94....” Lebergott, “Earnings of Nonfarm Employees in the U.S., 1890-1946” at 84, 75, 77.

<sup>60</sup>Haber, *Industrial Relations in the Building Industry* at 440.

Cleveland in the 1920s witnessed a similar development, which formed a link in the general "American Plan" campaign supported by the NAM, which focused on attacking building trades unions.<sup>61</sup> One of the campaign's most spectacular manifestations was the Bethlehem Steel Corporation's announcement that it would refuse to sell fabricated steel to building contractors in New York and Philadelphia operating on a union shop basis even if the result were a suspension of building in those cities.<sup>62</sup> In Cleveland, as in other well-organized cities, this emphasis derived from the circumstance that these unions

presented one of the most serious obstacles to the campaign of the open-shop movement. Among the most powerful unions in the labor movement, their strength sprang from various economic factors inherent in the building industry, and was considerably increased by the fact that the twenties saw a boom in the building industry and a great demand for skilled labor.

Strong and successful, the building-trades unions gave great impetus, both by their example and by their activities, to unionization in other industries. This fact was recognized by the unions and the open-shop associations.<sup>63</sup>

Since the contractors themselves were often less than enthusiastic about opposing unions where the latter helped standardize wage costs, the NAM American Plan recognized that the support of all businesses would have to be enlisted to place pressure on the contractors, especially the large ones, to adhere to antiunion policies.<sup>64</sup> The American Plan held out the prospect that political and

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<sup>61</sup>For the organization's own presentation of the campaign, see its *Open Shop Bulletin*, which appeared in 27 issues from November 1920 to March 1932, as well as its *Open Shop Encyclopedia for Debaters: A Reference Book for Use of Teachers, Students and Public Speakers* (Noel Sargent compiler, 3d ed., 1922 [1921]). For a sample of AFL opinion on the drive, see Samuel Gompers, "'Open Shop' Hypocrisy Exposed," 28 (2) *AF* 109-11 (Feb. 1921); "Open Shop—Survival of Outworn Industrial Era," 28 (2) *JEWO* 62-63, 112 (Feb. 1929); "The Case for Employer Violence—Substantive Record," 28 (3) *JEWO* 121, 165 (Mar. 1929); "Turning the Clock Back in the Key Industries," 28 (4) *JEWO* 179, 222 (Apr. 1929); "Who Is Paying for the Open Shop Movement?" 28 (5) *JEWO* 239 (May 1929). For a left-wing view, see Jay Lovestone, *The Government—Strikebreaker: A Study of the Role of Government in the Recent Industrial Crisis* (1923). On the open-shop movement in Wheeling, West Virginia, begun in June, 1921, to break a two-month strike by building trades unionists who had refused to accept a 20 percent wage cut after expiration of their agreements, see John Hennen, *The Americanization of West Virginia: Creating a Modern Industrial State 1916-1925*, at 110 (1996).

<sup>62</sup>Gompers, "'Open Shop' Hypocrisy Exposed" at 110.

<sup>63</sup>U.S. Senate, Committee on Education and Labor, *Violations of Free Speech and Rights of Labor*, Rep. No. 6, Pt. 5: *Labor Policies of Employers' Associations*, Pt. II: *The Associated Industries of Cleveland*, 76th Cong., 1st Sess. 25 (1939); see also *id.* at 8-18.

<sup>64</sup>For materials reprinted from the "Hand Book of the Ninth Semi-Annual, American Plan-Open Shop Conference," held in Detroit in 1926, and from the "Proceedings of Eighth Semiannual American Plan-Open Shop Conference," held in San Diego in 1925, which explicitly pointed to the

economic benefits would accrue to business at large from a successful struggle against organized labor. The ideological transparency of the alleged impact of the open shop left nothing to be desired: “Removes subconscious class antagonisms”; “Makes effective the slogan ‘The best man wins’”; “Increases capital investments due to increased safety of returns”; “Class consciousness is removed”: “Irritating forces that would divide society are put in quarantine”; “It recognizes that certain subversive activities in this country are inspired movements that emanate from abroad”....<sup>65</sup> At the same time, the American Plan promised lower building costs.<sup>66</sup> On this basis it proved possible to recruit a large number of industrial firms and banks to oppose a construction strike in 1926; by raising a \$5 million fund in support of the employers, a “Citizens’ Committee” enabled them to gain favorable terms, although the unions “still retained much of their power.”<sup>67</sup>

In this respect, too, the open-shop movement in Cleveland proved to be representative of the national movement in construction inasmuch as a temporary blow was struck at a well-organized body of workers in one city without causing irreparable damage. Although these forces registered no significant advances, neither did the unions make any inroads into previously nonunion areas or sectors. The fact that the open-shop movement failed to gain ground during the depression of the 1930s underscores the unions’ relative strength.<sup>68</sup> The movement’s ultimate failure, however, may be traced back to the rise of industrial unionism in the 1930s and the insight on the part of industrial capital that antiunionism as a social principle had, for the time being at least, outlived its usefulness.

The American Plan’s “harmonious coercion” did not so much peter out during the 1920s as yield to “the gentler methods of paternalistic welfare capitalism” as “[e]mployers could not decide whether their interests were better served simply by keeping labor disorganized or by putting it into organizations under their control. ... Employers were unsure whether to regard the worker as a displaceable cog in the productive machine or as an indispensable consumer of industry’s rising output, his wage as a cost item to be kept low or as an income

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need to mobilize “[f]inancial and building interests” as well as “[b]usiness men” in general to restrict contracts to antiunion contractors, see *id.* at 211-12, 220-21.

<sup>65</sup>*Id.* at 205, 207.

<sup>66</sup>*Id.* at 27, 205, 220. Although it is difficult to assess the claim that unions contributed to unnecessary increases in building costs during the 1920s, in the long run, increased productivity cannot result from mere oligopsonistic advantages in the labor market; rather, more efficient construction methods would have to be forthcoming, and there is no indication that American Planners were preparing any technological breakthroughs. They seem to have restricted themselves to wresting control of the skilled labor supply from unions and coordinating it among cities. *Id.* at 211-12.

<sup>67</sup>*Id.* at 27-29.

<sup>68</sup>William Haber, “Building Construction,” in *How Collective Bargaining Works* 183-228 at 205 (Harry Millis ed., 1942).

factor to be pushed high.”<sup>69</sup>

Since the IASF prepared no new structures that would have transformed this external intervention from an emergency into a permanent component of institutionalized labor relations, and since it also failed to create a new framework within which the old relations between unions and contractors could have developed, it is easy to understand why labor relations scholars in the 1930s regarded the American Plan as lacking a future (collective bargaining was in fact resumed in 1936): “If the Association had developed its original program of maintaining a balance of power between two equals so as to strengthen the employers and temper the power of the unions, its efforts would indeed have been commendable. The policy of the Association, however, has been to establish what it calls a ‘benevolent individualism.’”<sup>70</sup>

This view resembles that held by construction employers associations, the Roundtable, and government policymakers in the 1960s and 1970s, who did not seek to crush the building trades unions, but pleaded for state intervention to recreate a ‘lost equilibrium’ between construction labor and capital such as it still existed in other industries. Such a position overlooked the fact that the balance of forces between labor and capital in these industries was crucially determined by the state of capital accumulation and centralization and technological development. State intervention that circumvented these determinants by establishing a corresponding juridical superstructure without having touched the production process itself could not help missing its alleged goal. Because it is unimaginable that under the political realities of the 1970s an entire sector of national unions accounting for 20 percent of total AFL-CIO membership would have been crushed by direct political means, the most effective open-shop movement would have sought to realize its goal primarily by means of a structural transformation of the construction industry. For in the long run no labor union is immune to the development of the forces of production even if it may be in a position temporarily to stop the process or to negotiate better terms for adoption of the next wave of industrialization.

Unlike the American Plan’s explicit anti-Bolshevist thrust,<sup>71</sup> the open-shop movement of the 1970s was much less straightforwardly ideological—in large part because it succeeded in constructing its union opponents as greedy rather than politically subversive—and more concerned with a practical transformation of the construction industry. Roundtable activities can be interpreted as analogous to those of the American Plan, but crucial differences separate them. The Roundtable

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<sup>69</sup>Bernstein, *Lean Years* at 145-46.

<sup>70</sup>Haber, *Industrial Relations in the Building Industry* at 437.

<sup>71</sup>Philip Foner, *8 History of the Labor Movement in the United States: Postwar Struggles, 1918-1920*, at 172-73 (1988).

was an incomparably more sophisticated, influential, systematic, and serious national force. To be sure, it never sought or attained the kind of direct power over a metropolitan construction market that the IASF wielded in San Francisco during the 1920s. Nevertheless, its voluble demands for restraining construction unions' allegedly arbitrary or monopoly power or even eliminating their basis achieved a much more lasting and broad-based impact. The Roundtable was unable to secure enactment of its national legislative agenda, but it did thwart the AFL-CIO's congressional initiatives. Its most important accomplishment, undermining unions' quasi-monopoly of the large-scale industrial construction so vital to Roundtable members' accumulation strategies, was a self-help measure undertaken largely without state assistance. As was the case with the IASF, however, the Roundtable's successes may lack a firm foundation because they were not based on a thoroughgoing restructuring of the construction industry. So long as a deviant firm-size-structure and centralization of capital remain coupled with noncontinuous employment and a nonindustrialized craft production system, uncommonly strong unions and above-average wages will remain a threat.