

Wars of Attrition

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

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Part IV

The Joint Employer-State Struggle

The deterioration of labor relations in our industry has progressed to the point that the very existence of the construction industry as a free enterprise is in jeopardy. In fact, its impact is so far reaching that it poses a threat to our entire economic system.¹

¹John Graney, "Misplaced Responsibilities," *CLR*, No. 687, Nov. 20, 1968, at E-1-E-3 at E-1. Graney, labor relations manager of Ebasco Services, NCA past president, and future Roundtable official, delivered this address at the National Conference on Construction Problems.

The Nixon Administration's Early Initiatives to Regulate the Construction Industry

"It's a serious question whether the country can tolerate or survive the current collective bargaining system in construction."¹

The Nixon administration did not initiate the national government's preoccupation with construction workers. Chapter 1 detailed how, as the militarization of the economy expanded certain sectors during the Vietnam war, the Johnson administration issued reports of labor shortages. Nevertheless, the effort to suppress construction workers' militant demands for "more" by breaking up their local labor market monopolies did not become a priority until the Nixon administration. Its focus on and stance toward the construction industry may have been prefigured by the fact that three of its cabinet members were or had been construction contractors: Postmaster General Winton Blount, Secretary of Transportation John Volpe, and Secretary of the Interior Walter Hickel.²

A few days after Nixon took office, John Dunlop, a Harvard University labor economist who had served in numerous governmental and private capacities dealing with the construction industry since World War II, submitted a confidential memo to Secretary of Labor George Shultz at the latter's request. In it Dunlop judged that at the national level "the centrifugal forces are greater than at any time in the past thirty years." Identifying the relationship between national contractors associations and national unions as the most appropriate strategic point of entry into this "jungle of tangled problems," Dunlop argued that the central substantive problem was the industry's bargaining structure during a period of high employment. At a time when the parties could not even agree seriously to study their problems dispassionately, Dunlop concluded that only the federal government could take the initiative as catalyst, stimulator, and mediator. Despite the critical impasse, all Dunlop proposed at the outset was the formation of a tripartite group to meet periodically to discuss industrial relations and manpower problems.³ William J. Usery, Jr., a former Machinists Union official who had just joined the Labor Department, sent a memo to Shultz agreeing with Dunlop's judgment that the parties were unable to develop

¹"'Massive Leapfrogging' in Construction Negotiations Reported by CISC Chairman," *CLR*, No. 974, June 12, 1974, at X-1, X-3 (quoting D. Quinn Mills).

²*CLR*, No. 691, Dec. 18, 1968, at A-3.

³John Dunlop, "[Confidential] Memorandum: The Building and Construction Industry" at 6-8 (Jan. 23, 1969), in NACP, RG 174: General Records of the Labor Dept., Office of the Secretary, Records of the Secretary of Labor George P. Shultz, 1969-1970, Box No. 79: Labor Disputes, Folder: LD 1969: Building & Construction Trades Industry.

problem-solving arrangements on their own, but the new administration did not take any immediate action.⁴

In August 1969, Arthur F. Burns, Nixon's adviser on domestic affairs, "jolted by the excessive wage settlements in construction," began urging the president and his cabinet to consider jawboning or even an incomes policy: "Burns was concerned that the settlements in construction would have a strong secondary effect on industrial firms, communicated...through employees with similar skills and spreading by imitation to regular industrial workers."⁵

Nixon adopted several of Burns's specific construction-related proposals on September 4, 1969, but rejected the proposed suspension of the Davis-Bacon Act, which requires employers on federal government construction projects to pay (typically union) wage rates determined by the Secretary of Labor to be prevailing for the relevant class of workers "on projects of a character similar to the contract work in the city, town, village, or other civil subdivision of the State in which the work is to be performed."⁶ Nixon also refused to prohibit contracts requiring exclusive hiring by means of union hiring halls. The president acted on the advice of Labor Secretary Shultz, who opposed such direct intervention.⁷ Accepting the view that construction unions "were prime conveyers of the inflationary virus,"⁸ Nixon released a statement on the construction industry in which he complained that the "cost of building a home...ha[d] become exorbitant." In what was to become a refrain of public policy, the president, asserting that a "shortage of skilled manpower is at the root of many problems faced by this industry," directed the DOL and the Department of Health, Education and Welfare to provide training and education "in order to achieve a major increase in needed skilled labor for the construction industry." He also ordered federal contracting agencies to set aside 75 percent of planned starts of federally financed public works. Finally, he established a Cabinet Committee on Construction (CCC), consisting of the Secretaries of Commerce, HUD, Labor, and Transportation, the Postmaster General, and CEA chairman, which was charged with ensuring that federal construction activities not exacerbate the industry's problems.⁹ *Business Week* interpreted the committee's charge to analyze problems of seasonality as designed to undermine "workers' arguments that they need higher hourly rates to

⁴Memorandum from [William J.]Usery [Jr.] to Secretary (Feb. 4, 1969), in General Records of the Labor Dept., Office of the Secretary, Records of the Secretary of Labor George P. Shultz, 1969-1970, Box No. 58: Councils, Folder: 1969 Committee: Cabinet Committee on Construction.

⁵Neil De Marchi, "The First Nixon Administration: Prelude to Controls," in *Exhortation and Controls: The Search for a Wage-Price Policy 1945-1971*, at 295-352 at 310 (Craufurd Goodwin ed., 1971) (quoting from interview with Burns on Mar. 19, 1974).

⁶40 U.S.C. § 276a (1994). See also 29 C.F.R. § 1.2.

⁷De Marchi, "The First Nixon Administration: Prelude to Controls" at 310-11.

⁸Arnold Weber, "The Continuing Courtship: Wage-Price Policy Through Five Administrations," in *Exhortation and Controls* 353-83 at 359.

⁹Richard Nixon, *PPPUS: 1969*, at 352-53 (1971).

offset idleness in 'off seasons.'"¹⁰

Employers' reactions to these modest initiatives were not favorable. The president of the AGC, Carl Halvorson, lamented that the curtailment failed to get at the root cause—"excessive union power," which had already caused more than 200 economic work stoppages resulting in 328 million man-hours lost. "The answer," according to the AGC, was "to get rid of some of the archaic labor laws which protect the already 'overly protected'" unions.¹¹

Then on September 22, 1969, Nixon implemented Shultz's recommendation to establish a tripartite Construction Industry Collective Bargaining Commission (CICBC), composed of equal numbers of union, employer, and public representatives.¹² The president classified the new commission as continuous with earlier "[c]ooperative effort" by labor, management, and the federal government "in times of stress" such as the World War II-era Wage Adjustment Board (WAB).¹³ Instead of a direct attack on wages, which played no visible part, the administration emphasized a more efficient dispute resolution process to deal with the "numerous signs of strife and tension in the past several years in an economy of continuing high employment."¹⁴ This euphemism for the high incidence of strikes and tight labor markets was vindicated the very next year, which was called an "industrial relations debacle: a third of all negotiations resulted in work stoppages."¹⁵ (To put the state's concern with this particular source of production disruption into perspective: at this same time "the frequency of accidents on construction jobs is so great that work injuries annually cost the industry about 4 to 5 times more man-days of wage and salary workers time than are lost because of work stoppages.")¹⁶

¹⁰"Construction Pay Push Is Raising the Roof," *BW*, Apr. 18, 1970, at 74. See generally, David Martin, "Construction Seasonality: The New Federal Program," 16 (5) *CR* 4-7 (May 1970). On the CCC's slow progress with regard to manpower issues and dissemination of winter building technology, see White House Memorandum for Dr Paul McCracken (undated); Memorandum from Shultz (OMB) to Nixon, "A Report on the Cabinet Committee on Construction" (July 27, 1971), in NPMS, WHCF, SF Ex FG 256, Box 1: CCC, Folder 22: 1/1/71.

¹¹Halvorson, Haggerty at Odds over Factors Underlying President's Cutback Drive," *CLR*, No. 729, Sept. 10, 1969, at A-2-A-4. One of these laws that employers especially resented was Davis-Bacon. See, e.g., Yale Brozen, "The Law that Boomeranged," *NB*, Apr. 1974, at 70-73.

¹²For the drafts of the executive order and memos from Shultz to Nixon and others concerning the CICBC, see NPMS, WHCF, SF Ex FG 257 CICBC [1969-1970], Box 1, Folder 1 [1969-1970].

¹³Nixon, *PPPUS: 1969*, at 735. See also "Nixon Establishes Building Industry Bargaining Panel," *WSJ*, Sept. 23, 1969, at 2, col. 2.

¹⁴"Nixon Tries New Tack on Industry Problems," *ENR*, Sept. 18, 1969, at 87, 88 (quoting a confidential briefing paper by John Dunlop, a DOL adviser).

¹⁵D. Q. Mills, "Construction Wage Stabilization: A Historic Perspective," 11 (3) *IR* 352 (Oct. 1972).

¹⁶BLS, *Compensation in the Construction Industry* 23 (Bull. 1656, 1970).

Two weeks before Nixon's announcement, the Roundtable's Coordinating Committee noted that votes at the CICBC would probably run eight to four in favor of unions, which would use the commission as an excuse for not taking decisive actions themselves. The committee therefore reached a consensus that the Roundtable should not go on record favoring the proposal, and that some effort might be made to achieve its modification, but nothing came of the suggestion.¹⁷

The first of the CICBC's two major functions was to seek solutions to the industry's problems concerning training and developing manpower, seasonality and instability of employment, and productivity and mobility of the work force. The other was to "develop voluntary tripartite procedures in settling disputes." Its focus on nationalizing the control of labor relations was reflected in Nixon's appointment of leaders of the AGC and the NAHB as employer-members of the commission.¹⁸ Executive Order 11482 expressly included among the commission's objectives "to increase the labor force engaged in the construction industry" and "to strengthen the role of the national labor organizations and national associations of contractors in the dispute settlement process, and to enhance their responsibility for the results of collective bargaining in the industry."¹⁹ Privately, Nixon asserted to the chairman of the Equal Employment Opportunity Commission, in response to a letter from William H. Brown, III expressing his "disgust" at the underemployment of blacks in the building trades in Pittsburgh, that Brown's statement "describes...one of the important reasons" Nixon created the CICBC.²⁰

The labor market proposals appeared to be an unexceptionable basis of a nonzero-sum game for all groups, but the unemployment rates for construction workers during these years (6.9, 6.0, 9.7, and 10.4 percent from 1968 through 1971)²¹ raised the obvious question as to who would have benefited from an increase in the labor supply. In contrast to the possible response that there might be enough workers in the abstract, but that their skill-mix was inappropriate,

¹⁷CUAIR, CC, Minutes of Sept. 8, 1969, at 4, in BR, 1969: Vol. II: Minutes.

¹⁸Nixon, *PPPUS: 1969*, at 735-36. A contemporaneous OECD study revealed that the United States was the only country lacking some type of winter payment program for construction workers. Jan Wittrock, *Reducing Seasonal Unemployment in the Construction Industry: Methods of Stabilizing Construction Activity and Employee Income* 230-32 (1967). As long ago as the 1920s, the Department of Commerce had recognized that "bad weather is not the principal cause of seasonal idleness"—but, rather, customs that had been fixed before newer techniques had been developed. U.S. Dept. of Commerce, *Seasonal Operation in the Construction Industries: Summary of Report and Recommendations of a Committee of the President's Conference on Unemployment* vi (1924).

¹⁹Exec. Order 11482, §§ 3(a) & (b), in 34 Fed. Reg. 14,723-24 (1969).

²⁰Letter from William H. Brown, III to Richard Nixon (Sept. 22, 1969); Richard Nixon to William H. Brown, III (Oct. 24, 1969), in NPMS, WHCF, SF, EX FG 257 CICBC [1969-1970], Box 1, Folder 1.

²¹See above Table 6.

contemporaneous empirical studies found no shortage of skilled workers.²² By 1971, the head of the Plumbers union charged that the Nixon administration was “busily dismantling the apprenticeship system to benefit nonunion contractors and to flood the industry with surplus manpower. The Labor Department seems determined to increase the labor force in the construction field...whether or not there are any jobs for these new workers.”²³

The administration's proposals to nationalize labor-management relations put the cart before the horse by presupposing a stage of industrialization and a corresponding structure of capital accumulation and centralization lacking in construction. After all, the industry was commonly criticized for its retarded state of technological progress and undercapitalized firm structure, which caused the above-average fluctuations characteristic of the industry.²⁴ Accordingly, a plausible conclusion is that the whole catalog of reforms (except expansion of the labor supply) contemplated a transformation of the industry—otherwise they would have been condemned to failure.

The CICBC's objective of promoting the national scope of collective bargaining had numerous obstacles to overcome. An obvious conflict of interest between local unions and their national organizations as well as between local building firms and their national associations was paired with an implied restoration on the national level of a composition of interests presumably designed to make possible an accommodation of the collective bargaining parties. This prospect, in turn, presupposed the ability of both national employers and labor organizations to overcome local resistance.

It may seem surprising that employers treated this offer by the federal government to assist them in this conflict skeptically: “But management members of the industry discount the possibility of any quick or dramatic labor reforms.”²⁵ Especially the CUAIR showed “little enthusiasm for the commission plan, particularly its involvement in local bargaining.”²⁶ Possibly large users wanted to reserve the structure of such involvement exclusively for themselves. The NCA was not represented on the committee.²⁷ That the NCA was skeptical of intervention in local negotiations should not be surprising since its national

²²Strauss, “Apprenticeship: An Evaluation of the Need”; Howard Foster, “Nonapprentice Sources of Training in Construction,” 93 (2) *MLR* 21-26 (Feb. 1970).

²³*CLR*, No. 813, Apr. 21, 1971, at A-22.

²⁴See below chapter 10.

²⁵“Nixon May Benefit Construction,” *ENR*, Nov. 14, 1968, at 15-16; see also “Nixon's Labor Plan Criticized,” *ENR*, Sept. 25, 1969, at 56.

²⁶“Nixon Tries New Tack on Industry Problems,” *ENR*, Sept. 18, 1969, at 87, 89.

²⁷George McGuire of the NCA sent telegrams to Shultz on Sept. 11, 1969 and to Nixon on Sept. 19, 1969 protesting the exclusion of the NCA from the CICBC. Shultz wrote to McGuire on Sept. 17 informing him that an NCA representative would serve as an alternate. NPMS, WHCF, SF, EX FG 257: CICBC [1969-1970], Folder 4: [1969-70].

agreements placed it in conflict with local contractors.

In January 1970, members of Nixon's cabinet began laying the propagandistic groundwork for some form of intervention. Postmaster General Blount agreed with contractors that construction wage increases were "outrageous," but told them that they themselves bore much of the blame "because they had abdicated their managerial responsibilities."²⁸ Secretary of Housing George Romney echoed these sentiments, quantifying the wage increases as five times higher than in the automobile industry. Labor Secretary Shultz also deplored these developments, but cautioned that the Nixon administration would try to avoid wage and price controls because they would not achieve their ends.²⁹

About the same time, the CICBC unanimously adopted the recommendation of a tripartite committee of lawyers, which had been submitted in September, 1969, giving substance to the commission's charge to centralize labor relations.³⁰ The CICBC recommended that national labor unions and contractor associations be empowered to approve or disapprove their subordinate entities' strike or lockout decisions, assist in local negotiations, and approve local agreements. Such authority would also have severely curtailed the power that the rank-and-file had been exercising with distressing regularity to reject contracts negotiated by their local leaders and to codetermine their working conditions. The lawyers committee, including two union representatives, wrote that although some people argued that statutorily "taking away from the members of the bargaining unit the ultimate right to approve the terms and conditions under which they will provide their labor...violates the inherently democratic traditions of labor unions," the pressing need to "overcome this problem" of increasing contract rejection by the rank and file meant that until the legislative process ran its course "national unions should encourage local members to delegate binding authority to bargaining teams."³¹ A spokesman for Shultz, the CICBC chairman, openly admitted that "the

²⁸"Building Pay Rises Decried by Blount," *NYT*, Jan. 16, 1970, at 10, col. 3.

²⁹"Home Builders Plan Appeal to Nixon," *NYT*, Jan. 20, 1970, at 53, col. 2, at 63, col. 3-4.

³⁰"Advisory Recommendations of the Staff Committee to Review Certain Legal Aspects of the Collective Bargaining Structure in Construction" (Sept. 12, 1969), included as Appendix A in "Report of the CICBC September 1969 to January 1972," transmitted by Secretary of Labor Hodgson to President Nixon, Mar. 30, 1972, in NPMS, WHCF, Subject Files, EX FG 257: CICBC [1969-1970], Box 1, Folder 2: (1969-1970).

³¹"Report of the CICBC September 1969 to January 1972," at 5-6, NPMS, WHCF, Subject Files, EX FG 257: CICBC [1969-1970], Box 1, Folder 2: (1969-1970); "Tripartite Commission Adopts Nine-Point Plan to Expand Bargaining Role at National Level," *CLR*, No. 748, Jan. 21, 1970, at A-1; "Report of Staff Committee on Improving Collective Bargaining Process in Construction Industry," *CLR*, No. 749, Jan. 28, 1970, at X-1, X-3 (quote). This proposal was partially embodied in a bill that President Ford vetoed in 1975; see below chap. 14. The two union lawyers on the committee wrote a memo to one of the employers' lawyers two days before the committee submitted its report attempting to show that cases under the 1959 amendments to the NLRA had "frustrated the legitimate leadership role of national unions and have impaired the authority of local union officers duly elected

whole concern there is to avert the growing rejection of contracts by the rank and file....” The BCTD members of the CICBC approved the recommendation, one source conceding that “there might be some opposition from local unions,” but adding that “in most instances “I don’t think there is going to be adverse reaction to this.””³²

Such optimism, however, was premature: militantly self-regarding construction workers were still far from prepared to yield one of the institutions supporting their local labor market monopolies. This resistance was clearly on display that year at the Carpenters’ quadrennial convention, which adopted by voice vote a resolution strongly opposing these very proposals “that would dilute or reduce the membership’s right to approve or disapprove proposed agreements” or to strike.³³

Prompted by a memo on ending construction inflation from CEA chairman, Paul McCracken,³⁴ Nixon returned to the control of construction wages again on March 18, 1970, making a detailed statement about the connection between a shortage of new housing construction and “rampant inflation of construction costs.” Specifically, he argued that: “To moderate severe increases in the cost of labor, we must increase the labor supply to meet the increasing demand. This means we must assure equal employment opportunity for all in the industry.” The “disturbingly short supply” of skilled labor...contributed to recent construction industry wage settlements that exceed progress in labor productivity and increases in the general cost of living. They go well beyond the historical spread between construction wages and settlements in manufacturing industries.” The Philadelphia Plan (which established quotas for hiring blacks on federal construction projects) was one means of increasing the labor supply in an industry that “urgently need[ed] reform and

by the majority.” Memorandum from Louis Sherman and Robert Connerton to Winn John (Sept. 10, 1969), in NACP, RG 174: General Records of Labor Dept., Office of the Secretary, Records of the Secretary of Labor George P. Shultz, 1969-1970, Box No. 53: Commissions, Folder: 1969 Commission CICBC (Jan.-Sept.).

³²“Ratification Votes in Trades Opposed,” *NYT*, Jan. 21, 1970, at 19, col. 1. The labor members were the presidents of the Carpenters, Operating Engineers, Plumbers, and the BCTD. Robert Semple, Jr., “President Forms a Panel to Solve Building Disputes,” *NYT*, Sept. 23, 1969, at 1, col. 5, at 56, col. 7.

³³*Proceedings of the Thirty-First General Convention of the United Brotherhood of Carpenters and Joiners of America* 303 (1970).

³⁴McCracken used the phrase “disturbingly short supply” in referring to construction labor. Memo from McCracken to President on Ending Construction Inflation at 7 (Mar. 14, 1970) (Administratively Confidential), in NACP, RG 174: General Records of the Labor Dept., Records of the Secretary of Labor George P. Shultz, 1969-1970, Box No. 173: International Committee-Cabinet Committee on Oil Imports, Folder: 1970-Committee: CCC (Except May 5). See also Memorandum from John Ehrlichman to Richard Nixon (Mar. 16, 1970) (suggesting that Nixon mention the need to encourage the most effective management in the construction industry), in NPMS, WHCF, SF, Ex FG 257 CICBC [1969-1970], Box 1, Folder 1.

modernization”]; it did “not need harassment, unwarranted interference, or political denunciation [but] d[id] need...—most of all—more trained workers.” Nixon also directed federal agencies to include in their construction contracts a clause requiring the employment of apprentices or trainees in accordance with established apprentice-journeyman ratios.³⁵

Despite its aggressive tone, the speech merely provoked *The New York Times* to editorialize that the gains from Nixon’s action to revive the construction industry “may be more than offset by the incentive the Nixon moves have given the overfat unions in the building trades to step up their wage demands. Restraint has always been a stranger to these unions. Last year they fed the inflation fires by signing three-year agreements providing increases of 40 to 50 per cent for a half-million construction workers.”³⁶ In fact, the Nixon administration, as one of its cabinet members confessed to the CUAIR’s first members meeting on April 6, “was unable to offer an immediate solution to the high construction wage settlements, indicating that preaching had not turned down that trend and that intervention by a predecessor had exploded.”³⁷ And in the same vein, ten days later, Shultz’s undersecretary, Hodgson, reported to him that an approach that Dunlop had developed for inducing the parties to agree on principles—focused on wage parity within regions and wage increases from 1969 as the cap for those in 1970—was also no “answer to a maiden’s prayer.”³⁸

Analysis of the further course of state efforts to check construction wages will be shifted here to focus on two aspects of state intervention that helped structure the ways in which labor-capital conflicts were prosecuted: (1) the Nixon administration’s measures to combat racially motivated employment discrimination in order to channel black workers into the construction labor force to undermine construction unions’ labor market monopoly; and (2) a program to promote the industrialization of residential construction. Whereas the first program served to increase the supply of labor and disrupt unions politically, the second promised to reduce the demand for skilled labor by facilitating the invasion of construction by capital-rich industrial firms.

³⁵Richard Nixon, *PPPUS: 1970*, at 268-70, 273, 275 (1971). The apprenticeship regulations were later codified at 29 C.F.R. § 5a. The BCTD contested the DOL’s authority to issue these regulations. “Building Trades Department Challenges Legality of Proposed Apprenticeship-Journeyman Ratio Regulation.” *CLR*, No. 801, Jan. 27, 1971, at A-2. On the Philadelphia Plan, see below chapter 9.

³⁶“Spur to Housing,” *NYT*, Mar. 18, 1970, at 46, col. 1.

³⁷“Report to Members of Construction Users Anti-Inflation Roundtable” at 15 (n.d. [Apr. 1970]), in SP, Box 5, File-CUAIR 1969-1970 [].

³⁸Hodgson to Shultz, Subject: Proposals for Dealing with Excessive Wage Increases in the Construction Industry (Apr. 16, 1970), in NACP, RG 174: General Records of the Labor Dept., Office of the Secretary, Records of the Secretary of Labor George P. Shultz, 1969-1970, Box No. 167: CICB-WH Fellows, Folder: 1970 Commissions-CIBC (April-May).