Wars of Attrition

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

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Q. [D]o you think that...employers...understand when a union man is employed he engages himself subject to this reserved right of his to quit the employment...because non-union men are also engaged in the same work? A. I don't know what the employers think. They are rather a stupid set. They never learn anything until it is very late, and they have to be taught through a strike or two in nearly every case.¹

Construction Employer Organizations

You know that in our industry it is entirely different from the cotton industry, and the steel industry in this respect. Our employers are not capitalists in the sense that these large organizations are. We meet our employers every day, call them Tom, Dick and Harry; we meet them from time to time when we have a little trouble. They understand our troubles and we understand theirs. You know we have a lot of members in our trades union movement in the building industry who get up and preach about capitalism and all that kind of thing, and who would have us at one another’s throats with our employers, who say we have nothing in common with them. Gentlemen, we have everything in common with them....

The extraordinary number and variety of employer initiatives for restructuring labor relations in the construction industry in the late 1960s and early 1970s was bewildering, at times coalescing into a confused mass. The intersecting aims of rapidly shifting coalitions were often only roughly discernible; similarly, the bases of conflicting proposals were not always readily identifiable. This chapter introduces the most important employers associations and analyzes their specific plans.

The construction industry’s heterogeneity was expressed in the absence of an industry-wide umbrella organization of all associations and a corresponding fragmentation of collective bargaining, which resulted in many thousands of contracts. This decentralized structure was reflected in the fact that the typical or modal collective bargaining agreement encompassed the work performed by a single trade at all the organized construction sites in a locality and was negotiated between one or several locals of a national union and an employer organization representing most or all building contractors based in that area and employing members of the unions in question. Before exploring the positions of these associations, it will be useful to sketch the history of construction employers organization.

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BRIEF HISTORY OF CONSTRUCTION EMPLOYER ORGANIZATIONS

In a number of cases the contractors insured themselves against their competitors’ being able to get men at lower rates during slack periods by such provisions as: “Party of the second part agrees that during the life of this agreement no member of its organization shall work for any persons not parties to this agreement for any sum per day less than that stipulated in this agreement.”

Modern building employer groups arose in the mid-1880s. Just as local trade unions antedated this period, local mechanics’ exchanges and master builder associations had also existed earlier in the nineteenth century. Not until the end of the century, however, did the construction market begin to be coterminous with the national economy’s market. Such consolidation implies that production and the labor market had broken down the existing local and regional limits. An incipient national construction and construction labor market emerged in the form of “a unique example of employer-induced migration in the operations of several large firms, each of which contracted for work over a wide area. These interstate firms apparently arose after the depression of 1873-1879 and might be considered the counterparts in the construction industry of the large-scale, multiple-plant concerns elsewhere.... They generally specialized in large-scale projects, such as state or municipal buildings....” The emergence of national building firms and national labor mobility gave rise to national construction unions.

The closing years of the nineteenth century also witnessed a number of innovations in building materials and machinery—wrought iron, structural steel, reinforced concrete, elevators, power hoists and derricks, pneumatic riveters, and steam shovels—that made possible the erection of tall buildings. The rapid growth of the largest cities coincided with the rise of

1Royal Montgomery, Industrial Relations in the Chicago Building Trades 36 (1927).
2John R. Commons et al., History of Labour in the United States 1:69, 71-72 (1918); William Ham, “Associations of Employers in the Construction Industry of Boston,” 3 JEBH 55-80 at 60-62 (1930-31); Clarence Bonnett, History of Employers’ Associations in the United States (1956).
3Lloyd Ulman, The Rise of the National Union 55 (1966 [1955]).
4Ulman, Rise of the National Union at 59-60. By the turn of the century, large structures were being built chiefly by large firms headquartered in New York City. James Motley, Apprenticeship in American Trade Unions 103 (1907).
the great corporations and trusts and the locating of their head­
quar ters—together with those of financial- and distribution-sector firms—in the central areas of these cities, especially New York City and Chicago. The existence of ground rent then made the advent of the skyscraper almost inevitable.\textsuperscript{8}

The end of the nineteenth and the beginning of the twentieth century thus gave birth to a number of large building firms with the technological and financial capacity to undertake the construction of these large projects. Concentrated as they were in the largest cities, these firms were confronted with the already relatively well-organized skilled building trades workers on whom they were by and large compelled to rely as a source of labor supply. Data for the nineteenth century are lacking, but in the early twentieth century building tradesmen in the major cities were highly organized and represented a large proportion of total union membership in these cities. In 1912, the approximately 90,000 organized building tradesmen in New York City alone accounted for 18 percent of the nationwide total of 509,000. New York accounted for more than 30 percent of all organized elevator constructors and more than half of all unionized asbestos workers.\textsuperscript{9} In 1920, when about 50 percent of all bricklayers were organized, the rates for the large cities all lay well above this level with some approaching complete unionization.\textsuperscript{10} By 1936, 82 percent of all skilled workers in nonresidential construction were union members. In New York City, Boston, Cleveland, St. Louis, and Washington, D.C., organization was almost complete.\textsuperscript{11}

The rise of a limited number of large building firms competing with

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Study in the Economic Height of Modern Office Buildings (1930); Ham, “Associations of Employers in the Construction Industry of Boston” at 57-58; Harry Jerome, Mechanization in Industry 135-37 (1934); Harold Faulkner, The Decline of Laissez Faire 1897-1917, at 128 (1951). According to Motley, Apprenticeship in American Trade Unions at 102-103 n.94, these changes also brought about a substitution of unskilled for skilled workers: “With the introduction of ferro-concrete as a building material, the superintendent and foremen, aided by hatchet and saw carpenters and ordinary laborers, are able to construct the entire framework of the building.”

\textsuperscript{4}Clark & Kingston, Skyscraper.


\textsuperscript{10}Wolman, Growth of American Trade Unions at 92, 95.

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Wars of Attrition

one another in the largest cities—AFL president Gompers estimated in 1911 that a dozen or so large building contractors built almost all the modern buildings—and all similarly dependent on the same largely unionized supply of craftsmen brought about the need for new organizational forms adapted to the changing structures of competition among firms as well as between capital and organized labor. These interrelationships were complicated by the fact that certain alliances of convenience, when extended beyond a certain point, began to generate unintended consequences, which in turn called forth counter-campaigns and counter-alliances. For example, once a few large firms had begun to struggle for control over an urban construction market, the closed shop could become "a convenient instrument" to exclude unwelcome competition or to bring insubordinate contractors back into line.

But the relative power that local unions achieved and consolidated was not so easily manipulable as the large firms may have imagined since, once set in motion, it gained a certain autonomy. In particular, the unions' control over the skilled labor supply and the consequent 'infringement of management prerogatives' constituted "unbearable conditions" for local employers associations. Conditions varied from city to city, but one feature was common to most at the turn of the century: "The rapid growth of cities throughout the United States during this period was in part the result of unrestricted immigration and the growth of concentrated large-scale industry. The building demands created by the movement of workers to the cities placed building workers in a unique bargaining position."

These "unbearable conditions" were often similar to those that had originally given rise the employer associations. For example, the Master Builders' Association was established in Boston in 1885 as a reaction to

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13Rasmus Berg, Blikkenslagersvenden gennem tiderne: Festskriftet udgivet af Blikkenslagerforbundet in Danmark i Anledning af dets 50 aars Jubilæum 80-81 (1940) (term describing the use that master plumbers made of the plumbers' union in Denmark ca. 1880).
workers' demands for the nine-hour day. In other cities, employers' associations arose as a general response to union efforts to enforce the closed shop. A number of these organizations were formed under the auspices of the National Association of Builders (NAB), which was founded in 1887. Although a year or two earlier building trades workers had been defeated in the biggest building strike ever in Boston, the NAB’s secretary later told aggressive employers: “We do not want to lick them. We want to adopt a more businesslike way.” The cooperation of local employers vis-à-vis their unionized labor supply was a reaction to the possible advantages accruing to unions, which previously had had to deal with relatively small firms on an individual level. William Haber, the leading historian of construction labor relations, argued that employers were organizationally 30 years behind unions: “It is possibly no exaggeration to say that the unorganized individual employer in the building trades was at a greater disadvantage in dealing with the union than the unorganized worker in his relations with an employer.”

The dissolution of the NAB by the turn of the century—the depression of 1893 had eliminated many of the local exchanges—underscored an “absence of homogeneity in interests and in stability” as the organization’s fundamental weakness. That the NAB’s antiunion stance, though supported by employers, was unrealistic for many members in New York City and Chicago suggests that it was precisely the largest firms that were least interested in a direct confrontation with organized labor despite the fact that they may have been in the best position to conduct such a campaign successfully. The emphasis placed by employers’ associations on obligating unions contractually to supply them with tradesmen “even though the union must take such men from shops of employers not members of the association

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16Ham, “Associations” at 63.
17Haber, Industrial Relations in the Building Industry at 448; Commons et al., History 2:424; Bates, Bricklayers’ Century of Craftsmanship at 72, 92.
19Haber, Industrial Relations in the Building Industry at 442, 446 (quote).
20Haber, Industrial Relations in the Building Industry at 449, 443 (quote). Attached to the last issue of the NAB’s quarterly Bulletin: Devoted to the Ethics of Associated Effort, at the University of Wisconsin at Madison library is a letter, dated Jan. 11, 1900, from its secretary, William Sayward, stating that Bulletin had been discontinued about a year ago. 4 (5) Bulletin (Oct. 1898).
21Haber, Industrial Relations in the Building Industry at 450.
of employers," indicates the competitive advantages inhering in such quasi-exclusive agreements. Since union responsibility for the labor supply was an integral element of a branch characterized by unusually unstable employment, management control over the supply would have implied a capacity to finance more or less year-round employment. The capital stock, however, had not yet reached a magnitude that would have pressured firms to seek continuous capacity utilization in order to spread their overhead costs. Where, as in the exceptional case of iron erectors, "expensive equipment had to be constantly employed so that the overhead should not consume the profits," firms were able to offer steadier employment. Not coincidentally, the erectors' national association favored the open shop.

Despite these unfavorable conditions for employers, lockout statistics for the years 1881-1905 reveal the existence of a sector of firms capable of combating united labor. During that period, the building trades, ranking first in all categories, accounted for 16 percent of all lockouts, 55 percent of all affected establishments, and 31 percent of all locked-out employees. Construction lockouts were also larger than the all-industry average: they encompassed more than three times as many establishments and almost twice as many employees. Whereas lockouts affected two and one-half times more workers than strikes in industry at large, in construction lockouts were nine times larger; at 105 days, they were also longer than average. Employer militance was also reflected in the fact that employers prevailed in two-thirds of all lockouts. The spatial concentration of lockouts in Illinois and New York underscores the importance of a sector of organized employers in Chicago and New York City. Characteristically, in the majority of establishments affected by lockouts the major cause or object of the action

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22BLS, Conciliation and Arbitration in the Building Trades of Greater New York at 36 (quoting an umpire's decision within the framework of the General Arbitration Board regulating labor relations between building trades unions and the Building Trades Employers' Association of New York City during the first decade of the twentieth century).

23Courts had held illegal exclusive agreements which pledged employers' associations and unions to deal only with each other. F. Hilbert, "Employers' Associations in the United States," in Studies in American Trade Unionism 183-217 at 187-88 (J. Hollander & G. Barnett eds., 1906).

24Haber, Industrial Relations in the Building Industry at 278.

25Grant, National Erectors' Association at 80.


was not reducing wages or increasing hours, but rather the key issues of union power—the closed shop, union recognition, and building trades councils.\textsuperscript{28}

The divergence of interests between large and small employers with respect to unionism—a heterogeneity that in the 1960s and 1970s still exacerbated their inability to speak with a “single voice”—has often been advanced as an explanation of the failure of several early national organizations such as the National Building Trades Employers’ Association, which was founded in 1903 and again in 1919.\textsuperscript{29} This organization arose in response to the founding of the Structural Building Trades Alliance of unions, which proved to be weak.\textsuperscript{30} This sequence of events confirms the general observation that employers’ organizations develop “only after organizations of employees have become strong enough to gain advantages in the making of the labor contract.”\textsuperscript{31}

Prior to the depression of the 1930s, employer groups coalesced and wielded power from time to time in large cities such as Chicago (in 1900 and 1921) when construction firms concluded that the local building trades council had wrested too much control from them. But at that time only in New York City had employers succeeded in maintaining their organization continuously for more than 25 years.\textsuperscript{32}

\section*{Construction Industry Employers Associations}

An employer, as a rule, is not an unfair man, and generally it is a business proposition with him, and it is just as much of a business proposition with us. We should not look upon him as a thief.\textsuperscript{33}

The most important construction employers associations that

\begin{itemize}
  \item \textsuperscript{28}Tenth Annual Report of the Commissioner of Labor, 1894: Strikes and Lockouts, tab. XXV at 1897 (1896); Sixteenth Annual Report of the Commissioner of Labor, 1901, tab. XXI at 705-706.
  \item \textsuperscript{29}Haber, \textit{Industrial Relations in the Building Industry} at 456-57. 461; Hilbert, “Employers’ Associations” at 205-207.
  \item \textsuperscript{30}Haber, \textit{Industrial Relations in the Building Industry} at 334-35.
  \item \textsuperscript{31}Hilbert, “Employers’ Associations” at 185.
  \item \textsuperscript{32}Montgomery, \textit{Industrial Relations in the Chicago Building Trades}; Clarence Bonnett, \textit{Employers’ Associations in the United States: A Study of Typical Associations} 153-204 (1922); Haber, \textit{Industrial Relations in the Building Industry} at 346.
  \item \textsuperscript{33}“Report of the Proceedings of the Fourth Annual Convention, Utica. January 8-14, 1906,” 3 (1) \textit{IHCBLJ} 3 (Jan. 1906) (James Kirby, president, Structural Building Trades Alliance).
\end{itemize}
articulated their own plans for dealing with labor during the Indochina war period were the National Constructors Association, Associated General Contractors, and Associated Builders and Contractors. Differences among these groups were preordained by their formal positions vis-à-vis unions: whereas the NCA operated 100 percent union, the AGC, whose members at one time had been heavily closed or union shops, was in transition toward bifurcation between union and nonunion factions, and the ABC was militantly antiunion.

**National Constructors Association**

Employers associations are..., strictly economically speaking, nothing but purchasing cartels.... But purchasing cartels of a very special kind, because the commodity labor power...after all cannot enter totally into entrepreneurs' possession.34

The NCA was the most influential group in terms of its members' own concentrated capital power and their crucial role in building the factories, refineries, and power plants for the country's largest industrial corporations. Formed in 1947, it proved to be the most significant construction organization to emerge from World War II. The NCA was established by 21 of the largest national general contractors engaged in building oil refineries and steel and chemical plants “to improve field labor relations.”35 The origin of the NCA was linked to the very large industrial projects that developed during and after the war and made it necessary for these firms to establish labor relations staffs.36 Since NCA members employed about 50,000 workers (in 1950)37 and had long relied on the

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35To Amend the National Labor Relations Act at 126, 128 (NCA folder submitted in evidence by its vice-president, J. J. O'Donnell). A rich source of information, the NCA Bulletin, has apparently been lost; fire at the NCA office in the 1980s destroyed all of its back issues; no library appears to hold it and no NCA member appears to have retained issues from the 1960s and 1970s; Bechtel Corporation, for example, disposed of its holdings in 1979. Telephone interview with Robert McCormick, NCA president, Washington, D.C. (Mar. 11, 1999); telephone interview with Kenneth Hedman, vice president and labor relations manager, Bechtel Corp., San Francisco (Mar. 12, 1999).


37To Amend the National Labor Relations Act at 130.
building trades unions as a “source of highly skilled personnel,” it was scarcely surprising that the strong increase in strike activity in the early postwar period motivated these large firms to improve their bargaining position vis-à-vis organized labor as quickly as possible. The “NCA’s initial goal was to head off potential chaos threatened by the end of wage stabilization after World War II and to do this through improved labor contract bargaining at the local and national levels.”

That the war had fostered close union collaboration was visible in the fact that unions and firms unanimously agreed to a fifteen-month extension of wartime controls. After the repeal of all controls in 1946, the unions adopted a similar position. “They would have preferred a policy of moderate increases through a government agency. But the unions could hardly tolerate a condition in which wage controls had been removed in all areas of the economy except construction. It would have been impossible to justify or explain before the membership.” The firms shared this view, although they would have been publicly obliged by employers’ call for a repeal of all controls. The fears expressed by the union leadership were apparently well founded.

Composed of forty-four general contractors, the NCA in 1973 included nine of the country’s ten largest construction firms. They accounted for a large proportion of all industrial building in the United States, although they also performed much of their work abroad. Of special importance here is that their employees were 100 percent unionized. NCA members employed a large proportion of certain unions’ membership—for example, one-fourth to one-half of union plumbers. Because the core of year-round union workers was employed by these firms—their 75,000 to 150,000 employees in addition to 100,000 working for subcontractors accounted for

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38 To Amend the National Labor Relations Act at 126.
39 “NCA Increases the Pressure to Cut the Fat Out of Labor Costs,” ENR, Mar. 1, 1973, at 18.
43 Mills, Industrial Relations and Manpower in Construction at 35 n.22.
Wars of Attrition

80 to 90 percent of heavy industrial construction—developments in this sector had a disproportionate impact on the structure of labor relations in the whole industry.

NCA members preferred (and in many instances had no alternative but) to employ union members because unions could furnish them with the requisite number of workers with the proper mix of skills at all of their myriad far-flung building sites, but they were not unconditionally committed to the unions. The limit of that commitment was marked by the point at which union wage increases could no longer be compensated for by productivity advantages. At that point, the NCA members could: (1) depress the wage level down to that of the nonunion sector; (2) roll back the defensive controls that union workers had built up against management and that blocked productivity growth from capital’s perspective, or (3) hire nonunion workers.

By the late 1960s and early 1970s firms increasingly asserted that the aforementioned limit had already been reached. As early as 1966, one NCA member complained that 90 percent of $175 million spent on plant expansion by the natural gas industry would flow to open-shop contractors. In 1967, the NCA president, J. M. Graney (who two years later joined the Roundtable), began warning: “We have no monopoly, and there are other ways in which these services can be provided.” He insisted that the industry’s most pressing problems were all labor-related: declining productivity, excessive wage increases, labor shortages, and local union irresponsibility. Graney’s principal recommendation called for dismantling union hiring halls and creation of independent referral systems operated by professional personnel administrators. The NCA president, however, also charged industrial owners with responsibility for labor shortages; in selecting

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45 An indirect suggestion of this resistance against labor intensification measures is found in an older study, which revealed that productivity in southern states almost uniformly exceeded that in the North and unit wage costs were significantly lower in the South. Since northern unions were much stronger, the differential productivity, especially in such technologically backward occupations as bricklaying, the capital equipment in which was presumably similar everywhere, may have reflected differential intensity. E. Stewart, “Labor Productivity and Costs in Certain Building Trades,” 19 (5) MLR 1-15 (Nov. 1924).

46 M. Lefkoe, The Crisis in Construction: There Is an Answer 8 (1970). Lefkoe did not identify the firm, which he apparently interviewed. Since Lefkoe did not begin his research until 1968, it is unclear why the firm referred to 1966 as in the future.

new plant sites, they failed to pay attention to the labor market: “They overlook the fact that the mere availability of jobs will no longer attract skilled craftsmen from long distances....”

The BCTD agreed in early 1970 to take unspecified steps to “strengthen the competitive positions” of its NCA-member employers, which had lost $7.5 billion in work to nonunion contractors in the previous two years. But in mid-1970, the NCA joined the AGC and several specialty contractor associations in asking President Nixon to impose wage controls to “cool union demands” and protect the rest of the rest of the economy from “the spillover effects of exorbitant wage increases in construction.” (The BCTD replied that it would accept wage controls if they were combined with those on prices, profits, and all incomes.) By year’s end, the NCA repeated the request. In May 1972, R. Eric Miller, the president of the NCA, a vice-president of Bechtel, and the NCA’s liaison with the Roundtable, warned the Operating Engineers convention that “the nonunion contractor in manhours per unit of work beats us [Bechtel] from 20 to 30 percent. That is not the wage rates—that is the number of manhours that it takes to do the work.” Against the background of $36 billion in nonunion construction in 1971, he limned the possibility of future contracts providing for “effective grievance machinery to completely eliminate strikes and lockouts.”

These facts—or at least such perceptions—were a major reason for the expansion of the nonunion sector. The question here is whether similar tendencies were also observable within the NCA. In the first instance, its members focused on overcoming union resistance at the workplace. Thus in 1971, the NCA and the BCTD concluded an agreement to increase productivity through “uniform work rules” and to eliminate “costly and disruptive strikes and picketing.” In March 1971, the NCA and each of its

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member companies and the BCTD and its member unions entered into an agreement under which each union “shall as soon as practical incorporate” eleven specified work rules into its agreements with any of the NCA members, and “shall use its best efforts to require its affiliated local unions” with such collective bargaining agreements to incorporate these rules. Prominent among the work rules were: prohibitions on slowdowns, standby crews, featherbedding, illegal strikes and work stoppages, nonworking stewards, “limit on production by workmen” or “restrictions on the full use of tools or equipment” or “on the number of men assigned to any crew or any service; discouragement of overtime; and a requirement that “workmen shall be at their place of work at the starting time and shall remain at their place of work until quitting time.”

Unions characterized the agreement as promoting organizing efforts “by making union shop contractors more competitive.”

To be sure, Postmaster General Winton Blount, himself a major contractor, quickly informed the Cabinet Committee on Construction that the agreement was not the “‘historic breakthrough’” that the parties claimed it to be. Blount emphasized that the work rules had been written national union policy since 1958, which the national leadership had been unable to induce the locals to incorporate into their agreements; the internationals’ lack of leverage gave Blount little reason to expect more success now. This view was common. Two weeks later, John O’Connell, an official with Bechtel and the NCA, reported on the agreement to the CUAIR Coordinating Committee, emphasizing that “while the NCA would prefer to to be free to make assignments solely from the employers’ points of view, they saw no alternative to the craft system in the construction industry and to try to make it work as efficiently as possible.” To be sure, O’Connell insisted that the NCA had, as a result of owner surveys, diluted its demands with respect to closing down all relevant work during strikes for economic advantage and eliminating overtime except for emergencies. Predicting that some unions would resist complying, O’Connell explained that contractors and owners had to stand up to them: “Either these agreements will be made to work or the

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NCA is out of business." However, when the Plumbers union became the first to implement the incorporation in November 1971, the NCA president, Benjamin Frost, expressed disappointment that progress had been so slow. Although the NCA refrained from joining the open-shop movement, it did at times use the threat.

The following year, the NCA and the Plumbers entered into a new agreement designed to make the firms more competitive vis-à-vis nonunion companies. National firms were, for example, free to stop work to support local contractors involved in labor disputes. In explaining the union's reasons for acquiescing in the new realities, its general president, Martin Ward, came as close as anyone to predicting the future correctly when he observed that "many NCA members 'have begun to express a desire to return to the condition of the 1940's when the bulk of their operations were nonunion, or when they conducted a dual operation, building union only upon request of their clients.'" Ward suggested that his members' efforts to increase their productivity would determine "whether this will be our last agreement or whether this work will continue to be done 100 percent by union craftsmen." Later in 1972, Ward had become such a believer that he confided to a conference sponsored by Business Week that the increasingly cooperative relationship between industry and unions was in large part attributable to the new work rules. When "asked about the stress the construction unions have been putting on 'a fair day's work for a fair day's pay,'" the president of the BCTD "said it has been adapted from labor's slogan at the turn of the century when 'a fair day's pay for a fair day's work' was the rallying cry for working men seeking increased pay. He said the present one is to encourage workers to put in their full eight hours at work, and not to extend lunch or coffee breaks."

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57"NCA and UA Sign Addendum to Agreement Establishing Set of National Work Rules," CLR, No. 843, Nov. 17, 1971, at A-1. Five years later, the NCA was still urging adoption of a single national agreement for all major industrial projects to combat the open shop by combating work stoppages and setting high standards for skill and productivity." Building Trades, NCA Seek New Labor Pact Approaches," ENR, Aug. 26, 1976, at 49.
Yet by the end of 1972, after three consecutive years of declining industrial construction "obviously reflecting an overall excess plant capacity,"\(^{61}\) the NCA announced that the work rule agreement had lapsed because the majority of union presidents, though favoring the pact, deferred to the one or two who refused to execute the contract without modifications.\(^{62}\) The agreement’s potential for staving off nonunion competition was, however, too great for either side to permit it to die. Thus in 1973 the parties signed a new agreement obligating the unions to incorporate the work rules by May 31, 1974 into all contracts with NCA members, which covered 500,000 workers. Despite the inroads into worker control embodied in the new rules, the NCA president told the BCTD: "It is not the case of taking something out of the hide of labor. What we seek in making these agreements is simply a way of doing the job better."\(^{63}\) Yet the 1973 National Productivity Pact between the NCA and the Laborers’ International Union expressly prohibited "any organized coffee breaks, rest periods or other non-working time...during working hours."\(^{64}\) To what extent the paper agreements were implemented was contested. At any rate, the NCA’s dissatisfaction with the international unions’ inability to impose the agreement on unwilling locals was bluntly expressed by its vice president: "‘In this industry we do not enforce our agreements; until we do, we are not going to make any progress.’"\(^{65}\)

More remarkable still was the statement by the BCTD president at the Council of Construction Employers’ 1974 Construction Industry National Conference that employers should stop blaming unions for all their productivity problems. Frank Bonadio asserted: "Many of these problems...stemmed from business conditions during the Second World War and after, when contractors actually made money by hiring unnecessary manpower and making the government pay for it. ‘You are the people who agreed to coffee breaks and high time,’ he said to employers. ‘We’re both to blame for this condition. You gave it to us and we were happy to run with


\(^{65}\) RR, No. 74-5, at 4 (June 1, 1974).
it.’’ But in the past few years, he added, “the unions have been active in knocking out coffee break and high time provisions in local agreements, and trying to make their employers more competitive in the face of open shop inroads. ‘The unions have got to get off their rumps and do something about the nonunion contractor...but you contractors have to help.”66

NCA members’ dependence on union hiring halls may explain why the NCA failed to adopt more rigorous measures toward unions; these firms’ extraordinarily heavy reliance on low-wage projects in the Third World may also have contributed to their relatively relaxed attitude toward unions in the United States.67 Nevertheless, they did not abstain from urging the federal government to intervene against unions. The most eloquent testimony in this regard stemmed from Stephen Bechtel, the senior director of Bechtel Corporation, the largest and best known industrial and power plant construction firm in the United States and the world. At a meeting of the influential Business Council he argued that “the construction unions should be ‘opened up.’” Such a course “included the elimination of racial restrictions in the construction unions and the use of the union card as a prerequisite for employment. It also meant doing away with restrictions on the types of jobs some unions are allowed to perform and with restrictions on prefabricated construction.”68

These four issues reappeared again and again: (1) incorporating minorities into the construction labor supply; (2) eliminating union control over the labor market; (3) relaxing the rigid boundaries between skilled trades and/or unions; and (4) undermining union resistance to industrial construction methods. The last two points were geared toward preserving the sphere of management prerogatives, which employers regarded as especially beleaguered. As mechanisms for yielding extra profits for individual firms, the measures that would have implemented these developments could also have triggered concentration and centralization processes as well as disemployment, all of which could have depressed wages.

The NCA placed itself at odds with other leading management associations such as the NAM and Chamber of Commerce in late 1973 when


it called for a continuation of wage controls in construction through 1974 even after they had been removed in all other sectors. The NCA predicted that termination of the CISC would lead to "an inflationary...spiral of wages equal to or in excess of that during...1968-70." The organization argued macroeconomically that "industrial construction activities involving large scale energy facilities, environmental and pollution control facilities, and other heavy technological processes, in which NCA companies are primarily involved, may increase along with a rise in commercial construction in 1974, thereby placing new pressures on the wage structure."^69

Government control of wages was not the only subject on which the NCA differed with other large employers’ groups. The advantages and drawbacks of union hiring halls created such a complicated cost-benefit structure for employers that the NCA firms themselves could not formulate and adhere to a unitary position. Despite many members’ view of hiring halls as indispensable, the NCA president in 1967 characterized as an urgently needed reform the removal from local union control of hiring halls and their reassignment to professional personnel administrators responsible to joint labor-management trustees.\(^{70}\)

The NCA members were also at odds with their biggest customers, the members of the Roundtable, which in 1970 recommended that contractors vindicate their management rights by replacing union hiring halls with their own arrangements for gaining control over the labor supply. (The following year contractors began running a nonunion hiring hall in Houston.)\(^{71}\) The union hiring hall admittedly relieved contractors of the need to operate their own personnel offices, but at what the Roundtable deemed an unacceptable price—enabling unions to become "the \textit{de facto} employers with respect to most of the hiring, training, and placement functions, as well as the administration of non-wage benefits."\(^{72}\) The principal managerial functions that construction unions, according to the Roundtable, had assumed encompassed:

a. Recruiting and selection of manpower, typically referred to as the "hiring function."
b. Identification of the training and development needs of the work force, often including the providing of training programs and other activities designed to meet those needs.
c. Assignment of employees to the tasks required to accomplish the operating objectives, or the "placement function."
d. Determination of the type and amount of work to be accomplished within a given period of time.
e. Compensation of employees for work performed or time committed, including both monetary and benefit forms of compensation.
f. Provision and administration of a disciplinary system to administer the penalty side of the "reward and penalty" system.
g. Direction of the work force through an established supervisory organization.73

In 1973 the NCA, once again declaring its commitment to unionized operations, opposed the replacement of union hiring halls by employer-controlled systems on the grounds that the Roundtable had failed to take into account the divergent circumstances under which national construction firms operate. On large and complex projects "in remote areas, far from established sources of manpower," the broadest forms of staffing were required, for which the NCA had found "the top officials of organized labor...to be the most effective and reliable" sources. Even in local labor markets 25 to 75 miles from a metropolitan center, NCA member-firms "rarely have the luxury of having adequate numbers of local workers available due to the project size and tight schedule of requirements." The "terrific" labor turnover on long-term projects taking as long as ten years to complete was an exacerbating factor according to the NCA.74 In contrast, the Roundtable not only encouraged large users such as utility companies to create their own construction subsidiaries, but welcomed nonunion contractors' efforts to improve their workers' training sufficiently to bid for large industrial projects.75

Underscoring its willingness to work with unions—which boasted that they were, "in effect, a 'hiring hall' run for the employer free of charge"76—the NCA in 1974 announced that it and the Plumbers had

73CUAIR, "Restoration of the Management Role in the Construction Industry" at 1 (Mar. 1970), in SP, Box 5, File-Construction Committee.
76"The Laborers' Champion: Through Five Fateful Decades," 3 (5) Laborer 5-7, 24 at 7 (May, 1949). For the thesis that hiring halls were not widely adopted in construction until the 1950s,
undertaken the first comprehensive national labor supply survey for the electrical utility construction sector, which accounted for about 5 percent of all construction workers, and lent itself to a seven-year projection because power plant construction required long lead times. At the same time, the NCA announced a cooperative agreement with another group of union-shop contractors, the Contractors Mutual Association (CMA), to work toward wide-area coordinated collective bargaining, strengthening local contractors' bargaining position, and eliminating restrictive work practices. ENR prematurely praised the link as “A Turning Point in Labor Relations,” cautioning that the organizations were “not out to crack down on organized labor, whose future is inextricably tied to that of union contractors.” Rather, the members were merely seeking “more economic labor relations policies and practices” that would make it possible for them to “stay in business as union contractors.”

The NCA belonged to various committees or groups whose aim was to strengthen employers’ negotiating position vis-à-vis unions. In 1975 the NCA urged a merger of the CMA and the Council of Construction Employers (CCE). By dropping engineering-design capability as a criterion, the NCA made national industrial general contractors eligible to become members. The CMA, a so-called horizontal organization of individual contractors, had been formed in May 1971 with support from the Roundtable and Blough, who wished to create an organization that would deal with all unionized sectors. The CMA, which was chaired by John O’Connell of Bechtel, was never able totally to remove the taint of being the users’ creature. The CCE, a vertical organization of 10 associations representing 50,000 contractors, was founded in 1972 to become the counterpart of the BCTD. Viewed as the CMA’s mainstream rival, it was dissolved in 1978 when the closed shop, which had been the chief vehicle for union control over hiring, was outlawed. Philip Ross, “Construction Hiring Halls: Origins and Development,” 11 (3) IR 366-79 (Oct. 1972).


Construction Employer Organizations

165

after the creation of the National Construction Employers Council (NCEC),
which the CMA supported. The AGC declined to join the CMA-NCA in
1974 because it viewed them as trying to expand the union sector at the
expense of the nonunion sector, which would have placed the AGC as a
mixed organization in a difficult situation; in 1976, however, a new AGC
leadership led it into a trial participation, which resulted in the formation of
the NCEC to develop policies concerning collective bargaining.*2

National agreements, which by 1967 were increasingly coming under
attack, were another important area in which the NCA was at loggerheads
with other construction employers associations. One manifestation of such
opposition was the proposed multi-employer certification bill, which would
have given exclusive NLRA bargaining rights to a grouping of local
contractors and would have barred any such contractor from honoring any
national agreement with deviant provisions. Despite the fact that national
contractors might employ a large majority of the local union’s members, they
would have lost all right to codetermine working conditions. When special
trade contractors associations induced a Republican Senator to introduce the
bill in 1967 making it an unfair labor practice under the NLRA for a
construction industry employer having or seeking contractual relations with
a local union to bargain outside the multi-employer representative selected
by so-called area resident employers employing the largest number of
workers in a particular trade, the NCA opposed it as “a direct attack on
national agreements.”*3

In 1976, for the first time ever, the NCA participated directly in local
bargaining. NCA members, users, and other national contractors—building
a billion dollar nuclear powerplant at Hanford and other projects—had locked
out members of a UA pipefitters’ local in Washington state to support the
negotiating position of that state’s Mechanical Contractors Associations. The
NCA finally intervened to enter into the first nationally negotiated,
multiproject agreement covering wages and working conditions because of
the prolonged and total breakdown of local bargaining and requests by local

*3“NCA Suggests Countermeasures to Fend Off Number of Attacks on National Contracts,”
(quote). According to “Contractors Will Try to Change the Law on Bargaining,” ENR, Dec. 8, 1966,
at 68-69, the bill was also designed to prevent unions from engaging in whipsaw strikes. On
multiemployer and regional collective bargaining legislation, see below chapter 12.
contractors. Significantly, at the end of the lockout, the UA continued its strike against local mechanical contractors into its sixth month.84

By the mid-1970s, despite all the innovative agreements with and concessions from unions, NCA members’ competitive position was deteriorating rather than improving. In 1965, seven NCA members accounted for 69 percent of all domestic contracts awarded to the ten largest U.S. firms; ten years later, this share had fallen to 41 percent.85 Whereas the organization reported that members had lost to open-shop firms 181 contracts worth $8.5 billion from 1969 to 1971—even declining to 78 and $7.2 billion between 1971 and 1973—by 1978 the figures had risen to 270 and $28.1 billion. Ominously, nonunion firms were gaining ground with respect to the NCA’s biggest and technologically most sophisticated projects—petrochemical and power plants. Most menacing of all was the geographic aspect: whereas until the mid-1970s the open shop firms’ gains were largely confined to the Gulf Coast and Southeast, by the latter half of the 1970s they had invaded the West Coast, Mid-continent, and Great Lakes regions, leaving only the East Coast largely unscathed.86

Associated General Contractors of America

Our chief concern is to protect the local contractors who comply with the union scale against the unequal competition of employers who bring men from the country to work below it.87

The AGC was founded in 1918 by firms interested in war construction. The AGC formally supported the open shop as early as 1920, but the nature of its membership precluded enforcement: “Opportunism and expediency eclipsed principles in a very short time. Chicago and New York general contractors, working under ironclad closed-shop agreements, obviously disregarded such declarations....” The AGC’s practical recognition of the closed shop was dictated by its support of the National Board for Jurisdictional Awards, “a premise of whose very existence was the principle

85Linder, Projecting Capitalism at 192.
86Northrup, Open Shop Construction Revisited at 209-11. Although Northrup published chronologically continuous data in graph form, his tables states that data were lacking for 1973-77.
of the closed shop.” As a result, the AGC restricted itself in its early years to codes of ethics, trade practices, standardization, the elimination of day labor on public works, and reforming mechanics’ lien laws. Even during the 1930s, the AGC was more focused on the question of government competition in construction than on labor relations. Its ability to form alliances with the building trades unions was nicely captured by their cooperation in the early 1950s to combat attempts by industrial unions to promote vertical integration by limiting the volume of construction that industrial firms contracted out so that such work could be preserved for their own members.

At the 1968 National Conference on Construction Problems, John Garvin, a labor relations consultant, observed that the AGC had undermined its own efficacy in forging labor policies by virtue of its dual union and nonunion membership. Since the latter actually gained from instability in the organized sector, he suggested that the organization be bifurcated. The following year, when the AGC held its first national open shop conference, its membership was already 35 percent nonunion. By the early 1970s, as the AGC established an open-shop labor relations service, its members numbered over 9,000 firms, of which the nonunion section had recently risen sharply. Many of these nonunion firms originated from the practice of double breasting—that is, unionized firms “setting up a separate non-union or open-shop company run by the same management that’s running the unionized firm.” In the 1970s and 1980s these dual-shop firms became major streams of the open shop movement, which unions had little success in combating as unfair labor practices under the NLRA.

An important determinant of the AGC’s increasingly nonunion orientation derived from the competitive pressures to which its members were exposed. In terms of size, AGC firms occupied a position between the NCA

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88Haber, *Industrial Relations in the Building Industry* at 455-56, 88.

89Booth Mooney, *Builders for Progress* 54, 64, 78, 82 (1965).

90"Vertically-Formed Unions Industry Threat," 34 (10) *The Constructor* 33 (Oct. 1952); Mooney, *Builders for Progress* at 130.


94See below chapter 15.
members and the industry-wide average. Deprived of the advantages of scale and scope of the NCA firms, on the one hand, and of the lower wage costs and expanded managerial prerogatives of the growing nonunion sector on the other, the AGC’s higher-profile antiunion position became more and more rational especially as its own nonunion membership grew. That the typical AGC member was not a national firm, as was the case with the NCA, brought about a readiness and/or necessity to demand decisive state intervention; for it was precisely the locally operating firms, which were embedded in splintered collective bargaining units, vis-à-vis which well-organized workers often enjoyed a certain negotiating advantage, that stood in greatest need of state assistance.

The self-paralyzing fissures within the AGC were amply on display in 1968 when a group of AGC chapters, representing 30 percent of the total membership and 50 percent of union-firm membership, sought to persuade the organization to support multiemployer regional bargaining. These contractors, initially based in the Northeast and Midwest, opposed national or project agreements (such as the NCA’s) and proposed requiring AGC union-firm members to “join with the historically established multi-employer bargaining unit in the local, state or regional area in which the work is being performed.” The group also wanted to create a permanent committee to keep the NAM, as an organization of users, informed of “unrealistic wage settlements and onerous conditions in the construction industry” and to secure their “cooperation and support in achieving fair and equitable settlements.”

This group failed to become a majority within AGC, but the Roundtable soon arose to offer the cooperation and support it had imagined coming from the NAM. The AGC at its 1968 annual convention declined to go farther than endorsing a multiemployer construction industry congressional bill and only with regard to its ban on unions’ “whipsaw tactics”; the AGC voted to censure, but not to punish, members that continued to operate during local AGC strikes pursuant to no-strike clauses in national agreements.

Without accusing the local building trades unions of engaging in a national conspiracy to demand large wage increases, the AGC in 1969 proposed the adoption of a national stabilization agreement under which unions would pledge not to strike. By 1971 the AGC adopted the position

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97“AGC Seeking National Stabilization Agreement to Curb Threat of ‘Run-Away Wage
“that the strike and the picket line to enforce wage demands ‘are no longer acceptable in this country.’” It sought to support this demand through a common expiration date for all construction labor agreements and binding arbitration. This objective it shared with the Regional Congress of Construction Employers, a group formed in 1969 of 700 contractors in western New York, western Pennsylvania, northern West Virginia, southern Michigan, and all of Ohio. It believed that a common expiration date for all collective bargaining agreements would prevent unions from playing one employer off against another or from finding work for their members during strikes. They claimed to welcome the attendant risk of very large strikes: whereas hundreds of small strikes failed to capture public attention, one “big regional strike, crippling construction over a wide area,” might prompt beneficial federal intervention.

The AGC president in 1973, Nello Teer, Jr., a nonunion contractor, praised “fear of nonunion competition [a]s the major factor in keeping wage demands down.” For Teer the “[o]pen shop has become a viable and essential component of our national AGC, and is the only proven restraint we have to the irresponsible greed of organized labor. While CISC is due much credit for cooling off the gross demands of the building trades, we know the only truly effective long-range influence has been the prospect of loss of jobs due to open shop operations.”

This evaluation was similar to, if not identical with, that of the Roundtable and of D. Quinn Mills, a leading academic-bureaucrat wage regulator: “It cannot be doubted that the growth of nonunion construction contributed to an economic environment...favorable
to wage restraint and thereby to CISC's activities. However...it is unlikely that the impact of nonunion construction was, in the absence of a controls program, of sufficient magnitude to restrain increases in average hourly earnings to a large extent.”

The AGC also staked out a different position than the NCA with regard to contracts between owner and contractor giving the former the right to require the latter to work through strikes. Although the AGC advocated project agreements giving the contractor the right to shut down construction affecting workers from unions on strike against a local employer bargaining group, the growing popularity among owners of the first kind of agency agreement was seen as eventually resulting in “AGC members being forced to employ strikers while their chapter is taking a strike. Each owner...makes a determination whether the position of the local employer bargaining group is justified in light of his own interests.” The AGC was concerned with the increase in the number of “owners taking over the right of the contractor to determine his own course of action should a strike against the local employer bargaining group occur.”

And more generally, the AGC, while urging users to aid contractors, “warned against users combining to ‘dictate the terms of the relationship between the contractor and his employees.”

The increasingly antiunion composition and orientation clearly imprinted itself on the organization’s refusal to join the CMA-NCA alliance in 1974: “‘AGC cannot support any plan which has as one of its main purposes the enlargement of the market for unionized contractors at the expense of those contractors who work without collective bargaining agreements.”

The AGC’s ambivalence toward unions prompted Labor Secretary Dunlop to call it a “‘schizoid organization’ in which its member union contractors are overruled by its member nonunion builders.”

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104 CUAIR, Report, No. 72-2, at 3 (June 22, 1972) (William Dunn, exec. vice pres., AGC, at CUAIR’s annual meeting).
105 ENR, Nov. 14, 1974, at 3.
ambivalence toward unions extended to state intervention as well. In 1966 the AGC did “not want more federal controls but [wa]s fearful of the ‘unrestrained power’ exercised by local unions.” Because the AGC “didn’t think the union internationals [we]re ‘in sympathy’ with the ‘excessive’ wage demands made by their local affiliates,” it urged the implementation of binding adjudication of local contract disputes by the AGC and the international unions—a plan that had been thwarted since 1961 by the resistance of local unions. Yet in 1975, when Congress passed a Construction Industry Collective Bargaining bill along very similar lines, the AGC’s opposition helped induce a fatal presidential veto.

**Associated Builders and Contractors**

It is the profit that is achieved during the eight hour working day that allows the worker not to work during the remaining sixteen hours of the day.

The Associated Builders and Contractors, which was founded in the early 1950s, was (and remains) the principal organizational expression of the open-shop movement. From a few hundred members in the 1950s, it expanded rapidly to almost 5,000 by 1972 and more than 10,000 by 1976. The antiunion movement had originated largely as a southern phenomenon,
but as early as 1967 the BCTD declared that if the nonunion sector's rapid growth continued, it would gain national scope. By 1971 nonunion firms accounted for approximately 32 percent of all nonresidential industrial construction activity—a doubling in just two years.

By mid-1972, the business press frequently reported that union labor's high wages and productivity restraints had enabled nonunion contractors to push beyond their southern and southwestern rural origins into northern suburbs and even well-organized cities, although even later in the decade nonunion construction remained far more entrenched in the South. The movement's openly political and quasi-conspiratorial side was conspicuous when some chemical and petroleum company users, especially in the South, "not wanting unionized personnel on the premises, limit[ed] their bids to open shop contractors as a means of encouraging the plant employees to remain nonunion." The open shop's 1974 move into such a "union stronghold" as Westchester County bordering on New York City was ominous.

Its expansion into the key sector of technologically sophisticated large-scale industrial construction outside the South was one of the greatest achievements of the Roundtable and its corporate members. The


115 In 1975, the ratio of open shop contract volume to open and union volume was 69 percent in the South; the next highest ratio, 22 percent, was recorded for the area from Mississippi River to the Rockies, while the Midwest and Far West recorded 4 and 5 percent respectively. "Open Shop Survey Shows Penetration at the Top," ENR, May 27, 1976, at 8-9.

116 Northrup, Open-Shop Construction Revisited at 221.


118 Asked to identify the greatest contributory factor to the unions' decline, Mills unhesitatingly named the Roundtable and its success in inducing industrial firms to use nonunion contractors to build their facilities outside the South. Telephone interview with Daniel Quinn Mills, Harvard Business School (Jan. 4, 1999). Dunlop appears to be unique in responding "not much" to a question as to what the Roundtable had achieved with regard to combating construction unions. Telephone interview with John T. Dunlop, Harvard University (Jan. 7, 1999).
movement received an especially crucial initial boost when du Pont, which until 1970 had performed its construction under union shops, concluded that its construction costs were too high and began awarding contracts to three large and old antiunion firms, Brown & Root, Daniel International, and H. B. Zachry. By 1973-74, nonunion firms accounted for half of du Pont’s $700 million of construction, which employed 10,000 employees. Du Pont also promoted the open-shop’s long-term viability by working with nonunion contractors to develop local training programs.

As the “largest amalgam of nonunion employers in the country,” ABC experienced “phenomenal growth” that “forced the unionized sector of the industry to make changes and concessions that might not otherwise have happened.” Since this movement originated as a reaction against rising labor costs, it is hardly surprising that the underlying wage and productivity factors were the targets: “A.B.C. uses the so-called merit shop, under which the employer pays workers according to their skill and productivity instead of giving an equal wage to all workers in a certain trade, as is done under union contracts.” Indeed, ABC’s chairman proudly announced the open shop’s attraction: “owners have begun to realize that in today’s construction market the only flexible cost left is labor.” Although “[o]pen-shop contractors emphasize that their success doesn’t come from exploiting workers,” their proof was Pickwickian: their wages and benefits were lower, but “annual take-home pay generally runs higher” because they provide more hours of work.

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120 CUH, May 1975, at 5.
123 Gilbert Burck, “A Time of Reckoning for the Building Trades,” Fortune, June 4, 1979, at 82, 85. “A Fair Day’s Pay for No Work,” WSJ, Apr. 23, 1973, at 12, col. 1 at 2 (editorial), argued that “the most conscientious, productive union worker...inevitably will find it more rewarding to work full time in a nonunion shop, coming out ahead financially even at a lower hourly rate of pay.” The Bricklayers union opposed an annual wage plan in the 1930s because it would have guaranteed only (say) 300 days work for $2,000 instead of $1,500 for 150 days. “The Annual Wage Plan,” 41 (6) BMP 91-93 (June 1938).
By 1973, charging that the BCTD unions were engaged in a nationwide conspiracy to use coercion and to force ABC members out of business, the organization filed complaints with the NLRB seeking injunctions and compensation on behalf of their members' employees who had allegedly lost wages. That year ABC achieved one of its most important victories in northern Michigan, where a Houston, Texas nonunion firm gained a contract to build a $12 million natural gas processing plant for Shell Oil Company. After construction unions established an informational picket at the site of the first major industrial contract performed in Michigan by a nonunion contractor in many years, battles broke out between pickets and the workers, half of whom were from the South and Southwest. The building trades' fading position was underscored by the UAW's decision not to supplement its moral support with money or staff. *Business Week* linked this decision to the fact that the UAW's vice president Douglas Fraser had recently "smothered a demand by his own skilled workers for wage parity with outside building tradesmen by pointing out that construction unions have opened the door to nonunion contractors by pricing themselves out of the market."

ABC's injunction suit was resolved on the basis that "in the most heavily unionized state in the nation, a union group has agreed to let hard-hats work alongside what they have denounced as 'scab' labor at less than union scale. Normally union members doing this would be subject to union disciplinary action." ABC's unabashedly proemployer view of the NLRA's purpose is exemplified by its claim that: "All we ask for is that an employer and a worker have the right to choose." In fact, labor law, even the lopsidedly proemployer Taft-Hartley Act, accords the employer no right to choose whatsoever: if its employees choose a union, the employer must recognize and bargain with it.

How the open-shop movement contemplated securing the requisite labor emerges from its challenge to the ABC members to orient their
employment policy toward "a new breed of workers whose goals and needs are substantially different from those of the previous generation. No longer...are young men interested in job and economic security. Rather...they view work as a necessary evil or a means toward achieving other self-oriented goals. At the same time...this group of 18 to 25-year-olds can be more quickly trained and are promotable at a faster pace than the old steeds of the earlier workforce."\textsuperscript{128} The construction industry accommodated the demand for such workers by producing a large mass of unemployed—"a reserve of crafts willing to work 'temporarily' on nonunion projects." Decisive in this context was not so much the direct pressure on wages as the increased "productivity," which stemmed from the fact the new workers forwent "the ordinary contractual limits on what and how much a craftsman can do."\textsuperscript{129} Here the insecurity triggered by increasing unemployment fostered productivity. During the 1957-58 recession, for example, "many construction workers have, in fact, been working more assiduously...thus increasing their productivity. Builders regard this as an incidental benefit of the current economic dip and a reflection of the efforts of each worker to demonstrate his individual skill and value, and thus minimize his chances of being laid off if construction work suffers any marked decline in volume."\textsuperscript{130}

Such short-sighted recruitment and employment practices shed light on the coordinate wage strategies. U.S. labor economists tend to regard the craft wage formation process as an exception: "Historically, craft wage rates have been governed by the general value of a skill rather than by the economic circumstances of a particular industry or by the actual work performed. The employer is essentially paying for the whole reservoir of talents possessed by a qualified journeyman. From the management point of view this practice has made it difficult to realize savings from technological change when crafts monopolize certain work; for while the job content may be altered, the price of labor remains the same."\textsuperscript{131} This description may

\textsuperscript{131}Margaret Chandler, "Craft Bargaining," in \textit{Frontiers of Collective Bargaining} 60 (John
simply reflect the fact that the dequalification processes associated with the
development of the productive forces in other industries failed to dominate
construction; in other words, construction unions' "monopoly power" was
able to prevent the devaluation of their members labor power because "the
job content" was not transformed.

The chief competitive advantage that union-free construction firms
have claimed is precisely the compression of the wage structure by
eliminating the new production of or ceasing to recognize the existence of
the "whole reservoir of talents" in their employees. By specializing and
deskilling their workers, employers are in a position to pay only for a much
narrower range skills that cost less to produce. The open-shop movement
then took the logically next step in this cost-saving program—the transition
to piece rates. Building trades unionists, who throughout the twentieth
century successfully combated piece-rate work because it "destroys that
feeling of comradeship between man and man, which is the corner stone of
true brotherhood and manhood,"132 regarded uniform time wages as "the
ultimate expression of solidarity within the trade," because piecework,
"[w]ithout any built-in limit on earnings," induced workers to "drive
themselves mercilessly...." The accompanying unsustainable celebration of
younger workers' present strength over their long-term health insured the
high turnover rates and labor shortages that have continued to plague
nonunion employers.133


132"Piecework Is Wasteful and Dishonest," 27 (12) BMP 266 (Dec. 1924). See generally,
David McCabe, The Standard Rate in American Trade Unions 190-99 (1912). As early as 1890, only
5 percent of painters, fewer than 2 percent of carpenters and masons, and fewer than 1 percent of
plumbers were pieceworkers compared to 18 of all industrial workers and 13 percent of all males over
sixteen years. U.S. Census Office, Report on Manufacturing Industries in the United States at the
Eleventh Census: 1890, pt. 1, tab. 4 at 94-107 (1895). The argument that the non-standardized output
in construction precludes piece rates is refuted by its use in a number of Western European countries.
See Ludwig Bernhard, Die Akkordarbeit in Deutschland 69-91 (1903); Walter Galenson, Labor in
Norway 218 (1949); "Payments by Results in the Building Industry," 63 (1) ILR (Jan. 1951); V.
Allen, "Incentives in the Building Industry," 62 (147) EJ 595-608 (Sept. 1952); P. A. Stone & W.
Reiners, "Organisation and Efficiency of the House-Building Industry in England and Wales," 2 (2)
JIE 118-34 (1953-54); R. C. Sansom, Organization of Building Sites 55-76 (Nat. Bldg. Studies, Spec.
Rep. No. 29, 1960); Georg Meyer-Keller, Leistungslohn im Baubetrieb (1967); Murerforbundet I
Danmark gennem 75 år 51 (1962). Unions' preference for piece wages in some European countries
casts doubt on the claim that unions there were simply not strong enough to forbid it. John Dunlop,
Industrial Relations Systems 260 (1958).

133Erlich, With Our Hands at 226, 191. But see John Dunlop, "Labor-Management
Relations," in Design and the Production of Houses 275 (Burnham Kelly ed., 1959): "The flat hourly
Even a brief account of the open-shop movement makes clear that its proposals for restructuring the construction industry would have to be significantly different from those emanating from the sectors working with unions. Whereas the NCA and AGC demanded measures that strengthened their negotiating position vis-à-vis unions, the ABC sought to impede union countermeasures, for merely ignoring them would have tended to bring about violent reactions. Consequently, what antiunion firms required in the first instance was not so much new state initiatives, but judicial rulings that would put an end to the physical offensive that union workers had organized at many open-shop building sites. To be sure, the police anticipated the judges.\textsuperscript{134}

These contradictory tendencies were expressed, for example, in the fact that, on the one hand, the various groupings found a common basis in the creation of a “single voice” for construction—the National Construction Industry Council founded in 1974-75.\textsuperscript{135} As early as 1972 the CCE, formed by national employer associations, had warned: “‘Before controls on our industry are lifted we must find ways to improve the balance between management and labor, and ways to improve productivity and to stabilize our labor relations.... The industry cannot survive chaos revisited.’”\textsuperscript{136} On the other hand, serious difference of opinion among the members emerged at the
very first meetings with regard to labor relations. Shortly before the AGC had rejected collaboration with the NCA on the grounds that it could not support any plan that was designed to expand the unionized market at the expense of nonunionized firms.

Only the intervention of large industrial capital could break such an impasse.

Wage-Intensity and Employer Organization

"Remember, we can only command our present wage levels as long as we dominate the labor market with adequate numbers of better skilled workers with a higher productivity factor."

To reach conclusions concerning the formation and behavior of employers’ associations in the various construction sectors it is instructive to examine how large wages bulked in the total production costs of firms in the industrial construction sector. It is plausible, for example, that a firm/branch with a relatively low share of wage costs could afford to be ‘generous’ toward its workers since wage increases would ‘force’ price rises less than would equal percentage wage increases in firms/branches with higher wage shares; conversely, high-wage-share branches would be more vulnerable to wage increases and might be expected to adopt a hard-line approach toward unions.

Table 18 shows wages paid to production workers in construction as a share of production costs.

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Table 18: Construction Worker Wages as a % of Production Costs, and Construction Workers and Gross Book Value of Depreciable Assets per Establishment, 1972

<table>
<thead>
<tr>
<th>Sub-Sector</th>
<th>Wages (%)</th>
<th>Workers</th>
<th>Assets ($000)</th>
</tr>
</thead>
<tbody>
<tr>
<td>All</td>
<td>35</td>
<td>8</td>
<td>53</td>
</tr>
<tr>
<td>Single-family houses</td>
<td>21</td>
<td>4</td>
<td>27</td>
</tr>
<tr>
<td>Other residential</td>
<td>29</td>
<td>12</td>
<td>52</td>
</tr>
<tr>
<td>Highway-street</td>
<td>32</td>
<td>26</td>
<td>504</td>
</tr>
<tr>
<td>Special trades</td>
<td>41</td>
<td>7</td>
<td>29</td>
</tr>
<tr>
<td>Heavy</td>
<td>36</td>
<td>29</td>
<td>265</td>
</tr>
<tr>
<td>Industrial</td>
<td>33</td>
<td>15</td>
<td>73</td>
</tr>
<tr>
<td>Commercial</td>
<td>34</td>
<td>13</td>
<td>58</td>
</tr>
</tbody>
</table>

Source: USBC, 1972 CCI, Industry Series: United States Summary, tab. B1 & B2, and tab. 2 of Industry Series Reports. Production costs include total payroll of all workers, depreciation charges on fixed assets, rental payments for machinery and equipment, and materials, components, and supplies; only establishments with payroll are included.

The average for all sectors was 35 percent and overall the subsectors displayed little dispersion with regard to wage-intensity. Even the heavy (not elsewhere classified) and industrial sectors, in which NCA members operated, were located close to the average at 36 and 33 percent respectively. Only single-family housing (21 percent) and special trades (41 percent) lay far from the other sectors, whose clustering between 29 and 36 percent was unlikely to explain any differences in labor policies. Indeed, the single-family housing sector was the least organized although its major building contractor association, the National Association of Home Builders, did not play a conspicuous role in the open-shop movement and generally maintained a low labor relations profile since unions displayed little interest in organizing residential building workers. In the special trades, whose wage share was highest, the degree of unionization was also high—more than 60
percent in 1969, reaching as high as 67 percent in plumbing and 77 percent in electrical work—and a number of national contractor associations traditionally employed union members under firmly institutionalized collective bargaining mechanisms.

One of the explanatory difficulties is the complex interaction between cause and effect. The low degree of unionization in residential building, for example, contributed to the sub-sector’s below-average wages. In 1972, the average payroll expenditure per construction worker amounted to 73 percent of the industry-wide average, and it is largely this wage differential that is statistically responsible for the low wage share. Since residential construction was not a primary battleground between unions and antiunion employers, but rather was abandoned to nonunion employers by default, it would be difficult to draw any specific conclusions concerning employer militance on the basis of low wage shares. By the same token, special trade contractors’ dependence on one type of highly skilled labor that had long been largely organized left this sector little alternative to banding together in employers’ associations in order to increase individual small firms’ bargaining power. Because most special trade work took place in highly organized sectors, these unions were well placed to exert pressure on subcontractors to recognize them.

In spite of the fact that average payroll outlays per worker were

\[142\text{BLS, } Employee\ Compensation\ and\ Payroll\ Hours:\ Construction—Special\ Trade\ Contractors,\ 1969,\ at\ 1,\ 15\ (Rep.\ 413,\ 1972).\]

\[143\text{Dunlop \& Hill, } Wage\ Adjustment\ at\ 12;\ Northrup \& Foster, Open Shop Construction at 16; Charles Pitcher, “A Directory of National Trade Associations, Professional Societies, and Labor Unions Involved in the Construction and Building Materials Industries,” 21 (1) CR 4-22 at 7-8 (Jan.-Feb. 1975).\]

\[144\text{USBC, } 1972\ CCI, Industry\ Ser., U.S. Summary, tab. B1.\]

\[145\text{Although BLS, Labor and Material Requirements for Construction of Single-family Houses, tab. 7 at 15 (Bull. 1755, 1972), indicated that this sector had the lowest wage share in total costs, it is not clear that it can be identified with the lowest labor input unless the skill level were lower, which was not the case. Id. at 8; Claiborne Ball, “Employment Effects of Construction Expenditures,” 88 (2) MLR 154-58 at 156 (Feb. 1965). The relatively large share going to “overhead and profit” suggests that proprietors’ labor may have been classified under this heading.}\]

\[146\text{When the CIO tried to organize residential construction beginning about 1940, it stressed the AFL unions’ neglect of this sector; despite offering contractors conditions reminiscent of “open-shop” demands, it failed to organize many workers or employers. “C.I.O. Makes Sortie in Building Field,” NYT, Mar. 21, 1940, at 1, col. 3, at 20, col. 3; 1 (3) UCWN 4 (Sept. 1, 1940); Miles Colean, American Housing 152-53 (1944); Bates, Bricklayers’ Century at 244-45.}\]

\[147\text{In 1972, 56 percent of total payments to subcontractors were recorded in the commercial, industrial, and heavy construction sectors. USBC, } 1972\ CCI, Industry\ Ser.: U.S. Summary, tab. B1.\]
significantly above average in the relatively well organized nonresidential and heavy construction sectors, wages as a share of total costs were only average in these subsectors. If wage cost shares were not decisive in determining the degree of organization or employer counter-organization, the other two factors from Table 18, average number of workers and assets per establishment, are more promising explanatory variables. For establishments with relatively large numbers of workers and fixed assets were also relatively well organized on both sides. Whereas the relatively large number of workers concentrated at work sites may have fostered collective action, the concentrations of fixed capital that would have been vulnerable to strikes and other actions may have motivated employers to recognize unions rather than combat them. Though plausible, these ad hoc arguments do not allow of greater generalization. Wage shares thus do not appear to have been decisive and show a very weak correlation with the number of workers and amount of assets per establishment. The most plausible conclusion, therefore, is that employer organizations were formed primarily as a reaction to prior organization by construction workers.

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148 In heavy construction (not elsewhere classified), per capital payroll outlays at $12,318 about one-third higher than the industry average of $9,232. USBC, 1972 CCI, Industry Ser.: U.S. Summary, tab. B1.

149 The Spearman rank correlation for all sectors is 0.96 and the correlation coefficient 0.84; both are significant at the .01 level.

150 A good example is the highway sector once it began mechanizing in the 1920s and 1930s. Garth Mangum, The Operating Engineers 249 (1964).

151 The correlation coefficients are 0.32 and 0.11 respectively.

152 The process by which each step toward organizational centralization on the part of one side fostered or even compelled a parallel step on the other side was much less prominent in the United States, where centralized collective bargaining was far from complete, than elsewhere. For a lucid description of the early development in Germany, see Otto Liebich, Organisations- und Arbeitsverhältnisse im Baugewerbe (1922).