The original documents are located in Box 38, folder "1/2/76 HR5900 Common Situs Picketing Bill (vetoed) (1)" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

VETOED 1/2/76
DELIVERED TO THE CLERK OF THE HOUSE 1/2/76 8PM
STATEMENT ALSO ISSUED 12/22/75

ACTION

THE WHITE HOUSE

WASHINGTON

Last Day: January 2

January 2, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: H.R. 5900 - Common Situs Picketing Bill

Attached for your consideration is a proposed veto message for H.R. 5900, the Common Situs Picketing bill.

The proposed message is essentially an abbreviated version of your statement of December 22 announcing your intention to veto.

Bill Seidman and Ken Lazarus would prefer that the veto message simply indicate you are returning the bill and make reference to your December 22 statement. OMB, Max Friedersdorf and I recommend approval of the message which has been cleared by Paul Theis. It would seem more appropriate and courteous to the Congress for a veto message to include at least some substantive reasoning for the veto. If there is to be a substantive message, Bill Seidman finds the attached acceptable.

RECOMMENDATION

That you sign the veto message at Tab A.

Approve 1 Disapprove

no message already issued a statement -

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
WASHINGTON, D.C. 20546

OFFICE OF THE ADMINISTRATOR

DEC 19 1975

Director
Office of Management and Budget
Executive Office of the President
Washington, DC 20503

Attention: Assistant Director
for Legislative Reference

Subject: Enrolled Enactment report on H.R. 5900, 94th Congress

This is an Enrolled Enactment report on H.R. 5900, "To protect the economic rights of labor in the building and construction industry by providing for equal treatment of craft and industrial workers and to establish a national framework for collective bargaining in the construction industry, and for other related purposes." It is submitted pursuant to Mr. James M. Frey's memorandum of December 17, 1975.

Title I of the Enrolled Bill would create an exception for the building and construction trade unions from the secondary boycott prohibitions of the National Labor Relations Act. In essence the Enrolled Bill would legalize secondary boycotts at construction sites, an abuse made illegal since the passage of the Taft-Hartley Act in 1947.

Title II of the Enrolled Bill would create a national Construction Industry Collective Bargaining Committee to help avert and mediate strikes, including those types of strikes permitted by Title I. NASA has no objection to Title II of the Bill.

The nature of NASA's operations at various of its field centers and installations and the requirements of the procurement laws create special problems with respect to the effects of this Bill. As typified by the Kennedy Space Center, at Cape Kennedy, Florida, and the National Space Technology Laboratories near Bay St. Louis, Mississippi, NASA operates large Government enclaves, already constructed and containing various buildings, structures, and complexes

scattered over vast areas where a variety of agency activities are being performed. At any one time there are a variety of construction jobs, many unrelated to each other, being performed throughout these enclaves, ranging from minor repairs and modifications to the construction of an additional structure. Although there is some legislative history to indicate that the entire enclave would not be considered a site under the Bill if one of these construction jobs were struck, the same is not true at large facilities such as the Vehicle Assembly Building (VAB) or a launch complex. At those facilities we may have new construction, modification, and minor repairs proceeding simultaneously, while, at the same time, programmatic activities involving various industrial contractors and civil servants are being conducted. Since these facilities are considered sites under the Bill, a strike against one minor construction contractor could involve all those working at that site.

Moreover, there is little NASA can do to avoid some labor disputes since the procurement laws require us not to discriminate among contractors on the basis of whether or not they are union. Therefore, many of our construction projects will contain a mixture of union and non-union contractors, and since a principal purpose of this Bill is to create a mechanism for the elimination of non-union contractors from work sites there will be picketing for that purpose at such facilities as the VAB. Thus, disputes over the presence of a non-union contractor engaged in relatively minor construction could involve an entire complex and surrounding facilities and embroil industrial, as well as construction contractors, and possibly even civil servants. It should be noted that in accordance with the Davis-Bacon Act, all construction contractors, whether union or non-union, must pay, as a minimum, prevailing wage rates determined by the Labor Department, for the various categories of workers employed on Government jobs.

With the elimination of the traditional reserve gate option by virtue of the Enrolled Bill's ambiguous definitions of construction contractors who may be struck and work site, and the prohibition of the procurement laws against discriminating between union and non-union contractors, NASA and its contractors could become embroiled in large-scale labor disputes which they had little or no power to avoid, stop or even limit, and which could have serious effects on the agency's programs. We do not believe that the notice provisions to the national unions and mediation

agencies provided by Title I and the provisions of Title II for a National Construction Industry Collective Bargaining Committee are sufficient to aid our situation.

During the 1960's, despite the availability of the President's Missile Sites Labor Commission and the use of Project Stabilization Agreements in NASA construction contracts -- mechanisms for controlling labor disputes similar to those proposed in Title II of the Bill -- NASA's construction activities at the Kennedy Space Center and the Mississippi Test Facility were frequently disrupted by labor strife. Because many of those disruptions were illegal secondary boycotts under the Denver Building Trades case -- now sought to be repealed by Title I of this Bill -- NASA and its contractors were able to obtain injunctive relief before the National Labor Relations Board and the Courts. The elimination of this remedy and, as mentioned, the reserve gate, and the substitution of the Construction Industry Collective Bargaining Committee under Title II will not give NASA and its contractors comparable defense and does not reach the problem of the non-union contractor whose disputes will not even be subject to the Committee's jurisdiction.

We exerted considerable effort to persuade the Secretary of Labor and staff members of the Senate Subcommittee on Labor to either exempt NASA and like agencies or limit the Bill's application to prevent serious impact to our programs. In view of the potentially large-scale, disruptive effects of this legislation, the National Aeronautics and Space Administration believes that, on its merits, the Enrolled Bill should be vetoed, and we so recommend. In accordance with OMB Circular A-19, a proposed veto message is attached.

James C. Fletcher
Administrator

Enclosure

TO THE HOUSE OF REPRESENTATIVES

I return herewith, without my approval, H.R. 5900, which would amend the National Labor Relations Act, as amended, by providing an exception for building and construction trade unions from the secondary boycott prohibitions of the National Labor Relations Act, and would also create a national Construction Industry Collective Bargaining Committee to help avert and mediate strikes in that industry.

This Administration is firmly committed to the principle that all labor groups, regardless of whether or not they are industrial or construction trade unions, should stand on the same footing in being able to resort to strikes, as a measure of self-help during disputes. H.R. 5900 is intended to strengthen this principle for the construction trades, but in reality it goes much too far toward unbalancing the existing, precarious balance between management and labor in the use of economic force in the construction industry. The creation by the Bill of the Construction Industry Collective Bargaining Committee, although a major step toward bringing a measure of stability to this troubled industry, does not go far enough toward coping with the problems of the entire industry -- union and non-union -- nor does it deal adequately with the consequences of common situs picketing, as permitted by this Bill.

Common situs picketing would allow a union dispute with a contractor at a construction site to encompass not only the contractor who is the primary disputant but all other contractors at the site: a situation not possible under current law. This is a powerful advantage to the union since pressure

to settle the dispute would be exerted by all those so affected. The Bill not only permits this activity but allows it to happen almost without limitation. It so vaguely defines who is an involved contractor and what is a site that a strike can be directed at persons and companies not even remotely connected with the dispute at distances hundreds and even thousands of miles removed from the dispute. For example, non-union, industrial companies installing equipment at a struck site and small sub-contractors, not related to another sub-contractor at the same site which is engaged in a dispute at its main office many miles away, can be forced to cross picket lines. Under the Bill a site could be the entire 2,000-mile long Alaskan Pipeline project or the 98-mile Washington, D.C. Metro Line. A dispute at any point along these projects could tie up work anywhere else along the entire area of construction. Government projects are also peculiarly affected. Large Government enclaves such as the Kennedy Space Center contain already constructed, large-scale, multipurpose buildings such as the Vehicle Assembly Building, which are constantly under refurbishment. A strike involving a sub-contractor working on one corner of the structure could shut down the entire operations of this building because it is a site under the Bill, idling other construction activities entirely separate from the struck project, industrial firms engaged in non-construction activities, and curtailing the activities of civil servants working in the building.

Certainly neither Title I of the Bill with its provisions for notice to the Federal Mediation and Conciliation Service and the National Unions of any strike proposed at Government Enclaves engaged in defense work, nor Title II with its

creation, the Construction Industry Collective Bargaining Committee, contains the requisite safeguards against abuse of this powerful economic weapon. To safeguard the Public, the construction industry and the Government, this power must be more circumscribed, its effects more limited, and attempts to bring labor and management together to create a larger degree of harmony must encompass a larger group of those affected.

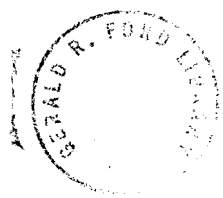
The large-scale labor disputes permitted by this Bill could have the effect of further crippling the already depressed construction industry, and have significant adverse economic consequences on even non-construction industries. Moreover, highly inflationary wage settlements could result from the great pressures generated by such wide-ranging disputes. Because of the potential harm to the economy of this Nation posed by this Bill, I cannot let it become law.

FINANCE

DEFENSE

Eco. 12/18/75

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D.C. 20503



Dear Mr. Lynn:

Reference is made to your request for the views of the Department of Defense with respect to the Enrolled Enactment of H.R. 5900, 94th Congress, an Act "To protect the economic rights of labor in the building and construction industry by providing for equal treatment of craft and industrial workers and to establish a national frame work for collective bargaining in the construction industry, and for other related purposes."

Title I of the Act would give construction labor organizations immunity from section 8(b)(4)(B) of the Taft-Hartley Act which prohibits secondary union pressure to force cessation of business relationships. The immunity would authorize construction unions to picket and strike every contractor and subcontractor primarily engaged in construction on the site, and their suppliers, provided certain conditions are met.

The Department of Defense is concerned that this Act would cause considerable difficulties, particularly on military installations. If pickets are permitted at all gates of an installation, it is likely that the impact would go far beyond the contractor or subcontractor involved in the labor dispute and could cause union members on other construction projects, as well as those working for service contractors, to refuse to enter the installation.

The procurement regulations of the Department of Defense and its components establish a policy of neutrality regarding labor disputes. Although the military departments generally prohibit picketing inside military installations, labor organizations are permitted to picket at the gates of those enclaves. The National Labor Relations Board (NLRB) and local and state enforcement agencies are called upon to exercise control over the union pickets when such picketing adversely affects the flow of traffic or prevents entry to the installation of parties who are not involved in the labor dispute. Under the present law, the courts and the NLRB have sanctioned "reserved gate" plans at shopping centers, private industrial sites and military installations. Where picketing involves a military installation, the installation commander may require the picketed contractor and his employees, to utilize one - and only one - gate to the installation. All other contractors, their suppliers and employees, are advised not to use the "reserved" gate, but to use other entrances. Appropriate signs and security methods are utilized to assure compliance with this procedure. Under the current version of the Taft-Hartley Act, as interpreted by the NLRB, the union involved in the labor dispute must then restrict its picketing to the "reserved" gate. The object, of course, is to permit

the union to accomplish all legitimate purposes of its picketing while allowing the Government to remain neutral in the dispute and to carry on its normal day to day activities. This successful procedure probably would not be possible if H.R. 5900 becomes law, in the absence of more definitive language in the Enrolled Act.

The language of H.R. 5900 is complex and subject to varied interpretations. Statements included in the legislative history in support of this Act are not all consistent with its language. As a result, it is difficult to accurately weigh the potential impact on DoD. While some of the potential problems may be alleviated in the implementation and administrative interpretation, the following consequences would be anticipated:

- The Act may end the ability of an installation commander to utilize the services of the NLRB to enforce the reserved one-gate plan, thus permitting picketing at all entrances to his installation. It is conceivable that a labor dispute of even minor import between a subcontractor and any one of the numerous construction trade unions could stop all other construction work as well as other union-provided services at an installation not related to the construction project. This result could severely impair the defense mission of the installation.

- Work stoppages on DoD construction projects, including those not involved in the dispute, would have a significant impact on the execution of our military construction program. Impairment of National Defense efforts could result both from intolerable delays in completion of projects and greatly increased costs.

- The Act permits picketing of any industrial facility due to a dispute involving construction workers hired to paint, alter, repair or expand the facility potentially resulting in the facility being shut down. If such a plant is engaged in the manufacture of vital defense items the loss of this production could have grave consequences for National Defense.

Inasmuch as the right to picket an employer involved in a dispute is already provided construction unions under present law and procedures, and in light of the potentially serious problems that could arise under this Act, the Department of Defense recommends that the President disapprove the Enrolled Enactment of H.R. 5900, 94th Congress.

Sincerely,

...resentative.

I regret that I must return H.R. 5900 without my approval.

I am in sympathey with the purpose of this Act, as stated in its title, "To protect the economic rights of labor in the building and construction industry by providing for equal treatment of craft and industrial workers and to establish a national framework for collective bargaining in the construction industry." However, I am deeply disappointed in the extent to which this Act impairs the National Defense in its effort to achieve these noble goals.

The Department of Defense is concerned that this Act would cause considerable difficulties, particularly on military installations. If pickets are permitted at all gates of an installation, it is likely that the impact would go far beyond the contractor or subcontractor involved in the labor dispute and could cause union members on other construction projects, as well as those working for service contractors, to refuse to enter the installation.

The procurement regulations of the Department of Defense and its components establish a policy of neutrality regarding labor disputes. Although the military departments generally prohibit picketing inside military installations, labor organizations are permitted to picket at the gates of those enclaves. The National Labor Relations Board (NLRB) and local and state enforcement agencies are called upon to exercise control over the union pickets when such picketing adversely affects the flow of traffic or prevents entry to the installation of parties who are not involved in the labor dispute. Under the present law, the courts and the NLRB have sanctioned "reserved gate" plans at shopping centers, private industrial sites and military installations. Where picketing involves a military installation, the installation commander may require the picketed contractor and his employees, to utilize one - and only one - gate to the installation. All other contractors, their suppliers and employees, are advised not to use the "reserved" gate, but to use other entrances. Appropriate signs and security methods are utilized to assure compliance with this procedure. Under the current version of the Taft-Hartley Act, as interpreted by the NLRB, the union involved in the labor dispute must then restrict its

picketing to the "reserved" gate. The object, of course, is to pe[illegible] the union to accomplish all legitimate purposes of its picketing wh[illegible] allowing the Government to remain neutral in the dispute and to carry on its normal day to day activities. This successful procedure probably would not be possible if H.R. 5900 becomes law, in the absence of more definitive language in the Enrolled Act.

The language of H.R. 5900 is complex and subject to varied interpretations. Statements included in the legislative history in support of this Act are not all consistent with its language. As a result, it is difficult to accurately weigh the potential impact on DoD. While some of the potential problems may be alleviated in the implementation and administrative interpretation, the following consequences would be anticipated:

- The Act may end the ability of an installation commander to utilize the services of the NLRB to enforce the reserved one-gate plan, thus permitting picketing at all entrances to his installation. It is conceivable that a labor dispute of even minor import between a subcontractor and any one of the numerous construction trade unions could stop all other construction work as well as other union-provided services at an installation not related to the construction project. This result could severely impair the defense mission of the installation.

- Work stoppages on DoD construction projects, including those not involved in the dispute, would have a significant impact on the execution of our military construction program. Impairment of National Defense efforts could result both from intolerable delays in completion of projects and greatly increased costs.

- The Act permits picketing of any industrial facility due to a dispute involving construction workers hired to paint, alter, repair or expand the facility potentially resulting in the facility being shut down. If such a plant is engaged in the manufacture of vital defense items the loss of this production could have grave consequences for National Defense.

Inasmuch as the [illegible] is already provided construction unions under present law and procedures, and in light of the potentially serious problems that could arise under this Act, I have no choice but to return H.R. 5900 to the House of Representatives.

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION
WASHINGTON, DC 20405

DEC 18 1975

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, DC 20503

Dear Mr. Lynn:

The Assistant Director for Legislative Reference has requested the views of the General Services Administration (GSA) on enrolled bill H.R. 5900, a bill "To protect the economic rights of labor in the building and construction industry by providing for equal treatment of craft and industrial workers."

GSA has reviewed the enrolled bill and feels it will have an extremely adverse effect upon Federal construction programs. For this reason, GSA recommends that the President veto H.R. 5900.

Starting in 1971, this agency began to use a new construction management technique that had proven successful in the private sector known as "phased construction." This method is based on the award of separate contracts for construction in a logical and orderly sequence so as to have a total building facility completed in the earliest possible time at the least possible cost. Through this method, construction activities at the building site start as soon as those portions that need to be constructed first are designed. The process of concurrent design and construction continues until the last element of design is completed and constructed.

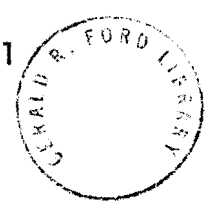
For GSA to make effective use of phased construction, the agency must have the ability to award a series of separate construction contracts for the total building or facility constructed at a common site. All of the requirements of Government contracting are applicable to each of the separate contracts, including the requirements that contracts be awarded to the lowest responsible responsive bidder, whether union or non-union; that prevailing wage rates be paid; and that payment and performance bonds be provided.

As of November 4, 1975, this agency has used phased construction on 18 projects resulting in the award of 268 separate construction contracts. GSA's present and future construction programs are based on being able to continue this procedure to take advantage of the attendant savings in time and money which are substantial.

For example, GSA comparisons of a single construction contract versus multiple contracts for the proposed Norfolk, Virginia, Federal Building and Parking Facility indicate a cost savings of $960,600 and a reduction in completion time of 11 months through the application of phased construction. Similar comparisons for the proposed Miami, Florida, Courthouse Annex indicate a cost savings of $1,335,000 and a reduction in time of one year. Early construction estimates for the Air and Space Museum here in Washington totalled $37,577,000. The museum was built under phased construction and projected final costs now total $30,287,000.

Any legislation that would impede the use of phased construction, or which would restrict the simultaneous utilization of union and non-union contractors on a Federal job site, would have a serious impact on our ability to provide Government facilities for the least cost and within minimum time. For example, should union contractors strike a project because we have separate contracts with non-union contractors, the project would come to a complete standstill. There would be no really adequate remedy available to the Government to get the project going. The cost in time and money that would be caused by such a situation is immeasurable. This potential problem, which would be caused by simultaneous utilization of union and non-union contractors at a common construction site, is not a problem in private sector phased construction because the private owner can stipulate that the project contractors either be all union or all non-union. The Federal Government is prohibited from making such a stipulation.

This problem would have been alleviated if the enrolled bill extended to the Federal Government an exception similar to that which it contains for state government construction. This exception essentially provides that separate construction contractors at a common site of construction are not to be considered as joint ventures or in the relationship of contractors and subcontractors with each other or with the State awarding the contract according to applicable law.



A modification of the kind described above is essential if potential disruptions to GSA phased construction projects are to be minimized to the point where they can be carried on successfully. We assume that the individual contractors on lump sum Federal construction contracts, will be able to handle most problems arising out of common situs picketing due to their ability to determine whether to use union or non-union labor.

It should be noted, however, that in the case of private contractors on Federal jobs, there will still exist many other sources for potential common situs picketing, such as wage or jurisdictional disputes, over which we will have little or no control.

In light of the above, we request that GSA's opposition to the enrolled bill be made known to the President for his consideration before final action is taken. A short veto message which sets forth the GSA point of view is attached for your use as may be appropriate.

Sincerely,

Jack Eckerd
Administrator

PROPOSED VETO MESSAGE ON H.R. 5900

H.R. 5900, in its present form, will have an extremely adverse effect upon the "phased construction" program of the General Services Administration. GSA's Public Buildings Service (PBS) is presently utilizing this new management technique in the construction of Federal buildings. Under phased construction the Federal Government, rather than waiting until the entire facility is designed before beginning construction, starts work as soon as those portions that need to be constructed first are designed. This process of overlapping design and construction continues until the last element of the design is completed and constructed. The principal benefit of the phased construction which utilizes separate construction contracts for various building components is a 25 percent savings in time and a 20 percent savings in cost.

This approach to construction requires that GSA have the ability to award a series of separate construction contracts for each of the design packages. All of the requirements of Government contracting are applicable to each of the separate contracts, including the requirements that contracts be awarded to the lowest responsible responsive bidder; that prevailing wage rates be paid; and that protective bonds be provided.

As of November 4, 1975, GSA has used the separate contracting procedure on 18 projects, resulting in the award of 268 separate construction contracts. It is estimated that GSA will have approximately twenty phased construction projects per year for the next several years.

Any legislation that would impede the use of the separate contract process or restrict the simultaneous utilization of union and non-union contractors on a Federal job site would have a serious impact on GSA's ability to provide Federal Government facilities for the least cost and within the minimum time. In this period of budgetary restraint, it is essential that your Government effect economies whenever possible and avoid actions which will result in increased expenditures. In our opinion, H.R. 5900 would have such an effect.

I understand that the Senate did consider a limited amendment, which would have allowed GSA to go forward with its program of saving millions of dollars, while preserving the integrity and basic purpose of the proposed law. It is my hope that when it reconsiders this important question of National labor policy in the future, the Congress will act to preserve this money saving Federal management technique. While it is difficult to fully assess the effect of this legislation on areas outside the purview of the General Services Administration, I think consideration must be given to whether this legislation is appropriate at this time

in light of the present economic situation. At this time, the construction industry throughout the country is at a low ebb. Housing starts have been a major concern over the last two years. Any legislation which may cause a decrease in construction industry activity must have an adverse impact on the individual home buyers and the economy as a whole. Since the construction industry is a major component of the total economic system, the legislation, to the extent it would have a negative impact on that industry, would also have an adverse effect on the ability of the economy as a whole to recover quickly. In view of the impact of the present legislation, I must regretfully refuse to accord it Presidential approval.

THE UNDER SECRETARY OF COMMERCE
Washington, D.C. 20230

DEC 18 1975

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Dear Mr. Lynn:

I shared the hope of others in the Administration that legislation directed at resolving the labor relations problems of the construction industry would be forthcoming. However, I feel that the enrolled bill, H.R. 5900, suffers from such serious defects in Title I as to warrant disapproval by the President.

One could hardly argue with the concept of a bill "to protect the economic rights" of construction unions. H.R. 5900 would not serve this purpose. Instead it would place construction unions in a privileged position by virtually exempting them from the limitations on secondary boycotts which have been so carefully developed in labor-management law over the past several decades. From the outset, the Administration recognized the dangers of common situs picketing and proposed that it be limited to a 30-day period. Congress did not adopt this suggestion.

I recognize that the President discussed the common situs picketing issue with the House and Senate leadership and stated that he would approve H.R. 5900 subject to several conditions. Those conditions were:

-- that the bill require approval of the national and international unions before any local called a strike;

-- that the bill provide for a 10-day cooling off period; and

-- that the bill be delivered to the President at the same time as legislation establishing a labor-management body to provide a mechanism for resolution of construction industry labor disputes.

The President's agreement was based on the assumption that such legislation would be acceptable to management as well as to labor. It is clear to me that management is dead set against the unduly broad common situs picketing rights afforded by H. R. 5900 as it emerged from the Congress. Title II does not make Title I acceptable.

I cannot recommend that approval be given to legislation which would strip away the legal protections now available to construction contractors under the National Labor Relations Act. Yet this is the effect that H. R. 5900 would have through the use of language which would make every contractor on a construction site a joint venturer with every other contractor in connection with any dispute at the site.

Furthermore, H. R. 5900 goes beyond the willingness of the Administration to support legislation which contains fair and balanced ground rules for picketing in construction. For example, in a contract renewal dispute involving only one union, H. R. 5900 would permit area wide picketing by all trades at all sites. This expanded secondary picketing conferred by Title I would tempt unions to seek excessively costly agreements as contractors seek to avoid crippling strikes. Even compliance by a single contractor would not prevent that contractor from being drawn into contract renewal disputes affecting any association. Each association will therefore be pressed to cause all other associations to conform to demands of every union in order to avoid shutting down of all construction sites in an area. The impact will be felt disproportionately by small contractors and their non-union employees, many of whom are often precluded from union membership due to their minority status. Title I therefore leads to a situation in which the safeguards in the bill cannot be effectively used.

I believe that with the application of Title I's radical changes in current picketing rules to contract negotiation disputes, the experiment towards a more responsible and responsive system of labor relations in construction, embodied in Title II, cannot succeed.

Finally, the bill contains a number of provisions, not directly related to the reversal of the Denver ruling, which are complex and ambiguous and for which there is inadequate legislative history. As such, H. R. 5900 provides inadequate guidelines to assure fair and expeditious administration of the Act and will cause costly and time-consuming litigation in order to clarify the intent of the law. In short, I believe H. R. 5900 will create more problems than it will solve.

I have enclosed herewith a proposed veto message for your consideration.

Sincerely,

James A. Baker, III

Enclosures

To the House of Representatives:

I return, without my approval, H.R. 5900.

Title II of this bill provides much-desired machinery for improving construction industry collective bargaining. However, Title I, pertaining to the complex situs picketing issue, is beset by defects which even its so-called safeguard provisions do not remedy.

It was my hope that carefully drafted legislation in regard to situs picketing, with effective safeguard provisions to minimize the potential for disruption flowing from secondary picketing, would be enacted. Such legislation would have reversed the decision of the court, bearing on section 8(b) (4) (B) of the National Labor Relations Act, in National Labor Relations Board v. Denver Building and Construction Trades Council, 341 U.S. 675 (1951).

In the Denver case, the Supreme Court held that a general contractor and each subcontractor on a common construction site were separate and independent employers. As a result, the court held that a union which had a dispute with a subcontractor who was paying his non-union employees less than the union scale could not picket the general contractor or the entire construction site in an effort to force the general contractor to terminate the disputed subcontractor. In effect, the Denver case holds that a union must limit its picketing to the subcontractor with whom it has its primary dispute.

Title I of the bill would not establish parity between the rights of construction unions and those of industrial unions, as alleged, but would instead place the construction unions in a more privileged position to use their expanded picketing rights against neutrals.

Title I would permit the shutting down of a large array of construction sites in an area. For example, in a situation in which a painting contractors' association and the painters' union have a dispute over contract renewal demands for an increase in wage rates, the painters' union would be able to picket every site at any stage of construction where a general contractor has contracted with a painting contractor. Conceivably, painters could picket sites where only excavation had been undertaken. The result would be to enable the painters' union to close down all such union construction projects in an area.

In light of its language and legislative history, I find that Title I would achieve certain ends which go beyond reversal of the Denver ruling. For example, one of its provisions could narrow the possibility of using injunctive relief to enforce "no strike" clauses in contracts in other industries. This provision received relatively little study prior to its inclusion in the bill. Another provision would grant unduly broad immunities to national and international labor organizations. Such a provision represents a marked departure from the traditional agency and immunity practices which have developed in the labor-management field over the past several decades.

While a limited revision of the long-standing prohibition on secondary boycotts may be justified for the construction industry, I am concerned that this bill deprives a major sector of the American economy of the thoughtfully worked out protections against secondary boycotts which have been part of our law for decades.

I would find any bill unacceptable which automatically made all contractors on a site parties to a dispute involving only one of them.

I find the safeguards provided under Titles I and II ineffective against the abuse of expanded picketing rights unless the expanded rights themselves are limited as to scope and applicability.

Finally, the bill's exemption from present law governing secondary boycotts is likely to bring more disharmony and disputes to construction, further imbalance the relative bargaining strength between management and labor, and lead to increases in work stoppages and violence. The impact will be felt disproportionately by small contractors and their non-union employees, many of whom are minorities. The inflationary impact on construction costs is certain to be great and may be so great as to create far more serious problems than exist in the absence of any revision of present labor law.

I recognize that, when I discussed the common situs picketing issue with House and Senate leadership, I agreed to approve H. R. 5900 if it were accompanied by appropriate safeguards for both industry and labor. My agreement was based on the assumption that the bill as finally presented would in fact safeguard both management and labor. In my view, H. R. 5900 fails to provide such safeguards.

VETERANS ADMINISTRATION
OFFICE OF THE ADMINISTRATOR OF VETERANS AFFAIRS
WASHINGTON, D.C. 20420
December 19, 1975

The Honorable
James T. Lynn
Director, Office of
Management and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

This will respond to the request of the Assistant Director for Legislative Reference for the views of the Veterans Administration on the enrolled enactment of H. R. 5900, 94th Congress, "An Act to protect the economic rights of labor in the building and construction industry by providing for equal treatment of craft and industrial workers and to establish a national framework for collective bargaining in the construction industry, and for other related purposes."

Broadly expressed, the primary purposes of the bill are to overcome court decisions which have drawn distinctions between allowable labor dispute activities of industrial workers and workers engaged in the construction industry, and to establish and define the functions of a "Construction Industry Collective Bargaining Committee" in the Department of Labor.

Title I of the bill would amend the National Labor Relations Act to prohibit interpretation of the provisions of that Act as limiting labor dispute activities in the construction industry to the contractor primarily concerned in the dispute and to the area of a construction site on which such contractor is working.

Title II of the bill is new and would create a Collective-bargaining Committee, the membership of which is designated and the functions of which are defined.

In our previous report to you, dated October 14, 1975, we directed your attention to two aspects of H. R. 5900 as passed by the House and S. 1479, introduced in the Senate.

First, it appeared to us that if secondary boycott activities were widened to the extent proposed in said bills, labor dispute activities could interfere with the operation of functioning hospitals by interruption of delivery of essential supplies such as drugs, food, fuel, etc. We note that in the enrolled enactment the language of section 101(a) has been changed to allow "separate gates" for such delivery. As we construe the changes and the intent expressed in the Conference Report (House Report No. 94-697), our previous concern on this point would not now be valid.

Second, we noted in the previous submission that, as interpreted in the House Committee on Education and Labor Report (House Report No. 94-371), the phrase "several employers. . . jointly engaged as joint venturers" could cover employers unrelated other than as having contracts to do work on a single site. We observe that the enrolled enactment, in amending section 8(b)(4) of the National Labor Relations Act, added the provision that:

> "In determining whether several employers who are in the construction industry are jointly engaged as joint venturers at any site, ownership or control of such site by a single person shall not be controlling."

This provision affords the clarification we sought.

The enrolled enactment eliminates the specific problems with which we were originally concerned in the operation of our functioning hospitals. We have no sound basis upon which to evaluate the effect this legislation may have on labor disputes which may arise in the future on VA construction sites. Therefore, we do not make a recommendation for Presidential action. Since the Department of Labor is the executive agency designated to administer the provisions of this enactment, and GSA is the agency charged with administering laws and regulations governing Federal procurement, we defer to the views of these agencies on H. R. 5900.

Sincerely,

Deputy Administrator - in the absence of

RICHARD L. ROUDEBUSH
Administrator

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

December 19, 1975

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Re: Bill, H.R. 5900

Dear Mr. Frey:

Pursuant to your request, we have reviewed the enrolled Bill H.R. 5900. As you are no doubt aware, the Secretary of Labor has presented the views of the Administration as to the desirability of the legislation and, therefore, we express no views on the substantive aspects of the Bill.

We have also reviewed the Bill from an operational standpoint and although we anticipate that there will be the usual litigation initially to seek court interpretation of certain provisions of the Bill, we envision no insurmountable operational problems.

We anticipate, however, that the enactment of the Bill will have some impact on the Agency's budget. The stated purpose of the legislation would be to make primary, the picketing at the common situs or jobsite of the general contractor or subcontractors. However, the Bill contains certain provisos which must be considered by the Agency in evaluating the legitimacy of the strike and/or picketing and will require a substantial increase in the Agency's investigative efforts in Section 8(b)(4)(B) cases. For example, the provisions calling for notice of intention to strike or picket or the "no strike clause" provision will require additional investigative effort not heretofore required. For the short-term, therefore, we anticipate an increase in unfair labor practice charges and conservatively estimate that the Agency will be

required to investigate approximately 25% more Section 8(b)(4)(B) allegations than in Fiscal Year 1975. In FY 1975, the Agency received approximately 2,000 unfair labor practice charges alleging in whole or in part, violations of Section 8(b)(4)(B). A fair estimate is that approximately 50% of those cases involved common situs cases which this Bill will affect.

We also note that the statute continues to give priority treatment to such cases. We estimate that the Agency will need between 15 to 20 man-years to handle the additional investigative efforts and would include training Agency staff on the effect and implementation of the legislation. A conservative estimate on the cost of additional manpower and training is approximately $500,000 and would not include costs of reporting services and travel which might add an additional $30,000. This estimate is based on a fiscal year basis and was arrived at after consultation with John Irving, our General Counsel and our budget people.

Sincerely,

Betty Southard Murphy
Chairman

THE GENERAL COUNSEL OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D. C. 20410

December 19, 1975

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D. C. 20503

Attention: Ms. Martha Ramsey

Dear Mr. Frey:

Subject: H. R. 5900, 94th Congress
Enrolled Enactment

This is in response to your request for our views on the enrolled enactment of H. R. 5900, an Act "To protect the economic rights of labor in the building and construction industry by providing for equal treatment of craft and industrial workers and to establish a national framework for collective bargaining in the construction industry, and for other related purposes."

Title I of the enrolled enactment would amend the National Labor Relations Act to permit common situs picketing at construction sites and, in effect, treat a general construction contractor and all subcontractors as one person for purposes of the secondary boycott provisions of the law. Under current law and court decisions, if, for example, an electrical subcontractor on a construction project employs non-union electricians, picketing by union members at the construction site would constitute an illegal secondary activity. The enactment would make such picketing permissable.

The right to engage in common situs picketing would not be permitted in connection with an otherwise unlawful labor dispute under this Act or in violation of an existing

collective bargaining agreement where the issues in the dispute involve a labor organization which is representing employees of an employer at the site who is not engaged primarily in the construction industry.

The enactment would also prohibit, in part, picketing: to remove or exclude from the site any employee on the ground of sex, race, creed, color, or national origin or because of membership or nonmembership in a union; to force an employer to discriminate against an employee whose membership in a union has been denied or terminated on grounds other than failure to pay dues or initiation fees; to exclude a labor organization because such organization is not affiliated with a national or international union; for organizational purposes where another labor organization is already lawfully recognized; and against employers who are required by State law to bid separately for certain categories of work.

The enactment would require a union, prior to common situs picketing, to give 10 days notice of intent to strike to all unions, employers, the general contractor and national or international unions with which it is affiliated. The union could strike at the expiration of 10 days if the appropriate national or international labor organization authorized such action in writing. Additionally, the enactment would not apply to common situs picketing at the site of construction or repair of a residential structure of not more than three stories by an employer whose gross volume, either in his own capacity or with any other person, did not exceed $9.5 million in the preceeding year.

Title II of the enactment, the "Construction Industry Collective Bargaining Act of 1975" would establish a Construction Industry Collective Bargaining Committee in the Department of Labor. The Committee would consist of ten union representatives, ten industry representatives, three public representatives (all twenty-three appointed by the President) and the Secretary of Labor and the Director of the Federal Mediation and Conciliation Service.

The title would require that collective bargaining agreements in the construction industry not be terminated or modified without 60 days notice to the Committee. After receipt of such notice, the Committee, if it wishes, may assume jurisdiction over the matter and refer it for arbitration to voluntary organizations or itself meet with interested parties or do both. A 90 day 'cooling off' period is required during which time all strikes and lockouts are prohibited. No new collective bargaining agreement involving a local union affiliated with a national construction labor organization shall be valid until approved in writing by the national organization.

The impact of the enrolled enactment on HUD programs and housing construction would depend upon two considerations which this Department cannot adequately assess. The first is the effect of the legislation on the frequency and severity of strikes in the construction trades thereby increasing costs and causing construction delay in Federal housing programs and in the industry as a whole. By removing legal prohibitions against common situs picketing, the enactment might well increase the severity of strikes. On the other hand, the provisions of Title II would establish a framework for collective bargaining which could possibly reduce the frequency of strikes.

The second consideration is the effect which the enactment would have on wage levels in the construction trades and therefore on the cost of producing housing. It is possible that by increasing the bargaining power of construction unions the enactment would result in more favorable and costly wage settlements. This possibility must of course be measured against the possibility that the Construction Industry Collective Bargaining Committee created by Title II of the enactment would moderate wage demands.

In addition, minority contractors, who are generally small and predominately non-union, have expressed to us their concern that the enactment would reduce the business opportunities available to them.

No industry has been affected more severely by the forces of economic recession and inflation than the housing industry. Recently there is evidence that the housing industry is recovering. However, this recovery is slow and somewhat fragile. If the enrolled enactment occasions increased costs and decreased starts, it would have a dampening effect on that recovery.

The choice facing the President calls for extremely difficult judgments as to the likely effects of the enactment on the construction industry and construction unions. These are judgments on which this Department is not sufficiently informed to make a firm recommendation.

Sincerely,

Robert R. Elliott

TENNESSEE VALLEY AUTHORITY
KNOXVILLE, TENNESSEE 37902

OFFICE OF THE BOARD OF DIRECTORS

December 19, 1975

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Frey:

This is in response to the Office of Management and Budget's request for TVA's views on enrolled bill H.R. 5900, a bill "To protect the economic rights of labor in the building and construction industry by providing for equal treatment of craft and industrial workers and to establish a national framework for collective bargaining in the construction industry, and for other related purposes."

The bill would amend the National Labor Relations Act in two important respects. Title I would remove in most cases the longstanding ban against common-site picketing at construction projects. Title II would create a Construction Industry Bargaining Committee within the Department of Labor to facilitate the peaceful settlement of labor disputes in the construction industry.

Because TVA is not an "employer" within the meaning of the National Labor Relations Act, we have no comment on the provisions of enrolled bill H.R. 5900. We appreciate, however, the opportunity to comment on this bill.

Sincerely yours,

Aubrey J. Wagner
Chairman of the Board

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON WAGE AND PRICE STABILITY
726 JACKSON PLACE, N.W.
WASHINGTON, D.C. 20506

December 19, 1975

Mr. James Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D. C. 20503

Attn: Ms. Martha Ramsey
Room 7201 NEOB

Subject: Enrolled Bill, H.R. 5900

Dear Mr. Frey:

The Council on Wage and Price Stability has not discussed enrolled bill H.R. 5900 so that the following views should be viewed as staff recommendations and not those of the Council itself.

The staff has not analyzed in detail Title I, "Protection of Economic Rights of Labor in the Construction Industry." However, Title II, "Construction Industry Collective Bargaining," is extremely important and a major long term improvement in the construction industry. Because of the fragmented nature of collective bargaining in construction and because of problems unique to the industry, we believe it essential to have a national mechanism to improve the structure of bargaining and dispute settlement. In our view, Title II will reduce the risk of serious structural distortions in wages negotiated by separate crafts and in separate localities. This mechanism is especially important in 1976 and 1977 as the economy expands and labor markets in construction become tighter. This view is based on our analysis of 1976 collective bargaining negotiations which is now available in draft form and will be published in January 1976.

Based on our review of Title II, we recommend that the President sign H.R. 5900 unless empirical or other evidence is presented that would demonstrate Title I to be harmful to the public interest.

Sincerely,

Michael H. Moskow
Director

UNITED STATES
ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION
WASHINGTON, D.C. 20545

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget

Dear Mr. Frey:

The Energy Research and Development Administration is pleased to respond to your request for our views regarding Enrolled Bill H.R. 5900, an Act "[t]o protect the economic rights of labor in the building and construction industry by providing for equal treatment of craft and industrial workers and to establish a national framework for collective bargaining in the construction industry, and for other related purposes".

Title I of the bill, generally referred to as the "Common Situs Picketing" bill, would permit picketing against all construction employers on a construction project, even though the picketing union has a dispute with only one of two or more such employers. If this bill becomes law, all construction employers on a project could be affected by a dispute between one union and one employer, and the employers not directly involved in the dispute will no longer be able to insulate themselves from it by requiring their employees to enter the project through a gate or gates not available to employees of the struck employer (legislative repeal of the "Reserve Gate Doctrine").

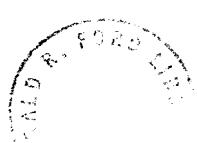
The broadened protected union activity authorized by Title I could adversely affect ERDA Construction. However, its impact could be mitigated by the requirements that the aggrieved union give other unions at the site 10 days' notice of its intent to picket, and that it receive written sanction from its parent organization before picketing can begin. It is believed that most problems underlying picketing at construction projects of our predecessor, the Atomic Energy Commission, could have been avoided through this procedure.

Title II which authorizes legislative initiatives of the Department of Labor, is designed to provide a mechanism to assure that broad national interests be adequately considered in all economic disputes that may occur at the expiration of a major or significant construction industry collective bargaining agreement. Title II would establish a "Construction Industry Collective Bargaining Committee" representing union, management and public interests at the national level which must have notice of contract terminations, may intervene at any stage during a 60-day period of negotiation before expiration, or for 30 days after expiration of an agreement. The Committee may also seek to enjoin strikes or lock-outs at any time during this 90-day period. It would also be empowered to seek to restructure construction industry bargaining so as to produce relative equality of strength on both sides of the bargaining table. ERDA believes Title II would be helpful.

On balance, from ERDA's limited perspective, the management of large government sites, we would not object to the enactment of H.R. 5900.

Sincerely,

Robert C. Seamans, Jr.
Administrator



FEDERAL MEDIATION AND CONCILIATION SERVICE
UNITED STATES GOVERNMENT
WASHINGTON, D.C. 20427

December 19, 1975

OFFICE OF THE DIRECTOR

Mr. James M. Frey
Assistant Director for Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Attention: Ms. Ramsey

Dear Mr. Frey:

This is in response to your request for the views of the Federal Mediation and Conciliation Service on enrolled bill H.R. 5900, "To protect the economic rights of labor in the construction industry . . . and to establish a national framework for collective bargaining in the construction industry."

I concur in the major objectives of the enrolled bill--to provide for equal treatment of craft and industrial workers by legalizing common situs picketing and to provide a revised structure for construction industry collective bargaining.

I, of course, recognize the controversial nature of Title I of the enrolled bill, but, on the merits, I believe that the safeguards provided for by the additional notice requirements and the involvement of parent labor organizations outweigh the fears of union abuse of an economic weapon.

Moreover, I strongly believe that the substance and procedure established by Title II will result in the type of responsibility and stability in the collective bargaining structure in the construction industry that will far outweigh the concerns expressed over Title I.

Please be assured that I fully appreciate the many considerations which must enter into the President's deliberations in this regard. However, I am firmly convinced, following months of discussions with Secretary Dunlop and representatives of labor and management in the construction industry, that implementation of the enrolled bill will foster responsible collective bargaining in an industry that is vital to the Nation's economy.

Sincerely,

W. J. Usery, Jr.
National Director

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON, D.C. 20506

December 22, 1975

Dear Mr. Frey:

I urge that the President veto H. R. 5900.

As indicated in the attached draft veto statement, unionized construction workers are not lacking in economic rights. Union wage rates are 35 to 50 percent higher than nonunion wages for the same skill. Title I of H. R. 5900 would increase the power of the unions over nonunion workers and construction contractors while Title II would increase the power of the national unions over their locals. The long-run result of Titles I and II will be higher union wages, higher construction costs (and hence higher taxes for Government projects) and greater inflationary pressures. This increased union power could result in more strike activity in the next few years.

Sincerely,

Alan Greenspan

Mr. James Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D. C. 20503

Draft veto message for H.R. 5900,
"An Act to protect the rights of labor in the building and construction industry..." (Situs Picketing and Collective Bargaining Act)

After long and thoughtful consideration of the issues, and consultation with my economic advisers, I have decided to veto H.R. 5900. Although allegedly designed "to protect the rights of labor in the building and construction industry," I believe that the main effect of the Act would be to reduce the rights of nonunion and many union construction workers, artificially increase the already high union wage rate and unnecessarily raise the cost of construction projects. The net effect would be to decrease employment and output in the construction sector and intensify inflationary pressures. These outcomes are clearly contrary to the best interests of the economy and of the very group that the Act is intended to assist.

Federal legislation already provides unique protection from economic competition for the construction trades unions. The Davis-Bacon Act (and equivalent legislation in many states) requires that construction workers on projects that are at least partially funded by the Government, or have Government loan guarantees, must pay workers in each occupation what is determined to be the prevailing wage in that area for that occupation. The prevailing wage is in effect determined to be the union wage, under current Department of Labor regulations.

Because of the increase in construction projects that are at least partially Government supported, there has been greater scope over time for the construction unions to increase their wage rates in excess of

the competitive level. To the extent that privately financed construction projects use the exclusive union hiring halls as a source of labor, they too pay these artificially high wages.

Data collected by the Bureau of Labor Statistics on wage rates of construction workers in 21 areas indicate that union wage rates are substantially higher than nonunion wage rates (Table 1). The gap between union and nonunion average straight-time hourly earnings for carpenters (1972), numerically the most important journeyman trade studied, ranged from 15 percent in New York to 84 percent in Hartford. Union carpenters typically earned 35 to 50 percent more per hour than nonunion workers. For construction laborers the differential in favor of unions was usually between 40 and 65 percent. Similar union/nonunion wage differentials exist for the other construction occupations.

These high union/nonunion wage differentials are not the result of low nonunion wages -- nonunion carpenters in New York earned $7.49 per hour -- but rather are the result of high wages for the union sector. And for the country as a whole, the hourly earnings for all workers in construction are about 53 percent greater than in manufacturing. There are also increasingly frequent reports of union members working at nonunion wages on nonunion projects when they cannot find employment at the union wage.

These artificially high union wage rates raise the cost of union construction projects to the private sector and to the taxpayers, and are retarding the expansion of employment and output in this sector. Yet,

the effect of H.R. 5900 would be to increase even further the relative bargaining power of the construction unions.

A secondary boycott is union activity against one employer, such as a prime contractor, to induce that party to put pressure on another employer with which the union has a dispute, such as a subcontractor. In "general industry" only one employer typically uses a particular site, while in construction several subcontractors will typically work on a given site at a point in time, although performing different tasks. As a result, the issue of secondary boycotts is more difficult in the construction sector, and union picketing activity has wisely been more narrowly restricted.

Under current regulations unions may picket at places and times that are relevant to the workers in the firm subject to the strike, without closing down the entire construction project. This provides protection from pickets and harassment for the other subcontractors and workers in neutral firms that are at the construction site.

Title I of H.R. 5900 (situs picketing) would substantially change this situation and give construction unions greater rights and privileges than those employed by industrial unions. The bill would permit construction unions to picket an entire job site, thereby closing down the entire construction project, and adversely effecting neutral workers and subcontractors. That is, a union with a disagreement with a small subcontractor on a large project could picket not only that subcontractor (as at present) but also the prime contractor and all of the other subcontractors.

The situs picketing powers would also spread the scope of union jurisdiction, and decrease the job opportunities for nonunion subcontractors and nonunion workers whose wages are determined by competitive forces. The result would be further increases in the union wage, a widening of the union/nonunion wage differential, and higher construction costs.

The Construction Industry Collective Bargaining Committee to be created under Title II of H.R. 5900 would be an appointed body with extraordinary authority. The Committee could delay a strike or a lock-out for up to 30 days after contract expiration. Under the Taft-Hartley Act the President must demonstrate that a strike endangers the national health, safety or welfare to obtain a court order. The Construction Committee, however, is not to be subject to such constraints.

If the Committee intervenes, and it may do so up to 30 days prior to contract expiration, the national union must approve, but is not legally responsible for, the negotiated agreement. The effect is to create national collective bargaining for the construction sector by limiting the freedom of local unions and local contractors to reach their own agreement. It will reduce competition between local unions (i.e., inter-area competition) by requiring national approval of contracts. On average, higher contract awards can be expected to follow.

Title II is an unprecedented permanent treatment of labor-management relations. It runs counter to my Administration's general approach that there has been too much regulation by public or quasi-public agencies, and too little reliance on competitive markets.

Thus, rather than protecting the rights of construction labor, H.R. 5900 will reduce the rights of local unions and nonunion workers, and increase the power of the national unions. Rather than promoting greater equity H.R. 5900 will increase the gap between union and nonunion (competitive) wages, and artificially increase the cost of housing and other structures to potential users. Rather than promoting economic recovery H.R. 5900 will slow the rate of economic expansion and increase inflationary pressures. For these reasons I have vetoed H.R. 5900, and trust that Congress will sustain this action.

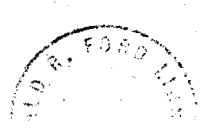


Table 1

Average Hourly Earnings of Workers in Construction Industries, by Selected Occupations and Areas, September 1972

	Hartford	New York	Dallas	Indianapolis	Denver
Carpenters					
Union	$8.12	8.58	6.62	8.17	6.57
Nonunion	$4.41	7.49	4.91	5.77	4.81
Ratio	1.84	1.15	1.35	1.42	1.37
Electricians					
Union	$8.72	8.49	7.40	8.20	8.04
Nonunion	$5.32	(1)	4.49	(1)	5.68
Ratio	1.63	--	1.65	--	1.42
Plumbers					
Union	$8.65	8.43	(1)	8.15	7.70
Nonunion	$5.52	5.40	5.09	4.59	(1)
Ratio	1.57	1.56	--	1.78	--
Construction Laborers					
Union	$6.39	7.04	4.64	5.51	4.36
Nonunion	$4.57	4.97	2.62	3.74	3.41
Ratio	1.40	1.42	1.77	1.47	1.28

(1) Insufficient sample size to warrant presentation of average wage.

Source: Martin E. Personick, "Union and Nonunion Pay Patterns in Construction," Monthly Labor Review, August 1974, Table 1, p. 72.

OFFICE OF MANAGEMENT AND BUDGET

Date: 12-30-75

TO : Robert D. Linder

FROM: James M. Frey
Assistant Director for
Legislative Reference

Although OMB did not prepare an enrolled bill memorandum on H.R. 5900, you might want the attached agency views letters for the record.

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON

DEC [illegible] 1975

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

This is in response to your request for the Department of Labor's views on enrolled bill, H.R. 5900, "An Act to protect the economic rights of labor in the building and construction industry by providing for equal treatment of craft and industrial workers and to establish a national framework for collective bargaining in the construction industry, and for other related purposes."

H.R. 5900 represents incorporation into one bill of two legislative proposals relating to construction industry labor organizations. The first, which is Title I of the legislation is the "common situs picketing" bill. It would overturn the Supreme Court's decision in the Denver Building Trades case in which the Court held that a construction industry labor organization could not picket at a construction site whenever the picketing had the effect of inducing the employees of contractors with whom the union had no dispute to refuse to perform their services. Industrial unions, on the other hand, may picket any employer at the industrial site which is involved in the normal operations of the primary employer. The legislation embodies the economic reality that a construction site is typically a unified work project, and one aspect of the construction is interrelated with all the other construction work. They are all part of the normal operations of the primary employer, i.e., the general contractor.

I testified on behalf of the Administration before subcommittees of both the House of Representatives and the Senate this summer on this aspect of the legislation at which time I endorsed its underlying principle. I reiterated the safeguards which former Secretary of Labor George Shultz proposed when he testified on similar legislation during a prior session of Congress. These were:

(1) Other than common situs picketing, no presently unlawful activity should be transformed into lawful activity;

(2) The legislation should not apply to general contractors and subcontractors operating under State laws requiring direct and separate contracts on State or municipal projects;

(3) The interests of industrial and independent unions must be protected;

(4) The legislation should include language to permit enforceability of no-strike clauses of contracts by injunctions; and

(5) The legislation should encourage the private settlement of disputes which could lead to the total shutting down of a construction project by such means as a requirement of giving notice prior to picketing and limiting the duration of picketing.

I expanded upon Secretary Shultz's fifth point and suggested the requirements of a 10-day notice of intent to picket, and authorization of the picketing by the local union's national or international organization or as an alternative authorization subject to a tripartite arbitration process. Nationals and internationals should not be subject to criminal or civil liability resulting from this authorization. I repeated Secretary Shultz's proposal that the picketing be limited in duration; specifically I recommended a 30-day period.

The Congress has adopted many of these proposals, including notice of intent to picket and authorization of the picketing by the national or international labor organization as well as provisions relating to all of Secretary Shultz's 1969 principles. They did not agree to the limitation on duration of picketing, but such omission has been determined to be satisfactory to the Administration.

Title II of H.R. 5900 is the Construction Industry Collective Bargaining Act of 1975 which I proposed on behalf of the Administration this past September. While there are some minor differences from the legislation as I proposed it and as it was passed, the changes made do not alter the basic substance of the legislation. I believe that, as passed, it would serve the objectives which I sought.

Title II is designed to minimize "whipsawing" and "leap-frogging" which result in distortions in appropriate wage and benefit relationships in the construction industry.

The legislation seeks to bring a wider focus to the negotiation of local collective bargaining agreements by providing an enhanced role for national unions and national contractor associations. Specifically Title II establishes a tripartite Construction Industry Collective Bargaining Committee (CICBC) composed of 10 representatives of national construction unions, 10 representatives of national construction contractor associations whose members are engaged in collective bargaining and up to 3 neutral members, all to be appointed by the President. The Secretary of Labor and the Director of the Federal Mediation and Conciliation Service will serve as ex officio members. The CICBC is authorized to take jurisdiction over contract renewals, which will automatically result in a "cooling-off" period of up to 30 days beyond expiration of the contract. Upon taking jurisdiction, the CICBC may take any or all of the following actions: meet with the parties directly, refer the matter to a national, labor-management craft board, or request direct national union and management participation in the negotiations. When the CICBC requests that appropriate national unions and contractor associations participate in local negotiations, any new contract must be approved by the national union involved, unless the CICBC suspends or revokes the national union approval requirement. Here Title II differs from the original Administration bill which did not permit the CICBC to revoke or suspend the national union approval requirement.

Title II also requires local unions wishing to terminate or modify a contract to give a 60-day notice to their national union. Local contractors and contractor associations are similarly required to notify the national contractor associations with which they are affiliated. If there is no such national affiliation, contractors must provide such notices to the CICBC. Notices received by the national organizations are to be forwarded to the CICBC.

The legislation is experimental in nature and will last for about 5 years.

I do not believe that Title I will have any significant inflationary consequences nor impact on the Federal budget. I estimate that the collective bargaining program established

by Title II will necessitate annual expenditures of about $538,840, totaling about $2,694,200 over the 5-year life of the program.

It is my considered opinion that H.R. 5900 is in the best interests of the construction industry and the economy in general. I strongly recommend that the President sign it into law. During the development of this legislation, important safeguards have been added to protect the interests of employers, employees, and the public. While there has been considerable controversy over this legislation, it has been out of all proportion to the bill's impact. Despite the controversy surrounding it, the bill has been drafted in a spirit of compromise from its inception in the 94th Congress.

Title II of the bill addresses the more fundamental needs and structural shortcomings of collective bargaining in the construction industry. In my opinion, such an approach is long overdue.

Enclosed you will find an analysis of the significant features of the legislation. Also there is a discussion of the suggestions I made in relation to Title I as they are reflected in the bill, and the differences between Title II as passed by the Congress and the original Administration proposal.

There is also enclosed a public statement entitled "H.R. 5900" dated December 17, 1975, which has been made public and which presents the main features of the two titles and the reasons to support the legislation.

I will send under separate cover a proposed Presidential signing statement and other materials.

Sincerely,

Secretary of Labor

Enclosures

ANALYSIS OF THE SIGNIFICANT FEATURES OF THE LEGISLATION

Title I, Common Situs Picketing

H.R. 5900 is divided into two Titles.

Title I seeks to overturn the Supreme Court's decision in the Denver Building Trades case in which it was held that a construction union may only picket the single employer-contractor on the construction site with which it has a labor dispute. Therefore, under present law, picketing against one contractor or subcontractor is unlawful when the effect is to induce the employees of other contractors and subcontractors to refuse to work at the site. Rules have been developed that allow a separate or reserved gate to be established for the employees and suppliers of the employer with whom there is a labor dispute. In such a case, the union must restrict its picketing at the construction site to that gate. When there is no reserved gate, broader picketing is allowed.

Section 101(a) amends section 8(b)(4) of the National Labor Relations Act. It provides that section 8(b)(4)(B) shall not be construed to prohibit a strike or refusal to perform services, or inducement thereof, by an employee of an employer primarily engaged in the construction industry at the construction site and such action is directed at any

of the several employers who are joint venturers or in the relationship of contractors and subcontractors in construction, alteration, painting, or repair of a project at the site.

The section further provides that except as provided in the legislation, no act or conduct is permitted which, prior to enactment was or may have been an unfair labor practice, and no act or conduct which was not an unfair labor practice prior to enactment is prohibited.

Section 101(a) prohibits the following:

-- A strike or refusal to perform services, or inducement thereof, in furtherance of a dispute unlawful under the Act, or in violation of an existing collective bargaining agreement, or when the issues in dispute do not involve a labor organization representing employees of an employer who is not primarily engaged in the construction industry;

-- Picketing to force an employer to exclude or remove an employee on the site on the grounds of sex, race, creed, color, or national origin, or because of the membership or nonmembership of the employee in a labor organization;

-- Picketing to cause an employer to discriminate against an employee in general, or because membership in a labor organization has been denied or terminated for some reason other than failure to pay periodic dues or an initiation fee;

-- Picketing to exclude a labor organization from the construction site because it is not affiliated with a national or international labor organization representing employees at the site;

-- Presently unlawful product boycotts; and

-- Picketing to attempt to force an employer to recognize or bargain with a labor organization where such action is prohibited by section 8(b)(7). However, when a labor organization engages in recognitional picketing, and a petition for representation has been filed, and a charge of an unfair labor practice has been made, the National Labor Relations Board is to conduct an election and certify the results within 14 days from the filing of the later of the petition and the charge.

Section 101(a) finally states that the ownership or control of the construction site is not the controlling factor in discerning whether the several employers in the construction

industry are joint venturers at the site and therefore whether common situs picketing would be permitted.

These provisions are enforceable under section 10(l) of the Act which governs injunctions involving violations of section 8(b)(4) (secondary boycotts) and section 8(b)(7) (recognitional picketing). Section 10(l) provides that the NLRB must:

1. Give priority to these cases;

2. Conduct a preliminary investigation forthwith; and

3. Seek an injunction if the investigation indicates reasonable cause that a violation has occurred and that a complaint should issue.

Further, section 303 of the Labor Management Relations Act authorizes private damage actions for secondary boycotts which violate section 8(b)(4).

Section 101(b) of the legislation amends section 8 of the NLRA, by first creating a new subsection (h) which provides that for the purposes of this Title, where a State law requires separate bids and contracts for the component parts of the construction project, the contractors awarded the contracts shall not be considered joint venturers or in the relationship of contractors and subcontractors with each other or with the State or local authority. In short, common situs picketing is not allowed when these laws apply.

Secondly, a new section 8(i) is created which provides that an employer at a common construction site may seek to enjoin any strike or picketing in violation of a no-strike clause of a collective-bargaining agreement which relates to an issue subject to final and binding arbitration or other method of final settlement of disputes.

Thirdly, a new section 8(j) is created that provides that this Title shall not apply at a construction site involving residential structures, three residential levels or less, which is constructed by an employer who in the last taxable year engaged in less than $9,500,000 of construction business by himself or with or through another person. Such employer must make notification to the appropriate parties within the specified time that he qualifies for this exemption.

Lastly, the present section 8(g) of the Act is redesignated 8(g)(1) and a new section 8(g)(2) is created. Section 8(g)(2)(A) requires a labor organization, before engaging in activities allowed by this Title, to give 10-days notice of intent to picket to the unions, the employers, and the general contractor at the construction site, to the Construction Industry Collective Bargaining Committee, and to the national or international labor organization with which it is affiliated. Further, before commencing to picket, the labor organization must have received written authorization to picket from its national or international. Such authorization will not render the parent national or international

organization civilly or criminally liable for those activities of which it has received notice unless it has actual knowledge that the picketing is directed at willfully achieving an unlawful purpose.

The new section 8(g)(2)(B) provides a special notice provision when the picketing is to be located at a military facility or installation or that of any other department or agency which is involved in the development, production, testing, firing, or launching of munitions, weapons, missiles, or space vehicles. In such cases, 10-days notice of intent to picket is to be given to the Federal Mediation and Conciliation Service, to any State or territorial agency established to mediate and conciliate disputes within the State or territory where the site is located, to the jointly engaged employers, to the department or agency concerned with the facility or installation, and to any national or international labor organization with which the labor organization is affiliated.

The new paragraph (C) provides that the notices required by paragraphs (B) and (C) are in addition to those required by section 8(d) of the Act.

The section 8(g) amendments, like those already in the statute relating to nonprofit hospitals, are enforceable through section 10(j) of the Act under which the NLRB has the discretionary authority to seek an injunction in cases

involving unfair labor practices. After a complaint has been issued, the Board may seek an injunction pending the adjudication of the case by the NLRB and the issuance, if appropriate, of a cease and desist order.

Section 102 of Title I establishes the effective date of the Title. In general, it is to take effect 90 days after enactment. However, there is an exception for construction work contracted for and on which work has actually begun as of November 15, 1975. If the gross value of the project is less than $5,000,000, the effective date is 1 year plus 90 days after the date of enactment. If the gross value of the project is more than $5,000,000, the effective date is 2 years plus 90 days after enactment.

Title II, Construction Industry Collective Bargaining

Section 201 provides that Title II may be cited as the "Construction Industry Collective Bargaining Act of 1975."

Section 202 states the Congressional findings and purposes.

Section 203(a) establishes the Construction Industry Collective Bargaining Committee (CICBC), in the Department of Labor to be made up of 10 labor members, 10 management members and up to three neutral members, appointed by the President, and the Secretary of Labor and the Director of the FMCS ex officio. The President is to designate one of the neutrals to serve as chairman. Alternate members may be appointed in the same way as regular members. At the CICBC's organizational meeting, at least five labor members, five management members and one neutral member must be present.

Section 203(b) gives the Secretary of Labor authority to appoint staff for the CICBC. He may also appoint an Executive Director, subject to the approval of the CICBC.

Section 203(c) gives the CICBC authority to promulgate regulations without regard to the rulemaking provisions of the Administrative Procedure Act. The CICBC is also empowered to designate the national unions and national contractor associations qualified to participate in the Title II procedures.

Section 204 requires that with respect to termination or modification of any collective bargaining agreement

covering employees in the construction industry, unions affiliated with any standard national construction labor organization, and any employer or employer association dealing with them, must give notice to their respective national organizations 60 days prior to the expiration date of the agreement. Contractors with no national affiliation must give this notice to the CICBC. Where the national organization is a party, it must give notice directly to the CICBC. If the agreement contains no expiration date, notice must be given 60 days before the date on which a proposed termination or modification is intended by the parties to take effect. It also requires 60 days notice of proposed mid-term modifications in existing agreements. The national organizations are required to transmit forthwith the notices they receive to the CICBC. During this 60-day period, which is comparable to the provisions of section 8(d) of the National Labor Relations Act, the parties to the agreement may not change the terms and conditions of the existing agreement or engage in any strike or lockout.

Section 205(a) authorizes the CICBC to take jurisdiction over a labor matter within a specified 90-day period.

Section 205(b) authorizes the CICBC to refer matters to national craft boards (or other similar organizations), and to meet with the parties directly.

Section 205(c) provides that once the Committee takes jurisdiction, strikes and lockouts are prohibited for a period of up to 30 days following the expiration date of the contract.

Section 205(d) authorizes the CICBC to request the participation in negotiations of the national labor and management organizations whose affiliates are parties to the matter.

Section 205(e) provides that when the CICBC has taken jurisdiction and has requested participation of the appropriate national organizations, no new contract between the parties shall take effect without approval of the standard national union involved, unless the CICBC has suspended or terminated the operation of this approval requirement.

Section 205(f) limits the civil and criminal liability of national labor and contractor organizations which might be imputed to them by virtue of their participation under the Act.

Section 205(g) states that the Act does not allow the CICBC to modify any contract.

Section 206 sets forth the standards for action by the CICBC, which relate to the improvement of collective bargaining.

Section 207 authorizes the CICBC to promote and assist in the formation of voluntary national labor-management

craft or branch boards and to make general recommendations for the improvement of collective bargaining in the construction industry.

Section 208(a) limits the application of Title II to activities affecting commerce as defined in the Taft-Hartley Act.

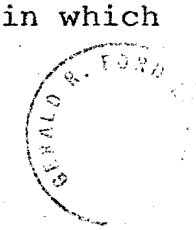
Section 208(b) prevents individual workers from being forced to work without their consent and provides that refusal to work caused by abnormally dangerous working conditions is not to be deemed a strike. This language is virtually identical to that contained in the Taft-Hartley Act.

Section 208(c) limits available remedies for violation of Title II to actions for equitable relief brought by the CICBC.

Section 208(d) permits the CICBC to seek enforcement of Title II in appropriate Federal District courts.

Section 208(e) sets forth the scope of judicial review stating that the CICBC may be overruled only where its findings or actions are found to be arbitrary or capricious, in excess of its delegated powers, or contrary to a specific requirement of Title II.

Section 208(f) permits voluntary service of members and alternate members of the CICBC. Such individuals will also be deemed special government employees on days in which they work for the CICBC.



Section 208(g) permits courts to issue injunctions under Title II notwithstanding the Norris-LaGuardia Act.

Section 208(h) permits the CICBC to make appropriate studies and gather appropriate data.

Section 208(i) provides an exemption for the CICBC from the hearing requirements of the Administrative Procedure Act.

Section 208(j) provides that except as provided in Title II, nothing in Title II shall be deemed to supersede or modify any other law.

Section 208(k) permits attorneys appointed by the Secretary of Labor to represent the CICBC, except before the Supreme Court, in all civil actions brought under Title II, subject to the direction and control of the Justice Department.

Section 209 provides for appropriate coordination between the CICBC and the FMCS as well as among other Federal agencies.

Section 210 provides definitions of terms used in Title II, incorporating definitions found in the Taft-Hartley Act.

Section 211 is a separability provision.

Section 212 authorizes necessary appropriations.

Section 213 provides that Title II will expire on December 31, 1980. It also requires the CICBC to make annual reports to the President and Congress as well as a final report to be submitted by June 30, 1980.

COMPARISON WITH ADMINISTRATION PROPOSALS

(a) Title I, Common Situs Picketing

When Secretary Dunlop testified before both House and Senate subcommittees, he reiterated five principles which former Secretary of Labor George P. Shultz emphasized when he was called upon to discuss similar legislation during a prior session of the Congress. These principles have been incorporated into the present legislation, have been the subject of subsequent developments in case law, or have been dealt with by appropriate legislative history.

The Shultz points are as follows:

(1) Other than common situs picketing, no presently unlawful activity should be transformed into lawful activity.

The following two provisos address the matter:

> (a) "Provided further, Except as provided in the above provisos nothing herein shall be construed to permit any act or conduct which was or may have been an unfair labor practice under this subsection.
>
> (b) "Provided further, That nothing in the above proviso shall be construed to permit a strike or refusal to perform services or any inducement of any individual employed by any person to strike or refuse to perform services in furtherance of a labor dispute, unlawful under this Act . . ."

(2) The legislation should not apply to general contractors and subcontractors operating under State laws requiring direct and separate contracts on State or municipal projects.

The following proviso addresses the matter:

> Notwithstanding the provisions of this or any other Act, where a State law requires separate bids and direct awards to employers for construction, the various contractors awarded contracts in accordance with such applicable State law shall not, for the purposes of the third proviso at the end of paragraph (4) of subsection (b) of this section, be considered joint venturers or in the relationship of contractors and subcontractors with each other or with the State or local authority awarding such contracts at the common site of the construction."

(3) The interest of industrial and independent unions must be protected.

The following language addresses the matter:

> (a) "Provided further, That nothing in the above provisos shall be construed to permit any attempt by a labor organization to require an employer to recognize or bargain with any labor organization presently prohibited by paragraph 7 of subsection (b) . . . "
>
> (b) "Provided further, That nothing in the above provisos shall be construed to authorize picketing . . . to exclude such labor organization on the ground that such labor organization is not affiliated with a national or international labor organization which represents employees of an employer at the common site:"
>
> " . . . and the issues in dispute involve a labor organization which is representing the employees of an employer at the site which is not engaged primarily in the construction industry:"

(4) The legislation should include language to permit enforceability of no-strike clauses of contracts by injunctions.

The following language addresses the matter:

> "Notwithstanding the provisions of this or any other Act, any employer at a common construction site may bring an action for injunctive relief under section 301 of the Labor Management Relations Act (29 U.S.C. 141) to enjoin any strike or picketing at a common situs in breach of a no-strike clause of a collective-bargaining agreement relating to an issue which is subject to final and binding arbitration or other method of final settlement of disputes as provided in the agreement."

This language codified into statutory law the Supreme Court decision in The Boys Markets, Inc v. Retail Clerks Union, 398 U.S. 235 (1970) in which the Court held that injunctions against work stoppages would lie when both parties are contractually bound to arbitrate.

(5) The legislation should encourage the private settlement of disputes which could lead to the total shutting down of a construction project by such means as a requirement for giving notice prior to picketing and limiting the duration of picketing.

The following language addresses part of the matter:

> "A labor organization before engaging in activity permitted by the third proviso at the end of paragraph (4) of subsection (b) of this section shall provide prior written notice of intent to strike or to refuse to perform services of not less than 10 days to all unions and the employers and the general contractor at the site and to any national or international labor organization of which the labor organization involved is an affiliate and to the Construction Industry Collective Bargaining Committee:"

No limitation on duration of picketing is provided.

In Secretary Dunlop's testimony before the Subcommittees, he expanded on Secretary Shultz's fifth principle. Not only

did he reemphasize the notice requirement suggestion, but combined it with a requirement of authorization of the picketing by a local union's national or international organization, and that such authorization should not subject the parent organization to any criminal or civil liability resulting from the picketing. He suggested that consideration be given to making the authorization to picket subject to tripartite arbitration. The notice and authorization by the national or international union has also been accepted by the Congress with the following language:

> "Provided further, That at any time after the expiration of 10 days from transmittal of such notice, the labor organization may engage in activities permitted by the third proviso at the end of paragraph (4) of subsection (b) of this section if the national or international labor organization of which the labor organization involved is an affiliate gives notice in writing authorizing such action: Provided further, That authorization of such action by the national or international labor organization shall not render it subject to criminal or civil liability arising from activities, notice of which was given pursuant to this subparagraph, unless such authorization is given with actual knowledge that the picketing is to be willfully used to achieve an unlawful purpose."

Secretary Dunlop also suggested that the picketing be limited to a 30-day period. This suggestion has not been adopted.

Lastly, an amendment, which was supported by Secretary Dunlop as a clarification of his intentions, was adopted

which placed the following provisions under section 8(g) rather than 8(b)(4): Required notice; Authorization of picketing by the national or international labor organization; Nonliability of national or international labor organization from activities of which it has notice; and Picketing on Army, Navy, or Air Force installations at which munitions, weapons, missiles, and space vehicles are produced, tested, developed, fired, or launched. The effect of the amendment is to make these provisions enforceable under section 10(j) as are the notice requirements involving nonprofit hospitals rather than 10(l) which governs violations of section 8(b)(4) and section 8(b)(7).

(b) Title II, Construction Industry Collective Bargaining

The following is a summary of the differences in substance between the Construction Industry Collective Bargaining Act of 1975 embodied in Title II of H.R. 5900 and the version originally proposed by the Administration.

First, Title II, like the Administration bill provides that once the appropriate national unions and contractor associations have been asked to participate in local negotiations by the CICBC, any new contract must have the approval of the national union. However, Title II goes on to permit the CICBC to suspend or terminate the national union approval requirement in any given case.

Second, Title II provides exemptions for the CICBC from the hearing and rulemaking provisions of the Administrative Procedure Act, which were not contained in the Administration bill.

Third, Title II requires that at least five labor members, five management members, and one neutral member be present at the CICBC's organizational meeting. The Administration bill contained no such provision.

Fourth, Title II requires that notices of intention to terminate or modify a contract be submitted "effective" 60 days in advance, whereas the Administration bill provided for submission of such notices "at least" 60 days in advance.

Fifth, Title II permits the CICBC to designate those organizations qualified to act as "standard national construction labor organizations" and "national construction contractor associations" under the Act. The Administration bill contained no such provision.

Sixth, Title II requires that national organizations in receipt of notices of proposed termination or modification of local contracts pass them on to the CICBC "forthwith." The Administration bill did not contain the "forthwith" requirement.

Seventh, with respect to the CICBC's powers to assume and exercise jurisdiction over construction labor relations matters, Title II makes several technical changes in the language of the Administration bill for the sake of clarity, including a clarification of the manner of computing the CICBC's 90-day period for the taking of jurisdiction. Further, Title II permits the CICBC to take jurisdiction with or without the suggestion of any interested party, while the Administration bill did not provide for such recommendations.

Eighth, regardless of what action the CICBC takes after taking jurisdiction of a matter, Title II makes it clear that the CICBC may continue to meet with interested parties. The Administration bill contained no such language.

Ninth, Title II makes the promotion of economic growth in the construction industry one of the standards for the taking of action by the CICBC, while the Administration bill contained no such language.

Tenth, in addition to some technical differences, Title II provides broader standards of court review than those contained in the Administration bill.

Eleventh, Title II gives Labor Department attorneys authority to conduct litigation for the CICBC (except in the Supreme Court) subject to the direction and control of the Justice Department. The Administration bill contained no such provision.

Twelfth, Title II states that except as provided in the Act itself, nothing in the Act shall be deemed to supersede or modify any other provision of law, while the Administration bill contained no such provision.

Thirteenth, Title II requires Federal agencies to cooperate with the CICBC and the FMCS to promote the purposes of the Act. This is in addition to the requirement that Federal agencies provide the CICBC with information contained in the Administration bill.

Fourteenth, Title II provides that the Act will expire on December 31, 1980, while the Administration bill provided for a February 28, 1981 expiration date. Similarly,

Title II requires submission of the CICBC's final report on June 30, 1980, instead of on September 1, 1980 as was provided in the Administration bill.

Fifteenth, Title II provides that no national union or national contractor association shall incur any criminal or civil liability, directly or indirectly, for actions or omissions pursuant to a request by the CICBC for its participation in collective bargaining negotiations, participation in such negotiations or the approval or refusal to approve a contract under this Title. While this is similar to the first sentence of the Administration's immunity provision, Title II does not include the second sentence of the Administration's provision, which stated that the forgoing shall not constitute a basis for the imposition of civil or criminal liability on a national union or national contractor association. In addition, the Title II immunity provision contains the following two provisos not contained in the Administration bill: (1) that this immunity shall not insulate from liability a national union or national contractor association when it performs an act under this statute to willfully achieve a purpose which it knows to be unlawful; and (2) that a union shall not by virtue of the performance of its duties under this Act be deemed a representative of any effected employees under the Taft-Hartley Act or become a party to or bear any liability under any contract it approves pursuant to its responsibilities under this Act.

J.T.D.
12/17/75

H.R. 5900

The Senate on December 15, 1975 passed H. R. 5900 by a vote of 52 to 43. This legislation, composed of Title I (Protection of Economic Rights of Labor in the Construction Industry) and Title II (the Construction Industry Collective Bargaining Act of 1975) will reach the President's desk surrounded by an atmosphere of emotional public and political debate. The debate, mainly focused on the common situs picketing provision, has been one of long standing, going back some 25 years to a situation in Denver, Colorado.

In 1949, a commercial building was being built in Denver by a general contractor with a number of subcontractors.

All the contractors on the project were under collective bargaining agreements with the building trades unions, providing for standard wages and conditions, except the electrical contractor who was paying 42-1/2 cents below the collective bargaining scale in the area. Over this issue, the Denver Building Trades Council engaged in peaceful picketing, bannering the job as "unfair."

The National Labor Relations Board (NLRB) in 1949 held that the picketing was unlawful. Although a Court of Appeals reversed that decision, the case was taken to the Supreme Court which upheld the NLRB's decision that the picketing constituted an enjoinable secondary boycott. However, the picketing would

have been legal if all the contractors were without agreements or if the picketing were confined to a separate gate for the contractor paying below standard wages and conditions.

Since 1951 the labor movement has protested this artificial limitation on the right to picket peacefully against wages and conditions below the collectively bargained area standards in the construction industry.

Employees are intermingled on a construction site, and what occurred in Denver is a prime example of the difficult problems of industrial relations which arise when union employees are working side by side with non-union employees of other contractors with differing labor conditions.

Typically, a construction project consists of a general contractor and a number of subcontractors who perform specialized work such as the heating, plumbing, painting, masonary, and electrical work. On large industrial construction projects, there are a great many subcontractors. Even on simpler jobs there are many subcontractors.

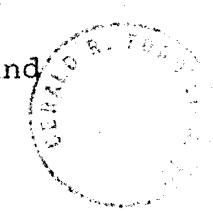
Thus, the simultaneous presence at the same job site of many different employers who may have differing labor policies is the source of the common situs picketing problem.

From one viewpoint, a construction site is a single entity with different crafts performing different functions in an

integrated operation similar to the work of a factory. The electricians at a construction site install the electrical system. Other crafts install other parts of the structure and equipment. In this instance each contractor is not truly an independent economic entity since the speciality work sub-contractor is an agent of other contractors on the site.

On the other hand, there is the view that each contractor is an independent enterprise and as such each should be free to follow its own labor policy.

In general, mixing labor policy on any single job is not conducive to sound labor relations, to cooperation on a job, nor to increased productivity. Rather, mixing labor policies tends more to stimulate disputes between workers operating under different wages and benefits doing the same or similar work, who must necessarily interface with each other for practical purposes. A single, consistent labor policy enhances overall labor relations and, in the long run, results in beneficial gains for both the employers and employees, and the public.



President Truman and four Presidents, starting with President Eisehnower, and all Secretaries of Labor under those

Presidents have supported porposed legislation to permit situs picketing. Senator Robert Taft, Sr., had favored such an amendment to the Taft-Hartley bill.

Secretary Shultz in 1969, testified in support of legislative changes to legalize common situs picketing, specifying five necessary safeguards:

1. other than common situs picketing, no presently unlawful activity should be transformed into lawful activity;
2. the legislation should not apply to general contractors and subcontractors operating under State laws requiring direct and separate contracts on State or municipal projects;
3. the interest of industrial and independent unions must be protected;
4. the legislation should include language to permit enforceability of no-strike clauses of contracts by injunction; and
5. the legislation should encourage the private settlement of disputes which could lead to the total shutting down of a construction project by such means as a requirement for giving notice prior to picketing and limiting the duration of picketing.

H.R. 5900 embodies all of Secretary Shultz' five safeguards.

This Administration proposed two new major safeguards in endorsing the legislation, strengthening Shultz's fifth point:

1. the provision for a 10-day notice period, and
2. the requirement that any picketing be authorized in writing by the international union.

These safeguards also are incorporated in H.R. 5900.

In the past six months, as Congress deliberated over common situs picketing, many additional safeguards and new limitations were developed and became a part of the legislation.

Included in H.R. 5900, under Title I, are:

1. the substantial exemption of homebuilding (90 percent of homebuilders doing 60 percent of the volume.)
2. the effective date is deferred until the spring of 1977 for projects under $5 million gross begun by November 15, 1975.
3. for such projects more than $5 million gross, the effective date is deferred until the spring of 1978.
4. A limitation of 14 days of picketing for organizational purposes in construction alone. (Generally, labor organizations in industry are permitted 30 days picketing for organizational purposes.)

Additionally, the extent of the limitations on peaceful picketing in this legislation needs clearly to be understood.

The statute precludes picketing, enjoinable by injunction, in the following circumstances:

- Where such activities are in violation of an existing collective bargaining agreement.
- Where such activities are otherwise a violation of law.
- Where the dispute involves an independent union or a nonconstruction labor organization.
- Where an object is discrimination by reason of sex, race, color or national origin, or because of membership or non-membership in any labor organization.
- Where an object is to discriminate against employees denied union membership, except for failure to pay periodic dues and initiation fees uniformly required.
- Where an object is to cause a cessation of use of a product, processor or manufacturer.
- Where a state law requires separate bids and contract awards on public works.

These are carefully drawn and reasonable restraints and safeguards. They are far more restrictive than those for which the Administration indicated support earlier this year.

TITLE II

In addition to the common situs picketing provisions of Title I, this legislation fills the most urgent need of collective bargaining in the construction industry -- the need for a mechanism to improve the structure of bargaining and dispute settlement. Title II, the Construction Industry Collective Bargaining Act of 1975, will serve to enhance responsible settlements among the diverse segments and localities of the construction industry.

This title of the legislation was developed jointly by the responsible national leaders of labor and management engaged in collective bargaining in the construction industry. It is the culmination of joint efforts of labor and managements, with government, which began at least 10 years ago. This title can be expected to make a significant contribution in this vital but troubled industry, in the year ahead and over the longer term. It constitutes a major constructive step in collective bargaining.

Title II establishes a tripartite Construction Industry Collective Bargaining Committee (CICBC). Title II requires local unions and contractors wishing to terminate or modify a contract to give 60-day notice to their national union. Local contractors and contractor associations are also required to notify the national associations with which they are

affiliated -- or the CICBC, if there is no national contractor association affiliation.

The CICBC has authority to take jurisdiction over contract renewals. An automatic cooling-off period of up to 30 days beyond contract expiration results.

The CICBC may then take any or all of the following actions:

1. Meet with the parties directly
2. Refer the matter to a national labor-management craft board
3. Request direct national union and management participation in the negotiations.

Where a request is made for national union and contractor participation any new contract must be approved by the national union involved -- unless CICBC suspends this requirement.

Title II is designed to minimize "whip sawing" and "leap frogging" which can result in wage and benefit distortions in the construction industry.

The CICBC is composed of 10 representatives of national construction unions, and 10 representatives of national construction contractor associations whose members engage in collective bargaining -- and up to 3 neutral members -- all to be appointed by the President.

The Secretary of Labor and the Director of the Federal Mediation and Conciliation Service are to serve as ex officio members.

Title II is experimental in nature, and must be reviewed after 5 years.

And finally, the opportunity is clear for the CICBC to play a major role in resolving disputes which could lead to common situs picketing.

The charge has been made that H.R. 5900 will breed industrial relations strife and contribute to inflation in the construction industry.

In my considered judgment, this charge is without merit. My judgment is based on personal experience as a mediator and arbitrator in the industry for more than 30 continuous years and is supported by W. J. Usery, Jr., Director of the Federal Mediation and Conciliation Service, and other government labor-management relations officials.

Nor is the bill inflationary. Construction wages and fringe benefits are negotiated typically at intervals of two or three years on an area-wide basis. Issues related to common situs picketing arise on individual projects during the term of the agreement. Experience points to stability in wage settlements in this industry under such a committee.

The increase in average hourly earnings in contract construction were 39.2% from 1970-75, during which period various construction industry bargaining committees operated. During that five year period, construction earnings rose less than,

for example, earnings in steel 63.5%, communications 62.6%, trucking 57.0%, and retail food stores 47.2%. These statistics point clearly to the potential of stability -- not to the inflationary settlements of the late 1960's. The legislation will assure the continuation of efforts toward moderation.

It is time to put to rest in a constructive way the long-time issue of situs picketing and to embark on an agreed-upon procedure to improve the collective bargaining process, to reduce industrial strife, and to achieve responsible terms and conditions of employment in the construction industry.

This legislation, I feel, has realized the best means to arrive at peaceful solutions to many of the contemporary problems and needs of the construction industry.

# # #

THE DEPUTY SECRETARY OF THE TREASURY

WASHINGTON, D.C. 20220

DEC 23 1975

Director, Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Sir:

Reference is made to your request for the views of this Department on the enrolled enactment of H.R. 5900, "To protect the economic rights of labor in the building and construction industry by providing for equal treatment of craft and industrial workers and to establish a national framework for collective bargaining in the construction industry, and for other related purposes."

Title I of the enrolled enactment would amend section 8(b)(4) of the National Labor Relations Act to permit picketing and strikes against all employers at a single construction site who are in the construction industry and are engaged as joint venturers or are in the relationship of contractor and subcontractor. Title II of H.R. 5900 would establish in the Department of Labor a Construction Industry Collective Bargaining Committee to be comprised of 23 members appointed by the President -- 10 members to represent the viewpoint of labor organizations in the construction industry, 10 members to represent construction employers, and up to three members qualified to represent the public interest. The Secretary of Labor and the Director of the Federal Mediation and Conciliation Service would serve as ex officio members. The purpose of the Committee would be to facilitate collective bargaining and foster stability in the construction industry.

The Department believes that the collective bargaining provisions contained in title II would be valuable to achieving stability in the construction industry, and may be sufficient to outweigh the objectionable features concerning

common situs picketing in title I. Failure to approve H.R. 5900 could result in exceedingly excessive behavior by construction unions during the heavy negotiating calendar for 1976, and thus achieve the result the opponents of common situs picketing fear the most. It is possible that approval of the enrolled enactment would enhance labor stability in the construction industry by reducing the number of wildcat strikes and by infusing responsibility in local negotiations. On the other hand, approval of H.R. 5900 could further destabilize the industry by increasing the number of union disputes and project shut-downs.

Other unfavorable aspects of title I include its strong incentive for general contractors to operate either with all union subcontractors or all non-union subcontractors and thereby encourage the development of a de facto union shop in the construction industry. Moreover, by enhancing the power of construction unions, the bill would directly encourage inflationary wage settlements in the industry. The President's approval could be interpreted as a signal to business and unions of a pro-labor Administration sentiment with regard to upcoming negotiations.

As the opposing arguments above demonstrate, much support can be mustered behind either a recommendation of the President's approval or his disapproval of the bill. However, the Department would support President Ford's decision to veto the enrolled enactment.

Sincerely yours,

Stephen S. Gardner