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The Housing Industry and Union Power:
An Economic Analysis

In October, 1972, there was every expectation that the issue of the anticompetitive influence of construction trades unions on the low- and moderate-income housing industry would be hotly debated over the next few years. Two recent actions by President Nixon have mooted the issue for the present.

The first move was the nomination of Peter Brennan, President of the New York State Building and Construction Trades Council, as Secretary of Labor, presumably as a reward for his support of the President during the recent campaign. The Labor Department's role is critical in at least two areas - enforcement of the Antidiscrimination programs on federally-supported building construction and administration of the Davis-Bacon Act, a major source of the ability of the building trades unions to maintain high wage rates.

The second move was the announcement by outgoing Secretary of Housing and Urban Development, George Romney, of the moratorium on Federal subsidies to housing, as of January 5, 1973. During 1972, 500,000 new housing units were built under the various Federal low- and moderate-income housing direct subsidy programs, a figure representing 25% of the total number of housing starts that year. So important to the construction of such housing are these subsidies, that it is unlikely that low-income housing can be built without them. In New York City, construction costs in the City are so high that it is considered impossible to build multifamily housing in marketable areas at a cost that would permit rents under $125 to $140 a room a month without some form of government assistance. Local authorities have relied heavily on the Federal Government for help in bringing rents down to levels within the means of middle-income families.

On a national level, it has been predicted by a newly formed “coalition of organizations interested in housing programs” that the effect of the housing subsidy moratorium would be a 15.5% reduction in residential construction, a 1.3% cut in the GNP, loss of almost 2 million jobs, an increase in the cost of single and multifamily homes, increases in rents for conventional apartments and a virtual standstill in the rehabilitation of existing housing—almost all of these effects hitting most directly at those who occupy substandard housing presently.

The budget for Fiscal Year 1974, beginning on July 1st of this year, continues the moratorium. Despite the freeze on government activity in the low cost housing area, the issue of the trades unions' role in the construction industry merits close analysis. The national commitment to providing every American with a decent home remains, but unions comprise one barrier to the attainment of that goal.

Craft unions in the contract construction industry have extraordinary power to impose excessive costs on the construction of housing. How do the unions exercise and maintain this power? Can increased use of industrialized housing lessen the power of craft unions? What solutions to the present housing crisis are available and which are politically feasible?
Labor as a Cost of Housing

A Direct Costs – Union Control Over Wages and Labor Supply

Construction unions have successfully exacted large wage increases and imposed other cost increases on the housing industry, both because of the need for the product that the industry sells and because of the atomized nature of the industry itself.

The product which the residential construction industry sells is housing, for which Americans spent about 29% of total personal consumption expenditures in 1970. Conventionally-built new housing has few substitutes, which makes demand for housing relatively price inelastic. There is evidence that some substitutes are now being created. One is the mobile home which now constitutes about 20% of new housing starts in the United States today. But there remains considerable popular resistance to mobile homes and attempts by communities to keep them out are not uncommon. Moreover, mobile homes are unfit for large families and thus for large segments of the lower income population.

Another substitute for new housing is the present housing stock. As prices rise, we expect people to stay in older, even substandard buildings rather than buy new ones. The elasticity of demand for conventionally-built new housing may also be affected by the propensity of people to adopt higher-density living patterns as high ratios of living space per person become too expensive. However, these effects will be limited by the introduction and enforcement of stringent housing codes which encourage abandonment of older housing or require minimum floor space. In the last analysis, the demand for housing remains less elastic in terms of demand response to price increases than the demand for many other important goods. Where demand is relatively inelastic, we can expect less economic restraint on labor to demand, and employers to resist, higher wages and benefits.

The ability to control wage rates by reliance on price inelasticities of demand among housing consumers is one part of the process by which high wages are maintained. The other key element of the equation is union control over the supply of labor. As economist D.Q. Mills points out:

Economists have often asserted the theoretical identity, in a partial equilibrium model, of control of the supply of labor and control over the wage rate. However, where supply cannot be controlled but some large degree of influence over the wage rate is available, secondary markets are likely to exist. This is particularly the case in construction, where entry of firms is relatively easy and many building trades skills are widely distributed among the workforce. The secondary market must be kept at rates of operation that are not threatening to the union. This may require either rates of compensation which do not diverge too greatly from the competitive market equilibrium or actual devices of supply restriction. Control over the price (i.e., wage scale) alone is not sufficient. Alternatively, for control over the wage rate to be equivalent to direct supply restriction, control must be exercised over all transactions so that they occur at the specified rate.

Building trades union control over the supply of labor is assured in an industry composed of small producers and large unions. The National Commission on Urban Problems or Douglas Commission described the industry in its report:

Homebuilding in the United States, in many of its aspects, is an example of the small-scale, handicraft type industry. ... [M]ore than almost any other industry it produces under conditions similar to those common a half century ago.

The building industry is a loose conglomeration of small participants who come together on a project-by-project basis. The initiator of the construction process brings together architects, engineers, and a general contractor for a given building development.

The typical contractor still builds only a few houses each year and farms out a large part of his work to specialized subcontractors. He might take charge of the foundations and the shell himself, but will have separate subcontractors for the plumbing and the electrical work. He hires painters and bricklayers and numerous other craftsmen to perform specialized tasks. Sometimes he lets these jobs out on subcontract, while remaining responsible for the purchase and flow of materials and for the general conduct of the work. When each participant completes his particular role, he leaves. Generally speaking, the organization is assembled for one job only.

Statistics vividly illuminate the extent to which the industry is fractionated. In 1969, there were about 903,000 firms in the contract construction industry. Of that number, 723,000 were sole proprietorships, 51,000 were active partnerships and 129,000 were active corporations. In 1969, 676,000 or more than 93% of all proprietorships had under $100,000 in receipts for that year. Forty-nine thousand of the partnerships earned less than $500,000 in 1969, with 38,000 of that number, earning less than $100,000. While corporations tended to generate more receipts per firm, about 80% or 102,000 of the total, still earned less than $1 million. Since the construction industry is more than 50% larger than the iron and steel and automobile industries combined, the extraordinary small-scale of the participants remains astonishing.

Facing these 900,000 firms are seventeen unions, operating through a few thousand tightly disciplined locals which collectively exercise almost complete control over the supply of skilled labor through a variety of devices. These include racial discrimination, long apprenticeship training requirements, high entry fees, and, most important, exclusive control of the hiring hall. Of the 2.5 million contract construction industry employees who belong to unions, about 60% belong to referral locals.
(Of the approximately 3.4 million workers in contract construction, then, 44% are subject to hiring hall control.)

Professor Ralph K. Winter has described the hiring hall as a technique for controlling labor supply:

In the construction industry, the ability to control the number of people admitted to the hiring hall gives unions the power to eliminate much of the employment benefit tradeoff problem. Because a hiring hall union need not admit all comers but can merely add temporary workers, it can raise wages substantially without fearing that the constituents of union leaders will be unemployed. The hiring hall, therefore, significantly reduces the restraint so significant to industrial unions, the fear of unemployment among union members.

The relatively small size of contractors also makes impossible economies of scale that could be attained by increasing volume of production. Such economies would include lower labor costs if a permanent labor force were retained by the firm the year around. Lower salaries might be paid if some of the insecurity in the labor market for contract construction were eliminated. Other economies would be lower materials costs (since larger inventories could be kept and favorable terms with suppliers more easily negotiated), and lower overhead and profits per unit of construction. However, the relative nonstandardization of the product itself makes such economies difficult to achieve except for large developers, and may explain the persistence of small-scale construction.

Other implications of this atomization become obvious. In so fragile an industry, where one ill-timed strike can ruin a contractor, there is every incentive for employers to settle wage disputes even if to do so would result in substantial cost increases for the final product. In an industry where there are few, if any, traditional employer-employee relationships, economic warfare is the rule rather than the exception. The contract construction industry has consistently led all other industry groups in the number of work stoppages, reaching a peak in 1970 with 1,137, about 1/5 of the total number throughout American industry that year. Yet employees in contract construction comprised less than 5% of the total number of employed Americans.

Thus, the need for the product which the construction industry produces and the smallness of builders in the industry combine to give well-organized craft unions power limited only by political and public opinion pressures. This power has afforded workers in the construction trades unions the highest gross average weekly and hourly earnings of any labor group in a single industry. Wages have risen 43.6% between 1967 and 1972, again more than for any other labor group. Moreover, this rate of increase has been almost twice as much as the increase in the cost of living in general and the cost of housing in particular. As an example of the penalty unions have been willing to exact when resistance to wage demands is encountered, we need only note that during the last wage dispute in New York City, 75,000 unionists were able to tie up $2 billion in construction for nearly three months.

B. Indirect Costs—Union Control over Conditions of Employment

In addition to exercising control over wages and the supply of labor, the unions have been successful in regulating the conditions under which their members work and the composition of the workforce itself. The nature of these controls contributes in indirect ways to increases in the cost of housing, largely through reductions in labor force productivity.

One conspicuous example of such antiproduc tive controls is the restrictive work rule. There are several varieties:

A concise listing which includes most of the current practices shows six varieties of make-work or featherbedding. These involve: limiting the work load an employee may handle or the number of machines he may operate; requiring unnecessary work or that work be done more than once; prohibiting certain labor-saving tools or machinery from being used; restricting the duties of workers or enforcing less efficient working methods and standards; requiring unnecessary standby workers or crews or an excessive number of workers; and compelling employers to grant excessive relief time.

One estimate has been made that, on the average, such restrictive work rules raise labor costs by about 10 to 12 per cent, with an increase in the final price of housing being around 2 to 3 per cent. Indeed, one report has shown that between 1964 and 1969, while compensation/man-hour was increasing an average of 6.5% each year, productivity/man-hour was actually dropping approximately .7% to 1.8% each year (depending upon how output estimates were measured). While productivity in the construction trades has been rising since 1969, the annual increase in productivity has been below that for American workers as a whole and certainly below increases in annual construction wages.

Unions also increase costs by resisting changes in building codes which mandate the use of certain materials in housing and other buildings. Of more than 8,000 local units of government with building codes surveyed by the National Commission on Urban Problems, 42% prohibited "off-site, prefabricated or pre-assembled combination drain, waste and vent plumbing systems for bathroom installation." Sixty-three per cent prohibited the use of plastic pipes in drainage systems. In the words of the Commission: "Among the more important methods of reducing building costs is the prefabrication or offsite assembly of plumbing or electrical units. This makes the use of mass production and assembly line techniques possible; work can be done more
efficiently through specialization and the division of labor; and much of the work is freed from the added costs due to time lost because of inclement weather because it is done indoors.  

While it would be unfair to charge unions with having been responsible for the initial promulgation of now economically inefficient building code provisions, unions do oppose changes which reduce the amount of on-site assembly and manufacture presently done by their members.  

Still another way in which unions indirectly work to increase the cost of housing is racial discrimination in union membership. To the extent that discriminating among various units of labor on bases other than productivity results in a decrease of productivity, racial discrimination imposes costs in terms of reduced productivity that augment the rise in housing costs.  

By refusing to comply with antidiscrimination laws, unions can also increase the cost of housing that is delayed because of their refusal. For instance, Sheetmetal Workers Local 28 of New York City, the highest paid union in that city, held up $200 million in city-subsidized construction because it refused to comply with Mayor Lindsay's Executive Order 31, mandating affirmative action pledges to increase minority group representation in the craft unions.  

Finally, unions may increase costs by forcing contractors to negotiate with each union separately. Under New York State law, for example, cities must negotiate four different contracts on projects above $50,000, covering general construction, heating and air conditioning, plumbing, and electrical work. The result of multiple contracts is higher costs for preliminary planning and negotiation of contracts. It has been estimated that New York City could save about $70 million annually if it were permitted to negotiate with one general contractor on all aspects of the building project.  

C Government Support for Union Power  
Statutes and court decisions abet the unions' ability to insulate themselves from the impact of competing labor pools and/or labor-saving materials and techniques. Any analysis of government aid to the construction trades unions must begin with a discussion of the bete noire of those alarmed at craft union power, the Davis-Bacon Act, and the regulations promulgated thereunder. The Act provides, inter alia, that on every contract in excess of $2000 for construction "to which the United States or the District of Columbia is a party," the wages paid to workers shall be those "prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village, or other civil division of the State [or in the District of Columbia] in which the work is to be performed . . ." The wage rate mandated includes the basic hourly rate of pay plus employer contributions to pension funds, disability and sickness insurance and the like; the law covers both contractors and subcontractors.

Davis-Bacon Act "prevailing wages" must be paid on projects undertaken under some 63 Federal statutes including the National Housing Act of 1934, (mortgage-insured private housing); the U.S. Housing Act of 1937, (public housing); the Housing Act of 1949, (urban renewal); the Housing Act of 1959, (inter alia, housing for elderly and handicapped low- and moderate-income persons); the Housing Act of 1964, (inter alia, housing for domestic farm labor); and the Urban Growth and New Community Development Act of 1970, (new towns).

Furthermore, such wage requirements have been imposed on projects built under other federal statutes relating to construction of schools, airports, community health centers, clinics and hospitals, libraries, and sewage treatment plants — all services which complement new housing.

In addition, some 34 states and the District of Columbia, including California, Illinois, Massachusetts, New York and Pennsylvania have passed "little Davis-Bacon" laws, and at least one author has noticed the high correlation between states with strong construction trades unions and states with Davis-Bacon-type laws. For the most part, these laws have been upheld as constitutional.  

When the Act was first considered and enacted in 1931, it protected the generally higher wages paid to Northern workers from being undercut on federal and federally-subsidized construction by lower bids from contractors using low-wage, Southern, generally nonunion employees. By requiring that all wages be paid at an ambiguously defined (though unambiguously determined) "prevailing wage" rate in the area where the construction was to take place, the competitive advantage that would otherwise inure to users of low-wage employees was partially eliminated. Today, the Davis-Bacon Act continues to insulate unionized labor in a particular locality from cheaper competitors.

The protection of union wage rates from competition follows from the way the Act is administered. The Secretary of Labor is charged by the Act with determining what constitutes prevailing wage rates, and pursuant to that authority, the Department has prescribed the following test:

The term 'prevailing wage rate' for each classification of laborers and mechanics which the Solicitor [sic] shall regard as prevailing in an area shall mean:

1. The rate of wages paid in the area in which the work is to be performed, to the majority of those employed in that classification in construction in the area similar to the proposed undertaking;

2. In the event that there is not a majority paid at the same rate, then the rate paid the greater number: Provided, such greater number constitutes 30 per cent of those employed; or

3. In the event that less than 30 per cent of those so employed receive the same rate, then the average rate.
Under the Labor Department's test, as long as a union has organized at least 30% of the identifiable contract construction workforce in the area where the federal or federally-subsidized construction is to take place, it is possible — as long as the lower wages of the other 70% are not easily ascertainable — for that union to insure that there will be no wage competition that threatens demand for their own labor services. With 25,000 wage determinations made each year, with some of those wage determinations covering up to 100 job types on a particular project, the temptation to look at area collective agreements for prevailing wage rates appears too great to overcome.

An example of the difference paying the "prevailing wage rate" can make, was given by the National Association of Home Builders, in a statement prepared for the Senate Subcommittee on Housing and Urban Affairs. Labor costs on a "236" development built in the Dallas-Fort Worth, area were compared with those on a conventionally financed project built at the same time, two miles away. The differences are as follows:

<table>
<thead>
<tr>
<th>Trade</th>
<th>&quot;236&quot; Project</th>
<th>Conventional Project</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carpenters</td>
<td>$6.18/hr.</td>
<td>$4.50/hr.</td>
</tr>
<tr>
<td>Plumbers</td>
<td>7.12</td>
<td>4.75</td>
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<tr>
<td>Electricians</td>
<td>6.76</td>
<td>4.00</td>
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<tr>
<td>Power Equip. Operators</td>
<td>5.67</td>
<td>3.50</td>
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<tr>
<td>Common laborers</td>
<td>4.12</td>
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Professor John Gould of the University of Chicago has given convincing proof that "the Davis-Bacon Act (and related prevailing wage legislation) would tend to increase wages even if local wages were accurately reflected in the determination of prevailing wages." He argues:

This is because the Davis-Bacon Act per se may alter the market structure and the nature of competition in the industry... The Davis-Bacon Act and related laws tend to make government demand (and government-assisted demand) for construction projects relatively inelastic (or unresponsive) to wages. In other words, the act tends to decrease the government's bargaining power by disallowing the possibility of withholding contracts from high-wage bidders if those bidders can establish their wage as 'prevailing.' This tendency is augmented by the bias toward appropriately high prevailing wage determinations, but it would occur in any situation in which the government is prevented from searching out the lowest bidder.

All in all, it is estimated that the Davis-Bacon Act adds approximately 5 to 15% to the cost of projects affected by it.63

The courts, including the U.S. Supreme Court, have augmented the unions' power to raise the costs of housing by permitting them, under certain vaguely prescribed circumstances, to prevent through contract provisions the use of prefabricated materials on job sites. In the landmark case, National Woodwork Manufacturers Association v. NLRB,64 the Court upheld an agreement between the carpenters' union and a general contractor that "... No member of this District Council will handle ... any doors ... which have been fitted prior to being furnished on the job ..."65 The National Woodwork Manufacturers Association contended, that this provision was a violation of the National Labor Relations Act's section 8(e), which provides:

It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforceable and void...66

The Supreme Court held that the "will-not-handle" contract provision was not illegal if "the Union's objective was preservation of work for [the Contractor's] employees." The implication of such a ruling is obvious.67 It permits unions to bar the use of prefabricated materials, imposing still another market constraint on the housing contractor.

While unions are still prevented from coercing employers into refusing to handle prefabricated materials, in the course of negotiating contracts, they may insist that such so-called "hot cargo" provisions be inserted into the contract as a condition of final settlement.68 And, as an answer to any argument that such "will-not-handle" clauses ought to be found invalid on the basis of the obvious economic and technological inefficiencies that result therefrom, the Court, in Woodwork Manufacturers Association, made clear that these are not matters to be considered by the courts:

Those arguments are addressed to the wrong branch of government. It may be 'that the time has come for a reevaluation of the basic content of collective bargaining as contemplated by the federal legislation. But that is for Congress...69

The result of Government intervention on the side of the building trades unions is to further insulate highly paid unions from the impact of a greater supply of cheaper labor and from prefabricated products which might otherwise displace the union's members. The twin threats — increased supply of labor and decreased demand for labor through substitution of labor-saving production techniques — are largely obviated.
II The Unions vs. Industrialized Housing

Programs like HUD's "Operation Breakthrough" begun in 1969, represented an attempt by the Federal Government to spread the gospel of industrialized housing. In the words of its chief apostle, former Secretary Romney:

Operation Breakthrough was undertaken for the purpose of eliminating the constraints that prevent the voluntary production of housing in this country from using modern methods of producing and financing and selling housing the way other products are financed and sold.

It was hoped that industrialized housing might break the stranglehold which the trades unions held on construction costs.

Since industrialized housing is not in widespread use in this country, it is difficult to estimate the impact of its spread on American workers. However, the mobile home industry, because it uses many of the production techniques that would be used in industrialized or modular housing, may provide a model for future industrialized construction on which to base an estimate. Indeed one mobile home producer has reported that it could immediately convert one-third of its production capacity to output of modulars. An observer of the mobile home industry has written:

The cost of labor runs to about 10 per cent of total costs, compared to about 25% for a conventional single-family house, excluding land.

... One of the industry's real advantages is that it pays on the basis of an industrial wage rather than a building-craft wage.

The difference between wages that must be paid industrial workers and building trades workers can be substantial. In California, with a 1971 factory-built housing law permitting industrialized housing anywhere in the state regardless of local codes, the differentials may be on the order of 25% for skilled labor, 40% for semiskilled labor, and 50% for unskilled labor.

What is more, there would be a reduction in the level of skills needed among the labor force members were systems building with factory built housing to be used. "Fully 65 per cent of the workforce can be rapidly trained unskilled labor." With lower levels of training and less specialized skills, wages become responsive to productivity gains rather than to union power.

Even where wages might not be reduced, perhaps because factory workers themselves organize into strong unions, there is some indication of a reduction in man-hours required per unit of construction. Levitt Homes, the largest producer of conventional housing in America, estimates that for every 250 man-hours now used in construction "field" work, 150 man-hours could be substituted in the factory. The number of man-hours required in construction of multi-family dwelling would be reduced from an average 1314 man-hours per thousand square feet to 762. The average 21 weeks it now takes to construct a single-family house could be reduced to as few as two days.

If labor costs were reduced substantially, there would be significant savings to the ultimate purchaser not only in the initial shelter costs but also in the total cost to him of owning his home (essentially shelter costs plus operating costs including property taxes, insurance premiums, utilities and maintenance). Lower construction costs would lead to a lower home price (or a better home for the same price) producing lower financing costs and a lower property valuation for property tax purposes.

What becomes manifest from this analysis is that the present organization of the construction industry labor force would be rendered obsolete or inefficient by the widespread use of industrialized housing techniques. The monopoly power now possessed by the unions would be considerably reduced. There would be fewer producers, as economies of scale permit present large producers to squeeze out or absorb the smaller producers. And resistance to wage demands would stiffen as the ability to survive the costs of strikes, slow-downs, and physical intimidation increased. It is therefore unlikely that the present unions would cooperate in any effort to speed the shift to industrialized housing. Present restrictive work practices evidence the opposition to encroachments upon union control over the production process that prefabricated housing techniques represent.

III Strategies for Change

The primary aim of those who seek to reduce union power in the construction industry is to make the price and supply of labor subject to market pressures. A number of strategies might be employed.

One might attempt to enforce limits on wage increases, by simply prohibiting wage increases above certain fixed percentage levels. This the Federal Government has attempted to do with the Construction Industry Stabilization Committee, established in April 1971, and continued under Phase III. One risk inherent in this approach is that wage controls may lead to non-cash payments (e.g., guarantees of employment) from employer to worker. If this results, controls aimed at wages alone will not decrease the growing net wealth transfers made to craft labor, but will affect only the form of those transfer payments. Nevertheless, to the extent that wage controls prevent unions from reaping monopoly wages, their incentive and ability to restrict the labor supply is diminished.

Applying wage controls to construction workers raises some nettlesome administrative problems particularly in fixing the sizes of acceptable wage increases. First, it is hard to measure productivity in the construction industry
because of the nonstandardization of the product. Second, any wage determination must take account of some unique characteristics of the quality of work in the industry. Employment in the industry is highly seasonal, and unemployment extremely high. In addition, construction workers have a very high injury frequency rate. Thus any wage determination must take into account the insecurity and danger of employment in construction.

Another way to reduce the price of labor is to repeal the Davis-Bacon Act and its counterparts in the several states. A Senate bill, S. 3654, introduced into the 92nd Congress by Senator John Tower of Texas, would abrogate Davis-Bacon provisions in the National Housing Act of 1934 (the basis of Federal support of privately-built low- and moderate-income housing) and the United States Housing Act of 1937 (the basis of Federally-subsidized low-income public housing). Such legislation would put some pressure on unions to hold wage demands down to a more competitive level.

An indirect way to reduce costs is to ban “work preservation” or “will-not-handle” agreements between contractors and unions and to eliminate housing code provisions which permit such anti-prefabrication arrangements. Senator William Brock of Tennessee introduced such a bill in the Senate last year, which would permit persons “aggrieved” by such contract or code provisions to sue in a U.S. District Court for injunctive relief, and in some cases damages. Though this law would apply to only HUD-assisted housing, its impact could be quite substantial, especially in light of the rapid spread of non-union private construction. Removal of these restrictive contract clauses and housing code provisions would force unions to calculate the costs they impose by prohibiting labor-displacing techniques which could be substituted at lower cost.

A final strategy may lie behind the actions of the present Administration. In ending housing subsidies, President Nixon may have undercut the ability of unions to obtain high wages by removing the artificially high demand for housing that such subsidies created. By reducing mortgage interest rates to as low as one percent for owners of low- and moderate-income multifamily rental or cooperative units (under the “236” program) or owner-occupied single-family units (under the “235” program); by subsidizing property insurance in high-risk areas (under HUD’s “FAIR” (Fair-Access-to-Insurance) program); by reducing down payments on housing to as low as $200 (again, the “235” program); and by giving rent supplements to poor families in order to rent new or rehabilitated FHA-assisted housing, the government artificially stimulated demand. A shift upward in the demand for housing, given a fixed labor supply, could account for the increase of over 76% in hourly wages of contract employees between 1969 and December, 1972. Faced with rising housing demand, the potential resistance to such wage demands was absent or buried beneath the Federal push for a decent home for everyone. By cutting back on demand, the President may have stiffened resistance to wage increases.

There are a number of serious problems with implementing any of the strategies discussed. The first involves the impact on the size of the labor pool. Although suspending the Davis-Bacon Act, prohibiting restrictive work practices, or eliminating subsidies would reduce the wealth of those within the union labor pool, the ultimate effect might be to make the unions even more exclusionary in their admissions or selection process. Individuals likely to be excluded are those in the lower wage categories, the younger members and nonwhites. One way to deal with this contraction of the work force is to eliminate the power of the trades unions to control the supply of labor. This would mean more active Government scrutiny of union racial discrimination, entry fees, and the hiring hall. The Federal Government could also assume the costs of training people for the various crafts. Presently, that cost is borne by the contractors (who are usually committed by contract to hiring so many apprentices per journeymen on construction jobs), or by the prospective employees themselves. The present system thus ensures a relatively small supply of labor. Lloyd Ulman presents one justification for shifting the costs of training to the government:

"... to the extent that individuals must incur the costs of their own training – especially when the skills to be acquired would make them more valuable to other employers as well as their own – there is a case for subsidizing the training of poorer individuals and particularly of those who are likely targets of discrimination. Such individuals, as Lester Thurow has pointed out, are likely to have exceptionally high rates of time preference precisely because they are poor – so that the marginal utility to them of a dollar in wages foregone during the training period is exceptionally high – and because their opportunities are limited – so that the private return on a training investment is likely to be exceptionally low. Moreover, there can be little doubt that any would-be borrower for whom discrimination has made the labor market imperfect would find himself regarded as an exceptionally poor risk by any potential lender in the capital market. Subsidies, even if provided on a scale sufficient to eliminate or overcompensate for the direct and indirect costs of training, cannot by themselves overcome the obstacles to career development thrown up by poverty and discrimination, but they would in principle play a useful role in helping to neutralize those disadvantages."

By increasing the supply of qualified craftsmen, and requiring that unions accept as members everyone certified through a Government-training program, union control over the supply of labor would be curtailed.
Another difficulty with these strategies lies in the narrowly economic perspective from which they approach the problem. For example, shifting more to industrialized housing would make the work of present craftsmen more like that of the assembly-line worker. The result would be to make the work of present construction industry employees more tedious, more specialized, and more insignificant in relation to the entire production process even as it becomes less seasonal, less dangerous, and more productive. The sacrifice of the individual’s sense of pride and control over his work is a social cost which must be taken into account in any comprehensive analysis.

The foregoing discussion has greatest relevance for proposals to eliminate work rules that promote inefficiency and curtail labor supply. Even if restrictive work practices do prevent efficiencies in building construction, they may also assert the feeling of employees that the integrity of the work they perform is jeopardized by prefabricated materials or by assembly-line techniques.

Work rules may embody the individual’s sense of his own rights and liberties. Nevertheless, restrictive work rules do impose costs on the potential consumers of housing. There must therefore be some supervision over industry work rules to insure a minimum of maladjustment among the conflicting interests. Such supervision does not exist, but would if Congress delegated to a control agency like the National Labor Relations Board the power to designate some work rules as illegal or non-bargainable.

No discussion of the problem posed by the construction trades unions could conclude without some mention of the present and substantial political power of these unions. It is not likely that this Administration will lightly undertake action that would diffuse the economic power of its allies. Those in Congress and in the state legislatures may also be unwilling to take on this problem—conservatives because of the attraction which labor support now has, liberals because of a need to assuage the anger of allies straying from the fold. Because of their high visibility and tight discipline, the construction unions are presently in a powerful position and those who would seek to make those unions more susceptible to market forces may find the political barriers high.

Despite these obstacles, the goal of providing a decent home within the reach of every American household stands. Indeed, behind this analysis lies the belief that the country is slipping further from this goal, and that a crisis exists in the area of low- and moderate-income housing. As a consequence, it remains our obligation to think about solutions to the crisis that the present economic tyranny of the craft unions helped to create.

1 Low- and moderate-income housing is generally that occupied by households earning less than $10,000 per year. I have selected this figure somewhat arbitrarily, but it does describe the economic circumstances of families occupying “236” housing, infra note 6. See 1970 HUD Statistical Yearbook, Table 134, “Characteristics of Households Certified for Subsidy in Section 236 Housing Through December 31, 1970.” (1970).


3 These antidiscrimination programs are typified by the so-called “Philadelphia Plan,” 41 C.F.R. § 60-1, which was issued by the Secretary of Labor on June 27, 1969, pursuant to Executive Order 11246. That plan’s validity was upheld in Contractors Assn’ of Eastern Pennsylvania v. Hodgson, 442 F.2d 159 (3d Cir., 1971), cert. den. 404 U.S. 854 (1971). For a history and discussion, see Note, The Legality of the Philadelphia Plan, 4 Univ. S.F. L. Rev. 373 (1970).

4 The announcement of the housing subsidy moratorium was reported N.Y. Times, January 9, 1973, at 1. The moratorium also included a hold on applications for a variety of other Federal programs, including water and sewer grants, open space grants and public facility loans. The Administration ended future cutrate housing loans for low-income rural families, “programs providing credit for farm labor housing, rural rental and cooperative housing and grants to small communities for building water and sewer systems.” Id.

5 New York Times, December 23, 1972, at 10. Total estimated subsidized new construction during 1972 was about 452,000, of which 147,000 were new one- to four-family homes built under “235” subsidies and the remaining new construction primarily multifamily dwellings built pursuant to the “236” program. Another 52,000 dwelling were rehabilitated, again primarily under the “235” and “236” programs. Message from the President of the United States, “Fourth Annual Report on National Housing Goals,” 92nd Cong., 2nd Session, House Doc. 92-319 (June 29, 1972), Appendix B, Table B-3, at 46.


For the legislative history of the Housing and Urban Development Act of 1968, see 1968 U.S. Code, Cong. and Admin. News, p. 2873 et seq. The “235” and “236” programs, which formed the bulk of the subsidies on which builders of low- and moderate-income housing relied, were considered by the Administration to be too costly
for the return. On the cost side, the mortgage insurance subsidy of the "233" program was estimated to have cost through the end of this Fiscal Year 1973 about $428 million; the interest reduction subsidy payments involved in the "236" program during this Fiscal Year 1973, were estimated to reach about $190 million. See 1972 Catalog of Federal Domestic Assistance, p. 353-357 (U.S. Office of Management and Budget, Washington, D.C., 1972).


9 Ibid.

10 Mr. Romney, in announcing the housing subsidy moratorium, said that the suspension "would have no effect on basic Federal Housing Administration programs of mortgage assistance, although there might be an increase in some premium rates because of anticipated plans to put the programs on a 'sound actuarial basis.'" New York Times, January 9, 1973, at 1. The "basic" FHA programs are those that assist mainly middle-class families to buy new homes. See Report of the National Commission on Urban Problems (The Douglas Commission), Building the American City 94-107 (1968).


12 According to the U.S. Department of Commerce and the Health Insurance Institute, in 1970, Americans spent 14.8% of personal consumption expenditures on basic shelter costs (mortgage debt service or rent) and another 13.9% on maintenance and operation of their homes. The American Consumer: Personal Expenditures, 1973 Associated Press Almanac, at 439.

13 See Mayer, Mobile Homes Move Into the Breach, 81 Fortune Magazine 126, 127 (March, 1970). The author observes that as early as 1969: "Thirty-three out of every hundred new single-family dwellings were mobile homes. For every hundred regular single-family houses built, fifty mobile homes were mobile homes. For every hundred regular single-family houses built, fifty mobile homes were mobile homes."

14 See, for example, Vickers v. Twp. Comm'r, Gloucester Twp., 37 N.J. 213, 181 A.2d 129 (1962). There, the Supreme Court of New Jersey upheld a subpoena against a town that taps anywhere within defendant-Township's boundaries.


16. There will always be some incentive for firms to resist increased wage demands as long as demand is not absolutely price inelastic, i.e., as long as E>0. One economist has calculated the elasticity of demand for non-farm housing to be 0.198. "The rise in price will lead to a 10% decline in demand. See Richard C. Muth, "The Demand for Non-Farm Housing," in Arnold C. Harberger (ed.), The Demand for Durables (1960). Others have found price elasticity of demand for housing to be an almost inelastic "minus 0.08," i.e., a 10% rise in price will lead to a decline in demand of only 0.008%. See James S. Duesenberry and Helen Kistin, "The Role of Demand in the Economic Structure," in Wassily Leontief (ed.), Studies in the Structure of the American Economy (1953). The true answer is probably closer to Muth's, whose study has remained the most comprehensive yet undertaken and considers, for purposes of calculation of price elasticity, the present major substitute to new housing -- viz., the present housing stock. However, for purposes of our discussion, we have taken the view that where the present stock is itself standard, such a substitute is unacceptable on public policy grounds. For the best discussion this student could find concerning the whole concept of elasticity of demand -- from the point of view of one not mathematically inclined -- see M. M. Bober, Intermediate Price and Income Theory, Rev. ed. (1962), 61-73.

17 D. Q. Mills, Wage Determination in Contract Construction, 10 Ind. Rel. 72, 84-85 (Feb., 1971) (footnotes omitted).


20 Ibid., Table 749.

21 Ibid., Table 749.

22 In 1971, the revenues of the iron and steel industry were approximately $20,126,000,000. Those for the automotive industry were $40,600,000,000. The value of new construction, in 1971, was $109,399,000,000. See 1972 Statistical Abstract, Tables 1216, 892 and 1126. Indeed, about 10% of the Gross National Product of this country was spent on construction in 1971, compared with 3.9% for automobiles. See, ibid., Tables 506 and 892.

23 These unions include: Bricklayers, Masons and Plasterers' International Union of America; United Brotherhood of Carpenters and Joiners of America; International Hod Carriers; Building and Construction Trades Department of America; International Brotherhood of Electrical Workers; International Union of Elevator Constructors; Brotherhood of Painters, Decorators and Paperhangers of America in Western States; The Wood, Wire and Metal Lathers International Union; Contracting Plasterers' and Lathers' International Association; International Union of Operating Engineers; International Association of Marble, Slate and Stone Polishers, Rubbers and Sawyers, Tile and Marble Setters' Helpers and Marble, Mosaic and Terrazzo Workers' Helpers; Operative Plasterers' and Cement Masons' International Association of the United States and Canada; United Association of Plumbers and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada; United Slate, Tile, and Composition Roofers, Damp, and Waterproof Workers Association; Sheetmetal Workers' International Association; International Association of Bridge, Structural and Ornamental Iron Workers; Laborers' International Union of North America; and United Rubber, Cork, Linoleum, and Plastic Workers of America. In addition, the International Brotherhood of Teamsters, Warehousemen, and Helpers of America has organized most of those truckdrivers delivering materials and supplies to construction sites. See U.S. Department of Labor, Occupational Outlook Handbook, 370-420 (1966).

24 "Union membership brings considerably steadier employment and much higher wages in these trades through job control and limiting entry into the trade. In achieving these benefits, many referral unions take over from the traditional management prerogative of determining in large measure who will enter the trade and when and where he will work.

25 "Thus, the member is not only protected by the union, but is also dependent upon it for his employment . . ." Hammelman, Minority Workers in Construction. Referree & Referral Unions, 95 Monthly Labor Review 17, 18 (May, 1972).


29 Hammerman, supra n. 24, has described the jobs of typic construction workers in this way: "the work is casual, intermittent and of limited duration with any particular employer; the trade offers fluctuating work opportunities due to seasonal, cyclical or other causes; the job is performed at scattered and varied worksites. Without unionization, these conditions of employment lead, almost inevitably, to great day-to-day job insecurity," at 18.


31 Consider the following observation: "As inefficient as the present market arrangement is, its fragmentation and localized character serve an important function. They provide a choice of housing. Further, at present, the housing industry follows public opinion, it does not lead it (as the automobile industry does). Individual preferences are still the most important factor in home design." Surveys of Housing: Is Industrialized Housing Really the Answer?, Jan. 1, 1973 (unpublished paper on file at Yale Law School), at 22.
The classic work in the area of the economic cause and effects of racial discrimination remains Becker, *The Economics of Discrimination*, 2nd ed. (1971), especially Chapter Four, which deals with the economics of employee discrimination against other potential employees.


44 N.Y. Finance Law § 135, as amended; N.Y. Public Buildings Law § 8, as amended.


50 42 U.S.C. § 1401 et seq. as amended.

51 42 U.S.C. § 1460 et seq. as amended.


56 Annot., 18 A.L.R. 3d 944.


58 Actually, the Deputy Assistant Secretary of Labor for Employment Standards, Employment Standards Administration, U.S. Department of Labor, who is also Administrator of the Wage and Hour Division, makes the actual wage determinations under the Davis-Bacon Act.

59 29 C.F.R. § 1.2 (a). In Fiscal Year 1970, 25,000 wage determination were made on contracts involving $28 billion in construction. See GAO Report, in Hearings, supra n. 36, at 475.

60 Ibid., at 187.

61 Gould, supra, n. 55, at 21.


63 See Hearings, supra n. 36, at 137-155 for a vivid account by representatives of contractors and building materials suppliers, of the power sanctioned by decisions like National Woodwork Manufacturers. See also United Assoc. Pipe Fitters Local Union No. 539, et al., supra.
Hearings on Improved Technology and Removal of Prevailing Wage Requirements, supra n. 36 at 216-217. Settlement costs can add an average 5.24 to 15.85% to the selling price of a single-family residence. Between 1950 and 1967, "[the] price of building sites for one-family homes . . . rose 600 per cent faster than the price of all consumer items." (Materials costs, particularly lumber, have also registered sharp price increases since 1967. But for low- and moderate-income families, most of the barriers posed by high financing and land costs could be significantly mitigated. Land acquisition and development costs could be reduced from an average 35% of shelter costs in the case of newly built homes to an average 25% in the case of multi-family, low-rise housing. As for mortgage costs, we have already discussed the impact of the "235" and "236" interest-subsidy and mortgage-insurance programs in terms of their removing financing costs as significant barriers to home ownership among moderate-income households. Thus, it is only in the area of construction costs (materials and labor) that controls need to be imposed or resource allocation made more efficient. It seems clear that control over labor costs is justified by the classic demand-supply model has been subverted by monopoly behavior by the building trades unions. It appears more likely that the dramatic increases in materials prices reflect classic demand-pull inflation pressures rather than artificial or voluntary restraints on supplies.

81 Executive Order 11588 (April 3, 1971), 36 F.R. 6339, 1971 U.S. Code, Cong., and Admin. News, p. 2540, established a Construction Industry Stabilization Committee, empowered to review construction industry labor contracts and to ensure that "those normally considered are supportable by productivity improvement and cost of living trends, but not in excess of the average of the median increases in wages and benefits over the life of the contract negotiated in major construction settlements in the period 1961 to 1968." [§ 6(a) of the Order; see, also, § 6(b)]. The Davis-Bacon Act could, at the option of the Committee, be suspended but only in so far as determinations under the various acts to which it applied would result in prevailing wage rate increases and determinations "in excess of that found to be acceptable in making determinations under that Act and related statutes." § 5(a). The members of the Committee were to be twelve, appointed by the Secretary of Labor and were to include four representatives of labor in the construction industry, four representatives of the public, with one of the latter group to be appointed chairman by the Secretary. The Chairman of the Committee, since its inception and until he was elevated by President Nixon to head the Cost of Living Council under Phase III, was John T. Dunlop, labor specialist from Harvard and Dean of Harvard College. See New York Times, April 6, 1971, at 21, for the other original members of the CISC. Phase III, which was announced in Executive Order 11695, 38 Fed. Reg. 1473 (Jan. 12, 1973) continues the Construction Industry Stabilization Committee, § 5 of the Order, indicating that the Administration still feels that wages in the construction industry are a problem. Cf. Regulations promulgated implementing E.O. 11695 in 38 Fed. Reg. 1489 et seq. (Jan. 12, 1973).

82 1972 Statistical Abstract, Table 383.

83 S. 3654, 92nd Cong., 2nd Sess. (May 31, 1972) in Hearings, Senate Subcommittee on Housing and Urban Affairs, supra n. 36 at 8.

84 S. 3373, 92nd Cong., 2nd Sess. (March 17, 1972) in Hearings, Senate Subcommittee on Housing and Urban Affairs, supra n. 36, at 5.

85 There is already evidence, particularly in the South and Southwest, that increasing use of non-union labor on construction projects is being made. New York Times, Feb. 10, 1972, at 29. According to Business Week, July 1, 1972, at 14: "To union crafts, the spread of nonunion building has now become critical . . . Within one week, recently, nearly $1 billion in new construction was let to open-shop (nonunion) contractors . . . Altogether, AFL-CIO buildings-trades unions now estimate that union-contract employers have lost more than $10 billion in contracts in the past three or four years. The National Constructors Ass'n., an employer group, estimates that 32% of all construction in 1971 went to open-shop bidders." Business Week also said that although the trend was mostly in the South and Southwest, even in tightly-organized regions like New York City and its environs, open-shop maintenance and repair work was spreading.


87 12 U.S.C. § 1701s, as amended.