

The Business Roundtable

**EXCLUSIVE JURISDICTION IN
CONSTRUCTION**

**A CONSTRUCTION INDUSTRY
COST EFFECTIVENESS PROJECT REPORT**

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EXCLUSIVE JURISDICTION IN CONSTRUCTION

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SUMMARY

Exclusive jurisdiction—which is based on the notion that every task can be performed only by members of a particular union—is a major source of inefficiencies in construction. It may well be the greatest handicap faced by union contractors as they attempt to avoid further losses in their shrinking share of the construction market.

This study examined the 1974 Business Roundtable report, “*Jurisdictional Problems in Construction*,” and found that its observations remain valid. Costly jurisdictional disputes still occur, but an *even greater cost to the industry results from inefficient work assignments routinely made to comply with precedents and jurisdictional agreements and to avoid disputes*. A survey by Stanford University, which identified key areas of jurisdictional problems, substantiates the belief that jurisdiction imposes major costs on union contractors.

Mechanisms for voluntary settlement of jurisdictional disputes have only increased the problem by developing ever more precise craft assignments of work that could be performed by any of several crafts. The national voluntary jurisdictional dispute settlement plan is in disarray and is not functioning. When the National Labor Relations Board (NLRB) has been utilized to settle jurisdictional disputes, its decisions usually have been based more logically on employer preference and efficiency considerations. But use of the NLRB is impractical in many disputes because the Board takes so long to act, if it chooses to act at all.

Among many detailed conclusions and recommendations in this report, four key recommendations deserve special emphasis.

- Representatives of owners and contractors, at projects in the field, need to be *much* more knowledgeable about jurisdictional matters, their rights and roles in the assignment of work, and the resolution of jurisdictional disputes on their union-shop projects.
- Contractors should have freedom to assign work to available workers who have the ability to perform the work safely and efficiently. Jurisdictional agreements must be revised to allow this. Recognition that there is work common to more than one craft is an essential element of any dispute-resolution plan.
- Contractors, unions and owners should reduce deterrents at jobsites which interfere with efficient assignment of work. Mergers of some international unions are also needed to

- reduce both structural and political deterrents to more flexible work assignments.
- Open-shop contractors should be vigilant to avoid an undue emphasis on craft lines, which can result from their employee-classification systems. They should also seek opportunities to develop more multi-skilled journeymen and multi-craft supervisors.

II

INTRODUCTION

“Beyond doubt, the greatest problem, the danger, which above all others most threatens not only the success, but the very existence of the American Federation of Labor, is the question of jurisdiction.”

Samuel Gompers, in his annual report to the AF. of L. convention, New Orleans. LA, November, 1902

Exclusive jurisdiction in the building trades—the concept that each element of craft work is within the exclusive jurisdiction of a particular union—has been a source of conflict and inefficiency in construction for generations. The 1902 warning from the AFL's founder and first president could as well have been spoken in 1982 about most unions in construction. Jurisdictional inefficiencies are probably the greatest—and certainly the central—current handicap faced by union contractors in the U.S.

Specific skills for certain construction tasks are often unique to a given trade, but a substantial portion of the work performed by each craft lies within the skills and capabilities of other crafts. Unnecessarily precise jurisdictional lines frequently limit both the owner's choice of contractors and the contractors ability to assign work efficiently. They also inhibit innovative techniques and development of new technology. Experienced observers contend that all this adds needless costs to union construction.

The building trades unions have insisted from their early years that they alone must determine what work should be done by each craft. Over the years these definitions have grown more and more detailed as construction techniques, equipment and materials have grown more complicated and as conflicts have arisen between the unions. Questions over work assignments have been resolved by the acceptance of trade practice, by agreements between the unions themselves, and by union-controlled dispute-settlement machinery that produced “decisions of record”

In recent years employers have been brought into the voluntary dispute-settlement mechanism, but the unions have continued to

dominate its procedures through reliance on old agreements as criteria for settling disputes and through the power of their position in the industry.

Jurisdictional disputes have been such a plague for the industry in the past that both unions and contractors have made efforts to reduce or eliminate the pressures to gain work for a given craft. Unfortunately, the usual basis for resolution of these disputes has been the union rationale of jurisdiction—except in cases that go to the National Labor Relations Board, where the union rationale has been bypassed in favor of economy, efficiency, and employer-preference.

Job disruptions by jurisdictional disputes are an obvious cost to contractors and owners. Much effort has been made to reduce them. However, there is a growing belief that accepted traditional patterns of work assignments in union construction have an even greater cost effect than the disputes they seek to avoid. Union construction surely needs a better system for the voluntary resolution of disputes than it now has at the national level. The parties to the present system accept this, although for different reasons. Contractors are coming to see that a voluntary system for dispute settlement based on present jurisdictional rules is a Band-Aid over a major wound. Union contractors are beginning to realize that exclusive jurisdiction on their jobs is making them less competitive with open-shop rivals. Contractors are also concluding that deciding which craft should perform a given task should not be solely a union function, but a management function in which unions have an interest.

With all of this in mind, a study team was organized by The Business Roundtable in 1980 to explore more fully the impact of craft jurisdiction on construction and to develop near-term recommendations and long-term strategies to reduce the resulting economic woes.¹ The main effort was directed at union construction, where the problem is greatest, but jurisdictional problems in open-shop construction were not overlooked

The Construction Institute, Stanford University, Department of Civil Engineering was retained to do research for this study. Their report, written by Professor John Fondahl and Associate Professor Boyd Paulson, Jr. is entitled *The Impact of Exclusive Craft Jurisdiction in the Construction Industry* (published October 30, 1981) and provides information on statistics, voluntary dispute settlement procedures, and the impact of jurisdiction on labor efficiency.

The Chicago law firm Vedder, Price, Kaufman, Kammholz & Day was retained to evaluate legal remedies. Their report entitled, *'Construction Jurisdictional Disputes A Critical Evaluation of Legal*

¹ Report D-1, "Subjourneymen in Union Construction", The Business Roundtable 1982, covers a topic closely related to this study.

Remedies," by Arthur B. Smith, Jr., Charles E Murphy, Thomas A. Baker, February 1, 1982, forms the basis of the discussion, "The National Labor Relations Board and Other Legal Remedies" (Section V of this report, see page 22).

III

JURISDICTION DISPUTES AND WORK STOPPAGES

One aim of the study team in examining the impact of exclusive jurisdiction in construction was to collect and analyze data on the incidence of jurisdictional disputes and work stoppages. If this information could be classified by crafts, subject matter, project size and type, the impact on construction costs might be assessed.

The search for reliable information ranged through reports and documents of the National Labor Relations Board, the Labor Department, university libraries, some Impartial Jurisdictional Disputes Board (IJDB) records, and private studies. The investigation revealed a disheartening paucity of data NLRB records are available and accurate, but the NLRB is involved in only a small fraction of construction's jurisdictional disputes.

As part of the fact-finding for the Stanford University report, a mail survey was conducted among 440 owners and contractors who use union construction crews. The survey included several questions about jurisdictional disputes. Responses from 184—an encouraging 42% return—show almost one-fourth of the disputes reported were settled by formal, external procedures such as NLRB, IJDB, or local settlement boards; the largest number of this kind of settlement on a single project was 18. An additional 70% of disputes were settled by discussions with union officials (business agent or higher); the largest number of this type of settlement on a single project was 192.

Though industry-wide data is not available, there is a current, common belief in the industry that jurisdictional work stoppages now occur infrequently in union construction. In contrast, 31% of the disputes reported by owners and contractors in the Stanford survey involved a work stoppage lasting a day or more. This data gives evidence that walkouts over jurisdictional disputes still occur in union construction and reflects more frequent and longer stoppages than generally realized.

Since available public information is almost useless for discerning specific jurisdictional-problem areas and trends in the industry, the parties in union

construction need to devise a way to gather the following data:

Incidences of work stoppages, strikes, slowdowns, picketing, or other job disruptions resulting from jurisdictional problems. This would include the number of idle workmen, length of the dispute and man-days lost. A means of assessing the dollar cost of disputes should be developed. There should be definitive reporting of the jurisdictional issue, the contending crafts, type of project, location of the project, the building trades council and the settlement—including the method and forum.

IV

VOLUNTARY DISPUTE-SETTLEMENT PROCEDURES

Overview

The first step toward settling a dispute is usually an informal discussion with shop stewards. Work normally proceeds as assigned by the contractor. Should the assignment still be contested, business agents are brought in to help resolve the issue. Failing agreement, the contractor may ask that international union representatives help to reach agreement, or he may use the services of his trade association staff or a local dispute-mediation process. The effectiveness of such local, informal processes, found more often in large urban metropolitan areas, reflects local parties' desire to project a good construction business image to the outside world. In these discussions, the resolution of the dispute is based on prior union agreements, trade practices, customary assignments of work, and at times the influence in the local area of a particular union, which can be very real and powerful.

If all the parties are stipulated to the IJDB, the contractor or one of the contesting unions may submit the dispute to the board at whatever point in the controversy he believes is appropriate. If all the parties are not so stipulated, the contractor can appeal to the NLRB for relief and a determination of the dispute, but only after he is subjected to unlawful pressure by one of the contending unions. All the construction unions are stipulated to the IJDB by the Building Trades Department, and contractors may do so either through their collective-bargaining agreements or by stipulation letters as individual contractors or associations.

The operations of the IJDB are suspended at present by agreement of the parties. The reasons are analyzed later in this section.

Local Plans for Dispute Settlement

Prior to the Taft-Hartley Act of 1947, local plans existed in Boston, Chicago and New York. They still exist and are the only local plans recognized by the Joint Administrative Committee (JAC) of the IJDB as part of the National Plan for the Settlement of Jurisdictional Disputes.

Boston

This plan covers the city of Boston and 23 nearby communities. It is operated by the Building and Construction Trades Council of Metropolitan Boston and seven contractor associations. Its last revision was effective March 1, 1975.

The decision-making body is a board of eight members, four from labor (two basic trades and two specialty trades) and four from employers (two general contractors and two specialty contractors). The board meets weekly, hears 30 to 40 cases per year: of these, three or four are appealed to the IJDB.

When the unions and a contractor are unable to resolve a dispute on the job, it can be brought to the board, which will not hear a dispute while there is a work stoppage. The local plan says the following about decision criteria.

“In making a job decision, the board shall utilize the following criteria: trade and area practice, decision and agreements of record in the Green Book² dated June 1, 1973, and such other decisions and agreements of record as are issued pursuant to the plan; efficiency of operation; past decision of the plan and board; and the quality, reliability, and integrity of the evidence presented to the board”.

The decision applies only to the job where the disputes occurred.

Chicago (Cook County)

In the Chicago area, the Construction Employers' Association (CEA) and the local Building and Construction Trades' Council established a Joint Conference Board in 1913. Its primary mission is settling local jurisdictional disputes. A standard agreement establishing the Joint

² “The Green Book” is the common reference for a publication entitled “Agreements and Decisions Rendered Affecting the Building Industry by the AF of L Building and Construction Trades Department, National Board for Jurisdictional Awards” Latest edition June 1, 1975. with numerous prior editions

Conference Board was adopted in 1926 and has been amended several times since, most recently in 1973. It is contained in all of the agreements between employers and unions who are members of the CEA and the labor council.

The Joint Conference Board consists of 24 members 12 union and 12 employer representatives, with a quorum of 8, to include equal representation of unions and employers. If a jurisdictional dispute cannot be resolved at the job site or by international representatives of the unions, the Joint Conference Board hears evidence and renders a speedy decision. Should the board be unable to decide the issue, it can be referred to an umpire selected annually by the board. However, the parties have seldom used this option. The only appeal from an umpire or board decision is to the IJDB, which has occasionally reversed the Chicago board.

The rules of the Joint Conference Board provide that in determining jurisdictional claims, it "shall be governed by the Plan for Settling Jurisdictional Disputes Nationally and Locally approved by the Building and Construction Trades Department A. F. of L." In effect, the board defers to union agreements and does not accept employer practice or preference. In the introduction of new techniques or materials, historical claims to work and union agreements are the basis for the board's decisions and tend to inhibit the assignment of work in the most cost-effective way.

Decisions apply only to the specific job under construction; work is not to be stopped while the dispute is being considered.

New York City

The Plan for the Settlement of Jurisdictional Disputes covers the five boroughs. Several characteristics make the New York plan different from the Boston and Chicago plans, which resemble the national IJDB plan. The differences include employer-only membership on the board of arbitration, binding decisions that become area-wide precedents rather than spot solutions, and general avoidance of composite-crew settlements.

The original plan was adopted as the "Joint Arbitration Plan" by the New York Building Trades in 1902, with modifications since then including the shift to purely employer representation. Though long cited in collective bargaining agreements, it was not written down until 1975 as an agreement between the New York Building and Construction Trades Council and the Building Trades Employers' Association (BTEA).

Efforts to resolve jurisdictional disputes are to begin at the job site by the contending union business agents while work proceeds as assigned by the contractor. Work assignments are to be based on decisions of record contained in the handbook of the BTEA or, if there

are none, by national decisions or agreements of record, if any. Failing to reach agreement here, the dispute may be referred for mediation by a representative of the Building Trades Council and the BTEA, with the business agents involved. About 40 disputes a year reach this stage, and about 75 to 80% of these are resolved here. Decisions at this stage apply only to the job in question.

If the dispute is not resolved through mediation, the trade contesting the assignment may submit the matter for arbitration to the executive committee of the BTEA, which becomes a board of arbitration. Its arbitration decision is added to previous awards made and printed in the Handbook of the BTEA, which is known as "the green book" It governs the awarding of similar work on future jobs. About five or six disputes a year reach this stage.

An appeal from a board of arbitration decision may be taken to the IJDB. Of the last dozen or so board of arbitration decisions, three or four have gone to this appeals step.

Only a union can initiate a case, not an employer. Lawyers are not allowed to act as arbitrator, counsel or advisor at any proceeding under the plan One court has held the no-lawyer rule invalid, but the spirit of the rule is still voluntarily observed in most cases. The BTEA bears the administrative cost of the plan.

The National Plan

The Plan—Prior to 1973

The IJDB had its roots in the Taft-Hartley Act of 1947, which provided that the NLRB would rule on jurisdictional disputes where union coercion against an employer was involved, except where there was a voluntary settlement procedure to which all parties to the dispute agreed to be bound. In such instances, the NLRB was to defer to the voluntary system. The contractor was obviously a party to the dispute and had to be included in any voluntary mechanism even though throughout their history the construction unions had taken the position that all issues of jurisdiction were to be determined solely by the unions. After weighing their alternatives, the unions agreed to a voluntary-disputes-resolution system that would include employers Thus was formed in 1948 the original National Joint Board for Settlement of Jurisdictional Disputes.

The background and history of dispute-resolution systems both before and after Taft-Hartley, and up to 1973, is well described in an earlier Business Roundtable report, "*Jurisdictional Problems in Construction*", published in 1974. So we begin here with the revised IJDB plan approved in 1973. Contractors had been unhappy with union reluctance to adapt in jurisdictional matters to an everchanging industry These and other matters of concern to contractors were

addressed in the 1973 plan and the parties looked hopefully toward the future.

The Plan: 1973—1981

All major employer associations supported the 1973 Plan because it incorporated several significant changes from the prior model.

- The Impartial Jurisdictional Disputes Board (IJDB) was to be manned and operated by impartial parties.
- A technological-change committee was established to study the effect of such changes in jurisdiction.
- Repetitive disputes were to be resolved expeditiously.
- A financial penalty plan for noncompliance with IJDB decisions was established.

The historical record of these changes is disappointing:

Impartial decision-makers were appointed to the IJDB to eliminate political trade-offs among the unions in the board's decisions. Nevertheless, they were ineffective due to shifts in union tactics. Union political pressures continued to be applied.

High hopes for the technological-change committee died aborning. After identifying a lengthy list of antiquated agreements of record, the committee ceased functioning. It has never submitted any formal recommendations to the JAC to deal with the problems of new technology, means of production, or shifting skills.

Though the 1973 plan provided for summary action in cases of repetitive disputes, the IJDB has been largely unwilling or unable to exercise this authority. As a result, literally scores of decisions have been issued on essentially identical matters.

The internal enforcement procedure adopted by the AFL Building and Construction Trades Department (BCTD), with its elaborate system of fines for noncompliance with the plan, was a paper tiger. It was never effective. The ability of local unions to strike over jurisdictional disputes, demand "shall assign" language in their collective bargaining agreements, insist upon changes in assignments and claim work belonging to other crafts under Green Book principles—all actions in violation of the plan—remained unchecked by the resolution on enforcement.

As was foreseen by some, the "new" 1973 Plan for the Settlement of Jurisdictional Disputes in the Construction Industry was basically not new at all. With trade-practice and Green-Book decisions and

agreements-of-record as the basis of its decision-making process, the past remained more significant than the present, let alone the future. The significant growth of open-shop competition during the period did not appear to have any impact on this traditional way of operation. Even those features of the plan claimed as improvements over its predecessor were shown to be ineffectual and therefore not used. Retention of Green-Book limitations for another decade placed the union sector of construction even further behind in using new methods and technology.

A growing number of employer association chapters and members refused to be bound to IJDB procedures, and in many instances some international unions have encouraged contractors not to participate. For contractors not agreeing to use the IJDB, challenged work assignments taken to the NLRB were overwhelmingly upheld.

Recognizing the ineffectiveness of the plan, employer associations in February 1981 made known their intent to withdraw from it. The Building and Construction Trades Department issued a similar statement of intent to withdraw. In mid-1981, the JAC of the IJDB decided to keep the board in operation on a month-to-month basis, during which time no job decisions would be issued. This hiatus is similar to one which took place in 1978, when the parties were temporarily deadlocked over renewal of the plan. Management associations agreed to remain in the plan during the hiatus while special subcommittees of the JAC explored new ways to improve it. Whether the problems will be adequately addressed and whether the IJDB will live or die remains unclear at the time of this writing.

Proposals to Modify the Voluntary Plan

Any jurisdictional-dispute settlement plan that does not recognize the substantial body of work that can be safely performed by different crafts under different circumstances will only entrench inefficient practices. It is unlikely that the jurisdictional framework of unions will be altered quickly, so ideas for interim improvement of the current system must be considered. The following proposals offer potential for substantial improvement and are consistent with some currently being advanced by contractor management:

Modernize Guidelines For Employer Assignments

Most critics agree that requiring contractors' work assignments to be based on historic decisions and agreements is the major impediment to change. They agree that work assignment decisions and inter-craft agreements must be revitalized and updated to take into account inherent inefficiencies, today's technology, and the competitive environment. At the same time, most would concur that some guidelines are needed to avoid interunion strife and to provide a widely accepted basis for employer assignment.

The parties to the plan should undertake a thorough and complete review of existing assignment standards for all trades. This review should stress the elements now considered by the NLRB in its decision-making: employer preference based on economy and efficiency, skills and the work involved. Where the parties are unable to agree, a reconstituted IJDB should have authority to develop such criteria. Once the new assignment criteria are adopted, a consolidation of jurisdictional groupings (discussed below) can be logically put into effect. Thereafter, the decision making process of the IJDB would be simplified, because most disputes requiring resolution would be those which pit one consolidated group of trades against another.

Consolidate Jurisdictions

A major part of the jurisdictional-dispute problem arises directly from the fragmented nature of the construction industry. Multiple crafts, multiple employers, multiple local unions—all lead to increased numbers of competing claims for the same work. Jurisdictional consolidation should be part of the solution to jurisdictional squabbles. This consolidation would come about by combining craftsmen together in groups for the purpose of assignment to specific tasks. The unions and craftsmen would retain their individual identities. Once the groups were established, a contractor would have leeway to assign the work to any employee within the particular grouping who is capable, in his opinion, of doing it successfully. The contractor would make his decision based on modernized guidelines emphasizing economy and efficiency. The reconstituted board would be called upon to render decisions only in cases of conflicting claims of unions from different groups, or where a contractor makes a flagrant misassignment of work within a group.

The following group headings are for the purpose of illustration only. Whether four, five or six groups would be best, and precisely which crafts would fall in each group, is a matter for negotiation between parties to the plan.

- Mechanical trades
- Electrical trades
- Civil trades
- Support trades

Consolidating crafts into groups, combined with other recommendations, should permit important progress towards reducing the number of jurisdictional disputes.

Eliminate Repetitive Disputes

Getting rid of repetitive disputes has been a goal of each plan revision, but the goal remains elusive. It is therefore recommended that the IJDB be given limited authority to make precedent-setting determinations. Once established, these precedents would remain controlling until the IJDB determines that there is a reason for the decision to be altered. Precedents could be national or limited to regions or localities to take cognizance of historical conditions. In addition, consideration could be given to the special needs of specific sectors of the construction industry (e.g., highway, industrial, or building).

Modify IJDB Procedures

Current IJDB procedures leave much to be desired. Until the craft consolidation just noted can be put into effect, these reforms could greatly improve IJDB adjudication of jurisdictional disputes.

- IJDB's decision-making process must be greatly accelerated so as to make disputes short-lived.
- IJDB procedures at present require that body to refuse to deal with jurisdictional disputes until after an assignment is made, work has begun, and a contending craft (or crafts) claims the work. It would be more sensible if the IJDB accepted and decided cases whenever a contractor believes a jurisdictional dispute is likely to arise.
- Today, local unions and their parent bodies are all too quick to trade settlements without regard to contractor wishes. No change in a contractor's assignment should be permitted without approval of the contractor or a decision by the IJDB.
- The decision-making apparatus of IJDB should be reformed. A panel of members should be selected by the parties. In selecting and retaining panel members, it is essential that they enjoy true independence, with freedom even from the appearance of favoritism or domination by any party to the plan. Any individual member of the panel should have authority to issue a job decision on an expedited basis. Once craft consolidation, as envisaged, becomes a fact, most decisions issued would involve only craft groups. Parties dissatisfied with a decision could appeal to the full panel. Contractors should have the same right to appeal decisions as that of current union participants in the plan.
- The IJDB needs an effective enforcement mechanism. This might well include court enforcement of IJDB decisions.

Even if all of these proposals are adopted and fully supported and implemented by labor and management in the construction industry, substantial modification of existing collective bargaining agreements

would still be necessary. These agreements contain jurisdictional 'shall assign' language and manning requirements based upon the long history of the Green Book. It should be recognized that dealing with the jurisdictional dispute mechanism will avail little unless negotiated contracts are similarly reformed.

This study of course, views proposals set forth as having merit to the extent that they are interim moves toward acceptance of job assignments based on the experience and skills of the individuals involved.

Any voluntary dispute-settlement mechanism that further solidifies a requirement to make assignments based on historic precedents regardless of efficiency is worse than no voluntary settlement at all.

V

THE NATIONAL LABOR RELATIONS BOARD AND OTHER LEGAL REMEDIES

Introduction

The NLRB became involved in the resolution of jurisdictional disputes with the passage of the Labor-Management Relations Act, 1947 (Taft-Hartley). President Truman in his State of the Union message on January 6, 1947, called for legislation to prevent jurisdictional strikes, as well as to provide for peaceful and binding settlement in jurisdictional disputes over which union is entitled to perform certain tasks.

In the Taft-Hartley law. Congress created two mechanisms to deal with jurisdictional disputes. In Section 8 (b) (4) (D) it prohibited a union from striking or using other economic coercion to force an assignment of work to employees in a particular labor organization or craft. Section 10 (l) authorized the NLRB general counsel to seek an injunction in a federal district court against such economic pressure pending the final adjudication by the board. Section 10 (k) directs the NLRB to hear and determine the underlying dispute. However, if the parties either resolve their dispute or agree on a voluntary method of adjustment within ten days after notice that a charge has been filed, the NLRB is to withhold action pending the outcome of the voluntary-adjustment procedure.

Types of Disputes

Before the NLRB will proceed under Section 8 (b) (4) (D) and 10 (k) of 13 the Act, it must be satisfied that the dispute is "jurisdictional". A

wide variety of disputes fall within this classification, but jurisdictional disputes can arise in situations containing several overtones that must be separated and identified before it is clear what the basic issue is—jurisdictional, recognition, work preservation, et al:

1. The classic jurisdiction case is a competing claim between two or more unions.
2. There can also be a jurisdictional dispute in the competing claim by a union and an unorganized group of employees
3. The board will process competing claims between employees of different employers under Section 10 (k), in addition to claims advanced by union members not employed on the job site.
4. If “an object’ is jurisdictional, the NLRB will process as jurisdictional disputes a wide range of matters that appear at first blush to be disputes about recognition or claims to perform particular work under the collective-bargaining agreement.
5. An important exception to the Labor Board’s willingness to consider competing claims for work as jurisdictional applies where a dispute involves a bonafide “work-preservation” controversy. In the context of Section 10 (k), this kind of claim usually arises when employees performing disputed work are discharged or displaced by a decision to do the work in another way. If the NLRB concludes that the picketing by the displaced employees is solely to regain their jobs, it will quash Section 10 (k) proceedings on the ground that no jurisdictional dispute exists.
6. “Right to control” cases are another example of controversy that has both jurisdictional and work preservation overtones. A typical “right to control” case arises when members of a craft union employed by a specialty contractor refuse to install or work on a prefabricated item because some of “their work” has been performed off-site by other employees. Ordinarily, the general contractor or owner specifies that the prefabricated product must be used. The subcontractor, therefore, lacks the “right to control” whether or not the disputed work is done by his employees on the job site.
7. The Labor Board has processed these cases in different ways. If the board considers it a jurisdictional issue, a Section 10 (k) hearing ensues, with a work-assignment decision. If it considers the refusal to work on a prefabricated item as economic pressure on an employer who lacks the right to control the disputed work, it becomes prima facie a secondary-boycott activity prohibited by Section 8 (b) (4) (B) of the Act. In such cases, if the charge has merit, the Labor Board is legally required to seek a court injunction against the union under Section 10 (1).

Legal Remedies for Jurisdictional Disputes

Construction-industry employers and owners have several remedies available to them in jurisdictional dispute situations, although delays and other problems appear to reduce their usefulness.

Section 10 (l) Injunctions

To secure injunctive relief, a contractor must file an unfair-labor-practice charge with the Labor Board's regional office, which then investigates the facts and decides whether the case has merit and should be prosecuted. The regional office must then persuade a federal district court that there is reason to believe the union is using unlawful pressure on the contractor and that an injunction is required to preserve the status quo while the Labor Board hears the case in a Section 10 (k) hearing to resolve the work-assignment dispute. The Act states the regional office is to seek injunctive relief "in situations where such relief is appropriate". This discretion vested in the regional office means a petition for injunctive relief is not automatic. While the majority of injunctive petitions are granted by the courts, and a contractor should pursue this remedy vigorously when hit by an illegal jurisdictional walkout, he also should be aware of the fragile spots.

Control over the proceedings: The regional office decides whether the dispute is jurisdictional, whether it would be appropriate to petition for injunctive relief, and what theory of the case will be argued. The NLRB will generally accept assistance from the contractor's counsel in handling the case, but the NLRB regional director is the party of record, so it is basically the NLRB's case to prosecute as it sees fit.

Delay: Contractors should not expect to win a court injunction relief in less than two weeks, once a charge is filed.

Incomplete relief: A Section 10 (l) injunction merely restrains the union from unlawful pressure after the injunction is issued. It cannot provide compensation for any financial losses.

Damage Actions

Section 301 of the Act lets an employer sue for damages against a union for violations of a collective-bargaining agreement. Section 303 allows any person injured in his "business or property" to recover damages from unlawful jurisdictional pressure. Courts have awarded money damages for many kinds of proved financial loss, including lost profits, rental expense or equipment which could not be used, depreciation, salaries of employees who were prevented from working by a strike, and contract penalties. If the only sanction of an unlawful strike were injunctive relief, a union could strike with impunity until

restrained by a court order. However, the possibility of a lawsuit against a union using patently illegal jurisdictional pressures is a threat to its financial security and should be strongly considered by a contractor or an owner as a moderating influence on unions in jurisdictional disputes. It is a powerful weapon, if carefully aimed.

Boys' Markets Injunctions

In the Boys' Markets case in 1970, the U.S. Supreme Court ruled that a strike is enjoined in a Section 301 action if an employer can show there was a no-strike clause in the contract and that the union was striking over a grievance subject to arbitration. In the Gateway Coal decision of 1974, the Supreme Court held that absence of a specific no-strike clause does not prevent injunctive relief if the collective-bargaining agreement contains a binding arbitration clause to resolve disputes (unless the agreement specifically negates the existence of a no-strike obligation). The procedure to seek this type of injunction takes only a few days because the contractor may go directly to federal court and need not go through the NLRB to obtain an injunction.

Boys' Markets injunctions, however, have not been effective in construction-jurisdictional disputes for several reasons. First, the Boys' Markets remedy is of no use if the contractor does not have a contractual relationship with the striking union. That frequently is the case. The contractor assigns the work to his own employees and employees for another employer picket to secure the work.

Second, construction unions strongly resist any attempt to insert binding grievance-arbitration procedures into collective bargaining agreements. In the absence of an arbitration clause covering the dispute, or if the contract expressly gives the union a right to strike about grievances, a Boys' Market injunction cannot be issued even where the necessary contractual relationship exists. Still, an advantage of the Joint Board and its jurisdictional-disputes settlement plan is that it becomes an arbitration plan for these disputes once adopted by rival unions in collective bargaining agreements. So once the parties to the plan resolve their difficulties, the new plan, *if properly drawn with binding arbitration procedures*, could help contractors in controlling illegal jurisdictional walkouts with Boys Markets injunctive support.

How the NLRB Decides Jurisdictional Disputes

After some prodding by the Supreme Court in the 1961 CBS decision (*NLRB Vs Radio Broadcast Engineers Local 1212*), the NLRB developed its approach to Section 10 (k) determinations and awards in the 1962 *J. A. Jones Construction Co.* case. The NLRB announced that rather than formulate general rules, it would resolve each case upon its own appraisal of the facts, after considering "all relevant factors", "on the basis of common sense and experience".

The Labor Board customarily evaluates eight factors in making 10 (k) awards and assigns an appropriate weight for each on a case-by-case basis.

Efficiency: This is almost always the critical element in 10 (k) awards. In appraising efficiency, the NLRB, in effect, puts itself into the shoes of the business and attempts to decide which work assignment is more logical, economical, and businesslike. Thus, its decisions tend to favor the work assignment that will not compel the employer to hire more workers, avoids unused employee time, encourages employee versatility, and eliminates the need for additional supervision. Wage rates and safety risks are also considered.

Skills and work involved: Almost by definition the NLRB 'news the employee group performing disputed work as having the necessary skill to do so, even when the disputing union asserts that the greater skill of its members supports a contrary assignment. If both groups claim and possess the skill to do the work, the NLRB labels the skill factor "inconclusive" and awards the work for other reasons.

NLRB certifications: This has weight if a certification *clearly* covers the work. NLRB certifications are not a significant factor in construction-industry jurisdictional dispute cases, however, because few construction unions are certified, i.e., recognized officially by the NLRB as the winner of a valid election conducted by the board.

Employer and industry practice: It is unusual for the NLRB to give conclusive weight to employer and area practice. In more typical cases, though the NLRB considers local practice, the board normally bases its decisions on other, more important factors, such as efficiency and employer assignment

Collective bargaining agreements A recognition clause or other language in a collective bargaining agreement specifying that a particular union is to represent employees performing disputed work is ordinarily respected by the NLRB. Where two unions claim entitlement to work on the basis of language in a collective bargaining agreement, the board attempts to determine which language is more specific and also looks to past practice under the agreements

Inter-union agreements: the board considers jurisdictional agreements between unions relevant in awarding work but rarely gives them significant weight. This policy undoubtedly reflects its long-standing unwillingness to recognize any

dispute-resolution mechanism to which all parties, including the employer, have not consented.

Arbitration and Impartial Jurisdictional Disputes Board Awards: The NLRB does not recognize as binding any arbitration or Joint Board award unless each competing group, as well as the employer, has consented to be bound. The Labor Board also does not give significant weight to these non-binding awards, because, for instance, the IJDB uses inter-union agreements, its own past decisions, trade practice, and area practice as primary criteria for decision-making factors that the NLRB rarely considers controlling. The NLRB frequently has issued 10 (k) decisions directly contrary to IJDB decisions in the same dispute.

Employer assignment: Much criticism of the NLRB's 10 (k) decision-making centers on the fact that the board generally rules in favor of the union assigned by the employer to the work in dispute. The board leans this way because employers take into account in making work assignments the same factors the NLRB evaluates in 10 (k) decisions. Employers generally prefer to make work assignments on the basis of efficiency and the commitments they have freely accepted, the items that weigh most heavily in the NLRB's 10 (k) determinations. Absent unusual circumstances, the employer's preference is honored by the NLRB if it represents an honest exercise in business judgment. One study has shown that 95% of the NLRB's work assignments during a three-year period upheld the employer's assignment of the work in question.³

Roadblocks to NLRB Decision-Making

The intention of Congress in implementing Section 8 (b) (4) (D) .10 (k) procedure of the Labor Management Relations Act was to provide a method for the prompt and final adjustment of work-assignment disputes either through an NLRB or a private-settlement mechanism. Experience has shown that a variety of procedural problems can prevent the prompt and final resolution of disputes by the NLRB.

Referral to Voluntary Settlement Plans

Section 10 (k) provides that the NLRB is to determine a work-assignment dispute unless the parties can show within 10 days of the filing of a charge that they have adjusted the dispute themselves or agreed upon a system for a voluntary resolution of the issue. Thus, the NLRB would not hear such a dispute if the board discovered all

³ See Player, *Work Assignment Disputes Under Section 10 (k)*. 52 Texas Law Review 417 435 (1974)

the parties had agreed upon a voluntary plan to resolve the dispute, such as the Joint Board Plan (JDB), a local disputes board, or some other voluntary mechanism.

The idea that a government agency should defer to a voluntary mechanism is sound. The problem is that the Labor Board concerns itself only with the “existence” of a plan in deferring to it even when there is a practical certainty the voluntary mechanism will not or cannot resolve the dispute. The NLRB has refused to act in each of the following situations, deferring to the voluntary mechanism even though it was clear it could not produce a decision.

- The employer agreed to a mechanism stating that the unions will resolve the dispute among themselves, but then the unions elected not to resolve it. The Joint board (JDB) refused to rule because the work in question was completed.
- A union (and its employer) is entitled to the work under Joint Board rules, but was not awarded the work because it was in noncompliance through refusing to accept a prior Joint Board decision.
- The Joint Board ceases to function because of a disagreement between contractors and unions over board procedures. This has happened twice in recent years, including the current disagreement period. During those periods, the NLRB has deferred on some occasions to the Joint Board even though the parties to jurisdictional disputes disagreed as to whether they were bound to the Joint Board after its operations had been suspended.

Disclaimer of Work

A second major procedural problem at the NLRB, the disclaimer doctrine, lets a union avoid a decision on its merits in a 10 (k) hearing by asserting before the hearing is convened, or even after the hearing, that it renounces its claim to the work. The NLRB believes a proper disclaimer requires it to quash a 10(k) proceeding because two or more “active” claims to the work are required for it to make a decision. In addition, there is a recent tendency in Labor Board cases to find that a union has disclaimed work even though it is by no means clear that the disclaimer freed the employer from unlawful economic pressure.

Disclaimers make it easy for unions to “experiment” with unlawful pressure. If the contractor is vulnerable and concedes, the union is ahead. If the contractor refuses to give in, the union can disclaim just before adverse NLRB action.

Inherent Delays in NLRB Remedies

Though the Labor Board has made important strides in recent years in reducing the time it takes to handle cases before it, legal complexities in jurisdictional dispute cases have added to the built-in delays of board procedures. This has detracted from prompt resolution of board disputes.

Waiting two weeks for an injunction to stop the job action and several months for a determination of who has the right to the work can be an intolerably long time to a contractor or owner. In the unusual case, if an injunction is not granted and the union seeking the work is not satisfied with a Board 10 (k) determination, the controversy could drag on for another 9 to 12 months before a final NLRB decision finding the economic pressure to be an unfair labor practice. Very few cases go all through NLRB procedures to the end. This must be due, at least in part, to the delays, built-in and otherwise, that preclude prompt NLRB decision-making. In 1979, for example, 484 jurisdictional cases were closed by the NLRB; 460 of the 484 cases were closed before a formal complaint was issued. There were only 39 Section 10 (k) determinations and only six decisions finding jurisdictional strikes to be unfair labor practices.

CONCLUSIONS

It must be remembered that strikes or other economic pressure by unions to further jurisdictional issues are unlawful. The major legal means of stopping such unlawful activity and deciding the basic dispute are contained in the Labor Management Relations Act. In American jurisprudence the rights of the parties are carefully detailed and protected and, consequently, there are impediments to prompt decision-making in matters covered by law, such as jurisdictional disputes.

Still, some administrative changes that the NLRB should consider would accelerate labor-board procedures without harming the rights of the affected parties. It should be kept in mind that a delay in NLRB processes almost always is to the detriment of the contractor and to the gain of the union. Furthermore, the law states these cases are to receive priority consideration.

1. One proposal would be to require the NLRB to seek Section 10(l) injunctive relief within 72 hours of the filing of a charge if no voluntary settlement has been reached. This is a tight target, but many construction contractors coping with a jurisdictional strike would view it as a reasonable upper limit.
2. In addition to promptness where injunctions are concerned, the hearing and determination of disputes also need to be handled without burdensome delays. For instance a 10 (k) hearing should be held within 10 days after notice that a charge has been filed. The

worst delay is imposed by the board itself after receiving the hearing record. That varies and can run as long as five months. If an injunction has been granted, or if the job pressure has been relaxed by the union, a certain delay is tolerable. Uncertainty, however, is not good for harmony on a project. Furthermore, the contractor might possibly face back-pay liability if the NLRB rules against him. Rather than suggest a time limit for Washington consideration of the case, it should suffice to suggest that the board conform to the language of the law that requires priority consideration be given jurisdictional disputes by the NLRB. A 45-day time limit might be more than generous. Five months does not appear to be priority consideration.

3. A 10 (k) proceeding should not be quashed because a union disclaimed the work. Once a charge is filed and there is evidence of a union claim for certain work in a context of unlawful pressure on the contractor, the case should go forward for handling and determination by the NLRB. The “disclaimer” doctrine of the board is a departure from its own practice in other unfair labor practice cases. In no other case can a union or employer abort an apparently meritorious proceeding without pledging to refrain from unlawful conduct or taking some form of remedial action.

4. Section 10 (k) empowers the board to determine a dispute unless the parties submit evidence “they have adjusted, or agreed upon methods for the voluntary adjustment of the dispute”. The board’s position is that it need concern itself only with the ‘existence’ of an agreed-upon dispute resolution mechanism in deciding whether to defer. The practical consequence of this policy is that the board will defer in a variety of situations where it is a practical certainty that the agreed-upon mechanism will not or cannot resolve the dispute

A realistic course of action for the board and one consonant with the language of the law would be not to intervene in a dispute where all parties are members of a voluntary disputes resolution mechanism *unless that system fails* for the dispute in question. Thus, the NLRB should not defer without qualification to a mechanism when it is inoperative at the express decision of the parties, or that will not allow a union to participate in a decision where the union is in non-compliance because of some prior action of that union in another dispute, or that refuses to rule if the work in question has been completed, or that is rejected by one or more of the parties for the dispute in question and will not be utilized.

WHY VOLUNTARY SETTLEMENTS COULD BE A BETTER IDEA

This analysis of the NLRB’s role in jurisdictional disputes is not intended to be unduly critical of the board or its methods. Any government forum established by law, whose decisions are reviewed by the courts, must conform to formalities that a voluntary mechanism

would find cumbersome and time-consuming. Still, steps need to be taken to reduce the elapsed time for steps in the board's procedure and arrive at the injunction-issuing point and dispute-determination point as soon as possible. Construction has a low tolerance for work stoppages because of the financial weakness of many contractors, the high cost of the stoppage contrasted with the cost of acquiescing to union demands, and the small financial stake a project owner usually feels he has in concessions made to unlawful economic pressure. However, even with a perfect NLRB procedure, an acceptable voluntary dispute-resolution system is better for the ongoing relationships of the parties, can be faster in its decisions, and certainly would be less expensive to use.

VI

JURISDICTION IN OPEN-SHOP CONSTRUCTION

The open shop contractor, not being a party to labor agreements, has no jurisdictional constraints imposed on him. Even so, many of his work assignments are made along craft lines similar to those found in union jobs. Some of these are logically based on the availability of skills resulting from efficient training). Others probably result from the mental attitudes of supervisors and craftsmen who developed their skills on union work.

How Open-Shop Contractors Operate

Most large open-shop contractors employ about the same number of crafts as union contractors do on similar work. There are some variations as to what construction tasks are assigned to the crafts employed from one open-shop contractor to another, and the lists of crafts are not identical with each contractor. There also can be differences in work assignment for the same craft between union contractors and open-shop contractors. Currently, there is a growing movement in open-shop construction to develop multi-skilled craftspersons to suit a contractor's particular needs. Thus, while the same craft classifications often exist in open-shop construction as in union construction, work assignments within a craft are not maintained so rigidly. As many as 18 classifications are used by some very large open-shop contractors in cataloging skills, recruiting and training. But we do not find corresponding, rigid, craft jurisdictions and lines of supervision.

In open shop construction, project managers and superintendents determine the way to set up craft lines based upon many aspects of each job, including efficiency and economy. Most open-shop contractors maintain that some craft order is necessary; otherwise, widespread, uncontrolled work assignments, for the sake of open-

shop flexibility could lead to nonproductive work. Craftsmen are hired for known skills and assembled into crews to best fit their capabilities. Semi-skilled personnel are hired to assist work crews that handle several major activities. It is common to move these people among crafts. For example, a carpenter helper may move to insulation work as the needs of the job change. The size and type of the project has a direct bearing on the flexibility of craft assignments. Open-shop contractors assign work to craftsmen and helpers who best expedite the job, regardless of craft lines. A worker might normally be assigned work within his expertise, but there are times when he is assigned work outside his normal craft.

Probably the majority of supervisors and managers of open-shop companies acquired their background in union shops. It was natural to start their business with job assignments that everyone knew and understood. Craft designations provided a convenient means of cataloging skills and for assigning work to foremen and workers having those pre-determined skills.

The Pros and Cons of Rigid Craft Lines

Craft jurisdiction within the union sector is an emotional subject and it probably evokes similar if less fervent feelings at open-shop jobs. It is natural for a worker to become jealous of his skills and want to protect his identity. A craft superintendent can also promote craft lines. He is protective of his share of the work and his crews. He doesn't want others taking his people or doing his work. On very large open-shop jobs, jurisdiction is more rigid than on smaller ones. Small open-shop contractors also appear to practice more flexibility and cross more craft lines than large contractors. The emphasis on craft identification and organization of the work and the workers within craft lines in open-shop construction can be beneficial—but it is accompanied by a number of real or potential drawbacks

Benefits

- A contractor wants to spend a minimum of time and effort getting a job set up. It is quick and easy to organize it based upon what is existing in the industry, i.e., craft lines similar to union jobs. The superintendents and foremen already know and understand work assignments based on their experience.
- The manpower is available by craft lines. The contractor can advertise and recruit personnel by craft and skill. They can then be assembled under supervision into crews that best fit their capabilities.
- Tools, materials and equipment are also thought of by craft lines. Individuals who do material take-off and procurement think, plan and do their work in these terms.

- Very few large open-shop jobs are fortunate enough to find all the skilled craftsmen needed; therefore, some training is necessary for some of these jobs. Having craft lines permits specific, intensified, task-oriented training in one skill and, therefore, allows individuals to become productive workers in a minimum of time.
- On large jobs, exclusive use of employees within a narrow skill area can be highly productive -- indeed the most efficient way to do repetitive jobs.

Drawbacks

- Rigid lines for a large number of crafts (including supervision) require separate organizations for each. This involves some duplication of effort. It appears that fewer crafts would yield administrative economies.
- Rigid craft lines lead to inefficiency for some jobs. The setting of pumps and motors, for instance, can be done by a small crew, but following rigid jurisdiction as on union jobs requires more workers and complicates scheduling.
- Changing skill requirements on small jobs and at the beginning and end of larger jobs requires the layoff of some workers and hiring of others if rigid craft lines are observed. More flexibility of work assignment across craft lines would produce a more stable work force through a transfer of people within the protect
- Featherbedding as experienced on union jobs is not common on open-shop work. but craft-oriented foremen and general foremen tend at times to stockpile men on the job so they will have plenty of help available when and if they are needed
- Maintaining the craft structure through the general foreman level causes unnecessary involvement of multiple supervisors on multi-craft crews, and does not develop multi-craft supervisory skills. Planning of multi-craft work that could be done at the foreman level requires involvement of higher levels of supervisors. If rigid craft lines prevail as open-shop organizations mature, it is possible that work restrictions will become a problem. The longer workers are organized along rigid lines and work is plentiful, the more the tendency for them to resist work outside craft lines. There already have been instances where welders would not work

without a fitter or do other than welding work, and skilled craftsmen would not perform unskilled work.

Still, the inefficiencies that can result from jurisdictional lines tend to be minimized in open-shop work by at least three factors

- The contractor has the final say about what craft does a specific job.
- Multiple-skilled personnel work in various crafts. This is done by changing the person's classification and moving him to another craft. Since the alternative might well be a layoff, the arrangement benefits individual workers. It also helps employers retain highly skilled craftsmen in their work force.
- The open-shop contractor has freedom in choosing foremen and general foremen. In some instances, foremen and general foremen also move from supervising one craft to supervising a different one.

Conclusions

Today's open-shop contractors catalog their employees in a large number of craft designations, depending on the size of the contractor. With many classifications, there is usually an overlap of skills between crafts. Therefore, while the classifications are rigidly identified, they are not rigidly enforced. Some craft identification is necessary in order to describe required skills, make work assignments in an orderly manner, and minimize training.

If the job is large, craft lines are more rigid because of specialized, repetitive tasks. Training can be held to a minimum, qualifying the individuals to perform only a specific task within a craft. On smaller jobs, the contractor does not maintain rigid craft lines but uses skilled craftsmen to perform a variety of skilled jobs. At the beginning and end of a job, when the work force is small and few crafts are present, flexibility of assignment is used to get work done.

The open-shop contractor has considerable flexibility. He does not have to follow rigid craft lines, or permit "featherbedding" or nonproductive personnel. He can use any amount of helpers or semi-skilled people without jurisdictional problems. There are indications, however, that craft lines are sometimes observed more rigorously than is conducive to the most efficient assignment and performance of the work. ***Contractors need to be vigilant in avoiding unduly rigid lines between classifications, which a large number of classifications might encourage. Efforts are needed to train more multi-craft journeymen and to develop multi-craft supervisors.***

VII

THE IMPACT OF JURISDICTION ON LABOR EFFICIENCY

Exclusive jurisdiction can raise the cost of construction in two ways. First, there is the direct cost of disputes—that is, job delays from jurisdictional walkouts, job pressures that interfere with the work, and morale problems that pull the job apart at the working level. Second, even where no dispute has arisen, there is the cost of following unreasonably precise jurisdictional lines, which limit both the owner's choice of contractors and the contractor's ability to assign work efficiently. This latter cost—often called “the cost of following the Green Book”—is treated in this section of our report.

The Stanford Survey

As noted earlier in this report, a team from Stanford University's Civil Engineering Department conducted a mail survey among owners and contractors to assess the impact of exclusive craft jurisdiction in the union sector of industrial, commercial and power plant construction. The questionnaire focused on 19 jurisdictional-problem areas where jurisdictional inefficiencies and/or disputes have been an issue.⁴ The problems: material handling support, operation of small equipment; incidental work; “hoisting” vs. “transport” equipment; installation of embedments in concrete; concrete formwork; placing and finishing concrete; application of curing compounds and protective coatings; installation of supports, restraints and backing; installation of non-metallic pipe and metallic tubing; erecting pre-engineered metal buildings; setting equipment, erection of scaffolding; interrelating pipe, sheetmetal and insulation work; metal decking; dry-wall (gyp-board) installation; power rigging of material and equipment; welding equipment as tools of the trade; cutting chases and wall/floor penetrations.

Approximately 440 questionnaires were distributed in a manner to ensure anonymity. Stanford University received 184 replies, a 42% return. Considering the length and complexity of the questionnaires, the nationwide response was good. The response by regions is shown on the map in Table 1. Contractors slightly outnumbered owners as respondents, with direct-hire general contractors outnumbering specialty subcontractors. The owner responses came predominantly from companies that have industrial facilities; the

⁴ These 19 jurisdictional problem areas were compiled after a series of discussions with study team members, Stanford representatives and a wide spectrum of contractor representatives. These areas are defined in Appendix 1 and further discussed with examples in Appendix 2

contractor responses were more evenly split between commercial and industrial though slightly higher in industrial.

Most projects were more than 75% complete at the time of the survey. There was a balanced distribution of projects according to size.

Survey Findings

Among the 19 jurisdictional problem areas, respondents were asked to identify for a selected project'

- those where jurisdictional disputes were an issue, a source of difficulties;
- those which had an unfavorable impact on cost and/or schedule when observing accepted jurisdictional trade practice; and the work-assignment changes. They would recommend in certain of these areas, plus manhour savings that should be realized from the change.

Where jurisdictional disputes were an issue, respondents were asked to rate the 19 areas as having "no impact at all", or "not applicable", or being "of some concern", or creating "a major problem".⁵ Six areas of jurisdictional conflict topped all the others. In descending order of importance they are:

- Setting equipment
- Material-handling support
- Operation of small equipment
- Power rigging of material and equipment
- Installation of supports, restraints and backing
- Erection of scaffolding

Examples:

Material handling support: The issue is whether such relatively unskilled work as unloading equipment, storage, warehousing and delivery of materials or equipment to skilled craftsmen should be done by members of the skilled craft union using the material, by another available skilled craft, or by less skilled crafts such as laborers, teamsters, or helpers from one craft or another. This has long been a major source of claim and counterclaim between unions. Both owners and contractors agreed that the choice should be "a management

⁵ Definition of "a major problem" situation has come up one or more times: its effects lasted several months or more, great difficulty in reaching a settlement, two or more unions clearly in conflict with each other, definitely would not choose this settlement if free to do so, results significantly and adversely affected our cost and/or schedule.

prerogative”, made according to the economic dictates of each project.

Operation of small equipment: Running such small equipment as pumps, compressors, pick-up trucks, etc., is sometimes claimed to require the full-time services of an operating engineer, or teamster, even though minimal labor or skill is involved and the equipment is used to support work done by another craft. Similar problems involve electricians on temporary lighting, or to turn on and off electric motors and generators. Stanford found a “strong consensus” among both owners and contractors that small equipment should be considered “a tool of the trade” and operated by the craft for which it facilitates work.

Many unions and contractors tend to label jurisdictional disputes as the major problems resulting from exclusive jurisdiction. But there is a growing body of evidence that the inflexibility of exclusive jurisdiction insisted on by the building trades unions is the real and major cost of jurisdiction in union construction. The unions’ unwillingness to change is cemented by agreements between unions, union convention resolutions, trade practice, tradition and historic precedents. It is a major force blocking the efficient assignment of work at job sites.

This matter was addressed in the survey. Respondents were asked to pick the top 10 jurisdictional problem areas from the 19 listed and rank them according to their negative impact on cost, and/or

TABLE 2	
Jurisdictional Problem Area	Negative Impact Rank
Materials-handling support	100 (max)
Setting equipment	86
Operation of small equipment	85
Power rigging of material and equipment	61
Installation of supports, restraints and backing	57
“Hoisting” vs. “transport” equipment	56
Erection of scaffolding	48
Incidental work	47
Installation of embedments in concrete	42
Interrelating pipe, sheet metal and insulation work	38

See Appendix 1 for definitions.

schedules, even when the contractor followed accepted trade practice and there were no disputes. The top 10, listed in Table 2, are weighted so that the highest rated item has a weight of 100.

In the final portion of the survey, the respondents were asked to identify desirable jurisdictional-work assignment changes and associated potential manhour savings in the “top 5” instances where they avoid disputes by following accepted jurisdictional trade practice.

This section of the survey demanded considerable time and effort for a careful response. Considering this, the study team was encouraged that a substantial majority of the contractors (87 of 97) and a significant number of the owners (31 of 78) responded.

Some 400 examples of jurisdictional inefficiencies were compiled together with changes that respondents would recommend to improve efficiency, reduce costs and/or shorten the schedule.⁶ An overwhelming proportion of respondents indicated that their recommended changes provided a better work sequence, the same or better quality of work, and the same or lower equipment costs.

While specific quantitative data was requested from each respondent about the cost impact of following accepted jurisdictional trade practice in each of the “top 5” problem areas, many of the returns did not provide explicit and comparable cost information. A total of 400 examples of jurisdictional inefficiencies were described, and these included 75 examples⁷ (on 35 projects) on which there was sufficient data to compute the man-hours that would have been saved, if the work had been assigned in a more logical way, as a percent of total project manhours.

The Significance of the Stanford Findings

1. This survey is the first attempt we know of to quantify the impact of jurisdiction in union construction. The owner and contractor respondents agreed on the major survey results. There was a remarkable consistency in many of the results. That union contractors would supply examples of inefficiencies and the cost on their projects is refreshing because too many contractors in the past have regarded jurisdictional assignments as none of their concern but as “something for the unions to work out”.

2. The respondents consistently pointed to the same cluster of jurisdictional problems as being their major concerns. These should be the first areas of discussion by the parties to provide contractors with more freedom to manage jobs.

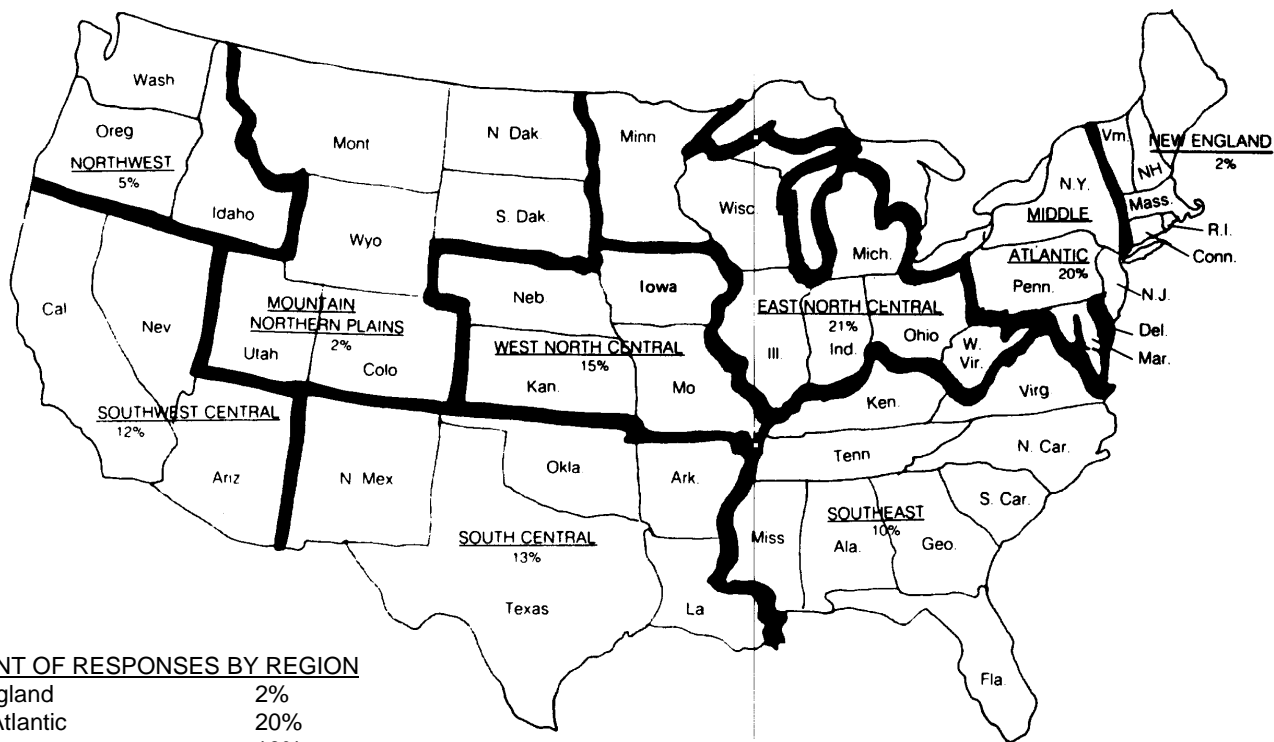
⁶ For further details, taken verbatim from the Stanford report. See Appendix 2.

⁷ On most of the other 325 examples, the responses also indicated that unnecessary costs were incurred but they were not included in the quantitative analysis, because the respondent either did not indicate the potential man-hour saving, or did not relate it to total project manhours.

3. There was almost unanimous support for the belief that following accepted jurisdictional trade practice was inefficient in many instances.

4. The 75 clearly quantified examples of jurisdictional inefficiencies, plus the many others where the responses were more qualitative, strongly support the conclusion that substantial savings would be available to union contractors, if they were not obligated to follow the accepted jurisdictional practices where there is a more logical and efficient way of safely accomplishing the work. The experiences of the study team further support their belief that the cost burden of jurisdictional inflexibility is generally felt throughout the union sector of the industry. The Stanford researchers, however, felt that the 75 quantified examples, scattered as they were across different types of projects and different problem areas, did not provide sufficient basis to compute an overall percentage savings potential for the industry.

5. Several hundred examples of jurisdictional inefficiencies provided by owners and contractors offer evidence that there may be no one work assignment that will be the most efficient way to do the same task on every job. For those instances where members of several crafts have the requisite skill, or where no skill at all is required, the efficient work assignment will vary depending on the project circumstances at the time, e.g. manpower available, sequencing of work, phase of the project, site conditions, material or equipment delivery, project organization, etc. Union contractors need more flexibility and less rigidity in jurisdictional requirements than now exist to allow them to make the best decision in each circumstance. This need becomes very apparent through study of the summary of examples of jurisdictional inefficiencies in the Appendix 2.



PERCENT OF RESPONSES BY REGION

New England	2%
Middle Atlantic	20%
Southeast	10%
East North Central	21%
West North Central	15%
South Central	13%
Mountain/Northern Plains	2%
Southwest Central	12%
Northwest	5%

VIII

CONCLUSIONS

1. Jurisdictional disputes on a project are costly because the settlement process causes job delays. The disputes also foment dissension among workers, interfere with job coordination, and frequently result in inefficient assignments. If they result in work stoppages, there are additional costs.
2. While disputes are costly, the larger cost of exclusive jurisdiction in union construction is the lack of flexibility for the contractor in making work assignments, requiring him to make inefficient assignments for jurisdictional reasons.
3. Adherence to tradition, trade practice, union charters, union convention resolutions, agreements between unions, and so-called "decisions of record" as the basis for work assignments leaves little room for considerations of efficiency.
4. Many contractors in the past viewed the determination of jurisdictional lines as a union responsibility. Fortunately, this attitude is changing.
5. Generations of exclusive jurisdiction have helped shape an industry structure of sharply defined craft lines and contractor organizations to match. This promotes a self-interest on both sides to maintain the status quo and encourages fragmented collective bargaining. Single-craft employers have tended to support established craft jurisdictions and expansionary jurisdictional claims by their counter-part unions.
6. The industry's crippled voluntary dispute-settlement system has perpetuated the problem because the decisions of the IJDB are based on union criteria for establishing jurisdictional lines. The voluntary system has deteriorated to the point where at this writing unions and contractors have agreed to a suspension of decisions by the IJDB.
7. Voluntary settlement of jurisdictional disputes appears logically preferable to a legislatively-imposed solution, but a voluntary-disputes settlement plan that reinforces inefficient practices is worse than no voluntary mechanism at all
8. Though jurisdictional disputes may occur on a relatively minor portion of a project, they can have a major, adverse impact on the total job because of the disruption they cause.

9. 9 The most troublesome areas of jurisdictional problems are defined in the Stanford survey. It also emphasizes that there is no one trade which is the efficient trade to perform many tasks in every circumstance. The contractor needs to have flexibility to make the efficient assignment, depending on circumstances.

10. The indicated additional manhour requirements in only the most-commonly cited examples in the Stanford survey provide substantive evidence that lack of contractor flexibility in work assignment—apart from the impact of disputes—is a significant cost to union contractors which needs immediate correction to allow them to compete with their growing open-shop rivals.

11. Unions and contractors alike have used collective-bargaining agreement language to stake out rigid claims to work that reinforces the practice of exclusive jurisdiction. At the same time, some collective bargaining agreements penalize contractors for failing to follow “shall assign” language.

12. The open-shop contractor has a competitive advantage by his unrestricted management right to determine work assignments. He has logically adopted craft designations for classifying worker skills, but there are indications that the accompanying jurisdictional practices sometimes limit the benefits he might have gained. Avoiding excessive craft rigidity offers potential for reducing labor costs.

13. The direct pass-through of contractor costs to owners for reimbursement places a special responsibility on owners to provide help to the parties in resolving the complex and emotional aspects of jurisdiction.

IX

RECOMMENDATIONS

For Owners

- Representatives of owners at projects should become knowledgeable about jurisdictional matters, and about the rights and role of contractors in the assignment of work and in resolving jurisdictional disputes.
- Owners should encourage and support contractor efforts to assign work in the most efficient way. Owners should recognize that when they break construction projects into bid packages of narrow segments along craft lines, they can inhibit the potential for contractor flexibility in assigning tasks to crafts. This needs to be examined with other economic trade-offs in job packaging.
- Owners should not hesitate to employ available legal actions, including damage suits, when faced by unlawful pressures on their projects.

For Union Contractors:

- Field managers for contractors should understand their rights and role in the assignment of work, and the available routes to resolution of jurisdictional disputes on their projects.
- In at least ten key areas of jurisdictional problems, contractors need to press unions in efforts to revise the basis for contractor's work assignments:

- Material-handling support
- Setting equipment
- Operation of small equipment
- Power rigging of materials and equipment
- Erection of scaffolding
- Installation of supports, restraints and backing
- "Hoisting" vs "transport" equipment
- Incidental work
- Installation of embedments in concrete
- Interrelated pipe, sheet metal and insulation work

- Any flexibility in work assignments agreed upon by the parties should be implemented by contractors. They must use new flexibility gained by change to avoid establishing precedents that may limit future assignments.

- Contractors participating in single craft employer associations should recognize the potential long-term benefit of supporting craft consolidations and more flexible jurisdictional lines.
- Contractors should recognize that jurisdictional strikes are unlawful and they should be prepared to take legal action (formal charges of unfair labor practices or damage suits) where appropriate.

For Building Trades Unions

- Local union leadership should recognize that the long-term self-interest of their members will be served by decreasing the cost burden that arbitrary jurisdictional lines and recurring disputes place on union contractors.
- Mergers of some international unions are needed to reduce the current large number of crafts and decrease the structural impediments to more flexible jurisdiction.

For Open-Shop Contractors

- Open-shop contractors should be vigilant in operating their employee-classification systems to avoid any unnecessary importation of dubious jurisdictional practices.
- Increased development of multi-skilled journeymen and multi-craft supervisors offers an exciting potential for further improvement in productivity from flexible work assignment.

Concerning Jurisdictional Disputes and Agreements

- Contractors need the flexibility to make work assignments to persons of their own choice where the work involved does not require special craft skills. Union agreements and the Green Book should be revised to reflect this. Any future agreements and decisions by the Impartial Jurisdictional Disputes Board should focus on the core work assignments of the crafts or the collection of tasks that should be assigned to a given craft by virtue of its skill, ability, training, or quality of its work. Still, recognition that there are some kinds of work common to more than one craft is an essential element of any dispute-resolution plan.
- Contractor management must be a party to any future jurisdictional agreements concerning the assignment of work. Agreements should be reached in an open atmosphere with input by all affected parties.
- A reorganized Impartial Jurisdictional Disputes Board should include efficiency and contractor choice as part of the basis for its decisions. It should also adopt a speedy decision-making

process. All parties must have access to the IJDB before job pressure erupts.

- Contractors should oppose any voluntary settlement mechanism based on today's IJDB criteria for decisions. In the absence of a functioning, voluntary settlement mechanism, contractors should not hesitate to use National Labor Relations Board processes to relieve unlawful union job pressures over jurisdictional issues.
- Owners, contractors and unions should develop a system to record the incidence of jurisdictional disputes and strikes, with the data available to all interested parties.

The NLRB should

- Speed up its sluggish handling of jurisdictional issues:
- Stop allowing a union disclaimer of work to halt a board case, unless the union pledges to refrain from unlawful conduct or the board takes some form of remedial action
- Refuse to defer to a voluntary-disputes settlement mechanism unless the voluntary system is operating effectively.

APPENDIX 1

DEFINITIONS OF JURISDICTIONAL PROBLEM AREAS

(From Stanford Survey form)

1. *Material Handling Support*—Material or equipment unloading, handling, storage, warehousing, delivery of material, or equipment to work location. One craft may claim the right to provide these services for other crafts, while those crafts may claim the right to handle their own materials and equipment.
2. *Operation of Small Equipment*—The operation of certain small equipment (such as pumps, compressors, welding machines, air/electric tuggers, push-button elevators, pendant-operated hoists, conveyors, etc.) is sometimes claimed by the operating engineers even though minimal labor and skill is involved in its operation, and the equipment is used primarily to support the operations of another craft. Similar situations can occur with pipefitters on automatic ventilating units, boilermakers on automatic boilers, and electricians on lighting. Related problems can occur with machines like fork lifts and pick-ups, which are considered by some crafts to be “tools of the trade”.
3. *Incidental Work*—A question sometimes arises when the craft doing the primary work on an item also claims incidental work, such as short-term shoveling or before-and/or-after clean-up, and a separate craft such as the laborers, also claims this work.
4. *“Hoisting” vs. “Transport” Equipment*—Certain kinds of heavy equipment (such as front-end loaders, fuel and lube trucks, cherry pickers, dual-purpose trucks (pitman), “A” frames, cranes, etc.) might be claimed by both the operating engineers and the teamsters, depending on whether it is being “operated” for a non-transport function or “driven” to move itself or transport material from one place to another
5. *Installation of Embedments in Concrete*—Each craft may claim the right to install its own embedments (conduit, sleeves, anchors, anchor bolts, pipe, frames, etc.) prior to a concrete pour, requiring careful scheduling of several crafts and subcontractors
6. *Concrete Formwork*—Carpenters and laborers sometimes divide stripping concrete formwork, depending on whether the material is reusable or non-reusable. Carpenters and cement masons may dispute low “forms” vs. “screed guides”

7. *Placing and Finishing Concrete*—A number of crafts could claim the need to be present during placing of concrete to observe and adjust forms, rebar, embedments, etc. Also, both laborers and cement masons are normally involved in handling, placing and finishing concrete, but there sometimes is a question on where unskilled laborer work leaves off and skilled finisher work becomes necessary.

8. *Application of Curing Compounds and Protective Coatings*—Several crafts sometimes become involved in applying curing compounds and protective coatings (cold-weather insulation, etc., depending on the material and method of application.

9. *Installation of Supports, Restraints and Backing*—Ironworkers, pipefitters, boilermakers, electricians, carpenters and sheetmetal workers claim supports, restraints and backing, depending on purpose and configuration.

10. *Installation of Non-Metallic Pipe and Metallic Pipe Tubing*—Laborers and pipefitters and plumbers may claim the installation of non-metallic pipe, even of the same type and material, depending on whether it is offsite (or beyond foundation), water main or sewer (laborers), or process piping or piping within a structure (pipefitters or plumbers). Disputes can also arise with metallic pipe used for tubing.

11. *Erecting Pre-Engineered Metal Buildings*—Ironworkers and sheetmetal workers sometimes divide the work between them on installation of siding (either or both); and trim such as flashing, gutters and downspouts (sheetmetal workers). Carpenters can also become involved in installing field-assembled insulated metal panels, and electricians, too, for modular wiring and light fixtures.

12. *Setting Equipment*—There are a number of labor agreements that call for two crafts in the installation of equipment. Examples: ironworkers and millwrights on turbine erection; millwrights and pipefitters on pump assemblies; electricians and ironworkers on motor generator sets; electricians and pipefitters on stress relieving; pipefitters and sheetmetal workers on air-conditioning units; boilermakers and sheetmetal workers on recovery systems; carpenters and ironworkers on pallet racks, etc

13. *Erection of Scaffolding*—Present jurisdictional precedents allow crafts to erect their own scaffolding if it is under 14 feet high, with carpenters erecting those over 14 feet

14. *Interrelated Pipe, Sheetmetal and Insulation Work*—The asbestos workers and sheet metal workers sometimes determine who installs metal lagging on the basis of the thickness of the material. A similar overlap can occur where sheetmetal workers or pipefitters might be able to do insulation associated with their work

15. *Metal Decking*—Iron workers and sheetmetal workers may divide the installation of metal decking depending on whether its use is floor or structural formwork (iron workers), roof (sheetmetal workers), or part of a plenum.

16. *Drywall (Gyp-Board) Installation*—Lathers, plasterers, carpenters and painters all sometimes claim various aspects of drywall work.

17. *Power Rigging of Material and Equipment*—There are a number of craft combinations which may claim the power-rigging portion of certain work items. Examples: Ironworkers and millwrights on turbine generators, carpenters and Ironworkers on anchor bolts; electricians and ironworkers on motor/generator sets; ironworkers and sheetmetal workers on fans and similar sheetmetal worker equipment; pipefitters and millwrights on pumps, boilermakers and millwrights on induced-draft (ID) and forced-draft (FD) fans.

18. *Welding Equipment as Tools of the Trade*—Several crafts claim the right to use welding equipment on their work or materials. For short-term needs and in isolated parts of the project, where other crafts might already have such equipment available nearby, this can sometimes cause delays while additional tools are obtained and set up.

19. *Cutting Chases and Wall/Floor Penetrations*—Exclusive jurisdiction may require certain crafts to make chases and drill or cut simple penetrations for other crafts (for example, carpenters to drill holes in studs for pipe or wiring). In other cases, crafts claim the right to do their own penetrations, which may require them to use tools with which they are not normally familiar (for example, electricians or pipefitters jackhammering concrete).

APPENDIX 2 SUMMARY OF JURISDICTIONAL INEFFICIENCIES

(Verbatim extracts from Stanford Report)

Material Handling Support—This problem area involves material or equipment unloading, handling, storage, warehousing and delivery of materials or equipment to the skilled craft needing it for fabrication and/or installation. The problem is whether this relatively unskilled work should actually be done by members of the skilled craft union that does the fabrication and installation, or whether it should be done by laborers, teamsters, helpers or similar less skilled crafts as a specialty support function. This problem area was identified as one of highest priority in our survey, and it also received a large number of narrative suggestions in Section III of the questionnaire. Among

owner, although there was a little disagreement, there was a fairly strong consensus that this materials handling support work should be done by a separate, less skilled craft than the one that is actually doing the fabrication and installation. Crafts suggested for this support work included laborers, teamsters, and ironworkers. Those respondents who preferred that the incidental handling be done directly by the skilled craft involved may have been from smaller projects that could not justify a special craft for this function. Like the owners, the contractors also generally agreed that less skilled crafts such as laborers or teamsters, or possibly helpers within a skilled craft, should do the materials handling support work. The main dissenting views seemed to come from those contractors who were forced to use teamsters full time to drive pick-up trucks to fetch materials for skilled crafts. One contractor pointed out this is not only a craft jurisdictional problem but also one of managing across the interfaces among various specialty subcontractors. In general, there also seems to be agreement that, regardless of whether the work is done by a skilled craft or by a support craft, this type of decision should be a prerogative of management, and be made according to the economic needs of the project involved.

Operation of Small Equipment—The problem area here is that the operation of certain small equipment such as pumps, compressors, pick-up trucks, and so forth is sometimes claimed to require the full time employment of an operating engineer or a teamster, even though minimal labor and skill is involved, and even though the equipment is used primarily to support the operations of another craft. Similar problems arise with electricians on lighting, or to turn on electric motors and generators. This was another of the six areas rated as highest priority on the basis of our questionnaire. In this area, there was strong and almost unanimous consensus among both owners and contractors that the operation of small equipment should be considered “a tool of the trade” that is doing the work. Almost all agreed that work characterized as “standby”, “makework”, or “featherbedding” should be eliminated.

Incidental Work—This problem arises when a craft doing its primary work also claims unskilled incidental work such as short-term shoveling or cleanup that results from the work. The topic reserved a moderate response in the questionnaire. There was no strong consensus either way among owners or contractors in this area. Some thought there should be a specialty support craft such as laborers, while others thought the work might more efficiently be done by the skilled craft involved in the principal work. Several, however, noted that this is an area that involves frequent disputes and lost time on their projects. The greatest benefit would probably come from making it clearly management’s prerogative to assign this work according to what is most efficient on the project involved.

“Hoisting” vs. “Transport” Equipment—This problem area involved

certain kinds of heavy equipment that might be claimed by the operating engineers and the teamsters, depending on whether the function is one of "operation" or "driving" or transport. Some respondents also read into this the problem of teamsters demanding to drive pick-up trucks that are used to support other skilled crafts. The overall problem area was another of those ranked highest in the survey, and it generated several responses in Section III. Although a number of specific problems were mentioned, including several that might better be classified under the operation of small equipment item there was no strong consensus as to what should be done in this area. Again, the problem might best be addressed by letting management make assignments based on economy and efficiency.

Installation of Embedments in Concrete-Problems in this area evolved because several crafts claimed the right to install their own embedments prior to a concrete pour, which requires difficult scheduling of several crafts and subcontractors. The item was ranked moderately high in the survey. There was strong and almost unanimous agreement among both owners and contractors that this work should be assigned to one of the two crafts principally involved in the installation of forms and rebar. Most actually preferred to use carpenters, but a few also indicated that ironworkers should install the embedments that are attached to the reinforcing steel.

Concrete Formwork-This problem area involves disputes between carpenters, laborers, and cement masons in doing either installation or stripping of concrete forms. The item was ranked low in the survey by owners, and generated only one suggestion to the effect that the work should be done by the craft responsible for the job. The item was ranked moderately low by contractors, but did generate several suggestions. Although several diverse views were presented, the one area of moderate consensus was that laborers should do unskilled work involving form stripping

Placing and Finishing Concrete-The problem here is a number of crafts claim the right to be involved during the pour even though their function might be just to observe and adjust forms, rebar, embedments, and so forth. There is also some dispute between laborers and cement masons, on this work. This was an item of low priority to owners, and of moderate priority to contractors. There was fairly strong consensus that observational functions should be eliminated, and where such work is assignments between laborers and cement masons themselves.

Application of Curing Compounds and Protective Coatings—This problem area can sometimes involve disputes between painters and cement masons on applying liquid coatings, and with some other trades on protective weather insulation. In the survey as a whole, the item was ranked low by both owners and contractors. In Section III,

no suggestions were offered by owners. Two contractor suggestions were offered in this area, but they were somewhat contradictory.

Installation of Supports, Restraints and Backing—The problem here is that ironworkers, pipefitters, boilermakers, electricians, carpenters and sheetmetal workers claim supports, restraints and backing, depending on purpose and configuration. In the survey the item was given high priority by both owners and contractors, and generated numerous suggestions from each in Section III of the questionnaire. Among owners, there was some difference of opinion as to whether this work should be done by the craft whose work was being supported or backed, or whether it should be assigned to a craft specializing in this work. However most seemed to feel that the work was best assigned to the ironworkers regardless of the other craft whose work was being supported. Composite crews were definitely out of favor. There was a similar difference of opinion among the contractor suggestions, but again, most quite strongly favored using the ironworkers, especially in the case of multi-purpose supports.

Installation of Non-Metallic Pipe and Metallic Tubing—Disputes arise here because laborers, pipefitters, and plumbers may claim the installation of non-metallic pipe even of the same type and material, depending on whether it is off-site or beyond the foundation, water main or sewer, or process piping, or piping within a structure. In the survey, this was an item of moderate to low priority and generated only one response from an owner. The owner favored the use of laborers, for less skilled work. Seven of the contractors offered suggestions, and all of these favored the use of less skilled laborers for this type of work.

Erecting Pre-Engineered Metal Buildings—Disputes in this case can involve ironworkers, sheetmetal workers, and carpenters, depending on whether they are installing siding, trim, or insulated metal panels, and sometimes electricians become involved in the case of modular wiring and light fixtures. This item was ranked fairly low in the survey as a whole by owners and contractors, and no owners submitted suggestions in this category. Two contractors offered suggestions, but, surprisingly, both recommended the use of composite crews, but of different types.

Setting Equipment—The problem here is one of requirements for composite crews in the setting and installation of equipment. This was the second most highly ranked item overall in the survey. It generated numerous suggestions from both owners and contractors in Section III of the questionnaire. Among owners, most of the ‘suggestions’ were more like restatements or examples of the problem. There was no general consensus as to what should be done about it, but most seemed to prefer avoiding composite crews where possible. There

was a similar diversity of opinions among contractors, but most also agreed that composite crews should be minimized or avoided.

Erection of Scaffolding—The problem in this case is that the present jurisdictional precedents allow crafts themselves or else laborers to erect their own scaffolding if it is under 14 feet high, but carpenters are required for scaffolding over 14 feet. This area was of moderate to high concern to both owners and contractors responding to the survey. Four of the owners made suggestions, of which one recommended that all scaffolding should be by the carpenters, while the other three said the craft using the scaffolding should be the one to erect it. There were numerous contractor suggestions and they reflected a considerable diversity of opinion. Most appear to prefer using laborers for scaffold erection especially for modular or patent type metal scaffolding, while others preferred letting the crew using the scaffolding be the ones to erect it, and still others preferred to let the carpenters be the ones to erect most scaffolding, especially when safety is a consideration. Again, this appears to be an area where it would be preferable to allow contractors more freedom to exercise their judgment to make assignments according to job needs.

Interrelated Pipe, Sheetmetal and Insulation Work—This problem arises when asbestos workers and sheetmetal workers sometimes determine who installs metal lagging on the basis of the thickness of the material. A similar overlap can occur when sheetmetal workers or pipefitters might be able to do insulation associated with their work. The item was of moderate concern to both owners and contractors in the survey. Two of the three owners who made suggestions favored the pipefitters for this type of work. If there is any consensus that can be read into the numerous contractor suggestions, it is that this is definitely a difficult problem area. However, there was little consensus on what to do about it.

Metal Decking--Disputes in this area occur between ironworkers and sheetmetal workers, depending on whether the installation of the metal decking is for the purpose of being a floor or a part of a structural formwork, or for a roof or as part of a plenum. The problem was ranked relatively low by both owners and contractors. The owners submitted no suggestions in this category. Among nine contractor suggestions there is no clear consensus, but most seem to favor the ironworkers.

Dry-Wall (Gyp-Board) Installation—The problem here is that laborers, plasterers, carpenters and painters all sometimes claim various aspects of this work. This was among the lowest priorities of both owners and contractors, and only one owner chose to make a suggestion, but it was not in the way of a solution. No contractors offered suggestions. From the results, it would appear that this former problem area may now have been satisfactorily resolved.

Power Rigging of Material and Equipment —This is a complex problem area involving many different crafts. It was also among the areas ranked highest by both owners and contractors, and stimulated numerous suggestions from both sides. Most owner “suggestions” were simply re-statements or examples of the problem, but where recommendations were given, most favored having power rigging done by the craft doing the installation except where the rigging might be unusually complex or difficult. One suggested use of a composite crew. The diversity of contractor suggestions and opinions also reflect the complexity of this problem area. In general, this appears to be another subject where the contractors need more on-site discretionary authority to make assignments according to the needs of the situation at hand.

Welding Equipment as Tools of the Trade — This problem arises because several crafts claim the right to use welding equipment on their work or materials. It is particularly troublesome for short-term welding needs in isolated parts of projects where other crafts might already have such equipment available, but the craft doing the work with the short-term need will obtain and set up additional tools. The problem was ranked moderately low by both owners and contractors in the survey. The complaints here dealt more with the requirement to use operating engineers to start and operate gasoline driven welders, which was the subject of an earlier problem area, than with the problem of disputes between crafts in welding. A few suggestions, however, did appeal for more flexibility in using other crafts to do small jobs when they are available nearby.

Cutting Chases and Wall/Floor Penetrations-This problem is similar to the incidental work described earlier, but deals specifically with whether the crafts should drill or cut simple penetrations for their own piping or wiring, or should involve carpenters or laborers for this type of work. The item was ranked moderately high by owners, and was of moderate concern to contractors. All four owners’ suggestions seemed to favor having laborers drill or cut the penetrations for higher skilled crafts. All but two of the 12 contractors concurred in this opinion, indicating a strong consensus in favor of using laborers for this type of unskilled work.

In several of the preceding items, a good degree of consensus can be seen. In others, however, the best that can be said is that, while there is no particular agreement on specific solutions, contractors do need more discretionary authority in making assignments most suitable for economy, safety, and efficiency to meet the needs of the particular situations at hand.

CICE REPORTS

The Findings and Recommendations of The Business Roundtable's Construction Industry Cost Effectiveness project are included in the Reports listed below. Copies may be obtained at no cost by writing to The Business Roundtable.

Project Management -- Study Area A

- A-1 Measuring Productivity in Construction
- A-2 Construction Labor Motivation
- A-3 Improving Construction Safety Performance
- A-4 First and Second Level Supervisory Training
- A-5 Management Education and Academic Relations
- A-6 Modern Management Systems
- A-7 Contractual Arrangements

Construction Technology -- Study Area B

- B-1 Integrating Construction Resources and Technology into Engineering
- B-2 Technological Progress in the Construction Industry
- B-3 Construction Technology Needs and Priorities

Labor Effectiveness -- Study Area C

- C-1 Exclusive Jurisdiction in Construction
- C-2 Scheduled Overtime Effect on Construction Projects
- C-3 Contractor Supervision in Unionized Construction
- C-4 Constraints Imposed by Collective Bargaining Agreements
- C-5 Local Labor Practices
- C-6 Absenteeism and Turnover
- C-7 The Impact of Local Union Politics

Labor Supply and Training -- Study Area D

- D-1 Subjourneymen in Union Construction
- D-2 Government Limitations on Training Innovations
- D-3 Construction Training Through Vocational Education
- D-4 Training Problems in Open Shop Construction
- D-5 Labor Supply Information

Regulations and Codes -- Study Area E

- E-1 Administration and Enforcement of Building Codes and Regulations

Summaries- More Construction For The Money
- CICE: The Next Five Years and Beyond

Supplements- The Workers' Compensation Crisis...Safety
- Excellence Will Make A Difference (A-3)