

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA)	INDICTMENT
)	
v.)	Criminal No: [filed 3/21/94]
)	
GLAZIER FOODS CO.,)	Violations:
)	15 U.S.C. § 1
Defendant.)	18 U.S.C. § 1001
)	18 U.S.C. § 371

COUNT ONE
(15 U.S.C. § 1)
(Conspiracy to Restrain Trade)

THE GRAND JURY CHARGES:

I

DESCRIPTION OF THE OFFENSE

1. Glazier Foods Co. is hereby indicted and made a defendant on the charges stated below.

2. Beginning at least as early as 1985 and continuing thereafter until at least May 1990, the exact dates being unknown to the grand jury, the defendant and others entered into and engaged in a combination and conspiracy to suppress and eliminate competition by rigging bids for the award and performance of contracts to supply wholesale grocery products to certain public school districts and other public entities located in southeastern Texas, in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Antitrust Act (15 U.S.C. § 1).

II

DEFINITIONS

3. As used herein, the term:

- (a) "Wholesale grocery products" means food and related products for the food service industry, including but not limited to, dry foodstuffs, baked goods, canned products, frozen foods, juices, meats, poultry, fish, or seafood; and
- (b) "Southeastern Texas" means the following counties within the State of Texas: Brazoria, Brazos, Fort Bend, Galveston, Harris, Matagorda, Montgomery, Walker and Waller.

III

DEFENDANT AND CO-CONSPIRATORS

4. Glazier Foods Co. is a corporation organized and existing under the laws of the State of Texas, with headquarters in Houston, Texas. During the period covered by this indictment, Glazier Foods Co. was engaged in the sale and distribution of wholesale grocery products in various locations in southeastern Texas.

5. Various corporations and individuals, not made defendants in this count, participated as co-conspirators in the

offense charged and performed acts and made statements in furtherance of it.

6. Whenever in this indictment reference is made to any act, deed, or transaction of any corporation, the allegation means that the corporation engaged in the act, deed, or transaction by or through its officers, directors, employees, agents, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

IV

THE CONSPIRACY

7. During the period covered by this count, certain public school districts and other public entities in southeastern Texas, at various times, invited wholesale grocery companies, including the defendant and corporate co-conspirators, to submit competitive bids for the award and performance of contracts to supply wholesale grocery products. The successful bidders were awarded contracts to furnish wholesale grocery products to those public school districts and other public entities for a specified period of time. As a result of the charged combination and conspiracy, the defendant and corporate co-conspirators were awarded contracts and furnished wholesale grocery products to various public school districts and other public entities. The wholesale grocery products furnished to the

public school districts were used in the preparation of meals for school children. A substantial portion of the funding used by the public school districts to purchase wholesale grocery products was provided by the Food and Nutrition Service, United States Department of Agriculture, through its Child Nutrition programs.

8. The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators, the substantial terms of which were:

- (a) to allocate among the corporate conspirators all or part of contracts to supply wholesale grocery products to certain public school districts and other public entities in southeastern Texas;
- (b) to refrain from submitting bids or to submit collusive, noncompetitive and rigged bids to certain public school districts and other public entities in southeastern Texas for contracts to supply wholesale grocery products; and
- (c) to supply wholesale grocery products to certain public school districts and other public entities in southeastern Texas at

collusive, noncompetitive and rigged prices
and receive compensation therefor.

9. For the purpose of forming and carrying out
the charged combination and conspiracy, the defendant and
co-conspirators performed the following acts, among others:

- (a) discussed among themselves the submission of
bids on upcoming contracts to supply wholesale
grocery products to certain public school
districts and other public entities in
southeastern Texas;
- (b) designated which corporate conspirator would
be the lowest responsive bidder for all or
part of contracts to supply wholesale grocery
products to certain public school districts
and other public entities in southeastern
Texas;
- (c) discussed and agreed upon prices to be
submitted on bids for contracts to supply
wholesale grocery products to certain public
school districts and other public entities in
southeastern Texas;
- (d) refrained from bidding or submitted inten-
tionally high, complementary bids for all or
part of contracts to supply wholesale gro-

cery products to certain public school districts and other public entities in southeastern Texas; and

- (e) supplied wholesale grocery products to certain public school districts and other public entities in southeastern Texas at noncompetitive prices and received compensation therefor.

V

TRADE AND COMMERCE

10. The business activities of the defendant and co-conspirators that are the subject of this count were within the flow of, and substantially affected, interstate trade and commerce.

11. During the period covered by this count, there was a substantial flow of wholesale grocery products into the State of Texas from outside the State of Texas for resale by the defendant and corporate co-conspirators to, among others, public school districts and other public entities.

VI

JURISDICTION AND VENUE

12. The combination and conspiracy charged in this count was formed and carried out, in part, within the Southern

District of Texas, Houston Division, within the five years preceding the return of this indictment.

ALL IN VIOLATION OF TITLE 15, UNITED STATES CODE,
SECTION 1.

COUNT TWO
(18 U.S.C. § 1001 - False Statement)

THE GRAND JURY FURTHER CHARGES:

1. Each and every allegation contained in paragraphs 1, 3, 4 and 6 of Count One of this Indictment is realleged with the same force and effect as if fully set forth in this count.

2. On or about August 15, 1989, in the Southern District of Texas, Glazier Foods Co. knowingly and willfully made and caused to be made certain false writings and documents, knowing the same to contain false, fictitious and fraudulent statements and entries as to material facts, in matters within the jurisdiction of the Veterans Administration, an agency of the United States of America.

3. These false, fictitious and fraudulent statements were contained in the Certificate of Independent Price Determination which was incorporated into, and formed part of, Glazier Foods Co.'s bid on Contract No. V580P-4645, a frozen juice contract, awarded by the Veterans Administration Medical Center #580 in Houston, Texas, on or about September 1, 1989. This bid was submitted and caused to be submitted by an employee of the

defendant on behalf of Glazier Foods Co. The Certificate of Independent Price Determination stated, in part:

(a) The offeror certifies that--

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered; [and]

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening[.]

4. In truth and fact, as the defendant knew, on or about August 15, 1989, the prices contained in the bid submitted by Glazier Foods Co. for Contract No. V580P-4645 had not been arrived at independently and without consultation because the defendant and another offeror and competitor had, for the purpose of restricting competition, consulted, communicated and agreed regarding the prices to be submitted, the intention to submit an offer, and the methods and factors to be used to calculate the prices offered; and the defendant had knowingly

disclosed, directly and indirectly, the prices contained in the aforementioned bid prior to the bid opening.

ALL IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 1001.

COUNT THREE
(18 U.S.C. § 371)
(Conspiracy to Commit Mail Fraud)

THE GRAND JURY FURTHER CHARGES:

1. Each and every allegation contained in paragraphs 1, and 3 through 6 of Count One of this Indictment is realleged with the same force and effect as if fully set forth in this Count.

2. Beginning at least as early as 1985 and continuing until at least as late as May 1990, the exact dates being unknown to the grand jury, in the Southern District of Texas, the defendant and co-conspirators did knowingly and willfully conspire, combine, and agree with each other to commit offenses against the United States, that is, to use and cause to be used the United States mails in furtherance and execution of a scheme and artifice to defraud public school districts in southeastern Texas of money and property by means of false and fraudulent representations, in violation of 18 U.S.C. § 1341.

3. It was a part and object of the aforesaid conspiracy that the defendant and co-conspirators would and did agree to allocate among the corporate conspirators all or parts of contracts to supply wholesale grocery products to public school districts in southeastern Texas, and to submit collusive, noncompetitive and rigged bids for those contracts.

4. It was further a part and object of the aforesaid conspiracy that the corporate conspirators would and did accept contracts to supply wholesale grocery products to public school districts in southeastern Texas awarded on the basis of their collusive, noncompetitive, and rigged bids.

5. It was further a part and object of the aforesaid conspiracy that the defendant and others caused to be placed in a United States post office or an authorized depository for mail, to be delivered by the United States Postal Service, among other things, periodic billing statements from and payments to the corporate conspirators for wholesale grocery products they supplied for contracts awarded to them on the basis of their collusive, rigged, and fraudulent bids.

6. It was further a part and object of the conspiracy that the corporate conspirators would and did

obtain, receive and accept payments for wholesale grocery products supplied pursuant to such contracts.

7. In furtherance of the conspiracy, and in order to accomplish the objects thereof, the defendant and co-conspirators performed the following acts, among others:

- (a) in each of the years 1985, 1986, 1987, 1988, 1989 and 1990, discussed among themselves the submission of bids on upcoming contracts to supply wholesale grocery products to certain public school districts in southeastern Texas;
- (b) in each of the years 1985, 1986, 1987, 1988, 1989 and 1990, designated which corporate conspirator would be the lowest responsive bidder for all or part of contracts to supply wholesale grocery products to certain public school districts in southeastern Texas;
- (c) in each of the years 1985, 1986, 1987, 1988, 1989 and 1990, discussed and agreed upon prices to be submitted on bids for contracts to supply wholesale

- grocery products to certain public school districts in southeastern Texas;
- (d) in each of the years 1985, 1986, 1987, 1988, 1989 and 1990, refrained from bidding or submitted intentionally high, complementary bids for all or part of contracts to supply wholesale grocery products to certain public school districts in southeastern Texas;
- (e) in each of the years 1985, 1986, 1987, 1988, 1989 and 1990, supplied wholesale grocery products to certain public school districts in southeastern Texas at collusive, noncompetitive and rigged prices and received compensation therefor;
- (f) in each of the years 1985, 1986, 1987, 1988, 1989 and 1990, caused billing statements from the corporate conspirators to be placed in a United States post office or an authorized depository for mail to be sent and delivered by the United States Postal

Service to public school districts,
such statements reflecting purchases of
wholesale grocery products made as a
result of rigged, noncompetitive and
fraudulent bids;

(g) in each of the years 1985, 1986, 1987,
1988, 1989 and 1990, caused payment
checks from public school districts to
be placed in a United States post
office or an authorized depository for
mail to be sent and delivered by the
United States Postal Service to the
corporate conspirators, such payments
representing compensation received as a
result of rigged, noncompetitive and
fraudulent bids; and

(h) in each of the years 1985, 1986, 1987,
1988, 1989 and 1990, caused the
corporate conspirators to obtain,
receive and accept payments mailed by
the public school districts and
delivered by the United States Postal
Service, such payments representing
compensation received as a result of

rigged, noncompetitive and fraudulent
bids.

ALL IN VIOLATION OF TITLE 18, UNITED STATES CODE,
SECTION 371.

Dated this _____ day of _____, 1994.

A TRUE BILL

FOREPERSON

"/s/"
JOSEPH H. WIDMAR
Acting Assistant Attorney General
Antitrust Division

"/s/"
JANE E. PHILLIPS

"/s/"
ALAN A PASON

"/s/"
JOAN E. MARSHALL

"/s/"
DUNCAN S. CURRIE

Attorneys, Antitrust
Division
U.S. Department of Justice

"/s/"
MARK R. ROSMAN

Attorneys, Antitrust
Division
U.S. Department of
Justice
Earle Cabell Federal
Bldg.
1100 Commerce St., Room
8C6
Dallas, Texas 75242-0898
Tel: (214) 767-8051

"/s/"
GAYNELLE GRIFFIN JONES
United States Attorney
Southern District of Texas