

**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. Detroit Tile Contractors' Association; Greater Detroit Tile Contractors' Association; Walter T. Ozias; Richard Bruny; Andrew S. Jackson; Charles E. Scott; Louis Vitali; Anthony Vivonetto; Louis Palombit; Humbert Mularoni; John Croci; Bricklayers, Masons and Plasterers' International Local Union, No. 32; Local No. 40 of the International Association of Marble, Stone and Slate Polishers, Rubbers and Sawyers, Tile and Marble Setters Helpers and Terrazzo Workers Helpers; Patrick J. Ruddy; Thomas Cowperthwaite; John E. Hughes; Daniel A. Martin; Louis Medici; Otto Williams; James Hagan; E. Stanton Piper; Randall Martin; James Randolph., U.S. District Court, E.D. Michigan, 1940-1943 Trade Cases ¶56,053, (Jul. 9, 1940)**

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United States of America v. Detroit Tile Contractors' Association; Greater Detroit Tile Contractors' Association; Walter T. Ozias; Richard Bruny; Andrew S. Jackson; Charles E. Scott; Louis Vitali; Anthony Vivonetto; Louis Palombit; Humbert Mularoni; John Croci; Bricklayers, Masons and Plasterers' International Local Union, No. 32; Local No. 40 of the International Association of Marble, Stone and Slate Polishers, Rubbers and Sawyers, Tile and Marble Setters Helpers and Terrazzo Workers Helpers; Patrick J. Ruddy; Thomas Cowperthwaite; John E. Hughes; Daniel A. Martin; Louis Medici; Otto Williams; James Hagan; E. Stanton Piper; Randall Martin; James Randolph.

1940-1943 Trade Cases ¶56,053. U.S. District Court, E.D. Michigan, Southern Division, July 9, 1940.

**Proceedings under the Sherman Anti-Trust Act are terminated by entry of a consent decree enjoining defendant associations and defendant tile contractors from agreeing or conspiring among themselves or with any labor organization or tile manufacturer to refuse to do business with any manufacturer, jobber or other person; to prevent nonmembers of the association from securing union labor or to require such persons to agree to onerous conditions; to create or participate in the operation of any bid depository or cost formula designed to fix prices in the tile industry; to prevent defendant unions or officers thereof from negotiating labor agreements with tile contractors who are not members of the association; to fine or penalize any member of the association for selling tile unset to non-members provided, however, defendants may advertise and promote the use of skilled tile setters; to refuse to install tile of any manufacturer because he has sold to non-members of the association or to report to the association any manufacturer for the purpose of accomplishing any objective enjoined by this decree.**

**Defendant unions and officers thereof are prohibited from conspiring with the association or defendant contractors or with anyone else to restrain the sale of tile; to circulate lists of member contractors for the purpose of influencing manufacturers and jobbers to do business only with those listed; to intimidate, withhold labor from, impose onerous conditions upon, blacklist, fine or penalize non-members of the association or any person or firm who is willing or able to execute an agreement to comply with the international union's requirements for wages, hours, etc., in all respects except as to those prohibited by this decree.**

**Defendant unions are enjoined from conspiring to deny to any contractor who has contracted with the international union or subordinate of defendant union the privilege of selecting for employment union workmen in good standing, or to prevent such contractor from doing business with subcontractors who are non-members; to deny members the right to transfer from one subordinate union to another or to**

**limit the amount of work a tile layer may perform provided, however, no member may be required to bargain to do a certain amount of work or to do a certain piece of work in a designated time.**

Thurman Arnold, Assistant Attorney General, John C. Lehr, U. S. Attorney for Eastern District of Michigan, Southern Division, John W. Babcock, acting Assistant U. S. attorney, Allen A. Dobey, Special Assistant to the Attorney General, Irving I. Axelrad, Special Attorney, attorneys for the United States.

Morris, Kixmiller & Baar, by George M. Morris; William E. Leahy, attorneys for the Defendants.

Before O'Brien, Judge.

#### **Final Decree**

1. This cause came on to be heard on this 9th day of July, 1940, the complainant being represented by John C. Lehr, United States Attorney, Thurman Arnold, Assistant Attorney General, and Allen A. Dobey, Special Assistant to the Attorney General, and the defendants being represented by their counsel, said defendants having appeared voluntarily and generally and waived service of process.

[ *Consent to Entry*]

2. It appears to the Court that the defendants have consented in writing to the making and entering of this decree, without any findings of fact, upon condition that neither such consent nor this decree shall be considered an admission or adjudication that said defendants have violated any law.

[ *Prior Decrees*]

3. It further appears to the Court that the Tile Contractors Association of America, Inc. and its Secretary H. Richardson Cole, have heretofore consented to the entry of a decree against them on June 10, 1940, in the District Court of the United States for the Northern District of Illinois. Eastern Division, in the case entitled *United States of America v. The Tile Contractors Association of America, Inc. et al.*, Civil Action No. 1761; and that the Wheeling Tile Co., Mosaic Tile Co., National Tile Co., Robertson Art Tile Co., Standard Tile Co., James B. Youngson, A. T. Falconer, C. G. Steinbicker, Daniel P. Forst, Harry W. Rhead, Owen Watkins, Frank Burt, Emile Francois, Duncan Millett, Ira C. Preston and John Morton, have also consented to the entry of the decree against themselves on June 17, 1940 in the District Court of the United States for the Northern District of Illinois, Eastern Division, in the case entitled *United States of America v. Mosaic Tile Company, et al.*, Civil Action No. 1788; that said decrees heretofore entered grant all the relief sought against the defendants named in this action; that no further injunction against the aforesaid association, individuals, or corporations is necessary and therefore in the best interests of the orderly administration of justice, this injunction will not extend to the aforesaid association, individuals or corporations.

[ *Decree Renders Trial Unnecessary*]

4. It further appears to the Court that this decree will provide suitable relief concerning the matters alleged in the Complaint and by reason of the aforesaid consent of the parties it is unnecessary to proceed with the trial of the cause, or to take testimony therein, or that any adjudication be made on the facts. Now, therefore, upon motion of the complainant, and in accordance with said consent it is hereby

#### **Ordered, Adjudged and Decreed**

[ *Jurisdiction*]

5. That the Court has jurisdiction of the subject matter set forth in the complaint and of all parties hereto with full power and authority to enter this decree, that the complaint states a cause of action against the defendants under the Act of Congress of July 2, 1890, entitled: "An Act to protect trade and commerce against unlawful restraints and monopolies", and the acts amendatory thereof and supplemental thereto, and that the defendants and each of them and each and all of their respective officers, directors, agents, servants, and employees, and all persons acting or claiming to act on behalf of the defendants or any of them are hereby perpetually enjoined and restrained from maintaining, or extending, directly or indirectly, any combination or conspiracy to restrain

interstate trade or commerce as alleged in the complaint by doing, performing, agreeing upon, entering upon, or carrying out any of the acts or things hereinafter prohibited.

[ *Practices of Association and Tile Contractors Enjoined*]

6. That the defendant associations and defendant tile contractors be and they are hereby perpetually enjoined and restrained from agreeing, combining, and conspiring among themselves or any of them or with any labor union or office, agent, or employee thereof or with any of them, or with a manufacturer of tile or officer, agent representative, or employee thereof or with any of them:

- (a) To refuse to do business with, or to threaten to refuse to do business with, any manufacturer, jobber, other local distributor, general contractor, or any other person;
- (b) To prevent any person firm, or corporation who is not a member either of the Tile Contractors Association of America, Inc., (hereinafter sometimes call the Tile Association) or of any local association (hereinafter sometimes called subordinate tile association) of tile contractors affiliated with and subordinate to said Tile Association from securing union labor, or to require him to agree to higher wages, shorter hours, or better working conditions than are required of tile contractors who are members of such association;
- (c) To create, operate, or participate in the operation of any bid depository;
- (d) To create, operate, or participate in the operation of any device similar to a bid depository, any central estimating bureau, any cost formula system or any other method, which device, estimating bureau, cost formula system, or other method is designed to maintain or to fix the price of tile and the installation or of any other building material or building material installation or to limit competition in bidding on tile or tile installation or on any other building material or building material installation or which has the effect of limiting the awarding authority in its free choice of the successful tile contractor on a given project;
- (e) To prevent any person, partnership, or corporation from employing union labor;
- (f) To prevent the defendant Unions, or any officer or agent of said defendant unions, including defendant unions' officers, from negotiating a labor agreement directly with a tile contractor who is not a member of the Tile Association or of the defendant tile associations, provided, however, that nothing in this decree shall prohibit the Tile Association or any subordinate tile association from insisting upon providing in its labor agreement with any union that the union shall grant to the members of such association terms as favorable to the members of such association as are granted by such union to any non-member of such association;
- (g) To fine or otherwise penalize any member of said Tile Association or subordinate tile association for selling tile unset to any person, partnership, or corporation not a member of said Tile Association or subordinate tile association;
- (h) To prevent any person, partnership, or corporation from selling tile unset; provided, however, that nothing herein shall be deemed to prevent the advancement or promotion by publicity or advertisement of the use of skilled the setters for the installation of tiles;
- (i) To refuse to install or threaten to refuse to install the material of any manufacturer because he sells or has sold tile to any particular person, partnership, or corporation;
- (j) To report to or otherwise notify directly or indirectly for the purpose of accomplishing any objective, end, or act enjoined or prohibited by this decree, any member, officer, or agent of Local No. 32 of the Bricklayers, Mason and Plasterers' International Union, or any person acting for or on behalf of it, or any member, officer or agent of Local No. 40 or any person acting for or on behalf of it, that:
  - 1. A particular manufacturer, jobber, local distributor, general contractor, tile contractor, or any other person is doing or has done business with any individual, partnership, association or corporation not a member of said Tile Association or subordinate tile associations;

2. Any individual, partnership, association, or corporation not a member of said Tile Association or subordinate tile associations has contracted for or is engaged in the installation of tile generally or on a particular job;

(k) To aid or assist Local No. 32 of the Bricklayers, Masons and Plasterers' International Union of America (Hereinafter sometimes called the International Union), or Local No. 40 of the International Association of Marble, Stone and Slate Polishers, Rubbers and Sawyers, Tile and Marble Setters Helpers and Terrazzo Workers Helpers, their officers or agents, or any of them in the imposition of fines or penalties against any person partnership, or corporation not a member of said Tile Association or subordinate tile association;

(l) To restrict the sale of tile to any person, partnership, or corporation whatsoever.

*[ Practices of Defendant Unions Enjoined]*

7. That the defendant unions, their officers, agents, and employees; be and they are hereby perpetually enjoined, restrained, and prohibited from agreeing, combining, and conspiring with the Tile association or any subordinate tile association, their officers or agents, including defendant contractors and defendant associations, or with any of them, or with any manufacturer, jobber, or local distributor or the officers, representatives, or agents thereof, or any of them;

(a) To restrain, restrict, or prevent the sale of tile to any person, partnership, or corporation;

(b) To circulate or distribute to manufacturers, manufacturers' representatives, jobbers, or distributors of tile a list or lists containing the names of contractors under agreement with said International Union or unions (hereinafter sometimes called subordinate unions) affiliated with and subordinate to said International Union, for the purpose of influencing such manufacturers, manufacturers representatives, jobbers, or distributors to do business only with contractors whose names are included on said list or lists;

(c) To withhold or threaten to withhold labor from any person partnership, or corporation;

(d) To intimidate or threaten any general contractor or awarding authority from dealing with any person, partnership, or corporation;

(e) To blacklist any person, partnership, or corporation;

(f) To require conditions and terms of any person, partnership, or corporation, which conditions and terms are not required of other contractors in the same branch of the building industry in the same locality;

(g) To impose fines or otherwise assess penalties against any person, partnership, or corporation, other than a member of the Tile Association or of a subordinate Tile association,

8. That the defendant unions, their officers, agents, or employees, shall not

(a) withhold or threaten to withhold labor from, or

(b) intimidate any general contractor or awarding authority from dealing with, or

(c) blacklist, or

(d) require conditions and terms not required of other contractors in the same branch of the building industry in the same locality save as otherwise in the decree permitted in the case of, or

(e) Impose fines or otherwise assess penalties against, any Individual, partnership, or corporation who is willing and able to execute a written agreement to comply, and to comply, in respects other than those hereinafter specified in paragraphs (a) to (k), inclusive, with the International Union's and the defendant Unions' requirements for wages, hours, and working conditions (including requirements with respect to the closed shop) required by said unions of all contractors doing similar work in the same locality:

(a) Because the wages, hours, and working conditions (including requirements with respect to the closed shop) required of such person, partnership, or corporation in the locality where such person, partnership, or corporation wishes to hire union labor are less favorable to the union members than the union requirements in some other locality where such person, partnership, or corporation also does

business, *provided*, the unions may require contractors to pay for the transportation, room, and board of employees ordered from one locality to another by contractors and to pay to such employees the wages, and to adhere to the conditions, obtaining in the locality from which the employees are ordered;

(b) Because the manufacturer of the building materials to be installed by members of the said unions for said person, partnership, or corporation either sells directly to jobbers, general contractors, or builders, or to subcontractors who carry on more than one kind of contracting business, or sells to other persons, firms, or corporations not members of the Tile Association or any subordinate tile association;

(c) Because the material to be installed by members of the said unions for such complying contractor was manufactured by employees whose wages, hours, and working conditions were less favorable to the employees than the wages, hours, and working conditions of the employees of other manufacturers of the same or of a substitute building material, or because said material was manufactured by another union; *provided, however*, that nothing in this decree shall prevent the members of the said unions from refusing, either alone or in concert, to install any building material that is prison made or that is made by a manufacturer who maintains an open shop or a company union or with whom the International Union or a subordinate union is having at the time a labor dispute with respect to wages, hours, or working conditions, or whom any such union is attempting to organize;

(d) Because such contractor has broken a rule or regulation of the Tile Association or of any subordinate Tile association, *provided, however*, that nothing in this decree shall prohibit or prevent the unions and the tile associations from disciplining any member of said associations for a breach by such member of the provisions relating to wages, hours, working conditions, or the closed shop of the labor agreement between said associations or either of them and the International Union or a subordinate union; and *provided further*, that nothing in this decree shall prohibit or prevent the unions from disciplining any contractor for a breach by such contractor of the provisions relating to wages, and hours, working conditions, or closed shop of the labor agreement under which he operates;

(e) Because such complying contractor is not a member either of the Tile Association, of a subordinate tile association, or of any other association of contractors;

(f) Because such complying contractor carries no stock of tile or of any other building material or carries an insufficient quantity of tile or of other building material, or because he does business from his residence, or because he maintains no show room; or because he carries on more than one kind of contracting business; or because he is a general contractor;

(g) Because such person, partnership, or corporation has refused to make payments to any officer, agent, member, or employee of the International Union, or subordinate or defendant unions other than payments due under the contract made or to be made between said parties;

(h) Because such person, partnership, or corporation has refused to deposit with the International Union or a subordinate or defendant union, or any officer or agent thereof, an unreasonable wage bond. For the purposes of this Decree, it is agreed that a reasonable wage bond shall be one conditioned upon the employer's meeting his payroll obligation on the particular job;

(i) Because said person, partnership, or corporation, after having made a bona fide request for the privilege of hiring men from the local unions, and having been refused, has used the tools or has hired persons not in good standing with the International Union;

(j) Because such persons, partnership, or corporation sells, has sold, or contemplates selling tile unset to any individual, partnership, or corporation;

(k) Because such person, partnership, or corporation had in the past, worked with the tools, provided that henceforth, only one contractor member of any firm shall work with the tools.

[ *Other Practices of Defendant Unions Enjoined* ]

9. That the defendant unions be and they are hereby perpetually enjoined and restrained from agreeing, combining, and conspiring with each other or with any other person, firm, corporation, or association, or any officer or employee thereof, or any of them;

(a) To deny to any contractor who has entered into, and who is fully performing, an agreement with the International Union or with a subordinate or defendant union, the privilege of selection for employment of any union workman in good standing who is at the time unemployed and who is willing to work for such contractor, *provided, however*, that nothing in this decree shall prevent the International Union or a subordinate or defendant union from insisting upon, or any union and any tile association from mutually agreeing to, a “spread-the-work” plan and applying the same without discrimination among tile association members and tile contractors who are not members of the Tile Association; or

(b) To threaten to impose upon any general contractor who is and has been fully performing a written agreement with the International Union or any subordinate or defendant union, restrictions or requirements not imposed upon his competitors because he does business with a subcontractor who is not a member either of the Tile Association or a subordinate tile association or of any other association of subcontractors ; *provided, however*, that nothing in this decree shall prevent such unions or any of them, either alone or in concert, from imposing such conditions as they or it may wish upon the supplying of union labor to a general contractor who does business with a subcontractor who does not have, or who has failed fully to comply with, a labor agreement with such unions or any of them;

(c) To deny to any bona fide member in good standing of the International Union or of any subordinate union the right to transfer bona fide his membership from one subordinate union to another, or to work in the jurisdiction of another subordinate union, in accordance with the provisions of Article XV of the Constitution of the International Union, (Revised and Adopted September, 1938);

(d) To violate any provisions contained in the Constitution of the International Union;

(e) To limit the amount of work a tile layer may perform, or to limit the use of machinery or tools, or to determine the number of tile layers to be employed on any specific job, *provided, however*, that no member of a subordinate union shall be required to bargain or contract to lay or to lay a designated number of feet of tile or do a certain piece of work in a designated time.

[ *Constitutions, By-Laws, Etc., Declared Void*]

10. That all constitutions, by-laws, resolutions, and agreements of the defendant tile contractors associations, the defendant unions and the arbitration board, the membership of which consists of representatives of the defendant tile contractors associations and the defendant unions insofar as said constitutions, by-laws, resolutions, and agreements authorize, provide, or permit any activity prohibited by this decree, are hereby declared unlawful and of no force and effect.

[ *Binding Effect of Decree*]

11. That the terms of this decree shall be binding upon, and shall extend to each and everyone of the successors in interest of any and all of the defendants herein, and to any and all corporations, partnerships, associations, and individuals who may acquire the ownership, control, directly or indirectly, of the property, business and assets of the defendants or any of them, whether by purchase, merger, consolidation, reorganization, or otherwise.

[ *Access to Records*]

12. That for the purpose of securing compliance with this decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on the written request of the Attorney General or an Assistant Attorney General and on reasonable notice to the defendants made to the principal office of the defendants, be permitted (a) reasonable access, during the office hours of the defendants, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendants, relating to any of the matters contained in this decree, (b) subject to the reasonable convenience

of the defendants and without restraint or interference from them, to interview officers or employees of the defendants, who may have counsel present, regarding any such matters; and the defendants, on such request, shall submit such reports in respect of any such matters as may from time to time be reasonably necessary for the proper enforcement of this decree; *provided, however*, that information obtained by the means permitted in this paragraph shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice except in the course of legal proceedings in which the United States is a party or as otherwise required by law.

[ *Activities Not Enjoined*]

13. That it is *provided, however*, that nothing herein contained shall, with respect to any act not enjoined by this decree, prohibit, prevent, or curtail the rights of the defendant unions from picketing or threatening to picket, circularizing or disseminating accurate information or carrying on any other lawful activities against anyone, or with reference to any product when the defendant unions or their members have a strike, grievance, or controversy, or from lawfully seeking to attain and carry out the legitimate and proper purpose and functions of a labor union.

[ *Jurisdiction Retained*]

14. That jurisdiction of this cause is retained for the purpose of-enabling any of the parties to this decree to make application to the Court at any time for such further orders and directions as may be necessary or appropriate in relation to the construction of or carrying out of this decree, for the modification hereof upon any ground (including any modification upon application of-the defendants or any of them required in order to conform this decree to any Act of Congress enacted after the date of entry of this decree), for the enforcement of compliance herewith and the punishment of violations hereof.

Jurisdiction of this cause is retained for the purpose of granting or denying such applications as justice may require and the right of the defendants to make such applications and to obtain such relief is expressly granted.

[ *Effective Date*]

15. That this decree shall become effective upon date of entry hereof.