

**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. Brooker Engineering Company. Fife-Pearce Electric Company, W. D. Gale, Inc., Gray Electric Company, Inc., Hatzel & Buehler Inc., Kuehne Electric Company, Inc., Long Electric Company, Inc., McCleary-Harmon Company, The Pierce Company, Inc., Southeastern Electric Company, Inc., Turner Engineering Company, The Detroit Electrical Contractors Association, Local Number 58, International Brotherhood of Electrical Workers, Murry L. Ansel, Marinus C. Brand, Lester F. Brooker, E. D. Brown, Frank Caccia, Lloyd J. Coons, Harry B. Fife, W. D. Gale, F. M. Georgi, Frank M. Hydon, John H. Kuehne, B. M. Long, F. J. O'toole, Marshal G. Pearce, Charles D. Pierce, C. O. Reckard and Waldso Turner., U.S. District Court, E.D. Michigan, 1940-1943 Trade Cases ¶56,183, (Jan. 7, 1942)**

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United States of America v. Brooker Engineering Company. Fife-Pearce Electric Company, W. D. Gale, Inc., Gray Electric Company, Inc., Hatzel & Buehler Inc., Kuehne Electric Company, Inc., Long Electric Company, Inc., McCleary-Harmon Company, The Pierce Company, Inc., Southeastern Electric Company, Inc., Turner Engineering Company, The Detroit Electrical Contractors Association, Local Number 58, International Brotherhood of Electrical Workers, Murry L. Ansel, Marinus C. Brand, Lester F. Brooker, E. D. Brown, Frank Caccia, Lloyd J. Coons, Harry B. Fife, W. D. Gale, F. M. Georgi, Frank M. Hydon, John H. Kuehne, B. M. Long, F. J. O'toole, Marshal G. Pearce, Charles D. Pierce, C. O. Reckard and Waldso Turner.

1940-1943 Trade Cases ¶56,183. U.S. District Court, E.D. Michigan, Southern Division. Civil Action No. 3146. January 7, 1942.

**Upon consent of all parties a decree is entered in proceedings under the Sherman Anti-Trust Act, restraining the defendants from combining and conspiring to restrain interstate trade and commerce in electrical contracting work. Among the activities enjoined are collusive bidding, allocation of contracts by collusive selection of the low bidder, persuading prospective customers not to award contracts to contractors outside the Detroit area, refusing or threatening to refuse union labor to outside contractors, slowing down work by express orders, and giving or receiving consideration to violate the law.**

John C. Lehr, U. S. District Attorney, Detroit, Mich.; Thurman Arnold, Assistant Attorney General, and Allen A. Dobey Special Assistant Attorney General, Washington, D.C., for the Plaintiff.

Richard J. Sullivan, Edward N. Barnard, and Frank W. Donovan, Detroit, Mich., and Brud, Abbot & Morgan, New York City, for the Defendants.

Before O'Brien, District Judge.

#### **Final Decree**

The complainant, United States of America, having filed its complaint herein on January 7th, 1942; all the defendants having appeared and severally filed their answers to such complaint denying the substantive allegations thereof; all parties hereto by their respective attorneys herein having severally consented to the entry of this final decree herein without trial or adjudication of any issue of fact or law herein and without admission by any party in respect of, any such issue;

NOW, THEREFORE, before any testimony has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon consent of all parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

[ *Jurisdiction*]

(1) That the Court has jurisdiction of the subject matter and of all parties hereto; 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.

[ *Injunction*]

(2) 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 forming, participating in, 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.

[ *Activities Enjoined*]

(3) That the defendant, Detroit Electrical Contractors Association and each and all of its officers, agents, servants and employees and the defendant electrical contractors 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 be and they hereby are perpetually enjoined and restrained from agreeing, combining, or conspiring among themselves or any of them or with any electrical contractor or with the defendant Local Number 58, International Brotherhood of Electrical Workers, or with any other labor union or with any officer, agent or employee of said labor union or of any other labor union:

[ *Collusive Bidding*]

(a) To establish collusive or non-competitive bids or estimates for contracts for the installation, alteration or repair of electrical systems;

[ *Allocation of Contracts*]

(b) To allocate among themselves contracts for the installation, alteration or repair of electrical systems:

[ *Restraint of Work*]

(c) To restrain electrical contractors from engaging in the installation, alteration or repair of electrical systems;

[ *Division of Profits*]

(d) To divide the profits resulting from the installation, alteration, or repair of electrical systems among electrical contractors not actually engaged in jointly installing, altering or repairing said electrical systems;

[ *Prevention of Bidding*]

(e) To pay any electrical contractor, to refrain from bidding or to give any consideration of any character for such purpose;

[ *Discrimination*]

(f) To refuse to do business with, or to threaten to refuse to do business with, any manufacturer, Jobber or any distributor or any other person, or to discriminate as to terms on which business will be transacted with such manufacturer, jobber, distributor, or person;

[ *Prevention of Labor Agreement*]

(g) To prevent the defendant Local Number 58, International Brotherhood of Electrical Workers, or any officer, agent, or employee thereof including defendant Union officers, from negotiating a labor agreement directly with any electrical contractor;

*[ Refusal to Install Equipment]*

(h) To refuse to install or threaten to refuse to install the electrical equipment of any manufacturer, distributor, or Jobber because he sells or has sold electrical equipment to any particular person, firm or corporation;

*[ Refusal To Buy]*

(i) To refuse to buy from any manufacturer, distributor, or jobber of electrical equipment because he sells or has sold electrical equipment to any particular person, firm, or corporation;

*[ Bidding with Standard Cost Formulae]*

(j) To refrain from submitting bids or estimates or undertaking contracts for the installation or alteration or repair of electrical systems except at prices that include all or stipulated items of cost for materials and labor plus a stipulated overhead or except in accordance with a standard cost formula or standard percentage for overhead provision;

*[ Refraining from Submitting Bids]*

(k) To refrain from submitting bids or estimates or undertaking contracts for the installation or alteration of electrical systems;

*[ Refraining from Accepting Price Concessions]*

(l) To refrain from soliciting or accepting legal price concessions on purchases of electrical equipment;

*[ Examination of Estimates]*

(m) To permit estimates or job costs of individual defendant electrical contractors to be examined by any representative or representatives of the defendant Detroit Electrical Contractors Association; or by any person or persons whatsoever outside of the individual defendant electrical contractor's own organization except in the course of the negotiation of a labor agreement;

*[ Slowing Down Work]*

(n) To persuade or coerce, or to cause to be persuaded or coerced, directly or indirectly, the members of Local Number 58 when working for any electrical contractor to slow down the rate of speed at which such members of Local Number 58 normally work;

*[ Gifts to Union]*

(o) To give the defendant Local Number 58, any of its officers, agents, employees, or members, any sum of money or any property whatsoever, tangible or intangible, other than wages for electrical work actually performed; or such contributions, otherwise lawful, for legitimate purposes which do not have the purpose or effect of violating the provisions of this paragraph 3;

*[ Threats Against Competitive Bidders]*

(p) To threaten persons, firms, or corporations engaged in the installation, alteration or repair of electrical systems, who submit competitive bids or estimates, or who refuse to withdraw competitive bids or estimates already submitted on prospective contracts for the installation, alteration, or repair of electrical systems, or persuading persons, firms, or corporations engaged in the installation, alteration, or repair of electrical systems to refrain from submitting competitive bids or estimates, or to persuade persons, firms, or corporations engaged in the installation, alteration, or repair of electrical systems to withdraw competitive bids or estimates already submitted on prospective contracts, for the installation, alteration or repair of electrical systems;

*[ Influencing Union]*

(q) To influence Local Number 58, any of its officers, agents, employees, or members, to discourage or to prevent persons, firms, or corporations from engaging in the installation, alteration, or repair of electrical systems;

*[ Supplying Information]*

(r) To supply Local Number 58, any of its officers, agents, employees, or members with information as to the activities or policies of any person, firm, or corporation when such information is designed to encourage Local Number 58, any of its officers, agents, employees, or members to discriminate against such person, firm, or corporation because of such activities or policies.

*[ Other Activities Enjoined]*

(4) That the defendant Detroit Electrical Contractors Association, its officers, agents, servants, and employees, and all persons acting or claiming to act on its behalf, and the defendant Electrical Contractors, their respective officers, agents, servants, employees, and all persons acting or claiming to act on their behalf are hereby perpetually enjoined and restrained from:

*[ Restraining Work]*

(a) Restraining electrical contractors from engaging in the installation, alteration, or repair of electrical systems;

*[ Payments to Refrain from Bidding]*

(b) Paying any electrical contractor to refrain from bidding or giving any consideration of any character for such purpose;

*[ Discriminatory Refusal to Deal]*

(c) Refusing to do business with any manufacturer, jobber, or distributor, or any other person, or to discriminate as to terms on which business will be transacted with such manufacturer, jobber, or distributor or other person, where the purpose and the effect of such refusal is to cause such manufacturer, jobber, or distributor, or other person not to do business with any other electrical contractor;

*[ Refusal to Install Equipment]*

(d) Refusing to install or threatening to refuse to install electrical equipment of any manufacturer, distributor, or jobber because he sells or has sold electrical equipment to any particular person, firm or corporation;

*[ Refusal to Buy]*

(e) Refusing to buy from any manufacturer, distributor, or jobber of electrical equipment because he sells or has sold electrical equipment to any particular person, firm, or corporation;

*[ Threats Against Competitive Bidders]*

(f) Threatening persons, firms, or corporations engaged in the installation, alteration or repair of electrical systems, who submit competitive bids or estimates, or who refuse to withdraw competitive bids or estimates already submitted on prospective contracts for the installation, alteration, or repair of electrical systems, or persuading persons, firms, or corporations engaged in the installation, alteration, or repair of electrical systems to refrain from submitting competitive bids or estimates, or persuading persons, firms, or corporations engaged in the installation, alteration, or repair of electrical systems to withdraw competitive bids or estimates already submitted on prospective contracts, for the installation, alteration or repair of electrical systems;

*[ Influencing Union]*

(g) Influencing Local Number 58, any of its officers, agents, employees, or members to discourage or to prevent persons, firms or corporations from engaging in the installation, alteration, or repair of electrical systems.

[ *Union Enjoined*]

(5) That the defendant Local Number 58, International Brotherhood of Electrical Workers, its officers, agents, or employees, including the defendant union officers, and all persons acting or claiming to act on its behalf be and they hereby are perpetually enjoined and restrained and prohibited from agreeing, combining or conspiring with the defendant Detroit Electrical, Contractors Association or the defendant electrical contractors, their officers, agents, or employees, or any of them, or with any electrical contractor whatsoever or its officers, agents or employees:

[ *Allocation of Contracts*]

(a) To allocate among electrical contractors contracts for the installation, alteration, or repair of electrical systems;

[ *Restraining Work*]

(b) To restrain electrical contractors from engaging in the installation, alteration, or repair of electrical systems;

[ *Restraint Against Award of Contracts*]

(c) To persuade, coerce or restrain any person, partnership or corporation from awarding contracts for the installation, alteration or repair of electrical systems to any person, firm, or corporation;

[ *Slowing Down Work*]

(d) To persuade or coerce the members of said Local Number 58 when working for any electrical contractor to slow down the rate of speed at which such members of Local Number 58 normally work;

[ *Threats against Competitive Bidders*]

(e) To threaten persons, firms, or corporations engaged in the installation; alteration or repair of electrical systems, who submit competitive bids or estimates, or who refuse to withdraw competitive bids or estimates, already submitted on prospective contracts for the installation, alteration, or repair of electrical systems, or persuading persons, firms, or corporations engaged in the installation, alteration, or repair of electrical systems to refrain from submitting competitive bids or estimates, or persuading persons, firms or corporations engaged in the installation, alteration, or repair of electrical systems to withdraw competitive bids or estimates already submitted on prospective contracts, for the installation, alteration or repair of electrical systems:

[ *Wrongful Use of Union Influence*]

(f) To use the influence of the defendant union to discourage or prevent persons, firms or corporations from engaging in the installation, alteration or repair of electrical systems;

[ *Receiving Gifts*]

(g) To demand or receive from any person, firm, or corporation engaged as an employer in the installation, alteration or repair of electrical systems any sum of money or any property whatsoever, tangible or intangible, other than wages for electrical work actually performed; or such contributions, otherwise lawful, for legitimate purposes which do not have the purpose or effect of violating the provisions of this paragraph 5.

[ *Discrimination*]

(h) To prevent any person, firm, or corporation engaged in the Installation, alteration, or repair of electrical systems from securing union labor from Local Number 58, or to require said person, firm, or corporation to agree to higher wages, shorter hours, or better working conditions than are required of the defendant electrical contractors;

[ *Labor Agreements*]

(i) To refrain from the negotiation of a labor agreement directly with any electrical contractor;

[ *Refusal to Install Equipment*]

(j) To refuse to install or threaten to refuse to install the electrical equipment of any manufacturer, distributor, or jobber because he sells or has sold electrical equipment to any particular person, firm, or corporation;

[ *Coercion against Competitive Bidding*]

(k) To coerce or to persuade persons, firms, or corporations engaged in the installation, alteration, or repair of electrical systems to refrain from submitting bids except at prices that include all or stipulated items of cost for materials and labor plus a stipulated overhead or except in accordance with a standard cost formula or standard percentage for overhead provision;

(l) To coerce or to persuade persons, firms, or corporations engaged in the installation, alteration, or repair of electrical systems to refrain from submitting bids or estimates that have not previously been examined by a representative or representatives of the defendant Detroit Electrical Contractors Association or by any person or persons whatsoever outside of the individual electrical contractor's own organization.

[ *Collusive Bidding*]

(6) That the defendant Local Number 58, International Brotherhood of Electrical Workers, its officers, agents or employees, including the defendant union officers, and all persons acting or claiming to act on its behalf be and they hereby are perpetually enjoined and restrained and prohibited from agreeing, combining or conspiring with the defendant Electrical Contractors Association or the defendant Electrical Contractors, their officers, agents or employees, or any of them, or with any electrical contractor whatsoever, or its officers, agents or employees, or with any other labor union, its officers, agents or employees, to establish collusive or non-competitive bids or estimates for contracts for the installation, alteration or repair of electrical systems.

[ *Fixing Prices*]

(7) 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 meeting together or otherwise communicating: with one another for the purpose of discussing the fixing of prices (not including wages), the allocation of electrical contracts, the establishment of quotas, or for the purpose of consummating any of the acts enjoined by this decree.

[ *Effect on Successors*]

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

[ *Examination of Records*]

(9) 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 the Assistant Attorney General in charge of the Anti-trust Division, and on reasonable notice to the defendants made to the principal office of the defendants; be permitted (a) 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 the matters contained in this decree, (b) subject to the reasonable convenience of the defendants and without restraint or interference from them subject to any legally recognized privilege, to interview officers or employees of the defendants, who may have counsel present, regarding any such matters and the defendants, on such request, 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

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 shall be a party and which shall have for their purpose the enforcement of this decree or as otherwise required by law.

[ *Retention of Jurisdiction*]

(10) That jurisdiction of this cause is retained for the purpose of enabling any of parties to this decree to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this decree, for the modification or termination of any of the provisions thereof for the enforcement of compliance therewith and for the punishment of violations thereof.

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