

U. S. v. AIR CONDITIONING INDUSTRY

**UNITED STATES OF AMERICA vs. VOLUNTARY
CODE OF THE HEATING, PIPING, AND AIR-
CONDITIONING INDUSTRY, ET AL., DEFENDANTS.**
IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF PENNSYLVANIA.

Civil Action No. 698.

UNITED STATES OF AMERICA, PLAINTIFF

VS.

VOLUNTARY CODE OF THE HEATING, PIPING, AND AIR-
CONDITIONING INDUSTRY FOR ALLEGHENY COUNTY,
PENNSYLVANIA, HEATING AND PIPING CONTRACTORS
PITTSBURGH ASSOCIATION, PAUL J. HEENAN, UNITED
ASSOCIATION OF STEAM, HOT WATER, REFRIGERATION,
PNEUMATIC TUBE, HYDRAULIC, AIR, OIL, GASOLINE,
GAS, AND PROCESS PIPE FITTERS, WELDERS AND
HELPERS LOCAL UNION No. 449 OF PITTSBURGH, PENN-
SYLVANIA, UNITED HEATING Co., BAKER SMITH & Co.,
INC., BARTLEY-O'NEILL COMPANY, WM. M. CLARK
& COMPANY, JOS. C. MEYER Co., F. E. GEISLER & COM-
PANY, INCORPORATED, THE G. F. HIGGINS COMPANY,
IRON CITY HEATING COMPANY, LANGDON-KASCHUB
COMPANY, MCGINNESS, SMITH & MCGINNESS COM-
PANY, MOSS AND BLAKELEY PLUMBING COMPANY, W.
N. SAUER COMPANY, GEORGE H. SOFFEL COMPANY,
WAYNE CROUSE, INC., THE HUFFMAN-WOLFE COM-
PANY, EASTERN PLUMBING AND HEATING COMPANY,
FRANK A. SPRAGUE, NORMAN S. SPRAGUE, JR., ROBERT
E. DAUME, WILLIAM J. GRAHAM, WILLIAM S. WILSON,
THOMAS KING, EDWARD F. CASS, PAUL G. CASS,
ADOLPH C. MATTER, LOUIS J. MATTER, GEORGE B.
STEWART, W. C. NIEBAUM, FRED E. HUBBS, JOHN M.
CUDDYRE, F. P. MADIGAN, JOSEPH G. HERTWECK, J. H.
CLARK, CHAS. A. DEVLIN, ALBERT JOHNS, THOMAS
E. KINSELLA, JOHN J. MORRISON, ALBERT J. NEIDEN-
BERGER, HOWARD THOMPSON, HARRY HAIGMEIR, JOHN
A. MCGUIRE, LEO A. GREEN, FRANK R. JOHNSTON,
JAMES AHEARN, AND JOSEPH C. O'TOOLE, DEFENDANTS.

This cause coming on to be heard on the 8th day of December 1939, and the defendants having waived process and service and having appeared herein,

And counsel for the plaintiff and for the defendants having consented to the making and entering of this judgment,

Now, therefore, without taking any testimony or evidence and in accordance with said consent of counsel, it is hereby

ORDERED, ADJUDGED, and DECREED AS FOLLOWS:

1. That the Court has jurisdiction of the subject matter and of all the 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.

2. That United Heating Co. be dissolved not later than March 1, 1940.

3. That the Voluntary Code of the Heating, Piping, and Air Conditioning Industry for Allegheny County, Pennsylvania, hereinafter referred to as the Voluntary Code, be dissolved forthwith.

4. That the defendants and each of them and all of their respective officers, directors, agents, servants, employees, and all persons acting or claiming to act on behalf of the defendants or any of them, and all members of defendant United Association of Steam, Hot Water, Refrigeration, Pneumatic Tube, Hydraulic, Air, Oil, Gasoline, Gas and Process Pipe Fitters, Welders and Helpers Local Union No. 449 of Pittsburgh, Pennsylvania, hereinafter referred to as Local 449, be and they hereby are perpetually enjoined and restrained

A. From in any way engaging in, maintaining, extending, continuing, or reviving, either directly or indirectly, in whole or in part, by any means whatsoever, the combination and conspiracies in restraint of trade

and commerce in heating materials, parts, supplies, apparatus, and equipment used in connection with heating and ventilating systems, described in the complaint herein, as follows:

16. Beginning on or about August 4, 1937, the defendants or some of them, have engaged in an unlawful combination and conspiracy to restrain and burden, and pursuant thereto to have actually restrained and burdened, the aforesaid interstate trade and commerce in heating equipment, in violation of the Act of Congress approved July 2, 1890, entitled "An Act To protect trade and commerce against unlawful restraints and monopolies," and acts amendatory thereof and supplementary thereto, in the manner and by the means as follows:

17. Local 449, Leo A. Green, Frank R. Johnston, Howard Thompson, the Contractors Association, E. J. Deere, J. J. Sneider, H. E. Kaschub, Chas. F. Ruege, William J. Graham, and Jacob Soffel, caused the organization of the Voluntary Code as aforesaid, on or about October 6, 1937. Shortly after such organization the Voluntary Code formulated and placed into effect its constitution and bylaws which provided, among other things, (a) that no member of the Voluntary Code could take any heating contract at less than the estimated cost of the heating equipment and labor used, exclusive of cash discounts, (b) that members of the Voluntary Code must submit copies of all heating and ventilating bids, other than bids on Public Works Administration projects, to a bid depository operated by said Voluntary Code, to be opened, tabulated, and made available to the other members of the Voluntary Code, (c) that each member of the Voluntary Code pay fees and dues to said Voluntary Code an amount equal to $\frac{1}{2}$ of 1% of each contract or order for work exceeding \$250.00, other than contracts financed by the Public Works Administration, and (d) that violations of said provisions be punishable by any monetary fine which the Board of Directors may levy, and by sus-

pension from participation in the Voluntary Code. Said provisions have been enforced so as to prevent contractor members from freely making their estimates for heating equipment and installation services, from lowering their prices therefor after their bids have been submitted, and from fully competing with one another in the sale at competitive prices of heating equipment moving in interstate commerce.

18. Upon the organization of the Voluntary Code as described above, Local 449 entered into an agreement with the Voluntary Code and its members, and the Contractors Association and its members, to limit employment of the members of Local 449 to the members of the Voluntary Code, to the exclusion of all other heating contractors and all other persons, firms, and corporations, irrespective of the readiness of such other contractors to adhere to union requirements respecting wages, hours, conditions of employment, and collective bargaining. The purpose and effect of said agreement has been to force substantially all heating contractors doing business in Pittsburgh to submit to the unreasonable code provisions, fees, and restraints enumerated above, or to make payments to contractor members for avoidance of said unreasonable provisions, fees, and restraints.

19. On or about April 20, 1936, Local 449, Leo A. Green, Wm. J. Kinsella, John M. Cuddyre, John L. Curley, and John A. McGuire caused to be formed defendant United Heating Co., for the purpose of entering into a nonprofit heating contracting business. Since such organization and continuously up to and including the time of filing this complaint, said company has been wholly owned and operated by Local 449. The said United Heating Co. has consistently submitted bids on heating equipment and installations against contractors and builders who are not members of the Voluntary Code, at prices below cost. The said bids have been submitted and the operations of the United Heating Co. generally have been carried on not for the purpose of obtaining profit but to compel

contractors and builders to become members of the Voluntary Code and to drive out of business those contractors and builders who purchase heating equipment directly from manufacturers or from dealers who are not members of the Voluntary Code.

20. The defendants have conspired together as aforesaid with the purpose and intent of unlawfully (a) monopolizing for the benefit of the members of the Voluntary Code, and of the Contractors Association, to the exclusion of substantially all other heating contractors, the sale and installation of heating equipment in the City of Pittsburgh; (b) raising prices of heating equipment and installation services, as described above; (c) obstructing and eliminating the purchase of heating equipment by general contractors or builders direct from manufacturers or from dealers who are not members of the Voluntary Code; (d) preventing heating contractors having their principal place of business outside the Commonwealth of Pennsylvania from coming into the City of Pittsburgh, competing therein for the business of furnishing heating equipment and services, and transporting heating equipment in interstate commerce into the said city; and (e) interfering with and restraining interstate trade and commerce in heating equipment.

B. From entering into or carrying out, directly or indirectly, by any means whatsoever, any combination or conspiracy of like or similar character or effect; and

C. From doing, performing, agreeing upon, entering upon, or carrying out (without limitation of the foregoing) any of the following things:

(a) Creating, operating, or participating in the operation of any association of heating contractors maintaining a bid depository or similar device designed to maintain or to fix the prices of heating equipment or to limit competition in bidding on heating installations, or having the effect of maintaining or fixing prices of heating equipment or of limiting competition in bidding on heating installations.

(b) Operating or participating in the operation of United Heating Co., or creating, operating, or participating in the operation of any like or similar organization, company, firm, or corporation used to discriminate, as described in the complaint herein, against contractors, builders, or other persons who are not members of an association such as is described in subparagraph (a) hereof, or against contractors, builders, or other persons who purchase heating equipment directly from manufacturers or from dealers who are not members of such an association.

(c) Agreeing to limit or limiting employment of members of Local 449 to contractors, builders, or other persons who are members of an association of heating contractors such as is described in subparagraph (a) hereof, or otherwise discriminating against any contractor, builder, or other person who is not a member of such an association or who purchases heating equipment directly from manufacturers or from dealers who are not members of such an association.

(d) Accepting or contracting for any fees, dues, moneys, payments, or other property, the consideration for which is the procurement of or a promise to procure labor for contractors or others who are not members of the Voluntary Code, of the Contractors Association, or of any other like or similar association.

5. That all constitutions, bylaws, resolutions, and agreements of and between Local 449, the Voluntary Code, and the Contractors Association insofar as they authorize, provide for, or relate to a bid depository, or authorize, provide for, or relate to any limitation of employment of members of Local 449 to members of the Voluntary Code or to members of the Contractors Association, are hereby declared illegal, void, and of no force and effect.

6. That the terms of this judgment 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, firms,

and individuals who may acquire the ownership or 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.

7. That for the purpose of securing compliance with the judgment, authorized representatives of the Department of Justice shall, upon the request of the Attorney General or an Assistant Attorney General, be permitted access, within the office hours of the defendants, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or control of the defendants or any of them, relating to any of the matters contained in this judgment; that any authorized representative of the Department of Justice shall, subject to the reasonable convenience of the defendants, be permitted to interview officers or employees of defendants, without interference, restraint, or limitation by defendants; that defendants, upon the written request of the Attorney General, shall submit such reports with respect to any of the matters contained in this judgment as may from time to time be necessary for the proper enforcement of this judgment.

8. That jurisdiction of this cause and of the parties hereto is retained for the purpose of giving full effect to this judgment and for the enforcement of strict compliance therewith, and for the further purpose of making such other and further orders and judgments or taking such other action as may from time to time be necessary.

Dated December 8, 1939.

F. P. SCHOONMAKER,
United States District Judge.