

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Minneapolis Electrical Contractors Association, et al., U.S. District Court, D. Minnesota, 1952-1953 Trade Cases ¶67,575, (Sept. 26, 1953)

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United States v. Minneapolis Electrical Contractors Association, et al.

1952-1953 Trade Cases ¶67,575. U.S. District Court, D. Minnesota, Fourth Division. Civil Action No. 3715. Dated September 26, 1953. Case No. 1077 in the Antitrust Division of the Department of justice.

Sherman Antitrust Act

Consent Decree—Practices Enjoined—Participation in Trade Association Activities— Electrical Contractors, Jobbers, Association, and Union.—Electrical contractors, jobbers, trade associations, and a union were enjoined by a consent decree from organizing, participating in the activities of, or contributing anything of value to any trade association, knowing that the purposes or activities of such association are in any manner inconsistent with the provisions of the decree. However, it was provided that the provisions of the decree should not prohibit the defendants from engaging in activities related solely to a labor dispute or collective bargaining, otherwise legal under labor laws applicable to such defendants.

Consent Decree—Practices Enjoined—Channelization Programs.—Jobbers of electrical equipment were enjoined by a consent decree from (1) refusing to sell to any person where the reason for such refusal is because such person is not an electrical contractor or does not hold a master electrician's license, (2) refusing to buy from any manufacturer where the reason for such refusal is because such manufacturer has sold or intends to sell to any person or class of persons, and (3) urging any person to refuse to sell electrical equipment to, or install electrical equipment for, any person or class of persons, for the purpose of establishing or adhering to any channelization program. Electrical contractors were enjoined from doing specified acts for the purpose of establishing or adhering to any channelization program. The above defendants, including electrical contractors' associations, and a union, also were enjoined from entering into any plan to establish or adhere to any channelization program.

Consent Decree—Practices Enjoined—Union Activities.—A union was enjoined by a consent decree from (A) refusing to install electrical equipment because such equipment was not sold by an electrical contractor or was purchased directly from a jobber or manufacturer, and from (B) urging any person not to sell or install electrical equipment for the purpose of establishing or adhering to any channelization program.

Consent Decree—Practices Enjoined—Refusal To Sell—Permissive Provision—Credit Information.—An individual was enjoined by a consent decree from refusing to sell electrical equipment to any person because such person has sold or intends to sell electrical equipment to any third person and from urging any person not to sell such equipment to any third person. However, it was provided that the prohibitions should not be construed to prevent the exchange of credit information and financial information relating to credit between the individual and others.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; Edward R. Kenney and John H. Waters, Trial Attorneys; and Edwin H. Pewett, William D. Kilgore, Jr., Charles F. B. McAleer, and Harry N. Burgess, Attorneys.

For the defendants: Dorsey, Colman, Barker, Scott and Barber, by Henry Halladay, Minneapolis, Minn., for Minneapolis Electrical Contractors Ass'n, Midwest Electric; Council, Inc., Skeldon & Green Electric, Inc., and Albert J. Fleming; Nichols, Mullin, Farnand and Lee, by Chester L. Nichols, Minneapolis, Minn., for Local Union No. 292, International Brotherhood of Electrical Workers; Leonard, Street and Deinard, by Benedict Deinard, Minneapolis, Minn., for Midwest Electric Co.; and Felhaber and Larson, by Gustav A. Larson, St. Paul, Minn., for St. Paul Electrical Contractors Association, Midwest Electric Council, Inc., Kehne Electric Co., Inc., and Tieso & Kostka Electric Co.

Final Judgment

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NORDBYE, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on April 30, 1951; and the defendants having appeared and filed their several answers to said complaint denying any violation of law; and the plaintiff and said defendants, by their respective attorneys, having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without admission by any party in respect to any such issue; and the Court having considered the matter and being duly advised;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and upon consent, as aforesaid, of all the parties hereto,

It is hereby ordered, adjudged and decreed, as follows:

I

[*Sherman Act Action*]

This Court has jurisdiction of the subject matter hereof and of all parties hereto. The complaint states a cause of action against the defendants under Section 1 of the Act of Congress of July 2, 1890, entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies," as amended, commonly known as the Sherman Act.

II

[*Definitions*]

As used in this Final Judgment:

(A) Defendants shall mean: Minneapolis Electrical Contractors Association; St. Paul Electrical Contractors Association; Midwest Electric Council, Inc.; Midwest Electric Company; Kehne Electric Company, Inc.; Tieso & Kostka Electric Company; Skeldon & Green Electric, Inc.; Local Union #292, International Brotherhood of Electrical Workers; and Albert J. Fleming.

(B) "Person" shall mean any individual, partnership, firm, corporation, association, trustee, or other business or legal entity;

(C) "Electrical Equipment" shall mean all types and kinds of electrical equipment which are customarily affixed to or permanently installed in residential, commercial or other buildings by skilled labor, including but not limited to, electrical wiring, lighting fixtures, switches and switch boxes, fuse boxes, insulators, cable, conduits and other equipment used or required to provide a complete electrical lighting and power system in said buildings;

(D) "Contractors" shall mean those persons engaged in the business of installing, altering, or repairing electrical equipment and in the sale of electrical equipment to consumers;

(E) "Jobbers" shall mean those persons engaged in the business of purchasing electrical equipment from manufacturers and reselling said equipment to electrical contractors and others;

(F) "Union" shall mean Local Union #292, International Brotherhood of Electrical Workers;

(G) "Channelization Program" shall mean any plan, program or course of action the purpose or effect of which is to limit or restrict the sale or distribution of electrical equipment by manufacturers or jobbers thereof. Without in any manner limiting the generality of the foregoing, the term "channelization program" shall specifically include any plan, program or course of action the purpose or effect of which is to restrict the sale or distribution of electrical equipment by manufacturers thereof solely to jobbers and the sale or distribution of electrical equipment by jobbers thereof solely to electrical contractors, or any plan, program of course of action having a like or similar purpose or effect.

(H) "Labor dispute" shall mean any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking

to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

III

[*Applicability of Judgment*]

The provisions of this Final Judgment applicable to a defendant, shall apply only to such defendant, its or his officers, agents, servants, employees, and attorneys, and to those persons in active concert Or participation with them who receive actual notice of this Final Judgment by personal service or otherwise. For the purpose of this Final Judgment a defendant and the respective officers, agents, servants, employees and attorneys thereof, shall be deemed to be one person.

IV

[*Trade Association Activities*]

(A) The defendants are jointly and Severally enjoined and restrained from organizing, forming, joining, belonging to, participating in the activities of, or contributing anything of value to any trade association of similar organization, knowing that the purposes or activities of said association or organization are in any manner inconsistent with any of the provisions of this Final Judgment.

(B) The provisions of this Final Judgment shall riot prohibit the defendants from engaging in activities related solely to a labor dispute or collective bargaining, otherwise legal under labor laws applicable to such defendants.

V

[*Channelization Programs Prohibited*]

The defendants are jointly and severally enjoined and restrained from entering into, maintaining, adhering to, or furthering, directly or indirectly, or claiming any rights under any provision of any contract, agreement, understanding, plan or program, with any other person to:

- (A) Establish, renew, maintain or adhere to any channelization program;
- (B) Hinder, restrict, limit or prevent the sale of electrical equipment to any person;
- (C) Hinder, restrict, limit or prevent any person from selling electrical equipment to or installing electrical equipment for any other person;
- (D) Refuse or threaten to refuse to sell electrical equipment to any person or class of persons;
- (E) Refuse, to buy or threaten to refuse to buy electrical equipment from any person;
- (F) Refuse or threaten to refuse to install electrical equipment for any person.

VI

The defendant jobbers are jointly and severally enjoined and restrained from doing any of the following acts for the purpose or with the effect of establishing, renewing, maintaining or adhering to any channelization program:

- (A) Refusing to sell or threatening to refuse to sell electrical equipment to any person where the reason for such refusal is, in whole or in part, because such person is not an electrical contractor, or does not hold a master electrician's license;
- (B) Refusing or threatening to refuse to buy electrical equipment from any manufacturer where the reason for such refusal is, in whole or in part, because such manufacturer has sold, does sell, or intends to sell electrical equipment to any person or class of persons;
- (C) Urging, influencing or requiring or attempting to urge, influence or require any other person to refuse to sell electrical equipment to, or install electrical equipment for, any person or class of persons.

VII

The defendant contractors are jointly and severally enjoined and restrained from doing any of the following acts for the purpose or with the effect of establishing, renewing, maintaining or adhering to any channelization program:

- (A) Establishing, maintaining or adhering to any plan or program or course of conduct to refuse to install electrical equipment purchased from some Other person or not purchased from such defendant;
- (B) Refusing or threatening to refuse to buy electrical equipment from any manufacturer or jobber where the reason for such refusal is, in whole or in part, because such manufacturer or jobber has sold, does sell, or intends to sell electrical equipment to any person or class of persons;
- (C) Urging, influencing or requiring or attempting to urge, influence or require any person not to sell electrical equipment to, or install electrical equipment for, any person.

VIII

[*Union Activity Enjoined*]

The Defendant Union is enjoined and restrained from:

- (A) Refusing to install electrical equipment because such equipment:
 - (1) was not sold by an electrical contractor, or
 - (2) was purchased directly from a jobber or manufacturer;
- (B) Urging, influencing or requiring or attempting to urge, influence or require any person not to sell or install electrical equipment for the purpose or with the effect of establishing, renewing, maintaining or adhering to any channelization program.

IX

[*Refusal To Sell*]

- (A) The defendant Albert J. Fleming is, enjoined and restrained from:
 - (1) Refusing or threatening to refuse to sell electrical equipment to any person because such person has sold, does sell or intends to sell electrical equipment to any third person;
 - (2) Urging, influencing or requiring or attempting to urge, influence or require any person not to sell electrical equipment to any third person.
- (B) The provisions of this Section IX shall not be construed to prevent the exchange of credit information and financial information relating to credit between defendant Albert J. Fleming and others.

X

[*Copies of Judgment*]

Each of the defendant Associations is ordered and directed to furnish to each of its present members and to each of its future members a copy of this Final Judgment, and to obtain and keep on file receipts showing delivery of said copies.

XI

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment duly authorized representatives of the Department of Justice shall, on written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be

permitted, (A) access during the office hours of such defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant relating to any matters contained in this Final Judgment, and (B) subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of said defendant, who may have counsel present, regarding any such matters, and (C) upon such request, the defendant shall submit any such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment. No information obtained by the means provided in this Section XI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XII

[*Jurisdiction Retained*]

Jurisdiction is retained for the purpose of enabling; any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, and for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.