

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. Engineering Survey and Audit Company, Inc., a corporation; Nola Electric Company, Inc., a corporation; Marks Electrical Construction Company, Ltd., a corporation; Gulf Electric, Inc., a corporation; Industrial Electric Company, Inc., a corporation; Odum & Pflueger Electrical Construction Company, Inc., a corporation; Maritime Electric Company, Inc., a corporation; Orleans Elevator & Electric Company, Inc., a corporation; William A. Barnes, d/b/a Barnes Electric Company; Walter J. Barnes, d/b/a Walter J. Barnes Electric Company; Raymond Voelker, d/b/a Busy Electric Company; J. Otto Kaelin, d/b/a J. Otto Kaelin Electric Company; Edward P. Phillips; Thos. V. Sharp; Fred Perrin; J. N. Nunez; C. H. Appel; New Orleans, Louisiana, Chapter of National Electrical Contractors Association; C. T. Odom; Robert C. Pflueger, Sr.; A. G. A. Wilson; E. M. Brignac; Henry A. Muller; C. H. Dorand; Monte E. Hart; I. G. Marks., U.S. District Court, E.D. Louisiana, 1940-1943 Trade Cases ¶56,019, (Feb. 21, 1940)

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United States of America v. Engineering Survey and Audit Company, Inc., a corporation; Nola Electric Company, Inc., a corporation; Marks Electrical Construction Company, Ltd., a corporation; Gulf Electric, Inc., a corporation; Industrial Electric Company, Inc., a corporation; Odum & Pflueger Electrical Construction Company, Inc., a corporation; Maritime Electric Company, Inc., a corporation; Orleans Elevator & Electric Company, Inc., a corporation; William A. Barnes, d/b/a Barnes Electric Company; Walter J. Barnes, d/b/a Walter J. Barnes Electric Company; Raymond Voelker, d/b/a Busy Electric Company; J. Otto Kaelin, d/b/a J. Otto Kaelin Electric Company; Edward P. Phillips; Thos. V. Sharp; Fred Perrin; J. N. Nunez; C. H. Appel; New Orleans, Louisiana, Chapter of National Electrical Contractors Association; C. T. Odom; Robert C. Pflueger, Sr.; A. G. A. Wilson; E. M. Brignac; Henry A. Muller; C. H. Dorand; Monte E. Hart; I. G. Marks.

1940-1943 Trade Cases ¶56,019. U.S. District Court, E.D. Louisiana, New Orleans Division, February 21, 1940.

Civil proceedings under the Sherman Anti-Trust Act against associated electrical contractors are terminated, upon agreement of all parties, by entry of a consent decree permanently enjoining concerted action by the contractors involving division of profits, pre-submission comparison of contracting bids, addition of fixed, non-competitive percentages for bid depository charges, and maintenance of price-fixing bid depositories.

Thurman Arnold, Assistant Attorney General; Rene A. Viosca, United States Attorney; Leon D. Hubert, Jr., Assistant United States Attorney; Tom C. Clark, Marcus A. Hollabauch, Special Assistants to the Attorney General; Attorneys for Plaintiff.

Morris P. Redmann; Attorney for Defendants.

Before BORAH, District Judge.

[*Consent Decree*]

BORAH, D. J.: This cause coming on to be heard on the 21st day of February 1940, and the defendants having waived process and service and having appeared herein,

[*No Admission of Alleged Offenses*]

And counsel for the plaintiff and for the defendants having consented to the making and entering of this decree upon condition that neither such consent nor this decree shall constitute or be considered an adjudication nor even an admission that the defendants, or any of them, have in fact violated any statute of the United States of America.

Now, therefore, before any testimony has been taken and in accordance with said consent of counsel, it is hereby

Ordered, adjudged, and decreed as follows;

[*Jurisdiction*]

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.

[*Injunction*]

2. That the defendants and each of them and all of their respective officers, directors, agents, servants, employees, and all persons acting or authorized to act on behalf of the defendants or any of them, be and they hereby are perpetually enjoined and restrained.

A. From carrying out or continuing, directly or indirectly, expressly or impliedly, any combination and conspiracy in restraint of interstate trade and commerce, in violation of the aforesaid Acts of Congress, in "commercial electrical materials" used in "electrical contracting business" as those materials and that business are defined in the complaint herein, through the use of any one or more of the following means, to wit:

[*Profit Sharing*]

(a) Distribution among all of the defendants of the profits from commercial work done by any of them;

[*Elimination of Bidding Competition*]

(b) The exchange with each other, before the submission of bids and with the intent and effect that competition in bidding among the defendants should be restricted, eliminated, and suppressed, of information regarding the quantities of materials and labor and the cost thereof which each believes necessary for the performance of the "commercial work" (as defined in the complaint herein) to which the bid relates, so that each might be able to calculate, in advance of submission, the bid to be submitted by the others;

[*Comparison of Proposed Bids*]

(c) Comparison of bids requested by or to be submitted to general contractors or others, prior to the submission thereof;

[*Bid Depository Charges*]

(d) The addition by defendants, or any of them, to any bid offered by them, or any of them, on "commercial electric work," of certain uniform, arbitrary, artificial, and noncompetitive percentages of the total bid price for the bidder's overhead and net profit, such percentages so added being fixed and determined, in advance of the submission of the bid or bids, by agreement of any two or more of the defendants submitting separate bids and/or refraining from bidding on the particular work, and including among the, percentages so added any percentage to be paid (1) to defendant Engineering Survey and Audit Company, Inc., or any other organization performing for defendants the functions heretofore performed by said Engineering Survey and Audit Company, Inc., (2) to any estimating authority created, operated, dominated, or controlled by defendants, (3) to any bid depository or similar common agency of defendants for the deposit of bids created, operated, dominated, or controlled by defendants, or (4) to any one or more electrical contractors other than the contractor or contractors making the particular bid.

[*Maintenance of Bid Depository*]

B. From creating, operating, or participating in the operation of any association of electrical contractors maintaining a bid depository, or similar common agency, for the deposit of bids or similar device designed to arbitrarily maintain or to fix the prices of "commercial materials," or to limit competition in bidding on "commercial work," or having the effect of arbitrarily maintaining or fixing the prices of "commercial materials" or limiting competition and bidding on "commercial electrical work."

[*Abetting Prohibited Activities*]

C. From aiding, abetting, inducing, or assisting, individually or collectively, others to *do* any of the things which the defendants are herein restrained from doing.

[*Retention of Jurisdiction*]

3. That jurisdiction of this cause be and it hereby is retained for the purpose of enforcing, enlarging, or modifying the terms of this decree upon application of the plaintiff or any of the defendants.