

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. National Association of Vertical Turbine Pump Manufacturers, now known as Vertical Turbine Pump Association; Turbine Pump Manufacturers Association; Food Machinery and Chemical Corporation; Fairbanks, Morse & Co.; Byron Jackson Co.; Wintroath Pumps, Incorporated; Layne & Bowler Corporation; Johnston Pump Company; Layne & Bowler, Incorporated; A. D. Cook, Incorporated, now known as Lawrenceburg Corporation; Worthington Pump and Machinery Corporation, now known as Worthington Corporation; The Deming Company; The American Well Works; Aurora Pump Company; and James A. Walstrom., U.S. District Court, N.D. California, 1954 Trade Cases ¶67,803, (Jun. 30, 1954)

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United States v. National Association of Vertical Turbine Pump Manufacturers, now known as Vertical Turbine Pump Association; Turbine Pump Manufacturers Association; Food Machinery and Chemical Corporation; Fairbanks, Morse & Co.; Byron Jackson Co.; Wintroath Pumps, Incorporated; Layne & Bowler Corporation; Johnston Pump Company; Layne & Bowler, Incorporated; A. D. Cook, Incorporated, now known as Lawrenceburg Corporation; Worthington Pump and Machinery Corporation, now known as Worthington Corporation; The Deming Company; The American Well Works; Aurora Pump Company; and James A. Walstrom.

1954 Trade Cases ¶67,803. U.S. District Court, N.D. California, Southern Division. Civil No. 29446. Filed June 30, 1954. Case No. 1011 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Consent Decree—Practices Enjoined—Price Fixing—Refusal to Deal.—Two associations of turbine pump manufacturers and their members consented to the entry of a decree prohibiting contracts or plans among themselves; or with any other manufacturer of vertical turbine pumps (1) to fix prices or other sales terms in connection with the sale of vertical turbine pumps, pump parts or services, (2) to fix trade-in allowances or terms for used pumps, (3) to fix uniform discounts or allowances, (4) to urge or induce purchasers to resell pumps or parts on terms determined by any defendant or anyone other than the buyer for resale, (5) to boycott or refuse to sell to buyers because of terms at which the buyers had sold or proposed to sell, or to discriminate in discounts, and (6) to establish or recommend uniform shaft size selection charts, column capacity charts, efficiency or quality charts without extra charge, or other uniform pump parts, selection methods and procedures.

Consent Decree—Practices Enjoined—Dissemination of Information.—Two associations of turbine pump manufacturers and their members were restrained by a consent decree from recommending or disseminating to manufacturers, dealers, distributors, users, or consumers of vertical turbine pumps and parts (1) certain shaft size selection charts, and (2) certain charts represented to be approved or sponsored by a defendant trade association or any two or more defendants. The decree further prohibited compelling pump purchasers to resell at terms of sale determined by any defendant or anyone other than the purchaser for resale, the dissemination to manufacturers or trade associations of suggested prices or pricing methods, and the exchange or dissemination of prices or price lists prior to the date of adoption thereof.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General, William D. Kilgore, Jr., Max Freeman, Lloyd H. Burke, by Charles Elmer Collett, Lyle L. Jones and Marquis L. Smith.

For the defendants: Alfred C. Ackerson; Pat A. McCormick; Cree & Brooks, by John W. Brooks; Watkins and Charlton, by Charles Watkins; Morrison, Hohfeld, Foerster, Shuman & Clark, by Boice Gross; Chickering & Gregory, by Frederick M. Fisk; and Aaron, Aaron, Schimberg & Hess, by Ely M. Aaron.

Final Judgment

O. D. HAMLIN, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on the 26th day of January, 1950, the defendants herein each having appeared herein by its or his respective counsel; and the plaintiff and said defendants, by their respective attorneys, having severally consented to the entry of this Final Judgment without the taking of any testimony, without trial or adjudication of any issue of fact or of law and without admission by any party herein in respect of any such issue; now, therefore, it is hereby ordered, adjudged and decreed as follows:

I.

[*Definitions*]

As used in this judgment:

(a) The term “vertical turbine pump” is a vertical shaft centrifugal or mixed flow pump with rotating impeller or impellers with discharge from the pumping element co-axial with the shaft, designed for operation in wells of restricted diameter. The pumping element is suspended by the conductor system which encloses a system of vertical shafting used to transmit power to the impellers, the prime mover being external to the flow stream.

(b) The term “pump parts” means the various items, components, parts, devices, and mechanisms which are incorporated in a completed vertical turbine pump, including but not limited to, discharge column, pipe, head assemblies, bowls and bowl assemblies, strainers, shafts, gears, and motors.

(c) The term “pump services” means those services incident to the installation and operation of a vertical turbine pump, including but not limited to laboratory tests, field tests, installation and pulling and removing, and other services involved in removing old pumps and installing new vertical turbine pumps.

(d) The term “subsidiary” of a defendant means any corporation or firm under the effective operating or managerial control of said defendant.

II.

[*Defendants*]

The following are the names of the corporate defendants:

Name of Corporation:	State of Incorporation:	Principal Office and Place of Business:
Vertical Turbine Pump Association, Formerly known as National Association of Vertical Turbin Pump Manufacturers	California	Los Angeles, California
Turbine Pump Manufacturers Association	California	Los Angeles, California
Food Machinery and Chemical Corporation	Delaware	San Jose, California
Fairbanks, Morse & Co.	Illinois	Chicago, Illinois
Byron Jackson Co.	Delaware	Vernon, California
Winworth Pumps, Incorporated	California	Alhambra, California
Layne & Bowler Corporation	California	Los Angeles, California
Johnston Pump Company	California	Vernon, California
Layne and Bowler, Incorporated	Delaware	Memphis, Tennessee
Lawrenceburg Corporation, formerly known as A. D. Cook, Incorporated	Indiana	Lawrenceburg, Indiana

Worthington Corporation, formerly known as Worthington Pump and Machinery Corporation	Delaware	Harrison, New Jersey
The Deming Company	Ohio	Salem, Ohio
The American Well Works	Illinois	Aurora, Illinois
Aurora Pump Company	Illinois	Aurora, Illinois

The following individual is a defendant herein: James A. Walstrom, Executive Manager and Secretary-Treasurer of defendant Associations, residing at Los Angeles, California.

III.

[*Jurisdiction*]

This Court has jurisdiction of the subject matter hereof and the parties hereto. The complaint herein 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," commonly known as the Sherman Act, as amended.

IV.

[*Applicability*]

The provisions of this Judgment applicable to any defendant shall apply to such defendant and to each of its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons acting or claiming to act under, through, or for such defendant.

Nothing contained in this Judgment shall apply to any agreement between

- (a) A manufacturer and its subsidiaries;
- (b) A manufacturer and companies associated with it through common ownership and operating management; and
- (c) The subsidiaries of any such manufacturer.

[*Price Fixing and Refusal to Deal*]

The defendants, and each of them, are hereby enjoined and restrained from entering into, adhering to, maintaining or furthering, directly or indirectly, any contract, agreement, understanding, plan or program, among themselves or with any other manufacturer of vertical turbine pumps;

- (a) to fix, establish, stabilize or maintain prices, discounts, allowances, warranties: or other terms and conditions of sale of vertical turbine pumps, pump parts or pump services;
- (b) to fix, establish, stabilize or maintain trade-in allowances or other terms and conditions at which used and second-hand vertical turbine pumps or pump parts will be accepted as a trade-in on new or used vertical turbine pumps or pump parts;
- (c) to fix, establish, stabilize or maintain uniform or designated discounts or allowances or any classification thereof for vertical turbine pump dealers or distributors;
- (d) to urge, advise, suggest, or induce any purchaser of vertical turbine pumps or pump parts to resell such pumps and parts at prices, discounts, or allowances, or on terms or conditions of resale determined by any defendant or anyone other than such purchaser for resale;
- (e) to boycott, black-list, or refuse to sell to any purchaser of vertical turbine pumps and pump parts because of the prices, discounts, allowances, or other terms and conditions at which such purchaser has sold or proposes to sell such pumps and pump parts; or to discriminate in the granting of dealer or distributor discounts to any such purchaser because of the prices, discounts, allowances, or other terms and conditions at which such purchaser has sold or proposes to sell such pumps and pump parts;

(f) to establish, adopt, adhere to, or recommend uniform or designated shaft size selection charts, column capacity charts, pump efficiency evaluation charts, charts or tables showing maximum efficiency or quality of pump parts permissible without extra charge, or other uniform pump parts' selection methods and procedures.

VI.

[*Dissemination of Information*]

The defendants and each of them are jointly and severally enjoined and restrained from

(a) publishing, circulating, recommending, or disseminating to manufacturers, dealers, distributors, users, or consumers of vertical turbine pumps and pump parts:

(1) The shaft size selection charts heretofore published by defendant Vertical Turbine Pump Association at pages 28-34, inclusive, of a booklet entitled "Standards of the National Association of Vertical Turbine Pump Manufacturers"; provided, however, that a defendant manufacturer, in preparing and formulating any shaft size selection chart by its sole and independent action, may utilize established engineering formulae and experience, obtained independently of the charts referred to in the initial sentence of this subparagraph (1), even though such formulae and experience were used in the preparation of the last referred to charts;

(2) Any shaft size selection chart which is represented by the defendant disseminating it to be sponsored or approved in any manner by defendant Vertical Turbine Pump Association, or which is represented by such defendant to be jointly or collectively sponsored or approved in any manner by any two or more of the defendants named herein; provided, however, that nothing herein shall be deemed to prohibit any defendant manufacturer from individually recommending, disseminating or publishing any shaft size selection chart which has been formulated by its sole and independent action or from adopting or using formulae, charts or tables formulated and promulgated by the American Water Works Association; and provided further, that nothing herein shall be deemed to prohibit defendant Vertical Turbine Pump Association from disseminating, without express recommendation, upon receipt of an unsolicited request, any shaft size selection chart or charts which may be formulated and promulgated by the American Water Works Association.

(b) Compelling or coercing, by economic means or otherwise, any purchaser of vertical turbine pumps and pump parts to resell such pumps and pump parts at prices, discounts or allowances, or on terms or conditions of sale determined by any defendant or anyone other than such purchaser for resale; provided, however, that any lawful conduct authorized or permitted by the so-called Miller-Tydings Amendment (SO Stat. 593) to section 1 of the Sherman Act (15 U. S. C. sec. 1, as amended) shall not be deemed to be a violation of this subparagraph;

(c) Circulating, disseminating, or communicating to any other manufacturer of vertical turbine pumps or to any trade association of, or central agency or committee of such manufacturers for consideration, comment, discussion, or adoption, any prices or system or method of pricing suggested or under consideration for future adoption;

(d) Exchanging with, disseminating, or communicating to any other manufacturer of vertical turbine pumps any price or price list relating to vertical turbine pumps, and pump parts prior to the date of adoption or release thereof.

VII.

[*Specific Requirements*]

Each corporate defendant (except defendant Associations), its successors and assigns, is hereby ordered and directed to file with the Clerk of this Court, within seven months subsequent to the effective date of this Judgment a copy of each of its shaft size selection charts and a copy of its regularly issued and published price lists, discounts and terms and conditions of sale applicable to vertical turbine pumps, pump parts and pump services, which were in effect on the date which is six, months subsequent to the effective date of this Judgment.

VIII.

[*Enforcement Provisions*]

Defendants Vertical Turbine Pump Association and Turbine Pump Manufacturers Association are each ordered and directed

(A) to adopt and retain by-laws or a charter which requires that as a condition of membership each present and future member agree to abide by the terms of this Final Judgment, and which requires that each future member be given a true copy of this Final Judgment;

(B) Within sixty days from the date of entry of this Final Judgment, to file with this Court and the Plaintiff proof that the immediate requirements of subsection (A) of this Section VIII have been complied with.

IX.

[*Inspection and Compliance*]

For the purpose of securing compliance with this Judgment, duly authorized representatives of the Department of Justice shall upon written request of the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to any defendant, be permitted, subject to any legally recognized privilege (1) access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant relating to any matters contained in this Judgment, and (2) subject to the reasonable convenience of said defendant and without restraint or interference to interview officers or employees of said defendant, who may have counsel present, regarding any such matters. For the purpose of securing compliance with this Judgment any defendant upon the written request of the Assistant Attorney General in charge of the Antitrust Division shall submit such written reports with respect to any of the matters contained in this Judgment as from time to time may be necessary for the purpose of enforcement of this Judgment. No information obtained by the means permitted by this article shall 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 to which the United States is a party for the purpose of securing compliance with this Judgment or as otherwise required by law.

X.

[*Retention of Jurisdiction*]

Jurisdiction is retained for the purpose of enabling any of the parties to this Judgment 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 Judgment or for the modification or termination of any of the provisions thereof, and for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.