

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. Heating, Piping & Air Conditioning Contractors Association of Southern California, Local Union No. 250 United Association Plumbers & Steam Fitters of the United States and Canada. American Engineers & Contractors, Ltd., H. G. Cary Co., Inc. Johnston & Washer, Inc., Hickman Brothers, Inc Lohman Bros., Inc., F. D. Reed Plumbing Co., Ltd., Younger & Fellows, Ltd., H. S McClelland, Inc., Munger & Munger, Inc., E. O. Nay Co., Inc., Clyde L. Stonemat A. A. Orr, William Flood, E. A. Cheeseboro, J. D. Owen, George E. Damon, Harry Curry O. P. Heximer, L. S. Berray, J. M. Moriarty, Charles W. Ballwey, Frank J. White, B. K Stoneman, A. D. Felthouse. Jacob Herman, F. D. Reed. Frank Washer, James A. Yale, J. L. Douglass, Henry G. Cary, J. L. Kroeger, E. R. Jordan. Roy R. Munger, Edwar Roeth, Jefferson H. Stockton. Paul J. Smith, C. T. Newman, Charles B. Swank, Eric W Brown, Terry E. Hickman, Claude Hickman, Clyde Hickman. Loy F. Johnston, John T. Lohman, Louis C. Breer, Rowland L. Lohman, F. L. Fidel, William Ray Younger, Edwi: W. Fellows, H. S. McClelland, F. B. Gardner, Edward O. Nay, Jr., Kenneth C. Hollo way, George E. Howe, Earl V. Ike, E. H. Martin. T. C. McInturff, E, H. Ming, H. E Murray, William N. Nies, Otto E. Ross, F. C. Schilling, E. Willardson., U.S. District Court, S.D. California, 1940-1943 Trade Cases ¶56,146, (Jul. 10, 1941)

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United States of America v. Heating, Piping & Air Conditioning Contractors Association of Southern California, Local Union No. 250 United Association Plumbers & Steam Fitters of the United States and Canada. American Engineers & Contractors, Ltd., H. G. Cary Co., Inc. Johnston & Washer, Inc., Hickman Brothers, Inc Lohman Bros., Inc., F. D. Reed Plumbing Co., Ltd., Younger & Fellows, Ltd., H. S McClelland, Inc., Munger & Munger, Inc., E. O. Nay Co., Inc., Clyde L. Stonemat A. A. Orr, William Flood, E. A. Cheeseboro, J. D. Owen, George E. Damon, Harry Curry O. P. Heximer, L. S. Berray, J. M. Moriarty, Charles W. Ballwey, Frank J. White, B. K Stoneman, A. D. Felthouse. Jacob Herman, F. D. Reed. Frank Washer, James A. Yale, J. L. Douglass, Henry G. Cary, J. L. Kroeger, E. R. Jordan. Roy R. Munger, Edwar Roeth, Jefferson H. Stockton. Paul J. Smith, C. T. Newman, Charles B. Swank, Eric W Brown, Terry E. Hickman, Claude Hickman, Clyde Hickman. Loy F. Johnston, John T. Lohman, Louis C. Breer, Rowland L. Lohman, F. L. Fidel, William Ray Younger, Edwi: W. Fellows, H. S. McClelland, F. B. Gardner, Edward O. Nay, Jr., Kenneth C. Hollo way, George E. Howe, Earl V. Ike, E. H. Martin. T. C. McInturff, E, H. Ming, H. E Murray, William N. Nies, Otto E. Ross, F. C. Schilling, E. Willardson.

1940-1943 Trade Cases ¶56,146. U.S. District Court, S.D. California, Central Division. Civil No. 1642-Y. July 10, 1941.

Upon consent of all parties, a decree is entered in proceedings under the Sherman Anti-Trust Act, enjoining defendants from acts restraining interstate trade and commerce in heating, piping, ventilating, and air conditioning equipment. Among the practice forbidden by the decree are: inducing manufacturers and

distributors to refuse to sell equipment to certain contractors; withholding or threatening to withhold union labor from any contractor; inducing discrimination by authorities awarding contracts; refusing to bid, comparing bids or otherwise attempting to limit competition; and coercing any manufacturer or distributor, or holding any conference of competitors, for the purpose of carrying out any of the prohibited activities.

Joseph K. Horton, Attorney for Defendants Heating, Piping & Air Conditioning Contractors Association of Southern California; American Engineers & Contractors, Ltd. H. G. Cary Co., Inc.; Hickman Brothers, Inc.; Johnston & Washer, Inc.; Lohman Bros. Inc.; F. D. Reed Plumbing Co., Ltd.; Younger & Fellows, Ltd.; Munger & Munger, Inc. E. O. Nay Co., Inc; J. M. Moriarity; Charles W. Ballwey; Frank J. White; B. K. Stone man; A. D. Felthouse; Jacob Herman; F. D. Reed; Frank Washer; James A. Yale J. L. Douglass; Henry G. Cary; J. L. Kroeger; E. R. Jordon; Roy R. Munger; Edwan Roeth; Jefferson H. Stockton; Paul J. Smith; C. T. Newman; Charles B. Swank; Eric W. Brown; Tarry E. Hickman; Claude Hickman; Clyde Hickman; Loy F. Johnston John T. Lohman; Louis C. Breer; Rowland L. Lohman; F. L. Fidel; William Ray Younger; Edwin W. Fellows; Edward O. Nay, Jr.; Kenneth C. Holloway; George E Howe; Earl V. Ike.; E. H. Martin; J. C. McInturff; E. H. Ming; H. E. Murray; William N. Nies; Otto E. Ross; F. C. Schilling; E. Willardson.

A. M. Smith, Attorney for Defendants H. S. McClelland, Inc.; H. S. McClelland; F. B. Gardner.

Otto J. Emme, John J. Irwin, Attorneys for Defendants Local Union No. 25(United Association, Plumbers and Steam Fitters of the United States and Canada; Clyde L. Stoneman; A. A. Orr; William Flood; E. A. Cheeseboro; J. D. Owen; George E. Damon; Harry Curry; O. P. Heximer; L. S. Berray.

Tom C. Clark, Alfred C. Ackerson, James E. Harrington, Special Assistants to the Attorney General; Wm. Fleet Palmer, United States Attorney, for the Complainant.

Before Yankwich, District Judge.

Consent Decree

YANKWICH, D. J.: This cause coming on to be heard on the 10th day of July, 1941 and the defendants having waived process and service and having appeared herein;

It appears to the Court that the defendants have asserted and do assert their innocence of any violation of law, but have consented in writing to the making and entering of this decree upon condition that neither such consent nor this decree shall be evidence, admission, or adjudication that the defendants have violated any law of the United States;

And it appearing by virtue of the attached consents of said defendants, and the acceptance of the same by the plaintiff, [that] it is unnecessary to proceed with the trial of the action or to take testimony therein or that any adjudication be made of the facts:

Now, therefore, before any testimony has been taken and without any findings of fact and upon the consent of all the parties hereto, it is hereby

ORDERED, ADJUDGED and DECREED as follows:

[*Jurisdiction of Court*]

(1) That the Court has jurisdiction of the subject matter herein and of all the parties hereto, for the purposes of this decree and the proceedings for enforcement thereof, and 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 acts amendatory thereof and supplemental thereto.

[*Injunction Granted*]

(2) That the defendants, and each of them, and all of their respective successors, officers, directors, agents, servants, employees, and all persons acting or authorized to act on behalf of the defendants, their successors, or any of them, be, and they hereby are, perpetually enjoined and restrained from carrying out, or continuing directly or indirectly, expressly or impliedly, any combination or conspiracy to restrain interstate trade and

commerce in heating, piping, ventilating, and air conditioning equipment and materials in violation of the Federal antitrust laws as alleged in the complaint herein, and from entering into or carrying out by any means whatsoever any combination or conspiracy of like character or effect, and more particularly (but the enumeration following shall not detract from the inclusiveness of the foregoing) from combining, conspiring, or agreeing among themselves or with others to engage in any of the following specified acts or practices:

[*Sales Practices*]

(a) seeking to induce, or inducing, influencing, or preventing manufacturers, jobbers, wholesalers, or distributors of heating, piping, ventilating, or air conditioning equipment and materials or their agents or representatives, by threats of boycott, promises, or otherwise, to refuse to sell such equipment and materials to any contractor or sub-contractor, or to discriminate in the conditions of sale with reference thereto;

[*Withholding Union Labor*]

(b) agreeing to withhold, or withholding, or inducing, or seeking to induce, any labor union to withhold union labor from any contractor or sub-contractor who is able and willing to comply with and abide by union requirements concerning wages, hours, working conditions and collective bargaining. Any existing contract

or agreement among the defendants shall be null and void to the extent that it conflicts with the provisions of this decree;

(c) influencing, by promises, threats of discrimination or boycott, or otherwise, general contractors or other awarding authorities to discriminate against any contractor or sub-contractor in requests for bids, acceptance of bids, or letting of contracts for the furnishing and installing of heating, piping, ventilating, and air conditioning equipment;

(d) threatening to withhold, or withholding, union labor from any contractor or sub-contractor, or otherwise discriminating, or threatening to discriminate, in the furnishing of union labor, for the purpose of inducing such contractor or sub-contractor to carry out the policies of, or cooperate with, or join any association' or group of contractors or sub-contractors;

(e) threatening to withhold, or withholding, union labor from any contractor or sub-contractor, or otherwise discriminating, or threatening to discriminate, in the furnishing of union labor, for the purpose of giving any group of contractors or sub-contractors an unfair competitive advantage over such contractor or sub-contractor ;

[*Bidding Practices*]

(f) refusing to participate in bids for, or perform work on, contracts requiring the furnishing or installation of heating, piping, ventilating, or air conditioning equipment and materials with any contractor or sub-contractor, or otherwise discriminating against competitors for the purpose, or with the effect of restraining such competitors in engaging in the heating, piping, ventilating, or air conditioning contracting business;

(g) adding to any bid submitted by the defendants, or any of them, any sum or amount, whether the same be a percentage of said bid price, or otherwise; provided that this subparagraph shall not prohibit the assessing or collecting of association dues on the basis of the volume of business done by the respective members;

(h) creating, operating, or participating in the operation of any association or other group of heating, piping, ventilating or air conditioning contractors maintaining a bid depository, or common agency, for the deposit of bids, or similar device, designed to, or having the effect of, arbitrarily maintaining, fixing, or stabilizing the prices for furnishing or installing heating, piping, ventilating, or air conditioning equipment and materials, or limiting competition in bidding on contracts requiring furnishing or installing of such equipment and materials;

(i) comparing bids requested by, or to be submitted to, general contractors or others prior to the submission thereof;

[*Right to Resign*]

(j) restraining the right of any member of the defendant association or similar organization to resign his or its membership upon reasonable written notice not to exceed thirty days and upon payment of dues accrued on work done to date of resignation.

[*Additional Prohibited Practices*]

(3) Defendants, their officers, directors, agents, and employees, their successors, and all persons acting under, through or for defendants or their successors, or any of them, be, and they are, hereby individually and perpetually enjoined and restrained from engaging in any of the following specific acts and practices:

a) coercing or restraining a manufacturer or distributor of heating, piping, ventilating, or air conditioning equipment or general building contractor for the purpose of cooperating in carrying out any of the activities prohibited in paragraph 2 hereof;

(b) sponsoring, calling, holding, or participating in any meeting or conference of competitors held for the purpose of raising, lowering, fixing, establishing, maintaining or stabilizing prices to be charged for furnishing and installing heating, piping, ventilating and air conditioning equipment;

(c) sponsoring, calling, holding; or participating in any meeting or conference of competitors held for the purpose of cooperating in carrying out any of the activities prohibited by paragraph 2 hereof.

[*Scope of Injunction*]

(4) That nothing contained in this decree shall prohibit any agreement which is specifically authorized by an Act of Congress, nor is it to be construed to affect relations which otherwise are lawful between a defendant (except the defendant association), its officers, employees, or agents, or its subsidiaries.

[*Access to Records*]

(5) That for the purpose of securing compliance with this decree, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or an Assistant Attorney General, be permitted access within the office hours of the defendants and upon reasonable notice to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or control of defendants relating to any of the matters contained in this decree; 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 the defendants without interference, restraint, or limitation by defendants, relating to any of the matters contained in this decree; provided, however, that any such officer or employee may have counsel present at such interview.

[*Retention of Jurisdiction*]

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