

U. S. v. THE TILE CONTRACTORS' ASS'N, ET AL.
IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS, EASTERN
DIVISION.

June Term, 1940—Civil No. 1761.

UNITED STATES OF AMERICA, PLAINTIFF

VS.

THE TILE CONTRACTORS' ASSOCIATION OF AMERICA, INC.;
H. RICHARDSON COLE; CHICAGO MANTEL & TILE CON-
TRACTORS' ASSOCIATION; H. B. CARTER CO.; VICTOR E.
COLE & CO.; INTERIOR TILING COMPANY; RAVENSWOOD
TILE COMPANY; WALTER PERINE; WALTER O. SWAN-
SON; ARTHUR B. PETERSON; EDWIN KRAUSE; ARTHUR
D'AMBROSIO; VICTOR E. COLE; HARRY B. CARTER;
HAMPTON MCCORMICK, SR.; BRICKLAYERS, MASONS &
PLASTERERS INTERNATIONAL UNION OF AMERICA;
HARRY C. BATES; RICHARD J. GRAY; ELMER SPAHR;
CERAMIC, MOSIAC & ENCAUSTIC TILE LAYERS LOCAL
UNION No. 67 OF THE BRICKLAYERS, MASONS & PLAS-
TERERS INTERNATIONAL UNION OF AMERICA; ROBERT E.
SHEPHERD; HENRY BARTELS; FLORENCE J. O'SHEA;
JOHN R. O'KEEFE; WILLIAM J. DUGAL; EDWARD HAN-
SON; LOUIS MILLER; JESS HARRIS; ANTHONY E. BER-
HEID; FRED JASPER; THOMAS MCNELLEY, DEFENDANTS.

FINAL DECREE.

1. This cause came on to be heard on this 10th day of June 1940, the complainant being represented by Thurman Arnold, Assistant Attorney General, and William J. Campbell, United States Attorney for the Northern District of Illinois, and the defendants being represented by their counsel, said defendants having appeared voluntarily and generally and waived service of process.

2. It appears to the Court that the defendants have consented in writing to the making and entering of this decree, without any findings of fact, upon condition that neither such consent nor this decree shall be considered an admission or adjudication that said defend-

ants have violated any law.

3. It further appears to the Court that this decree will provide suitable relief concerning the matters alleged in the complaint and by reason of the aforesaid consent of the parties it is unnecessary to proceed with the trial of the cause, or to take testimony therein, or that any adjudication be made of the facts. Now, therefore, upon motion of complainant, and in accordance with said consent, it is hereby

ORDERED, ADJUDGED, AND DECREED

4. That the Court has jurisdiction of the subject matter set forth in the complaint and of all parties hereto with full power and authority to enter this decree, 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, and that the defendants and each of them and each and all of their respective officers, directors, agents, servants, and employees, and all persons acting or claiming to act on behalf of the defendants or any of them are hereby perpetually enjoined and restrained from maintaining, or extending, directly or indirectly, any combination or conspiracy to restrain interstate trade or commerce as alleged in the complaint by doing, performing, agreeing upon, entering upon, or carrying out any of the acts or things hereinafter prohibited.

5. That the Tile Contractors' Association of America, Inc. (hereinafter sometimes called the Tile Association), the defendant Secretary thereof, local associations (hereinafter sometimes called subordinate tile associations) of tile contractors affiliated with and subordinate to said Tile Association, including defendant associations and defendant tile contractors be and they are hereby perpetually enjoined and restrained from agreeing, combining, and conspiring among themselves or any of them or with any labor union or officer, agent, or employee thereof or with any of them, or with a manufacturer of tile or

officer, agent, representative, or employee thereof or with any of them:

(a) To refuse to do business with, or to threaten to refuse to do business with, any manufacturer, jobber, other local distributor, general contractor, or any other person.

(b) To prevent any person, firm, or corporation who is not a member either of the Tile Association or of any subordinate tile association from securing union labor, or to require him to agree to higher wages, shorter hours, or better working conditions than are required of tile contractors who are members of such association.

(c) To create, operate, or participate in the operation of any bid depository.

(d) To create, operate, or participate in the operation of any device similar to a bid depository, any central estimating bureau, any cost formula system or any other method, which device, estimating bureau, cost formula system, or other method is designed to maintain or to fix the price of tile and tile installation or of any other building material or building material installation or to limit competition in bidding on tile or tile installation or of any other building material or building material installation or which has the effect of limiting the awarding authority in its free choice of the successful tile contractor on a given project.

(e) To prevent any person, partnership, or corporation from employing union labor.

(f) To prevent the defendant Bricklayers, Masons and Plasterers' International Union of America (hereinafter sometimes called the International Union) or any unions (hereinafter sometimes called subordinate unions) affiliated with and subordinate to said defendant International Union, including defendant unions, or any officer or agent of said subordinate unions, including defendant union officers, from negotiating a labor agreement directly with a tile contractor who is not a member of the Tile Association or of any subordinate tile association: *Provided, however, That* noth-

ing in this decree shall prohibit the Tile Association or any subordinate tile association from insisting upon providing in its labor agreement with any union that the union shall grant to the members of such association terms as favorable to the members of such association as are granted by such union to any nonmember of such association.

(g) To fine or otherwise penalize any member of said Tile Association or subordinate tile association for selling tile unset to any person, partnership, or corporation not a member of said Tile Association or subordinate tile association.

(h) To prevent any person, partnership, or corporation from selling tile unset: *Provided, however, That* nothing herein shall be deemed to prevent the advancement or promotion by publicity or advertisement of the use of skilled tile setters for the installation of tiles.

(i) To refuse to install or threaten to refuse to install the material of any manufacturer because he sells or has sold tile to any particular person, partnership, or corporation.

(j) To report to or otherwise notify directly or indirectly for the purposes of accomplishing any objective, end, or act enjoined or prohibited by this decree, any member, officer, or agent of the International Union or any subordinate union, or any person acting for or on behalf of them that:

1. A particular manufacturer, jobber, local distributor, general contractor, tile contractor, or any other person is doing or has done business with any individual, partnership, association, or corporation not a member of said Tile Association or subordinate tile association.

2. Any individual, partnership, association, or corporation not a member of said Tile Association or subordinate tile association has contracted for or is engaged in the installation of tile generally or on a particular job.

(k) To aid or assist the International Union, any subordinate union, their officers or agents, or any of them in the imposition of fines or penalties against any person, partnership, or corporation not a member of said Tile Association or subordinate tile association.

(l) To restrict the sale of tile to any person, partnership, or corporation whatsoever.

(6) That the International Union and all subordinate unions, their officers, agents, and employees, including defendant union officers and defendant unions, be and they hereby are perpetually enjoined, restrained, and prohibited from agreeing, combining, and conspiring with the Tile Association or any subordinate tile association, their officers or agents, including defendant contractors and defendant associations, or with any of them, or with any manufacturer, jobber, or local distributor or the officers, representatives, or agents thereof, or any of them:

(a) To restrain, restrict, or prevent the sale of tile to any person, partnership, or corporation.

(b) To circulate or distribute to manufacturers, manufacturers, representatives, jobbers, or distributors of tile a list or lists containing the names of contractors under agreement with said International Union or subordinate unions for the purpose of influencing such manufacturers, manufacturers' representatives, jobbers, or distributors to do business only with contractors whose names are included on said list or lists.

(c) To withhold or threaten to withhold labor from any person, partnership, or corporation.

(d) To intimidate or threaten any general contractor or awarding authority from dealing with any person, partnership, or corporation.

(e) To blacklist any person, partnership, or corporation.

(f) To require conditions and terms of any person, partnership, or corporation, which conditions and terms are not required of other contractors in the same branch of the building industry in the same locality.

(g) To impose fines or otherwise assess penalties against any person, partnership, or corporation, other than a member of the Tile Association or of a subordinate tile association.

7. That the International Union and all subordinate unions, their officers, agents, or employees, including defendant union officers and defendant unions, shall not

(a) withhold or threaten to withhold labor from, or

(b) intimidate any general contractor or awarding authority from dealing with, or

(c) blacklist, or

(d) require conditions and terms not required of other contractors in the same branch of the building industry in the same locality save as otherwise in the decree permitted in the case of, or

(e) impose fines or otherwise assess penalties against,

any individual, partnership, or corporation who is willing and able to execute a written agreement to comply, and to comply, in respects other than those hereinafter specified in paragraphs (a) to (k), inclusive, with the International Union's and such subordinate unions' requirements for wages, hours, and working conditions (including requirements with respect to the closed shop) required by said unions of all contractors doing similar work in the same locality:

(a) Because the wages, hours, and working conditions (including requirements with respect to the closed shop) required of such person, partnership, or corporation in the locality where such person, partnership, or corporation wishes to hire union labor are less favorable to the union members than the union requirements in some other locality where such person, partnership, or corporation also does business: *Provided*, The union may require contractors to pay for the transportation, room, and board of employees ordered from one locality to another by contractors and to pay to such employees the wages, and to adhere to the conditions, obtaining in the locality from which the employees are ordered.

(b) Because the manufacturer of the building materials to be installed by members of the said unions for said person, partnership, or corporation either sells directly to jobbers, general contractors, or builders, or to subcontractors who carry on more than one kind of contracting business, or sells to other persons, firms, or corporations not members of the Tile Association or any subordinate tile association.

(c) Because the material to be installed by members of the said unions for such complying contractor was manufactured by employees whose wages, hours, and working conditions were less favorable to the employees than the wages, hours, and working conditions of the employees of other manufacturers of the same or of a substitute building material, or because said material was manufactured by another union: *Provided, however,* That nothing in this decree shall prevent the members of the said unions from refusing, either alone or in concert, to install any building material that is prison-made or that is made by a manufacturer who maintains an open shop, or a company union, or with whom the International Union, or a subordinate union, is having at the time a labor dispute with respect to wages, hours, or working conditions, or whom the union is attempting to organize.

(d) Because such contractor has broken a rule or regulation of the Tile Association or of any subordinate tile association: *Provided, however,* That nothing in this decree shall prohibit or prevent the unions and the tile associations from disciplining any member of said associations for a breach by such members of the provisions relating to wages, hours, working conditions, or the closed shop of the labor agreement between said associations or either of them and the International Union or a subordinate union: *And provided further,* That nothing in this decree shall prohibit or prevent the unions from disciplining any contractor for a breach by such contractor of the provisions relating to wages, hours, working conditions, or closed shop of the labor agreement under which he operates.

(e) Because such complying contractor is not a member either of the Tile Association, of a subordinate tile association, or of any other association of contractors.

(f) Because such complying contractor carries no stock of tile or of any other building material, or carries an insufficient quantity of tile or of other building material; or because he does business from his residence, or because he maintains no show room; or because he carries on more than one kind of contracting business; or because he is a general contractor.

(g) Because such person, partnership, or corporation has refused to make payments to any officer, agent, member, or employee of the International Union or subordinate union other than payments due under the contract made or to be made between said parties.

(h) Because such person, partnership, or corporation has refused to deposit with the International Union or a subordinate union, or any officer or agent thereof, an unreasonable wage bond. For the purposes of this decree, it is agreed that a reasonable wage bond shall be one conditioned upon the employer's meeting his payroll obligation on the particular job.

(i) Because said person, partnership, or corporation, after having made a bona fide request for the privilege of hiring men from the subordinate local, and having been refused, has used the tools or has hired persons not in good standing with the International Union.

(j) Because such person, partnership, or corporation sells, has sold, or contemplates selling tile unset to any individual, partnership, or corporation.

(k) Because such person, partnership, or corporation had, in the past, worked with the tools, provided that henceforth, only one contractor member of any firm shall work with the tools.

8. That the International Union and each subordinate union be and they hereby are perpetually enjoined and restrained from agreeing, combining, and conspiring among themselves or among any of them, or with

any other person, firm, corporation, or association, or any officer or employee thereof.

(a) To deny to any contractor who has entered into, and who is fully performing, an agreement with the International Union or with a subordinate union, the privilege of selection for employment any union workman in good standing who is at the time unemployed and who is willing to work for such contractor: *Provided, however*, That nothing in this decree shall prevent the International Union or a subordinate union from insisting upon, or any union and any tile association from mutually agreeing to, a "spread the work" plan and applying the same without discrimination among tile association members and tile contractors who are not members of the Tile Association; or

(b) To threaten to impose upon any general contractor who is and has been fully performing a written agreement with the International Union or any subordinate union, restrictions or requirements not imposed upon his competitors because he does business with a subcontractor who is not a member either of the Tile Association or a subordinate tile association or of any other association of subcontractors: *Provided, however*, That nothing in this decree shall prevent such unions or any of them, either alone or in concert, from imposing such conditions as it may wish upon the supplying of union labor to a general contractor who does business with a subcontractor who does not have, or who has failed fully to comply with, a labor agreement with such unions or any of them.

(c) To deny to any bona fide member in good standing of the International Union or of any subordinate union the right to transfer bona fide his membership from one subordinate union to another, or to work in the jurisdiction of another subordinate union, in accordance with the provisions of Article XV of the Constitution of the International Union, Revised and Adopted September 1938.

(d) To violate any provisions contained in the Constitution of the International Union.

(e) To limit the amount of work a tile layer may perform, or to limit the use of machinery or tools, or to determine the number of tile layers to be employed on any specific job: *Provided, however*, That no member of a subordinate union shall be required to bargain or contract to lay or to lay a designated number of feet of tile or do a certain piece of work in a designated time.

9. That the defendant Tile Association and defendant International Union shall cause copies of this decree to be printed and shall furnish each subordinate tile association and each subordinate union with three copies hereof. Said decree shall either be read at open meeting of such subordinate tile associations and subordinate unions, or shall be mailed to each member thereof; and the constitution and bylaws of the International Union and all constitutions and bylaws hereafter adopted, printed, or promulgated by said International Union and the bylaws of the Tile Association, and all bylaws hereafter adopted, printed, or promulgated by such Tile Association shall call attention to this decree and its provisions and to the fact that each member of said organizations and subordinates thereof is bound thereby.

10. That the defendant Tile Association and defendant International Union shall use every reasonable effort to prevent violations of this decree by subordinate tile associations and subordinate unions and members thereof, and to inform themselves as to the observance of the decree by said tile associations and subordinate unions and the members thereof. And said Tile Associations and said International Union shall promptly report to the Attorney General of the United States every case in which proceedings have been instituted by either the Tile Association or the International Union to try alleged violations of this decree. Said Tile Association and International Union shall notify their respective subordinate tile associations and subordinate unions to report to them any violations of this decree coming to

the attention of said subordinate tile association and subordinate unions.

11. That it shall be the duty of the International Union, after knowledge obtained of a violation of this decree, to bring to trial, and to punish, any subordinate union or member thereof violating this decree. Said trial shall be in accordance with Article IV, Section 17, of the Constitution of the said International Union which provides as follows:

SECTION 17. The Executive Board, upon notice given it of any executive matter in any manner or from any source that any subordinate union, officer, or member thereof has failed or neglected to comply with the laws of this International Union or its rules or orders or the rules or orders of the Executive Board of this International Union shall immediately cause notice of said complaint to be given to the union, officer, or member thereof so charged. Such notice may be served by telegraph, registered mail, or personally. It shall state the substance of the charge and the name of the person or body making the charge. The accused must, within three (3) days thereafter, cause his answer to be served on this International Union or its Executive Board by telegraph that an answer has been mailed. Upon receipt of the answer, or if no answer is received within ten (10) days after notice shall have been served upon the accused, this International Union or its Executive Board shall pass upon the whole matter as set forth in the complaint and answer, and if it determines that there is reasonable ground to believe the accused guilty it shall immediately suspend said accused and shall direct the accused to appear with his witnesses for trial upon said charges at a time and place specified before said Executive Board or any member thereof designated by the President of this International Union or any member of this International Union who shall be designated as referee by the President of this International Union. If the trial is held by the entire Executive Board, it

shall cause witnesses to be sworn and the testimony taken by a stenographer and transcribed, and it shall immediately render its decision and impose the penalty therefor. If the trial is held by a member of the Executive Board or a referee designated by the President of this International Union, he shall cause all parties and witnesses to be sworn and the testimony of the parties and witnesses to be taken by a stenographer and transcribed, and he shall make his report at once to the Executive Board, which shall as soon thereafter as convenient meet and determine the guilt or innocence of the accused. If found guilty, the Executive Board shall immediately impose the penalty, which shall be binding on all of the parties, and shall be observed and obeyed by them. If the accused shall feel aggrieved at the action of said Executive Board, it or he may within ten (10) days after notice of the action of said Executive Board has been served on it or him, appeal from the action of the Executive Board to the Board of Appeals, and when such appeal has been taken, the entire transcript of the proceedings appealed from and all books and papers relating to the same, shall at once be transmitted to said Board of Appeals and said Board of Appeals shall review said case in its entirety.

The Executive Board is authorized to appoint an International Apprentice Inquiry Commission to investigate every phase of the apprentice situation, to subpoena persons, documents, records, or any material evidence, to the end that our established apprentice policy may be enforced; that such Commission shall have authority to travel from place to place under the direction of the Executive Board and to be compensated for such travel; that the International Executive Board shall have full authority to act on the findings of such Commission, to issue special cards, and to do any other act that may be, in the judgment of the Executive Board, required to bring order out of the situation, bring all apprentices under registra-

tion and create a situation in conformity with the laws of our International Union.

The Executive Board shall have entire control over all judicial business of this International Union when not in session, viz, all appeals by members or unions against members or unions of another State or Province or in States or Provinces where no Conference is legalized; all decisions as to the laws or usages of the International Union or of subordinate unions; all charges or disputes of one member against another or his union; and all charges or disputes of one union against another; all questions as to the law raised or reported by deputies—in fact, all questions relating to the laws of the International Union or subordinate unions and violations thereof. But said Board shall in no case render a decision until both parties shall have had a full and complete opportunity to answer all charges made and refute all evidence submitted.

The Board shall notify all interested parties of its decision by mail by registered letter, within five days after the rendition thereof, and its decision shall be final unless reversed by the Board of Appeals or by the International Union at its first Convention held after such decision. The Executive Board shall file at Headquarters all papers and copies of all decisions rendered and the same shall be printed in the President's report. The decision of the Executive Board shall be in full force and effect pending the decision of the appeal.

12. That it shall be the duty of the Tile Association to invoke its powers under Article I, Section 5, and Article II, Section 10, of the Bylaws of said Tile Association, to punish any violation of this decree by any member of said Tile Association or by any subordinate tile association or by any member thereof. The provisions of Article I, Section 5, and Article II, Section 10, of said Bylaws read as follows:

ARTICLE I, SECTION 5

Local Associations.—The Board of Directors shall

have power to grant, suspend, or revoke charters to local organizations in cities, towns, or localities having three or more qualified tile, mantel, and grate contractors. Such local organizations shall be subordinate to this association, shall at all times further and carry out the object of this association, and may adopt their own bylaws and regulations, which shall be in furtherance of the charter and bylaws of this association and not inconsistent therewith. On request of the president the local organization shall file with this association a complete and accurate copy of its bylaws, rules, and regulations. The local organization shall not create any obligation against this association.

ARTICLE II, SECTION 10

Suspension and Expulsion.—Any member of this association not a member of any local association who shall violate the charter and bylaws of this association or be guilty of conduct unbecoming a member of this association may be suspended or expelled by the Board of Directors. If such member shall feel such action unjust he may appeal therefrom to the members at the next annual meeting.

Any member of the Association who is a member of a local association may be suspended or expelled by the local association for like cause or for violating the bylaws, rules, or regulations of the local association. Suspension or expulsion from the local association shall constitute and be suspension or expulsion from this association. If any member shall feel himself aggrieved by any such action of the local association, he may appeal therefrom to the Board of Directors of this association who shall hear the complaint and affirm, reverse, or modify the action of the local association as in their judgment the facts warrant.

If a member of a local association is suspended they automatically cease to be a member of this association, but upon application of the local association and reinstatement of the member by the local association, they may be reinstated by The Tile Contractors' Associa-

tion of America, Inc., subject to the approval of the Board of Directors.

13. That all constitutions, bylaws, resolutions, and agreements of the Tile Association and any of its subordinate associations, the International Union and any of its subordinate unions, and any arbitration boards whose membership consists of representatives of any of the subordinate tile associations or subordinate unions or of the International Union or of the Tile Association, insofar as said constitutions, bylaws, resolutions, and agreements authorize, provide, or permit any activity prohibited by this decree, are hereby declared unlawful and of no force and effect.

14. That the terms of this decree 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, associations, and individuals who may acquire the ownership, control, directly or indirectly, of the property, business, and assets of the defendants or any of them, or of any of the subordinate tile associations or subordinate unions other than those named as defendants or any of them, whether by purchase, merger, consolidation, reorganization, or otherwise.

15. That for the purpose of securing compliance with this decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on the written request of the Attorney General or an Assistant Attorney General and on reasonable notice to the defendants made to the principal office of the defendants, be permitted (a) reasonable access, during the office hours of the defendants, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendants, relating to any of the matters contained in this decree, (b) subject to the reasonable convenience of the defendants and without restraint or interference from them, to interview officers or employees of the defendants, who may have counsel present,

regarding any such matters; and the defendants, on such request, shall submit such reports in respect of any such matters as may from time to time be reasonably necessary for the proper enforcement of this decree: *Provided, however,* That information obtained by the means permitted in this paragraph shall not 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 in which the United States is a party or as otherwise required by law.

16. That it is: *Provided, however,* That nothing herein contained shall, with respect to any act not enjoined by this decree, prohibit, prevent, or curtail the rights of the defendant unions or any of them from picketing or threatening to picket, circularizing or disseminating accurate information or carrying on any other lawful activities against anyone, or with reference to any product when the defendant unions or their members have a strike, grievance, or controversy, or from lawfully seeking to attain and carry out the legitimate and proper purpose and functions of a labor union.

17. That jurisdiction of this cause is retained for the purpose of enabling any of the parties to this decree to make application to the Court at any time for such further orders and directions as may be necessary or appropriate in relation to the construction of or carrying out of this decree, for the modification hereof upon any ground (including any modification upon application of the defendants or any of them required in order to conform this decree to any Act of Congress enacted after the date of entry of this decree), for the enforcement of compliance herewith and the punishment of violations hereof. Jurisdiction of this cause is retained for the purpose of granting or denying such applications as justice may require and the right of the defendants to make such applications and to obtain such relief is expressly granted.

18. That this decree shall become effective upon date of entry hereof.

Dated June 10, 1940.

MICHAEL L. IGOE,
United States District Judge.