

Syllabus

IN THE MATTER OF
AMERICAN PHOTO-ENGRAVERS' ASSOCIATION, ET AL.
AND THE INTERNATIONAL PHOTO-ENGRAVERS'
UNION OF NORTH AMERICA ET AL.

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Dockets 82 and 928. Complaint,¹ Oct. 20, 1925—Decision, Feb. 10, 1928

Where a trade association which included in its membership concerns producing from 75 per cent to 90 per cent of the output of photo-engravings in the United States, with annual sales for the industry amounting to over forty million dollars, and which (a) included among its objects (1) the thorough organization of the photo-engravers of America, (2) the elimination of the evils of ignorant and ruinous competition, (3) the spread of the knowledge of the elements of costs and what constitutes a "proper" remuneration for services rendered, and (4) the universal use of its so-called "standard scale" as the basis for pricing plates, and which (b) included in its code of ethics (violated by price cutting) such a friendly attitude among competitors as would enable them to meet and discuss frankly the means whereby "wily and unscrupulous" buyers might be effectively discouraged, and which (c) admitted to membership only those who were also members of their respective local associations, when the latter required its members to belong to the general organization; and said trade association's officers and members; in pursuance of a combination or conspiracy for the purpose of lessening, hindering, regulating or suppressing competition in price in the sale of photo-engraving products or of enhancing the prices therefor, and, in order to consummate said purpose, to coerce, intimidate or prevent manufacturers of said products from individually and freely making such prices for their products as the free exercise of their individual judgment directed, and from competing in price among themselves or with others,

- (a) Promulgated its so-called "standard scale," consisting of a schedule of uniform minimum base prices (based on high cost, rather than representative, jobs, and providing and intended to provide a profit), as the official basis of charges, for the purpose, among others, of facilitating measures for the regulation and lessening of price competition in photo-engraving products, and of enhancing the prices thereof, mailed every manufacturing photo-engraver in the United States a copy thereof, and directed a special committee to cooperate with its executive committee in introducing such scale into general use by all photo-engravers;

¹ Second amended.

- (b) Prepared uniform estimating blanks, inaugurated estimating exercises, and conducted a national estimating class in its monthly periodical and encouraged its local clubs to hold such classes in order to foster and develop uniform interpretation and application of the scale in arriving at base prices, and of the explanatory side notes, and "suggested supplementary notes" pertaining thereto and covering the application thereof and charges for time work, special processes, etc., and to guard against unwitting price cuts by the omission of chargeable items from estimates;
- (c) Urged the local and sectional clubs and associations to adopt supplementary notes representing *interpretations of the scale, as nearly uniform and standard as conditions would permit*, and undertook a campaign of organization, standardization, and education, financed by weekly contributions from members, in order to standardize prices and the mutual understanding of every factor in the business, and to overcome the condition of difference in prices;
- (d) Encouraged and aided engravers specializing in color work and work for school annuals, in combining in establishing agreed uniform rates of maximum discount;
- (e) Declared its purpose to have local clubs formed in every city throughout the United States, and banded into sectional bodies in order that it might afford protection against price cutting by having outside engravers quote the terms of the standard scale, recognizing discounts in vogue in each territory and receiving reciprocal treatment at home, enlisted the cooperation of the union involved to this end, and undertook to afford and at great cost in time and money did afford such protection to local engravers, thereby directly and substantially retarding actual shipments of products involved from state to state, due to advantages of the local engravers through nearness and personal contact, over more distant competitors;
- (f) Endorsed the so-called "Chicago Plan" or "Clause 10," whereby one of the clubs, as a means of inducing and compelling concerns to respect prices and to restrict and regulate competition entered into an agreement with the local of the union involved, (which included among its members 90 per cent of the workmen in the industry in the United States), providing, among other things, that the members of the local should work only for member clubs, and exhorted photo-engravers elsewhere to follow the example of said club, and carried on extensive propaganda in favor thereof, held many meetings, and an organization conference arranging for the further spread of said plan, and together with the president and the general and local officers of the union concerned frequently addressed meetings held by members of the industry relative to the use of such device as a means of enforcing the standard scale and restricting or eliminating price competition;
- (g) Engaged, through their official periodical or bulletin, in propaganda in favor of the elimination, in so far as possible, of price competition, giving publicity to obdurate offenders invading other territory at cut prices, praising those declining business from outside territory, advocating the employment of Clause 10 and the enhancement of prices, suggesting the refusal on the part of the men to work for photo-engravers who fail to maintain required price standards, (defining a price cutter as one who uses the scale to determine the proper price, but quotes a greater discount therefrom than that prevailing in his territory), and reciting resolu-

tions by and certain provisions of the general law of the union involved, relating to the withdrawal of men from shops offering price competition; with the result that there was a general knowledge throughout the industry that the union and the employers' bodies would place their full united strength in support of the price program determined upon; and

- (h) Approved establishment of "prevailing rates" of maximum discount from scale prices for different clubs, and encouraged gentlemen's agreements and working understandings between clubs not to solicit business in each other's territory at cut prices, if at all, and took action directly in the case of disturbing factors in the price situation through invasion by a concern at cut prices of the territory of others, through securing assurances and pledges and in other ways; and

Where the local and sectional member clubs, (member concerns of which were in the case of many of the locals likewise members of the general association), formed for the purpose, among others, of supplying the means for local understandings as to price, and the officers and members thereof; in pursuance of the aforesaid purposes,

- (i) Adopted and used said standard scale, as revised in a generally upward direction from time to time, as a common basis for making prices, to the practical exclusion of the old method, passed motions and resolutions fixing local minimum prices for photo-engraving products, submitted bids for club approval before submission to the prospect, resisted price cutting through propaganda and otherwise, held estimating classes for the sake of bringing about price uniformity, and arrived at understandings between one another that they should respect the prices and conditions established by other clubs when making sales in their territories;
- (j) Passed laws making members subject to suspension and expulsion from the respective clubs for violation of motions or resolutions of the club, asserted the power to inspect the books of members and appointed auditors, accountants and vigilance committees, adopted clause 10 in all but 4 or 5 of the 25 largest cities in the United States, warned members they would be held strictly accountable for violation of price policies, suspended, and through reprimand, fine, threat of labor troubles, and otherwise disciplined and coerced members and concerns who violated price agreements and policies, and notified locals of the union, which adopted and followed the policy that price cutting was good cause for suspension of a concern by its club and that it must withdraw men from the shops of price cutting employers and those where the proprietors failed to join or to maintain their membership in the club (except for such a cause as excessive initiation fees, or grounds considered by it arbitrary or unreasonable), and thereby and through notice that it would not tolerate "unwarranted" competition and otherwise, cooperated in the accomplishment of the aforesaid purposes; with the result that concerns were forced against their will to join various local clubs, and others to maintain membership therein and adhere to local price understandings; and
- (k) Cooperated directly with the general association, in the case of those engravers specializing in color work and work for school annuals, in standardizing a form of contract to be used by their solicitors, containing provisions as to the rates of discount from the scale, and in the use of the scale with agreed discounts therefrom, and special charges;

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With the result of (1) largely localizing the business involved, (2) encouraging the use of the scale by individual concerns, by reason of its availability in place of the adoption of cost systems, as advocated by the association, and by the local clubs to assure the securing by the engraver of the "fair profit" called for by the code of ethics, (3) enhancing and stabilizing the prices of the products concerned through the country as a whole and curtailing, restricting, regulating and destroying price competition, as to a large proportion of the trade, including to a lesser extent that of plants not belonging to the various clubs, and (4) compelling unwilling adherence of certain competitors of manufacturer members; and

With the further result, by reason of said enhanced prices and lessened price competition of (1) bringing into the industry, many new plants, largely managed by men ill equipped by experience and capital, thereby increasing the industry's capacity to produce photo-engraving products far beyond the demand therefor and thereby loss due to idle labor, time and increased costs of production, and (2) influencing buyers of the products, including publishers, to go into the business themselves, and with a tendency on the part of the associations and clubs, and their members so to enhance prices as to permit the ill equipped and inexperienced to remain in business:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Eugene W. Burr, Mr. Randall Larson, Mr. Robt. N. McMillen and Miss Anna Boyle for the Commission.

Mr. John Walsh and Mr. L. A. Spiess, of Washington, D. C., for the American Photo-Engravers' Association, the local Photo-Engraving Associations, their officers and members.

Phillips, Leibell & Fielding, of New York City, for the International Photo-Engravers' Union, its officers and members and various local unions.

SYNOPSIS OF COMPLAINT *

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent American Photo-Engravers' Association, its officers and members, the various local photo-engravers' associations, and their officers and members,² the International Photo-Engravers' Union of North America, with principal office in Chicago,³ its officers, execu-

* Second amended complaint.

² In the case of both local associations, and general associations, composed of individuals, partnerships and corporations engaged in the manufacture and sale of photo-engraving products, and, with few exceptions, engaged in such sale in interstate commerce, and comprising also a substantial majority of all the concerns engaged in the manufacture and sale of the aforesaid products, in competition with others similarly engaged in various cities and sections of the United States.

³ With 75 local union organizations in various cities and sections of the United States, some of said locals being the New York Photo-Engravers' Union, No. 1, Chicago Photo-Engravers' Union No. 5, St. Louis Photo-Engravers' Union No. 10, and other similar local union groups, composed of persons employed in photo-engraving establishments in their respective cities, and located in all the principal cities of the United States and Canada, with a total membership for the International and the various locals, of approximately 5,000, constituting a substantial majority of all the persons employed as above set forth, throughout the United States.

tive board and members, and its various local photo-engraving unions and their officers, executive boards and members, with conspiring, combining, confederating and agreeing together among themselves to regulate, control and suppress competition among manufacturers of the products in question and to establish and maintain enhanced prices therefor throughout the United States, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.⁵

⁵ This complaint, the second amended complaint, sets forth the previous issuance of a complaint against the Chicago Photo-Engravers' Association, the granting of a petition for leave to intervene in behalf of the International Photo-Engravers' Union of North America and the Chicago Photo-Engravers' Union No. 5, the issuance of a subsequent complaint against the Photo-Engravers' Board of Trade of New York, Inc., and the New York Photo-Engravers' Union No. 1, the issuance of an amended complaint against all the respondents named herein and the taking of evidence in support thereof but not in support of the answers filed, preceding the issuance of this, the second amended complaint.

Said second amended complaint sets forth the associations, etc., joined as respondents, as follows:

American Photo-Engravers' Association, its officers and members;
 Baltimore-Washington Engravers' Association, its officers and members;
 Boston Association of Photo-Engravers, its officers and members;
 Buffalo Photo-Engravers' Association, its officers and members;
 Central States Association of Photo-Engravers, its officers and members;
 Central-Eastern Photo-Engravers' Association, its officers and members;
 Chicago Photo-Engravers' Association, its officers and members;
 Cincinnati Photo-Engravers' Association, its officers and members;
 Cleveland Photo-Engravers' Club, its officers and members;
 Denver Photo-Engravers' Club, its officers and members;
 Detroit Photo-Engravers' Club, its officers and members;
 Houston Photo-Engravers' Club, its officers and members;
 Iowa Manufacturing Photo-Engravers' Association, its officers and members;
 Kansas City Photo-Engravers' Club, its officers and members;
 Manufacturing Photo-Engravers' Association of Philadelphia, its officers and members;
 Manufacturing Photo-Engravers' Association of New Jersey, its officers and members;
 Michigan Photo-Engravers' Club, its officers and members;
 Minnesota Photo-Engravers' Association, its officers and members;
 Mountain States Photo-Engravers' Association, its officers and members;
 New England Photo-Engravers' Association, its officers and members;
 Northern California Photo-Engravers' Association, its officers and members;
 Northwestern Photo-Engravers' Association, its officers and members;
 Omaha Photo-Engravers' Club, its officers and members;
 Photo-Engravers' Association of Southern California, its officers and members;
 Photo-Engravers' Board of Trade of New York, Inc., its officers and members;
 Photo-Engravers' Club of Wisconsin, its officers and members;
 Pittsburgh Photo-Engravers' Club, its officers and members;
 Portland Photo-Engravers' Association, its officers and members;
 Rochester Photo-Engravers' Club, its officers and members;
 Seattle Photo-Engravers' Club, its officers and members;
 Southeastern Photo-Engravers' Association, its officers and members;
 Texas Photo-Engravers' Association, its officers and members;
 St. Louis Photo-Engravers' Club, its officers and members;
 Virginia State Photo-Engravers' Association, its officers and members;
 International Photo-Engravers' Union of North America, its officers, executive board and members, and its various local photo-engraving unions, their officers, executive boards and members.

Names of respondent officers of respondent American Photo-Engravers' Association, and of the local associations, in so far as known to the Commission, and representative numbers of individual members, of the various associations are set forth in the complaint,

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According to the complaint, "In the acts hereinafter set out said respondents, American Photo-Engravers' Association, and the local photo-engravers' associations, acted for and in behalf of all individuals, partnerships and corporations who were members of said associations, both those engaged exclusively in intrastate commerce and those engaged in part in interstate commerce, and said acts as hereinafter set out have substantially affected interstate commerce in photo-engraving products throughout the United States," and said officers of said respondent, International Photo-Engravers' Union of North America, and the officers of all of said local union organizations and the delegates representing said local union organizations at meetings and conventions of or on committees of the International Photo-Engravers' Union of North America, have acted as the representatives, and in the common interest, of all the members of said union organizations.

The complaint, following the preliminary recital of respondents, etc., as above summarized and suggested, concludes as follows:

PARAGRAPH 5. In or about July, 1915, said respondent, American Photo-Engravers' Association, its officers and members, conspired, combined, confederated and agreed together among themselves and with the said respondent, International Photo-Engravers' Union of North America, its officers and members, to regulate, control, and suppress competition among manufacturers of photo-engraving products and to establish and maintain enhanced prices for photo-engraving products throughout the United States.

PAR. 6. In furtherance of said conspiracy, combination, confederation, and agreement the said respondent, American Photo-Engravers' Association, through its officers and on behalf of its members, compiled and adopted a schedule of uniform minimum prices for all photo-engraving products hereinafter called standard scale. The said standard scale was submitted by said American Photo-Engravers' Association to the various respondent local photo-engravers' associations throughout the United States, and the said American Photo-Engravers' Association secured the adoption, maintenance and use of the said standard scale by many of said respondent local photo-engravers' associations and their members, as a uniform schedule of minimum prices for the sale of photo-engraving products, a sub-

and all officers and member individuals, partnerships, and corporations are made respondents without being specifically named, as constituting a class too numerous to be brought before the Commission in the proceeding "without manifest inconvenience and delay," and the officers of the International Photo-Engravers' Union of North America are likewise set forth, and said officers and the officers of the various local union organizations, the delegates, and their members, are made respondents without being specifically named, as constituting a class too numerous to be brought before the Commission, as hereinabove set forth.

stantial portion of which products was intended for sale and actually sold in interstate commerce. Others of the respondent local photo-engravers' associations and their members adopted as their schedule of uniform minimum prices, the said standard scale but with a uniform discount therefrom agreed upon by the members of each such local association. Others of respondent local associations and their members adopted, as their schedule of uniform minimum prices, said standard scale but made agreed discounts therefrom in favor of a certain class or certain classes of preferred buyers of photo-engravings, to wit, advertising agencies, publishers and printers or one or more of said classes of buyers, all other customers being required to pay not less than the charges shown upon said standard scale without discount therefrom. Respondent local associations, with the concurrence, advice and insistence of respondent American Photo-Engraving Association joined in an understanding and agreement that in all cases where a local association should establish a variation from said uniform schedule as in this paragraph above described, the members of any other local association, when doing business in the territory wherein such variation should be in effect, should observe said variation and not sell at prices less than those established by said variation.

PAR. 7. In furtherance of said conspiracy, combination, confederation, and agreement it was understood and agreed by and between the American Photo-Engravers' Association and the International Photo-Engravers' Union of North America that the members of said respondent associations would employ only members of said unions, and that members of said unions would work only for members of said associations; that in pursuance of said agreement the American Photo-Engravers' Association recommended to its members and to the various local photo-engravers' associations and the International Photo-Engravers' Union of North America recommended to the various local unions, the following form of agreement for adoption and use by and between the photo-engravers' association and the union in each city or locality within the United States.

In order that the union may secure the adoption and carrying out by all photo-engraving concerns in Chicago of the scale of wages and working conditions herein specified, and have the responsibility of said club for their observance and performance, the union hereby requests and the club hereby agrees, that the club will admit to its membership all reputable photo-engraving concerns in Chicago; and in consideration hereof and of the assumption of the responsibility by the club for any and all violations of said scale of wages and working conditions by every member of the club, the union agrees that its members will work only for such photo-engraving concerns as are members of the club, provided that the club shall not arbitrarily, or for any but good cause, refuse admission to or deny retention of membership in the club.

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In a number of cities and sections of the United States this agreement, or a similar agreement, was adopted by the local photo-engravers' association and the local union organization, together with an agreement providing for the employment of union men exclusively by members of the local photo-engravers' association.

PAR. 8. Aforesaid agreement set out in paragraph 7 hereof was intended to force and resulted in forcing all individuals, partnerships and corporations engaged in manufacturing, by means of the employment and services in whole or in part of members of respondent unions, and in selling photo-engraving products in various cities and localities, to join and become members of the local photo-engravers' association operating in each such city or locality and to adopt and maintain as their respective uniform minimum prices the said standard scale prices or aforesaid locally agreed upon variations from said standard scale, as described in paragraph six hereof, for all photo-engraving products manufactured and sold by such manufacturers, including a substantial volume of such products sold and transported, by them in the regular course of business, to customers located in States other than the respective States wherein the said products were manufactured.

PAR. 9. In pursuance of said conspiracy, combination, confederation, agreement and understanding the International Photo-Engravers' Union of North America and its officers and some of the respondent local unions have from time to time declared that all individuals, partnerships and corporations manufacturing and selling photo-engraving products and having their places of business in localities wherein, at such respective times, prices were being made, by one or more of such manufacturers, for photo-engraving products, lower than the aforesaid agreed prices, would have to adopt and maintain as their minimum prices, said uniform scale of prices for photo-engraving products, or such said variation therefrom as might be in force in a given territory, as in paragraph 6 hereof described, and have at various times threatened to call strikes or withdraw union employees from photo-engraving establishments that failed to maintain said uniform scale of prices, and have at various times threatened to ruin such photo-engraving establishments, and have withdrawn their members from employment in such establishments unless and until such establishments promised to adopt and maintain said uniform minimum prices for the sale of their said products. Respondent unions have adopted other devices intended to compel and resulting in the adoption and maintenance by photo-engraving establishments of a uniform minimum scale of prices for photo-en-

graving products, in pursuance of said conspiracy hereinbefore set out.

PAR. 10. The said scale of uniform prices for photo-engraving products has been changed from time to time by said respondent, American Photo-Engravers' Association and the various local photo-engraving associations, and various devices and means have been used by said respondent associations to induce or compel the adoption and maintenance of minimum prices of photo-engraving products agreed upon as aforesaid and to prevent competition in price between photo-engraving manufacturers in their interstate commerce in said products.

PAR. 11. These alleged acts of respondent, American Photo-Engravers' Association, and the various local photo-engravers' associations, and the International Photo-Engravers' Union of North America, and the various local union organizations, considered together, have a dangerous tendency unduly to hinder free competition in commerce in photo-engraving products by fixing and maintaining uniform prices therefor, within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Acting in the public interest, pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission, on the 14th day of April, 1923, issued and served a complaint upon the American Photo-Engravers' Association, its officers and members, 33 local associations of photo-engravers, including the 31 described in section 2 thereof, their officers and members, and the International Photo-Engravers' Union of North America, its executive board and members and its various local photo-engraving unions and their officers, executive boards and members, charging them with the use of unfair methods of competition, in violation of the provisions of section 5 of said act.

The complaint against these respondents was in part a consolidation of two complaints, under which no testimony was taken; the one being Docket 928, dated November 8, 1922, against the New York City club of employing photo-engravers and the local union of workmen, and the other Docket 82, dated March 13, 1918, against the Chicago club of employing photo-engravers, in which the Commission had, on the 15th day of June, 1921, granted a petition to inter-

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vene, filed in 1918 by the International Photo-Engravers' Union of North America and Chicago Photo-Engraver's Union No. 5; and the said pleading was designated an amended complaint.

Respondents having entered their appearances and filed their answers, hearings were had from time to time, from May, 1923, to September 1925, before an examiner of the Federal Trade Commission theretofore duly appointed, at which hearings evidence was introduced in support of the allegations of the complaint.

The amended complaint was thereupon, on the 20th day of October, 1925, amended to conform to the proof, and the respondents filed new answers, and further hearings were had in June and July, 1926, at which evidence was introduced on behalf of the respondents and the Commission.

All of the evidence was recorded, duly certified and transmitted to the Commission. Thereupon this proceeding came on for decision on the record, briefs and oral argument, and the Commission being fully advised in the premises, makes its findings as to the facts and its conclusions drawn therefrom.

FINDINGS AS TO THE FACTS

I

1. Respondent American Photo-Engravers' Association, hereinafter called "American," is a continuation of an unincorporated trade association organized in 1897 by individuals, partnerships, and corporations of manufacturing or commercial photo-engravers, and later known as the International Association of Manufacturing Photo-Engravers until 1918, when the word "Manufacturing" was eliminated and the present name adopted. Its principal office is in Chicago. Among its expressed objects are to establish local and sectional associations and to effect the thorough organization of the photo-engravers of America; to encourage and foster a feeling of friendship and spirit of cooperation for the elimination of the "evils of ignorant and ruinous competition"; to spread the knowledge of the elements of cost and what constitutes a "proper" remuneration for services rendered, so that competition may be "honorable, just and reasonable"; and to standardize a code of ethics and trade customs for the guidance of its members. It has an executive committee, a vigilance committee for enforcing its code of ethics and committees on publicity, membership, research and cost.

2. Parts of its code of ethics promulgated in 1920 declare for:

(a) Universal use of the standard scale as the basis for pricing plates.

(b) "Fair" prices, profits and competitive conditions and uniform trade customs.

(c) The use of quality and service rather than lower prices as selling arguments.

(d) The free exchange of ideas and experiences.

(e) Such a friendly attitude among competitors as will enable them to meet and discuss frankly the means whereby "wily and unscrupulous" buyers may be effectively discouraged. Cutting prices constituted one form of violation of the code of ethics of the American.

3. It maintains a cost accounting department which analyzes and prepares data for the use of its members and other photo-engravers throughout the United States. It has, through its membership or organization committee, through its monthly bulletins and otherwise, done much work in forming and fostering the strong local and sectional associations described in section II below; for which purpose it has divided the country into districts, with boundaries fixed by the executive committee; it admits to its membership no one who is not a member of his local association if, as is true of about half the clubs including the larger organizations, the local association involved requires all of its members to be members also of the American. Its expenses during the year ending May 31, 1922, aside from its monthly bulletin, which is more than self-sustaining, were a little over \$36,000, nearly equally divided between headquarters expenses and others, including over \$13,500 for organizing, conferences, arbitration and conciliation.

4. Respondent officers and executive committee of the American at the close of the testimony herein who are charged with and engaged in the management and direction of its affairs, and in this behalf represent all of its members, were: Louis Flader, commissioner, who edits its monthly official organ, the Photo-Engravers' Bulletin, with a circulation of over 1,000, travels extensively and conducts, and since 1912 has conducted its business under the direction of its president and executive committee; respondents E. W. Houser, Chicago, president; V. W. Hurst, Rochester, first vice president; H. C. Campbell, Seattle, second vice president; Oscar F. Kwett, Canton, Ohio, secretary-treasurer; Adolph Schuetz, New York; C. W. Beck, jr.; and C. A. Stinson, Philadelphia; R. W. Hichert, Cleveland; and B. J. Gray, St. Louis.

5. Respondent members of the American are somewhat less than two-thirds of the nearly 700 "Commercial" photo-engravers (as distinguished from 125 "newspaper" plants, operated by newspapers for the primary purpose of making their own engravings though in most cases also doing some commercial work) in the District of Columbia and various States of the United States, and produce from 75 to 90 per cent of the output of photo-engravings in the United States.

6. The industry employs about 7,500 workmen, has an invested capital of about \$14,000,000, and annual sales of over \$40,000,000. The average net profit for the four years 1922-1925 is over 5 per cent on sales. For the year 1925, 143 companies, with sales of \$16,700,000 and an investment of nearly \$7,000,000, reported an average net profit of 12½ per cent on investment. Of 141 of these, 30 earned over 30 per cent on investment, 24 others over 20 per cent, 28 others over 10 per cent, 31 others 10 per cent or less, while 28 showed losses. Some of the work is made and delivered within a few hours, and practically half of it within three days after orders are received; but color work often takes from two to four weeks for completion. The time from delivery required for collections averages somewhat over two months.

7. Respondent members, in common with other commercial photo-engravers, are engaged in making the copper and zinc relief printing plates known as half tones, and line plates which, alone or in combination, in black-and-white, in tints or in colors, are used in producing nearly all illustrations used in typographic printing of placards, posters, catalogues, newspapers, magazines, and books. Zinc etchings and square-finish half tones in black-and-white form the most important part of the output of most plants so far as the number of plates is concerned, and are the ones covered by the price figures in the body of the standard scale described below; half tones, tints and Ben Day plates are intermediate in price between zinc etchings and color process plates, which, in 1924, in sets of two, three, or four, were respectively, 7, 10½, and 14 times the price of square-finish half tones in black-and-white. Not one plant in six, however, is equipped to do color-process work.

8. Plate making is the art of photographically printing an acid resist on a metal plate, and then etching the unprotected parts. Making the photograph and getting it on the plate is an elaborate process; the etching, unless electrolytic, is done by nitric acid for zinc, and by bichloride of iron for copper, applied to the metal by baths in tub or tray, or by various types of paddling or blast machines, by which the work is done more speedily than by the tub method. The plates then go through many processes, by machine and by hand, which may include further etching, engraving, finishing, routing, tooling, burnishing, beveling, blocking, mortising and proofing, and require over 100 materials and chemicals, 34 formulas, a great variety of machinery, and workmen of the greatest skill, dexterity, judgment and experience. Outlays for labor and materials, respectively, in 1925, constituted about 70 per cent and 18

per cent of factory costs, or about 46 per cent and 12 per cent of the selling price of the plates. Quality and prompt service are the foremost requirements on the part of most customers, but price is a serious consideration and often determines sales.

9. Many plants, in addition to making plates, maintain art departments for creating drawings, paintings, sketches or other "copy" to be reproduced by the plates for such customers as do not furnish their own copy. In such cases this work is billed separately from the plates, as "art work." Occasionally "direct" work is done, the physical object to be reproduced being itself used as copy. This class of work is a specialty.

10. The process as a whole is a photo-mechanical one, enhanced by skill and artistry, but its highest excellence is the faithful or exact reproduction of copy. The purpose of photo-engraving is not to create fine or high art but to produce photo-mechanical etched relief plates that will print on paper, reproduction of pictures, designs, photographs or other graphic forms or objects. Respondent members of the American ordinarily carry no plates in stock, but make them up on orders, in strict compliance and accordance with the requirements and directions of their customers for their particular, peculiar, and exclusive use, with special features which they require, and which render the plates of value to them, but useful and salable to others only as scrap metal.

II

1. Respondents:

Baltimore-Washington Engravers' Association, Baltimore, Md.;
 Boston Association of Photo-Engravers, Boston, Mass.;
 Buffalo Photo-Engravers' Association, Buffalo, N. Y.;
 Central States Association of Photo-Engravers, Cleveland, Ohio;
 Central-Eastern Photo-Engravers' Association, Syracuse, N. Y.;
 Chicago Photo-Engravers' Association, Chicago, Ill.;
 Cincinnati Photo-Engravers' Association, Cincinnati, Ohio;
 Cleveland Photo-Engravers' Club, Cleveland, Ohio;
 Denver Photo-Engravers' Club, Denver, Colo.;
 Detroit Photo-Engravers' Club, Detroit, Mich.;
 Houston Photo-Engravers' Club, Houston, Tex.;
 Kansas City Photo-Engravers' Club, Kansas City, Mo.;
 Manufacturing Photo-Engravers' Association of Philadelphia, Philadelphia, Pa.;
 Manufacturing Photo-Engravers' Association of New Jersey, Newark, N. J.;
 Michigan Photo-Engravers' Club, Detroit, Mich.;
 Minnesota Photo-Engravers' Association, St. Paul, Minn.;
 Mountain States Photo-Engravers' Association, Denver, Colo.;
 New England Photo-Engravers' Association, Providence, R. I.;
 Northern California Photo-Engravers' Association, San Francisco, Calif.;

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Northwestern Photo-Engravers' Association, Portland, Oreg.;
Omaha, Photo-Engravers' Club, Omaha, Nebr.;
Photo-Engravers' Association of Southern California, Los Angeles, Calif.;
Photo-Engravers' Board of Trade of New York, Inc., New York, N. Y.;
Photo-Engravers' Club of Wisconsin, Milwaukee, Wis.;
Pittsburgh Photo-Engravers' Club, Pittsburgh, Pa.;
Portland Photo-Engravers' Association, Portland, Oreg.;
Rochester Photo-Engravers' Club, Rochester, N. Y.;
Seattle Photo-Engravers' Club, Seattle, Wash.;
Southeastern Photo-Engravers' Association, Chattanooga, Tenn.;
Texas Photo-Engravers' Association, Fort Worth, Tex.; and
St. Louis Photo-Engravers' Club, St. Louis, Mo.,

hereinafter called "clubs," are voluntary unincorporated associations or corporations organized by individuals, partnerships, and corporations of commercial photo-engravers, to promote the interests of their members by fostering trade acquaintance and friendship, spreading knowledge of the elements of cost-finding, to the end that competition may be "reasonable," and in other ways. Their members are in many places—including New York, Philadelphia, Chicago, St. Louis, San Francisco, Portland, and Seattle—identically the same concerns that make up the membership of the American in their territory.

2. Club revenues come from initiation fees ranging from \$10 to \$250, and from monthly dues, in some instances of over \$100 for plants employing 10 journeymen. The fees and dues of the Chicago and St. Louis clubs, and possibly others, include those for the American; these and the other five clubs listed above collect dues for the American. Paid secretaries are employed by the New York, Chicago, Philadelphia, St. Louis, Cleveland, Milwaukee, Los Angeles, San Francisco, and New England clubs, and were formerly employed by those at Grand Rapids, Detroit, Minneapolis and by the one at Baltimore and Washington. The clubs and the American maintain close relations with each other, and the industry is one of the best organized in America.

III

1. Respondent, International Photo-Engravers Union of North America, hereinafter called the international, is an unincorporated association of workmen engaged as journeymen in the preparation of photo-engravings, having its principal office at Chicago, with which over 90 per cent of the workmen in the industry in the United States, are affiliated. These workmen are organized into 75 unions, hereinafter called "locals," subordinate to the international, but having self-government within territories determined by the international, provided their acts do not conflict with its laws. They are now allowed to call strikes without sanction from the international.

2. The international's business is under the general supervision of an executive council, of which its president and secretary-treasurer are members. Matthew Woll for more than 15 years has been president of the international, and also editor of its monthly official journal, the *American Photo-Engraver*, which is subscribed for by member and nonmember workmen and most of their employers, and practically covers the entire industry.

IV

1. Employing respondent concerns, as well as other photo-engravers in the course of their business, make plates for customers in States other than that of manufacture, and in cities where other photo-engravers are located, and at the direction of the customer and at his expense, ship the plates so made by parcel post or express to the customer or his printer or advertising agent located in another State. In addition, deliveries for out-of-State customers, are, when so requested, made to advertising agents and printers in the State of production, and in some cases the photo-engraver himself does the printing for the customer.

2. Many respondent members and other photo-engravers in Boston, New York, Philadelphia, Baltimore, Washington, Chicago, Milwaukee, Minneapolis, St. Louis, Grand Rapids, and other cities, make plates for, and ship them to, out-of-State customers in widely separated parts of the United States and in Canada, Mexico, and Porto Rico. Some of them advertise extensively and send traveling salesmen into, or maintain selling offices or branch plants in other States, and ship into other States, plates representing from one-fifth to over one-third of their output. A St. Louis member selling in 26 States, together with one other company, in 1921 was supplying 80 per cent of the country's demand for shoe illustrations; another in Terre Haute sells over one-third of his \$48,000 output in 30 foreign jurisdictions, from Arizona to New Hampshire; and a nonmember at Alton, Ill., sells about 40 per cent of his output to customers in other States. Sixteen members, 4 each in Philadelphia and St. Louis, 5 in Kansas City, 2 in Denver and 1 in Baltimore, ship over \$340,000 worth of plates per year, or nearly 16 per cent of their output, into other States, of which one-third is shipped by a single respondent in Philadelphia who so ships about 21 per cent of his output. The ratios of out-of-State shipments to total output of these companies, for the different cities, are: 35 per cent in Baltimore; 17 per cent in Philadelphia; 14 per cent in Kansas City; 11.1 per cent in Denver and a little under 10 per cent in St. Louis. New England photo-

engravers ship 11 per cent to 12 per cent of their products out of the State of production. Four members in San Francisco ship \$7,500 worth of plates (under 3 per cent of output), and four in Portland, Oreg., \$4,800 worth (about 2 per cent of output) per year into other States. In New York and Chicago there are members selling and shipping varying minor portions of their output to out-of-State customers. Respondent members, as a whole, ship less than 10 per cent of their output outside of the State of production. This percentage is less than it was ten years ago. This decrease is due to the activities of the American and the local clubs hereinbelow described.

3. These respondents, in selling plates as aforesaid, are severally in competition with other members and nonmembers in their own and other States, likewise so engaged; and also, in lesser degree, with companies producing planographic and intaglio illustrations, such as are used in offset printing and rotogravure respectively, and to a still less extent with makers of electrotypes, photo-engraving being the leading graphic art.

4. In addition to the actual shipment of photo-engravings from one State to another in the course of trade, there is potential competition between manufacturers of diverse States, which, if unhampered, would cause shipment of this class of product, in larger quantities than those above stated, by manufacturing respondents and other photo-engravers, from the State of manufacture to other States. The sectional and local clubs have been formed with the purpose of supplying the means for local understanding as to price, sometimes embodied in resolutions at club meetings and sometimes not, supported by mutual understanding that outside engravers would respect local prices when entering each respective territory for business. As early as 1916 it was officially declared for the American that it purposed to have photo-engravers' clubs formed in every city throughout the United States and these clubs banded into sectional bodies in order to have protection from the American against price cutting, to the end that outside engravers quote the terms of the standard scale, recognizing discounts in vogue in each territory, and receive reciprocal treatment at home. The American undertook to afford, and at great cost in time and money has afforded protection to local engravers to the end sales made by outside photo-engravers shall not be made at prices below the concerted price in the locality into which the photo-engraving products are to be shipped, and this lessens and curtails the said shipments from State to State. Since the local engraver has advantages through nearness and personal contact, over his distant competitor, the elimination of price competition has di-

rectly and substantially retarded and lessened actual shipments of these products from State to State.

5. Among numerous localities and sections which received protection of this kind from the price competition of other districts are Chicago, Milwaukee, Minnesota, Michigan, Wisconsin, Nebraska, Ohio, Missouri, Minneapolis, St. Paul, Denver, Omaha, Texas, Virginia, ten States south of Virginia and the Ohio River, New York, Philadelphia, and Atlantic coast cities as far south as Savannah, California, Oregon, Washington, and British Columbia.

6. There are many lines of competition between the States remaining, though lessened, and to a large degree thwarted, by the said nation-wide price understanding. These include, among many others, competition between New York, Philadelphia, and Chicago, and intervening points; and by manufacturing photo-engravers in these points with St. Louis and Kansas City; engravers between Omaha and Denver compete for business in Missouri and surrounding territory; Cincinnati and Indianapolis meet Louisville; Cincinnati competes with Knoxville and Chicago; St. Louis and Kansas City with Dallas and other Texas plants; Denver competes with New York and eastern houses, Chicago, Omaha, Missouri, Kansas, Boise, Salt Lake, California, and Portland, Oreg.; there is substantial, actual, and greater potential competition by Chicago with engravers in localities all over the United States.

7. The engraving business has thus gradually become localized, a great percentage of the work in any locality is local, and the out-of-town business, which once was used as a competitive price condition no longer exists to its former extent, and price competition among rival manufacturers of diverse States has been materially diminished. The American's definition of a price cutter includes one who uses the standard scale herein below described, in determining a proper price to quote, but quotes a discount from that scale greater than the prevailing discount in his territory.

V

1. The American at its annual convention at Chicago in June, 1915, following investigation into average cost of production and following earlier attempts to correlate costs and prices by a general price increase and a special increase on small plates comprising the great bulk of the output, approved as the official basis of charges a schedule of uniform minimum base prices, since known as the standard scale. This action was taken in part to relieve its members from increased costs, with falling prices, and to secure dis-

continuance of the unscientific method then prevailing of selling plates by the square inch without differentiation on account of size other than the making of a charge for a minimum number of inches. But there was a further purpose in the adoption of the standard scale, namely, to facilitate measures for the regulation and lessening of price competition in photo-engraving products, and to enhance the prices thereof.

2. The American caused notice of this action, with copy of the scale, to be mailed to every manufacturing photo-engraver in the United States. A number of respondent members at once signed an agreement pledging their firms to adopt and use this schedule at a date to be set by the executive committee. The American directed a special committee to cooperate with its executive committee to introduce the scale into general use by all photo-engravers.

3. The scale thus adopted was substantially the same one that the American had previously approved, and that the Chicago club had attempted to put into use by its members at the outset of 1914. On September 1 of that year, in the midst of a period of depressed prices and of more than usual price competition in the photo-engraving industry, price cutting was declared to be endangering both profits and wages and many employers admitted that the American was unable to cope with the problem because of its inability to force compliance with conclusions and decisions agreed to. During the year 1914 to 1915, 50 new plants went into the photo-engraving trade while several concerns were reorganized as the result of ill success; making, however, considerable net increase in the number of photo-engraving plants in the country.

4. Respondent Flader, secretary of the Chicago club as well as commissioner of the American, then, with the aim to stabilize conditions and bring more money into the industry, appealed to the international as the one force capable of controlling and keeping within reasonable bounds competition of the type flourishing, to give effect to the agitation of the past two years for cooperation between the unions and respondent associations, and help raise the prices of photo-engraving. Commissioner Flader and the president of the international agreed that proper cooperation would accomplish more than the most perfect cost-keeping system, and the latter promised all aid consistent with the expressed wishes and laws of his organization. Accordingly the "Chicago plan," or "clause 10," was inserted in the Chicago wage agreement effective April 19, 1915, as follows:

CLAUSE 10.—In order that the Union may secure the adoption and carrying out by all photo-engraving concerns in Chicago of the scale of wages and work-

ing conditions herein specified, and have the responsibility of said club for their observance and performance, the union hereby requests, and the club hereby agrees, that the club will admit to its membership all reputable photo-engraving concerns in Chicago and in consideration thereof and of the assumption of the responsibility by the club for any and all violations of said scale of wages and working conditions by every member of the club, the union agrees that its members will work only for such photo-engraving concerns as are members of the club, provided that the club shall not arbitrarily or for any but good cause, refuse admission to or deny retention of membership in the club.

5. Clause 10 was described to the 1915 convention of the American by the president, during its consideration of the price question, as the unions' agreement to cooperate with employers to bring about conditions that would permit the latter to make good their promises to increase wages and grant other concessions, and copies of it were distributed among those present.

6. The Chicago club became the leader of the movement for 100 per cent organization of the employers, clause 10, and the standard scale as the only basis for charging and billing everywhere. The American exhorted photo-engravers in other cities to follow Chicago's example and go into the plan as units and not as individuals, and appealed for money to send organizers into the various cities. An extensive propaganda was carried on by the American and many meetings were held, one center of production after another, as a result, adopting the plan in its entirety. An organization conference was held at Chicago and the further spread of the plan was there arranged.

7. Letters were sent to the American from all parts of the country, seeking information on clause 10 and the standard scale and this Chicago conference, described by some attendants as the greatest meeting in the history of the industry, was followed within a month by others in many sections; and every city which took up the question of the scale asked aid from the American; and its commissioner and other officers, together with the president and other international and local union officers, frequently addressed their meetings. For five years from June, 1915, clause 10, the standard scale, and the steps taken for their enforcement were the most discussed and advocated topics in photo-engraving circles and literature.

8. The American publicly praised the work of respondent Woll, as chiefly responsible for the evolution and successful application of the Chicago plan, and congratulated the international on having leaders capable of safeguarding its members. The president of the New York City local, shortly before the clause was there adopted, said it would be a great step in the right direction if the union by recognizing the employers' organization, could stop the prevalent indis-

criminate price cutting. He described the employers' request for clause 10 as an appeal to the union to help them to secure collective bargaining in selling and to keep "the straggling and shirking element in line" by lending its assistance to those only who as members of the employers' organization had pledged themselves to a fair and equitable selling price, for the product of the workers' toil, based on cost of production, and by refusing to aid such employers as would sell at a price to discourage those willing to pay for value received. The president of the international is reported by the official journal as describing clause 10 in an address at Boston in March, 1917, as the one means to protect the business from the evil of price cutting, organizing both employers and employees to maintain prices, a fair profit to the employer, a fair wage to the employee. Commissioner Flader's experience led him to express the view that the adoption of clause 10 was the wisest move the Chicago club ever made, he credited it with stabilizing both prices and profits, and in 1920 he felt that through clause 10 the American had been able to improve selling conditions and get a "very splendid return" for wages paid.

VI

1. The standard scale was adopted and has been continued in use by all respondent clubs named in section II above. It rapidly gained, and in its revised forms has continued to hold, almost universal recognition and use by engravers, to the practical exclusion of the old square inch method of pricing. Over 30,000 copies of its 1925 edition were sold by the American within two months after its issue.

2. The scale of 1915 embodied a fixed charge of \$1.50 plus 10 cents an inch for halftones containing from a 5-inch minimum to 30 square inches, and a flat rate of 15 cents an inch for larger plates, with one-half of this price for zinc etchings, and multiples of 6, 9, and 12 of it, and minimum charges of \$20, \$40, and \$50, respectively, for two, three, and four color process plates. It was so printed on 12-inch by 15-inch sheets that when any ordinary size square-finish plate is properly placed on the sheet, its price, computed to the nearest one-sixteenth of a square inch, is readily found under the upper right-hand corner of the plate.

3. Notes printed on the margin of the various editions of the scale describe how it is to be used and how prices for extras and other than square-finish black-and-white plates are to be figured, as for example, the minimum price on outlined and vignetted half tones is 50 per cent and on oval half tones is 25 per cent above the scale price for square-finish half tones of like size, and all manipulations are charged additional on the basis of time consumed. The notes to

all scales, prior to the 1925 revision, provided that charges for time work should be net, and the 1916 edition provided that the net rate for certain kinds of time work should be \$1.50 per hour. Provision as to how time work is to be charged is not included in the side notes of the 1925 edition, but "suggested supplementary notes," issued and distributed as a separate folder, state that time and hand-work charges represent money actually paid out, and should not be discounted, and it is the usual practice in the trade not to allow discounts on time work charges.

4. The American estimates the average costs per chargeable hour, including all expense, for the year ending April 30, 1926, at \$3.52, and "suggests" that time work be charged at \$4 per hour. This is the rate used in computing prices given in the side notes to the scale, and customarily charged net by engravers for most time work. Provision for other net prices has also been embodied in supplementary notes.

5. The changes of price brought into effect by successive advances in the standard scale, apart from side notes and supplementary notes, are indicated by the following square-finish half-tone price formulas on which the principal editions of the scale were based:

1915..... \$1.50 plus 10 cents per square inch up to 30 inches
 1917..... \$2.00 plus 10 cents per square inch up to 40 inches
 1918..... \$2.50 plus 10 cents per square inch up to 50 inches
 1920..... \$3.00 plus 15 cents per square inch up to 100 inches

Larger sizes were priced at a flat rate of 15 cents an inch in the first three editions, and at 18 cents an inch in the 1920 scale.

The resulting square-inch price for half tones of designated sizes, in comparison with the prescale rate of 10 cents an inch with a minimum of 10 square inches, is as follows:

Size of plate in square inches	Price in cents per square inch				
	Prescale	1915	1917	1918	1920
5	20	40	50	60	75
10	10	25	30	35	45
20	10	17½	20	22½	30
30	10	15	16¾	18¾	25
45	10	15	15	16¾	22½
50	10	15	15	15	21
100	10	15	15	15	18

Prices on zinc etchings were one-half of the like size half-tone prices in the first two editions and two-thirds of like size half-tone prices in the 1918 and 1920 editions. Prices on plates for color work prior to February 1, 1925, were covered in side notes to the scale.

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Two, three, and four color plates were priced respectively at 6, 9, and 12 times the half-tone price in the first two, and at 7, 10½, and 14 times the half-tone price in the last two editions of the scale. The minimum charge for two-color plates was \$20 in 1915, \$25 in 1917 and 1918, and \$32.50 in 1920; for three colors it was \$40 in the first three editions and \$52.50 in 1920, and for four-color process plates it was \$50 in earlier editions and \$65 in 1920. The prescale minimum was \$25 to \$30 for four-color plates, \$20 for three-color and apparently only \$6 or \$7 for two-color plates.

6. The total increase over prescale prices in the case of a 10-inch zinc etching has been 650 per cent. The additional income from the 1920 increase alone, provided that the new scale was introduced by all engravers, was \$6,000,000 a year and for all increases the American claims exclusive credit. Yet it finds fault with middlemen and conditions of overinvestment in the industry and it and the clubs have taken steps to make it more difficult to establish new plants. The described increases in photo-engraving prices and the lessening of price competition effected by respondents have resulted in bringing into the industry many new plants of which a large proportion are managed by men ill equipped by experience and capital. Hence, so many shops have entered the trade that the capacity to produce photo-engraving products much exceeds the demand, thus increasing the loss due to idle labor time and increasing the costs of production. High prices have also influenced buyers of these products, including publishers, to go into the photo-engraving business. There is also a tendency on the part of respondents so to enhance prices as to permit ill-equipped and inexperienced men to remain in business.

7. Early in 1925, the American, in the further interest of "standardization and harmony in the industry and fair dealing with the public and a reasonable return for services rendered," and at a cost of thousands of dollars, again revised the said notes to the black-and-white scale of 1920 in a generally upward direction, eliminating the provisions for color plates, and issued an entirely separate scale for color work, providing minimum base prices of \$45, \$72 and \$90, respectively, for two, three, and four color plates, and prices over 50 per cent higher than those of 1920 on some of the smaller size color plates; but on 100-inch plates, the new prices are only slightly above, and on still larger plates are below the 1920 prices. A further substantial increase in prices in the body of the black-and-white scale for the smaller sizes of plates, amounting to \$1.15 on the minimum half tone of 5 square inches was at this time also recommended by the cost committee but was not approved.

8. Respondent American eliminated the word "prices" from the caption of the then new scale, in 1917, and has since described it as a schedule of "values based upon," or of "basic values founded upon" the ascertained cost of production, and though a member of the Chicago club in 1919 considered some of its provisions, as interpreted by the secretary as almost "rank robbery," some members think that the scale is merely a compilation of costs without provision for profit. The said scale actually does provide a profit and was intended so to do, the costs which it embodies are not costs on truly representative jobs but rather on high cost jobs. They come from a comparatively small number of engravers, and are not as accurate as they can be made and do not cover the entire output of even this small number since it is the American's aim to include figures on only such jobs as are made to fill orders for single plates, and also since the individual photo-engraver who returns cost-data reports only a very small percentage of his business and deems himself and the trade benefited by the use of data from jobs showing higher than average cost of manufacture. Costs in 1924 had increased according to the cost committee, more than 20 per cent since 1920 when the current black-and-white scale was adopted. Discounts from scale prices are frequently granted and in some cases in New York City run as high as $33\frac{1}{3}$ per cent to 55 per cent or 60 per cent. Yet figures already given indicate that the average engraver, in 1925, made a net profit of about $12\frac{1}{2}$ per cent on investment, and in 1922 and 1924, engravers granting a 10 per cent discount made an average net profit of over 5 per cent on sales; and in 1924 the American did not adopt the recommendation of its cost-accounting and statistical department to add one-ninth to cost figures in order that a trade discount of 10 per cent might furnish scale rates equal to average cost conditions.

9. The American has long advocated the keeping of cost systems, but has not succeeded in getting over 30 engravers to make yearly reports on costs. The availability of the standard scale lessens the incentive to install cost systems and in the absence of a cost system, recourse is had to the scale by the individual concern to throw some light on its costs and by respondent clubs to determine whether or not an engraver is violating the code of ethics by failure to get the "fair profit" required by section 20 of that document.

10. Commissioner Flader upon occasion told members of local clubs with agreed discounts that it would be wrong for them to act individually in fixing their rate of discounts and after a meeting of all New England engravers in Boston, in November, 1924, attended by the American's commissioner, president, vice president and cost

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accountant, who had visited practically all engraving plants in the territory and compiled figures to show the large amounts local engravers were losing by giving generous discounts, the New England club announced that henceforth its slogan would be, "Get a fair profit—give less discount." But the enforcement of adherence to, or not exceeding the rate of, discount prevailing in any locality by engravers in that locality was left by the American largely to the local clubs, which developed machinery peculiarly fitted for this purpose, such as a right to examine books to ascertain price violations, and by way of punishment for price and other violations, passed by-laws calling for reprimand, fine, suspension and expulsion. They received union cooperation to the same end under clause 10. The president of the international, in reporting a local strike when clause 10 became effective there in 1916, declared that the locals operating under clause 10 had no alternative but to withdraw their men from the shops of such operators as refused to join the club after being requested to do so, unless in cases where initiation fees were excessive; and in cases where the clubs suspended or expelled members, clause 10 required the local to withdraw its men from the shop in question unless it considered the suspension or expulsion arbitrary or not for good cause. Moreover, the policy of the international, as declared by its resolutions and the precepts of its officers, was that price cutting constituted good cause for suspension by the club.

11. The American, to define terms and further standardize certain operations, to foster and develop uniform interpretations and application of the scale in arriving at base prices, and of the notes, and to guard against unwitting price cuts by the omission of chargeable items from estimates, prepared a uniform estimating blank, inaugurated estimating exercises and conducted a national estimating class in its monthly bulletin and at conventions, and encouraged respondent clubs to hold, and they have held and do hold, estimating classes. It also urges them to adopt supplementary notes as nearly uniform and standard, as conditions will permit, since such notes represent interpretations of the scale itself; and, in order to standardize prices and the mutual understanding of every factor in the business, and to overcome the condition of great differences in prices, the American, in 1917, undertook a campaign of organization, standardization and education, financed for about a year by the "Johnny B. Good" fund for which each member was to prepare a pay envelope and contribute \$2 a week.

12. Respondent American encouraged and aided the comparatively small number of engravers specializing in color work and

work for school annuals, whose trade has not been localized to nearly the same extent as that of black-and-white engravers, each in his own line of work, to combine in establishing agreed uniform rates of maximum discount. Accordingly, the color-plate makers' section of the American, at a meeting in March, 1916, provided for printing a color scale by following the notes on the standard scale and formulated a schedule of discounts from scale prices ranging from 20 per cent to 20 per cent plus 20 per cent, according to size or quantity, as the maximum that could be granted with safety, and gave it as their firm belief, "based on knowledge of costs," that greater discounts would result in loss. This schedule of discounts was later lowered, and in 1922 ranged from zero on plates under 140 inches, to 20 per cent on plates of over 300 inches.

13. The American's executive committee, in February, 1918, voted that the maximum discount from the color scale, on and after April 1, should be 10 per cent, and that in the interim, no contracts extending beyond that date should be made at lower rates and the American, at the time of the adoption of the 1920 scale, advised members that the best information available indicated that a discount of 10 per cent from the black-and-white scale prices was about the limit. In March, 1921, the prevailing rate everywhere on three and four color process plates was scale, net, save for the quantity discounts provided in notes to the color scale. The American, at its 1921 convention, adopted the report of the special color-plate committee specifying the time in which various types of work should be completed and naming a uniform increase of $2\frac{1}{2}$ per cent in price for jobs required in less than the allotted time.

14. Engravers specializing in school and college annual work granted discounts which the American deemed in excess of those that could possibly be granted in any other class of work, and the prevailing prices for this work and the method pursued in selling it were denounced by the American, whose ultimate goal in 1917 was to get them on exactly the same basis as other engravers. They took action early in that year to standardize a form of contract to be used by their solicitors. With the aid of the American such a contract form, containing provisions as to the rates of discount from the scale and a copy of the scale printed on its back was adopted, and, after the issuance of the 1920 scale, revised by these engravers and sometimes distributed by the American. In 1918, all except three of the concerns in this line were said to have given assurance of co-operation. In 1920 respondent Flader said that the improvement in the price situation among them was due to his agitation and publicity and would have been impossible without the organization machinery and support of the American.

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15. The tendency among respondent clubs had long been to supplant the 20 per cent discount originally suggested, by smaller discounts, and while some of them charged scale and scale plus prices, the maximum discount rate of 10 per cent is the most common given in reports to the American and set out in the agreements cited above. In numerous sections the discounts are to advertising agencies, printers, and publishers. The American advises doing away with trade discounts of this character.

VII

1. Clause 10 was adopted by employer and employe respondents in 32 large cities by the summer of 1917. The international directed its officers to do everything in their power to have it made a part of every employers' organization agreement with its members and in many cases the extension of clause 10 was simultaneous with that of the scale. Thirty-four unions in the United States and Canada never adopted it, and it was not included in agreements with newspaper plants, but it became effective at one time or another in commercial shops in all but 4 or 5 of the 25 largest cities in the United States—Detroit, Cleveland, Boston, Washington, and possibly Jersey City. All told, it was adopted by respondents covering about 50 cities, as follows: New York, Chicago, Philadelphia, St. Louis, Baltimore, Pittsburgh, Los Angeles, Buffalo, San Francisco, Milwaukee, Newark, Cincinnati, New Orleans, Minneapolis, Kansas City, Seattle, Indianapolis, Rochester, Portland, Oreg., Denver, St. Paul, Oakland, Atlanta, Birmingham, Syracuse, Richmond, Va., San Antonio, Dallas, Houston, Des Moines, Nashville, Spokane, Knoxville, Utica, Duluth, Tacoma, Fort Worth, Galveston, Austin, Muskogee, Tulsa, Oklahoma City, Cedar Rapids, Waterloo, Sioux City, St. Joseph, Fresno, San Jose, Sacramento, and Stockton. There are plants in approximately 200 cities.

2. Cooperation by respondents under clause 10 resulted in forcing certain concerns against their will to join the respective local clubs, and others to maintain their membership therein and to adhere to the local price understanding by the use of the following methods:

(a) Each respective club, under clause 10, contracted to admit to its membership all reputable photo-engravers in each respective city.

(b) The clubs passed motions and resolutions fixing local minimum prices for photo-engraving products.

(c) The clubs passed laws whereby members were subject to suspension and expulsion from the club for violation of motions or resolutions passed by the club.

(d) The clubs asserted the power to inspect the books of their members, having thus the means for detecting price violations.

(e) The local unions contracted under clause 10 that their members would work only for such photo-engravers as were members of the club with the proviso that the club would not arbitrarily or for any but good cause refuse admission to or deny membership.

(f) The international adopted the policy that cutting prices on the part of employing photo-engravers was good cause for the withdrawal of men from the shops of such employers.

(g) The clubs suspended members who broke the price agreements, and notified the local unions of the action taken.

(h) The unions called out the men from shops where proprietors failed to join or to maintain membership in the club.

3. There have been instances of strike pressure brought to bear by local clubs and unions in cooperation under clause 10 by way of requiring photo-engravers to join the local employers' club with its obligation to adhere to minimum price understandings, or requiring them to make good such membership with the said obligation. In some instances a threat of withdrawal sufficed, in others the men were withdrawn. These instances include five photo-engraving shops in Chicago, three in St. Louis, three in New York, one each in Dallas, Seattle, Milwaukee, and Terre Haute.

4. The official bulletin of the American engaged in a propaganda in favor of the elimination, in so far as possible, of price competition, advocating the employment of clause 10, and the enhancement of prices, and suggesting the refusal on the part of the men to work for photo-engravers who failed to maintain the required price standards. This publication recited the resolutions by, and certain provisions of the general laws of, the international union relating to the withdrawal of men from shops offering price competition. The result was a general knowledge throughout the industry that the unions and the employers' bodies would place their full united strength in support of the price program above described.

5. The American came to the view that the prosperity resulting from the use of clause 10 gave the unions an exaggerated idea of their importance in connection therewith, led them to demand too big a price for continuing it, and at the same time rendered its use less necessary. Prices had already been raised to cover wage increases, and as the legality of clause 10 had been called into question under State and Federal laws, that provision was tentatively dropped from the Chicago agreement in 1921, and certain other localities dropped it in the same year. Cooperative relations were further disturbed by a labor dispute involving two-thirds of the industry at

the outset of 1922, and from that time to May, 1925, clause 10 has been gradually abandoned throughout the country, with the possible exception of Philadelphia.

VIII

1. By 1915 and 1916 it had been learned by respondents that individual localities could not unaided successfully maintain prices, but that outside price competition broke local understandings. Hence the American, obtaining the cooperation of the international, took steps to prevent outside photo-engravers from competing with local employers of each given district at prices below those locally agreed upon.

2. Respondent American, apart from color and school annual work, though it ridiculed the price cutter, did not attempt to prescribe a standard uniform rate of discount from scale figures for all territory. The means for eliminating price competition were local control of prices and an understanding between the clubs that each should respect prices and conditions established by other clubs when making sales in the respective territories of the latter. It has been the general understanding among engravers in soliciting outside business to conform to prices prevailing in the territory solicited in order to "deal fairly" with local competitors. At the outset, the American cautioned engravers not to forget that "20 per cent from scale prices is dangerously close to cost," nor to think there was too much profit in plates at full scale prices. "Prevailing rates" of maximum discount from scale prices for different respondent clubs, though respondent Flader rather favored "understandings" and at times advised against too definite and explicit agreements fixing discounts and restricting territory, were established with the American's hearty approval. This was done sometimes by resolution, and sometimes by mutual understanding, but rarely, if ever, exceeded the limit suggested by the American. Among centers wherein such resolutions and mutual understandings were effected, are these important centers and sections among others: New York, Philadelphia, Baltimore, ten Southern States, Indiana, Michigan, Chicago, Minnesota, St. Louis, Milwaukee, Denver, San Francisco, Pacific Northwest.

3. The American encouraged gentlemen's agreements and working understandings between clubs not to solicit business in each other's territory at cut prices, if, indeed, they should even accept outside orders; and such arrangements were entered into. Its officers, at photo-engravers' sectional conventions, openly favored the fixation of maximum agreed discounts from the scale, but insisted that no express resolution should show the actual intendment as to inter-

sectional price understandings, but on the contrary should make reference to "common sense, ethics and business practice." Commissioner Flader has also done much letter writing, sometimes in cooperation with club secretaries and with individual engravers, to induce members and nonmembers to refrain from seeking orders in outside territory except at the discounts there prevailing. He has thus secured assurances and pledges of protection and he has not always refrained from giving publicity in his magazine to obdurate offenders.

4. The only plant in Terre Haute is of about the size the American considers most efficient, unaffiliated with any respondent club, and hence with no agreed rate of discount, without traveling salesmen, and with an inadequate local market. It solicits business by circular in many States, at prices lower than those prevailing in the invaded territory. Texas engravers publicly appealed to its manager through the columns of the American's official organ in 1917, to realize that in so doing he was tearing down the very thing the American was trying to build up, and it quit seeking business on price only. This photo-engraver signed an agreement containing clause 10, after being threatened with a strike, and in 1918, when he was issuing cut-price circulars, announcing the opening of a since discontinued office in Chicago, the Commissioner was appealed to and, in the summer of 1920, said that though this manufacturer had been a "bad competitor," it was better for all concerned to be friendly with him than to continue to fight him, and "at the present time we have made a pretty good sort of chap out of him." But before the end of the year, upon receipt of a number of complaints from several parts of the country, Commissioner Flader at least twice protested to him against excessive discounts, and warned him that he was inviting retaliation. He joined the American, and complaints from engravers against his prices resulted in his adopting the policy of not soliciting in territory where there were engraving shops, of avoidance of getting into any trouble with any organization and of staying in territory where "no one bothers." But his discount of 40 per cent from scale in 1924 was drawing considerable unsolicited business from St. Louis.

5. To get members of the American to accept business from outside territory in some cases "it pretty nearly has to be pushed on them." The American fostered the disposition to refuse or discourage such business by publishing in its magazines with laudatory comment letters from engravers turning down outside business as "evidence of existing cooperation" and in other ways, and failure to exhibit such disposition was resented by respondent clubs.

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IX

1. Respondent clubs engaged in price fixing activities of a local or sectional character under the above described arrangement and understanding forbidding price competition by photo-engravers of diverse localities or sections, as set forth in ensuing paragraphs:

2. CHICAGO.—(a) Respondent club in Chicago was the first to adopt the standard scale and has continued to use it. This club, with assurances from respondent, local and respondent international that they were determined to enforce a strict adherence to the agreement and did not propose to permit their members to cooperate with any employer who persisted in selling at prices dangerous to himself and the members of the labor committee, kept clause 10 in Chicago for nearly six years from April 19, 1915, but omitted it from their 1921 and later wage agreements. Its ways and means committee, ten days after the 1915 convention of the American, and after consulting counsel, unanimously recommended that "a discount of 20 per cent be granted from the standard scale, and an additional discount of 10 per cent where the nature of the business warrants it."

(b) No formal adoption of this discount rate by the club itself is shown. A one-time chairman of the club, told the secretary that a guardian should be appointed for letter writers who announced that as a fixed discount, and President Houser suggested censoring members' letters announcing the adoption of the scale or its revisions. This, however, was the rate announced in October, 1915, by a member who had recently been forced to join the club and a discount of 20 per cent was later regarded as the maximum rate in Chicago. On May 1, 1919, this was formally changed to 10 per cent. Propaganda against price cutting suggested "to be shot at sunrise" as the proper fate for the man who failed to "stand tight" and the chairman of the club in 1920, on receipt of many reports of price cutting, threatened to resign unless the practice, so far as it existed, was stopped. The club at the start was to base prices on the scale except in out-of-town cases where adherence to it would embarrass members, adding subsequently to its territory all cities that had officially notified it of putting the scale into effect, and directed its secretary to furnish members a list of such cities.

(c) This club made provision for discipline of members violating its by-laws or motions and resolutions adopted by it or its board of directors, and likewise for inspecting the books of members or otherwise securing data necessary in adjusting complaints. The secretary was empowered and authorized by club vote in December, 1915, to inspect the books of all members. Discipline, under the Chicago

club's by-laws, which have been used in other sections as a model, consisted of reprimand, fine, suspension or expulsion, in the discretion of its board of directors, and its constitution warns members that they shall be held fully responsible and subject to discipline for all acts of employees and representatives in violation of the club's constitution, by-laws, rules and regulations. The secretary characterized it as being remiss in duty for even a nonmember engraver to fail to report instances of price cutting as soon as they were brought to his attention.

(d) The club's board of directors, on October 7, 1915, considered several complaints referring to trade matters and abuses and reprimanded the perpetrators. One employing photo-engraver after a severe reprimand, was told that repetition would not be tolerated, and he promised faithfully to conduct himself properly in the future. The minutes of a board meeting on December 30, 1915, recite that eight members appeared in answer to summonses, and where violation of the constitution and by-laws were under consideration, each one agreed thereafter to adhere strictly to the letter. Members of the club are still called before its board of directors from time to time to explain their reasons for quoting below the standard scale or at less than the prices which the club considers fair, and nonmember engravers have also been asked for similar explanations. Color-plate makers, in 1917, authorized the club's board of directors to investigate all existing contracts for color plates, to determine if any of them violated existing agreements with respondent local. The club needed no outside aid so far as its own members were concerned, and in 1915, and for some time thereafter, it secured the cooperation of the two largest nonunion plants which, as a matter of form, resigned from the club because they did not wish to embarrass it nor themselves in dealing with the union. A leading member of this club, in his 1919 report as president of the American, claimed that the unethical engraver was then a rarity, for, by organized effort, they had been able to reform him, and that "our employes are working with us and not for us, and are, in reality, our business partners; and woe betide the pirate who preys unfairly on us; for he will now find a united front arrayed against him." They exerted strike pressure for price maintenance with aid of the local union.

(e) There is a nonunion shop of considerable size in Chicago, which the American has regarded as "a bone of contention and a sore spot" since 1918, although it cooperated with the club up to that time, and the club had had to contend with other price cutting. Even in times of business depression the club was able to prevent price cutting.

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(f) The club received the cooperation of the local union, in April, 1923, upon the entry of new shops into the field, through a resolution of the union for distribution to every engraving concern in the city, serving notice on them of its intent to put a stop to unfair competition of whatever kind even to the extent of enforcing that section of the general laws of the international which it cited as authorizing the executive council, if necessary, to withdraw union men from plants engaged in "unfair, unjustified, or unwarranted competition for trade and in selling engravings, and which may react to the detriment" of the craft.

3. ST. LOUIS.—(a) Respondent club in St. Louis, in December, 1915, unanimously adopted and has since used the scale, and at the same time, in conjunction with respondent local, put clause 10 into operation, and did not abandon clause 10 until the middle of 1922. The club's membership has, at times, embraced all St. Louis engravers, and in April, 1924, included 14, which was most of them; they received support as to prices from outside photo-engravers, and upon partial failure of such cooperation appealed to respondent American for help.

(b) Only partial records of the meetings of the club were available and the prevailing rates of discount from scale are not in evidence until 1919, when the club had cut off all discounts, except 10 per cent for out-of-town trade to meet Chicago and other competition. In 1917, club membership carried with it the obligation to sell on the standard scale. Specific net rates per hour to be charged for all time work, and scale plus 25 per cent as a temporary selling basis for scale plates were recommended at a club meeting in January, 1920, where it was also suggested that all members mark their invoices "Net cash, no discount." The club's notes supplementary to the scale for use beginning with the 1920 scale also make provision for certain net prices. Estimating classes, which are still continued by respondent club, have been conducted in a painstaking manner. Members were, at the time of the hearings herein, in the main adhering to the practice of giving a discount of 10 per cent from scale to printers, publishers and advertising agencies, and charging all other buyers scale price without discount. Certain members, however, sometimes grant confidential discounts or secret rebates. The customer in some cases deducts these from his remittance, although they are not shown on his invoices, and in others they are handed to him in cash.

(c) The club's constitution provides that members failing to furnish its secretary-treasurer such statistics as may be required to compile records for use in his office shall be subject to fine; its pro-

visions for discipline are otherwise substantially the same as those of the Chicago club. The club has called upon members for explanations of price cutting, and attempted to go over their books.

(d) The club brought to the attention of the local union any cases of suspension of the members for failure to adhere to price understandings, as well as for other reasons, and had the benefit of union support of its price understandings by strike pressure.

4. NEW YORK.—The course in the city of New York of operation under the standard scale and clause 10 varied somewhat from that followed elsewhere.

(a) Respondent club, on April 3, 1916, began and has since continued the use of the standard scale, and on the same day began to operate under clause 10, which was continued in force until May 17, 1921, when it was removed at the request of the club. Both were adopted nearly unanimously, in December, 1915. The club adopted the standard scale with a fixed discount of 10 per cent and appointed a "commissioner" and placed at his disposal the services of three certified public accountants. About this time or later, the club made provision for an emergency fund not to exceed \$100,000. It also appealed to such engravers in other cities as might be induced to enter its market, to respect established local conditions, and promised reciprocity.

(b) The club was handicapped for about two years by investigation and indictment under the State Donnelly antitrust act. Respondent club, in 1916 during the early progress of said investigation by the State district attorney, claimed that it had not violated the Donnelly act, but promised for the future to follow it in letter and spirit, to insure open and free competition, and to withdraw the scale immediately. Despite those assurances and attempts by the American to adjust the situation the New York business publishers convinced the district attorney that the engravers were not abiding by their agreement, and in June an indictment followed. The club, in June, 1917, in an amendment to its by-laws, reaffirmed the scale as the basis of charges, but provided that discounts, depending on the nature of the work, the services rendered, the volume of the order and the cost of production were to be fixed in each case by the buyer and seller. A demurrer to the indictment was finally sustained in February, 1918, in the court of general sessions of the peace in and for the county of New York upon grounds of statutory construction.

(c) The local club had, at the outset of operation under clause 10, the cooperation of the local union, under clause 10 in bringing strike pressure to bear upon the three shops of the largest photo-engraving concern in the city, in order to enforce the price understanding.

The price fixing activities of the club were, however, dwarfed by the subsequent action of the local union, which, after expressing dissatisfaction with the efforts of the club in the obtaining of enhanced prices, invoked provisions of the general laws of the international union and assumed complete control of minimum prices of photo-engraving products made by New York concerns, and enforced the same by calling strikes, over the period from November, 1918, to April, 1922. The great majority of the members of the New York club, and photo-engravers shipping from other States into New York, cooperated with the New York union in its aims and efforts as to prices. The State legislature, however, in 1921, so amended the Donnelly act as to include articles or products "used in the conduct of trade, commerce, or manufacture," as well as articles or commodities of common use, and in a test case under this act, officers of respondent local were enjoined, in 1922, from conspiring, by any scheme or device, to fix prices, and the local union thereupon, in 1922, abandoned its schedule of prices and subsequently price competition in the sale of engravings in New York City has increased. Respondent Director Schuetz, however, who was one of the parties named in the said indictment, while he was president of the American in 1922, in urging the respondent employers in California, to agree not to cut prices in the territory of other clubs, said: "You can imagine the feeling if Philadelphia came to New York and tried to take our business away," or vice versa; and in exhorting them back to the days when they sold on the scale less a certain discount, and made "barrels of money," said: "We in New York today are getting very close together—very close. Everybody there sees the error of their ways, and we are going right back to where we were."

5. NORTHERN CALIFORNIA.—(a) The sectional association for California (except the southwestern part of the State) has 26 members in San Francisco, Oakland, Fresno, Sacramento, Stockton, and San Jose. The scale and clause 10 were put into operation in San Francisco in 1916, and by the entire membership on May 1, 1917, with permissive maximum discount of 10 per cent from the scale for black-and-white plates and 20 per cent on color process plates; but while the use of the scale has continued uninterruptedly, clause 10 was dropped at the end of 1921. Said respondent later agreed upon extra charges of 50 per cent and 100 per cent for rush work, and secured the aid of respondent local in maintaining them. Although there were occasional rumors of price cutting and rebating, its scale was in 1922 very well adhered to on the whole. The club, in June, 1923, acting on the suggestion that salesmen who made a practice of

granting competitive prices should be discharged, directed its executive committee to ask all members fully to instruct their salesmen on the club's ethics. The club, in January, 1919, amended its constitution, already containing the typical provisions for discipline, to authorize its board of directors to retain the services of a competent auditor to "expert" the relevant portions of books of firms suspected of violating the basic selling price, in cases where the board should be convinced by evidence presented by a member or members, that such violations existed. A refusal to permit such audit was to be taken as an admission of guilt, and in such case the directors were to recommend a penalty.

(b) In 1921, as a further means of maintaining the standard scale, it created a grievance committee to hear, investigate and determine all differences arising in the club. It had earlier provided that members should submit their contracts to the club for record, and that all bids for school work must be submitted to the club or its directors before being tendered to the prospect, and required the withdrawal of bids not in conformity with its rulings.

(c) It reprimanded, fined, suspended, and expelled members for breach of its rules by "violating the terms of the standard scale," or in other ways. The club reported to the local union on the discipline it administered to members and reported engravers who refused to join the club; it received the cooperation of the union in persuading and demanding that engravers join the club. The club unanimously voted to grant the local union a desired wage increase in 1919, with a proviso that the union should agree in return to assist in enforcing said charges for rush work and pay half of the necessary charges for an auditor when his services were deemed necessary by a joint committee of the club and that the local union should "enforce the scale of prices adopted" by the club.

6. PACIFIC NORTHWEST.--(a) Respondent Northwestern is a sectional association of clubs. It had three members in Vancouver, B. C., five in Seattle and Tacoma, and five in Portland, in 1919; eighteen members in 1922; and in 1923 its membership included all engravers in this territory except one small shop in Portland. It adopted the scale, or some modification of it, in July, 1915, and has since continued its use, although its adoption of revisions has not always coincided with that of the American. At the same meeting it unanimously favored the universal adoption of clause 10, and Seattle, Tacoma, and Portland, in cooperation with respondent local union, began the use of clause 10 in 1916 and continued it until May, 1924. After over a year's trial the Northwestern declared it the only means to correct the many evils that had confronted it,

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and pledged its support for the installation of clause 10 in every city in the Northwest.

(b) The Northwestern passed resolutions favoring, recommending and proposing to the various clubs for adoption, and itself adopting specified rates of discount from its scale of base prices, and specific prices for extras; its recommendations were promptly adopted by the Portland, Seattle, and Tacoma clubs.

(c) The Portland club, under its provisions for discipline which also were adopted by the Seattle club in 1915, investigated apparent instances of price-cutting whenever they occurred and laid such stress upon them that the practice was immediately stopped. Upon various complaints of price cutting in 1919 it voted to audit the books of each member for a period of fifteen days, and to retain an accountant to investigate disputed accounts and alleged violations of its code of ethics at the cost of the offender or, if the charges were not sustained, at cost of the accuser. Members submitted for the club's approval bids for certain kinds of work before tendering them to the prospect, and the club directed members to withdraw cut-rate quotations and to refrain from giving a quotation on an order placed with another engraver. It suspended a member in May, 1918, for failure to protect a fellow member on prices quoted "in accordance with the usual custom," and directed that the local union be notified thereof.

(d) In 1922 the Northwestern's construction as to who were entitled to its prevailing rate of discount of 10 per cent to printers, publishers and advertising agencies only, and the members' adherence to this construction, were excellent. Such members as charged less than scale were doing so with the knowledge and consent of the clubs, or so concealed and covered up the transactions that "no one could ever prove them." The Northwestern's success in 1922 was due largely to a gentlemen's agreement of long standing and strictly adhered to, not to solicit business in one another's territory.

7. In numerous localities and sections other than the foregoing as to which findings are made above, similar means and activities, including the standard scale and clause 10, were employed by respondents, with the aim and result of lessening and restricting price competition in photo-engraving products, including Buffalo, Philadelphia, Baltimore, Cincinnati, Louisville, Kansas City, and Denver; also Indiana, Michigan, Wisconsin, Minnesota, Iowa, Nebraska, Kansas, Oklahoma, Texas, ten Southern States, and the Mountain States.

The combined activities of the respondent employers' organizations and their officers and members hereinabove set forth were intended greatly to enhance prices in photo-engraving products, to curtail, lessen, hinder and regulate price competition therein, including products transported from one State to another as well as those not so transported, and to lessen the amount and number of such products transported from one State to another. The effect, except latterly in New York City, has been to enhance and stabilize the prices of such products and to curtail, restrict and regulate price competition. The combination has not availed to destroy all price competition, nor has the effect been uniform throughout the country nor throughout the period covered by the pleadings. It has, however, been effective as regards a large proportion of the trade, including to a lesser degree that of plants not belonging to respondent clubs, from 1915 to the close of the present case, and, to the extent and for the time that it has been effective, it has destroyed competition in price and has compelled unwilling adherence of certain competitors of manufacturing respondents.

CONCLUSION

That the practices of the respondent clubs and of the respondent American Photo-Engravers' Association, as set forth in the foregoing findings as to the facts, in the circumstances therein set forth, constituted a conspiracy and combination to further unfair methods of competition in interstate commerce in violation of the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been submitted to the Federal Trade Commission upon the second amended complaint of the Commission, the answers of all respondents and evidence received by trial examiners for the Commission, and counsel for the Commission and for respondents having submitted written and oral argument, and the Commission having made its findings as to the facts and its conclusion that the respondent manufacturing photo-engravers and the respondent organizations thereof have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is hereby ordered as follows:

I

That all and several of the local and sectional clubs of the associations of employing photo-engravers, and respondent American Photo-Engravers' Association, and the officers, agents, representatives and members of each of the said clubs and associations, do cease and desist from combining, conspiring, confederating, cooperating or agreeing together or with others, for the purpose or with the result of limiting, lessening, hindering, regulating or suppressing competition in price in the sale of photo-engraving products in interstate commerce, or of enhancing the prices of photo-engraving products sold in such commerce; and for such purposes, or any of them, from coercing, intimidating or preventing manufacturers of such products whether respondents herein or not, from individually and freely making such prices for their products as the free exercise of their individual judgment shall direct, and from preventing such manufacturers from competing in price among themselves or with others engaged in the same business.

II

That for the purpose of rendering section 1 of this order effective the said described respondents shall cease and desist from the following described methods of competition and practices in interstate commerce, and each of them to wit:

1. Respondents American Photo-Engravers' Association and the local and sectional clubs and associations, their officers, agents, representatives and members shall cease and desist from the following acts:

(a) From using, directly, or indirectly, the so-called standard scale, either that for black-and-white work or that for color-process work, or any modified form thereof or any substitute therefor, as a means for hindering, lessening, or curtailing competition in the prices of any photo-engraving product or products; and from having an understanding or agreement that the figures of the said standard scale or said figures as modified by an understood or agreed discount or deduction, addition or premium shall constitute the prices or the minimum prices of any photo-engraving product or products.

(b) From using, directly or indirectly, either separately or in combination in the making or soliciting of sales, any memoranda or notes wherein have been fixed by agreement or understanding between two or more of respondent manufacturing photo-engravers or by one or more organizations thereof, the prices or time rates or

minimum prices or time rates to be made for any special or hand work, service or operation in connection with the manufacture and pricing for photo-engraving products, and from continuing the use of the fixations of prices or minimum prices contained in the so-called side notes of the Standard Scale, for either black-and-white or color-process work, of the American Photo-Engravers' Association or contained in the so-called supplemental notes of any respondent local club or association, and from agreeing upon, or having a mutual understanding as to a rate or minimum rate of charge to be made for special or hand work or any branch, part or process of photo-engraving, as a part of the price of any finished photo-engraved products.

2. The respondent local and sectional clubs and associations, their officers, agents, representatives and members shall cease and desist from the following acts:

(a) From seeking, urging, advocating, making or maintaining, directly or indirectly, an agreement or understanding, express or implied, between two or more respondent local clubs or associations or between individual photo-engravers, that members of a club or association, or individual photo-engravers of one locality or section shall not sell their products at prices lower than the prevailing, customary, agreed or understood prices in any territory where sales are to be made, or into which the photo-engraving products in question are to be transported; also from advocating and declaring that it is unethical or unbusinesslike, or remiss or negligent as regards due and proper cooperation in the industry, or otherwise to the same end, for a photo-engraver located in one locality or section to compete in price or otherwise, with one or more photo-engravers in another section or locality.

(b) From the use, in contracts with local photo-engravers' unions, of that certain contract provision known in the photo-engraving trade as "clause 10," as an obligation to, or as a means or occasion for, inducing, persuading or compelling any photo-engraving concern or concerns to adhere to, or agree to adhere to, any certain prices or minimum prices for photo-engraving products, or any of them, or to cease to offer competition in price in such products, or to lessen or restrict such competition with such photo-engravers, and from the use of any other device, contract, provision, mutual understanding or other means for accomplishing the same purpose through the cooperation of any union or agent, representative or committee thereof.

(c) From notifying any union or any agent, representative, committee, employee or member of any union of price cutting or com-

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petition in price by any photo-engraver, with the purpose or result of obtaining cooperation on the part of any union or any agent or representative thereof in pursuance of a combination or conspiracy within the terms of Section I of this order; also from stating or threatening, directly or indirectly, that if any manufacturing photo-engraver shall compete in price or shall not abide by so-called fair, equitable or reasonable prices or minimum prices, such photo-engraver may not or will not be able to retain or secure workmen; and from otherwise exerting pressure against one or more individual manufacturing photo-engravers to the end that they shall not freely compete in price with others.

(d) From advocating, maintaining, adopting or using any resolution, agreement or understanding as to the price or minimum price of any photo-engraving product or of any process, operation or time element in the manufacture thereof or of any extras or accessories connected therewith; or any resolution, agreement or understanding for the purpose of lessening price competition therein; and from using any schedule or scale of figures for the purpose of reaching or maintaining an agreement or understanding upon prices or minimum prices, either with or without the addition or subtraction of any percentage, discount or sum derived by mutual understanding or agreement, or by any other means or device whatsoever.

(e) From reprimanding, fining, suspending or expelling from the said respective employers' organizations any member for failing to abide by any agreement or mutual understanding, express or implied, as to the price or minimum price of photo-engraving products, or of any process, specialty, operation, extra or accessory, or the time element therein.

(f) From asserting or using the right, power or privilege to inspect any books, records, papers or accounts of any photo-engraver, whether respondent herein or not, for the purpose or with the result of detecting any violation of any agreement or mutual understanding as to price or minimum price; and from using or invoking any previously passed motion, resolution, rule, regulation or law of any said club or association, purporting to confer such right or privilege upon any respective club or association, or any representative or agent thereof, for the said purpose or with the said result.

(g) From holding estimating classes for the purpose of securing or approximating common prices among members, or other photo engravers, for any photo-engraving product or any process, specialty, operation, extra or accessory thereof or thereto, or time element therein.

3. The respondent, American Photo-Engravers' Association, its officers, agents, representatives and members shall cease and desist from the following acts:

(a) From using its official organ the Photo-Engravers' Bulletin, or circulars, or written or oral communications of its officers or other representatives, or adopting resolutions for the purposes or with the results named in section I of this order; and for the purpose or with the result of promoting, urging, or aiding the use by said respondent local or sectional clubs or associations of any of the methods or the practices named herein in section II, subdivision 2 (a) to (g), inclusive.

(b) From aiding or fostering an understanding whether through "clause 10" or otherwise on the part of any manufacturing photo-engraver or photo-engravers, or any organization thereof, with any union whereby said union might or could bring pressure by strike or the withdrawal of men, or by direct or indirect threat thereof, to induce any photo-engraver or photo-engravers to stop, lessen or prevent competition in price, as aforesaid, in the photo-engraving trade.

And it is further ordered, That the respondent local and sectional photo-engravers' clubs and associations, and the respondent American Photo-Engravers' Association and their respective officers, agents, representatives and members shall, within 60 days after the service upon them of a copy of this order file with the Commission their report in writing stating the manner in which they have complied with and conformed to this order.

And it is further ordered, That the charges in the second amended complaint herein, as against the respondents, the International Photo-Engravers' Union, the local photo-engravers' unions affiliated therewith, and the officers, executive boards, and members of all of the said respective unions, be and the same are hereby dismissed.

By the Commission, Commissioner Ferguson not voting, not having been a member of the Commission when the latter was argued; and Commissioner Humphrey dissenting as to the dismissal of the union labor respondents.

IN THE MATTER OF
PUBLIC SERVICE CUP COMPANY

COMPLAINT, (SYNOPSIS), FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 1373. Complaint, Mar. 29, 1926—Decision, Feb. 20, 1928

Where a corporation engaged in the manufacture of paper drinking cups and dishes, together with containers, folders, trays, etc., and in the sale thereof through jobbers exclusively; in pursuance of a policy directed to the maintenance of the prices fixed by it for the resale of its products to retailers,

- (a) Requested and secured promises from new customers for the resale of said products at such prices;
- (b) Advised customers by letter and through salesmen that it expected and required rigid adherence thereto and that it would discontinue sales to price cutters;
- (c) Refused to sell its products to price cutters, or to resume dealing therewith unless or until they gave satisfactory assurances that they would thereafter respect its prices;
- (d) Requested customers, by letter and through salesmen, to cooperate in the maintenance of its said prices and to notify it of price cutting, and advised customers that it would require price cutters to respect its prices thereafter under penalty of being refused further sales of its products, and wrote customers complaining of price cutting, whether voluntarily or at its request, that it would investigate the matter and require the offender to stop the practice, and thereafter notified the customer of its action in the premises; and
- (e) Instructed salesmen to report price cutting to it, and investigated the same whether thus brought to its attention or through customers, and threatened offenders with discontinuance of further sales, and did discontinue sales to those failing to give satisfactory assurances as to their future conduct, and advised customer competitors concerned of its action;

With the effect of requiring all customers uniformly to sell its product to the public at the prices named by it, and with the tendency and capacity to hinder and restrict competition between them, and with the tendency to and with the effect of unduly hindering and obstructing competition in the sale and distribution of its products:

Held, That such a plan of resale price maintenance, under the circumstances set forth, constituted an unfair method of competition.

Mr. T. B. Dixon and *Mr. G. Ed. Rowland* for the Commission.
Briesen & Schrenk and *Battle, Miller, Levy and Van Tine* of New York City, for respondent.