

IN THE MATTER OF

PITTSBURGH PLATE GLASS CO., STEWART-CAREY GLASS CO., CAPITOL GLASS CO., BROTHERHOOD OF PAINTERS, DECORATORS, AND PAPER HANGERS OF AMERICA, DISTRICT COUNCIL NO. 27, ETC., AND GLAZIERS' LOCAL UNION NO. 1165, ETC., AND VARIOUS INDIVIDUALS AS OFFICERS, AGENTS, AND REPRESENTATIVES

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

Docket 3858. Complaint, July 22, 1939—Decision, Jan. 16, 1940

Where corporate manufacturer and two other concerns, together with certain officers and employees thereof, engaged in the sale and distribution of glass to dealers and consumers in State of Indiana from Indianapolis branch or place of business therein and in conducting in said State glazing contracting business, namely—

I. Corporation engaged in manufacture of glass and in sale and distribution thereof and in conducting glazing contracting business throughout the United States, with factories or manufacturing plants in several States and some 75 warehouses or jobbing branches in various cities including Indianapolis one from which it sold and distributed its said product to dealers therein and consumers thereof in State of Indiana exclusively, and conducted therein also glazing contracting business; and

II. Two corporations respectively engaged in said city as wholesale distributors of glass purchased by them from various manufacturers in different States of the United States other than Indiana and in reselling such glass to dealers in or retailers and consumers of said product in Indianapolis trade area and in the State of Indiana exclusively and in also carrying on exclusively within said State glazing contracting business.

In carrying on, as aforesaid engaged, their businesses in competition with one another in sale and distribution of glass and in glazing contracting business within State of Indiana, and in competition also, as case might be with—

(1) Other jobbers and distributors of glass and glazing contractors with places of business in said State and in other States who undertook to sell and distribute glass and make contracts and installation thereof within same parts of Indianapolis trade area within which aforesaid concerns or distributors conducted their respective businesses and did in some instances thus sell, etc., and who were in competition in so doing with one another and with one or more of distributors aforesaid in area in question, and who, in some instances and in case of distributors with places of business in other States shipped or caused to be shipped glass for jobs secured in said trade area by glazing contractors located within and without such area, and who bid successfully thereon in competition with concerns above described; and

(2) Glazing contractors, not dealers in or distributors of glass, located in said State and in other States who sought to and did make glazing contracts within portion of Indianapolis trade area in which aforesaid distributors conducted glazing business, and were in competition with one or more of such distributors in seeking and securing such contracts in said area and who in some instances purchased glass for jobs therein in which they were in competition with some or all of such distributors, from dealers and distributors of such product in other States and caused shipment of glass thus purchased to be shipped into State in question from other States as aforesaid—

Entered into, accepted, signed or ratified as case might be, contract negotiated by recently formed local union, membership of which embraced from 85 percent to 95 percent of glaziers in said city and employment of which was then essential to securing and carrying out contracts on most construction or repair jobs therein, and especially those of any size, by which, among other things, it was provided that no member of union would be allowed "to work for any glazing contractor who has not signed this agreement," or "lived up to the provisions thereof" and that "to be recognized as a glazing contractor employer must be in glass and glazing business, evidence of which shall be the stocking of a reasonable quantity of flat glass products, necessary truck and warehouse equipment for legitimate glazing operation to service the building and replacement trade," and continuous employment of "at least three men"; and

Where said local, and district council of trade or trades concerned, and the national brotherhood of trade or trades concerned of which such local was member, and certain individuals who were agents, officers, or representatives of said organization, and as case might be—

Negotiated, ratified and approved contract aforesaid and decided compliance with terms thereof constituted prerequisite to recognition as union glazing contractor by any contractor seeking such recognition, and carried out and enforced provisions and decision aforesaid;

With effect that glazing contractors within State in question and in other States who, prior to signing and execution of contract in question by and between distributor concern involved and said local had in some instances performed glazing contracts within that part of Indianapolis trade area in which some or all of said distributor concerns had conducted such business were, as a result of quoted provisions of contract in question and during period thereof unable to bid upon or execute such contracts; and

With result that capacity and effect of provisions in question were to tend—

1. To prevent glazing contractors and glass distributors, located both within State of Indiana and in other States of United States, from bidding upon, or securing, glazing contracts, and from selling glass in that part of Indianapolis trade area in which distributor concerns conducted glazing contracting business;

2. To unreasonably lessen and suppress competition in the sale of glass and in procurement of glazing contracts within said Indianapolis trade area by glass distributors and glazing contractors located both in State of Indiana and in other States of the United States;

3. To unduly restrict glazing contractors, both within State of Indiana and in other States of United States, desiring to bid upon, and secure,

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glazing contracts in said Indianapolis trade area, but who did not enter into aforementioned contract because not then qualified to do so under provisions thereof;

4. To unduly interfere with natural flow in commerce of glass into State of Indiana from other States of United States; and

5. To unduly restrict and restrain sale of glass in trade and commerce between and among several States; and

With result further that capacity and tendency of such provisions for employment of glaziers in connection with installation of any plate, window, safety, or structural glass sold or distributed in interstate commerce and for structures or buildings, and requiring as prerequisite to employment of glaziers by glazing contractor, as above set forth, maintenance of specific stock, truck or warehouse equipment, and continuous employment of specified number of men in connection with operation of business, was to bring about results enumerated as above set forth:

Held, That such acts and practices of said various concerns, organizations, and individuals, under circumstances set forth, were all to prejudice of public and had dangerous tendency to hinder and prevent competition in glazing contracting business in that part of Indianapolis trade area in which aforesaid distributor concerns conducted such business, to place in said concerns, organizations and individuals power to control glazing contracting business therein, and to unduly restrict and restrain sale and distribution of glass in trade and commerce between the several States, and constituted unfair methods of competition.

Mr. Fletcher G. Cohn for the Commission.

Mr. Leland Hazard and *Mr. Joseph T. Owens*, of Pittsburgh, Pa., for Pittsburgh Plate Glass Co., Philip G. King and H. B. Higgins.

Noel, Hickam, Boyd & Armstrong, of Indianapolis, Ind., for Stewart-Carey Glass Co., and J. Morris Haines.

Mr. Carl Wilde, of Indianapolis, Ind., for Capitol Glass Co., W. J. Byrne and Robert W. Byrne.

Mr. Joseph A. Padway, of Washington, D. C., for Brotherhood of Painters, Decorators, and Paper Hangers of America; L. P. Lindelof; Clarence E. Swick; District Council No. 27 of the Brotherhood of Painters, Decorators, and Paper Hangers of America, of Indianapolis, Ind.; Courtney E. Hammond; Glaziers' Local Union No. 1165, of the Brotherhood of Painters, Decorators, and Paper Hangers of America, of Indianapolis, Ind.; and Joseph Schubert.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the respondents herein named have violated the provisions of said act, and it appear-

ing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The words and terms defined in this paragraph have the following meaning as used in this complaint:

"glass" means plate, window, safety, and structural glass;

"respondent distributors" refers to respondent Pittsburgh Plate Glass Company, Stewart-Carey Glass Co., and Capitol Glass Co.

"Indianapolis trade area" means the area including, surrounding and adjacent to the City of Indianapolis, Ind., both in the State of Indiana and in the adjoining States;

"glazing contracting business" means the business of contracting to sell and install glass in buildings and structures and also of selling glass therefor and installing the same therein;

"glazing contractor" means one who engages in the glazing contracting business;

"sash and door manufacturers" refers to concerns which manufacture sashes, doors and frames in which glass is set or fitted at the factory of the manufacturer.

PAR. 2. Respondent, Pittsburgh Plate Glass Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania with its office and principal place of business located in the Grant Building, Pittsburgh, Pa. It is engaged in the business of manufacturing glass, and of selling and distributing same, and of conducting a glass glazing contracting business throughout the United States. It has factories or manufacturing plants in several States of the United States and maintains and operates approximately 75 warehouses or jobbing branches located in cities in various States of the United States, from which it sells and distributes its glass to dealers and consumers located in the same and different States and in which it conducts a glazing contracting business. Among said jobbing branches so maintained and operated by it is the Indianapolis, Ind., jobbing and distributing branch, which sells and distributes its glass to dealers in, and consumers of, glass in the Indianapolis trade area, and also conducts a glazing contracting business in said area.

Respondent Pittsburgh Plate Glass Co.'s Indianapolis branch is managed by respondent Philip G. King, who is an employee and representative and agent of the respondent Pittsburgh Plate Glass Co. in the Indianapolis trade area, and whose address is % Pittsburgh Plate Glass Co., Indianapolis, Ind.

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Respondent, H. B. Higgins is executive vice president of respondent Pittsburgh Plate Glass Co., and as such is the officer, representative, and agent of said respondent who supervises the activities of the Indianapolis, Ind., branch of respondent Pittsburgh Plate Glass Co.; his office is located at the Pittsburgh Plate Glass Co., Grant Building, Pittsburgh, Pa.

PAR. 3. Respondent, Stewart-Carey Glass Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at Virginia Avenue and South New Jersey Street, Indianapolis, Ind. It is a wholesale distributor of glass which it purchases from various manufacturers thereof located in different States of the United States; it resells such glass to retailer dealers therein, and it also does a glazing contracting business, in the Indianapolis trade area.

Respondent, J. Morris Haines is secretary and general manager of respondent Stewart-Carey Glass Co., and as such directs its policies; his office address is % Stewart-Carey Glass Co., Virginia Avenue and South New Jersey Street, Indianapolis, Ind.

PAR. 4. Respondent, Capitol Glass Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 401 West South Street, Indianapolis, Ind. It is a wholesale distributor of glass which it purchases from various manufacturers thereof located in different States of the United States; it resells said glass to dealers within the Indianapolis trade area. It likewise engages in the glazing contracting business in said area.

Respondents, W. J. Byrne and Robert W. Byrne are president and vice president, respectively, of said corporation, and are the executive officers who control and direct its affairs; the places of business of both are % Capitol Glass Co., 401 West South Street, Indianapolis, Ind.

PAR. 5. Respondent, Brotherhood of Painters, Decorators, and Paper Hangers of America, is an association incorporated under the laws of the State of Indiana, with its principal office and place of business located at 217 North 6th Street, La Fayette, Ind. It is an organization comprised of local unions, district councils, and subordinate bodies throughout the United States, whose members are employed in the several branches of the building trade enumerated in its constitution and including glaziers.

Respondents, L. P. Lindelof and Clarence E. Swick, individuals, are general president and general secretary, respectively, of respondent Brotherhood of Painters, Decorators, and Paper Hangers of America,

and as such are the executive officers of said Brotherhood with their offices located at 217 North 6th Street, La Fayette, Ind.

Respondents, District Council No. 27 and Glaziers' Local Union No. 1165, both of the Brotherhood of Painters, Decorators, and Paper Hangers of America, with their offices and principal places of business being located at 29 South Delaware Street, Indianapolis, Ind., and 250 Leeds Avenue, Indianapolis, Ind., respectively, are unincorporated associations of glaziers whose members are members of the respondent Brotherhood of Painters, Decorators, and Paper Hangers of America, and which members are engaged in glazing and installing glass in buildings in the Indianapolis trade area.

Respondent, Courtney E. Hammond, an individual, is the secretary of said respondent, District Council No. 27, and his office is located at 29 South Delaware Street, Indianapolis, Ind.

Respondent, Joseph Schubert, an individual, is the business agent of said respondent, Glaziers' Local Union No. 1165 of the Brotherhood of Painters, Decorators, and Paper Hangers of America, and as such represent said respondent Union and its members in its and their dealings with respondent distributors and other glass distributors and glazing contractors in the Indianapolis trade area. His address is % Glaziers' Local Union 1165 of the Brotherhood of Painters, Decorators, and Paper Hangers of America, 250 Leeds Avenue, Indianapolis, Ind.

Respondents named in this paragraph are engaged in unfair methods and practices, hereinafter set out, which directly affect and restrain competition in the sale and distribution of glass in commerce between and among the several States of the United States.

PAR. 6. Respondent distributors are in competition with one another in the sale and distribution of glass and in the glazing contracting business in the Indianapolis trade area, except insofar as said competition has been hindered, lessened, restrained, or restricted, or potential competition among them forestalled, by the unfair practices and methods hereinafter set forth.

There are other jobbers and distributors of glass, with their places of business located both in the State of Indiana and in other States of the United States, who are engaged in the sale and distribution of glass in the Indianapolis trade area, and who are also engaged in the glazing contracting business therein, who are in competition with one another and with one or more of the respondent distributors, except insofar as such competition has been hindered, lessened, restrained, or restricted, or potential competition among them forestalled, by the use by respondent distributors and the other respondents named herein of the unfair practices and methods hereinafter set out.

There are also glazing contractors, located both in the State of Indiana and in other States of the United States, who were not dealers in, or distributors of, glass, but who seek to make, and do make, glazing contracts in the Indianapolis trade area, purchasing the necessary glass for such work from dealers and distributors of glass located both in the State of Indiana and in other States of the United States; such glazing contractors are in competition with one or more of respondent distributors in seeking to secure, and securing, glazing contracts in the aforementioned trade area, except insofar as such competition has been hindered, lessened, restricted, and restrained, or potential competition among them forestalled, by the use by respondent distributors and the other respondents named herein of the unfair practices and methods hereinafter set forth.

PAR. 7. Those glass distributors who are in competition with respondent distributors, as above described, and whose places of business are located in States other than the State of Indiana, in the course and conduct of their businesses sell glass to glazing contractors who bid on and secure glazing contracts on construction and repair jobs in the Indianapolis trade area, and, when they make such sales, said distributors ship, or cause to be shipped, the glass for said jobs, from their said places of business located in States other than the State of Indiana, into the State of Indiana.

Those competitors of respondent distributors who do not sell or distribute glass, but are glazing contractors, in the course and conduct of their businesses, in many instances purchase glass for those jobs in the Indianapolis trade area for which they have glazing contracts from dealers and distributors of same located in States other than the State of Indiana, which dealers and distributors as part of such purchases, ship, or cause to be shipped, said glass into the State of Indiana.

PAR. 8. All of respondent distributors are engaged in unfair methods and practices which directly affect and restrain competition in the sale and distribution of glass in commerce between and among the several States of the United States.

PAR. 9. In order to secure and execute contracts on most construction or repair jobs, especially those of any size, in the Indianapolis trade area, it is necessary for glazing contractors to employ glaziers who are members of respondent Glaziers' Local Union No. 1165.

PAR. 10. In 1938, respondent distributors, acting through and by means of their respective officers and agents, which officers and agents have hereinbefore been named as parties respondent, and respondent Glaziers' Local No. 1165, acting through and by means of respondent Joseph Schubert, and with the approval and sanction of

the other respondents heretofore named and described in paragraph 5, entered into and thereafter carried out an understanding and agreement to restrict and restrain the sale and distribution of glass in commerce between and among the several States of the United States and in the District of Columbia, and more particularly in the Indianapolis trade area.

PAR. 11. As a part of, and pursuant to, the aforementioned understanding and agreement, and in furtherance thereof, all of the respondents, among other acts and things, agreed:

1. To restrict and restrain, and they have restricted and restrained, the employment of members of respondent, Glaziers' Local Union No. 1165, by any one other than respondent distributors.

2. To prevent, and they have prevented, distributors of glass competing with respondent distributors, or desiring to compete with them, which distributors are located both within and outside the State of Indiana, from securing glaziers to install glass in buildings and structures being erected or repaired in the Indianapolis trade area.

3. To preclude, and they have precluded, such competing distributors, located both in the State of Indiana and in other States of the United States, from bidding on contracts for the supply and installation of glass in such buildings and structures in said trade area.

4. To preclude, and they have precluded, such competing distributors located both in the State of Indiana and in other States of the United States, from supplying and installing glass in buildings and structures being erected or repaired in said trade area.

5. To compel, and they have compelled, such competing distributors and also competing glazing contractors located both in the State of Indiana and other States of the United States, desiring to do glazing contracting business in the Indianapolis trade area, to employ at least three men continuously, regardless of whether or not such distributor or contractor could provide employment for such men.

6. To compel, and they have compelled, all glazing work to be done at the situs of each respective job.

7. To prevent, and they have prevented, any glazing work from being done in the shop unless permission first be secured from respondent Joseph Schubert, the business agent of respondent Glaziers' Local Union No. 1165.

8. To prevent, and they have prevented, sash and door manufacturers operating in the Indianapolis trade area from glazing glass and installing the same in sash and door frames in their respective factories.

9. To use, and they have used, other means, methods, and practices to restrict and restrain the employment of members of respondent

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Glaziers' Local Union No. 1165 by any one other than respondent distributors.

PAR. 12. For the purpose of making effective the understandings and agreements heretofore set forth in paragraphs 10 and 11, and of requiring compliance therewith, respondent distributors, acting through and by means of their agents, officials, and representatives, herein named as parties respondent, did enter into and sign during the month of May 1938, and did thereafter carry into effect, a written agreement with respondent Glaziers' Local Union No. 1165, which union acted through and by means of respondent Joseph Schubert, and with the approval and sanction of the respondents heretofore named in paragraph 5; and all of the respondents did thereafter carry into effect such agreement; said agreement among other things provides that:

1. No member of the respondent Glaziers' Local Union No. 1165 will be allowed to work for any glazing contractor that has not signed the aforementioned agreement and has not lived up to its provisions.

2. To be recognized as a glazing contractor, one must be an employer engaged in the glass and glazing business.

3. Evidence that one is in such business shall be the stocking of a reasonable quantity of flat glass products, necessary truck and warehouse equipment, and legitimate glazing operations to service the building and replacement trade.

4. Further evidence that one is in the glass and glazing business shall be the continuous employment of at least three men.

5. All glazing work must be done at the situs of each respective job and no glazing work can be done in shops unless permission first be secured from the business agent of respondent Glaziers' Local Union No. 1165.

6. No firm, partnership, or corporation signing the aforementioned agreement shall be permitted to accept glazing contracts from, or sublet glazing contracts to, any glazing firm, partnership, or corporation who has not signed this agreement, or any agents of such glazing firm, partnership or corporation.

PAR. 13. Each of respondents, at the times herein mentioned, acted in concert with one or more of the other respondents in doing and performing the acts and things hereinabove alleged in furtherance of the understanding and agreement heretofore set forth.

PAR. 14. The capacity, tendency and effect of said agreement and understanding, and the acts and things done by respondents in pursuance thereof, are and have been:

1. To monopolize in respondent distributors the glazing contracting business in the Indianapolis trade area.

2. To prevent glazing contractors and glass distributors located outside the State of Indiana from bidding upon or securing glazing contracts, and from selling glass, in the Indianapolis trade area.

3. To unreasonably lessen, eliminate, restrict, stifle, hamper, and suppress competition in the sale of glass and in the procurement of glazing contracts in the Indianapolis trade area by glass distributors and glass contractors located both in the State of Indiana and in other States of the United States.

4. To deprive the purchasing and consuming public and public agencies of the advantages in price, service, and other considerations which they would enjoy under conditions of normal, unrestricted, and free competition in the sale of glass and in the procurement of glazing contracts in said area, and to otherwise operate as a restraint upon, obstruction to, and detriment to the freedom of fair and legitimate competition in such sales and procurements.

5. To suppress, eliminate, and discriminate against glazing contractors both in and outside of the State of Indiana desiring to bid on glazing contracts in the Indianapolis trade area, but who do not, or cannot, enter into the aforementioned agreement with respondent Glaziers' Local Union No. 1165.

6. To obstruct and prevent the establishment of new glazing contractors in the Indianapolis trade area.

7. To eliminate and suppress competition among glass distributors and glazing contractors both in the State of Indiana and in other States of the United States in the sale of glass for glazing contracts in the Indianapolis trade area.

8. To burden, hamper, and interfere with the normal and natural flow of commerce in glass from the various States of the United States other than the State of Indiana into the State of Indiana;

9. To injure the competitors of respondent distributors, which competitors are engaged both in the sale and distribution of glass and in the glazing contracting business, by unfairly diverting business and trade from said competitors.

10. To prejudice and injure glass distributors and glazing contractors both in the State of Indiana and in other States of the United States who do not or cannot enter into the aforementioned agreement with respondent Glaziers' Local Union No. 1165.

11. To unduly and unlawfully restrict and restrain the sale of glass in trade and commerce between and among the several States of the United States.

PAR. 15. The understanding and agreement heretofore set out and the acts and things done by respondents thereunder and in furtherance thereof, as above alleged, constitute unfair methods of competi-

tion in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 22d day of July 1939, issued and served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. Subsequently, all of the respondents filed their answers to said complaint. Thereafter, stipulations were entered into whereby it was stipulated and agreed that statements of fact signed and executed by respondents, Pittsburgh Plate Glass Co., a corporation, Philip G. King, individually and as manager of the Indianapolis, Ind., branch of the Pittsburgh Plate Glass Co., H. B. Higgins, individually and as vice president of the Pittsburgh Plate Glass Co., and their counsel Leland Hazard; respondents Stewart-Carey Glass Co., a corporation, and J. Morris Haines, individually, and as secretary and general manager of the Stewart-Carey Glass Co., and their counsel James W. Noel; Capitol Glass Co., a corporation, W. J. Byrne individually and as president of the Capitol Glass Co., Robert W. Byrne, individually and as vice president of the Capitol Glass Co., and their counsel, Carl Wilde; and Brotherhood of Painters, Decorators, and Paper Hangers of America, a corporation, L. P. Lindelof, individually and as general president of the Brotherhood of Painters, Decorators, and Paper Hangers of America, Clarence E. Swick, individually and as general secretary of the Brotherhood of Painters, Decorators, and Paper Hangers of America, District Council No. 27 of the Brotherhood of Painters, Decorators, and Paper Hangers of America of Indianapolis, Ind., an unincorporated association, Courtney E. Hammond, individually and as secretary of District Council No. 27 of the Brotherhood of Painters, Decorators, and Paper Hangers of America, Glaziers' Local Union No. 1165, of the Brotherhood of Painters, Decorators, and Paper Hangers of America of Indianapolis, Ind., an unincorporated association, Joseph Schubert, individually and as Business Agent of Glaziers' Local Union No. 1165, of the Brotherhood of Painters, Decorators, and Paper Hangers of America, Indianapolis, Ind., and their counsel Joseph A. Padway, and W. T. Kelley, chief counsel of the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charge stated in the complaint, or in opposition thereto,

and that the said Commission may proceed upon said statements of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of arguments or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers and stipulations, said stipulations having been approved, accepted and filed by the Commission, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The words and terms defined in this paragraph have the following meaning as used in this findings as to the facts and conclusion:

"glass" means plate, window, safety, and structural glass;

"respondents distributors" refers to respondent Pittsburgh Plate Glass Company, Stewart-Carey Glass Co., and Capitol Glass Co.;

"Indianapolis trade area" means the area including, surrounding and adjacent to the City of Indianapolis, Ind., both in the State of Indiana, and in the adjoining States;

"glazing contracting business" means the business of contracting to sell and install glass in buildings and structures and also of selling glass therefor and installing the same therein;

"glazing contractor" means one who engages in the glazing contracting business.

PAR. 2. Respondent, Pittsburgh Plate Glass Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located in the Grant Building, Pittsburgh, Pa. It is engaged in the business of manufacturing glass, and of selling and distributing same, and of conducting a glass contracting business, throughout the United States. It has factories or manufacturing plants in several States of the United States and maintains and operates approximately 75 warehouses or jobbing branches located in cities in various States of the United States, from which it sells and distributes its glass to dealers and consumers thereof. Among said jobbing branches so maintained and operated by it, is the Indianapolis, Ind., jobbing and distributing branch, from which it sells, and distributes its glass to dealers in, and consumers of, glass located in the States of Indiana, exclusively, and also conducts a glazing contracting business in such State.

Respondent, Pittsburgh Plate Glass Co.'s Indianapolis, Ind., branch is managed by respondent Philip G. King, who is an employee and representative and agent of Pittsburgh Plate Glass Co. in the aforementioned area in which the Indianapolis, Ind., branch of said respondent Pittsburgh Plate Glass Co. sells and distributes the glass of the Pittsburgh Plate Glass Co. and in which it also conducts a glazing contracting business. His address is in care of Pittsburgh Plate Glass Co., Indianapolis, Ind.

Respondent, H. B. Higgins is vice president of respondent Pittsburgh Plate Glass Co., and as such, is the officer, representative, and agent of said respondent who supervises the activities of the Indianapolis, Ind., branch of said respondent; his address is in care of Pittsburgh Plate Glass Co., Grant Building, Pittsburgh, Pa.

PAR. 3. Respondent Stewart-Carey Glass Co. is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at Virginia Avenue and South New Jersey Street, Indianapolis, Ind. It is a wholesale distributor of glass which it purchases from various manufacturers thereof located in different States of the United States other than the State of Indiana; it resells said glass to retail dealers in the Indianapolis trade area and does a glazing contracting business, confined to its own sales of glass, solely within the State of Indiana.

Respondent, J. Morris Haines is secretary and general manager of respondent Stewart-Carey Glass Co., and as such directs its business policies; his address is in care of Stewart-Carey Glass Co., Virginia Avenue and South New Jersey Street, Indianapolis, Ind.

PAR. 4. Respondent, Capitol Glass Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 432 South Missouri Street, Indianapolis, Ind. It is a wholesale distributor of glass which it purchases from various manufacturers thereof located in different States of the United States; it resells said glass to dealers in, and consumers of, same, exclusively within the State of Indiana, and likewise does a glazing contracting business exclusively within such State.

Respondents, W. J. Byrne and Robert W. Byrne are president and vice president, respectively, of said corporation, and are the executive officers who control and direct its affairs, the place of business of both being in care of Capitol Glass Co., 432 South Missouri Street, Indianapolis, Ind.

PAR. 5. Respondent, Brotherhood of Painters, Decorators, and Paper Hangers of America is an association incorporated under the

laws of the State of Indiana, with its principal office and place of business located at 217 North Sixth Street, LaFayette, Ind. It is an organization comprised of local unions, district councils, and subordinate bodies throughout the United States, whose members are employed in the several branches of the building trade enumerated in its constitution and including glaziers.

Respondents, L. P. Lindelof and Clarence E. Swick are general president and general secretary, respectively, of respondent Brotherhood of Painters, Decorators, and Paper Hangers of America, and as such are the executive officers of said Brotherhood of Painters, Decorators, and Paper Hangers of America, with their offices being located at 217 North Sixth Street, LaFayette, Ind.

Respondents, District Council No. 27 and Glaziers' Local Union No. 1165, both of respondent Brotherhood of Painters, Decorators, and Paper Hangers of America, with their offices and principal places of business located at 29 South Delaware Street, Indianapolis, Ind., and 250 Leeds Avenue, Indianapolis, Ind., respectively, are unincorporated associations of glaziers, whose members are likewise members of respondent Brotherhood of Painters, Decorators, and Paper Hangers of America, and which members are engaged in glazing and installing glass in buildings in the Indianapolis trade area; the jurisdiction of said respondent Glaziers' Local Union No. 1165 extends throughout the southwestern part of the State of Indiana and a small section of the eastern part of the State of Illinois.

Respondent, Courtney E. Hammond is the secretary of said respondent, District Council No. 27, with his office being located at 29 South Delaware Street, Indianapolis, Ind.

Respondent, Joseph Schubert was, during the period of time covered by the complaint in this case, business agent of said respondent Glaziers' Local Union No. 1165 of the Brotherhood of Painters, Decorators, and Paper Hangers of America, and as such represented during said period, said respondent Union and its members in its and their dealings with respondent distributors and other glass distributors and glazing contractors in the Indianapolis trade area. His address is in care of Glaziers' Local Union No. 1165 of the Brotherhood of Painters, Decorators, and Paper Hangers of America, 250 Leeds Avenue, Indianapolis, Ind.

PAR. 6. Respondent distributors are, and were, in competition with one another in the sale and distribution of glass and in the glazing contracting business within the State of Indiana.

There are, and were, in May 1938, other jobbers and distributors of glass, and glazing contractors with their places of business located both in the State of Indiana and in other States of the United

States, who undertake, and undertook, to sell, distribute, and make contracts for the installation of, glass, and who in some instances, do, and did, sell and distribute and contract for the installation of, glass within the same parts of the Indianapolis trade area, within which all of said respondent distributors conduct and conducted their respective businesses, and who are, and were, in competition with one another, and are, and were, in competition with one or more of the respondent distributors in said area in which respondent distributors conduct like businesses.

There are, and were, in May 1938, also glazing contractors located both in the State of Indiana and in other States of the United States, who are not dealers in, or distributors of, glass, but who seek to make, and sought to make, and do make, and did make glazing contracts within that portion of the Indianapolis trade area in which the respondent distributors conduct a glazing business. These other glazing contractors are, and were, in May 1938, in competition with one or more of the respondent distributors in seeking to secure, and securing, glazing contracts within the aforementioned part of the Indianapolis trade area in which respondent distributors, or some of them, make, or made, or seek to make, or sought to make, glazing contracts.

PAR. 7. Those competitors of respondent distributors who do not sell or distribute glass but are glazing contractors, in the course and conduct of their respective businesses, in some instances purchase, and did purchase, in May 1938, glass for those jobs within the Indianapolis trade area, where they are, and were, in competition with some, or all of the respondent distributors, from dealers and distributors of same, located in States other than the State of Indiana, and cause, and caused, said dealers and distributors as part of such purchases, to ship or cause to be shipped, said glass into the State of Indiana, from other States of the United States.

PAR. 8. Those glass distributors who are in competition with the respondent distributors, as above found, and whose places of business are located in States other than in the State of Indiana, in some instances, sell, and have sold, in May 1938, glass to glazing contractors who bid on and secure, and have bid on and secured, in May 1938, glazing contracts on construction and repair jobs in that part of the Indianapolis trade area in which some or all of the respondent distributors likewise bid on, have bid on, in May 1938, secured and have secured, in May 1938, glazing contracts, and when said glass distributors make such sales, they ship, have shipped, or cause to be shipped, or have caused to be shipped, the glass for said jobs, from their said

places of business located in States other than the State of Indiana, into the State of Indiana.

PAR. 9. Eighty-five percent to ninety-five percent of the glaziers in the city of Indianapolis, Ind., are members of said Union.

In order to secure and execute contracts on most construction or repair jobs, especially those of any size, in the city of Indianapolis, Ind., where all of the respondent distributors conduct a glazing contracting business, it is, and was in May 1938, necessary for glazing contractors to employ glaziers who are members of the respondent Glaziers' Local Union No. 1165.

PAR. 10. Respondent, Glaziers' Local Union No. 1165 was organized early in the year 1938 and none of the respondent distributors previously had entered into or signed any contracts with said respondent Union, for the employment by said respondent distributors of members of said respondent Union.

PAR. 11. During the first part of the year 1938, respondent, Joseph Schubert, acting for and on behalf of respondent Glaziers' Local Union No. 1165, entered into negotiations with the respondent distributors for the purpose of negotiating with them a contract, upon which all parties could agree, regarding the employment by said respondent distributors of members of respondent Glaziers' Local Union No. 1165, on the glazing contract work conducted by said respondent distributors within that part of the Indianapolis trade area in which said respondent distributors engaged in the glazing contracting business.

PAR. 12. As hereinbefore found, pursuant to, and as a result of the aforementioned negotiations by and between the respondent distributors and the respondent Joseph Schubert, acting for and on behalf of respondent Glazier's Local Union No. 1165, a contract was entered into, under date of May 6, 1938, by and between said respondent distributors and respondent Glaziers' Local Union No. 1165 concerning the employment by said respondent distributors of members of said respondent Glaziers' Local Union No. 1165, which contract remained in effect until on or about July 1, 1938, pertinent parts of which are as follows:

Entered into this Sixth day of May, 1938, between the Pittsburgh Plate Glass Company, Stewart-Carey Glass Company, and Capitol Glass Company, parties of the first part, herein referred to as the "companies", and the Brotherhood of Painters, Decorators and Paper Hangers of America, Glaziers' Local Union No. 1165, Indianapolis, Indiana, party of the second part, hereinafter referred to as the "Union", WITNESSETH:

ARTICLE II: No member of the Union will be allowed to work for any glazing contractor who has not signed this agreement or that has not lived up to the provisions of this agreement. To be recognized as a glazing contractor au

Findings

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employer must be in the glass and glazing business, evidence of which shall be the stocking of a reasonable quantity of flat glass products, necessary truck and warehouse equipment for legitimate glazing operation to service the building and replacement trade and who continuously employs at least three men.

The aforementioned contract entered into under date of May 6, 1938, in addition to the sections above quoted, contained 13 other articles, covering, among other things, hours of work, rates of pay, and conditions of employment.

PAR. 13. After said contract of May 6, 1938, was signed by the three respondent distributors and by respondent Glaziers' Local Union No. 1165, it was adopted and approved by respondent District Council No. 27, and forwarded by respondent Courtney E. Hammond, secretary of said respondent District Council No. 27, to respondent Brotherhood of Painters, Decorators, and Paper Hangers of America, at its office in LaFayette, Ind., it being required by the practice, rules, and regulations of said respondent Brotherhood of Painters, Decorators, and Paper Hangers of America that before such a contract was effective, same had to be approved by both the district council and the general executive board of the brotherhood of Painters, Decorators, and Paper Hangers of America.

Certain glazing contractors in the Indianapolis trade area, who took the position that, because of the aforequoted provisions of said contract, they were unable to comply with the same and were thereby unable to employ union glaziers in the Indianapolis trade area, over which respondent Glaziers' Local Union No. 1165 had jurisdiction, filed a complaint regarding said provisions of the contract of May 6, 1938, with respondent Brotherhood of Painters, Decorators, and Paper Hangers of America.

To such complaint, respondent Brotherhood of Painters, Decorators, and Paper Hangers of America through its general executive board, gave a decision that the terms of the aforesaid contract entered into by and between the three respondent distributors and respondent Glaziers' Local Union No. 1165, on May 6, 1938, had to be complied with if any contractor sought to be recognized as a union glazing contractor.

The executive board of said respondent, Brotherhood of Painters, Decorators, and Paper Hangers of America, did not return to respondent District Council No. 27, the aforementioned contract of May 6, 1938, sent to it by respondent Courtney E. Hammond, stamped with the approval of said board, as is its usual custom when such a contract is approved by the board.

PAR. 14. Respondents, L. P. Lindelof, general president of respondent Brotherhood of Painters, Decorators, and Paper Hangers

of America, and respondent Clarence E. Swick, general secretary of said respondent Brotherhood, both individually, and acting in their respective positions, carried out the aforesaid decisions of the general executive board of said respondent Brotherhood.

PAR. 15. The aforementioned contract of May 6, 1938, entered into, by, and between the three respondent distributors and respondent Joseph Schubert, acting for and on behalf of respondent Glaziers' Local Union No. 1165, was accepted, ratified, and enforced, for a period extending from May 6, 1938, to on or about July 1, 1938, by respondents Glaziers' Local Union No. 1165, by respondent Brotherhood of Painters, Decorators, and Paper Hangers of America, by L. P. Lindelof, individually and as general president of the Brotherhood of Painters, Decorators, and Paper Hangers of America, by Clarence E. Swick, individually and as general secretary of the Brotherhood of Painters, Decorators, and Paper Hangers of America, by District Council No. 27 of the Brotherhood of Painters, Decorators, and Paper Hangers of America, and by Courtney E. Hammond, individually and as secretary of District Council No. 27 of the Brotherhood of Painters, Decorators, and Paper Hangers of America.

PAR. 16. The provisions of said contract of May 6, 1938, to the effect that no member of the Union can work for any glazing contractor who has not signed and lived up to the provisions of said contract are usual provisions in contracts between glaziers' local unions and employers, and no charge is made in this proceeding that said provisions are in violation of the Federal Trade Commission Act.

PAR. 17. There were glazing contractors, located both within the State of Indiana, and in other States of the United States, who, prior to the signing and execution of the aforementioned contract of May 6, 1938, by and between the respondent distributors and respondent Glaziers' Local Union No. 1165, had, in some instances, performed glazing contracts within that part of the Indianapolis trade area in which some or all of the respondent distributors had conducted such a business, and, who, because of the above quoted provisions of said contract regarding the requirements for recognition as a glazing contractor, were unable, during the period extending from May 6, 1938, to on or about July 1, 1938, to bid upon, or to execute, glazing contracts within the aforementioned parts of the Indianapolis trade area, in which some, or all, of said respondent distributors conducted a glazing contracting business in competition with said glazing contractors.

PAR. 18. Respondents, Philip G. King, individually, and as manager of the Indianapolis, Ind., branch of the Pittsburgh Plate Glass

Co.; H. B. Higgins, individually and as vice-president of the Pittsburgh Plate Glass Co.; J. Morris Haines, individually and as secretary and general manager of Stewart-Carey Glass Co.; W. J. Byrne, individually and as president of the Capitol Glass Co.; and Robert W. Byrne, individually and as vice president of the Capitol Glass Co., either signed, or ratified and approved the aforementioned contract of May 6, 1938.

PAR. 19. The aforementioned contract of May 6, 1938, through the mutual consent of all the respondents, did not remain in force and effect subsequent to on or about July 1, 1938. During the period extending from May 6, 1938, to on or about July 1, 1938, there were some glazing contractors who conducted such a business within that part of the Indianapolis trade area in which some, or all of the respondent distributors, conducted a like business, who did not comply with the particular provisions of said contract hereinbefore quoted in paragraph 12, but were able to secure, and did secure, union glaziers to perform work on glazing contracts which they had within said territory.

PAR. 20. During the aforesaid period from May 6, 1938, to on or about July 1, 1938, when the aforesaid contract was in force and effect, the capacity and effect of the provisions in said contract, which required evidence by an employer to show that he was a glazing contractor, to wit: that he had the stocking of a reasonable quantity of flat glass products, necessary truck and warehouse equipment for legitimate glazing operation to service the building and replacement trade, and to continuously employ at least three men, were that said provisions tended:

1. To prevent glazing contractors and glass distributors, located both within the State of Indiana and in other States of the United States, from bidding upon, or securing, glazing contracts, and from selling glass in that part of the Indianapolis trade area in which respondent distributors conducted a glazing contracting business.

2. To unreasonably lessen and suppress competition in the sale of glass and in the procurement of glazing contracts within that part of the Indianapolis trade area in which the respondent distributors conducted a glazing contracting business, by glass distributors and glazing contractors located both in the State of Indiana and in other States of the United States.

3. To unduly restrict glazing contractors, both within the State of Indiana and in other States of the United States, desiring to bid upon, and secure, glazing contracts in that part of the Indianapolis trade area in which respondent distributors conducted a glazing contracting business, but who did not enter into the aforementioned

contract on May 6, 1938, because they were not qualified to do so at that time under the provisions of said contract.

4. To unduly interfere with the natural flow in commerce of glass from States of the United States other than the State of Indiana, into the State of Indiana.

5. To unduly restrict and restrain the sale of glass in trade and commerce between and among the several States of the United States.

PAR. 21. The capacity and tendency of provisions in any agreement, contract, or understanding for the employment of glaziers in connection with the installation of any plate, window, safety, or structural glass, in structures or buildings, which glass is sold or distributed in interstate commerce, which require as a prerequisite to the right or privilege of any glass distributor or glazing contractor to employ such glaziers that:

1. Any such glass distributor or glazing contractor must have or maintain a stock of any specific quantity of flat-glass products, in connection with the operation of his business; or

2. Any such glass distributor or glazing contractor must have or maintain any trucking or warehousing equipment to service the building or replacement trade, in connection with the operation of his business; or

3. Any such glass distributor or glazing contractor must have or maintain the continuous employment of any specific number of men, in connection with the operation of his business;

Are the same as those resulting from similar provisions in the aforementioned contract of May 6, 1938, as heretofore found in paragraph 20.

CONCLUSION

The acts and practices of respondents, as hereinabove found, are all to the prejudice of the public, and have a dangerous tendency to hinder and prevent competition in the glazing contracting business in that part of the Indianapolis trade area in which the respondent distributors conduct such a business, to place in respondents the power to control the glazing contracting business therein, to unduly restrict and restrain the sale and distribution of glass in trade and commerce between the several States of the United States and constitute unfair methods of competition within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respond-

ents and stipulations as to the facts entered into by and between the respondents herein, and W. T. Kelley, chief counsel for the Commission, which provide, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondents herein and each of them, findings as to the facts and conclusion based thereon, and an order disposing of this proceeding, and the Commission having made its findings as to the facts and its conclusion that the said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, Pittsburgh Plate Glass Co., a corporation, Stewart-Carey Glass Co., a corporation, Capitol Glass Co., a corporation, Brotherhood of Painters, Decorators, and Paper Hangers of America, a corporation, District Council No. 27 of the Brotherhood of Painters, Decorators, and Paper Hangers of America, of Indianapolis, Ind., an unincorporated association, Glaziers' Local Union No. 1165, of the Brotherhood of Painters, Decorators, and Paper Hangers of America, of Indianapolis, Ind., an unincorporated association, and the representatives, successors, assigns, officers, agents, and employees of each of said respondents; Philip G. King, individually, and as manager of the Indianapolis, Ind., branch of the Pittsburgh Plate Glass Co., H. B. Higgins, individually, and as vice president of the Pittsburgh Plate Glass Co., J. Morris Haines, individually, and as secretary and general manager of the Stewart-Carey Glass Co., W. J. Byrne, individually, and as president of the Capitol Glass Co., Robert W. Byrne, individually, and as vice president of the Capitol Glass Co., L. P. Lindelof, individually, and as general president of the Brotherhood of Painters, Decorators, and Paper Hangers of America, Clarence E. Swick, individually, and as general secretary of the Brotherhood of Painters, Decorators, and Paper Hangers of America, Courtney E. Hammond, individually, and as secretary of District Council No. 27 of the Brotherhood of Painters, Decorators, and Paper Hangers of America, Joseph Schubert, individually, and as business agent of Glaziers' Local Union No. 1165 of the Brotherhood of Painters, Decorators, and Paper Hangers of America; directly or indirectly, by any means, shall, in connection with the sale or distribution in interstate commerce of plate, window, safety, or structural glass, or in connection with the installation of such glass in structures or buildings, forthwith cease and desist from entering into, effectuating, approving, or recognizing any agreement, contract, or understanding which contain any of the following requirements or provisions as a prerequisite to the right or privilege of any glass distributor or glazing contractor to employ glaziers for the installation of such glass products in structures or buildings:

1. A requirement or provision that any such glass distributor or glazing contractor must have or maintain a stock of any specified quantity of flat glass products, in connection with the operation of his business.

2. A requirement or provision that any such glass distributor or glazing contractor must have or maintain any trucking or warehousing equipment to service the building or replacement trade, in connection with the operation of his business.

3. A requirement or provision that any such glass distributor or glazing contractor must have or maintain the continuous employment of any specific number of men, in connection with the operation of his business.

It is further ordered, That the respondents herein, and each of them, shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

Order

30 F. T. C.

IN THE MATTER OF
THE AMERICAN PRODUCTS COMPANY, AND THE ZANOL
PRODUCTS COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 2836. Order, Jan. 25, 1940

Order, in response to motion, modifying cease and desist order of November 8, 1939, 29 F. T. C. 1306, so as to require respondents, their officers, etc., in connection with offer, etc., in commerce, of food and toilet products and household cleaners, to cease and desist from misrepresenting volume of respondents' business or risk or expense incurred by their salesmen or distributors, or using term "free" to describe articles offered as compensation for distribution thereof, or misrepresenting earnings or profits of sales persons or dealers, as in said order below set forth.

Before *Mr. Edward E. Reardon* and *Mr. Randolph Preston*, trial examiners.

Mr. Alden S. Bradley and *Mr. M. C. Pearce* for the Commission.

Frost & Jacobs, of Cincinnati, Ohio, and *Mr. J. M. George*, of Winona, Minn., for respondents.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the motion of W. T. Kelley, Chief Counsel for the Commission, to modify the order to cease and desist heretofore issued in this proceeding on November 8, 1939, and the Commission having considered said motion and the record herein and being now fully advised in the premises;

It is ordered, That the motion to modify the order to cease and desist as issued herein on November 8, 1939, be, and the same hereby is, granted as prayed;

It is further ordered, That the order to cease and desist issued herein on November 8, 1939, be, and the same hereby is, modified so as to read as follows:

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondents, in which answer respondents admit the material allegations of facts set forth in said complaint, and the Commission having made its findings as to the facts and conclusion that the said respondents have violated the provisions of the Federal Trade Commission Act;