

IN THE MATTER OF
THE WIRE ROPE & STRAND MANUFACTURERS ASSOCIA-
TION, INC., ET AL.

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

Docket 4443. Complaint, Jan. 3, 1941—Decision, May 25, 1943

Where 15 member corporations of an association originally organized to meet the requirements of the National Industrial Recovery Act, which (1) were engaged in the manufacture and interstate sale and distribution of ordinary nonpatented wire rope, comprising about 80 to 85 percent of the total volume of wire rope produced by them, to distributors and dealers and also direct to users, including various Federal, state, and municipal governmental agencies, at delivered prices; which (2) together did about 85 percent of all such business in the United States, with only two competitors; and (3) were in competition with one another and with the two concerns above referred to, except insofar as such competition had been restricted or forestalled as below set forth; and which (4) to the extent that they acted collusively and collectively in the pricing and distribution of wire rope in the United States, were in a position to dominate and control prices for the product involved; acting concertedly—

- (a) Following the filing of list prices and discounts with the Code Authority under the National Recovery Act—which gradually became uniform, with the consequence that resulting delivered prices on May 27, 1935, the date of the Schechter Supreme Court decision invalidating the act referred to, were uniform—acquiesced in a practice by three of their number (smaller manufacturers) under which such manufacturers sold their wire rope at an additional 5 percent chain discount;
- (b) Published, after the adoption of the code and notwithstanding the rejection by the Administrator of a proposal so to do, their list price schedules, sales terms, and base and chain discounts, with the effect of making in each case complete delivered sales prices;
- (c) Continued, at the time of the adoption of the code, their practice of quoting and selling only on a delivered zone basis;
- (d) Filled a formula setting forth in detail the method for the order in which base and chain discounts—i. e., respectively, discounts from list prices and special discounts to different classes of customers—were to be applied and the number of decimals to be used in developing net delivered prices, and continued use of said formula after the Schechter decision; and continued also to publish and allow the same chain discounts to all classes of customers except governmental agencies as were allowed on May 27, 1935;
- (e) From July 13, 1935, on, by common understanding, allowed the Federal Government, in sealed bids, a chain discount which exceeded that published by them on aforesaid date by a uniform amount and which was the same for all with the exception of aforesaid three smaller manufacturers who allowed a greater discount; and in September 1935, changed the chain discounts allowed to states and counties—which theretofore differed from

those allowed the Federal Government—so that they were the same as the latter; and from time to time, through common agreement, made changes in their method of computing net prices by extending or reducing the number of digits after the decimal point, with result of preventing such purchasers of wire rope as Government agencies from securing the advantages of net prices which were not uniform;

- (f) In March 1937, by agreement, lowered their base discounts on all types of rope in all zones, by 5 percent, agreed on the prices and discounts charged on sales by one manufacturer to another, and between June 30 and July 12 advanced their base discounts 5 percent back to the point where they were prior to March 1937;
 - (g) Took action among themselves with respect to those of their number who were themselves located on the Pacific coast, or who had branch offices or representatives there, over a period of years following said Schechter decision, to fix the prices and conditions governing the sale of their products in said territory and to eliminate sales at other than scheduled prices;
 - (h) Continued thereafter, as a general practice of each manufacturer, a prior agreement to quote and sell only at delivered prices within their various zones as concertedly proposed in a code submitted for the approval of the Code Administrator but rejected by him;
 - (i) Prior to their presentation of a proposed code to the National Industrial Recovery Administration, agreed upon and adopted a uniform list of classes of customers for insertion in the code, and while such uniform list was not made a part thereof, filed with the Code Authority lists identical with such uniform list, in connection with the filing of their prices under the code; and subsequent to said Schechter decision, concertedly continued the use thereof;
 - (j) Following said decision, continued to file with the association, in accordance with the provisions of the code, a complete list of each manufacturer's authorized distributors, which was revised from time to time; and continued to make use of the definition of a distributor as contained in the code; and
 - (k) Published and usually allowed the same chain discounts to their respective distributors and dealers, with the exception of the uniformly larger discounts allowed by the three smaller manufacturers above referred to;
- With the result that through publication and allowance of same base discounts within particular zones, and use of same general classification of customers and identical chain discounts for the respective classes, they usually received the same net delivered prices from purchasers within a particular classification such as "distributors," "governmental agencies," etc., within a zone, which delivered prices bore no relation to the actual freight paid but produced a different mill net return to each manufacturer on sales to customers at different locations within same zone; and
- (l) Inserted in their distributor contracts a provision under which each was to buy its entire requirements from the particular manufacturer by whom the distributor was appointed; and, following the elimination of such a provision, by agreement among themselves refused to sell distributor of another on any basis other than that of a dealer even though the distributor offered to qualify as distributor of second manufacturer, and mutually agreed that they would not make a distributor's contract with one who had been appointed by another; and

(m) Agreed that only certain designated towns on the Pacific coast could be considered as distribution points, and that distributors could not be appointed by any of them at any other point on the Pacific coast, preventing thereby those who could otherwise qualify but were not located at such points from becoming distributors for any;

Capacity, tendency, and effect of which agreements and practices were to:

1. Bring about and maintain throughout the United States, for any particular delivered price zone, class of customer, and grade and construction, uniformity in delivered prices, terms and conditions of sale for nonpatented wire rope, except for the uniformly lower level of the three smaller manufacturers above referred to;

2. Fix and maintain uniform formulae for determining the order and manner in which base and chain discounts were to be applied to their list prices in arriving at said uniform delivered prices, and bring about and maintain uniformity in said respective discounts by all such manufacturers;

3. Continue the use of territorial delivered price zones throughout the United States, within each of which prices were usually uniform for all customers of a particular class purchasing a particular grade and construction of said product; with result that each of said manufacturers customarily received a greater mill net return within a given zone, after allowing for actual freight, from customers nearer the mill than from those more distant;

4. Continue the use of said zones within the United States whereby customers in competition with one another were charged different delivered zone prices which did not reflect the differences in actual delivery cost;

5. Bring about, and maintain, uniformity in base and chain discounts published and usually allowed, and in the classification of customers among all of said manufacturers, whereby they published and received uniform delivered prices from all purchasers belonging to a particular class within a particular zone, on sales of any particular grade or construction;

6. Fix and maintain among them a uniform definition of a distributor;

7. Restrain any manufacturer from making a distributor's contract with another's distributor; and

8. Restrain the appointment by any of them of distributors at Pacific coast points not designated, by agreement among them, as distribution points:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and of said manufacturers' competitors; had a dangerous tendency to, and did, hinder and prevent competition between and among them in the sale and distribution of said product in commerce; unreasonably restrained trade therein; and constituted unfair methods of competition in commerce.

Mr. Fletcher G. Cohn for the Commission.

Morelock & Lamb, of Washington, D. C., for The Wire Rope & Strand Manufacturers Association, Inc., and George P. Lamb.

Feldman, Kittelle, Campbell & Ewing, of Washington, D. C., for Harry J. Leschen, George S. Whyte, American Chain and Cable Co., Inc., Broderick & Bascom Rope Co., E. H. Edwards Co., A. Leschen & Sons Rope Co., MacWhyte Co., Rochester Ropes, Inc., John A. Roebeling's Sons Co., Union Wire Rope Corp., The Upson-Walton Co., Wickwire Spencer Steel Co., Wire Rope Corporation of America, Inc.;

and, along with *Salisbury, Robinson & Himrod*, of Los Angeles, Calif., for Pacific Wire Rope Co., and with *Jones & Bronson*, of Seattle, Wash., for Wire Rope Manufacturing & Equipment Co.

Squire, Sanders & Dempsey and *Mr. J. H. Kerr*, of Cleveland, Ohio, *Willkie, Owen, Otis, Farr & Gallagher* and *White & Case*, of New York City, and *Mr. B. L. Rawlins, Jr.*, of Pittsburgh, Pa., for the American Steel and Wire Co. of N. J.

Cravath, DeGersdorff, Swaine & Wood, of New York City, for Bethlehem Steel Co.

Mr. Walter Shelton, of San Francisco, Calif., and *Willkie, Owen, Otis, Farr & Gallagher* and *White & Case*, of New York City, for Columbia Steel Co.

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 parties named in the caption hereof, and more particularly described and referred to hereinafter as respondents, have violated the provisions of the said act, and it appearing 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. Respondent, The Wire Rope & Strand Manufacturers Association, Inc., is a membership corporation, organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 627 Shoreham Building, Washington, D. C.

Respondent, Harry J. Leschen, is the president of respondent, The Wire Rope & Strand Manufacturers Association, Inc., and is also president of respondent, A. Leschen & Sons Rope Co., 5909 Kennerly Avenue, St. Louis, Mo.

Respondent, George S. Whyte, is chairman of the board of respondent, The Wire Rope & Strand Manufacturers Association, Inc., and is also chairman of the board of the MacWhyte Co., 2906 Fourteenth Avenue, Kenosha, Wis.

Respondent, George P. Lamb, is executive secretary of respondent, The Wire Rope & Strand Manufacturers Association, Inc., his office being located in the Shoreham Building, Washington, D. C.

Respondent, American Chain and Cable Co., Inc., is a corporation, organized and existing under and by virtue of the laws of State of New York, with its office and principal place of business located at 230 Park Avenue, New York, N. Y.

Respondent, The American Steel and Wire Co., is a corporation, organized and existing under and by virtue of the laws of the State

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of New Jersey, with its office and principal place of business located at Rockefeller Building, Cleveland, Ohio.

Respondent, the Bethlehem Steel Company, is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 701 East Third Street, Bethlehem, Pa.

Respondent, Broderick & Bascom Rope Co., is a corporation, organized and existing under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 4203 North Union Boulevard, St. Louis, Mo.

Respondent, Columbia Steel Co., is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Russ Building, San Francisco, Calif.

Respondent, E. H. Edwards Co., is a corporation, organized and existing under and by virtue of the laws of the State of California, with its office and principal place of business located at 225 Bush Street, San Francisco, Calif.

Respondent, A. Leschen & Sons Rope Co., is a corporation, organized and existing under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 5909 Kennerly Avenue, St. Louis, Mo.

Respondent, MacWhyte Co., is a corporation, organized and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 2906 Fourteenth Avenue, Kenosha, Wis.

Respondent, Pacific Wire Rope Co., is a corporation, organized and existing under and by virtue of the laws of the State of California, with its office and principal place of business located at 1840 East Fifteenth Street, Los Angeles, Calif.

Respondent, Rochester Ropes Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 91 Van Wyck Boulevard, Jamaica, Long Island, N. Y.

Respondent, John A. Roebling's Sons Co., is a corporation, organized and existing under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 630 South Broad Street, Trenton, N. J.

Respondent, Union Wire Rope Corporation, is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Twenty-first Street and Manchester Avenue, Kansas City Mo.

Respondent, Upson-Walton Co., is a corporation, organized and existing under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 1310 West Eleventh Street, Cleveland, Ohio.

Respondent, Wickwire Spencer Steel Co., is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 500 Fifth Avenue, New York, N. Y.

Respondent, Wire Rope Corporation of America, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at 464 Congress Avenue, New Haven, Conn.

Respondent, Wire Rope Manufacturing & Equipment Co., is a corporation organized and existing under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 322 First Avenue, South, Seattle, Wash.

PAR. 2. Respondent, The Wire Rope & Strand Manufacturers Association, Inc., hereinafter referred to as "respondent association" was originally organized to meet the requirements set out in section 3 (a) of the National Industrial Recovery Act. After this act was declared unconstitutional by the Supreme Court in the *Schechter case* on May 27, 1935, respondent association continued to function, and still is in operation. Its membership is composed of the respondent corporations herein, who are hereinafter referred to as "respondent members," all of whom are engaged in the manufacture, sale and distribution of wire rope throughout the United States. The board of directors of respondent association is composed of one representative from each of the 16 respondent members.

PAR. 3. Respondents, Harry J. Leschen, George S. Whyte, and George P. Lamb, as president, chairman of the board, and executive secretary, respectively, of respondent association, control, supervise, and direct the policies and activities of said respondent association.

PAR. 4. Wire rope is manufactured from fine steel wires which are woven into what is known as a strand; the strands are interwoven and twisted together around a core, thus producing a wire rope. Practically all building elevators are operated by the use of such rope, as are also power shovels, cranes, logging machines, and other species of equipment used in pulling, lifting, or supporting heavy loads. The wire rope is made in many sizes, varying from that used for airplane control wires to those employed in supporting suspension bridges. While there are two types of wire ropes most commonly produced, ordinary and preformed, this proceeding is concerned with the

former only, which comprises from approximately 80 to 85 percent of the total volume of wire rope produced by respondent members. Over a long period of years ordinary wire rope has been sold to distributors and dealers and also to the users thereof, including various governmental agencies, by the respondent members, at list prices less basic and chain discounts.

PAR. 5. Respondent members manufacture, sell, and distribute approximately 95 percent of all of the wire rope manufactured, sold, and distributed in the United States. There is but one other manufacturer in the United States which produces this product, and it did not begin production until the latter part of 1938. Respondent members sell the wire rope manufactured by them largely through distributors or dealers. On Federal, State, and municipal invitations to bid, respondent members, and also distributors selling their products, usually participate in bidding pursuant to said invitations. To the extent that respondent members act collusively and collectively in the pricing and distribution of wire rope in the United States, they are in a position to dominate and control the prices, at which this product must be purchased by the distributors, dealers, and users thereof, including Federal, State, and municipal agencies.

PAR. 6. In the course and conduct of their respective businesses, each of respondent members sells and distributes the wire rope manufactured by it to the purchasers thereof located in the various States of the United States and in the District of Columbia, and in connection with said sales, transports or causes to be transported said product to such purchasers located in the various States of the United States, other than the States of the origin of said shipments, and in the District of Columbia. All of respondent members have maintained, and still do maintain a regular current of trade in wire rope in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 7. Each of respondent members has been and is in competition with one or more of the other respondent members in making or seeking to make sales in commerce between and among the various States of the United States and in the District of Columbia, of wire rope which they manufacture, except insofar as said competition has been hindered, lessened, restricted, or forestalled, by the understanding, agreement, combination, or conspiracy and the acts, practices, and things done in pursuance and in furtherance thereof, as hereinafter set forth.

PAR. 8. For more than 4 years last past, respondent members, acting between and among themselves, or through and by means of respondent association, or through and by means of respondents Leschen,

Whyte, and Lamb, while these three were acting in their official positions with respondent association, or by other means and methods, have entered into, and thereafter engaged in and carried out, and are still engaged in and carrying out, a wrongful and unlawful understanding, agreement, combination, and conspiracy, for the purpose and with the effect of substantially restricting, suppressing, eliminating, and frustrating actual and potential competition as to price, and otherwise, in the sale and distribution of wire rope in trade and commerce between and among the various States of the United States and in the District of Columbia.

PAR. 9. Pursuant to said understanding, agreement, combination, and conspiracy, and in furtherance thereof, said respondent members, acting in the manner and by the methods herein set forth, have done and performed, and still do and perform, among other acts, practices, and things, the following:

1. Agreed to fix and maintain, and have fixed and maintained, uniform delivered prices, terms, and conditions for the sale of wire rope in the United States to the dealers and distributors thereof and to certain users thereof, including various governmental agencies.

2. Continued, in effect, by agreement, understanding, and concerted action among themselves, a price-fixing formula, whereby uniform delivered prices for the sale of wire rope manufactured by them, are fixed and maintained, which price-fixing formula was embodied in an expressed agreement among said respondent members during the period that a code for the industry to which respondent members belonged was in operation under the National Industrial Recovery Act.

3. Agreed to adopt, and have adopted and maintained, a uniform method of computing net delivered prices for wire rope sold by respondent members throughout the United States.

4. Agreed to adopt, and have adopted and maintained, a system of delivered prices designed to prevent, and which does prevent, the differences in the cost of freight delivery between the respective places of business of respondent members and those of the intended purchasers of wire rope manufactured by respondent members, from creating any advantage or disadvantage to said purchasers in delivery costs, without regard to which of respondent members such purchasers might desire to purchase said rope from; such system of identical delivered prices is predicated upon the use by respondent members of so-called basing points whereby all delivered prices are calculated as though shipments were made from a single point or points having a common freight destination.

5. Agreed to adopt and have adopted and maintained, a plan whereby the United States is divided into certain basing point areas

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so that all purchasers within a given area, regardless of the distance of the place of business of said purchaser from the place of business of a respondent member, receive the same delivered prices on wire rope manufactured by respondent members.

6. Agreed to require, and do require, the distributors to whom respondent members sell the wire rope manufactured by them, to submit prices for the resale of same according to a price formula agreed upon and set up by respondent members.

7. Agreed to adopt, and have adopted and maintained, a uniform method of determining the basic and chain discounts and the amount thereof to be granted by respondent members to the purchasers from them of wire rope manufactured and sold, as aforesaid, by said respondent members.

8. Agreed to change, and have changed, simultaneously the basic discounts and the amounts thereof at which respondent members sell to purchasers from them of the wire rope manufactured by said respondent members.

9. Agreed to define, and have defined, what constitutes an acceptable or recognized distributor of wire rope.

10. Agreed to enter into, and have entered into, uniform written contracts with their respective distributors.

11. Agreed to organize, and have organized, a distributors' committee in respondent association to classify distributors of wire rope throughout the United States.

12. Agreed to file, and have filed, with respondent association, acting through and by means of respondent, George P. Lamb, as executive secretary of respondent association, the names of all their respective wire rope distributors.

13. Agreed to authorize, and have authorized, said respondent, George P. Lamb, acting as executive secretary of respondent association, to compile a master list showing all the wire rope distributors of all the respondent members.

14. Agreed to authorize, and have authorized, the said respondent, George P. Lamb, acting as executive secretary of respondent association, to expunge from said compiled list, all companies or firms who do not come within the definition of a distributor, as agreed upon and adopted by respondent members.

15. Agreed to circulate, and have circulated, through and by means of respondent association and respondent, George P. Lamb, acting as executive secretary of respondent association, lists of each respondent member's distributors to all the other respondent members, so that each respondent member knows precisely with what manufacturer each distributor has a distributing contract for wire rope.

16. Agreed that each respondent member grant to his distributors a special chain discount, which is not granted to other dealers in wire rope, to whom he sells, and who, although they may meet the requirements of the definition of a wire rope distributor as agreed upon and adopted by respondent members, nevertheless do not have a distributor's contract with this particular respondent member.

17. Agreed to refrain from soliciting, or entering into a contract with, and have refrained from soliciting or entering into contracts with, any distributors who already had contracted as such with another respondent member.

18. Agreed not to grant, and do not grant, to distributors who have a distributing contract with another respondent member, the same or similar discounts which they grant to their own distributors.

19. Agreed to include, and did include, in a uniform contract which all the respondent members entered into with their respective distributors, a provision which forbade such distributors from selling any wire rope other than that made by the particular respondent member with whom said distributor had a distributing contract.

PAR. 10. In order to effectuate the agreements and acts and practices performed thereunder, as hereinbefore set forth in the preceding paragraph, which agreements and acts have been, and are, made pursuant to, and in furtherance of, the agreement, understanding, combination, and conspiracy hereinbefore described in paragraph 8, respondent members, also, among other acts and things have agreed:

1. To hold, and have held, frequent meetings under the auspices and supervision of respondent association and respondents, Harry J. Leschen, George S. Whyte, and George P. Lamb, acting in their respective positions for respondent association.

2. To supervise and investigate, and do supervise and investigate, through and by means of respondent association and said respondents, Leschen, Whyte, and Lamb, acting in their respective official positions with respondent association, and by other means and methods, the fulfillment and enforcement of the agreements and acts performed pursuant thereto and in furtherance thereof.

3. To act, and do act, concertedly to maintain said agreements.

4. To coercively require, and do coercively require, recalcitrant manufacturers, distributors, and dealers of wire rope, to recognize and conform to such agreements.

5. To use, have used, and are still using, other unlawful means and methods in restricting, restraining, suppressing, preventing and forestalling actual and potential competition in the sale and distribution of wire rope in the United States.

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PAR. 11. Most of the acts, things, practices, and agreements referred to in the two preceding paragraphs were in effect during the period covered by the code, for the particular industry to which respondent members belonged under the National Industrial Recovery Act, and have continued in effect, pursuant to understanding, agreement, combination, and conspiracy between and among respondent members.

PAR. 12. As an incident to, and a necessary result of, respondent members' said agreement to use, and their use of, the basing point system of delivered prices, so as to make delivered prices identical within certain areas defined by respondent members, through agreement and understanding among said respondent members, notwithstanding differences in the actual freight from their respective places of business to various destinations within the same area, respondent members have habitually and systematically demanded, charged, accepted, and received within the same basing point area, and in other basing point areas, larger sums per unit of product from their customers located near their respective places of business than from their other customers located at greater distances within the same basing point area, and have thereby forced their nearer customers to pay more to respondent members for the wire rope manufactured by said respondents, in order that the more distant customers within the same area might pay less, thus depriving the nearby customers of any price advantage which they should have by reason of their proximity to the places of production.

PAR. 13. Respondent association and respondents, Leschen, Whyte, and Lamb, while acting in their respective offices in respondent association, aided, abetted, furthered, cooperated with, and were instrumentalities of, the understanding, agreement, combination, and conspiracy hereinbefore set forth, and they also directly or indirectly participated in the performance of at least some of the acts and practices done pursuant to, and in furtherance of, said understanding, agreement, combination, and conspiracy, hereinbefore set out.

PAR. 14. Each of respondent members has acted, and still acts, in concert and cooperation with one or more of the other respondent members, by means of, and through, respondent association, respondents, Leschen, Whyte, and Lamb, acting in their official positions with respondent association, or by, and through other means and methods, in doing and performing the acts, practices, and agreements hereinbefore set forth.

PAR. 15. The acts, practices, and agreements of the respondents, as herein alleged, are all to the prejudice of actual and potential competitors of respondent manufacturers and of the public; have a dangerous tendency to, and have actually hindered and prevented

competition in the sale of wire rope in commerce, within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained such commerce in said product; have a dangerous tendency to create in respondents a monopoly in the sale and distribution of said product, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, MODIFIED FINDINGS AS TO THE FACTS AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on January 3, 1941, issued and thereafter 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 that act. All of the respondents filed answers to the complaint. Thereafter, a stipulation was entered into by all of the respondents herein except Bethlehem Steel Co., whereby it was stipulated and agreed that a statement of facts executed by such respondents and by W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding as to such respondents and in lieu of testimony in support of or in opposition to the charges stated in the complaint, and that the Commission may proceed upon such statement of facts to make its report, stating its findings as to the facts (including inferences which it may draw from the stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding (the parties reserving, however, the right to file briefs with the Commission). Subsequently, the proceeding regularly came on for final hearing before the Commission on the complaint, answers, stipulation (the stipulation having been approved, accepted, and filed), and brief on behalf of respondent The Wire Rope & Strand Manufacturers Association, Inc. (no brief having been filed on behalf of any of the other respondents); and the Commission having duly considered the same, on December 8, 1942, made and entered its findings as to the facts and conclusion and order to cease and desist.¹ Thereafter, the matter came on for hearing upon motion, dated May 15, 1943, of Joseph J. Smith, Jr., assistant chief counsel for the Commission, to reopen this proceeding and to modify the Commission's said findings as to the facts and order to cease and desist, and the respondents having waived notice of and hearing upon said motion, and the Commission having duly considered the same and the entire record herein

¹ See 35 F. T. C. 750.

and being now fully advised in the premises and being of the opinion that the public interest requires a modification of its said findings as to the facts and order to cease and desist, the Commission finds that this proceeding is in the interest of the public and makes this its modified findings as to the facts and its conclusion drawn therefrom.

MODIFIED FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Wire Rope & Strand Manufacturers Association, Inc., herein sometimes referred to as "respondent association" and as "the association," is a membership corporation organized and existing under and by virtue of the laws of the State of Delaware, with its office located in the Shoreham Building, Washington, D. C.

Respondent, Harry J. Leschen, (now deceased), was the president of respondent association from 1933 until February 13, 1941, and was also president of respondent A. Leschen & Sons Rope Co., 5909 Kennerly Avenue, St. Louis, Mo.

Respondent, George S. Whyte, was chairman of the board of respondent association from 1933 until May 1940, and is also chairman of the board of respondent, MacWhyte Co., 2906 Fourteenth Avenue, Kenosha, Wis.

Respondent, George P. Lamb, is executive secretary and counsel of respondent association, with his office located in the Shoreham Building, Washington, D. C., which is the same address as that of respondent association.

Respondent, American Chain & Cable Co., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 230 Park Avenue, New York, N. Y.

Respondent, The American Steel & Wire Co. of New Jersey (referred to in the complaint as the American Steel & Wire Co.), is a corporation, organized and existing under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located in the Rockefeller Building, Cleveland, Ohio.

Respondent, Bethlehem Steel Co. (referred to in the complaint as the Bethlehem Steel Co.), is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 701 East Third Street, Bethlehem, Pa.

Respondent, Broderick & Bascom Rope Co., is a corporation, organized and existing under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 4203 North Union Boulevard, St. Louis, Mo.

Respondent, Columbia Steel Co., is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located in the Russ Building, San Francisco, Calif. This respondent is affiliated with respondent, the American Steel & Wire Co. of New Jersey, both of these respondents being subsidiaries of United States Steel Corporation.

Respondent, E. H. Edwards Co., is a corporation, organized and existing under and by virtue of the laws of the State of California, with its office and principal place of business located at 225 Bush Street, San Francisco, Calif.

Respondent, A. Leschen & Sons Rope Co., is a corporation, organized and existing under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 5909 Kennerly Avenue, St. Louis, Mo.

Respondent, MacWhyte Co., is a corporation, organized and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 2906 Fourteenth Avenue, Kenosha, Wis.

Respondent, Pacific Wire Rope Co., is a corporation, organized and existing under and by virtue of the laws of the State of California, with its office and principal place of business located at 1840 East Fifteenth Street, Los Angeles, Calif.

Respondent, Rochester Ropes, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 91 Van Wyck Boulevard, Jamaica, Long Island, N. Y.

Respondent, John A. Roebling's Sons Co., is a corporation, organized and existing under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 640 South Broad Street (referred to in the complaint as 630 South Broad Street), Trenton, N. J.

Respondent, Union Wire Rope Corporation, is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Twenty-first Street and Manchester Avenue, Kansas City, Mo.

Respondent, The Upson-Walton Co. (referred to in the complaint as Upson-Walton Co.), is a corporation, organized and existing under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 740 Superior Avenue West (referred to in the complaint as 1310 West Eleventh Street), Cleveland, Ohio.

Respondent, Wickwire Spencer Steel Co., is a corporation, organized and existing under and by virtue of the laws of the State of Delaware,

with its office and principal place of business located at 500 Fifth Avenue, New York, N. Y.

Respondent, Wire Rope Corporation of America, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at 464 Congress Avenue, New Haven, Conn.

Respondent, Wire Rope Manufacturing & Equipment Co., is a corporation, organized and existing under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 322 First Avenue South, Seattle, Wash.

PAR. 2. The Commission having concluded that the complaint should be dismissed as to respondents, Harry J. Leschen, George S. Whyte, George P. Lamb, The Wire Rope & Strand Manufacturers Association, Inc., and Bethlehem Steel Co., the terms "respondents," "respondent corporations," and "respondent manufacturers," as used hereinafter, will not include these respondents unless the contrary is indicated.

PAR. 3. Respondent association was originally organized to meet the requirements set out in section 3 (a) of the National Industrial Recovery Act. After this act was declared unconstitutional by the Supreme Court of the United States on May 27, 1935, in *Schechter Poultry Corp. v. United States*, 295 U. S. 495, the association continued to function and is still in operation. All of the respondent corporations are members of the association except respondent, Pacific Wire Rope Co., which was a member until June 4, 1937, when it resigned therefrom. It has not been a member since that date. The respondent corporations are engaged in the manufacture of wire rope and in the sale and distribution thereof throughout the United States.

PAR. 4. Wire rope is manufactured from relatively small section wires, either ferrous or nonferrous, often in combination with hard fibers or cotton. The wires are laid together in definite patterns to form strands, which are then laid together in definite patterns around centers made from fiber, cotton, wire strand, or wire rope, to thus form wire rope.

Practically all building elevators are operated by the use of such rope, as are also power shovels, cranes, logging machines, and other species of equipment used in pulling, lifting, or supporting heavy loads. The wire rope is made in many sizes, varying from that used for airplane control wire to those employed in supporting suspension bridges. While there are two types of wire ropes most commonly produced, ordinary (nonpatented) and preformed, this proceeding is concerned only with the former, which comprises approximately 80 to 85 percent of the total volume of wire rope produced by respondent manufacturers. Over a long period of years, ordinary or non-

patented wire rope has been sold to distributors and dealers, and also directly to the users thereof, including various governmental agencies, by the respondent manufacturers at delivered prices. Such rope is usually sold to various governmental agencies at net prices.

PAR. 5. The respondent manufacturers manufacture, sell, and distribute approximately 85 percent of all of the wire rope manufactured, sold, and distributed in the United States. In addition to such respondents and respondent, Bethlehem Steel Co., there was at the time of the filing of the complaint herein but one other manufacturer in the United States which produced this product, and this manufacturer did not begin production until the latter part of 1938. The respondent manufacturers sell the wire rope manufactured by them largely to or through distributors or to dealers. On Federal, State, and municipal invitations to bid, all of such respondents, and also the distributors selling their products, at one time or another have bid or do bid pursuant to such invitations, usually by means of sealed bids. To the extent that such respondents act collusively and collectively in the pricing and distribution of wire rope in the United States, they are in a position to dominate and control the prices at which this product must be purchased by the distributors, dealers, and users thereof, including Federal, State, and municipal agencies.

PAR. 6. In the course and conduct of their respective businesses, each of the respondent manufacturers sells and distributes the wire rope manufactured by it to the purchasers thereof located in various States of the United States, and, in the case of some of such respondents, also to purchasers located in the District of Columbia. In connection with such sales, these respondents transport their product or cause it to be transported to such purchasers located in various States of the United States other than the States of origin of such shipments, and, in the case of some of the respondents, also to purchasers located in the District of Columbia. All of such respondents maintain and have maintained a regular current of trade in their product in commerce among and between the various States of the United States, or some of them, and, in the case of some of the respondents, also in the District of Columbia.

PAR. 7. Each of the respondent manufacturers has been and is in competition with one or more of the other respondent manufacturers, and with the two other concerns referred to in paragraph 5, in making or seeking to make sales of its wire rope in commerce among and between the various States of the United States and in the District of Columbia, except insofar as such competition has been hindered, lessened, restricted, or forestalled by the understandings, agreements, combinations, or conspiracies, and the acts, practices, and things done in pursuance and in furtherance thereof, as hereinafter set forth.

PAR. 8. During the years 1930 through 1933, the sealed bids submitted by respondent manufacturers or their respective distributors or dealers to various governmental agencies generally showed a variance in price. Before the adoption of the code hereinafter mentioned in paragraph nine, generally there was no uniformity in the classification of their respective customers by such respondents. As a result, the actual prices at which these various respondents offered to sell or sold their wire rope to the same customer varied considerably.

PAR. 9. On May 24, 1934, the supplementary code of fair competition for the wire rope and strand manufacturing industry (which industry was a division of the fabricated metal products manufacturing and metal finishing and metal coating industry), herein referred to as "the code," was approved pursuant to the National Industrial Recovery Act.

This code under article V, Price List Schedules and Discounts, provided among other things that:

Each member * * * shall, within ten days after the effective date of this * * * Code, file with the Secretary of the Supplementary Code Authority its price list schedules and/or sales terms and/or discount sheets, which price list schedules and/or sales terms and/or discounts shall become effective on the date of filing. The Secretary of the * * * Code Authority shall immediately send copies of such filings to all known members of the industry. No member of the industry shall make any change in the price list schedules and/or sales terms and/or discounts so filed except as provided for in Section 3 * * *.

Section 3 of article V provided that:

Revised price list schedules and/or sales terms and/or discount sheets may be filed from time to time with the Secretary of the Supplementary Code Authority by any member of the industry, to become effective ten business days after actual receipt by the Supplementary Code Authority. Copies of such revised price list schedules and/or sales terms and/or discount sheets with notice of the effective date specified, shall be immediately sent by the Secretary to all known members of the industry who are cooperating in this Supplementary Code, any of whom may file, if he so desires, to become effective upon a date when the revised price list schedules and/or sales terms and/or discount sheets first filed shall go into effect, revisions of his price list schedules and/or sales terms and/or discount sheet establishing price list schedules and/or sales terms and/or discounts not lower than those established in revised price list schedules and/or sales terms and/or discount sheets first filed * * *.

(By order approving the code, the foregoing provision for a waiting period of 10 days was stayed and never became effective.)

Section 5 of article V provided further that: .

No member of the industry shall sell or contract to sell, directly or indirectly, by any means whatsoever, any of his products coming under this Supplementary Code at a price other than shown in the price list schedules and discount sheets filed by that member * * *.

PAR. 10. Pursuant to these provisions of the code, all of the re-

spondent manufacturers filed their list prices and discounts with the Code Authority. For many years the wire rope industry had used two sets of discounts, one called base discounts, the other (additional discounts) commonly known as chain discounts. The base discounts for each standard grade and construction of wire rope vary according to the geographic location of the customer, the chain discounts vary according to the classification of the customer. During the filing of prices under the code, these list prices, discounts, and classifications, and usually the resulting delivered prices of the respondent manufacturers from time to time became uniform, and on May 27, 1935, were uniform except as to the discounts of respondent, Wire Rope Corporation of America, Inc., respondent, Rochester Ropes, Inc. (then named New York Cordage & Cable Co.), and the predecessor of respondent, the Upson-Walton Co., three of the smaller manufacturers of wire rope. These three concerns, with the common knowledge of the other respondent manufacturers, during the existence of the Code Authority customarily sold and still sell wire rope at a 5-percent-chain discount in addition to the general discounts allowed by the other respondent manufacturers.

The Commission finds, since all of the other respondent manufacturers have had knowledge that these three smaller manufacturers were selling their products at approximately a 5-percent greater chain discount and have acquiesced in such arrangement, that there has been an understanding, agreement, and combination among all of the respondent manufacturers for these three smaller concerns to grant this higher chain discount.

PAR. 11. Prior to the submission of a code under the provisions of the National Industrial Recovery Act, most but not all of the respondents then manufacturing wire rope published their respective price list schedules, sales terms, and base and chain discounts. In formulating a proposed code, all of the respondent manufacturers agreed to the submission, for the approval of the Administrator, of a code containing the following provision:

In order to bring about fair practices of both consumers and Members of the Industry and to effectuate the provisions of this Supplementary Code, the Members of the Industry agree to the general trade practice of each publishing its own independent price list schedules and/or sales terms and/or base discounts and all discounts to be allowed the various classes of trade, making in each case a complete delivered sales price for all those products coming under this Supplementary Code.

This proposed code was approved by the Administrator, as heretofore set out in paragraph 9, but in giving such approval the Administrator ordered that the above-quoted provision be deleted. However, all of the respondent manufacturers did, after the adoption of the

code, and do publish their price-list schedules, sales terms, and base and chain discounts, making in each case complete delivered sales prices.

PAR. 12. At the time of the adoption of the code, all of the respondent manufacturers continued to quote their respective prices and to sell only on a delivered basis and on a basis of zones, as they had done for many years and as they are still doing. Under this zoning arrangement the United States is divided into six zones, as follows:

1. Eastern territory: Territory east of the western line of Missouri, Minnesota, Iowa, Arkansas, and Louisiana, and including points on either bank of the Missouri River between Sioux City, Iowa, and Kansas City, Missouri, any point on the west side—not actually on the bank of the river—shall be considered western territory;

2. Western territory: States of North Dakota, South Dakota, Nebraska, Kansas (excepting points on Missouri River between Sioux City and Kansas City, Missouri), Texas, Oklahoma;

3. Territory consisting of the States of Wyoming, New Mexico, and Colorado;

4. Territory consisting of the States of Montana, east of the 114th meridian, and Utah;

5. Pacific coast territory: California, Oregon, Nevada, Washington, Idaho, and Montana, west of the 114th meridian, including Missoula; and

6. State of Arizona.

PAR. 13. The respondent manufacturers in September 1934, all filed under the provisions of the code hereinbefore quoted in paragraph 9, and likewise employed by common understanding a formula or formulae setting forth in detail the method for the order in which base and chain discounts were to be applied to list prices and the number of decimal places to be used in developing net delivered prices on wire rope sold by such respondents. An example of such a formula reads as follows:

FORMULA TO BE USED IN DEVELOPING NET PRICES ON WIRE ROPE.

Figure the discounts from the list in their consecutive order. Extend the figures beyond the decimal point as far as they will go until the final price per foot has been developed. Point off three places on this final price and drop all figures beyond these three places, regardless of their value.

To arrive at the price per 100 feet, multiply the net price per foot by 100.

To arrive at the price per 1000 feet, multiply the net price per foot by 1000.

When figuring the total price, drop all figures beyond two figures after the decimal. For example: If the total price figures on the above basis should be \$120.214, the price to be quoted would be \$120.21.

WIRE ROPE CENTER, WIRE CENTER AND GALVANIZED ROPES. Add the necessary extras to the list prices before applying the discounts. Carry out full number of places beyond the decimal point in making these additions.

Following is an illustration of the application of the foregoing rule for establishing the net price in which the Eastern base discount on Plow Steel, with a spread of 10-5-5% has been used:

1" DIAMETER 6.19 PLOW STEEL—HEMP CENTER (Discount 30-10-5-5%)

\$.43	List
×.70	— (30% discount)
.3010	
— .0301	— (10% discount)
.2709	
— .013545	— (5% discount)
.257355	
— .01286775	— (5% discount)
.244	

RESULT:

.244 Per Foot
24.40 Per 100'
244.00 Per 1000'

Subsequent to the decision in the *Schechter* case, all of the respondent manufacturers, by reason of an agreement or understanding among themselves, have been and are still using the above formula in arriving at net delivered prices.

PAR. 14. The National Industrial Recovery Act was declared unconstitutional by the Supreme Court of the United States in the *Schechter* case on May 27, 1935. On that date, the Administrator of the National Industrial Recovery Act issued a statement to the public requesting that parties operating under codes should continue to maintain standards set up in the codes for the prevention of dishonest, fraudulent trade practices and unfair competition in overworking and underpaying labor.

On May 29, 1935, the president of respondent association, after wiring the respondent manufacturers, summarized their replies in the following wire to the executive secretary of the association:

All members Industry, including Strand Manufacturers have agreed to co-operate in maintenance of present standards as set up in Code.

On May 28 or 29, 1935, respondents, John A. Roebling's Sons Co., American Chain & Cable Company, Inc., A. Læschen & Sons Rope Co., and Broderick & Bascom Rope Co., all wrote or wired their respective branch offices or distributors to the effect that they were continuing to operate under the code, respondent, Broderick & Bascom Rope Co. stating in its circular letter to its distributors that:

Notwithstanding the recent Supreme Court Decision on the NRA, we are confident that the Wire Rope Industry will continue to operate exactly as they have during the past several months.

The following appears in the minutes of the meeting of respondent association held on June 11-12, 1935:

It was stated that the purpose of this meeting was to consider the position of the Association relative to the provisions of the Wire Rope Code in the light of the recent Supreme Court decision on the unconstitutionality of the National Recovery Act. The President stated that he had contacted every member of the Wire Rope Industry as well as the Strand manufacturers, by wire with the result that a feeling of cooperation was evidenced by the replies. Commenting upon these replies, the President stated, that they indicated that the Wire Rope Industry would be able to continue successfully because of the fine spirit of cooperation, evidenced thereby.

At this meeting the respondent manufacturers, by the unanimous vote of those present, decided upon the following procedure:

1. Each manufacturer should file with the office of the Executive Secretary his price lists and discount sheets on a purely voluntary basis to be distributed to the members of the industry, these prices to become effective immediately and to be refiled in accordance with the volition of each individual member. This procedure will be followed until further notification to the members of the industry to the contrary. [Subsequent to May 27, 1935, respondent manufacturers did not file prices with respondent Association or with George P. Lamb, or with any other officer of respondent Association, with the exception of a few instances immediately following the decision in the *Schechter* case.]
2. Each member of the Association shall continue to file his changes in distributors as has been done in the past.
3. The fair trade practices sections of both the basic code and the supplementary code shall be observed.

PAR. 15. Subsequent to the decision in the *Schechter* case, each of the respondent manufacturers knew and understood that all of them were publishing and usually allowing the same chain discounts to dealers, distributors, and all other classes of customers except Federal and other governmental agencies, as were published and usually allowed on May 27, 1935; and by agreement and understanding among themselves, these respondents have continued to publish and usually allow such uniform chain discounts.

On May 27, 1935, the published chain discounts allowed to the Federal Government by the respondent manufacturers were 10-5-5-10 percent, with the exception of those allowed by the three smaller manufacturers mentioned in paragraph 10 and by respondent, Pacific Wire Rope Co., which on that date were 10-5-10-10-10 percent.

Notwithstanding their published chain discounts to the Federal Government, the respondent manufacturers on July 13, 1935, in sealed bids, all allowed the Federal Government a chain discount of 10-5-10-10-10 percent, with the exception of the three smaller manufacturers hereinbefore mentioned in paragraph 10, who allowed greater discounts. Subsequently, all of these respondents (except the three

smaller concerns mentioned in paragraph 10 and the Pacific Wire Rope Co., all four of whom already had a published chain discount to the Federal Government of 10-5-10-10-10 percent published on various dates and continued usually to allow the chain discounts of 10-5-10-10-10 percent to the Federal Government, and from November 1937, to date these have remained, by common understanding and agreement, the chain discounts published and usually allowed to the Federal Government by all of the respondent manufacturers.

Prior to September, 1935, the chain discounts allowed by the respondent manufacturers to States and counties were different from those allowed by them to the Federal Government, and in or about that month such respondents agreed that on all bids to States or counties they would allow the same chain discounts as to the Federal Government.

On December 31, 1935, respondent, MacWhyte Co., in a letter to its distributors, noted that examination into many reported discrepancies in quoted prices by the respondent manufacturers revealed a surprising uniformity in quotation, and that "the deviations from the prices that were set up under the Code when it was effective had been continued [sic] so universally that it is almost an exact truth to say that no deviation at all has been made except possibly as the result of an accident or mistake." The Commission finds from the context of this quotation that the word "continued" was intended to be "discontinued," so that the quotation should read:

The deviations from the prices that were set up under the Code when it was effective have been discontinued so universally that it is almost an exact truth to say that no deviation at all has been made except possibly as the result of an accident or mistake.

PAR. 16. On December 5, 1935, the principal office of respondent, American Chain & Cable Co., Inc., notified its branches by circular letter to increase their price on a certain type of wire rope to become effective January 1, 1936. Respondent, MacWhyte Co., announced the same change on December 13; respondent, the American Steel & Wire Co. of New Jersey, on December 17; respondent, John A. Roebeling's Sons Co., on December 18; respondent, A. Leschen & Sons Rope Co., on December 19; and respondent, Broderick & Bascom Rope Co., on December 26, all to become effective on January 1, 1936. The Commission finds that these price changes were the result of an agreement among the respondent manufacturers.

PAR. 17. On December 13, 1935, respondent, MacWhyte Co., announced a change in its method of computing net prices to various governmental agencies by extending the number of decimal places from three to four in the formula described in paragraph 13, to be-

come effective January 1, 1936. Respondent, John A. Roebling's Sons Co., announced the same change on December 18; respondent, A. Leschen & Sons Rope Co., on December 23; respondent, American Chain & Cable Co., Inc., on December 24; and respondent, Broderick & Bascom Rope Co., on December 26, all to become effective on January 1, 1936.

On February 12, 1936, respondent, MacWhyte Co., announced a change in its method of computing net prices, the number of decimal places being reduced from four back to three, effective at once. Respondents, American Chain & Cable Co., Inc., and A. Leschen & Sons Rope Co., announced the same change on February 13; respondent, the American Steel & Wire Co. of New Jersey, on February 14; respondent, John A. Roebling's Sons Co., on February 18; and respondent, Broderick & Bascom Rope Co., on February 26, all to become effective at once except that of John A. Roebling's Sons Co., which was retroactive to February 13. By March 1936, all of the respondent manufacturers were quoting net prices to governmental agencies which were arrived at by pointing off three places to the right of the decimal point.

In many instances, sealed bids are won by a difference of a few cents or fractions of a cent per unit.

The Commission finds that these changes in the method of computing net prices by the retention or elimination of figures or digits after the decimal point were made as a result of an agreement, understanding, and combination between and among the respondent manufacturers, and that the result was and is to prevent purchasers of wire rope, such as governmental agencies, from securing the advantages of having these respondents quote and sell at net prices which are not uniform.

PAR. 18. In March 1937, the respondent manufacturers lowered their base discounts on all types of rope in all zones by 3 percentage points, all of such respondents making the change at approximately the same date.

PAR. 19. On July 8, 1937, an officer of one of the respondent manufacturers wrote to one of its branches that there was an agreement among the respondent manufacturers that the price charged on sales by one such manufacturer to another of list less standard base less 10-5-10-10-10 percent would be adhered to.

PAR. 20. On March 26, 1938, an officer of one of the respondent manufacturers wrote a representative of such respondent regarding poor business conditions then existing, and among other things stated:

With regard to price cutting, up to the present time this has not been serious. There has been some chiseling going on but it has not been serious enough to

have caused any of the wire rope companies to become really excited and disturbed. * * *

PAR. 21. On various dates between June 30 and July 12, 1938, inclusive, all of the respondent manufacturers advanced their base discounts 5 percent, thus returning the base discounts to where they were prior to March 1937.

PAR. 22. The Commission finds from the foregoing facts that the changes in the base discounts which the respondent manufacturers granted in all zones were the result of an agreement, understanding, and combination between and among such respondents.

PAR. 23. With the exception of respondents Rochester Ropes, Inc., The Upson-Walton Co., and The American Steel & Wire Co. of New Jersey, all of the respondent manufacturers who are located in the eastern or midwestern parts of the country have branch offices or representatives on the Pacific coast for the purpose of selling, and who do sell, the wire rope of these respective manufacturers on the Pacific coast, where are also located respondents, Columbia Steel Co., E. H. Edwards Co., Pacific Wire Rope Co., and Wire Rope Manufacturing & Equipment Co., and a wire rope manufacturing plant of respondent, Broderick & Bascom Rope Co.

In December 1935, when the respondent manufacturers increased their price on a certain type of wire rope, as set forth in paragraph 16 hereof, the Pacific coast manager of one of these respondents wired the principal office of such respondent that he had confirmed that "all Pacific coast group will put new metallic core prices in effect date mentioned your letter."

In June 1937, there were an unusual number of deviations from their respective published prices in sales on the Pacific coast by the respondent manufacturers. On June 21, 1937, the vice president of one of such respondents wrote its Pacific coast representative that he did not think the price disturbance would last much longer, as "at this time there is a conference going on between the parties interested" and "all manufacturers are hoping that settlement will be reached under whereby they will go back to the new prices that we established under date of March 20" [sic].

On October 15, 1937, one of the respondent manufacturers wrote another of such respondents that while on September 1, 1937, the first respondent had sold a certain customer off list, "This order was taken during the commotion in the Northwest," and that "However, this is all out and they cannot, under any conditions, purchase from us at anything but the schedule price," and "regardless of what stories people hear we will not deviate from the above."

Representatives of all of the respondent manufacturers except Pacific Wire Rope Co., Columbia Steel Co., Wire Rope Manufacturing & Equipment Co., and American Chain & Cable Co., Inc., were together at White Sulphur Springs, W. Va., during the latter part of September 1938. Among those present were two representatives from the Pacific coast and the other from the east. On October 10, 1938, the Pacific coast representative wrote the eastern representative as follows:

The situation is certainly bad and there is no hope for immediate relief unless steps that were taken back at White Sulphur Springs to correct the situation will accomplish results. The gentlemen with whom we discussed this situation at White Sulphur Springs are fully aware of the seriousness of the situation, and I advised you just what the plans are to correct it, and I certainly hope that this will be accomplished in the very near future.

On or about October 27, 1938, all of the respondents selling wire rope on the Pacific coast increased their respective base discounts two and one-half points, for the Pacific coast zone only.

On November 1, 1938, one of the respondent manufacturers wrote its Pacific coast office as follows:

Attached is a complete schedule set up on the new base discounts for the Pacific Coast territory and Arizona.

Confirming my letter of 11-1 38, it is definitely understood that you will notify everyone concerned there will be no deviation whatever in the discounts, as per our printed schedule. This applies to everybody so do not come back and ask if so-and-so or so-and-so are included because they all are definitely included. Do not have the salesmen tell you that someone else is getting a better price and they will have to meet it because we will not listen to any of these stories at all.

Of course, it is possible we may lose some business but just the same we will gain from someone else. So when it is all washed up we will be better off than we were before.

You must definitely adhere to the schedule unless otherwise instructed.

PAR. 24. The Commission finds from the foregoing facts set forth in paragraph 23 that there was an agreement, understanding, and combination between and among the respondent manufacturers whereby the prices and conditions governing the sale of such respondents' products on the Pacific coast were fixed and determined.

PAR. 25. The present general practice of each of the respondent manufacturers of quoting and selling the wire rope manufactured by it only at delivered prices, which delivered prices are identical within and throughout each of the respective zones hereinbefore outlined in paragraph 12, is the same as the practice of quoting and selling at delivered prices which such respondents agreed to and did include in the proposed provision of the code hereinbefore quoted in paragraph 11. The Commission finds that these respondents have, by agreement,

understanding, and combination between and among themselves, continued, and still do continue, their prior agreement to sell only on this delivered zone price basis. The Commission further finds that the result of selling on such a basis is that all of the respondent manufacturers, although their places of production are scattered throughout the United States, publish and usually allow the same base discounts within a given zone, regardless of where the wire rope is to be delivered within the zone and regardless of the varying delivery costs therein for such rope; that since all of such respondents employ the same general classifications of customers and (with the exception of the three smaller manufacturers mentioned in paragraph 10) publish and usually allow identical chain discounts for their respective classes of customers, all of such respondents (with these exceptions) usually charge and receive the same net delivered prices on all wire rope sold to purchasers thereof belonging to a particular class, i. e., "distributors," "governmental agencies," etc., within any of the common zones set forth in paragraph 12; and that these same delivered prices produce a different mill net return to each of such respondents on sales to its customers at different locations within the same zone, since each respondent's average freight cost factor (which is included in full in its delivered price when it sells other than at a loss, and is included in part in such delivered price when it sells at a loss) bears no relation to the actual freight paid by it on such sales.

PAR. 26. Prior to their presentation of a proposed code to the National Recovery Administration, the respondent manufacturers agreed upon and adopted, for the first time in the industry, a uniform list of classes of customers for insertion as part of the code. This uniform list was not made a part of the code, but in connection with the filing of their prices under the code all of such respondents filed with the Code Authority lists identical with such uniform list. Subsequent to the decision in the *Schechter* case these respondents have, by agreement and understanding between and among themselves, continued to use and are still using such uniform list.

PAR. 27. The code defined a "distributor" and provided that a complete list of each respondent manufacturer's authorized distributors (who, according to the provision of the code, had to be under a written contract to act as such), as well as all subsequent changes therein, should be filed with the secretary of the Code Authority, who was then required to transmit the composite list of all of such authorized distributors to all of the respondent manufacturers.

Pursuant to the step numbered "2" in the procedure adopted by the respondent manufacturers subsequent to the decision in the *Schechter* case and set forth in paragraph 14 hereof, such respondents

have continued to file their respective lists of distributors with respondent association, except that respondent, Rochester Ropes, Inc., has not filed any of such lists since June 1939. Upon receipt of these lists of distributors from respondent manufacturers, the association, through its executive secretary, has caused to be compiled from such lists a master list showing all of the distributors of each of the respondent manufacturers. From time to time the association has caused distributors' names to be added to and deleted from such master list as information relative thereto has been received from the respective respondent manufacturers.

Subsequent to the decision in the *Schechter* case the respondent manufacturers, in determining what constitutes a distributor, have by agreement and understanding between and among themselves continued to use and still use the definition of a distributor as contained in the code.

The chain discounts published and usually allowed by all of the respondent manufacturers to their respective distributors are 10-5-5-10-10 percent and to their respective dealers 10-5-5-10 percent, except that the three smaller manufacturers mentioned in paragraph 10, by agreement, understanding, and combination between them and the other respondent manufacturers, are allowed to and do grant 5 percent additional chain discounts to both of these classes of purchasers.

Through an agreement and understanding between and among themselves, the respondent manufacturers prior to July 1936, inserted in the contracts with their respective appointed distributors a provision which bound each such distributor "to buy its entire requirements of wire rope" from the particular respondent by whom the distributor was appointed. In July 1936, this clause was eliminated from all of the contracts which these respondents had with their respective appointed distributors, and all of such contracts of such respondents have since contained a provision that each such distributor is a "nonexclusive distributor." However, all of the respondent manufacturers, by agreement and understanding between and among themselves, still refuse to sell distributors appointed by other respondent manufacturers on any basis other than that of a dealer, even though the distributors offer to qualify as such for other respondent manufacturers.

The respondent manufacturers have mutually agreed that one of them will not make or seek to make a distributor's contract with a distributor who has been appointed by and is acting as such for another of them. This agreement in many instances has been carried out by most of these respondents.

PAR. 28. The respondent manufacturers by agreement have designated, with reference to the Pacific coast, that only certain towns can be considered as distribution points and distributors cannot be appointed by any of such respondents at any other point on the Pacific coast, thus preventing those who could qualify as distributors under the definition referred to in paragraph 27 but who are not located at such distribution points from becoming distributors for any of such respondents.

PAR. 29. Each of the respondent manufacturers has acted in concert and cooperation with one or more of the other respondent manufacturers in doing the foregoing acts pursuant to and in furtherance of the understandings, agreements, and conspiracies herein described.

PAR. 30. The Commission finds that the capacity, tendency, and effect of the understandings, agreements, combinations, and conspiracies herein described, and of the practices, acts, and things done in pursuance thereof, have been and are:

1. To bring about, continue, and maintain throughout the United States uniformity of delivered prices, terms, and conditions of sale for the sale by the respondent manufacturers of nonpatented wire rope, which prices, terms, and conditions of sale for any particular territorial delivered price zone, class of customer, and grade and construction of such wire rope are uniform among such respondents except for the three smaller manufacturers mentioned in paragraph 10, and, as to these three respondents uniformity at a lower level.

2. To fix and maintain uniform formulae among all of the respondent manufacturers with respect to the methods employed by them in determining the order and manner in which base and chain discounts are to be applied to such respondents' list prices and the number of decimal places to be used in arriving at the uniform net delivered prices for wire rope sold by such respondents throughout the United States.

3. To continue the use of territorial delivered price zones throughout the United States, which zones are the same for all of the respondent manufacturers with each zone generally having different delivered prices from all other such zones, and within each of which zones the delivered prices published and usually charged by all of such respondents are uniform (with the exception of the three smaller manufacturers mentioned in paragraph 10, whose prices are uniform at a lower level) to all customers of a particular class purchasing a particular grade and construction of nonpatented wire rope, regardless of the location of such customers within a particular zone, regardless of the location of the respective places of production or distribution of such respondent, and regardless of difference in

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actual freight or delivery costs from such places of production or distribution to such customers.

4. To result in each of the respondent manufacturers customarily receiving a greater mill net return, after allowing for actual freight, from those of its customers within a given zone who are nearer the mill than from those of its customers within the same zone who are more distant therefrom.

5. To continue the use of the aforesaid zones within the United States whereby purchasers from all of the respondent manufacturers (which purchasers may be in competition with one another but are located in different zones) are charged different delivered zone prices which generally do not reflect the differences in actual delivery costs to such purchasers.

6. To bring about and maintain uniformity in the base and chain discounts which all of the respondent manufacturers publish and usually allow to their respective purchasers, except as to the chain discounts of the three smaller manufacturers mentioned in paragraph 10, as to which there is uniformity at a higher level.

7. To bring about and maintain uniformity in the classifications of customers among all of the respondent manufacturers, with the result that all of such respondents publish and usually charge and receive uniform delivered prices from all purchasers belonging to a particular class within a particular territorial delivered price zone on sales of any particular grade and construction of nonpatented wire rope, with the exception set forth in subparagraph 1 of this paragraph regarding the three smaller manufacturers.

8. To fix and maintain among the respondents a uniform definition as to what constitutes a distributor of nonpatented wire rope.

9. To restrain any of the respondent manufacturers from making or seeking to make a distributor's contract with any distributor who has been appointed by and is acting as such for another of such respondents.

10. To restrain the appointment by any of the respondent manufacturers of distributors of nonpatented wire rope at such places on the Pacific coast as have not been designated, by agreement among such respondents, as distribution points.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of the public and of respondent manufacturers' competitors; have a dangerous tendency to and have hindered and prevented competition between and among the respondent manufacturers in the sale and distribution of nonpatented wire rope in commerce, ^{as}

"commerce" is defined in the Federal Trade Commission Act; have unreasonably restrained trade in such product in such commerce; and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, brief filed on behalf of respondent, The Wire Rope & Strand Manufacturers Association, Inc., and a stipulation as to the facts entered into between all of the respondents (except Bethlehem Steel Co.), and W. T. Kelley, chief counsel for the Commission, and the Commission having duly made and entered herein its findings as to the facts, conclusion, and order to cease and desist dated December 8, 1942, and the matter having thereafter come on for hearing upon motion dated May 15, 1943, of Joseph J. Smith, Jr., assistant chief counsel for the Commission, to reopen this proceeding and to modify the Commission's said findings as to the facts and order to cease and desist, and the respondents having waived notice of and hearing upon said motion, and the Commission having duly considered the same and the entire record herein and being now fully advised in the premises and being of the opinion that the public interest requires a modification of its said order to cease and desist, now, therefore, upon consideration of the entire record in this matter and upon its modified findings as to the facts this day dated and entered herein, the Commission, being of the opinion that the respondents (except those named in the last paragraph hereof) have violated the provisions of the Federal Trade Commission Act, issues this its modified order to cease and desist, and:

It is ordered, That respondents, American Chain & Cable Co., Inc., the American Steel & Wire Co. of New Jersey, Broderick & Bascom Rope Co., Columbia Steel Co., E. H. Edwards Co., A. Leschen & Sons Rope Co., MacWhyte Co., Pacific Wire Rope Co., Rochester Ropes, Inc., John A. Roebling's Sons Co., Union Wire Rope Corporation, The Upson-Walton Co., Wickwire Spencer Steel Co., Wire Rope Corporation of America, Inc., and Wire Rope Manufacturing & Equipment Co., corporations, and their respective officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of nonpatented wire rope of any type or description, do forthwith cease and desist from continuing, entering into, or carrying out

any agreement, understanding, combination, or conspiracy and from continuing or cooperating in any agreed or planned common course of action, between or among any two or more of said respondents, or between any one or more of said respondents and any person, association, or corporation not a party to this order, to do or perform any of the following acts or things:

1. Fixing, determining, maintaining, or adhering to prices, terms, or conditions of sale of such wire rope to dealers, distributors, users thereof, including any governmental agency.

2. Adopting, fixing, determining, maintaining, or adhering to any price-fixing formula or formulae for applying discounts of any nature or description, regardless of their designation, to list prices, or for the purpose or with the effect of retaining, eliminating, or interpreting any figures or digits after any decimal point, whereby prices (including net delivered prices) for the sale of such wire rope are or may be fixed, determined, maintained, or adhered to.

3. Establishing, maintaining, or adhering to territorial delivered-price zones.

4. Making quotations or sales upon a delivered-price basis under a zone system whereby the cost to all customers, or to customers of any particular class or designation, purchasing a particular grade and construction of such wire rope is made identical to all destinations within a particular zone.

5. Adopting, fixing, determining, maintaining, or adhering to the form, amount, or application of base or chain discounts to be allowed, or which may be allowed, by the respondents on purchases of such wire rope.

6. Adopting, fixing, determining, maintaining, or adhering to uniform classifications of customers.

7. Defining what constitutes a distributor of wire rope, where the purpose or effect is or may be to prevent or restrict the selection of distributors.

8. Filing with any association, or with any other agency, the names of respondents' distributors of wire rope.

9. Authorizing the compilation, for circulation among the respondents, of lists showing the names of distributors of any of the respondents.

10. Circulating or attempting to circulate among the respondents, by any means or method, lists showing the names of distributors of any of the respondents.

11. Refusing by any method or in any manner to make a distributor's contract with any person, firm, or corporation who has been appointed a distributor of and is acting as such for another respondent

where such person, firm, or corporation possesses the qualifications and is able and willing to perform the functions required of the distributors of the respondent so refusing.

12. Including in or making a part of any contract which respondents have or may enter into with their respective distributors, any provision which forbids or may forbid such a distributor from selling any wire rope other than that manufactured or sold by the particular respondent with whom such distributor has a distributor's contract.

13. Refusing to appoint distributors in any particular locality or localities.

It is further ordered, That said respondents 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.

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to respondents, Harry J. Leschen, George S. Whyte, George P. Lamb, The Wire Rope & Strand Manufacturers Association, Inc., and Bethlehem Steel Co.

Complaint

36 F. T. C.

IN THE MATTER OF
MODERNISTIC CANDIES, INC., ET AL.

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

Docket 4605. Complaint, Oct. 6, 1941—Decision, May 25, 1943

Where, a corporation and two officers and stockholders, engaged in the manufacture and competitive interstate sale and distribution of chewing gum, including certain assortments which were so packed and assembled in "ballgum boards" as to involve the use of a lottery scheme in sale thereof and of other merchandise under a plan, as typical, by which the different color of 20 pieces—or other number, as indicated thereon—entitled the customer, in addition to the penny piece secured by all, to a merchandise prize of ordinarily greater value, as supplied by the wholesaler or retailer; and thereby Supplied to and placed in latter's hands the means of conducting games of chance in the sale and distribution of such gum in accordance with aforesaid sales plan involving the sale of a chance to obtain additional merchandise at less than its normal retail price, contrary to an established public policy of the United States Government and in competition with those who do not use such plans or methods;

With result that many persons were attracted by their method of packing their gum and by the element of chance involved therein, and were thereby induced to buy and sell it in preference to that of competitors aforesaid, whereby substantial trade was diverted unfairly from latter to them:

Held, That such acts and practices, under the circumstances above set forth, were all to the prejudice of the public and competitors, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

Before *Mr. John W. Addison*, trial examiner.

Mr. J. W. Brookfield, Jr., for the Commission.

Beach, Fathchild & Scofield, of Chicago, Ill., for respondents.

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 Modernistic Candies, Inc., a corporation, and Sol S. Leaf and Harry Leaf, individually, and as officers of Modernistic Candies, Inc., hereinafter referred to as respondents, have violated the provisions of said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues this complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Modernistic Candies, Inc., is a corporation, organized and doing business under the laws of the State of