

IN THE MATTER OF
CHARLES F. ROHLEDER, ET AL.¹

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

Docket 4806. Complaint, Aug. 6, 1942—Decision, Oct. 10, 1944

Where (1) a general contractor and two individuals, his employees and agents; (2) D, employee and agent, in city concerned, of W (company engaged in interstate purchase and sale of electrical equipment and supplies) and instrumental in effecting the interstate purchase and sale of such products; (3) R, electrical contractor in said city, and also, during period concerned, employee and agent of aforesaid general contractor and purchaser in interstate commerce in said capacity of such products from concerns W, W.B., and others; (4) C, vice president and agent of said W. B. (corporation engaged in manufacture and in interstate purchase and sale of such products) and instrumental in effecting the purchase and sale of such products; (5) L, secretary and agent of A (a corporation also so engaged); and (6) the three electrical concerns above referred to, namely, W, W.B., and A, in competition among themselves and with other purchasers and sellers of such products except insofar as said competition had been restricted or forestalled by the concerted course of action below set forth;

Following arrangements by the Navy with a shipbuilding company under which said company was to undertake construction of naval vessels, and pursuant to which (1) the Navy agreed to arrange for the advancing of the necessary funds to rehabilitate the latter's shipyards in said city, to be expended under the general supervision of the Navy and subject to its approval, and (2) said shipbuilding company contracted with aforesaid general contractor for the reconstruction by him of certain office buildings and shipways on a cost-plus-a-fixed-fee basis, with the understanding that in securing materials or services he would obtain competitive offers from as many as practicable, but not less than two—or three where specified—reputable firms and award a contract to the concern quoting the minimum price; bids to be opened by or in the presence of the Navy Supervisor of Shipbuilding, or his representative, and to be subject to his approval before award of the subcontract—

Cooperated, combined, agreed, and conspired, through understanding among themselves, during a period of some fifteen months or more, to, and did restrain and suppress competition in the purchase and sale in commerce of said products, including such items as electric cable, wire, switches, conduit, fittings, condulets, potheads, cable heads, transformers, insulators, lighting fixtures, lamps, and accessories; and pursuant to and as a part of aforesaid understanding, etc.—

- (a) Promoted, established and carried out a practice of maintaining a false appearance of competition between said concerns and other sellers of such products in their submission of bids to buyers and prospective buyers;
- (b) Conveyed to such buyers, including official awarding authorities of the United States Government, and others involved in the purchase of such products, the rep-

¹ The instant case is one of a group of eight having to do with the preparation and submission of sham, false, fictitious, fraudulent and non-competitive bids in connection with the Navy's arrangement for the construction of ships by the Cramp Shipbuilding Co. at its shipyards in Philadelphia. For list of these cases, see footnote to the case of the Grater-Bodey Co., et al., Docket 4799, p. 113.

resentation that aforesaid concerns and other sellers were rival bidders and competitors, when, in reality, they were acting collusively in preparing and submitting bids;

- (c) Avoided and prevented competition and prevented consideration by purchasers of genuinely competitive bids or price quotations; and

Where aforesaid general contractor, acting directly and through his aforesaid two employees and agents, and through said R, electrical contractor and own employee and agent also—

- (d) Cooperated with said D, employee and agent of supply company W, and with R, in the preparation and submission to himself and his said two agents and employees, and to his subcontractor, said R, of fictitious bids for the furnishing of electrical equipment and supplies, for his use in rehabilitating said shipyards, and submitted such bids in turn to purchasing officials of said shipbuilding company and representatives of the Navy Supervisor of Ships as genuinely competitive bids and price quotations; and

Where said agent D, on numerous occasions, with the knowledge and cooperation of said general contractor, and his employees, agents, and subcontractors, including said R—

- (e) In furtherance of the above described deception secured letterhead stationery of said concerns W.B. and A, from said C, and L, their respective officials, and made use thereof in the preparation and submission of fictitious bids for furnishing electrical equipment and supplies to said general contractor and his agents and subcontractors, over the names of the aforesaid two electrical concerns and over the purported but false signatures of their officials, at prices which were higher than, and non-competitive with the bids submitted in each comparable instance by said D as the bid of his company; and

Where said general contractor, his employees, agents, and subcontractors, in each of the number of instances where said D thus submitted to them such bids on stationery of concerns W, W.B., and A.—

- (f) In turn submitted as and for genuine and competitive bids, such false bids to officials of said shipbuilding company and to representatives of the Navy Supervisor of Ships, who were misled and deceived thereby into considering and approving them as genuine and competitive; and

Where said C, vice president of said W.B., and said L, secretary of said A—

- (g) Knowingly cooperated with said D in furnishing him with stationery bearing the letterheads of their respective concerns for his use in the preparation of such fictitious bids;

With the result that said W, as a consequence of the submission of such fictitious bids by its said agent, enjoyed awards of numerous contracts to it by said general contractor, his employees, agents and subcontractors, with the approval of officials of said shipbuilding company and representatives of the Navy Supervisor of Ships, secured through deception as aforesaid; and

Where said R, individually and as employee, agent and subcontractor of said general contractor, in addition to cooperating with said agent D, in the preparation and submission of said fictitious bids;

- (h) Personally also prepared and submitted such bids to and through the office of said general contractor for the purpose and with the result of having them in turn submitted by said general contractor or his said two agents, to officials of said shipbuilding company and representatives of the Navy Supervisor of Ships, whereby such bids were considered and approved as genuine and competitive by said misled officials and representatives, and contracts for furnishing such equipment and

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supplies to said general contractor and said shipbuilding company were secured by him:

With the effect of depriving buyers and prospective buyers of electrical equipment and supplies, including contractors and subcontractors with the United States Government, and the public in general, of the benefit of competition in commerce, between said three concerns and others with whom they normally would be in competition in making bids and price quotations; and with tendency so to do:

Held, That such acts, practices, agreements and conspiracy, under the circumstances set forth, were all to the prejudice of the public, had a dangerous tendency to and did restrain and eliminate competition in the purchase and sale of electrical equipment and supplies in commerce; had the capacity and tendency to, and did, unreasonably restrain such commerce in said products; had a dangerous tendency to create in aforesaid individuals and concerns a monopoly in the purchase, sale and distribution of said products; and constituted unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Mr. Everett MacIntyre and Mr. V. W. Summers for the Commission.

Mr. James F. Masterson, of Philadelphia, Pa., for Charles F. Rohleder, Allen McLaine Ward, J. R. Baldrige, Jr. and J. P. Rainey.

Saul, Ewing, Remick & Harrison, of Philadelphia, Pa., for Westinghouse Electric Supply Co.

Rawle & Henderson, of Philadelphia, Pa., for R. R. Dewees.

Montgomery, McCracken, Walker & Rhoads, of Philadelphia, Pa., for Walker Brothers and Anthony M. Callanan.

Mr. William J. Wilson, of Philadelphia, Pa., for Adelphia Electric Co. and Norman T. Leithold.

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 persons, partnerships and corporations named or included by reference in the caption hereof, and more particularly hereinafter described and referred to as respondents, have violated the provisions of Section 5 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 against each of the said parties, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Charles F. Rohleder, is an individual, engaged in general contracting and construction work, with office and principal place of business located at 2134 Cherry Street, Philadelphia, Pa.

Respondent, Allen McLaine Ward, whose residence address is 7415 Bingham Street, Philadelphia, Pa., is an individual, who during the period covered by the activities involved in the charges of this complaint served as an employee and agent of respondent, Charles F. Rohleder.

Respondent, J. R. Baldrige, Jr., whose residence address is 111 East Cliveden Avenue, Philadelphia, Pa., is an individual, who during the period covered by the activities involved in the charges of this complaint served as an employee and agent of respondent, Charles F. Rohleder.

Respondent, J. P. Rainey, is an individual, engaged in the electrical contracting business and trading as J. P. Rainey & Co., 511 North Broad Street, Philadelphia, Pa. He, during the period covered by the activities involved in the charges in the complaint, also served as an employee and agent of respondent, Charles F. Rohleder.

Respondent, Westinghouse Electric Supply Co., is a corporation, organized and existing under the laws of the State of Delaware, with an office and principal place of business located at 150 Varick Street, New York, N. Y., and with a branch or district office located at 1101 Race Street, Philadelphia, Pa.

Respondent, R. R. Dewees, is an individual, who has served as an employee and agent of respondent, Westinghouse Electric Supply Co., 1101 Race Street, Philadelphia, Pa., during the period covered by the activities involved in the charges in this complaint.

Respondent, Walker Brothers, is a Pennsylvania corporation with office and principal place of business located at Conshohocken, Pa.

Respondent, Anthony M. Callanan, is an individual, who during the period covered by the activities involved in the charges of this complaint served as a vice president and agent of respondent, Walker Brothers, Conshohocken, Pa.

Respondent, Adelphia Electric Co., is a Pennsylvania corporation, with principal place of business located at 125 North 10th Street, Philadelphia, Pa.

Respondent, Norman T. Leithold, is an individual, who during the period covered by the activities involved in the charges of this complaint served as secretary and agent of respondent Adelphia Electric Co., 125 North 10th Street, Philadelphia, Pa.

PAR. 2. At all times hereinafter mentioned respondent, Charles F. Rohleder, directly and through his agents, respondents, Allen McLaine Ward, J. R. Baldridge, Jr., and J. P. Rainey, has been engaged in negotiating with and buying from respondents, Westinghouse Electric Supply Co., J. P. Rainey & Co., and Walker Brothers, directly and through their agents, including R. R. Dewees, J. P. Rainey and Anthony M. Callanan, "electrical equipment and supplies" which were shipped from many points located in States other than the State of Pennsylvania by the sellers or their suppliers to Charles F. Rohleder or his agents at Cramp Shipbuilding Co. shipyard, Richmond and Norris Streets, Philadelphia, Pa.

At all times hereinafter mentioned, respondent, J. P. Rainey, doing business as J. P. Rainey & Company, has been engaged in Philadelphia, Pa., in the electrical contracting business and in that capacity, and also as an agent of respondent, Charles F. Rohleder, has purchased "electrical equipment and supplies" from respondents, Westinghouse Electric Supply Co., Walker Brothers, and others, and caused such electrical supplies and equipment to be shipped from locations in States other than the State of Pennsylvania to him in Philadelphia, Pa.

At all times hereinafter mentioned, respondent, Westinghouse Electric Supply Co., has been engaged in the purchase and sale of "electrical equipment and supplies" and causing the same to be shipped from points of manufacture in various States through and to locations in other States, including Philadelphia, Pa., where such electrical supplies and equipment were used by the buyers.

At all times hereinafter mentioned, respondent, Walker Brothers, has been engaged in the manufacture, purchase and sale of "electrical equipment and supplies" and causing the same to be shipped from points of manufacture in various States through and to locations in other States, including Philadelphia, Pa., where such electrical supplies and equipment were used by the buyers.

At all times hereinafter mentioned, respondent, Adelphia Electric Co., has been engaged in the purchase and sale of "electrical equipment and supplies" and causing the same to be shipped from points of manufacture in various States through and to locations in other States, including Philadelphia, Pa., where such electrical supplies and equipment were used by the buyers.

At all times hereinafter mentioned respondents, R. R. Dewees and Anthony M. Callanan, as agents of respondent, Westinghouse Electric Supply Co., and respondent, Walker Brothers, respectively, have been instrumental in effecting purchase and sale of "electrical equipment and supplies" and causing the same to be shipped from points of manufacture in various States through and to locations in other States, including Philadelphia, Pa., where such electrical supplies and equipment were used by the buyers.

PAR. 3. Respondents, Westinghouse Electric Supply Co., Walker Brothers, Adelphia Electric Co., and others not named herein as respondents engaged in the purchase and sale of "electrical equipment and supplies" in Philadelphia, Pa., have been and are in competition between and among themselves and with one or more other purchasers and sellers of electrical supplies in making or seeking to make sales in "commerce" between and among the various States of the United States of "electrical equipment and supplies" except in so far as said competition has been hindered, lessened, restricted or forestalled by the cooperation, concert or common course of action, understanding, confederation, combination, agreement or conspiracy or the acts, things, practices, policies or methods done and carried on in pursuance thereto or in furtherance thereof, as hereinafter set forth.

PAR. 4. The term "electrical equipment and supplies" as used herein includes, but not limited to, such items as electric cable, electric wire, electric switches, electric conduit, fittings, condulets, potheads, cableheads, transformers, insulators, lighting fixtures, lamps and accessories.

PAR. 5. During 1940, as a part of its work in the Defense Program of the United States of America, the Navy Department arranged with Cramp Shipbuilding Co., whose shipyards are located at Richmond and Norris Streets, Philadelphia, Pa., for the latter to undertake the construction of naval vessels and in that connection agreed to arrange for the advancement of the necessary funds to rehabilitate the facilities of the said shipyard, including office buildings and shipways, with the understanding that the expenditure of the said funds for such work would be under the general supervision and subject to the approval of officials of the United States Navy Department. Thereupon, the said Cramp Shipbuilding Co. contracted with respondent, Charles F. Rohleder, for the latter to reconstruct certain office buildings and shipways on a cost plus a fixed fee basis, with the understanding that the said Rohleder in securing materials or services would obtain competitive offers from as many as practicable, but not less

than two (not less than three where specified) reputable firms in a position to provide the material, equipment or services, as required at a reasonable cost, and to award contract to that firm quoting the minimum price; and with the further understanding that the said offers, proposals or bids were to be opened by or in the presence of the Supervisor of Shipbuilding, U. S. Navy, or his representative, and subject to his approval before award of the sub-contract for materials, equipment or services.

In connection with his aforesaid contract with Cramp Shipbuilding Co., respondent, Charles F. Rohleder, negotiated with and made awards of contracts for the purchase, directly and through agents, of "electrical equipment and supplies" from respondents, J. P. Rainey, R. R. Dewees, Westinghouse Electric Supply Co. and others.

PAR. 6. Throughout a period of time beginning on or about the first day of October 1940 and continuing thereafter until subsequent to January 1, 1942, the respondents, Charles F. Rohleder, Allen McLaine Ward, J. R. Baldridge, Jr., R. R. Dewees, J. P. Rainey, Anthony M. Callanan, Norman T. Leithold, Westinghouse Electric Supply Co., Walker Brothers and Adelphia Electric Co., have through understanding together and with each other cooperated, confederated, combined, agreed and conspired to frustrate, hinder, restrain and suppress competition in the purchase and sale of "electrical equipment and supplies" in "commerce" as "commerce" is defined in the Federal Trade Commission Act in which sense it is herein used, and have in fact through such cooperation, confederation, combination, agreements and conspiracy frustrated, hindered, restrained and suppressed competition in the purchase and sale of "electrical equipment and supplies" in commerce.

Pursuant to, in furtherance of, and as a part of the aforesaid understanding, cooperation, confederation, combination, agreement and conspiracy, the aforesaid respondents have done, performed and used among other acts, things, practices, policies and methods the following:

1. Promoted, established, carried out and continued a practice of maintaining a false appearance of competition between and among respondents, Westinghouse Electric Supply Co., Walker Brothers, Adelphia Electric Co. and other sellers of "electrical equipment and supplies" in their submission of price quotations and bids to buyers and prospective buyers.

2. Conveyed to buyers and prospective buyers including official awarding authorities of the United States Government, and others involved in the purchase of "electrical supplies and equipment" the representation that said respondents, Westinghouse Electrical Supply Co., Walker Brothers, Adelphia Electric Co. and other sellers of "electrical equipment and supplies" were rival bidders and competitors when they in reality were acting collusively between and among themselves in preparing and submitting bids.

3. Avoided and prevented competition.

4. Prevented consideration of genuinely competitive bids or price quotations by purchasers.

5. On numerous occasions, the exact numbers and dates of which are unknown to the Commission, respondent, Charles F. Rohleder, acting directly and through his agents, respondents, Allen McLaine Ward, J. R. Baldridge, Jr., and J. P. Rainey, cooperated with respondents, R. R. Dewees, and J. P. Rainey, in the preparation and submission to said re-

spondent, Charles F. Rohleder, agents, and employees respondents Allen McLaine Ward and J. R. Baldrige, Jr., and his sub-contractor respondent, J. P. Rainey, of sham, false, fictitious, fraudulent and non-competitive bids and price quotations for the furnishing of "electrical equipment and supplies" for said Rohleder's use in rehabilitating the facilities of the Cramp Shipbuilding Co. shipyards, Norris and Richmond Streets, Philadelphia, Pa., and submitted such sham, false, fictitious, fraudulent and non-competitive bids and price quotations in turn to purchasing officials of the Cramp Shipbuilding Co. and representatives of the Supervisor of Ships, U. S. Navy Department, for consideration and approval as genuinely competitive bids and price quotations.

6. On numerous occasions, the exact number and dates of which are unknown to the Commission, respondent, R. R. Dewees, acting in his capacity as agent of respondent, Westinghouse Electric Supply Co., with the knowledge and cooperation of respondent, Charles F. Rohleder, his employees, agents and sub-contractors, including respondent, J. P. Rainey, secured printed stationery of respondent, Walker Brothers, and respondent, Adelphia Electric Co., bearing their respective letterheads from their respective officials, respondent, Anthony M. Callanan, and respondent, Norman T. Leithold, respectively, and used the same in the submission of sham, false, fictitious, fraudulent and non-competitive bids and price quotations for furnishing "electrical equipment and supplies" to said respondent, Charles F. Rohleder, and his employees, agents and sub-contractors in furtherance of the deception as hereinbefore described, in preparing bids and price quotations over the names of Walker Brothers and Adelphia Electric Co. and over the purported but false signatures of officials of those firms, the prices specified therein being different from, higher than and non-competitive with the bid and price quotation submitted in each comparable instance by the said R. R. Dewees as the bid or price quotation of the firm he was then known to be representing, namely respondent, Westinghouse Electric Supply Co. Thereupon, in each of the number of instances where said R. R. Dewees thus submitted to respondent, Charles F. Rohleder, his employees, agents and sub-contractors, sham, false, fictitious, fraudulent and non-competitive bids for furnishing "electrical equipment and supplies" on stationery bearing the letterheads of respondents, Westinghouse Electric Supply Co., Walker Brothers and Adelphia Electric Co., such bids were in turn submitted by said Charles F. Rohleder, his employees, agents and sub-contractors as and for genuine and competitive bids to officials of Cramp Shipbuilding Co. and to representatives of the Supervisor of Ships, of the U. S. Navy, who were through the appearance of such bids misled and deceived into considering and approving them as genuine and competitive.

7. Respondent, Anthony M. Callanan, acting in his capacity as vice president of respondent, Walker Brothers, and respondent, Norman T. Leithold, acting in his capacity as secretary of respondent, Adelphia Electric Co., knowingly cooperated with respondent, R. R. Dewees, in his submission of sham, false, fictitious, fraudulent and non-competitive bids as aforesaid in furnishing him with stationery bearing said letterheads of their respective firms for his use in preparation of said bids.

8. Respondent, Westinghouse Electric Supply Co., as a result of the submission of sham, false, fictitious, fraudulent and non-competitive bids by its agent, respondent, R. R. Dewees, as aforesaid, enjoyed awards of

numerous contracts to it by said Charles F. Rohleder, his employees, agents and sub-contractors, with the approval, of officials of Cramp Shipbuilding Co. and representatives of the Supervisor of Ships, U. S. Navy, secured through deception as aforesaid.

9. Respondent, J. P. Rainey, individually, and as an employee, agent and sub-contractor of respondent, Charles F. Rohleder, in addition to aiding, abetting and cooperating with respondent, R. R. Dewees, sales agent of respondent, Westinghouse Electric Supply Co., in the latter's preparation and submission of sham, false, fictitious, fraudulent and non-competitive bids for furnishing "electrical equipment and supplies" to respondent, Charles F. Rohleder, Cramp Shipbuilding Co., and representatives of Supervisor of Ships, U. S. Navy, also personally prepared and submitted such bids to and through the office of said Charles F. Rohleder for the purpose and with the result of having them in turn submitted by respondent, Charles F. Rohleder, or by his agents, respondents, Allen McLaine Ward and J. R. Baldrige, Jr., to officials of Cramp Shipbuilding Co. and representatives of Supervisor of Ships, U. S. Navy thereby misleading said officials and representatives into believing, considering and approving such bids as being genuine and competitive, and as a result thereof respondent, Rainey, secured contracts for furnishing "electrical equipment and supplies" to said respondent Rohleder and Cramp Shipbuilding Co.

PAR. 7. The aforesaid understanding, cooperation, combination and conspiracy and the doing and performing of the acts and things and the use of the methods set forth in the preceding paragraphs hereof tend to have and have had the effect of depriving buyers and prospective buyers of "electrical equipment and supplies" including contractors and sub-contractors with the United States Government and the public in general, of the benefit of competition in commerce between and among respondents, Westinghouse Electric Co., Walker Brothers, Adelphia Electric Co. and others with whom they normally would be in competition in making bids and price quotations.

PAR. 8. The acts, practices, methods, understandings, agreements, combination and conspiracy of the respondents, as hereinbefore alleged, are all to the prejudice of the public, have a dangerous tendency to and have actually frustrated, hindered, suppressed, lessened, restrained and eliminated competition in the purchase and sale of "electrical equipment and supplies" in commerce within the intent and meaning of the Federal Trade Commission Act; and have the capacity and tendency to restrain unreasonably and have restrained unreasonably such commerce in said products; have a dangerous tendency to create in respondents a monopoly in the purchase, sale and distribution of such products, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of Section 5 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 August 6, 1942, issued and subsequently

served its complaint in this proceeding upon respondents named in the caption hereof, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act. After the filing of respondents' answers, the Commission, by orders entered herein, granted respondents' requests for permission to withdraw their answers and to substitute therefor answers admitting all of the material allegations of fact set forth in the complaint, waiving all intervening procedure and hearings, and consenting that the Commission may, without trial and without the taking of evidence, make and enter its findings as to the facts and its conclusion based thereon. Thereafter, this proceeding regularly came on for final hearing before the Commission on the complaint and the substitute answers; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Charles F. Rohleder, is an individual, engaged in general contracting and construction work, with his office and principal place of business located at 2134 Cherry Street, Philadelphia, Pa.

Respondent, Allen McLaine Ward, whose residence address is 7415 Bingham Street, Philadelphia, Pa., is an individual, who during the period covered by the activities hereinafter specified, served as an employee and agent of respondent, Charles F. Rohleder.

Respondent, J. R. Baldridge, Jr., whose residence address is 111 East Cliveden Avenue, Philadelphia, Pa., is an individual, who during the period covered by the activities hereinafter specified, served as an employee and agent of respondent, Charles F. Rohleder.

Respondent, J. P. Rainey, is an individual, engaged in the electrical contracting business and trading as J. P. Rainey & Company, 511 North Broad Street, Philadelphia, Pa. During the period covered by the activities hereinafter specified he also served as an employee and agent of respondent, Charles F. Rohleder.

Respondent, Westinghouse Electric Supply Co., is a corporation, organized and existing under the laws of the State of Delaware, with an office and principal place of business located at 150 Varick Street, New York, N. Y., and with a branch or district office located at 1101 Race Street, Philadelphia, Pa.

Respondent, R. R. Dewees, was an individual, who served as an employee and agent of respondent, Westinghouse Electric Supply Co., 1101 Race Street, Philadelphia, Pa., during the period covered by the activities hereinafter specified. He died August 10, 1944.

Respondent, Walker Brothers, is a Pennsylvania corporation, with its office and principal place of business located at Conshohocken, Pa.

Respondent, Anthony M. Callanan, is an individual, who during the period covered by the activities hereinafter specified, served as vice president and agent of respondent, Walker Brothers.

Respondent, Adelpia Electric Co., is a Pennsylvania corporation, with its principal place of business located at 125 North Tenth Street, Philadelphia, Pa.

Respondent, Norman T. Leithold, is an individual, who during the period covered by the activities hereinafter specified, served as secretary and agent of respondent, Adelpia Electric Co.

PAR. 2. At all times hereinafter mentioned respondent, Charles F. Rohleder, directly and through his agents, respondents, Allen McLaine Ward, J. R. Baldridge, Jr., and J. P. Rainey, has been engaged in negotiating with and buying from respondents, Westinghouse Electric Supply Co., J. P. Rainey & Co., and Walker Brothers, directly and through their agents, including R. R. Dewees, J. P. Rainey, and Anthony M. Callanan, "electrical equipment and supplies" which were shipped by the sellers or their suppliers from many points located in States other than the State of Pennsylvania to Charles F. Rohleder or his agents at Cramp Shipbuilding Co. shipyard, Richmond and Norris Streets, Philadelphia, Pa.

At all times hereinafter mentioned respondent, J. P. Rainey, doing business as J. P. Rainey & Co., has been engaged in Philadelphia, Pa., in the electrical contracting business, and in that capacity and also as an agent of respondent, Charles F. Rohleder, has purchased "electrical equipment and supplies" from respondents, Westinghouse Electric Supply Co., Walker Brothers, and others, and caused such electrical supplies and equipment to be shipped to him in Philadelphia, Pa., from locations in States other than the State of Pennsylvania.

At all times hereinafter mentioned respondent, Westinghouse Electric Supply Co., has been engaged in the purchase and sale of "electrical equipment and supplies," causing the same to be shipped from points of manufacture in various States to locations in other States, including Philadelphia, Pa., where such electrical supplies and equipment were used by the buyers.

At all times hereinafter mentioned respondent, Walker Brother, has been engaged in the manufacture, purchase, and sale of "electrical equipment and supplies," causing the same to be shipped from points of manufacture in various States to locations in other States, including Philadelphia, Pa., where such electrical supplies and equipment were used by the buyers.

At all times hereinafter mentioned respondent, Adelpia Electric Co., has been engaged in the purchase and sale of "electrical equipment and supplies," causing the same to be shipped from points of manufacture in various States to locations in other States, including Philadelphia, Pa., where such electrical supplies and equipment were used by the buyers.

At all times hereinafter mentioned respondents, R. R. Dewees and Anthony M. Callanan, as agents of respondent, Westinghouse Electric Supply Co., and respondent, Walker Brothers, respectively, have been instrumental in effecting the purchase and sale of "electrical equipment and supplies," causing the same to be shipped from points of manufacture in various States to locations in other States, including Philadelphia, Pa., where such electrical supplies and equipment were used by the buyers.

PAR. 3. Respondents, Westinghouse Electric Supply Co., Walker Brothers, Adelpia Electric Co., and others not named herein as respondents, engaged in the purchase and sale of "electrical equipment and sup-

plies" in Philadelphia, Pa., have been, and are, in competition between and among themselves and with one or more other purchasers and sellers of electrical supplies in making or seeking to make sales of "electrical equipment and supplies" in commerce between and among the various States of the United States, except insofar as said competition has been hindered, lessened, restricted, or forestalled by the cooperation, concert or common course of action, understanding, confederation, combination, agreement, or conspiracy, or the acts, things, practices, policies, or methods done and carried on in pursuance thereto or in furtherance thereof, as hereinafter set forth.

PAR. 4. The term "electrical equipment and supplies" as used herein includes, but is not limited to, such items as electric cable, electric wire, electric switches, electric conduit, fittings, condulets, potheads, cable-heads, transformers, insulators, lighting fixtures, lamps, and accessories.

PAR. 5. During 1940, as a part of its work in the defense program of the United States of America, the Navy Department arranged with Cramp Shipbuilding Co., whose shipyards are located at Richmond and Norris Streets, Philadelphia, Pa., for the latter to undertake the construction of naval vessels, and in that connection agreed to arrange for the advancement of the necessary funds to rehabilitate the facilities of the said shipyard, including office buildings and shipways, with the understanding that the expenditure of the said funds for such work would be under the general supervision and subject to the approval of officials of the United States Navy Department. Thereupon, the said Cramp Shipbuilding Co. contracted with respondent, Charles F. Rohleder, for the latter to reconstruct certain office buildings and shipways on a cost-plus-a-fixed-fee basis, with the understanding that the said Rohleder, in securing materials or services, would obtain competitive offers from as many as practicable but not less than two (not less than three where specified) reputable firms in a position to provide the material, equipment, or services as required, at a reasonable cost, and to award contract to that firm quoting the minimum price; and with the further understanding that the said offers, proposals, or bids were to be opened by or in the presence of the Supervisor of Shipbuilding, U. S. Navy, or his representative, and were to be subject to his approval before award of the subcontract for materials, equipment, or services.

In connection with his aforesaid contract with Cramp Shipbuilding Company, respondent, Charles F. Rohleder, negotiated with and made awards of contracts for the purchase, directly and through agents, of "electrical equipment and supplies" from respondents, J. P. Rainey, R. R. Dewees, Westinghouse Electric Supply Co., and others.

PAR. 6. Throughout a period of time beginning on or about the first day of October 1940 and continuing thereafter until subsequent to January 1, 1942, respondents, Charles F. Rohleder, Allen McLaine Ward, J. R. Bldridge, Jr., R. R. Dewees, J. P. Rainey, Anthony M. Callanan, Norman T. Leithold, Westinghouse Electric Supply Co., Walker Brothers, and Adelphia Electric Co. have, through understanding together and with each other, cooperated, confederated, combined, agreed, and conspired to frustrate, hinder, restrain, and suppress competition in the purchase and sale of "electrical equipment and supplies" in commerce, as "commerce" is defined in the Federal Trade Commission Act, in which sense it is herein used, and have in fact through such cooperation, confederation, combina-

tion, agreements, and conspiracy frustrated, hindered, restrained, and suppressed competition in the purchase and sale of "electrical equipment and supplies" in commerce.

Pursuant to, in furtherance of, and as a part of the aforesaid understanding, cooperation, confederation, combination, agreement, and conspiracy, the aforesaid respondents have done, performed, and used, among other acts, things, practices, policies, and methods, the following:

(a) Promoted, established, carried out, and continued a practice of maintaining a false appearance of competition between and among respondents, Westinghouse Electric Supply Co., Walker Brothers, Adelpia Electric Co., and other sellers of "electrical equipment and supplies" in their submission of price quotations and bids to buyers and prospective buyers.

(b) Conveyed to buyers and prospective buyers, including official awarding authorities of the United States Government and others involved in the purchase of "electrical equipment and supplies," the representation that said respondents, Westinghouse Electric Supply Co., Walker Brothers, Adelpia Electric Co., and other sellers of "electrical equipment and supplies" were rival bidders and competitors when, in reality, they were acting collusively between and among themselves in preparing and submitting bids.

(c) Avoided and prevented competition.

(d) Prevented consideration by purchasers of genuinely competitive bids or price quotations.

(e) On numerous occasions respondent, Charles F. Rohleder, acting directly and through his agents, respondents, Allen McLaine Ward, J. R. Baldrige, Jr., and J. P. Rainey, cooperated with respondents, R. R. Dewees and J. P. Rainey, in the preparation and submission to said respondent, Charles F. Rohleder, and his agents and employees, respondents, Allen McLaine Ward and J. R. Baldrige, Jr., and his subcontractor, respondent, J. P. Rainey, of sham, false, fictitious, fraudulent, and non-competitive bids and price quotations for the furnishing of "electrical equipment and supplies" for said Rohleder's use in rehabilitating the facilities of the Cramp Shipbuilding Co. shipyards, Norris and Richmond Streets, Philadelphia, Pa., and submitted such sham, false, fictitious, fraudulent, and non-competitive bids and price quotations in turn to purchasing officials of the Cramp Shipbuilding Co., and representatives of the Supervisor of Ships, U. S. Navy Department, for consideration and approval as genuinely competitive bids and price quotations.

(f) On numerous occasions respondent, R. R. Dewees, acting in his capacity as agent of respondent, Westinghouse Electric Supply Co., with the knowledge and cooperation of respondent, Charles F. Rohleder, his employees, agents, and subcontractors, including respondent, J. P. Rainey, secured printed stationery of respondent, Walker Brothers, and respondent, Adelpia Electric Co., bearing their respective letterheads, from their respective officials, respondent, Anthony M. Callanan, and respondent Norman T. Leithold, and used the same in the submission of sham, false, fictitious, fraudulent, and non-competitive bids and price quotations for furnishing "electrical equipment and supplies" to said respondent, Charles F. Rohleder, and his employees, agents, and subcontractors in furtherance of the deception, as hereinbefore described, in preparing bids

and price quotations over the names of Walker Brothers and Adelphia Electric Co. and over the purported but false signatures of officials of those firms, the prices specified therein being different from, higher than, and non-competitive with the bid and price quotation submitted in each comparable instance by the said R. R. Dewees as the bid or price quotation of the firm he was then known to be representing; namely, respondent, Westinghouse Electric Supply Co. Thereupon, in each of the number of instances where said R. R. Dewees thus submitted to respondent, Charles F. Rohleder, his employees, agents, and subcontractors, sham, false, fictitious, fraudulent, and non-competitive bids for furnishing "electrical equipment and supplies" on stationery bearing the letterheads of respondents, Westinghouse Electric Supply Co., Walker Brothers and Adelphia Electric Co., such bids were in turn submitted as and for genuine and competitive bids by said Charles F. Rohleder, his employees, agents, and subcontractors to officials of Cramp Shipbuilding Co. and to representatives of the Supervisor of Ships, U. S. Navy, who, through the appearance of such bids, were misled and deceived into considering and approving them as genuine and competitive.

(g) Respondent, Anthony M. Callanan, acting in his capacity as vice president of respondent, Walker Brothers, and respondent, Norman T. Leithold, acting in his capacity as secretary of respondent, Adelphia Electric Co., knowingly cooperated with respondent, R. R. Dewees, in his submission of sham, false, fictitious, fraudulent, and non-competitive bids as aforesaid in furnishing him with stationery bearing said letterheads of their respective firms for his use in preparation of said bids.

(h) Respondent, Westinghouse Electric Supply Co., as a result of the submission of sham, false, fictitious, fraudulent, and non-competitive bids by its agent, respondent R. R. Dewees, as aforesaid, enjoyed awards of numerous contracts to it by said Charles F. Rohleder, his employees, agents, and subcontractors, with the approval of officials of Cramp Shipbuilding Co. and representatives of the Supervisor of Ships, U. S. Navy, secured through deception as aforesaid.

(i) Respondent, J. P. Rainey, individually, and as an employee, agent, and subcontractor of respondent, Charles F. Rohleder, in addition to aiding, abetting and cooperating with respondent, R. R. Dewees, sales agent of respondent, Westinghouse Electric Supply Co., in the latter's preparation and submission of sham, false, fictitious, fraudulent, and non-competitive bids for furnishing "electrical equipment and supplies" to respondent, Charles F. Rohleder, Cramp Shipbuilding Co., and representatives of the Supervisor of Ships, U. S. Navy, also personally prepared and submitted such bids to and through the office of said Charles F. Rohleder for the purpose and with the result of having them in turn submitted by respondent, Charles F. Rohleder, or by his agents, respondents, Allen McLaine Ward and J. R. Baldrige, Jr., to officials of Cramp Shipbuilding Co. and representatives of the Supervisor of Ships, U. S. Navy, thereby misleading said officials and representatives into believing, considering, and approving such bids as being genuine and competitive, and as a result thereof respondent Rainey secured contracts for furnishing "electrical equipment and supplies" to said respondent Rohleder and Cramp Shipbuilding Co.

PAR. 7. The aforesaid understanding, cooperation, combination, and conspiracy, and the doing and performing of the acts and things, and the use of the methods set forth in the preceding paragraphs hereof tend to have, and have had, the effect of depriving buyers and prospective buyers of "electrical equipment and supplies," including contractors and subcontractors with the United States Government and the public in general, of the benefit of competition in commerce between and among respondents, Westinghouse Electric Supply Co., Walker Brothers, Adelphia Electric Co., and others with whom they normally would be in competition, in making bids and price quotations.

CONCLUSION

The acts, practices, methods, understandings, agreements, combination, and conspiracy of the respondents, as hereinbefore found, are all to the prejudice of the public, have a dangerous tendency to and have actually frustrated, hindered, suppressed, lessened, restrained, and eliminated competition in the purchase and sale of "electrical equipment and supplies" in commerce within the intent and meaning of the Federal Trade Commission Act; and have the capacity and tendency to restrain unreasonably, and have restrained unreasonably, such commerce in said products; have a dangerous tendency to create in respondents a monopoly in the purchase, sale, and distribution of such products; and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of Section 5 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 and the substitute answers of the respondents, in which answers respondents admit all of the material allegations set forth in the complaint and waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that respondents have violated the provisions of Section 5 of the Federal Trade Commission Act.

It is ordered, That respondents, Charles F. Rohleder; Allen McLaine Ward, individually, and as an agent of respondent, Charles F. Rohleder; J. R. Baldridge, Jr., individually, and as an agent of respondent, Charles F. Rohleder; J. P. Rainey, an individual, trading as J. P. Rainey & Co., individually, and as an agent of Charles F. Rohleder; Westinghouse Electric Supply Co., a corporation; Walker Brothers, a corporation; Anthony M. Callanan, individually, and as vice president of respondent, Walker Brothers; Adelphia Electric Co., a corporation; and Norman T. Leithold, individually, and as secretary of respondent, Adelphia Electric Co., their respective representatives, agents, and employees, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of electric cable, electric wire, electric switches, electric conduit, fittings, condulets, potheads

cableheads, transformers, insulators, lighting fixtures, lamps, and accessories, or other electrical equipment or supplies, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination, or conspiracy between and among any two or more of the said respondents, or between any one or more of said respondents and any other person, partnership, or corporation not a party hereto, to do or perform any of the following acts, things, or practices:

1. Conveying or assisting in conveying to buyers or prospective buyers, or to any official or awarding authority of any Federal agency, or to any one contracting with such agency, or to any one acting for or on behalf of such agency or for or on behalf of any contractor with such agency, any representation that any two or more apparent sellers are rival bidders or competitors, when in reality they are acting collusively in preparing and submitting bids.

2. Aiding, assisting, or cooperating in any manner in the submission of any sham, fictitious, fraudulent, or non-competitive bids or price quotations to any buyer or prospective buyer, or to any Federal agency or any one acting for or on its behalf, or for or on behalf of any party purchasing material or equipment in fulfillment of a contract with such agency.

3. Interfering with or assisting in interfering with the procurement or consideration of genuinely competitive bids or price quotations by any Federal agency or any official or awarding authority of such agency, or any buyer or prospective buyer.

4. Promoting, establishing, carrying out, or continuing any act or practice for the purpose or with the effect of maintaining or presenting a false appearance of competition between or among any of the respondents or other sellers in the submission of price quotations or bids to buyers or prospective buyers.

5. Arranging or attempting to arrange for the filing of any bid in the name of one ostensibly competing bidder when the prices and terms are in fact determined by some other bidder, or when in fact the bid is not a bona fide bid.

Provided, however, That nothing contained in this order shall be deemed to prohibit any lawful action under any lawful license agreement under any patent.

It is further ordered, For the reason appearing in paragraph 1 of the findings as to the facts herein, that the complaint herein be, and the same hereby is, dismissed as to respondent, R. R. Dewees.

It is further ordered, That the respondents shall, within 60 days after the 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

IN THE MATTER OF

NATIONAL PUBLICITY BUREAU, INC., ET AL.

MODIFIED ORDER TO CEASE AND DESIST

Docket 2908. Order, October 13, 1944

Modified order in proceeding in question—in which original order issued on March 1, 1939, 28 F. T. C. 857—requiring respondent, in connection with the offer, etc., in commerce, of silverware or sales promotional plans including premium certificates, gift cards or coupons redeemable in silverware or other articles of merchandise, to cease and desist from misrepresenting his connections and arrangements with others, business identity, goods as free, and terms and conditions, as in said order below specified.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony and other evidence taken before John W. Addison, an examiner of the Commission duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed herein by counsel for the Commission, and the Commission having duly made and issued its findings as to the facts, conclusion, and order to cease and desist dated March 1, 1939; and the Commission having further considered said order to cease and desist heretofore issued, and being of the opinion that the public interest requires that a modified order to cease and desist should be issued in said cause; and the Commission having given due notice to the respondent to show cause on July 24, 1944, why this case should not be reopened for the purpose of modifying said order to cease and desist; and the Commission having considered the matter and the record herein, and having issued its order modifying said order in certain respects, issues this its modified order to cease and desist.

It is ordered, That the respondent, Hugh J. Wanke, individually, and trading as National Publicity Bureau and Rogers Silverware Distributors, or under any other name or names, and his 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 by the Federal Trade Commission Act, of silverware or sales promotional plans including premium certificates, gift cards or coupons redeemable in silverware or other articles of merchandise, do forthwith cease and desist from:

1. Representing, by use of the words "Rogers Silverware" in a corporate or trade name, or by statements or representations in advertising or in any other way, that the respondent has an interest in, forms a part of, or has any connection with the manufacturer of William A. Rogers Silverware; *provided, however*, that this order shall not be construed to in any way prohibit the respondent from dealing in William A. Rogers Silverware or other products.