

IN THE MATTER OF
LEMUEL FIRTH, 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 5065. Complaint, Oct. 20, 1943—Decision, May 4, 1945

Where 19 individuals, owners and masters of fishing boats operating out of the city of Gloucester, Mass., and comprising practically all the boats catching mackerel in fishing grounds located more than three miles off shore from Massachusetts and adjoining States, with fish capacity ranging from 60,000 pounds to over 100,000 pounds each plus ice to preserve the fish and with crews of from ten to fourteen men, compensated by an agreed share of the profit from each catch of fish; and engaged in the transportation and competitive sale of such fish to dealers in New Bedford, Boston, and Gloucester, Mass., for resale to dealers in various States;

Following dissatisfaction on the part of owners, masters and crew members, caused by a glut in the market when prices, particularly in New Bedford—where there were only about three dealers and sale, unlike that at the Boston Fish Exchange at which it was at public auction, was through private negotiation only—dropped to an extremely low point, and preceding the subsequent scarcity of mackerel, a much stronger market, and substantial price advances, as a result of which they evidently felt the situation had thus corrected itself;

Entered into and put into operation and effect, for a period of one month, an agreement, combination, and conspiracy among themselves and with the Atlantic Fishermen's Union and its members to hinder, restrain, and lessen competition in the production of mackerel and in the sale and distribution of such fish in interstate commerce; and pursuant thereto,

- (a) Agreed to and did limit the catches to 40,000 pounds of mackerel;
- (b) Agreed and abided by agreement that boats carrying their catch to New Bedford (which was the principal port they had in mind in referring to ports on "the westerly side of the Cape Cod Canal" in their formal agreement) would refuse to sell their fish unless the New Bedford dealers would pay a price one-half cent per pound above the prevailing price on the Boston exchange; in order, through said differential, to offset certain freight rate advantages enjoyed by the New Bedford dealers in selling in the New York market, and to offset the effect of apprehended collusion among the New Bedford dealers, which tended to depress the market and afford them an unfair advantage over dealers in Boston, who had to buy at public auction;
- (c) Agreed and abided by agreement that boats going into New Bedford would remain in port for thirty-six hours, as opposed to those going into Boston or Gloucester which were required to remain only twenty-four hours, due to greater nearness of the fishing grounds to New Bedford than to Boston, and their wish to give boats going into Boston opportunity to dispose of their catch and return to the fishing grounds as soon as those going into New Bedford, and thus afford all boats opportunity to make approximately the same number of trips to and from the fishing grounds, encourage boats to go to Boston, and tend to relieve somewhat the glutted condition of the New Bedford market; and
- (d) Agreed to and did discontinue the practice, regarded as unfair, of selling fish via radio phone before the boat reached port, and sometimes even before the fish had been caught;

With the result, by reason of such agreements, etc., carried out for said period, but apparently not longer, and aforesaid acts and things done pursuant thereto, of substantially restraining competition in the production of such fish, and in the sale and distribution thereof in commerce; compelling certain dealers to pay higher prices than they would otherwise have paid; and increasing the price to the consuming public:

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

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

Mr. Everett F. Haycraft for the Commission.

Mr. William J. MacInnis, of Gloucester, Mass., 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 the individuals named in the caption hereof, hereinafter referred to as respondents, have violated the provisions of Section 5 of 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, Lemuel Firth, is the owner and master of the boat, Three Sisters, and resides in the city of Gloucester, State of Massachusetts. Respondent, Cyril Dyett, is the owner and master of the boat, American Eagle, and resides in the city of Gloucester, State of Massachusetts. Respondent, Jack Barrett, is the owner and master of the boat, Jackie B., and resides in the city of Gloucester, State of Massachusetts. Respondent, Frank Foote, is the owner and master of the boat, Eleanor, and resides in the city of Gloucester, State of Massachusetts. Respondent, Cy Tysfer, is the owner and master of the boat, Naomi Bruce, and resides in the city of Gloucester, State of Massachusetts. Respondent, Benedetto Randazza, is the owner and master of the boat, Antonina, and resides in the city of Gloucester, State of Massachusetts. Respondent, Phillip Curcuru, is the owner and master of the boat, Bethulia, and resides in the city of Gloucester, State of Massachusetts. Respondent, Thomas Scola, is the master of the boat, Mary W., and resides in the city of Gloucester, State of Massachusetts. Respondent, Joseph Sinagra, is the owner and master of the boat, Frankie & Rose, and resides in the city of Gloucester, State of Massachusetts. Respondent, Peter Scola, is the owner and master of the boat, Rosemarie, and resides in the city of Gloucester, State of Massachusetts. Respondent, Joseph Parisi, is the owner and master of the boat, Rose & Lucy, and resides in the city of Gloucester, State of Massachusetts. Respondent, Frank Mineo, is the master of the boat, Alden, and resides in the city of Gloucester, State of Massachusetts. Respondent, Isodoro Tarantino, is the owner and master of the boat, Captain Drum, and resides in the city of Gloucester, State of Massachusetts. Respondent, Peter Mercurio, is the owner and master of the boat, Santa Maria, and resides in the city of Gloucester, State of Massachusetts. Respondent, Paul Scola, is the owner and master of the boat, Jennie & Julia, and resides in the city of Gloucester, State of Massachusetts. Respondent, Gerome Frontiero, is the owner and master of the boat, Beatrice & Rose,

and resides in the city of Gloucester, State of Massachusetts. Respondent, Philip Nicaastro, is the owner and master of the boat, Serafina N., and resides in the city of Gloucester, State of Massachusetts. Respondent, Leo Favaloro, is the owner and master of the boat, Saint Ann, and resides in the city of Gloucester, State of Massachusetts. Respondent, Alphonse Mineo, is the master of the boat, Frank F. Grinnell, and resides in the city of Gloucester, State of Massachusetts.

PAR. 2. Said respondents are engaged in the business of catching fish in fishing grounds in the Atlantic Ocean three miles or more from shore adjacent to the State of Massachusetts and adjoining States, and in the transportation and sale thereof to dealers located in the cities of Gloucester, Boston and New Bedford, Mass., who in turn sell said fish to dealers located in States other than the State of Massachusetts, causing said fish when sold to be transported from their respective places of business to the purchasers thereof located throughout the several States of the United States and there has been and now is a regular course of interstate trade and commerce in fresh fish to and from and through said dealers located in said cities to dealers located in cities in States other than Massachusetts. Said respondents have been during all times herein mentioned and now constitute more than 90% of all fishermen engaged in catching fish in said fishing grounds. Prior to the adoption of the practices hereinafter alleged, said respondents were in free, active and substantial competition with each other in catching and selling fish to dealers in said commerce and, but for the facts hereinafter alleged, such free, active and substantial competition would have continued and said respondents would now be in free, active and substantial competition with each other.

PAR. 3. Said respondents, acting in cooperation with each other and with the Atlantic Fishermen's Union of Boston and other similar organizations and their members who are members of the crews employed by said respondents on their respective boats during the period of time, to wit, from May, 1941, to the date of this complaint, have from time to time entered into understandings, agreements, combinations and conspiracies among themselves to hinder and suppress competition in the interstate sale and distribution of fresh fish, including particularly, mackerel, red fish and yellow tails, to dealers, and to restrain interstate trade in said fish and to create a monopoly in the interstate sale and distribution of such fish in and around the cities of Gloucester, Boston and New Bedford, Mass. Pursuant to said understanding, agreement, combination and conspiracy and in furtherance thereof, the respondents have acted in concert, have followed a planned common course of action and have cooperated with each other in doing the following acts and things:

(a) Restricted the quantity of fish to be caught and sold to dealers within certain time limits.

(b) Fixed the price at which said fish was to be sold to dealers in the respective markets, particularly in the city of New Bedford.

(c) Restricted the length of time that a fishing boat may stay in said ports for the purpose of selling fish.

(d) Refused to allow each other to receive and dealers to make bids on catches of fish by the use of radio phone before boats are docked.

(e) Refused to sell fish to dealers located in New Bedford, Massachusetts, at prices less than those fixed by respondents pursuant to agreement and understanding as aforesaid.

(f) Held joint meetings with the said Atlantic Fishermen's Union and other similar labor organizations composed of members of crews employed

by said respondents at which agreements were made to boycott or otherwise interfere with the usual operation of fishermen who did not observe and do the acts and things set forth herein in subparagraphs (a) to (e) inclusive.

PAR. 4. The results of such understanding, agreement and conspiracy, of the planned common course of action and cooperation, and of the acts and things done thereunder and pursuant thereto by said respondent as hereinbefore set forth have been and now are:

1. To prevent and hinder respondents from selling their fish in interstate commerce to dealers therein who but for the existence of said understanding, agreement, combination and conspiracy would purchase said fish.

2. To prevent dealers in fish in the city of New Bedford, Mass., and elsewhere from purchasing their requirements of said fish in interstate commerce from the respondents.

3. To force many dealers in fish located in the city of New Bedford, Mass., and elsewhere to discontinue the business of buying and selling certain kinds of fish particularly mackerel, red fish or yellow tails because of their inability to obtain a supply thereof at competitive prices from said respondents.

4. To substantially increase the price of said fish to dealers located in the city of New Bedford, Mass., and elsewhere and to the consuming public.

5. To place in the hands of the respondents control over the business practices of fishermen and dealers in fish and over market prices of fish and the power to exclude from the fishing industry in the territory adjacent to the State of Massachusetts those who do not conform to the rules, regulations and prices established by said respondents.

PAR. 5. The acts and practices of the respondents, as herein alleged, are all to the prejudice of the public, have a dangerous tendency to and have actually hindered and prevented price competition between and among respondents in the sale of fresh fish in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices in said fish and have tended to create in the respondents a monopoly in the sale of said fish in such commerce, and constitute unfair methods of competition 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 October 20, 1943, issued and subsequently 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. After the filing by respondents of their answer to the complaint, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint, answer, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, and brief in support

of the complaint (no brief having been filed on behalf of respondents and oral argument not having been requested); 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. All of the respondents reside in the city of Gloucester, Mass. Each is the owner and/or master of a fishing boat operating out of that city. Respondent, Lemuel Firth, is the owner of the boat "Three Sisters." Respondent, Cyril Dyett, is the master of the boat "American Eagle." Respondent, Jack Barrett, is the owner of the boat "Jackie B." Respondent, Frank Foote, is the master of the boat "Eleanor." Respondent, Cy Tysfer, is the master of the boat "Naomi Bruce." Respondent, Benedetto Randazza, is the owner and master of the boat "Antonina." Respondent, Phillip Curcuru, is the owner and master of the boat "Bethulia." Respondent, Thomas Scola, was, during the time hereinafter referred to, the master of the boat "Mary W." Respondent, Joseph Sinagra, is the owner and master of the boat "Frankie and Rose." Respondent, Peter Scola, is the owner and master of the boat "Rosemarie." Respondent, Joseph Parisi, is the master of the boat "Rose and Lucy." Respondent, Frank Mineo, is the master of the boat "Alden." Respondent, Isodoro Tarantino, is the master of the boat "Captain Drum." Respondent, Peter Mercurio, is the owner and master of the boat "Santa Maria." Respondent, Paul Scola, is the owner and master of the boat "Jennie & Julia." Respondent, Gerome Frontiero, is the owner and master of the boat "Beatrice & Rose." Respondent, Philip Nicastro, is the master of the boat "Serafina N." Respondent, Leo Favaloro, is the master of the boat "Saint Ann." Respondent, Alphonse Mineo, is the master of the boat "Frank F. Grinnell."

PAR. 2. The respondents are engaged in the business of catching fish, particularly mackerel, in fishing grounds located more than three miles from shore in that portion of the Atlantic Ocean adjacent to the State of Massachusetts and adjoining States, and in the transportation and sale of such fish to dealers located in the cities of New Bedford, Boston, and Gloucester, Mass. These dealers resell the fish to dealers located in States other than the State of Massachusetts, causing the fish, when sold, to be transported across State lines to such purchasers. Respondents and the dealers purchasing their fish maintain and have maintained a regular course of trade in such fish in commerce among and between various States of the United States.

PAR. 3. The respondents are in active and substantial competition with one another in catching fish and in the transportation and sale of such fish in commerce as aforesaid, except insofar as such competition has been hindered, lessened, and restrained as a result of the acts and practices hereinafter described.

PAR. 4. The boats operated by the respondents comprise practically all of the boats fishing for mackerel in the fishing grounds in question. The boats range in load capacity from about 60,000 pounds to over 100,000 pounds of fish, plus the amount of ice necessary to preserve the fish until they are unloaded in port. Each boat carries a crew of from ten to fourteen men. The crew members receive for their labor an agreed share o

percentage of the profit accruing from each catch of fish. They are therefore directly interested in the price obtained for the catch. The master or captain of the boat sometimes receives a share as a member of the crew in addition to the commission or other compensation paid him by the owner of the boat. In Boston, fish are sold at public auction on the fish exchange. In New Bedford, however, a different situation prevails. Here there are only about three dealers, and the sale is a matter of private negotiation or bargaining between the dealer and the operators of the boat. The prices prevailing in the Boston market usually govern the prices paid in New Bedford.

PAR. 5. In May, 1941, mackerel were plentiful, and as the boats usually caught and carried into port loads approximating their full capacity, the result was that the market was glutted, particularly in New Bedford. Prices dropped to an extremely low point, and all parties interested in the operation of the boats—owners, masters, and crew members alike—were very much dissatisfied. In an attempt to remedy the situation, the respondents held a meeting in the latter part of May, 1941, and tentatively agreed among themselves upon certain rules or regulations to govern the catching and sale of mackerel. These rules were reduced to memorandum form and submitted to the local representative of the labor union known as the Atlantic Fishermen's Union, to which all of the crew members belonged. After making certain changes in and additions to the rules, the union representative had them reduced to a formal written agreement, and each of the respondents signed a copy of the agreement. The agreement was in the following form:

A G R E E M E N T

THIS AGREEMENT ENTERED into this June 1 to July 1, 1941, by and between _____ Owner, Captain or anyone acting in their behalf, of the American Fishing Vessel _____, hereinafter referred to as the Owner, Party of the First Part and the Atlantic Fishermen's Union, hereinafter referred to as the Union, Party of the Second Part.

WHEREAS, the Owner, Captain or anyone acting in their behalf and the Union are desirous of catching and selling mackerel, and

WHEREAS, the work and expense to the fishermen in catching mackerel is not commensurate with his return on said mackerel,

THEREFORE, it is hereby mutually agreed as follows:

Crew members will work as many hours as it may take to catch 40,000 lbs of mackerel.

Boats going in to the westerly side of the Cape Cod Canal, arriving in any port before noon (on the westerly side) may take out fish at $\frac{1}{2}\text{¢}$ above the Boston price in the fish exchange.

Boats arriving after noon in any of the above mentioned ports, shall take out fish the following day at the above mentioned price, and shall stay in 36 hours in port from the time the trip is started.

Boats in Boston or Gloucester shall stay in 24 hours.

From 10,000 lbs. and over, will be considered a trip.

No fish is to be given away to any boats out of the seine.

No fish will be sold by radio phone but fish can be sold by land phone.

One man from the crew shall be permitted to tally fish. (Comm. Ex. 1)

PAR. 6. This agreement, which was signed by the respondents on or about June 1, 1941, covered the thirty-day period from June 1, 1941, to

July 1, 1941. It was in the nature of an experiment, respondents intending to extend the agreement for a longer period if it proved satisfactory. That the agreement was immediately put into effect is evident from the record. Catches were restricted to 40,000 pounds. Boats carrying their catch to New Bedford (which was the principal port respondents had in mind in referring to ports on "the westerly side of the Cape Cod Canal") refused to sell their fish unless the New Bedford dealers would pay a price one-half cent per pound above the prevailing price on the Boston exchange. This price differential was imposed by respondents to offset certain freight rate advantages enjoyed by the New Bedford dealers in selling in the New York market, and also because the respondents felt that there was collusion among the New Bedford dealers, which tended to depress the market and afford the dealers an unfair advantage over dealers in Boston, who had to buy at public auction.

Respondents likewise observed the provision of the agreement requiring boats going into New Bedford to remain in port for thirty-six hours, whereas boats going into Boston or Gloucester were required to remain only twenty-four hours. The reason for this rule was that the fishing grounds were nearer to New Bedford than to Boston, and respondents wished to give boats going into Boston an opportunity to dispose of their catch and return to the fishing grounds by the time boats going into New Bedford could return, thus affording all boats an opportunity to make approximately the same number of trips to and from the fishing grounds. It was thought that this would encourage boats to go to Boston and tend to relieve somewhat the glutted condition of the New Bedford market. Also discontinued, pursuant to the agreement, was the practice of certain of the respondents of selling fish via radio phone before the boat reached port, and sometimes even before the fish had been caught. This was regarded by the respondents generally as an unfair practice.

So far as the record discloses, the agreement was not extended beyond the thirty-day period. The reason for this appears to have been that before the period expired mackerel had become scarce, the market had become much stronger, and prices had advanced substantially. The respondents evidently felt that the situation had thus corrected itself, and that there was therefore no necessity for extending the agreement.

PAR. 7. The Commission finds from the facts, herein set forth, that the respondents entered into and put into operation and effect an agreement, combination, and conspiracy among themselves and with the Atlantic Fishermen's Union and its members to hinder, restrain, and lessen competition in the production of mackerel fish and in the sale and distribution of such fish in interstate commerce. Such agreement, combination, and conspiracy, and the acts and things done pursuant thereto and in furtherance thereof, as herein set forth, had the tendency and capacity to, and did, substantially hinder, restrain, and lessen competition in the production of such fish, and in the sale and distribution thereof in commerce as aforesaid, compel certain dealers to pay higher prices for such fish than they would otherwise have paid, and increase the price of such fish to the consuming public.

CONCLUSION

The acts and practices of the respondents, as herein found, are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and the exceptions to such report, and brief in support of the complaint (no brief having been filed on behalf of respondents and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Lemuel Firth, Cyril Dyett, Jack Barrett, Frank Foote, Cy Tysfer, Benedetto Randazza, Phillip Curcuru, Thomas Scola, Joseph Sinagra, Peter Scola, Joseph Parisi, Frank Mineo, Isadoro Tarantino, Peter Mercurio, Paul Scola, Gerome Frontiero, Philip Nicastro, Leo Favalaro, and Alphonse Mineo, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of fish in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, agreement, understanding, combination, or conspiracy between or among any two or more of said respondents, or between any one or more of said respondents and others not parties to this proceeding, to do or perform any of the following acts or things:

1. Restricting the quantity of fish to be caught and sold to dealers.
2. Fixing the price at which fish are to be sold to dealers in any market, or establishing or maintaining any price differential between or among different markets.
3. Prescribing the length of time a boat carrying fish to market shall remain in port.
4. Prohibiting the use of the radio phone in carrying on negotiations for the sale of fish.
5. Holding meetings for the purpose of reaching agreements governing the quantity of fish to be caught or the price at which fish are to be sold.
6. Engaging in any act or practice substantially similar to those set out in this order with the purpose or effect of establishing or maintaining uniform prices for fish.

It is further ordered, That the 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.

IN THE MATTER OF
ASSOCIATED MERCHANDISING CORPORATION, ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SUB-SEC. (f) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914,
AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5027. Complaint, Aug. 17, 1943—Decision, May 8, 1945

Where a corporation, the 21 owners and members of which were engaged in the operation of 22 department stores located in Boston, New York, Philadelphia, Baltimore, Richmond, Cleveland, Chicago, Minneapolis, St. Louis, San Francisco and other large cities, with sales in 1941 aggregating 425 million dollars, and individual store sales ranging from two to 40 million dollars; which, reorganized and re-incorporated in 1939, with staffs of market specialists charged primarily with assisting the buyers of the various stores in purchasing from the manufacturers, producers and suppliers at the lowest possible price, merchandise resold in said stores of the members—about 25% of which was bought with its aid; and which, with offices in New York, branch offices in Chicago and Los Angeles, a Boston sub-office and, before the war, buying offices in various cities in Europe and the Orient; and with no warehouses and selling no merchandise to the trade or the consuming public; was maintained and operated by said members as an agency and means whereby they were enabled to act collectively to obtain special allowances and discounts on their purchases of merchandise—

- (a) Knowingly induced manufacturers, producers, and suppliers to discriminate in price in favor of said members by selling them merchandise for resale in their respective department stores at lower prices or with higher allowances or discounts than those accorded to stores of non-members in competition with members' stores; and,

Where said members—

- (b) Knowingly received the benefits of such discriminatory allowances or discounts granted to said corporation for the use and benefit of said members, through ratable distribution by said corporation of the rebate paid by the manufacturer or other source of supply on the total aggregate purchases from it for a specific period—usually a year—of all the department stores of such members; and

Where said corporation—

- (c) Sought to induce manufacturers, producers, and suppliers of merchandise resold in the department stores of the members, to grant the aforesaid special and discriminatory allowances or discounts on the purchase thereof by the members, and approved, classified, and designated a manufacturer agreeing so to do, as a "preferred resource";
- (d) As an inducement for, and in consideration of, the aforesaid discriminations in price granted by said "preferred resources," continuously requested, and by various means attempted to influence, the members to confine to said "preferred resources" all of their purchases of the merchandise of which said preferred resources were sources of supply; and

Where said members—

- (e) Usually acting directly, but sometimes through such corporation, generally confined purchases to "preferred resources" and withheld them from other sources of supply;
- (f) As a further inducement to and in consideration of the aforesaid discriminations in price, gave preference in reselling to merchandise which had been purchased