

IN THE MATTER OF
MASTER ENGRAVERS GUILD ET AL.

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

Docket 5088. Complaint, Nov. 27, 1943—Decision, June 3, 1948

"The conception of commerce is not static but of necessity has evolved coincident with the increasing complexities of our economic system, and, what is or is not interstate commerce is to be determined upon a broad conception of the substance of the whole transaction." And while personal effort not related to production, such as professional baseball, may not be a subject of commerce, a contract or agreement which by its terms provides for the processing for a consideration of commodities—even though not owned by the processors—and the transportation thereof across state lines must be held a contract or agreement made in the course of commerce, and the parties thereto engaged in such commerce and, therefore, subject to the jurisdiction of the Commission. *Federal Trade Commission v. Pacific States Paper Trade Association*, 273 U. S. 52.

Price fixing was illegal under the common law and is contrary to the public policy of the United States, and there is no more powerful internal enemy of the American system of free enterprise than monopolistic practices and price-fixing conspiracies.

In a proceeding in which the Commission found that respondents' association and respondent members had engaged in practices in violation of the provisions of section 5 of the Federal Trade Commission Act, and in which it appeared that the Commission, some 10 years theretofore, by letter, had advised said association that the Commission did not find at that time that respondents were engaging in practices coming within the purview of the laws administered by the Commission, said letter was simply indicative of the fact that in said year the Commission did not have reason to believe that respondents were violating the laws administered by it, and it was obvious that subsequent thereto the Commission procured additional information as to said practices, for the reason that some 6 years thereafter it directed that the complaint in the proceeding in question be issued.

Where a membership organization or guild, organized in 1935; and some 20 individual, partnership, and corporate members, which (a) were engaged in the business of etching and engraving designs to be imposed upon textile fabrics for "converters," under the custom pursuant to which "converter" purchasers of gray and white fabrics from the manufacturer deliver the fabrics to the dyers or printers, who print them from copper rollers upon which the desired design has been engraved by the engraver and return them to the converter for sale to department stores or manufacturers of printed-goods products; and (b) which, prior to the organization of their said guild had been in competition as to price with one another in the sale of etchings and engravings to their printer customers and would still be but for the agreements, practices, and methods below set forth—

(a) Entered into and engaged, for a number of years before, and particularly since, 1935, in agreements and understandings among themselves and with

and through their said guild, and with nonmembers, to restrain and suppress competition in the sale and distribution of engravings for printing fabrics by agreeing to fix and maintain uniform selling prices, terms, and discounts therefor; and

Where said various members—

- (b) Entered into agreements among themselves to limit their customers to persons and concerns engaged in the business of printing fabrics, and to limit the engraving of copper rollers for printing fabrics to members of their said guild; and in furtherance of said agreements, etc., among themselves and with others, cooperatively and collectively—
- (1) Organized said guild in 1935 to promote their mutual interests and to serve as an instrument or vehicle for their joint and cooperative purpose and action, and included in article IX of its bylaws certain rules of conduct or provisions substantially similar to those of a former so-called code of ethics under which said members had operated prior to 1935 and during the NRA period—which limited customers, fixed minimum prices, and terms and conditions of sale, and prohibited members from dealing with customers who had been certified to the guild for nonpayment of indebtedness;
- (2) Cooperatively promoted adherence to said agreements and understandings by authorizing the board of trustees of their said guild, in sections 14 and 15 of article V of its bylaws, to set up a central agency with power to examine members' books and records and to hold hearings as to whether any violations of the bylaws or rules of conduct had occurred, and, in the event of violation, "to impose such penalty or penalties as may be fair and just";

With the result that said board audited the books of members and assessed such penalties for violations as the suspension of operation, surrender of the offender's stamp in the interim, expulsion from membership, or, in the alternative, payment of a penalty of \$2,000 within 4 months and forfeiture of the balance on hand;

- (3) Acting cooperatively by and through their said guild, fixed and maintained minimum prices to be charged for engraving copper rollers for use in printing fabrics, and through meetings of the members and trustees took action with respect to maintenance of the agreed minimum price, deciding collectively to extend all help possible to enable printing concerns to stabilize their prices, to inform a printer who was endeavoring to get better engraving prices, that he might be cut off, and considering reduction of the minimum price in order to meet outside competition;
- (4) Attempted to establish a monopoly in themselves through restricting the sale of engravings for the printing of fabrics to the members of their said guild by means of agreements or contracts entered into between said guild and the union of members' employees, whereby it was agreed in the first two annual contracts that the sole use of the union labor or insignia, for affixing to each roller engraved—and without which the union employees of said engravers' customer printers would not use the rollers for printing fabrics—was granted to said members; and it was further provided that the union would withdraw use of the insignia from any member of the guild found not to be in good standing or to have violated the guild's rules and regulations and in addition withdraw its members from working in such member's shop and the guild agreed in such event to reimburse or find employment for such employees; and notwithstanding a change in later contracts from the grant of

exclusive use of the insignia to the grant of a license to the members—continued thereafter to make use of the insignia to enforce adherence to aforesaid agreements in much the same manner; bringing to the attention of the union use of the insignia by those who refused to become members, and requesting removal of the insignia from the offenders;

- (5) Took advantage of the exclusive use of the insignia by members to enforce payment of dues and observance of the provisions of the bylaws and particularly of the rules of conduct contained therein; notifying the union of expulsion of a member or of disciplinary action taken and requesting its cooperation in making the action effective, and requesting removal of the stamp from a concern failing to submit satisfactory records to the guild and to keep up payments, until the offender was prepared to furnish satisfactory assurances in the premises; and
- (6) To facilitate enforcement of the said agreements and understandings, organized their service corporation, with which they entered into contracts whereby they agreed to assign to it all accounts receivable upon issuance of invoices, give it access to their books and records, and transact business only with customers it approved, the latter, in turn, agreeing to guarantee payment of all accounts assigned to it by the members and to perform other services of an advisory nature;

Effect of which understandings, etc., and things done thereunder and in furtherance thereof was to unduly restrain and suppress competition in the sale and distribution of etchings and engravings in commerce, and to deprive their customers and the public of the full benefit of competition in said commerce between and among members and between said members and their competitors:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of competitors and the public, had a dangerous tendency to and did restrain and eliminate competition in the sale and distribution of etchings and engravings in commerce, placed in said guild and members the power to control and enhance prices, unreasonably restrained said commerce in etchings and engravings; and constituted unfair methods of competition in commerce.

The conspiracy of respondent engravers in said proceeding to fix the prices for their service in processing or engraving the rollers sent to them across State lines and by them returned, after processing, to the printer owners, was a conspiracy in restraint of interstate commerce and, being such, was subject to the regulatory powers of Congress even if the conspirators were not themselves engaged in such commerce. *United States v. International Fur Workers Union*, 100 F. (2d) 541, certiorari denied, 306 U. S. 653; *Loewe v. Lawlor*, 208 U. S. 274, 301; *Stafford v. Wallace*, 258 U. S. 495, 521.

In said proceeding the transactions between the engravers and the printers in different States included intercourse in the negotiating of the contracts or agreements, the processing of the rollers, and the movement of the commodity, and the payments therefor from one State to another, and said engravers, having been engaged in intercourse among the States, in the use of a medium of exchange suitable for their particular purpose, and in trafficking in goods, the product of their invested capital and hired labor, must be held to have been engaged in interstate commerce, so that the restraint thereof practiced by them constituted unfair methods of competi-

tion therein. Had respondent engraver processors owned the copper rollers, which they engraved, and then sold them across State lines, they would obviously, under the decisions, have been so engaged. To hold that they were not so engaged would involve the acceptance of a technical legal conception thereof, and would not constitute a reasonable interpretation of the term in the light of their business practices. The contention, accordingly, that they did not sell commodities and that, since the ownership of the rollers did not pass from the engravers to the printers, the restraint was not an unfair method of competition in interstate commerce, did not give sufficient consideration to the substance of the transactions between respondent engravers and the printers, and the direct participation in commerce by the former. *Swift and Co. v. United States*, 196 U. S. 375; *International Textile Co. v. Pigg*, 207 U. S. 91, 107; *Federal Trade Commission v. Civil Service Training Bureau, Inc.*, 79 F. (2d) 113; 21 F. T. C. 1197; 2 S. & D. 306.

The Commission in said proceeding was not stating, directly or indirectly, that it did or did not have jurisdiction over various trades which essentially perform local personal services, and it was not considering the practices of the laundryman around the corner, the laborer, or the professional man engaged in intellectual pursuits. Nor was the matter a labor controversy, since it was not considering questions as to the wages or working conditions of laborers. What it was considering was the practices of industrial entrepreneurs who hire labor, buy materials, and with such labor and materials process commodities across State lines, and who, controlling a substantial portion of the engraving business of the United States, fixed the price for their engraving, and in so doing fixed an element in the price of the completed textile article and affected directly or indirectly the pocketbooks of consumers in practically every commodity in the United States, in that the cost of textiles, used by practically every person therein, is an item in every family budget.

A contention in said proceeding that there was a variance between the complaint and the proof in that the complaint alleged that the respondents sold and distributed their product in commerce, was without merit, for the reason that the proof showed that respondents did thus sell in commerce their product, the yield of their materials and labor.

Before *Mr. George Biddle*, trial examiner.

Mr. Floyd O. Collins for the Commission.

Weiss & Weiss, of Paterson, N. J., for Master Engravers Guild, Master Engravers Service Corp., George Stone, Duncan C. McAllister, John G. Stockman, The Textigrave Co., The George H. Phelps Engraving Co., Highland Engraving Co., Inc., Delagrave Co. of South Carolina, Textile Engravings, Inc., The George S. Smith Engraving Co., Delagrave Co., the Passaic Engraving Co., Textile Process Engraving Co., Paterson Engraving Co., Superior Textile Engraving Works, New England Engraving Works, and Jas. F. Derrig Engraving Co.

Peer & Mahr, of Newark, N. J., for Thos. L. Stone and Lillias I. Stone.

Complaint

44 F. T. C.

Clancy & Murphy, of Newark, N. J., for Modern Engraving Co.
Mr. Emanuel Shavick, of Paterson, N. J., for Thomas M. Kreger Corp., and along with—
Mr. Bernard Heller, of Paterson, N. J., for The Metropolitan Engraving 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 hereinafter described and referred to as respondents, have violated 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 stating its charges in that respect, as follows:

PARAGRAPH 1. Respondent, Master Engravers Guild (hereinafter referred to as respondent guild), is an incorporated membership organization incorporated and existing under and by virtue of the laws of the State of New Jersey, with its main office and principal place of business at 246 Paterson Avenue, Paterson, N. J.

Respondent, George Stone, whose address is Box 150, Bound Brook, N. J., is an individual and is president of respondent guild.

Respondent, Duncan C. McAllister, of 81 Hay Avenue, Nutley, N. J., is an individual and is secretary and treasurer of the respondent guild and of respondent service corporation.

PAR. 2. Master Engravers Service Corp., hereinafter referred to as respondent service corporation, is a New Jersey corporation with its home office and principal place of business located at 246 Paterson Avenue, Paterson, N. J.

PAR. 3. Respondent, John G. Stockman, is an individual trading and doing business at 431 Bank Street, Fall River, Mass., as Globe Engraving Co. The home address of respondent Stockman is 222 Florence Street, Fall River, Mass.

Respondent, The Texigrave Co., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business located at Knickerbocker and West Railway Avenue, Paterson 3, N. J.

Respondent, The George H. Phelps Engraving Co., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business located at 2 Llewellyn Avenue, Hawthorne, N. J.

Complaint

The respondent, Highland Engraving Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, and its home office and principal place of business is located at 256 Sherman Street, Passaic, N. J.

The respondent, Delagrave Co. of South Carolina, is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, and its principal place of business is located at 176 Ezell Street, Spartanburg, S. C.

The respondent, Columbia Textile Engraving Co., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, and the address of its principal place of business is 807 Gervais Street, Columbia, S. C.

Respondents, Thos. L. Stone, Grosvenor Road, Short Hills, N. J., and Lillias I. Stone, 199 Elwood Avenue, Newark, N. J., are copartners trading and doing business at 502 Mulberry Street, Newark, N. J., as Thos. & Geo. M. Stone, Inc.

The respondent, Textile Engravings, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business located at Bound Brook, N. J.

The respondent, The George S. Smith Engraving Co., is a corporation organized and existing under and by virtue of the laws of the State of Rhode Island, and the address and home office of its principal place of business is 3 Brayton Avenue, corner of West Exchange Street, Providence, R. I.

The respondent, Delagrave Co., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its main office and principal place of business located at 831 Broadway, Newark, N. J.

The respondent, The Passaic Engraving Co., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business located at 41 Brook Avenue, Passaic, N. J.

The respondent, Modern Engraving Co., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business located at 154 Avon Avenue, Newark, N. J.

The respondent, Thomas M. Kreger Corp., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business located at 125 Fifth Avenue, Paterson, N. J.

Complaint

44 F. T. C.

The respondent, Textile Process Engraving Co., is located at 361 Harrison Street, Nutley, N. J., but the nature of the organization is unknown to the Commission.

The respondent, The Metropolitan Engraving Co., is located at 50 State Street, Paterson, N. J., but the nature of the organization is unknown to the Commission.

The respondent, Paterson Engraving Co., is located at 404 Crooks Avenue, Clifton, N. J., but the nature of the organization is unknown to the Commission.

The respondent, Superior Textile Engraving Works, is located at 116 East Fifteenth Street, Paterson, N. J., but the nature of the organization is unknown to the Commission.

The respondent, New England Engraving Works, is located in Manufacturers Building, Providence, R. I., but the nature of the organization is unknown to the Commission.

The respondent, Jas. F. Derrig Engraving Co., is located at 58 Arch Street, Fall River, Mass., but the nature of the organization is unknown to the Commission.

The respondent, John Hope & Sons, is located at 334 Providence Street, West Warwick, R. I., but the nature of the organization is unknown to the Commission.

All of the respondents named in the instant paragraph hereof are members of the respondent guild and the respondent Service Corp.

PAR. 4. There are in the textile industry corporations, firms, and partnerships engaged in buying gray and white fabrics from manufacturers who print or stamp designs on said fabrics, or cause designs to be printed or stamped thereon by others, before they are sold to the garment manufacturers or other users. Such corporations, firms, and partnerships are known in the trade as converters.

In printing and stamping fabrics the designs are imposed upon the fabrics by the use of copper or steel rollers which have the designs desired etched or engraved upon their surfaces. A majority of converters are not equipped to do their own stamping and printing, and those who are not so equipped contract with what are known in the trade as printers to print and stamp their fabrics for them. Some printers have the facilities for making their own etched and engraved rollers. A great majority of the printers buy their etched and engraved designs from engravers, such as respondent engravers named herein.

PAR. 5. Respondents named and described in paragraph 3 hereof are engaged in the business of commercial etching and engraving, and in the course and conduct of their respective businesses respondents sell

and distribute their products to the purchasers thereof. In the consummation of such sales respondents ship or cause to be shipped said products from their respective places of business to the purchasers thereof located in States of the United States other than the States of origin of said shipments. Said respondents have maintained and still maintain a constant current of trade in said products in commerce among and between the various States of the United States.

PAR. 6. Said respondent engravers occupy a dominant position in the sale and distribution of etchings and engravings to be used in stamping and printing cloth, oilcloth, and other like materials. The respondents enjoy approximately 90 percent of the business in said field. The extent of their business is such that they are in a position to and have for a number of years controlled the price and terms and conditions of sale of said products in commerce as herein described.

PAR. 7. Respondent guild and respondent Service Corp., are not engaged in commerce, but said respondents were and are parties to the understanding, combination, and conspiracy herein described. Said respondents aided and abetted the formation of said agreement and conspiracy and have taken an active part in the enforcement and the carrying out thereof and have cooperated with the other respondents in all of their activities in connection therewith.

PAR. 8. Said respondent engravers were, prior to the year of 1935, in active and substantial competition with one another and with other engravers in the sale and distribution of etchings and engravings in commerce among and between the various States of the United States, and but for the unlawful agreement, understanding, combination, and conspiracy, said respondents would now be in such competition.

PAR. 9. On or a short time before November 15, 1935, respondents entered into and thereafter carried out an understanding, agreement, combination, and conspiracy to suppress and eliminate competition in price and otherwise among and between themselves and to monopolize for themselves the production, sale, and distribution of etchings and engravings to be used for stamping and printing cloth, oilcloth, and other like materials.

PAR. 10. Pursuant to and to effectuate and carry out the said agreement, understanding, combination, and conspiracy as herein described, the respondents entered into, among other things, the following agreements and did and performed the following acts and things:

(1) The respondent engravers, through and with the cooperation of the respondent guild, formulated and adopted a code of ethics by which they agreed to be bound. Said code of ethics is, in part, in words and figures as follows:

Complaint

44 F. T. C.

"(a) Members may solicit engraving from firms equipped with the necessary plant and machinery to process goods from engraved rollers, but it is deemed an unfair practice and all members are prohibited from soliciting or accepting designs for engraving from any converters, persons or firms whose business is not essentially that of printing.

"(b) No member shall be permitted to quote a price for engraving service lower than that which shall be established at a general meeting of the Masters Engravers Guild which shall continue in force until revoked by a two-thirds vote of a general meeting.

"(c) Upon request of a member of the Guild in good standing, through the constituted authority of the same, for assistance in collecting monies for engraving which have been unjustifiably and unreasonably withheld, then in such event the constituted authority may take such action as it deems necessary to assist in the collection of such monies wrongfully withheld, and to obtain such assurance as it may for the purpose of collecting the indebtedness, and in the event payment is not made or satisfactory arrangement for its payment provided, no member of the Guild shall be permitted to perform engraving services of any character for such customer.

"(d) Members, who, having violated the rules and regulations of the Masters Engravers Guild, have lost their insignia, and have had their employees withdrawn, thereby causing the Masters Engravers Guild to be put to the expense of maintaining said employees while out of employment as per contract with the Friendly Society of Engravers and Sketchmakers, shall be required to reimburse the Masters Engravers Guild for all sums thus expended before they may be reinstated in the Guild and/or obtain the return of the insignia.

"(e) It shall be an unfair trade practice and is forbidden to make rebates, allowances or discounts, other than the usual 2 percent for 10 days or for extending any special privileges which would tend to reduce the lowest established price for engraving services.

(2) In November 1935, the board of directors and managers of the respondent guild (designated in the following agreement as party of the second part) entered into an agreement with the Friendly Society of Engravers and Sketchmakers (designated in said agreement as party of the first part), which agreement was renewed from time to time and is, in part, in words and figures as follows:

"(a) That each and every member of the party of the second part shall affix the said trade-mark (owned by party of first part) on each and every roller engraved.

936

Complaint

“(b) That if and in the event any member of the party of the second part shall fail or refuse to conform to the terms and conditions of the within agreement and schedule annexed hereto, upon notice by the party of the first part to the party of the second part, in the manner herein provided, the party of the first part shall within five days thereafter withdraw the use and privilege of said insignia from the offending member.

“(c) It is further covenanted and agreed that if and in the event the party of the second part determined that any one or more of its members are not in good standing, then, and in such event, upon notification to the party of the first part in the manner herein provided, the party of the first part shall take such steps as are necessary to enforce adherence to the rules and regulations violated by the offending member or members of the party of the second part, including the withdrawal of the use of said insignia together with such privileges and benefits which may have accrued through its use.

“(d) In the event that the offending member or members of the party of the second part, who have violated the rules and regulations fixed by the constituted authority of the party of the second part, refuses and/or neglects to adhere to such rules and regulations, then the party of the first part covenants and agrees to withdraw such members belonging to it from working in said offending shop or shops.

“(e) Upon such members being withdrawn from such offending shop or shops, the party of the second part covenants and agrees to compensate such members on the basis of one-half of their weekly pay based upon a full week's work, or in lieu thereof, furnish jobs to said men.

(3) In 1941 the respondent engravers, through and with the co-operation of the respondent guild, for the purpose and with the effect of more effectively enforcing the agreement, combination, and conspiracy herein described, organized the respondent, Masters Engravers Service Corp., and thereafter and in accordance with an agreement theretofore entered into between said respondents, the respondent engravers and each of them entered into a written agreement with the respondent, Service Corp., whereby they and each of them, among other things, agreed:

“(a) That the Service Corp. would furnish the engravers information as to the financial condition of the engravers' customers.

“(b) That the Service Corp. would advise the engravers as to methods for the conduct and operation of their business.

"(c) That the engravers would assign to the Service Corp. all accounts receivable for etchings and engravings.

"(d) That the Service Corp. would guarantee the payment of all accounts receivable assigned to it and which had been approved by it and retained for its services \$5 for each etching and engraving.

"(e) That the Service Corp. would pay to the engravers a special sum for the first 6 months period of the agreement provided the engraver had operated its business in accordance with and in the manner advised by the Service Corp.

"(f) That the engraver would not render or perform any service for anyone not having been first approved by the Service Corp.

"(g) That the engraver would prepare and furnish to the Service Corp. copies of all bills receivable.

"(h) That the engraver would give the Service Corp. access to its books for the purpose of examining said books.

"(i) That the engraver would not sell all or any of its stock or all or any of its machinery without the approval of the Service Corp. and without having first given the Service Corp. an opportunity to buy the same.

(4) The respondent, guild and respondent Service Corp. authorized and empowered by their officers and members, have assessed and collected penalties from engravers for violation of terms of the afore-described agreements.

(5) The respondent, guild and the respondent Service Corp. authorized and empowered by their officers and members, have caused the use of the union insignia to be withdrawn from engravers who failed to adhere to the scheduled prices and terms and conditions of sale.

(6) The respondent guild and the respondent Service Corp. authorized and empowered by their officers and members, have caused the employees of offending engravers to strike and refuse to work and this condition existed until the guild and Service Corp. certified that the offending engraver had made proper adjustments and was again in good standing with the guild and Service Corp.

(7) The respondent guild and respondent Service Corp. authorized and empowered by their officers and members have caused the employees of printers to strike and refuse to work in cases where the printer was dealing with engravers not in good standing with the guild and Service Corp.

PAR. 11. Each of the said respondents herein named acted in concert and in cooperation with one or more of the respondents in entering into and carrying out the agreements and understandings hereinabove

alleged in furtherance of said understandings, agreements, combinations, and conspiracies.

PAR. 12. Said understandings, agreements, combinations, and conspiracies, and the acts and things done thereunder and pursuant thereto, as hereinbefore alleged, have had and do have the effect of unduly and unlawfully restricting, restraining, hindering, and preventing price competition between and among the respondents in the sale and distribution of etchings and engravings and have the dangerous tendency to create a monopoly in said respondents in the sale and distribution of etchings and engravings and unduly restrict and restrain trade and commerce in said products in commerce within the intent and meaning of the Federal Trade Commission Act and of placing in the hands of the respondents the power to control and enhance prices and of suppressing all competition in commerce in said products.

Said understandings, agreements, combinations, and conspiracies and the acts and things done thereunder and pursuant thereto and in furtherance thereof as above alleged 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 November 27, 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 said act. After the issuance of said complaint and the filing of the answers of the respondents thereto, testimony, and other evidence in support of the complaint and in opposition thereto were introduced before a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers thereto, testimony, and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, and briefs filed in support of the complaint and in opposition thereto (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. Respondent, Master Engravers Guild, is an incorporated membership organization incorporated and existing under and by virtue of the laws of the State of New Jersey, with its main office and principal place of business at 246 Paterson Avenue, Paterson, N. J.

Respondent, George Stone, whose address is Box 150, Bound Brook, N. J., is an individual and at the time of the filing of the complaint herein was president of respondent, Master Engravers Guild.

Respondent, Duncan C. McAllister, of 81 Hay Avenue, Nutley, N. J., is an individual and at the time of the filing of the complaint herein was secretary and treasurer of the respondent, Master Engravers Guild.

Respondent, Master Engravers Service Corp., was a New Jersey corporation, with its home office and principal place of business located at 246 Paterson Avenue, Paterson, N. J. This respondent discontinued business about June 1941 but has never been dissolved.

PAR. 2. Respondent, John G. Stockman, is an individual trading and doing business at 431 Bank Street, Fall River, Mass., as Globe Engraving Co. The home address of respondent, Stockman is 222 Florence Street, Fall River, Mass.

Respondent, The Textigrave Co., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business located at Knickerbocker and West Railway Avenue, Paterson 3, N. J.

Respondent, The George H. Phelps Engraving Co., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business located at 2 Llewellyn Avenue, Hawthorne, N. J.

The respondent, Highland Engraving Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, and its home office and principal place of business is located at 256 Sherman Street, Passaic, N. J.

The respondent, Delagrave Co., of South Carolina, is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, and its principal place of business is located at 176 Ezell Street, Spartanburg, S. C.

The respondent, Columbia Textile Engraving Co., was a corporation organized and existing under and by virtue of the laws of the State of New Jersey, and the address of its principal place of business is 807 Gervais Street, Columbia, S. C. This respondent is now out of business.

Respondents, Thos. L. Stone, Grosvenor Road, Short Hills, N. J., and Lillias I. Stone, 199 Elwood Avenue, Newark, N. J., named in the complaint as copartners, trading and doing business as Thos. & Geo. M. Stone, Inc., were in fact officers and stockholders of Thos. & Geo. M. Stone, Inc., a corporation. This corporation was a member of the Master Engravers Guild until about June 1940.

The respondent, Textile Engravings, Inc., is a corporation and existing under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business located at Bound Brook, N. J.

The respondent, The George S. Smith Engraving Co., is a corporation organized and existing under and by virtue of the laws of the State of Rhode Island, and the address and home office of its principal place of business is 3 Brayton Avenue, corner of West Exchange Street, Providence, R. I.

The respondent, Delagrave Co. is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its main office and principal place of business located at 831 Broadway, Newark, N. J.

The respondent, The Passaic Engraving Co., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business located at 41 Brook Avenue, Passaic, N. J.

The respondent, Modern Engraving Co., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business located at 154 Avon Avenue, Newark, N. J. This respondent discontinued its membership in the Master Engravers Guild on April 3, 1938.

The respondent, Thomas M. Kreger Corp., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business located at 125 Fifth Avenue, Paterson, N. J. This corporation was never a member of the Master Engravers Guild.

The respondent, Textile Process Engraving Co., is located at 361 Harrison Street, Nutley, N. J.

The respondent, The Metropolitan Engraving Co., is located at 50 State Street, Paterson, N. J. This respondent ceased to be a member of respondent Master Engravers Guild on November 24, 1939.

The respondent, Paterson Engraving Co., is located at 404 Crooks Avenue, Clifton, N. J.

The respondent, Superior Textile Engraving Works, is located at 116 East Fifteenth Street, Paterson, N. J.

Findings

44 F. T. C.

The respondent, New England Engraving Works, is located in Manufacturers Building, Providence, R. I.

The respondent, Jas. F. Derrig Engraving Co., was located at 58 Arch Street, Fall River, Mass., but has discontinued business and closed its plant.

The respondent, John Hope & Sons, was located at 334 Providence Street, West Warwick, R. I., but is now out of business.

The above-named respondents, except as herein noted, were all engravers and members of the respondent Master Engravers Guild and will hereinafter be referred to as respondent members.

PAR. 3. The respondent members herein described are all engaged in the business of commercial etching and engraving of designs which are imposed upon textile fabrics. In the textile industry there are various concerns, known as converters, who are engaged in the buying of gray and white fabrics from the manufacturer thereof. It is the usual custom for the converter to deliver such fabrics to printers or dyers for further processing. When such fabrics are dyed or printed they are then returned to the converter, who sells the finished fabrics to department stores or manufacturers of printed-goods products.

In the printing of such fabrics by the printer, it is customary for such printer to forward the design selected by the converter, together with a copper roller, to the engraver for the purpose of etching or engraving the design upon such roller. When the design has been engraved upon the roller, it is then returned to the printer for printing the designs upon the fabric.

The engraving described is done by the respondent members on orders from the printers. The copper rollers are shipped by such printers to the various respondent members, who engrave the required design thereon so that they may be used in the printing of fabrics. When such rollers have been so engraved by the respondent members they are then shipped to such printer-customers. The respondent members have many printer-customers located in States other than the State where the respondent member's plant is located. The shipment of the copper rollers by such printer-customers to the respondent members involves transportation of such rollers across State lines, and again the shipment by the respondent members of such rollers after they have been engraved also involves transportation of such rollers across State lines. By this means and in this manner the respondent members maintain, and during the times mentioned herein have maintained, a course of trade in commerce in engravings among and between the several States of the United States.

PAR. 4. Prior to 1935 said respondent members were in competition as to price with one another in the sale and distribution of etchings and engravings in commerce among and between the various States of the United States and would now be in free and open competition with one another in said commerce but for the agreements, practices, and methods as hereinafter set forth.

PAR. 5. The respondent members, in cooperation with each other and with others, and in cooperation with respondent Master Engravers Guild, entered into and have engaged for several years last past, particularly since 1935, in agreements, understandings, combinations, and conspiracies among themselves and with and through the respondent Master Engravers Guild and with others who were not members of respondent guild, to restrict, restrain, and suppress competition in the sale and distribution of engravings for use in printing fabrics to customers located throughout the several States of the United States by agreeing to fix and maintain uniform minimum prices, terms, and discounts at which such engravings were sold to various customers.

Agreements were also entered into among respondent members to limit the customers of the respondent members to persons and concerns engaged in the business of printing fabrics and to limit the engraving of copper rollers for printing fabrics to members of respondent Master Engravers Guild.

Pursuant to and in furtherance of and to make effective said agreements, understandings, combinations, and conspiracies, said respondent members, among themselves and with others, have cooperatively, concerted, and collectively adopted, engaged in, and carried out, among other things, the methods, acts, and practices hereinafter more fully described.

PAR. 6. In 1935 the respondent members organized the respondent Master Engravers Guild as an incorporated membership organization to promote the mutual interests of the respondent members and to serve as an instrument or vehicle for the joint and cooperative purpose and action of the respondent members.

Prior to 1935 and during the time the NIRA code for the engraving industry was in force, the respondent members operated under so-called code of ethics. When the respondent members organized and incorporated the respondent Master Engravers Guild in 1935, they adopted bylaws for such corporation and incorporated in Article X thereof, entitled "Rules of Conduct," provisions which were substantially similar to those of the former code of ethics.

The provisions of the rules of conduct in article IX of the bylaws, which limited customers, fixed minimum prices, fixed terms and con-

ditions of sale, and prohibited respondent members from dealing with customers who had been certified to the guild for nonpayment of indebtedness, were the following:

Article IX. RULES OF CONDUCT

Sec. 1. Members may solicit engraving from firms equipped with the necessary plant and machinery to process goods from engraved rollers, but it is deemed an unfair practice and all members are prohibited from soliciting or accepting designs for engraving from any converters, persons, or firms whose business is not essentially that of printing.

COMPENSATION FOR SERVICES

Sec. 2. The Board of Trustees shall set a prevailing minimum price which shall represent the average overhead expenditures of the members of this association and no member shall be permitted to quote a price for engraving service lower than that which has been established as the prevailing price, and said price shall continue in force and effect until changed or altered by a three-fourths majority of the members present at one of the meetings of this association.

COLLECTION ASSISTANCE

Sec. 3 (A). Upon request of a member of the association in good standing, through the constituted authority of the same, for assistance in collecting monies for engraving which have been unjustifiably and unreasonably withheld, then and in such event the constituted authority may take such action as it deems necessary to assist in the collection of such monies wrongfully withheld and to obtain such assurance as it may for the purpose of collecting the indebtedness, and in the event payment is not made or satisfactory arrangement for its payment provided, no member of the association shall be permitted to perform engraving service of any character for such customer.

Sec. 3 (B). A credit bureau shall be established whose duties shall be to protect the members of this guild from having to extend unreasonable credit. It therefore shall be established that all bills rendered during any month shall be due and payable by the 20th of the following month. Any accounts not paid by the 30th must be reported to the credit bureau and it shall be the duty of the bureau to notify the delinquent customer that his credit limit as been reached and that if the accounts have not been paid within 5 days, the members of M. E. G. will not be permitted to extend any further engraving service and a notice of such delinquent accounts shall be sent to all the members of the guild. Any engraving service whatsoever rendered after such notice shall be a violation of the rules of conduct and subject to such penalty as provided by the bylaws.

VIOLATIONS

Sec. 4. Members who have violated the rules of conduct of the Master Engravers Guild, have lost their insignia and have had their employees withdrawn, thereby causing the Master Engravers Guild to be put to the expense of maintaining said employees while out of employment as per contract with the Friendly Society of Engravers and Sketchmakers, shall be required to reimburse the Master Engravers

Guild for all sums thus expended before they may be reinstated in the Guild and/or obtain the return of the insignia.

REBATES OR ALLOWANCES

Sec. 5. It shall be an unfair trade practice and is forbidden to make rebates, allowances, or discounts, other than the usual 2% for 10 days or for extending any special privilege which would tend to reduce the lowest price for engraving service (Com. Ex. 66 G and H).

PAR. 7. The respondent members jointly and cooperatively attempted to, and have, promoted adherence to the agreements and understandings hereinabove described by authorizing the Board of Trustees of respondent Master Engravers Guild to set-up a central agency with power to examine the books and records of the respondent members and to hold hearings as to whether any violations of the bylaws or rules of conduct have occurred. The authority so granted to the board of trustees and the power to set up rules of conduct for the respondent members are fully set-out in sections 14 and 15 of article V of the by-laws of the respondent, Master Engravers Guild, which read as follows:

Section 14. The Board of Trustees shall have power and authority to set up a central bureau for investigating and examining the books, records, and plants of the members of this association, with power to call a hearing or hearings for the purpose of determining whether or not any agreements entered into between members of this association and the association, have been violated, or any of the bylaws of this association have been violated with power to impose such penalty or penalties as may be fair and just.

Section 15. The Board of Trustees shall have power and authority to set up rules of conduct covering improper practices of the members of this association; prevailing rates which shall not be lower than the average overhead expenditures; collection of accounts; violations and funds to prosecute said violations; rebates and allowances; plant operations and hours regulating same; and such other rules of conduct necessary to effectuate the objects and purposes of this association. The said rules of conduct, before they can become effective, must be first approved by a majority vote of the members of this association. Said rules of conduct shall be made part of the bylaws and shall be binding upon all members of this association (Com. Ex. 66-E).

Pursuant to the authority so granted, the board of trustees of respondent, Master Engravers Guild, audited the books of certain of its members and assessed penalties for violation of the rules of conduct. For example, after an audit of the books of the Central Engraving Co., which disclosed some irregularities, including the making of cash rebates, the board of trustees, at a meeting held on April 28, 1938, ordered that the Central Engraving Co. suspend operations for a period of 2 weeks, surrender its stamp in the interim to the

secretary, and furnish affidavits that it had been required to return to the converter a portion of the engraving charges as a consideration for receiving business.

On May 31, 1938, the board of trustees expelled the Star Engraving Co. from membership in the Master Engravers Guild for violation of the code of ethics. Later, on June 13, 1938, the board of trustees offered to rescind the expulsion upon payment of a penalty of \$2,000 within 4 months and a forfeiture of the balance on hand.

PAR. 8. The respondent members, acting cooperatively by and through respondent Master Engravers Guild, fixed and maintained a minimum price to be charged for engraving copper rollers for use in printing fabrics. This minimum price, prior to February 18, 1937, was fixed at \$30 per roller. On February 18, 1937, D. C. McAllister, secretary and business manager of respondent, Master Engravers Guild, notified customers of respondent members that "in accordance with the resolutions adopted at a meeting of the Master Engravers Guild held on Saturday, February 13, we shall be obliged to advance the minimum price of engraving for pantograph work to \$35.00."

The question of maintenance of the minimum price agreed upon came up before the meetings of the respondent members and the Trustees of the respondent Master Engravers Guild. At a meeting of the board of trustees held September 28, 1938, the secretary reported an apparent concerted action on the part of the converters to break the minimum price established by the Master Engravers Guild. It was decided that the Guild should extend all the help possible to enable printing concerns to stabilize their prices.

At a meeting of the board of trustees of respondent guild on October 18, 1938, Mr. Clemmon of the Lincoln Print Works was discussed as a party who was endeavoring to get better prices for engraving. It was decided that the secretary inform him that if he persisted, the Master Engravers Guild would be unable to supply him with any further engraving.

At a meeting of the board of trustees held September 5, 1939, Alexander DeKzyer, one of the trustees, stated that it was quite evident that a \$25 price for engraving had been established and that it was his personal opinion that the guild members should be permitted to go out and meet this competition and prevent the concerns who were breaking the price from monopolizing the business. The trustees as a whole did not quite agree, and no action was taken.

PAR. 9. All of the engravers employed by the respondent members were members of a labor union known as the Friendly Society of Engravers and Sketchmakers. This union was the owner of a special

design or insignia which was placed upon all copper or steel rollers engraved or etched by the members of said union. This insignia served notice that the engravings appearing on a roller were union made, and in the absence of such insignia no union printing shop would use the rollers for printing fabrics.

The respondent members attempted to establish a monopoly in the members of respondent Master Engravers Guild by restricting the sale of engravings for the printing of fabrics to the members of said guild. This restraint of trade was accomplished by means of certain agreements or contracts entered into between respondent Master Engravers Guild and the Friendly Society of Engravers and Sketchmakers. In addition, the respondent members secured adherence to the provisions of the bylaws of the Master Engravers Guild by means of said agreements or contracts between said guild and the Friendly Society of Engravers and Sketchmakers.

The contracts entered into for the years 1936 and 1937 between respondent Master Engravers Guild and the Friendly Society of Engravers and Sketchmakers granted to the members of the respondent Master Engravers Guild the sole use of the insignia or union label owned by the said Friendly Society of Engravers and Sketchmakers, to be affixed to each and every roller engraved. Said contracts also provided that in the event any member of the guild was found not to be in good standing or to have violated the rules and regulations of said guild, the Friendly Society of Engravers and Sketchmakers would withdraw the use of the insignia from such members and, in addition, withdraw its members from working in such member's shop. In the event of such withdrawal of employees, the respondent guild agreed to reimburse or find employment for such employees.

In contract of December 30, 1937, for the year 1938 and in all later contracts, the exclusive use of the insignia was not granted, but, instead, said contracts granted a license to the members of respondent guild to use said insignia. However, the use of the insignia to enforce adherence to the agreements of the respondent members and to restrict engraving to respondent members was continued in much the same manner.

For example, on May 23, 1938, respondent Master Engravers Guild wrote John Allison, then secretary of the Friendly Society of Engravers and Sketchmakers, informing him that said respondent had recently learned that the Berkshire Engraving Co. was doing work on a commercial basis and that they were using the insignia of the society but were refusing to become members of the guild and requested that the insignia be removed from the Berkshire Engraving Co.

Findings

44 F. T. C.

The exclusive use of the insignia by members of the respondent Master Engravers Guild was also used by respondent members to enforce payment of dues and to keep the various members in good standing. For example, on March 7, 1936, the respondent Master Engravers Guild wrote Robert Goudie & Sons, of Providence, R. I., then a member of the guild, advising them that they had not paid their assessment for the first quarter of 1936 and stated—

Failure to pay this quarter's dues by March 31 will subject you to the loss of the insignia, together with such privileges which its use may provide. I am sure you do not wish to subject your firm to this loss, and will therefore remit by return mail.

Whenever any member of respondent Master Engravers Guild violated the provisions of the bylaws and particularly of the rules of conduct contained therein and was expelled by action of the board of trustees, the secretary of the respondent Master Engravers Guild immediately notified the secretary of the Friendly Society of Engravers and Sketchmakers so that the insignia might be immediately removed, with the result that none of the employees of such expelled member who were members of the Friendly Society could continue in the employ of such expelled member until such time as such expelled member might be reinstated by proper action of the membership or trustees of the respondent Master Engravers Guild. For example, the secretary of the respondent Master Engravers Guild on May 25, 1939, wrote John Allison, secretary of the Friendly Society of Engravers and Sketchmakers, informing him that at a meeting of the board of directors of the Master Engravers Guild it was unanimously agreed that the Arrow Textile Engraving Works be expelled from their organization and requested the cooperation of the Friendly Society of Engravers and Sketchmakers in making this expulsion effective.

On November 8, 1938, respondent Master Engravers Guild wrote the Friendly Society of Engravers and Sketchmakers advising them that they were having difficulty in inducing the Craig Engraving Shop, of Westcott, R. I., to submit satisfactory records and to keep up their payments to the guild and requested that the stamp be removed from this concern until such time as they are prepared to furnish the information requested and give assurance they will abide by the provisions of the Master Engravers Guild in the future.

PAR. 10. In order to facilitate the enforcement of the agreements and understanding, the respondent members of 1941 organized the Master Engravers Service Corp. This corporation continued in business for approximately 1 year, when it was discontinued, but said corporation has not been dissolved.

936

Order

The Master Engravers Service Corp. entered into contracts with the various respondent members, whereby, among other things, the respondent members agreed to assign to said service corporation all accounts receivable upon issuance of invoices, give said service corporation access to their books and records, and, in addition, agreed to transact business only with customers approved by said service corporation. The Master Engravers Service Corp., in turn, agreed to guarantee payment of all accounts assigned to it by the respondent members and to perform other services of an advisory nature.

PAR. 11. The aforesaid understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto and in furtherance thereof as hereinbefore described, have had, and do have, the effect of unduly lessening, restricting, restraining, and suppressing competition in the sale and distribution of etchings and engravings in commerce among and between the several states of the United States and of depriving respondents' customers and the public of the full benefit of competition in said commerce between and among the respondent members and between them and their competitors.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of competitors of respondents and of the public; have a dangerous tendency to and have actually frustrated, hindered, suppressed, lessened, restrained, and eliminated competition in the sale and distribution of etchings and engravings in commerce as "commerce" is defined in the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; have unreasonably restrained such commerce in etchings and engravings; and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act. Commissioner Mason dissenting.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answers of the respondents, testimony, and other evidence in support of and in opposition to the allegations of said complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions filed thereto, and briefs filed in support of the complaint and in opposition thereto; and the Commission having made its findings as to the facts and its conclusion

Order

44 F. T. C.

that said respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Master Engravers Guild, an incorporated membership association; Master Engravers Service Corp., a corporation; George Stone, individually and as president of respondent guild; Duncan C. McAllister, individually and as secretary of respondent guild and respondent service corporation; John G. Stockman, an individual doing business as Globe Engraving Co.; The Textigrave Co., a corporation; The George H. Phelps Engraving Co., a corporation; Highland Engraving Co., Inc., a corporation; Delagrave Co., of South Carolina, a corporation; Textile Engravings, Inc., a corporation; The George S. Smith Engraving Co., a corporation; Delagrave Co., a corporation; The Passaic Engraving Co., a corporation; Textile Process Engraving Co.; Paterson Engraving Co.; Superior Textile Engraving Works; and New England Engraving Works, and their respective officers, agents, representatives, and employees, in connection with the offering for sale, sale, and distribution of etchings and engravings 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, mutual agreement, understanding, combination, or conspiracy between and among any two or more of said respondents or between any one or more of said respondents and others not parties hereto to do or perform any of the following acts or practices:

1. Establishing, fixing, or maintaining prices, terms, or conditions of sale for etchings or engravings, or adhering to or promising to adhere to the prices, terms, or conditions of sale so fixed.

2. Establishing, fixing, or maintaining a minimum price for etchings or engravings placed upon rollers for use in printing fabrics, or adhering to or promising to adhere to the minimum price so fixed.

3. Restricting or attempting to restrict the customers of respondent engravers to printers of fabrics, or agreeing not to place engravings or etchings on rollers for converters or persons or concerns other than printers of fabrics.

4. Refusing to solicit or to accept or agreeing not to solicit or accept designs for engravings from converters, persons, or firms whose business is not that of printing fabrics.

5. Authorizing or permitting examination of the books or other records of the respondent engravers by any agent of the Master Engravers Guild or Master Engravers Service Corp. or by any agent of the respondent engravers, or any of them, to determine or

check the prices, terms, or conditions of sale at which any respondent engraver has made or is currently making sales.

6. Coercing, inducing, or persuading or attempting to coerce, induce, or persuade respondent members to adhere to or maintain the prices, terms, or conditions of sale established by respondent members by establishing or setting up any central agency or bureau with authority to investigate or examine the books, records, or plants of the respondent engravers with power to hold hearings and to impose penalties.

7. Expelling or attempting to expel any respondent engraver from the Master Engravers Guild for failure to maintain or adhere to any minimum price for engraving established by the respondent engravers by or through the Master Engravers Guild.

8. Inducing or attempting to induce the Friendly Society of Engravers and Sketchmakers to issue its insignia or union label only to members of respondent Master Engravers Guild who are in good standing.

9. Inducing or attempting to induce the Friendly Society of Engravers and Sketchmakers to withdraw the right to use its insignia from members of the respondent Master Engravers Guild who do not maintain the minimum prices or the terms or conditions of sale adopted by said Master Engravers Guild or who have been expelled or penalized for such failure to maintain minimum prices, terms, or conditions of sale.

10. Inducing or attempting to induce the Friendly Society of Engravers and Sketchmakers to withdraw its members from the plant of any engraver who fails to maintain the minimum prices and the terms and conditions of sale adopted by the respondent engravers or who has been expelled or penalized by the respondent Master Engravers Guild or other central agency established by the respondent engravers.

11. Inducing or attempting to induce the Friendly Society of Engravers and Sketchmakers to make the maintenance of membership in respondent Master Engravers Guild a condition precedent to the right to use insignia or union label of said Friendly Society of Engravers and Sketchmakers.

12. Agreeing to transact business only with customers approved by the Master Engravers Service Corp. or any central agency or bureau.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to Columbia Textile Engraving Co., a corporation; Thos. L. Stone and Lillias I. Stone, copartners, doing

business as Thos. & Geo. M. Stone, Inc.; Modern Engraving Co., a corporation; Thomas M. Kreger Corp., a corporation; The Metropolitan Engraving Co.; Jas. F. Derrig Engraving Co.; and John Hope & Sons.

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.

Commissioner Mason dissenting.

OPINION OF COMMISSIONER EWIN L. DAVIS

The respondents in this proceeding are the Master Engravers Guild, a substantial number of engraving concerns, which are members of the guild, and the Master Engravers Service Corp. The complaint alleged that respondents are engaged in interstate commerce and that by unlawful agreements among the respondents the latter fixed the charges made by respondents for the products processed by them and that pursuant to such unlawful agreements respondents restrained trade by use of devices such as boycott and other coercive practices.

The facts, briefly, are that the respondent engravers perform an important and indispensable part of the work in the textile industry by which raw fabrics are processed into finished printed goods. The converters in the industry purchase plain goods from the manufacturers and send these goods to the printers for processing. Machinery is used by the printer to place the design on the goods and this design is engraved on a removable copper roller attached to the printing machinery. The copper rollers are the property of the printers. Upon the receipt by the printers of an order from the converters for a print design on goods, the printers send the rollers to the engravers with instructions as to the particular design to be engraved on the rollers. After completion of the process of engraving the design on the rollers, the engravers, who are the respondents herein, send the rollers to the printers, who attach the rollers to the machines and imprint the design on the cloth.

For the purpose of stabilizing and controlling the market in the engraving business described above, the respondents adopted what is described as Rules of Conduct which in effect provided for the fixing of charges and the establishment of coercive procedures whereby engravers who neglected or refused to abide by the price pattern fixed by agreement were forced to cooperate or else be subject to economic penalties. The record unquestionably shows that there was a conspiracy

among the respondent engravers to fix the charges for processing the copper rollers. The questions at issue are whether or not the conspiracy of the respondents restrains trade, and if so, whether or not such restraint constitutes unfair methods of competition in interstate commerce. Unless respondents are engaged in unfair methods of competition in commerce, as that term is defined in the Federal Trade Commission Act, respondents are not in this proceeding subject to the jurisdiction of this Commission.

As to the question of whether or not the conspiracy of respondents restrained commerce, attention is invited to the case of *United States v. International Fur Workers Union*, 100 F. (2d) 541, cert. denied 306 U. S. 653, in which the defendants therein were convicted under the Sherman Act of a conspiracy to fix the prices for dressing fur skins in the metropolitan area of New York. The court held that since part of the trade restrained included transporting raw skins and returning dressed skins across State lines, the conspiracy of the defendants clearly restrained interstate commerce. In that case the fur dressers did not have title to the furs but only performed the operation of dressing furs owned by other parties. It is a well settled rule of law that a conspiracy to restrain interstate commerce is subject to the regulatory powers of Congress although the conspirators are not themselves engaged in interstate commerce (*Loewe v. Lawlor*, 208 U. S. 274, 301). As the Supreme Court stated in *Stafford v. Wallace*, 258 U. S. 495, 521—

Whatever amounts to more or less constant practices, and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause.

It follows from the above that the conspiracy of the respondents herein is, in the language of the Sherman Act, a restraint of trade or commerce among the several States. The next question is that although the proof shows that respondents restrained commerce—are respondents themselves engaged in commerce so that such restraint constitutes unfair methods of competition in commerce? It is contended respondents do not sell commodities and because the ownership of the copper rollers does not pass from the engravers to the printers the restraint is not an unfair method of competition in interstate commerce. This view does not give sufficient consideration to the substance of the transactions between the respondents and the printers and the direct participation in commerce by the respondents.

The respondent engravers are situated in various States of the United States and in many instances in States other than where the printers are situated. In such instances, the blank copper rollers are

shipped to the respondent engravers across State lines and after processing by the engravers are shipped by the latter across State lines to the printers. The transactions between these engravers and the printers situated in different States include intercourse in negotiating the contracts or agreements, the processing of the rollers, and the movement of the commodity, and the payments therefor from one State to another.

The Commission is not stating that it has jurisdiction in this case because the activities of respondents affect commerce. In *Federal Trade Commission v. Bunte Bros., Inc.*, 312 U. S. 349, the respondent therein was engaged in selling, solely in the State of Illinois, lottery merchandise. The position of the Commission in that case was that the unfair practice followed by said respondent in its intrastate sales diverted trade from competitors, situated in other States, who sold their merchandise in commerce to persons in Illinois. The Court held, in effect, that as said respondent was engaged only in an intrastate business, this Commission did not have jurisdiction although said respondent's activities may have affected interstate commerce. The facts in the *Bunte* case are readily distinguishable from the facts in the case under consideration. Respondents in this case do an interstate business and are engaged in interstate commerce.

It is contended that the respondent engravers perform only a service. In *Federal Trade Commission v. Civil Service Training Bureau, Inc.*, 79 F. (2d) 113, the respondent was a correspondence school engaged in the sale and distribution of courses of study to prepare students for civil-service examination. The respondent in appealing to the court from an order of the Commission contended that the Commission was without jurisdiction for the reason that the Commission was constituted for the purpose of dealing with cases involving the sale of commodities in interstate commerce and that while respondent conducted an interstate business it was not dealing in commodities but was selling a service. The court held that the contention of respondent was untenable because the Federal Trade Commission Act applies to unfair methods of competition "in commerce" and the respondent was engaged in commerce. The court cited as authority *International Textbook Co. v. Pigg*, 217 U. S. 91, 107, in which the Supreme Court quoted with approval the following:

All interstate commerce is not sales of goods. Importation into one state from another is the indispensable element, the test, of interstate commerce; and every negotiation, contract, trade, and dealing between citizens of different states, which contemplates and causes such importation, whether it be of goods, persons, or information, is a transaction of interstate commerce.

Respondents use labor and materials to convert a semifinished article into a finished article ready for use. It is apparently because of a matter of convenience that the ownership of the semifinished or finished rollers does not pass from the engravers to the printers, or vice versa. The power of this Commission to prohibit a conspiracy in restraint of trade participated in by parties in various States and affecting consumers in all States is not to be denied because, as a matter of convenience, the title to the processed article does not rest temporarily in the conspirators. As stated by Mr. Justice Holmes in *Swift & Co. v. United States*, 196 U. S. 375:

Commerce among the States is not a technical legal conception, but a practical one, drawn from the course of business.

I can find no other litigated price fixing conspiracy case considered by this Commission in which the subject matter of the conspiracy did not directly involve the sale of a commodity. There are very few reported Sherman Act cases involving facts substantially as presented herein. It is probably rare in our economic system that concerns which process commodities but do not own same are in a position to fix the charges for such processing and thereby substantially restrain interstate commerce in such commodities. Rarity, however, while of interest, is not an appropriate defense to a charge of illegality under the laws administered by this Commission. To state that respondents are not engaged in commerce is, in the language of Mr. Justice Holmes, the acceptance of a "technical legal conception" of commerce and is not a reasonable interpretation of such term in the light of the business practices of respondents. The great opinions through the years of the Justices of the Supreme Court demonstrate that the conception of commerce is not static but of necessity has evolved coincident with the increasing complexities of our economic system.

Personal effort not related to production, such as professional baseball, may not be a subject of commerce (*Federal Club v. National League*, 259 U. S. 200), but a contract or agreement which by its terms provides for the processing of commodities for a consideration and the transportation of the commodities across State lines is a contract or agreement made in the course of commerce and the parties thereto are engaged in interstate commerce and are therefore subject to the jurisdiction of this Commission. As the Supreme Court has stated in interpreting the organic act of this Commission, "What is or is not interstate commerce is to be determined upon a broad consideration of the substance of the whole transaction" (*Federal Trade Commission v. Pacific States Paper Trade Assn.*, 273 U. S. 52).

It is obvious under the court decisions that if respondents owned the copper rollers and sold them across State lines, respondents would be engaged in commerce. To be in commerce is it necessary for a processor for hire of raw materials to own such materials? In *Gibbons v. Ogden*, 9 Wheaton 1, 188, Chief Justice Marshall stated commerce is traffic and intercourse and that commerce "is regulated by prescribing rules for carrying on that intercourse." Congress has prescribed such rules and has directed this Commission to prohibit unfair practices by those engaged in such traffic and intercourse. Respondents are engaged in intercourse among the States. Justice Johnson stated in a concurring opinion in *Gibbons v. Ogden, supra*, that "Commerce, in its simplest signification, means an exchange of goods" but that with the advancement of society various mediums of exchange enter into commerce. Respondents, using a medium of exchange suitable for their particular purpose, are engaged in traffic in goods, the product of their invested capital and hired labor. Respondents pass the test of commerce.

The Commission is not stating, directly or indirectly, that it does or does not have jurisdiction over various trades which essentially perform local personal services. That is not the issue in this proceeding. We are not considering the practices of the laundryman around the corner, the laborer, or the professional man engaged in intellectual pursuits. This is not a labor controversy, as we are not considering questions as to the wages or working conditions of laborers. We are considering the practices of industrial entrepreneurs who hire labor, buy materials, and with this labor and materials process commodities for a consideration, and ship the processed commodities across State lines. Each entrepreneur hires the engravers who work in his particular shop and who actually perform the engraving. It was these entrepreneurs who by conspiracy fixed the price for the engraving and these entrepreneurs control a substantial portion of the engraving business of the textile industry of the United States. Textiles are used by practically every person in the United States and the cost thereof is an item in every family budget. These respondents, by conspiracy, fixed the price of one of the elements of the completed textile article. It can be assumed that this price was fixed at a level higher than that which would have been determined by the free play of competitive forces. The practices of respondents affected, directly or indirectly, the pocket-books of consumers in practically every community in the United States. Price fixing was illegal under the common law and is contrary to the statutes and public policy of the United States. There is

no more powerful internal enemy of the American system of free enterprise than monopolistic practices and price-fixing conspiracies.

It is contended that there is a variance between the complaint and the proof in this proceeding in that the complaint alleges that the respondents sell and distribute their product in commerce. There is no merit in this contention for the reason that the proof shows that respondents do sell their product, the yield of their materials and labor, in commerce.

In 1937 the Commission, by letter, advised the respondent guild that the Commission did not find at that time that respondents were engaging in practices coming within the purview of the laws administered by the Commission. That letter is simply indicative of the fact that in 1937 the Commission did not have reason to believe that respondents were violating laws administered by the Commission. Subsequent to 1937, however, the Commission obviously procured additional information as to respondents' practices for the reason that in 1943 the Commission directed that the complaint in this proceeding be issued.

The record sustains the allegations of the complaint that respondents are engaged in practices in restraint of trade and violative of section 5 of the Federal Trade Commission Act, and the Commission in the public interest is issuing appropriate findings as to the facts and order to cease and desist.

OPINION OF COMMISSIONER LOWELL MASON

In my opinion, this is a labor case and we ought to stay out of it.

If I hire a man to peel my apples, he is not engaged in commerce—he is rendering a service. And if I get him to cut bits of copper off my copper rolls, he is still rendering a service, whether he does all the peeling himself or gets a dozen others to help him.

Down here at the Federal Trade Commission we have nothing to do with the pricing habits of labor even when they affect interstate commerce. In a complicated policy such as ours, it behooves each agency to stick to its own last. Our job deals with methods of commerce, and Congress, to prevent us from becoming a quasi-judicial Jack of all trades, has told us to keep out of railroading, banking, communications, stockyards, labor relations, etc., and to concern ourselves with unfair methods of competition in interstate commerce.

Congress in its wisdom has not seen fit to delegate to the Federal Trade Commission the job of surveying the pricing habits of those engaged in selling their manual, professional, or skilled services. The

compensation for baby sitting, barbering, doctoring, engraving, etc., may some time come under the centralized control of Washington but so far, the Federal Trade Commission has been protected from the flesh pots of this additional and overwhelming bureaucratic power by the strict admonishment from Congress that—

The labor of a human being is not a commodity or article of commerce.

The respondents are engravers—they cut bits of copper off somebody else's rollers. If a person wants to know the details of why and how, he may read the second paragraph of the majority opinion where they are correctly described.

The facts are, the respondents never owned any etching to sell, any more than a ditch digger working in a public street sells ditches. They sold their services—their labor.

By what Dean Roscoe Pound describes as a "spurious extension of administrative interpretation," the Commission would convert the skilled labor "etching" such as these respondents do, into a corporeal commodity like the picture a man shows his friends.

I don't think it can be done.

Eleven years ago the Commission was importuned to climb over into labor pastures in this very matter, and it refused to do so.

Long before the Commission filed this formal complaint respondents' practices were under consideration through an application for a trade practice conference to correct industry-wide practices here under discussion. The conference was not rejected because there was not enough evidence to prove restraint. At about the same time the Commission had under investigation the acts and practices of respondents. After consideration of the file it arrived at the same conclusion.¹

For let there be no doubt about it, both the evidence in 1937 and the evidence in 1943 showed beyond all reasonable doubt that the engravers followed a planned common course of action in establishing and maintaining prices for their services. The conference was rejected because we just don't have the authority to meddle with labor and service pricing agreements.

¹ On November 30, 1937, the Commission advised the guild as follows: "The Commission has given consideration to the facts developed in a preliminary investigation of an application for complaint involving the alleged unlawful establishment, maintenance, and enforcement of price fixing agreements, and conspiracy to stifle competition and restrain trade through boycott and other unfair and discriminatory practices by the Master Engravers' Guild for the Textile Print Roller Engraving Industry, proposed respondent in the above-numbered application. It does not appear from this investigation that further proceeding by the Commission is warranted, inasmuch as the Commission does not find that the proposed respondent is engaged in practices coming within the purview of the laws administered by it."

Before Congress puts it in our laps it will have to amend a half dozen statutes, as well as give us a billion dollars to cope with all service pricing, from apple peelers to zither players.

In 1935 the Commission tried to secure from Congress an express grant of authority over transactions "affecting commerce" in addition to its control of practices in commerce. This attempt was unsuccessful and we should not try to administratively legislate what Congress has refused to give us. There isn't much use of us trying anyway, because the Supreme Court in 1941 held in the *Bunte* case that "to read 'unfair methods of competition in (interstate) commerce' as though it meant 'unfair methods of competition in any way affecting interstate commerce,' requires, in view of all the relevant considerations, much clearer manifestation of intention than Congress has furnished."

The only case which hits the nail on the head, as it were, on the question of services is *California Rice Industry v. Federal Trade Commission*, where the circuit court of appeals upheld the contentions of the Commission on all but the one point here involved. The respondents were engaged in rendering a service; that is to say, instead of etching copper off a roller that they didn't own, they processed rice which they didn't own, and in doing so, fixed and determined quotas in rice milling. The court held: "This enterprise, like mining in the *Carter Coal* case, is not commerce and is intrastate in character."² This is the only case directly bearing on the question of service as applied to the powers of the Federal Trade Commission Act and involving on one hand the Federal Trade Commission and a member of a private industry on the other.

Therefore, as to the order in this case—

I am against it.

² 102 F. (2d) 716 (C. C. A. 9th).

IN THE MATTER OF
CAREER TRAINING INSTITUTE 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 5354. Complaint, July 17, 1945—Decision, June 3, 1948

In a proceeding in which certain practices of the salesmen or representatives of a correspondence school in soliciting prospective students for said school, were challenged as false and misleading and in which it was contended that said representatives or so-called registrars were not agents of the corporation, but occupied the legal status of independent contractors, the Commission was of the view that such position was untenable, and that so far as the public was concerned, said registrars were in fact the agents and salesmen of the corporation, and that it was properly chargeable with the representations made by them.

Where a corporation engaged in the interstate sale and distribution of correspondence courses of study and instruction in various business and clerical subjects such as bookkeeping, typing, shorthand, etc., and in soliciting inquiries with respect to employment in private industry and civil service through postal cards mailed to prospective purchasers, which stated that one of the school's representatives described as a "registrar," would call upon the prospect and ascertain his qualifications; together with three officers thereof who participated actively in its affairs and practices—

(a) Represented through said agents or salesmen, that the agent was a representative of or had some connection with the Government or Civil Service Commission, and was a registrar of the school and authorized to check upon the qualifications of prospective students to determine their eligibility for taking civil-service examinations;

The facts being that said salesmen were employees of the corporation, had no connection with the Government, and called solely to enroll students for courses of study and to obtain payment of the tuition fee or a portion thereof;

(b) Represented as aforesaid that positions in the civil service were guaranteed immediately after the taking and passing of an examination, that such positions would be available in designated localities or cities close to the residence of the prospective student;

The facts being said corporation was a private one, for profit, and had no connection with the Government; was not qualified to place any of its students in civil-service positions; and neither it nor its salesmen could guarantee positions in any branch thereof;

(c) Represented as aforesaid that if students, having completed the course of study, took civil-service examinations and failed to pass, their tuition fees would be refunded immediately;

The facts being that the salesmen failed to explain that the terms and conditions under which refunds were to be made were such that only in rare and unlikely instances would the corporation be obligated to make the refund;