

Complaint

52 F. T. C.

IN THE MATTER OF

NATIONAL FOOD BROKERS ASSOCIATION ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6363. Complaint, June 13, 1955—Decision, Oct. 7, 1955

Consent order requiring a trade association and its 1750 food broker members—including more than 40 per cent of all the food brokers in the United States, and more than 75 per cent of all whose business did not include buying and selling for their own account—to cease concertedly restraining competition by refusing to solicit business from each other's customers, disciplining members who did not cooperate, denying membership to outsiders for the same reason, and engaging in other restrictive practices.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Raymond L. Hays and *Mr. William W. Rogal* for the Commission.

Williams, Myers & Quiggle, of Washington, D. C., for respondents.

Howie & Robertson, of New York City, also represented John G. Paton Co., Inc.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the respondents named and referred to in the caption hereof and hereinafter more specifically named, designated and described, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent National Food Brokers Association, sometimes hereinafter referred to as respondent NFBA or respondent Association, is a voluntary, unincorporated association with its office and principal place of business located at 527 Munsey Building, Washington 4, D. C.

The membership of respondent NFBA is composed of corporations, partnerships and individuals whose business consists of negotiating the sale of food and grocery products for and on account of the sellers of such merchandise and whose compensation is a commission or brokerage paid by the seller. The member corporations, partnerships and individuals are known as food brokers and the sellers for whom they act are referred to by the aforesaid food brokers as principals.

PAR. 2. The control, direction and management of respondent NFBA's business, affairs, policies, practices and actions are vested in respondent NFBA's Officers, Executive Committee, Advisory Committee and members.

Respondent Watson Rogers has occupied the office of President of respondent NFBA from 1946 to the present time. His address is 527 Munsey Building, Washington 4, D. C.

The President of respondent NFBA is the chief administrative officer of respondent Association and is appointed by aforesaid Executive Committee. The President is responsible for carrying out the policies and decisions of aforesaid Executive Committee. The title of President was assigned to the incumbent of the chief administrative office of respondent NFBA in 1946. Previous incumbents of the chief administrative office of respondent NFBA bore the title of Secretary.

The Executive Committee of respondent NFBA is the governing body of respondent Association. It is composed of seven individuals who are either members or employees, officers or owners of firms holding membership in respondent NFBA.

Respondent Truman F. Graves is the National Chairman and Chairman of the Executive Committee of respondent NFBA; his address is 3464 East Marginal Way, Seattle 4, Washington.

Respondent Walter H. Burns, Sr., is the First Vice-Chairman and a member of the Executive Committee of respondent NFBA; his address is Penn Avenue and Dahlem Street, Pittsburgh 6, Pennsylvania.

Respondent George E. Dillworth is the Second Vice-Chairman and a member of the Executive Committee of respondent NFBA; his address is 1448 Wabash Avenue, Detroit 16, Michigan.

Respondent W. Sloan McCrea is the Member at Large of the Executive Committee of respondent NFBA; his address is 1220 South Miami Avenue, Miami 32, Florida.

Respondent Willis Johnson, Jr., was, in 1954, National Chairman and is at present a member of the Executive Committee of respondent NFBA; his address is 520 East Markham Street, Little Rock, Arkansas.

Respondent E. Norton Reusswig was, in 1953, National Chairman and is at present a member of the Executive Committee of respondent NFBA; his address is 105 Hudson Street, New York 13, New York.

Respondent Clarence Wendt was, in 1952, National Chairman and is at present a member of the Executive Committee of respondent NFBA; his address is 1016 Colcord Building, Oklahoma City 2, Oklahoma.

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The Advisory Committee of respondent NFBA is composed of all past holders of respondent Association's highest elective office. Prior to 1946, the incumbent of this office bore the title of President; since 1946, the incumbent has borne the title of National Chairman.

Respondent Roy C. Ossman was National Chairman and a member of the Executive Committee of respondent NFBA during the year 1951 and is at present a member of its Advisory Committee; his address is 1468-70 West 9th Street, Cleveland 13, Ohio.

Respondent Ed. W. Jones was the National Chairman and a member of the Executive Committee of respondent NFBA during the year 1950 and is at present a member of its Advisory Committee; his address is 20 W. 9th Street Building, Kansas City 5, Missouri.

Respondent Ralph D. Davies was the National Chairman and a member of the Executive Committee of respondent NFBA during the year 1949 and is at present a member of its Advisory Committee; his address is 407 Provident Bank Building, Cincinnati 2, Ohio.

Respondent Jack L. Gentry was National Chairman and a member of the Executive Committee of respondent NFBA during the year 1948 and is at present a member of its Advisory Committee; his address is 150 N. Spring Street, Spartanburg, South Carolina.

Respondent Elwin W. Peterson was National Chairman and a member of the Executive Committee of respondent NFBA during the year 1947 and is at present a member of its Advisory Committee; his address is 615 Oakland Avenue, Birmingham, Michigan.

Respondent John O. Crawford was National Chairman and a member of the Executive Committee of respondent NFBA during the year 1946 and is at present a member of its Advisory Committee; his address is 4814 Loma Vista Avenue, Los Angeles 58, California.

Respondent H. Wayne Clarke was President and a member of the Executive Committee of respondent NFBA during the years 1942 to 1945, inclusive, and is at present a member of its Advisory Committee; his address is 1631 K Street, N.W., Washington 6, D. C.

Respondent A. J. Campbell was President and a member of the Executive Committee of respondent NFBA during the year 1941 and is at present a member of its Advisory Committee; his address is 216 E. 7th Street, Charlotte 1, North Carolina.

Respondent Harry L. Wagner was President and a member of the Executive Committee of respondent NFBA during the year 1940 and is at present a member of its Advisory Committee; his address is 406 Market Street, St. Louis 2, Missouri.

Respondent James J. Reilley was President and a member of the Executive Committee of respondent NFBA during the year 1938 and

is at present a member of its Advisory Committee; his address is 905-06 Lafayette Building, Philadelphia 6, Pennsylvania.

Respondent T. H. McKnight, Sr., was President and a member of the Executive Committee of respondent NFBA during the year 1937 and is at present a member of its Advisory Committee; his address is 405 McCall Building, Memphis 2, Tennessee.

Respondent Howard L. Scott was President and a member of the Executive Committee of respondent NFBA during the year 1935 and is at present a member of its Advisory Committee; his address is 401 Harris Avenue, Bellingham, Washington.

Respondent George R. Bennett was President and a member of the Executive Committee of respondent NFBA during the year 1933 and is at present a member of its Advisory Committee; his address is 434 Delaware Avenue, Buffalo 2, New York.

Respondent Wilbur R. Orr was President and a member of the Executive Committee of respondent NFBA during the year 1930 and is at present a member of its Advisory Committee; his address is 507 Temple Building, Danville, Illinois.

Among the members of respondent NFBA are the following named persons, partnerships and corporations:

Truman F. Graves and Winston W. Chambers are copartners doing business under the firm name and style of Graves-Chambers Co., a partnership, with their office and principal place of business located at 3464 East Marginal Way, Seattle 4, Washington, and as such and individually are named as respondents herein.

Respondent Walter H. Burns Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at Penn Avenue and Dahlem Street, Pittsburgh 6, Pennsylvania.

Jean N. Bistline, Roy M. Bistline and Bessie M. Bistline are copartners doing business under the firm name and style of Bistline Brokerage Company, a partnership, with their office and principal place of business located at 120 W. 13th Avenue, Denver 4, Colorado, and as such and individually are named as respondents herein.

Respondent Earl V. Wilson Company is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 1220 South Miami Avenue, Miami 32, Florida.

Willis Johnson, Jr., and William M. Powell are copartners doing business under the firm name and style of Willis Johnson & Company, a partnership, with their office and principal place of business located

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at 520 East Markham Street, Little Rock, Arkansas, and as such and individually are named as respondents herein.

Harold J. Lestrade, E. Norton Reusswig, Sidney Kahn and Herbert Davies are copartners doing business under the firm name and style of Lestrade Brothers, a partnership, with their office and principal place of business located at 105 Hudson Street, New York 13, New York, and as such and individually are named as respondents herein.

Ed Allison and Clarence Wendt are copartners doing business under the firm name and style of Allison & Wendt, a partnership, with their office and principal place of business located at 1016 Colcord Building, Oklahoma City 2, Oklahoma, and as such and individually are named as respondents herein.

Respondent The Paul E. Kroehle Co. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 1468-70 West 9th Street, Cleveland 13, Ohio.

Respondent Meinrath Brokerage Co. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 20 West 9th Street Building, Kansas City 5, Missouri.

Respondent Ralph D. Davies, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 407 Provident Bank Building, Cincinnati 2, Ohio.

Respondent Jack L. Gentry is a sole proprietor doing business under the firm name and style of Jack L. Gentry, with his office and principal place of business located at 150 North Spring Street, Spartanburg, South Carolina.

Respondent Peterson Sales, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 615 Oakland Avenue, Birmingham, Michigan.

Calvin H. Baker, John O. Crawford and James Bishop are copartners doing business under the firm name and style of Baker-Crawford-Bishop, a partnership, with their office and principal place of business located at 4814 Loma Vista Avenue, Los Angeles 58, California, and as such and individually are named as respondents herein.

H. Wayne Clarke and G. Leaman are copartners doing business under the firm name and style of Walter Leaman Company, a partnership, with their office and principal place of business located at 1631 K Street, N.W., Washington 6, D. C., and as such and individually are named as respondents herein.

Respondent A. J. Campbell is a sole proprietor doing business under the firm name and style of A. J. Campbell Company, with his office and principal place of business located at 216 East 7th Street, Charlotte 1, North Carolina.

Respondent Carter Wagner Brokerage Company is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 406 Market Street, St. Louis 2, Missouri.

Respondent James J. Reilley is a sole proprietor doing business under the firm name and style of James J. Reilley & Associates, with his office and principal place of business located at 905-06 Lafayette Building, Philadelphia 6, Pennsylvania.

T. H. McKnight, Sr., T. H. McKnight, Jr. and J. M. McKnight are copartners doing business under the firm name and style of T. H. McKnight & Sons, a partnership, with their office and principal place of business located at 405 McCall Building, Memphis 2, Tennessee and as such and individually are named as respondents herein.

Respondent Deming & Gould Company is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 401 Harris Avenue, Bellingham, Washington.

Respondent George R. Bennett Company, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 434 Delaware Avenue, Buffalo 2, New York.

Respondent Wilbur R. Orr is a sole proprietor doing business under the firm name and style of W. R. Orr and Company, with his office and principal place of business located at 106 North Vermilion Street, Danville, Illinois.

T. F. Robbins, Jr. and L. D. Greenwood are copartners doing business under the firm name and style of Robbins-Greenwood Company, a partnership, with their office and principal place of business located at 7502 Katy Road, Houston 24, Texas, and as such and individually are named as respondents herein.

Respondent Eldridge Brokerage Company is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its office and principal place of business located at 1513 W.O.W. Building, 14th and Farnam Streets, Omaha 2, Nebraska.

Respondent The John G. Paton Co., Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 630 5th Avenue, New York 20, New York.

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Respondent Rodway Sales Corporation is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 99 Hudson Street, New York 13, New York.

J. P. Wier and J. Neville Wier are copartners doing business under the firm name and style of J. P. Wier Brokerage Company, a partnership, with their principal place of business located at 2301 First Avenue North, Birmingham, Alabama, and as such and individually are named as respondents herein.

Respondent Clarence A. Klag is a sole proprietor doing business under the firm name and style of Clarence A. Klag Company, with his office and principal place of business located at 4 Huron Street, Toledo 4, Ohio.

Respondent Kierce & Dillworth, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 1448 Wabash Avenue, Detroit 16, Michigan.

The entire membership of respondent NFBA consists of approximately 1750 individuals, partnerships and corporations and constitutes a class so numerous as to make it impracticable to specifically name them all as respondents herein. The individuals, partnerships, and corporations hereinbefore specifically named as respondents in various capacities in Paragraph 2 are fairly representative of the class composed of all the members of respondent NFBA and are herewith and hereby made respondents as representatives of a class composed of all NFBA members. Those members of respondent NFBA, as represented by the respondents hereinbefore specifically named in Paragraph 2, are hereby made respondents as though specifically named herein and, together with the specifically named members of respondent NFBA, are sometimes hereinafter referred to as respondent NFBA members.

PAR. 3. In the course and conduct of their respective businesses various respondent NFBA members, acting for and on behalf of their respective principals, secure orders for food and grocery products from buyers, many of which are located in States of the United States other than the States in which the offices of such respondent NFBA members are located, and in the District of Columbia.

Such respondent NFBA members transmit such orders to their respective principals, many of which are located in States of the United States other than the States in which the offices of such respondent NFBA members are located, and in the District of Columbia.

Pursuant to such orders, aforesaid principals, acting as sellers, transport, or cause to be transported, food and grocery products to

aforesaid buyers, many of which are located in States of the United States other than the State of origin of such shipments, and in the District of Columbia.

Such respondent NFBA members are and were, during the period covered by this complaint, engaged in commerce, as "commerce" is defined by the Federal Trade Commission Act, between and among the several States of the United States and in the District of Columbia.

PAR. 4. One or more of respondent NFBA members are located in each of the States of the United States and in the District of Columbia.

The total membership of respondent NFBA consists of more than forty percent (40%) of all food brokers located in the United States.

The total membership of respondent NFBA consists of more than seventy-five percent (75%) of all food brokers located in the United States whose business does not include buying and selling for their own account.

Respondents possess the capacity, ability and means to lessen, restrain and restrict actual and potential competition between and among themselves and others and in fact have lessened, restrained and restricted actual and potential competition in the manner and to the extent hereinafter described.

PAR. 5. Each of respondent NFBA members is and was in competition with one or more other respondent NFBA members in the acquisition and retention of the business of principals who sell food and grocery products in commerce between and among the several States of the United States and in the District of Columbia except to the extent that actual and potential competition has been hindered, lessened, restricted, restrained and forestalled by the unfair methods and practices hereinafter set forth.

PAR. 6. Respondent NFBA, respondent Watson Rogers, and the respondent members of the NFBA's Executive Committee and Advisory Committee, who are more particularly defined and described in Paragraph 2 herein, participated in, aided, abetted, furthered and cooperated with the other respondents in establishing and carrying out the understandings, agreements, combinations and planned common course of action hereinafter set forth.

PAR. 7. Respondent NFBA members, acting under the auspices of respondent NFBA, its officers, Executive Committee and Advisory Committee, and, in some instances, acting between and among themselves, since about 1943 and continuing to the present, have agreed and combined among themselves and with others and have united in, acquiesced in and pursued a planned common course of action to adopt,

carry out and maintain in commerce, as "commerce" is defined in the Federal Trade Commission Act, between and among the several States of the United States and in the District of Columbia, certain restricting, restraining and unfair policies and practices and unfair methods of competition which are more particularly described as follows:

1. Prohibiting, forbidding and refraining from the solicitation of the representation, as food brokers, of sellers of food and grocery products when such sellers were already represented by one or more respondent NFBA members.

2. Adopting a policy and practice whereby respondent NFBA members who solicited such representation of aforesaid sellers were disciplined, reprimanded or suspended from membership in respondent NFBA.

3. Adopting a policy and practice whereby applicants for membership in respondent NFBA were refused membership for the reason that such applicants solicited such representation of aforesaid sellers.

PAR. 8. The agreements, understandings, combination and planned common course of action between and among the respondents, and the acts and practices done in furtherance thereof and in pursuance thereto, as hereinbefore alleged, have a dangerous tendency unduly to hinder and restrain competition between and among respondent NFBA members and between such members and other food brokers with respect to the representation of sellers of food and grocery products in commerce and with respect to the sale and distribution of food and grocery products in commerce, as "commerce" is defined by the Federal Trade Commission Act. Such agreements, understandings, combination and planned common course of action and such acts and practices, all and singly, are to the prejudice and injury of the public and constitute unfair acts and practices and unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 13, 1955, issued and subsequently served its complaint on respondents herein who are located and in business as follows:

Respondent National Food Brokers Association is a voluntary, unincorporated association, with its office and principal place of business located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent Watson Rogers is now and has been since 1946 President of respondent National Food Brokers Association. His office and principal place of business, as President of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent Truman F. Graves is now and was during the year 1955 National Chairman and Chairman of the Executive Committee of respondent National Food Brokers Association. His office and principal place of business, as National Chairman and Chairman of the Executive Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent Walter H. Burns, Sr., is now and was during the year 1955, 1st Vice-Chairman and a member of the Executive Committee of respondent National Food Brokers Association. His office and principal place of business, as 1st Vice-Chairman and a member of the Executive Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent George E. Dillworth is now and was during the year 1955, 2nd Vice-Chairman and a member of the Executive Committee of respondent National Food Brokers Association. His office and principal place of business, as 2nd Vice-Chairman and a member of the Executive Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent W. Sloan McCrea is now and was during the year 1955, the Member at Large of the Executive Committee of respondent National Food Brokers Association. His office and principal place of business, as the Member at Large of the Executive Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent Willis Johnson, Jr., is now and was during the year 1955, a member of the Executive Committee of respondent National Food Brokers Association. His office and principal place of business, as a member of the Executive Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent E. Norton Reusswig is now and was during the year 1955, a member of the Executive Committee of respondent National Food Brokers Association. His office and principal place of business, as a member of the Executive Committee of respondent National Food

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Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent Clarence Wendt is now and was during the year 1955, a member of the Executive Committee of respondent National Food Brokers Association. His office and principal place of business, as a member of the Executive Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent Roy C. Ossman is now and was during the year 1955, a member of the Advisory Committee of respondent National Food Brokers Association. His office and principal place of business, as a member of the Advisory Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent Ed. W. Jones is now and was during the year 1955, a member of the Advisory Committee of respondent National Food Brokers Association. His office and principal place of business, as a member of the Advisory Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent Ralph D. Davies is now and was during the year 1955, a member of the Advisory Committee of respondent National Food Brokers Association. His office and principal place of business, as a member of the Advisory Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent Jack L. Gentry is now and was during the year 1955, a member of the Advisory Committee of respondent National Food Brokers Association. His office and principal place of business, as a member of the Advisory Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent John O. Crawford is now and was during the year 1955, a member of the Advisory Committee of respondent National Food Brokers Association. His office and principal place of business, as a member of the Advisory Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent H. Wayne Clarke is now and was during the year 1955, a member of the Advisory Committee of respondent National Food Brokers Association. His office and principal place of business, as a member of the Advisory Committee of respondent National Food

Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent A. J. Campbell is now and was during the year 1955, a member of the Advisory Committee of respondent National Food Brokers Association. His office and principal place of business, as a member of the Advisory Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent Harry L. Wagner is now and was during the year 1955, a member of the Advisory Committee of respondent National Food Brokers Association. His office and principal place of business, as a member of the Advisory Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent James J. Reilley is now and was during the year 1955, a member of the Advisory Committee of respondent National Food Brokers Association. His office and principal place of business, as a member of the Advisory Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent T. H. McKnight, Sr., is now and was during the year 1955, a member of the Advisory Committee of respondent National Food Brokers Association. His office and principal place of business, as a member of the Advisory Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent Howard L. Scott is now and was during the year 1955, a member of the Advisory Committee of respondent National Food Brokers Association. His office and principal place of business, as a member of the Advisory Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent George R. Bennett is now and was during the year 1955, a member of the Advisory Committee of respondent National Food Brokers Association. His office and principal place of business, as a member of the Advisory Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent Wilbur R. Orr is now and was during the year 1955, a member of the Advisory Committee of respondent National Food Brokers Association. His office and principal place of business, as a member of the Advisory Committee of respondent National Food

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Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent Walter H. Burns Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at Penn Avenue and Dahlem Street, in the City of Pittsburgh, State of Pennsylvania.

Respondent Earl V. Wilson Company is a corporation existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 1220 S. Miami Avenue, in the City of Miami, State of Florida.

Respondent The Paul E. Kroehle Co. is a corporation existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 1468-70 W. 9th Street, in the City of Cleveland, State of Ohio.

Respondent Meinrath Brokerage Co. is a corporation existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 20 W. 9th Street Building, in the City of Kansas City, State of Missouri.

Respondent Ralph D. Davies, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 407 Provident Bank Building, in the City of Cincinnati, State of Ohio.

Respondent Peterson Sales, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 615 Oakland Avenue, in the City of Birmingham, State of Michigan.

Respondent Carter Wagner Brokerage Company is a corporation existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 406 Market Street, in the City of St. Louis, State of Missouri.

Respondent Deming & Gould Company is a corporation existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 401 Harris Avenue, in the City of Bellingham, State of Washington.

Respondent George R. Bennett Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 434 Delaware Avenue, in the City of Buffalo, State of New York.

Respondent Eldridge Brokerage Company is a corporation existing and doing business under and by virtue of the laws of the State of Nebraska, with its office and principal place of business located at 1513

W.O.W. Building, 14th and Farnum Streets, in the City of Omaha, State of Nebraska.

Respondent The John G. Paton Co., Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 630 - 5th Avenue, in the City of New York, State of New York.

Respondent Rodway Sales Corporation is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 99 Hudson Street, in the City of New York, State of New York.

Respondent Kierce & Dillworth, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 1448 Wabash Avenue, in the City of Detroit, State of Michigan.

Respondents Truman F. Graves and Winston W. Chambers are copartners doing business under the firm name and style of Graves-Chambers Co., a partnership, with their office and principal place of business located at 3464 East Marginal Way, in the City of Seattle, State of Washington.

Respondents Jean N. Bistline, Roy M. Bistline and Bessie M. Bistline are copartners doing business under the firm name and style of Bistline Brokerage Company, a partnership, with their office and place of business located at 120 W. 13th Avenue, in the City of Denver, State of Colorado.

Respondents Willis Johnson, Jr. and William M. Powell are copartners doing business under the firm name and style of Willis Johnson & Company, a partnership, with their office and principal place of business located at 520 East Markham Street, in the City of Little Rock, State of Arkansas.

Respondents Harold J. Lestrade, E. Norton Reusswig, Sidney Kahn and Herbert Davies are copartners doing business under the firm name and style of Lestrade Brothers, a partnership, with their office and principal place of business located at 105 Hudson Street, in the City of New York, State of New York.

Respondents Ed Allison and Clarence Wendt are copartners doing business under the firm name and style of Allison & Wendt, a partnership, with their office and principal place of business located at 1016 Colcord Building, in the City of Oklahoma City, State of Oklahoma.

Respondents Calvin H. Baker, John O. Crawford and James Bishop are copartners doing business under the firm name and style of Baker-Crawford-Bishop, a partnership, with their office and

principal place of business located at 4814 Loma Vista Avenue, in the City of Los Angeles, State of California.

Respondents H. Wayne Clarke and G. Leaman are copartners doing business under the firm name and style of Walter Leaman Company, a partnership, with their office and principal place of business located at 1631 K Street, N.W., in the City of Washington, District of Columbia.

Respondents T. H. McKnight, Sr., T. H. McKnight, Jr., and J. M. McKnight are copartners doing business under the firm name and style of T. H. McKnight & Sons, a partnership, with their office and principal place of business located at 405 McCall Building, in the City of Memphis, State of Tennessee.

Respondents T. F. Robbins, Jr., and L. D. Greenwood are copartners doing business under the firm name and style of Robbins-Greenwood Company, a partnership, with their office and principal place of business located at 7502 Katy Road, in the City of Houston, State of Texas.

Respondents J. P. Wier and J. Neville Wier are copartners doing business under the firm name and style of J. P. Wier Brokerage Company, a partnership, with their office and principal place of business located at 2301 First Avenue North, in the City of Birmingham, State of Alabama.

Respondent Jack L. Gentry is a sole proprietor doing business under the firm name and style of Jack L. Gentry, with his office and principal place of business located at 150 North Spring Street, in the City of Spartansburg, State of South Carolina.

Respondent A. J. Campbell is a sole proprietor doing business under the firm name and style of A. J. Campbell Company, with his office and principal place of business located at 216 East 7th Street, in the City of Charlotte, State of North Carolina.

Respondent James J. Reilley is a sole proprietor doing business under the firm name and style of James J. Reilley & Associates, with his office and principal place of business located at 905-06 Lafayette Building, in the City of Philadelphia, State of Pennsylvania.

Respondent Wilbur R. Orr is a sole proprietor doing business under the firm name and style of W. R. Orr and Company, with his office and principal place of business located at 106 North Vermilion Street, in the City of Danville, State of Illinois.

Respondent Clarence A. Klag is a sole proprietor doing business under the firm name and style of Clarence A. Klag Company, with his office and principal place of business located at 4 Huron Street, in the City of Toledo, State of Ohio.

On August 8, 1955, there was submitted to the undersigned hearing examiner an agreement between counsel in support of the complaint and respondents and their counsel providing for the entry of a consent order. By the terms thereof respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of such jurisdictional facts had been duly made in accordance with such allegations therein. Respondents expressly waive any further procedural steps before the hearing examiner and the Commission, the making of findings of facts and conclusions of law by either, and all the rights they may have to challenge or contest the validity of the order to cease and desist provided for in such agreement. Such agreement further provides that it disposes of all of this proceeding as to all parties, and the record, on which the initial decision and the decision of the Commission shall be based, shall consist solely of the complaint and the aforesaid agreement; that the latter shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

On the basis of the foregoing, the undersigned hearing examiner concludes that this proceeding is in the public interest; that such agreement is an appropriate disposition of the proceeding and in accordance with the action contemplated and agreed upon, makes the following order:

ORDER

It is ordered, That respondents, National Food Brokers Association, a voluntary, unincorporated association, its officers, Executive Committee, Advisory Committee, agents, employees, representatives, successors, assigns and members; Watson Rogers, individually, as President of respondent association and as representative of the members of respondent association, and his successors in said office; Truman F. Graves, individually, as National Chairman and a member of the Executive Committee of respondent association and as representative of the members of respondent association, and his successors in each of said offices; Walter H. Burns, Sr., individually, as First Vice-Chairman and a member of the Executive Committee of respondent association and as representative of the members of respondent association, and his successors in each of said offices; George E. Dillworth, individually, as Second Vice-Chairman and a member of the Executive Committee of respondent association and as representative of the members of respondent association, and his successors in each of said

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offices; W. Sloan McCrea, individually, as Member at Large of the Executive Committee of respondent association and as representative of the members of respondent association, and his successors in said office; Willis Johnson, Jr., individually, as a member of the Executive Committee of respondent association and as representative of the members of respondent association, and his successors in said office; E. Norton Reusswig, individually, as a member of the Executive Committee of respondent association and as representative of the members of respondent association, and his successors in said office; Clarence Wendt, individually, as a member of the Executive Committee of respondent association and as representative of the members of respondent association, and his successors in said office; Roy C. Ossman, Ed. W. Jones, Ralph D. Davies, Jack L. Gentry, John O. Crawford, H. Wayne Clake, A. J. Campbell, Harry L. Wagner, James J. Reilley, T. H. McKnight, Sr., Howard L. Scott, George R. Bennett and Wilbur R. Orr, individually, as members of the Advisory Committee of respondent association and as representative of the members of respondent association, and their successors on said Advisory Committee; Walter H. Burns Company, Inc., a corporation, Earl V. Wilson Company, a corporation, The Paul E. Kroehle Co., a corporation, Meinrath Brokerage Co., a corporation, Ralph D. Davies, Inc., a corporation, Peterson Sales, Inc., a corporation, Carter Wagner Brokerage Company, a corporation, Deming & Gould Company, a corporation, George R. Bennett Company, Inc., a corporation, Eldridge Brokerage Company, a corporation, The John G. Paton Co., Inc., a corporation, Rodway Sales Corporation, a corporation and Kierce & Dillworth, Inc., a corporation, and their respective officers, agents, representatives and employees, individually, as members of respondent association and as representative of all of the members of respondent association; Truman F. Graves and Winston W. Chambers, copartners doing business under the firm name and style of Graves-Chambers Co., a partnership, each individually, as a member of respondent association and as representative of all the members of respondent association; Jean N. Bistline, Roy M. Bistline and Bessie M. Bistline, copartners doing business under the firm name and style of Bistline Brokerage Company, a partnership, each individually, as a member of respondent association and as representative of all of the members of respondent association; Willis Johnson, Jr., and William M. Powell, copartners doing business under the firm name and style of Willis Johnson & Company, a partnership, each individually, as a member of the respondent association and as representative of all the members of respondent association; Harold J. Lestrade, E. Norton Reusswig, Sidney Kahn and Herbert Davies, copartners doing busi-

ness under the firm name and style of Lestrade Brothers, a partnership, each individually, as a member of respondent association and as representative of all of the members of respondent association; Ed Allison and Clarence Wendt, copartners doing business under the firm name and style of Allison & Wendt, a partnership, each individually, as a member of respondent association and as representative of all of the members of respondent association; Calvin H. Baker, John O. Crawford and James Bishop, copartners doing business under the firm name and style of Baker-Crawford-Bishop, a partnership, each individually, as a member of respondent association and as representative of all of the members of respondent association; H. Wayne Clarke and G. Leaman, copartners doing business under the firm name and style of Walter Leaman Company, a partnership, each individually, as a member of respondent association and as representative of all of the members of respondent association; T. H. McKnight, Sr., T. H. McKnight, Jr., and J. M. McKnight, copartners doing business under the firm name and style of T. H. McKnight & Sons, a partnership, each individually, as a member of respondent association and as representative of all of the members of respondent association; T. F. Robbins, Jr. and L. D. Greenwood, copartners doing business under the firm name and style of Robbins-Greenwood Company, a partnership, each individually, as a member of respondent association and as representative of all of the members of respondent association; and J. P. Wier and J. Neville Wier, copartners doing business under the firm name and style of J. P. Wier Brokerage Company, a partnership, each individually, as a member of respondent association and as representative of all of the members of respondent association; Jack L. Gentry, doing business under the firm name and style of Jack L. Gentry, a sole proprietorship, A. J. Campbell, doing business under the firm name and style of A. J. Campbell Company, a sole proprietorship, James J. Reilley, doing business under the firm name and style of James J. Reilley & Associates, a sole proprietorship, Wilbur R. Orr, doing business under the firm name and style of W. R. Orr and Company, a sole proprietorship and Clarence A. Klag, doing business under the firm name and style of Clarence A. Klag Company, a sole proprietorship, individually, as members of respondent association and as representative of all of the members of respondent association, directly or indirectly, or through any corporate or other device, in or in connection with the representing or soliciting the representation of sellers of food or grocery products, or in or in connection with the carrying on of the business of food brokers, 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 agreement, understanding, combination or planned common course of action between two or more of said respondents, or between any one or more of said respondents and another or other persons, partnerships, or corporations not parties hereto, to do, perform, carry out or engage in, either directly or indirectly, or to attempt to do, perform, carry out or engage in, either directly or indirectly, any of the following acts, practices or methods:

1. Refraining from, abstaining from or refusing to solicit the representation, as food brokers, of a seller of food or grocery products when such seller is already represented by a food broker.

2. Compelling, inducing or coercing food brokers to refrain or abstain from soliciting the representation, as food brokers, of a seller of food or grocery products when such seller is already represented by a food broker.

3. Disciplining, reprimanding, suspending or expelling from membership any member of the National Food Brokers Association because such member solicited the representation, as a food broker, of a seller of food or grocery products when such seller was already represented by a food broker.

4. Prohibiting or forbidding the solicitation of representation, as a food broker, of a seller of food or grocery products when such seller is already represented by a food broker.

5. Refusing to endorse applications for membership, declining to elect candidates to membership, or in any manner denying or refusing membership in the National Food Brokers Association, or any similar organization, to any person, partnership or corporation because such person, partnership or corporation solicited the representation, as a food broker, of a seller of food or grocery products when such seller was already represented by a food broker.

6. Engaging in any act or practice, the purpose or effect of which is, directly or indirectly, to further or accomplish any understanding, agreement or combination prohibited herein.

7. Effectuating or attempting to effectuate any act, practice, policy or method, prohibited by any provision or part of this order, through respondent National Food Brokers Association or any other instrumentality, agent, medium or representative.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 7th day of

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October, 1955, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents herein shall, within sixty (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 the order to cease and desist.

Commissioner Mason concurs on the basis of his own opinion that the order herein imposes no individual civil liability upon any person who, even though a member of the class sued, neither was served with the complaint nor consented to the order.

IN THE MATTER OF
UNION CIRCULATION COMPANY, INC. ET AL.

Docket 5978. Order and opinion, Oct. 10, 1955

Order denying respondents' motion requesting clarification of order prohibiting no-switching agreements among magazine subscription agencies.

Before *Mr. William L. Pack*, hearing examiner.

Mr. Lynn C. Paulson and *Mr. T. Harold Scott* for the Commission.

Mr. Benjamin Kirschstein and *Mr. Gilbert H. Weil*, of New York City, for Union Circulation Co., Inc., and along with—

Mr. Mortimer M. Lerner, of New York City, for National Circulation Co., Inc. and Periodical Sales Co., Inc.;

Mr. William N. Kenefick, of Michigan City, Ind., and *Mr. F. Kenneth Dempsey*, of South Bend, Ind., for Publishers Continental Sales Corp.;

Mr. A. Walter Socolow, of New York City, for Leo E. Light and Roy C. Hodge.

ORDER DENYING RESPONDENTS' MOTION FOR CLARIFICATION OF ORDER
TO CEASE AND DESIST

This matter having come on to be heard by the Commission upon respondents' motion filed on May 27, 1955, requesting clarification of the order to cease and desist issued herein on January 25, 1955¹ or, in the alternative, that the case be remanded to the hearing examiner for the purpose of redrafting the order, and answer of counsel supporting the complaint in opposition thereto; and

The Commission having determined, for the reasons appearing in the accompanying opinion of the Commission, that the motion and request for oral argument thereon should be denied:

It is ordered, That respondents' said motion and request for oral argument thereon be, and they hereby are, denied.

OPINION OF THE COMMISSION

By GWYNNE, Chairman:

Respondents' motion requests clarification of the cease and desist order entered herein on January 25, 1955 so as to render it clear that the order is not intended to refer to such "parties" as have been engaging in false, fraudulent, deceptive or otherwise unlawful acts,

¹ Order to cease and desist, dated Jan. 25, 1955, is reported in 51 F. T. C. 647.