

IN THE MATTER OF  
PUGET SOUND SALMON CANNERS, INC., ET AL.

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

*Docket 6376. Complaint, June 28, 1955—Decision, Oct. 8, 1956*

Order requiring a fishing vessel owners' association and a fishermen's union in the Puget Sound salmon fishing area and the members of both (the respondents remaining after acceptance of a consent order by 13 canner respondents and dismissal of the complaint as to a fourteenth canner and the cannery's trade association<sup>1</sup>) to cease entering into and maintaining an unlawful price-fixing combination among themselves and with members of the cannery's association; fixing and adhering to minimum prices at which raw or fresh salmon was to be purchased or sold; and preventing boats leaving for the fishing grounds and crews moving vessels from home ports for the purpose of maintaining any price agreement.

*Mr. Lewis F. Depro, Mr. Fletcher G. Cohn and Mr. John J. McNally* for the Commission.

*Mr. Herald A. O'Neill*, of Seattle, Wash., for Puget Sound Salmon Cannery, Inc. and Anacortes Canning Co.

*Mr. John F. Evich*, of Seattle, Wash., for Purse Seine Vessel Owners Ass'n.

*Walther, Oseran, Warner & Keefe*, of Seattle, Wash., for Local No. 3, Fishermen & Allied Workers Division, International Longshoremen & Warehousemen's Union.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

1. The complaint in this proceeding charges a price fixing combination in the salmon fishing industry in the Puget Sound area. The respondents are Puget Sound Salmon Cannery, Inc., a trade association, and fourteen of its members, all of whom are or have been engaged in processing, canning and selling salmon caught in the Puget Sound area; Purse Seine Vessel Owners Association and its members, all of whom are owners or captains (skippers) of boats engaged in fishing for salmon in that area; and Local No. 3, Fishermen & Allied Workers Division, International Longshoremen & Warehousemen's Union, a labor union, whose members make up the crews of such boats.

2. (a) Respondent Puget Sound Salmon Cannery, Inc. (frequently referred to hereinafter as the "Cannery Association") is a membership corporation organized and existing under the laws of the State

<sup>1</sup> 52 F.T.C. 1251.

of Washington, with its principal office and place of business at 304 Spring Street, Seattle, Washington. The fourteen members of this respondent are frequently referred to hereinafter as the "Canner respondents" or as the "Canners."

(b) Respondent Purse Seine Vessel Owners Association (frequently referred to hereinafter as the "Vessel Owners Association") is a membership corporation organized and existing under the laws of the State of Washington, with its principal office and place of business at 5301 North Ruby Street, Tacoma, Washington.

(c) Respondent Local No. 3, Fishermen & Allied Workers Division, International Longshoremen & Warehousemen's Union (frequently referred to hereinafter as the "Union") is an unincorporated association, with its principal office and place of business at 84 Union Street, Seattle, Washington.

3. An agreement for a consent order disposing of the proceeding as to thirteen of the fourteen Canner respondents has heretofore been entered into by such respondents and counsel supporting the complaint, and an initial decision as to such respondents has already been issued by the hearing examiner. The remaining Canner respondent, Jay F. Carroll, doing business as Anacortes Canning Company, sold his business prior to the issuance of the complaint and is no longer engaged in the canning business. In the circumstances, it is concluded that no useful purpose would be served by retaining this respondent in the proceeding and the complaint is being dismissed as to him.

4. This leaves as respondents in the proceeding the Canners association, the Vessel Owners Association and the Union. As to these respondents, hearings have been held at which evidence in support of the complaint was introduced, no evidence being offered by respondents except certain brief testimony on behalf of the Canners association. Proposed findings and conclusions have been submitted by some of the parties (the others electing not to do so), and the case is now before the hearing examiner for final consideration.

5. The Puget Sound salmon fishing area extends from the Canadian border and Cape Flattery some 150 miles south to Seattle and Tacoma, Washington. The width of the area varies widely, the average width being some 40 miles. The fishing for and canning of salmon is one of the most important business enterprises in that section of the United States. In 1954, approximately 400,000 cases (each containing 48 1-pound cans) of salmon caught in that area were packed and canned, the wholesale value aggregating some \$12,000,000.00. Practically all of the salmon caught in

the area are canned by the Cannery involved in the present proceeding, all of whom have their places of business in the State of Washington. Very little, not over 5 percent, of the canned salmon remains in that State, practically all of it being sold and shipped by the Cannery to purchasers in other states of the United States.

6. "Purse Seine" fishing vessels are so designated because the type of seine used by them operates somewhat like a purse. Of all salmon caught in the Puget Sound area approximately 75 percent are caught by Purse Seine vessels, and some 60 percent are caught by vessels whose owners or skippers are members of respondent Vessel Owners Association. The membership of the association comprises some 150 owners or skippers of Purse Seine vessels. A new Purse Seine vessel costs approximately \$60,000.00 and its gear (seine and other fishing equipment) an additional \$7,000.00 to \$10,000.00. Such a vessel will ordinarily carry a crew of eight or nine men. Approximately 75 percent of the crew members on vessels whose owners or skippers belong to the Vessel Owners Association are members of respondent Union.

7. The salmon fishing season in the Puget Sound area is regulated by the International Sockeye Commission. There are, in fact, two seasons—the summer season which usually opens about July 1 and extends through September, and the fall season which usually opens October 5 and closes November 30. The salmon available during the two seasons are of different types.

8. An adequate source of supply of raw salmon is vital to the Cannery, and each spring each Canner undertakes to assure itself as best it can that a sufficient number of fishing vessels will sell their fish to it. The owners and skippers of the fishing vessels likewise wish an understanding with one or more Cannery so that they will have no difficulty in disposing of their catch. While there seldom is any written or binding contract between the Cannery and the skippers, it is quite common for a Canner and a skipper to have a mutual understanding that during a certain season the skipper will sell to that Canner and that the Canner in turn will purchase all salmon caught by the skipper. Between some Cannery and skippers such an arrangement has been in effect for years and is continued from season to season by mutual understanding.

9. In order for a Canner to be able to compete effectively for an adequate supply of fish, it is indispensable that the Canner furnish adequate and efficient tender service. Tenders are boats operated by the Canner which go to the fishing grounds every day and pick up the fish caught by the fishing vessels. If the tender of a particular Canner is not at the fishing grounds when the skipper is

ready to unload his fish he frequently will dispose of his catch to the tender of any other Canner which may be convenient. All fish picked up by a tender are weighed and counted and the skipper of the fishing vessel is given a receipt or "fish ticket" evidencing the transaction. This fish ticket is on a form prescribed by the State of Washington and is always executed in quadruplicate—one copy being retained by the tender for delivery to the Canner; another going to the skipper of the fishing boat; a third to the State of Washington; and a fourth to the International Sockeye Commission. It is on the basis of these tickets that settlement is made between the Canner and the skipper at the close of the season.

10. To further assure themselves of an adequate supply of fish, the Cannery frequently have boats of their own which they charter to skippers. Sometimes they also lend money to individual owners or skippers, taking a mortgage on the boat as security. While such ownership or lending of money is no guarantee that the Canner will receive the catch of the boat, there is an implied understanding that in such circumstances the skipper will sell to the Canner, or at least give him the preference. Only in very rare instances does the Canner own the gear on the boat; almost invariably the gear is the property of the skipper.

11. Another practice prevalent among the Cannery is that of giving bonuses or making postseason payments to the skippers of boats supplying the Canner with fish. These payments are in addition to the regular settlements made with the skippers covering fish purchased, and the payments appear to have no relationship to the prices paid for the fish. Among the factors taken into consideration by the Canner in determining whether an additional payment will be made and, if so, the amount are the results, profit-wise, of the season's operations to the Canner, the value to him of the skipper's production of fish, and the assistance and cooperation of the skipper, as, for example, whether the skipper has been instrumental in getting other skippers to sell to the Canner. The purpose of the bonus or additional payment is to retain the goodwill of the skipper and to encourage him to continue to sell his fish to the Canner and assist the Canner in procuring fish from other vessels. These postseason payments go to the skipper exclusively; they do not form a part of the regular settlement in which the members of the skipper's crew share.

12. The actual fishing operations of a Purse Seine vessel are always under the control and supervision of the skipper. He employs his own crew and decides when and where the boat will fish, the Canner having nothing to do with such matters. Any withholding

of income tax or social security payments is done by the skipper, and any liability insurance is arranged and paid for by him. While during the course of the fishing season the Canner may make advances to the crew members, such advances are always upon written authorization of the skipper and are deducted from the final settlement made by the Canner with the skipper. Nor is the skipper's control of the fishing operations affected by the fact that the Canner may own or hold a mortgage on the boat, nor by the making of postseason payments to the skipper.

13. The Government's case as to price fixing rests essentially upon two written agreements. First, an agreement entered into by the boat owners or skippers and the Union, known as the "Working Agreement," and second, an agreement entered into by the Cannery and the Union, known as the "Salmon Agreement" or "Price Agreement." While the Working Agreement is negotiated on behalf of the boat owners and skippers by the Vessel Owners Association, a copy is executed by each owner or skipper as well as by the Union. Pertinent portions of the Working Agreement (negotiated in 1950 and still in effect) are:

2. The shares for salmon purse seining for all fish caught and delivered shall be as follows:

A. Share for boat seine and gear after deduction of gross stock expenses \* \* \*:

(1) For vessels having a crew of nine (9) men, including skipper, or less, 33⅓%.

(2) For vessel having a crew of ten (10) men, including skipper, 30.7%.

B. The remaining portion shall be divided equally among the crew, including the Captain.

\* \* \* \* \*

6. No contract will be entered into by the owner with any cannery or reduction plant regarding prices or sale of fish or any other matters affecting the working conditions of the crew or their remuneration inconsistent with this Agreement, unless said contract is approved by the Union and to which said contract the Union or its authorized agent becomes a contracting party in interest.

\* \* \* \* \*

16 A. In the event that any Company or companies shall terminate the price agreement by the submission of 48-hour notice to the Union, then the Union may call special emergency mass meeting of the membership at the termination of said 48-hour notice. The Captain shall bring the vessel to port and release the entire crew in sufficient time for the members to attend said meeting.

B. There shall be no work on a seine or gear by the crew until twenty (20) days prior to the date of embarkation nor until the Working Agreement has been signed except with specific permission of the Union. No boat shall be allowed to leave for the fishing grounds nor shall any crew move any vessel from the home port of the vessel until the Price Agreement has been signed. Any vessel violating this section shall be declared unfair. (Com. Ex. 1)

14. The Salmon Agreement is the "Price Agreement" referred to in the last two sections of the Working Agreement quoted above. The Salmon Agreement fixes the minimum prices to be paid by Cannerys for the various types of salmon. While on its face the agreement is between only one Cannery and the Union, actually all Cannerys execute identical agreements, or if agreements are not actually executed by all of the Cannerys, a Price Agreement executed by any one Cannery is recognized by the Cannerys as binding upon all. In practical effect, once any Cannery has signed the agreement, the minimum prices to be paid by all Cannerys for that season are fixed.

15. There is close relationship between the two agreements. This is so because, as seen above, the Working Agreement, Section 16 B., stipulates that "No boat shall be allowed to leave for the fishing grounds nor shall any crew move any vessel from the home port of the vessel until the Price Agreement has been signed. Any vessel violating this section shall be declared unfair." This provision is rigidly enforced. Vessels and crew members failing to observe it are publicly denounced by the Union as "Scabs," and picket lines are thrown around the plant of any Cannery purchasing fish from such a vessel. The cannery workers employed within the plant refuse to cross the picket lines. These cannery workers, like the fishermen, are members of the Union, and so are the cannery employees who work on the tenders.

16. An unusual feature of the agreements is that although the Vessel Owners Association members (boat owners and skippers) are bound by the Price Agreement, and although the settlements covering fish purchased are made with the members, they have nothing whatever to do with determining the prices. The prices are fixed by the Union and the Cannerys. The vessel owners have at times sought to participate in the Price Agreement negotiations, but have been prohibited by the Union from doing so. (As used in the Vessel Owners Association, the word "owner" means an individual owner or a skipper; a cannery, even though it may own a boat, is not eligible for membership.)

17. In addition to the Price Agreement executed at or before the opening of the summer fishing season, a Supplemental Price Agreement is executed to cover the fall season. This is done because of the differences in the varieties of the salmon caught during the two seasons. This Supplemental Price Agreement operates in exactly the same manner as the agreement covering the summer season.

18. The principal defense urged by the Union is that the crew members are in fact employees of the Cannerys, and that the agree-

ments constitute nothing more than agreements between employer and employees as to wages; that the individual owners and skippers of the boats are actually agents of the Canners. This position is untenable in the face of the record. Not only is all of the testimony on the point to the contrary, but in both the Working Agreement and the Price Agreement the Union expressly recognizes that the employer-employee relationship is between the skippers and the crew members.

19. For a number of years immediately preceding 1947, respondent Cannery association, acting on behalf of its members, negotiated the Price Agreements with the Union. During that year, however, the association became concerned as to the legality of such agreements and took the matter up with the Antitrust Division of the United States Department of Justice. Failing to obtain a "Clearance" or favorable opinion from the Department, the association discontinued negotiating the agreements, and since that time (1947) the agreements have been negotiated and executed by the Cannery themselves. While the association has on a few occasions during the last four years supplied its members with information and advice in connection with the agreements, principally with respect to certain pending litigation between the Vessel Owners Association and the Union, such actions fall short of making the Cannery association a party to the agreements. The association having in good faith and some eight years prior to the issuance of the complaint disassociated itself from the agreements, it would appear that due recognition should be given such action and the complaint dismissed as to this respondent.

20. As to the remaining respondents, the Vessel Owners Association and the Union, and their respective members, it is clear that they have entered into and are still maintaining an unlawful price fixing combination among themselves and with the members of the Cannery association. And such combination unquestionably has the effect of substantially restraining competition in the Puget Sound salmon fishing industry. There is competition among the members of the Vessel Owners Association and among the members of the Union in fishing for salmon, and likewise there is competition among the Cannery in seeking to obtain an adequate supply of salmon. Also, there is a measure of competition as to prices above the minimum prices set forth in the Salmon Agreements. But there is no competition whatever insofar as the minimum prices are concerned. These are fixed by the agreements and adhered to by all parties—Cannery, Vessel Owners and Union members. In consequence there necessarily is a substantial tendency toward ri-

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gidity in prices for salmon produced in the Puget Sound area, and toward enhancing the prices which must be paid by the consuming public for such salmon.

21. The Commission's jurisdiction in the proceeding likewise seems clear. As heretofore pointed out, practically all of the large quantity of salmon processed and canned by the Canner respondents is sold and shipped by them in interstate commerce. And unquestionably this is known to and contemplated by all of the respondents. The catching, initial sale, processing, canning and resale of the salmon all form parts of a regular course or current of trade in the salmon in commerce between the State of Washington and other states of the United States.

22. The proceeding, being directed against a price fixing combination, is in the public interest. The acts and practices of respondents Purse Seine Vessel Owners Association and the Union and their respective members are to the prejudice of the public, and constitute unfair acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

*It is ordered*, That respondents Purse Seine Vessel Owners Association and Local No. 3, Fishermen & Allied Workers Division, International Longshoremen & Warehousemen's Union, their members, officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the purchase or sale, or offering to purchase or sell, in commerce, as "commerce" is defined in the Federal Trade Commission Act, of raw or fresh salmon caught in the fishing area of Puget Sound, do forthwith cease and desist from entering into, continuing, cooperating in or carrying out any planned common course of action, understanding or agreement between any two or more of said respondents, or between any one or more of said respondents and any one or more of the respondents named in any other order to cease and desist issued by the Commission in this proceeding, or between any one or more of the respondents named herein and others not parties to this proceeding, to do any of the following things:

1. Entering into or carrying out, or attempting to enter into or carry out, any "Working Agreement" or "Salmon Agreement," as defined and explained in the complaint herein, or any other agreement or understanding having as its purpose or effect the fixing or maintaining of any price or prices at which raw or fresh salmon is to be purchased or sold.

2. Fixing, establishing, adopting, maintaining or adhering to, or attempting to fix, establish, adopt, maintain or adhere to, by any

means or method, any price or prices at which raw or fresh salmon is to be purchased or sold.

3. Preventing, prohibiting or interfering with, or attempting to prevent, prohibit or interfere with, the operation of any fishing vessel, with the purpose or effect of establishing or maintaining any agreement as to prices to be paid or received for raw or fresh salmon.

*Provided, however,* That nothing in this order shall prevent any member of respondent Purse Seine Vessel Owners Association, acting individually, from negotiating and agreeing with canners concerning prices at which salmon caught by the fishing vessel or vessels of such member is to be sold to such canners.

*Provided further,* That nothing herein contained shall prevent collective bargaining between respondent Union and any employer with respect to wages, hours and working conditions of members of said Union.

*Provided further,* That nothing herein contained shall prevent any association of bona fide salmon fishermen, acting pursuant to or in accordance with the provisions of the Fisheries Cooperative Marketing Act (15 U.S.C.A., Sections 521 and 522), from performing any of the acts and practices permitted by said Act.

*It is further ordered,* That the complaint be, and it hereby is, dismissed as to respondents Pudget Sound Salmon Canners, Inc., and Jay F. Carroll, doing business as Anacortes Canning Company.

#### OPINION OF THE COMMISSION

By SECRET, Commissioner:

In this proceeding the complaint charges a price fixing combination in the salmon fishing industry in the Puget Sound area in the Pacific Northwest. The respondents are Puget Sound Salmon Canners, Inc., a trade association, and fourteen of its members (the members being referred to hereafter as respondent Canners or Canners), all of whom are or have been engaged in processing, canning and selling salmon caught in the Puget Sound area; Purse Seine Vessel Owners Association and its members, all of whom are owners or captains (skippers) of boats engaged in fishing for salmon in said area; and Local No. 3, Fishermen & Allied Workers Division, International Longshoremen & Warehousemen's Union (referred to hereafter as respondent Union), a labor union, and its members, which members make up the crews of such boats.

The hearing examiner's initial decision filed March 19, 1956 (which became the decision of the Commission May 8, 1956, pursuant to Section 3.21 of the Commission's Rules of Practice) has disposed

of this proceeding as to thirteen of the fourteen Canner respondents under an agreement for consent order. The hearing examiner subsequently filed his initial decision on June 22, 1956, disposing of the proceeding as to the remaining respondents. He ordered the complaint dismissed as to respondents, Puget Sound Salmon Cannery, Inc., and Jay F. Carroll, doing business as Anacortes Canning Company, for the reasons appearing in the decision. As to respondent Union and respondent Purse Seine Vessel Owners Association and their respective members, he found that the allegations in the complaint had been sustained and included as against these respondents an order to cease and desist.

Respondent Union has appealed from the latter initial decision. The appeal raises only one question: Did the hearing examiner err by denying said respondent's application for the issuance of certain subpoenas duces tecum directed to ten of respondent Cannerys?

On this appeal there is no dispute about the facts as shown by the evidence received into the record. As the hearing examiner found, the charges of the complaint rest essentially upon two written agreements. The first is an identical agreement entered into by each boat owner or skipper with respondent Union, known as the "Working Agreement," and the second is an identical agreement entered into by (or recognized as binding upon) each Canner and the respondent Union, known as the "Salmon Agreement" or "Price Agreement." These agreements are closely interrelated. The Salmon Agreement fixes the minimum prices to be paid by Cannerys for the various types of salmon while the Working Agreement enforces conformity to the Salmon Agreement by providing, among other things, that "No boat shall be allowed to leave for the fishing grounds nor shall any crew move any vessel from the home port of the vessel until the Price Agreement has been signed. Any vessel violating this section shall be declared unfair." The hearing examiner found that in connection with these agreements, the respondent, Purse Seine Vessel Owners Association, and the respondent Union and their respective members have entered into, and are still maintaining, an unlawful price fixing combination among themselves and with members of Puget Sound Salmon Cannery, Inc., in violation of the Federal Trade Commission Act.

The subpoenas duces tecum requested by respondent Union during this proceeding would have required ten of respondent Cannerys to produce records covering a six-year period indicating the amount of salmon purchased from Purse Seine Vessels operating in the Puget Sound area and records showing post-season adjustments, bonuses, rebates, any pre-season agreements, charters, or the like, made be-

tween shippers and/or vessel owners of such vessels delivering salmon to said Cannery. The hearing examiner in a carefully reasoned ruling denied the application primarily on the ground that the issuance of the subpoenas would fail to serve any real or useful purpose in the proceeding. This ruling is the subject of the appeal before us.

Respondent Union contends, in effect, that it might have obtained evidence material to its defense had the application for the subpoenas been granted. The grounds for this contention relate to the practice prevalent among the Canneries of giving bonuses or post-season payments to the skippers of vessels supplying the Cannery with fish. Such bonuses are in addition to the regular settlements made with skippers covering fish purchased. The testimony shows that a number of factors are taken into consideration in determining not only whether a bonus will be paid but, if so, the amount. Among these are the results, profit-wise, of the season's operations to the Cannery, the value to him of the skipper's production of fish, and the assistance and cooperation of the skipper. Respondent Union claims, however, that the records sought may show, contrary to such evidence, that the bonuses "have a direct relationship to the prices paid for the fish and in fact are governed entirely by the amount of fish." Allegedly, this would indicate an element of control over the skippers by the Canneries to which they sell their fish and ties in, apparently, with a defense asserted that the legal relationship between the individual Canneries and the fishermen employed on vessels fishing for such Canneries is that of employer and employee. Under this defense, it is argued that the skipper is the agent of the Cannery and the agreements involved in this proceeding are nothing more than agreements between employer and employees as to wages.

The record clearly shows that the skippers of Purse Seine Vessels are independent businessmen. They own their own gear and sometimes their own vessels. They employ their own crews and assume the responsibility for withholding any income tax or social security payments of the crews. They also arrange and pay for any liability insurance. Insofar as the actual fishing operations are concerned, the skippers fish when and where they want to without reference to any Cannery to which they sell fish. Moreover, whether or not a Cannery owns or holds a mortgage on a vessel has no bearing on the skippers' control of the fishing operations. Neither the skippers nor their crews are shown to be employees of individual Canneries. The relationship involved is that of sellers and buyers of fish. *Columbia River Packers Association, Inc. v. Hinton, et al.*, 315 U.S.

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143 (1942); *Hawaiian Tuna Packers, Limited v. International Longshoremen's and Warehousemen's Union (C.I.O.), et al.*, 72 F. Supp. 562 (D.C. Hawaii, 1947); *Local 36 of International Fishermen & Allied Workers of America, et al. v. United States*, 177 F. 2d 320 (C.A. 9, 1949), cert. denied, 339 U.S. 947.

The contention that evidence showing a connection between post-season bonuses and the pounds of fish purchased would be of such weight as to prove, in the face of the record, that the fishermen are in fact employees of individual Cannery appears to be entirely void of any merit. The regular settlements between skipper and Cannery are directly related to the pounds of fish purchased, but this fact has not served to indicate the alleged relationship. Even if the bonuses are likewise related to the pounds of fish purchased, why should the result be any different? Plainly, the evidence sought by respondent Union would have no material bearing on the issues in this proceeding.

Moreover, under all the circumstances, the request is unreasonable in scope. Respondent Union is asking for extensive documentation covering a six-year period and involving data which respondent cannery considers highly confidential without any basis therefor other than mere speculation that the records may contain evidence to support its defense. The hearing examiner properly denied the application for the issuance of subpoenas duces tecum, and, accordingly, the appeal of respondent Union is also denied.

The findings, conclusions, and order contained in the hearing examiner's initial decision filed June 22, 1956, are adopted as the findings, conclusions, and order of the Commission.

Commissioner Mason dissents to the order herein to the extent that it attempts to impose sanctions upon association *members* and union *members* who were not parties respondent.

#### FINAL ORDER

This matter having been heard upon the appeal of respondent, Local No. 3, Fishermen & Allied Workers Division, International Longshoremen & Warehousemen's Union from the hearing examiner's initial decision, and briefs of counsel in support thereof and in opposition thereto, no oral argument having been requested; and

The Commission having rendered its decision denying said respondent's appeal and adopting the initial decision as the decision of the Commission:

*It is ordered*, That respondents, Purse Seine Vessel Owners Association and Local No. 3, Fishermen & Allied Workers Division, In-

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ternational Longshoremen & Warehousemen's Union, and their respective members, 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 contained in the initial decision.

Commissioner Mason dissenting to the order herein to the extent that it attempts to impose sanctions upon association *members* and union *members* who were not parties respondent.

## Decision

IN THE MATTER OF  
HERBERT L. GUNDLACH DOING BUSINESS AS  
CIVILIAN SERVICE BUREAU

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

*Docket 6567. Complaint, June 12, 1956—Decision, Oct. 13, 1956*

Consent order requiring an individual in Greensboro, North Carolina, selling a correspondence course intended to prepare persons for examinations for Civil Service positions, to cease representing falsely that he was connected with the federal Government, that many Civil Service positions were available and that students completing his courses were guaranteed appointment to them, that his school was a corporate entity with various departments, etc.; and to cease using a fictitious name to collect accounts.

*Mr. Frederick McManus* for the Commission.

*Mr. Herbert L. Gundlach*, of Greensboro, N.C., for respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter, issued June 12, 1956, charges respondent with violation of the Federal Trade Commission Act in connection with the sale of a course of study intended to prepare persons for examinations for civil service positions in the United States Government. An agreement has now been entered into by respondent and counsel supporting the complaint which provides, among other things, that respondent admits all of the jurisdictional allegations of the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondent specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; and that the agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint.