

IN THE MATTER OF
STANDARD MOTOR PRODUCTS, INC.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(a) OF
THE CLAYTON ACT

Docket 5721. Complaint, Dec. 20, 1949—Decision, Dec. 27, 1957

Order requiring a seller in Long Island City, N.Y., of automotive replacement parts to jobbers who resold to garages, service stations, fleet owners, and other jobbers, to cease discriminating in price in violation of section 2(a) of the Clayton Act, by means of a retroactive volume rebate plan under which large volume purchasers and members of group buying organizations were granted rebates on their total annual purchases in addition to the customary 2 percent cash discount, with result that they were charged lower prices than their smaller competitors.

Mr. Eldon P. Schrup for the Commission.

Mr. Edward S. St. John, of New York, N.Y., for respondent.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

This proceeding is based upon a complaint charging that the respondent Standard Motor Products, Inc., a corporation, has discriminated in price between different purchasers of its products in violation of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C., Title 15, sec. 13). The price differentials which are charged to be in violation of the Clayton Act arise from respondent's pricing practices, involving the granting of an annual retroactive volume rebate to its customers, and also in the granting of such retroactive volume rebate to group purchasers on the basis of their aggregate purchases instead of upon the individual purchases of the members. The general system of pricing used by the respondent, as developed by the record, and the variations therefrom in the case of group buyers, is not disputed by the respondent, but was instead defended on the basis that the pricing practices of respondent have not resulted in any injury to competition, and that respondent's prices, discounts and allowances were made to meet competition. No attempt was made by respondent to justify its price differentials on the basis of differences in cost of manufacture, sale, or delivery.

This proceeding is now before the undersigned hearing examiner for final consideration on the complaint, answer thereto, testimony and other evidence, and proposed findings as to the facts and conclusions presented by counsel and oral argument thereon. The hearing examiner has given consideration to the proposed findings as to the facts

and conclusions submitted by both parties and the memoranda and brief in support thereof, and all findings of facts and conclusions of law proposed by the parties, respectively, not hereinafter specifically found or concluded, are herewith rejected, and the hearing examiner having considered the record herein and being now fully advised in the premises, makes the following findings as to the facts, conclusions drawn therefrom, and order:

1. Respondent Standard Motor Products, Inc., is a corporation organized under the laws of the State of New York with its principal office and place of business located at 37-18 Northern Boulevard, Long Island City, New York, N.Y.

2. Since 1926, the respondent has been engaged in the manufacture and in the sale and distribution in interstate commerce of automotive replacement parts, consisting of ignition parts and automotive wire and cable and related items, in competition with other concerns who were also engaged in the sale and distribution of similar products in interstate commerce.

3. The market in automotive replacement parts is highly competitive. The amount of business transacted by the respondent in the replacement parts field is substantial. Its sales during the year 1949, exclusive of Hygrade products, was in excess of \$4 million.

4. The respondent, during the time mentioned herein, has sold its replacement parts to jobbers, who were designated by the respondent as distributors, who resold such products to garages, service stations, fleet owners and other jobbers. From time to time respondent issued its Distributor's Price List, which listed the basic prices used by the respondent in the sale and distribution of its various replacement parts. Any discounts, allowances or rebates were off Distributor's Price List. Respondent also from time to time issued suggested resale price lists for use by distributors and dealers in the resale of respondent's products. The net purchase price paid by distributors for respondent's products is the purchase price paid subject to and following all applicable rebates, discounts and allowances. The automotive replacement parts sold and distributed by respondent were all of one grade and quality. Respondent sold such products of like grade and quality to its distributors at varying net prices. Such distributors of respondent were competitively engaged in the resale of respondent's replacement parts in the various territories and places where such distributors carried on their businesses.

5. On October 15, 1947, respondent acquired Hygrade Products Co., Inc., which became a division of the respondent but was operated as a separate unit. The Hygrade Products line consisted of fuel

pumps and parts therefor. The pricing practices followed by the respondent in connection with its Hygrade line was substantially the same as those maintained in its regular Standard line. However, for the purpose of expediting this matter and bringing the litigation to a conclusion, the examiner eliminated from consideration in this proceeding all exhibits and testimony pertaining to the Hygrade line of products.

6. The annual volume rebates provided for in respondent's pricing plan were incorporated in, and made a part of, its Distributors Rebate Contract and Master Distributors Rebate Contract. Since June 19, 1936, and prior thereto, respondent has granted a retroactive volume rebate to its various distributors. The retroactive volume rebates as set out in respondent's contracts with its distributors are as follows:

(a) *Distributors Rebate Contract.* Purchasers operating under this contract by the Standard line of products subject to a retroactive rebate on purchase price based upon the following rebatable purchase volume, plus a cash discount of 2 percent on the value of all invoices if paid on the 10th following the month of date of shipment:

"If the net amount of goods purchased is \$1,800 per year the rebate is 3%
If the net amount of goods purchased is \$2,400 per year the rebate is 5%
If the net amount of goods purchased is \$3,600 per year the rebate is 7%
If the net amount of goods purchased is \$5,000 per year the rebate is 9%
If the net amount of goods purchased is \$6,500 per year the rebate is 11%
If the net amount of goods purchased is \$8,000 per year the rebate is 13%
If the net amount of goods purchased is \$10,000 per year the rebate is 15%"

(b) *Master Distributors Rebate Contract.* Purchasers operating under this contract and its endorsement, buy the Standard line of products subject to a retroactive rebate on purchase price based upon the following rebatable purchase volume:

"Net purchases of \$1,800, rebate is 3% advanced monthly.
Net purchases of \$2,400, rebate is 3% advanced monthly plus 2% at end of year.
Net purchases of \$3,600, rebate is 3% advanced monthly plus 4% at end of year.
Net purchases of \$5,000, rebate is 3% advanced monthly plus 6% at end of year.
Net purchases of \$6,500, rebate is 3% advanced monthly plus 8% at end of year.
Net purchases of \$8,000, rebate is 3% advanced monthly plus 10% at end of year."

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Net purchases of \$10,000, rebate is 3% advanced monthly plus 12% at end of year.

Net purchases of \$25,000, rebate is 3% advanced monthly plus 13% at end of year.

Net purchases of \$50,000, rebate is 3% advanced monthly plus 14% at end of year.

Net purchases of \$75,000, rebate is 3% advanced monthly plus 15% at end of year.

Net purchases of \$100,000, rebate is 3% advanced monthly plus 17% at end of year."

The Master Distributors Rebate Contract, as distinguished from the Distributors Rebate Contract, provides that "The manufacturer will allow the distributor a monthly discount of 5 percent instead of the usual 2 percent. This 5 percent comprises the usual 2 percent cash discount and 3 percent rebate allowed in advance monthly."

7. Under the retroactive rebate plan, purchasers were granted and received rebates on all their individual purchases according to the rebate bracket applicable to their total annual purchases. Any individual purchase price was retroactively determined by the total of all purchases during the year according to the terms of the retroactive rebate plan.

8. The amounts involved in the granting by respondent of the volume rebates were substantial and reflect the importance which was attached to said rebates by the various purchasers. Respondent has 1,500 or more customers located in numerous cities and towns throughout the United States who are variously operating under the afore-described rebate contracts.

9. During the year 1949, respondent sold its products to jobber members of various group buying organizations. Sales were made during 1949 to members of the following group buying organizations:

<i>Name</i>	<i>Address</i>
Mid-South Distributors, Inc.-----	Memphis, Tenn.
Warehouse Distributors, Inc.-----	Atlanta, Ga.
Automotive Parts Distributors, Inc. (now National Parts Warehouse).	Athens, Ga.
Ark-La-Tex Warehouse Distributors, Inc.-----	Marshall, Tex.
Automotive Southwest, Inc.-----	Dallas, Tex.
Southwestern Warehouse Distributors, Inc.-----	Dallas, Tex.
Metropolitan Automotive Wholesalers Co-Operative, Inc.	New York, N.Y.

10. The purchasing procedure in a group buying operation provided for the forwarding of merchandise purchase orders by the

individual jobber member to the seller directly or through the group office. Merchandise so ordered was shipped by the respondent direct to the individual jobber member with billing for same being directed to the group office. Monthly settlements were made between respondent and the group office for the aggregate sum of the purchase orders of all the jobber members so received, and each jobber member also settled monthly with the group office for his own individual purchases so made. The annual volume rebate allowed by the respondent was based upon the aggregate purchases of the group members and was paid to the group office, which in turn distributed such volume rebate to the jobber members in proportion to the amount of such jobber's individual purchases. In some instances respondent permitted the buying group to deduct the retroactive discount on making monthly remittances. For example, Mid-South Distributors, Inc., deducted the 20 percent, plus 2 percent cash discount, from its monthly remittances. The rebates and discounts as shown by the tabulations in evidence were granted and allowed by the respondent to each individual member of the said buying groups on the basis of the total purchases of all the members irrespective of whether or not the amount of such individual member's purchases met with the requirements of any particular bracket of respondent's volume rebate schedules set forth in the respondent's rebate contracts. The group buying organization was in reality a bookkeeping device for the collection of rebates, discounts and allowances received from sellers on purchases made by its jobber members. Such jobber members, in fact, purchased their requirements of respondent's products direct from respondent, and at the same time received a more favorable price or higher rebate based upon the combined purchases of all the members.

11. Respondent's gross billings during 1949 in connection with the Standard line products sales to the above group members were in the total aggregate amount of \$698,124.48, on which respondent allowed cash discounts of \$13,972.50. The rebatable amount on such aggregate purchases was \$642,351.93, on which respondent allowed volume discounts of \$123,710.35, or an average rebate of 19.26 percent to such buyers.

12. Illustrative of the monetary benefits derived by the individual jobber member of such group buying organization, as opposed to those individual purchasers buying without the benefits of such group consolidation of purchases is the following tabulation taken from Commission's exhibit 330, dealing with the transactions between respondent and Mid-South Distributors, Inc.:

AUTOMOTIVE JOBBER "GROUP BUYING" METHOD OF PURCHASING

Manufacturer's published rebate schedule to trade		1	2	3	4	5	6
Net purchases	Rebate	Actual net rebatable purchases each member jobber	Manufacturer's schedule rebate rate applicable	Manufacturer's schedule rebate amount due	Manufacturer's "group" rebate rate	Manufacturer's "group" rebate amount paid	Actual price difference
	Percent		Percent		Percent		
Under \$1,800.....	None	1. \$10,926.64	15	\$1,639.00	20	\$2,185.33	\$546.33
\$1,800-\$2,400.....	3	2. 4,883.52	7	341.85	20	976.70	634.85
\$2,400-\$3,600.....	5	3. 19,813.71	15	2,972.06	20	3,962.72	990.66
\$3,600-\$5,000.....	7	4. 34,902.59	16	5,584.41	20	6,980.50	1,396.09
\$5,000-\$6,500.....	9	5. 2,107.24	3	63.22	20	421.45	358.23
\$6,500-\$8,000.....	11	6. 34,578.28	16	5,532.52	20	6,915.65	1,383.13
\$8,000-\$10,000.....	13	7. 2,432.54	5	121.63	20	486.54	364.91
\$10,000-\$25,000.....	15	8. 263.35	None		20	52.67	52.67
\$25,000-\$50,000.....	16	9. 44,940.96	16	7,190.55	20	8,988.15	1,797.60
\$50,000-\$75,000.....	17	10. 8,312.32	13	1,080.60	20	1,662.47	581.87
\$75,000-\$100,000.....	18	11. 13,933.59	15	2,090.04	20	2,786.70	696.66
\$100,000 and over....	20	12. 4,500.89	7	315.06	20	899.99	584.93
		13. 11,386.24	15	1,707.94	20	2,277.43	569.49
		14. 17,050.24	15	2,557.54	20	3,410.06	852.52
		15. 31,821.79	16	5,091.49	20	6,364.36	1,272.87
		16. 16,638.77	15	2,495.82	20	3,327.75	831.93
		17. 5,803.64	9	522.33	20	1,160.75	638.42
		18. 17,307.94	15	2,596.19	20	3,461.61	865.42
Totals.....		281,604.25		41,902.25		56,320.83	14,418.58

13. In following the pricing practices hereinabove described, respondent has discriminated in price by means of rebates allowed by it in the sale of its various automotive products and related items as between respondent's competing distributors and also between respondent's distributors and competing group buying jobbers, and the effect of such discrimination may be to substantially lessen, injure or prevent competition between respondent's customers receiving the benefit of such discriminations and the customers who do not receive the benefit of such discriminations.

14. The respondent did not grant exclusive territory to any of its customers and has had more than one distributor in various trade areas who were, in fact, in competition with each other and also in competition with group buying jobbers, who sold respondent's replacement parts to dealers and other purchasers in their respective trade areas. Substantial differences in the net purchase prices paid by competing purchasers of respondent's product lines have resulted from the aforesaid pricing practices of respondent. The record contains a number of tabulations prepared from respondent's accounts and records showing details of respondent's sales to jobber purchasers in a number of different trading areas. These tabulations reflect price differences between such purchasers in the same trading area of varying amounts or percentages, with some net purchase price differences amounting to as much as 20 percent.

15. The record, based upon the tabulations in evidence in this proceeding, disclosed substantial differences in the net purchase prices paid by competing purchasers of respondent's products for resale. The substantiality of the amount represented by such price differences with relation to the purchaser's net profit margin is conclusively shown when compared with the competitive effect of the amount represented by the 2 percent cash discount. Distributors of respondent, who testified in this proceeding, stated that they invariably took advantage of the 2 percent cash discount as being essential in the conduct of their respective businesses, and that such discount reduced the cost of acquisition of respondent's products. This 2-percent reduction in cost of acquisition is substantial and may account for a substantial portion of the margin of profit. Several jobbers of respondent testified that the overall net profit of their companies after taxes ran from 2 to 4 percent. By the very nature of the businesses operated by the various jobber customers of respondent, their profit was necessarily based upon an accumulation of small margins of profit on many items. Some of the witnesses handled from 50 to 150 lines, involving an aggregate of thousands of items. Practically all of respondent's jobber customers extend the same cash discount they receive to their customers, however, on a mark-up of acquisition cost, the discount actually given by such customer to its purchaser on resale will be greater than the 2 percent cash discount.

16. The substantiality of the total dollar volume amounts in lost rebates to respondent's nonfavored customers by not being allowed the higher rebate percentages on purchase price granted respondent's favored customers, is well illustrated by the following comparison based on Commission's exhibits 340 and 350D. The substantiality of respondent's price discriminations between its various favored and nonfavored customers becomes most apparent when the dollar amount of the cash discounts, normally taken as a matter of business necessity by these nonfavored customers, is contrasted with the dollar amount in total rebates actually lost to such nonfavored customers because of respondent's following less favorable rebate percentages:

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1949 Standard line sales to customers in certain trading areas, from Commission exhibit Nos. 340 and 350-D

1 Customer and location	2 Member of buying group	3 Gross billing	4 Cash discount	5 Rebate- able amount	6 Rebate		8 Rebate lost	9 Cash discount taken
					Amount	Percent		
Selma, Ala.: Selma Parts Service.....	Automotive Parts.....	\$507.74	\$10.56	\$434.49	\$46.67	10.74		
Auto Parts Co., Charlotte, N.C.:.....	do.....	2,026.31	40.53	1,770.36	53.46	3.02	\$136.67	\$40.53
Southern Bearings & Parts.....	Warehouse Distributors, Inc.....	3,658.01	70.89	3,387.00	677.40	20.00		
Wholesale Auto Parts.....	do.....	41,772.67	835.45	38,377.43	5,822.89	15.17	1,853.63	835.45
Burlington, N.C.: Motor Bearings & Parts Co.....	do.....	1,103.55	23.01	1,120.81	225.96	20.00		
Norton Russ Automotive Co.....	do.....	1,831.76	15.13	1,625.94			325.19	15.13
High Point, N.C.: Southern Bearings & Parts.....	do.....	855.23	16.48	778.91	155.78	20.00		
Collins Auto Supply Co.....	do.....	826.26	16.52	778.61	22.99	2.95	132.75	16.52
Statesville, N.C.: Southern Bearings & Parts.....	do.....	1,109.31	23.12	1,098.57	219.72	20.00		
Auto Parts & Electric Co.....	do.....	10,131.08	202.62	9,614.56	1,373.55	14.29	548.99	202.62
Rockingham, N.C.: Southern Bearings & Parts.....	do.....	1,100.90	21.22	975.66	195.13	20.00		
Smith Auto Parts.....	do.....	2,126.43	42.53	1,997.90	48.82	2.44	350.83	42.53
Winston-Salem, N.C.: Southern Bearings & Parts.....	do.....	1,099.45	21.19	981.76	196.55	20.00		
Motor Parts Co.....	do.....	3,725.80	74.52	3,410.57	231.54	6.79	450.59	74.52
Columbus, Ga.: C&B Parts Service Co.....	Automotive Parts Distributors, Inc.....	19.44	.41	6.24	95	15.22		
Reming Auto Parts Co.....	do.....	2,952.47	59.05	2,740.94	132.36	4.83	284.78	59.05
Salliof Auto Parts.....	do.....	2,314.97	46.30	2,231.17	65.45	2.93	274.21	46.30
Jackson, Miss.: Robinson Brothers.....	Mid-South Distributors, Inc.....	12,113.54	242.27	11,386.24	2,277.43	20.00		
Ryan Supply Co.....	do.....	10,222.33	204.45	9,614.81	1,369.79	14.25	552.85	204.45
Weatherall Auto Supply.....	do.....	3,031.94	61.04	2,897.78	133.57	4.87	433.90	61.04
Meridian, Miss.: Motor Supply Co.....	do.....	8,807.64	176.15	8,312.32	1,602.47	20.00		
Adams Supply Co.....	do.....	5,274.06	105.48	4,953.02	426.17	8.60	425.96	105.48
Charleston, S.C.: H. Steeken & Co.....	Warehouse Distributors, Inc.....	9,103.26	175.47	8,381.04	1,676.21	20.00		
C. D. Franke & Co., Inc.....	do.....	2,408.24	49.36	2,256.18	103.27	4.84	342.04	49.36
Greenville, S.C.: Scurry & Nixon.....	do.....	8,713.80	167.96	8,189.42	1,637.88	20.00		
Kaufman Brothers.....	do.....	8,693.21	173.86	8,326.82	1,631.12	12.38	634.50	173.86
Knoxville, Tenn.: Tenn. Mill & Mine Supply.....	Mid-South Distributors, Inc.....	18,479.72	369.60	17,050.24	3,410.06	20.00		
Service Auto Parts Co.....	do.....	24,154.00	483.08	22,385.46	3,401.58	15.20	1,074.50	483.08

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17. In the course of this proceeding it was the contention of the respondent that no injury to competition existed by reason of respondent's pricing practices because its customers generally followed the suggested resale price lists, issued by the respondent, in the resale to their respective customers. In support of this contention, the respondent introduced testimony of a number of distributors that they had not suffered any injury by reason of differing or higher prices paid by them as compared with prices paid by competitors in their respective trade areas. On cross-examination, these witnesses admitted that their reasons for stating that they had not been competitively injured was due to the fact that their competitors all followed the suggested resale price of the respondent and that there was no price competition in their particular trade areas.

18. The fact that price competition may have been eliminated in some areas because of uniformity of resale price does not eliminate the question of injury to competition. Any saving or advantage in price obtained by one competitor as against another increased his margin of profit, permitted additional services to be extended to customers, the use of additional salesmen, the carrying of larger and more varied stocks, and the establishment of branch houses for expansion of the business. While price competition among customers was more or less nonexistent, except in isolated instances, in the areas where testimony was taken, the possibility of price competition is ever present where lower prices to certain competing customers exist.

19. It was contended by the respondent that the discounts or rebates allowed to the various group purchasing organizations were allowed to the members of such organization to meet the prices of its competitors. The discounts and rebates so allowed were not granted in good faith to meet an equally low price of a competitor, but instead were used as a weapon to obtain new customers at the expense of its seller competitors and not to hold existing customers. For example:

(a) At the time Mid-South Distributors, Inc., was formed, respondent, while selling a majority of the members, was in fact selling more members after the formation of the group than prior thereto, and in 1949, it had 18 members of the Mid-South group who were customers with a gross billing of \$306,433.95.

(b) With reference to Warehouse Distributors, Inc., this group was formed in 1948. At the time of the formation, eight of the members were customers of the respondent. In 1949, respondent was selling 30 of the members, including a number of branch offices.

(c) In the case of Automotive Parts Distributors, Inc., this group was formed in 1947 or 1948. At the time of its formation there

were seven members who were customers of respondent. In 1949, respondent was selling 13 members of this group.

(d) In the case of Southwestern Warehouse Distributors, Inc., this group was formed in 1946 or 1947. There were 15 members who were customers of respondent at the time of the formation of the group. The original membership was 23. In 1949, respondent was selling 21 members of this group.

(e) In the case of Midwest Warehouse Distributors, Inc., there were three members of this group who were customers of respondent at the time of the formation in 1949. This group presently has 20 members, 19 of which are now buying from respondent.

20. The defense of meeting competition in connection with sales to the various group members is without merit. The good faith requirement of section 2(b) of the Clayton Act is not met where a price discrimination, with the required resultant effect, is for aggressive rather than defensive purposes. The allowance of discounts and rebates to members of the various groups based upon the aggregate purchases of all the members was designed to meet competition generally and to obtain the business of all the members of a group and were not allowed to meet an equally low price of a competitor.

21. If, as contended by the respondent, it granted a cumulative annual rebate to members of groups, based upon the aggregate purchases of all the members because its competitors were offering such rebate based upon the aggregate purchases of the members of a group, it could not be considered that such action was in good faith since the respondent well knew that the rebates offered by its competitors as well as the rebates offered by respondent to group buyers were unlawful in that the differences in price accorded group and nongroup purchasers could not be justified by showing differences in the cost of manufacture, sale or delivery since their source is a rebate system, based, not on the quantities or other factors involved in any particular sale, but rather upon the combined dollar amount of all sales to a group.

CONCLUSIONS

1. Respondent's retroactive volume rebate plan has resulted in general widespread and substantial price differences between its customers. Large buyers and members of groups received higher rebates and were benefited by the plan. The competitive opportunities of certain purchasers were injured when they had to pay substantially more for respondent's products than their competitors had to pay.

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2. The contention by respondent that no injury occurred since non-favored customers testified that they were not injured because of higher rebates granted to their competitors because all sold at respondent's suggested resale price, is without merit. This contention is fully disposed of by the importance attached to the 2 percent cash discount, by these same customers and the fact that this cash discount in some instances amounted to the difference between profit and loss. In so testifying as to the absence of injury, these witnesses were attempting, by conclusion, to deny a mathematical fact, *Moog Industries, Inc., v. Federal Trade Commission*, C.C.A. 8, 238 F. 2d 43.

3. Price differentials not justified by a showing of differences in the cost of manufacture, sale or delivery become price discriminations and are prohibited by section 2(a) of the Clayton Act as amended by the Robinson-Patman Act, if they may substantially lessen, injure, destroy or prevent competition. *Moog Industries, Inc., v. Federal Trade Commission*, supra; *Federal Trade Commission v. Morton Salt Co.*, 334 U.S. 37, 44; *Federal Trade Commission v. A. E. Staley Mfg. Co.*, 324 U.S. 746, 751; *Corn Products Refining Co. v. Federal Trade Commission*, 324 U.S. 726.

4. The acts and prices of the respondent as herein found are in violation of the provisions of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

ORDER

It is ordered. That respondent Standard Motor Products, Inc., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in or in connection with the sale, for replacement purposes, of automotive products and supplies in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Discriminating, directly or indirectly, in the price of such products and supplies of like grade and quality:

1. By selling to any one purchaser at net prices higher than the net prices charged to any other purchaser who, in fact, competes with the purchaser paying the higher price in the resale and distribution of respondent's products.

OPINION OF THE COMMISSION

By Gwynne, Chairman:

The complaint charges respondent with violation of section 2(a) of the amended Clayton Act (U.S.C., Title 15, sec. 13). The practices involved have to do with retroactive volume rebates to respondent's

customers, and also the granting of such retroactive volume rebates on group purchases upon the basis of their aggregate purchases instead of upon the individual purchases of the members. After hearings, the hearing examiner found against respondent and entered the following order:

It is ordered. That respondent Standard Motor products, Inc., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in or in connection with the sale, for replacement purposes, of automotive products and supplies in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Discriminating, directly or indirectly, in the price of such products and supplies of like grade and quality:

1. By selling to any one purchaser at net prices higher than the net prices charged to any other purchaser who, in fact, competes with the purchaser paying the higher price in the resale and distribution of respondent's products.

Respondent has appealed.

The provisions of the amended Clayton Act involved here are as follows:

Sec. 2.² (a) That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided*, That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered:

* * * * *

(b) Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, the burden of rebutting the prima facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: *Provided, however*, That nothing herein contained shall prevent a seller rebutting the prima facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

Respondent corporation has, since 1926, been engaged in the manufacture, sale and distribution in interstate commerce of automotive

replacement parts consisting of ignition parts and automotive wire, cable and related items. On October 15, 1947, and while the hearings were in progress, respondent acquired Hygrade Products Company, Inc. and operated it as a separate unit. The hearing examiner found that the Hygrade Products line (fuel pumps and parts) was distributed by respondent in the same manner as it distributed regular Standard Products. "However, for the purpose of expediting this matter and bringing this litigation to a conclusion, the examiner eliminated from consideration in this proceeding, all exhibits and testimony pertaining to the Hygrade line of products."

It is not disputed that the products involved here are of like grade and quality.

Sales of Standard parts during 1949 were over \$4 million. Such sales were made in competition with other firms similarly engaged. Sales were made to jobbers and to jobbers known as "distributors," all of whom resold to garages, service stations, fleet owners or other jobbers. Prices of respondent's products were in accordance with its Distributor's Price List issued from time to time, and discounts (including the 2 percent discount for cash), allowances and rebates were based on the customer price list.

In 1949, respondent sold to members of seven group buying organizations. Although there was some variation, the general procedure was as follows: Operations were under two types of contracts known as Distributor's Rebate Contract and Master Distributor's Rebate Contract. These contracts are described in the initial decision as follows:

6. The annual volume rebates provided for in respondent's pricing plan were incorporated in, and made a part of, its Distributors Rebate Contract and Master Distributors Rebate Contract. Since June 19, 1936, and prior thereto, respondent has granted a retroactive volume rebate to its various distributors. The retroactive volume rebates as set out in respondent's contracts with its distributors are as follows:

(a) *Distributors Rebate Contract.* Purchasers operating under this contract buy the Standard line of products subject to a retroactive rebate on purchase price based upon the following rebatable purchase volume, plus a cash discount of 2 percent on the value of all invoices if paid on the 10th following the month of date of shipment:

If the net amount of goods purchased is \$1,800 per year the rebate is 3%
If the net amount of goods purchased is 2,400 per year the rebate is 5%
If the net amount of goods purchased is 3,600 per year the rebate is 7%
If the net amount of goods purchased is 5,000 per year the rebate is 9%
If the net amount of goods purchased is 6,500 per year the rebate is 11%
If the net amount of goods purchased is 8,000 per year the rebate is 13%
If the net amount of goods purchased is 10,000 per year the rebate is 15%

"(b) *Master Distributors Rebate Contract*. Purchasers operating under this contract and its endorsement buy the Standard line of products subject to a retroactive rebate on purchase price based upon the following rebatable purchase volume:

Net purchases of \$1,800, rebate is 3% advanced monthly.

Net purchases of 2,400, rebate is 3% advanced monthly plus 2% at end of year.

Net purchases of 3,600, rebate is 3% advanced monthly plus 4% at end of year.

Net purchases of 5,000, rebate is 3% advanced monthly plus 6% at end of year.

Net purchases of 6,500, rebate is 3% advanced monthly plus 8% at end of year.

Net purchases of 8,000, rebate is 3% advanced monthly plus 10% at end of year.

Net purchases of 10,000, rebate is 3% advanced monthly plus 12% at end of year.

Net purchases of 25,000, rebate is 3% advanced monthly plus 13% at end of year.

Net purchases of 50,000, rebate is 3% advanced monthly plus 14% at end of year.

Net purchases of 75,000, rebate is 3% advanced monthly plus 15% at end of year.

Net purchases of 100,000, rebate is 3% advanced monthly plus 17% at end of year.

The Master Distributors Rebate Contract, as distinguished from the Distributors Rebate Contract, provides that "The manufacturer will allow the distributors a monthly discount of 5 percent instead of the usual 2 percent. This 5 percent comprises the usual 2 percent cash discount and 3 percent rebate allowed in the advance monthly".

A member of a group buying organization sends its regular purchase orders to respondent direct or through the office of the group. In any event, the latter is kept advised of all transactions. The products ordered are shipped direct to the member buyer, but the billing is to the group organization. Regular settlements are made between the respondent and the group buying organization for the aggregate of all the members' purchases. The volume rebate allowed by respondent is based upon the aggregate purchases of the members. After deducting the expenses of operation, the balance is distributed at regular periods by the group buying organization to the member buyers in proportion to the amount of their individual purchases.

About 1,500 customers buy respondent's products through group buying organizations and receive differing rebates based solely on volume. The rebatable amount on such aggregate purchases during 1949 on Standard line products sales after deducting sales to Metropolitan Automotive Wholesalers (evidence of which was stricken from the record) was \$598,761.28. Total volume discounts allowed were \$114,976.56.

The initial decision contains tables based on Commission exhibits showing transactions for 1949 between respondent and various customers and groups. Because these tables illustrate graphically the results of respondent's pricing practices, they are reproduced here.

No evidence of cost justification was introduced. It is clear that respondent's rebates were based on aggregate volume and resulted in sales to customers at substantially differing prices.

Respondent argues that the customers involved were not in competition with each other and that evidence of injury is lacking. Considerable evidence was introduced on these subjects and the hearing examiner found against the respondent as to both features.

The customers involved are, for the most part, small, although some maintain more than one place of business. Their methods of operation are similar and they sell to the same general class of customers. Their trading area usually covers the community in which they are located and an area within a 50-mile radius. The respondent does not grant exclusive territory to any customers and in various trade areas has more than one customer. These customers compete with other customers of respondent, including some who have the benefit of group buying.

The difference in price paid by the nonfavored customer as against the favored is illustrated in the charts included herein. It is a matter of mathematical calculation. The parties involved carry on business under substantially the same conditions. Competition is keen on all levels and margins of profit small. There is evidence that in some cases the overall net profit is between 2 and 4 percent. Testimony of distributors indicated that they take advantage of the 2 percent cash discount and that they find it essential to their business.

As was said in the Commission's Opinion *In the Matter of P. Sorenson Manufacturing Co., Inc.*, Docket 6052, "The fact that the 2 percent involved a cash discount is not significant. Its importance lies in the opinion expressed by the witnesses that a wholesaler, who for any reason is required to pay 2 percent more for his products than his competitor, was at a disadvantage which reflected itself in the margin of his profit and in his financial success."

If a 2 percent differential creates injury, obviously the larger differentials involved here may create even greater injury.

Respondent issued suggested resale price lists, which were generally followed by its customers. This, however, does not settle the question of probability of injury. A more advantageous price to one customer gives him increased margin of profit, permits additional services to customers, more vigorous selling and other opportunities for the extension of his business at the expense of his less-favored competitors. It is true all may not take advantage of these opportunities but normally many would. The situation is similar to that in the case of *Moog Industries, Inc. v. FTC* (1956), 238 F. 2d 43, where the court held that the record justified a finding by the Commission that substantial injury to competition may probably be the result.

Respondent also claims that the rebates allowed were justified un-

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der section 2(b) in that they were made in good faith to meet an equally low price of a competitor.

The defense under 2(b) is a limited one upon which the respondent bears the burden of proof. Some of the limitations are set forth in *FTC v. A. E. Staley Manufacturing Co.* (1945) 324 U.S. 746, where the court considered the legality of a basing point delivered price comparable to that of a competitor. The court said:

Thus it is the contention that a seller may justify a basing point delivered price system, which is otherwise outlawed by § 2, because other competitors are in part violating the law by maintaining a like system. If respondents' argument is sound it would seem to follow that even if the competitor's pricing system were wholly in violation of § 2 of the Clayton Act, respondents could adopt and follow it with impunity.

This startling conclusion is admissible only upon the assumption that the statute permits a seller to maintain an otherwise unlawful system of discriminatory prices, merely because he had adopted it in its entirety, as a means of securing the benefits of a like unlawful system maintained by his competitors. But § 2(b) does not concern itself with pricing systems or even with all the seller's discriminatory prices to buyers. It speaks only of the seller's "lower" price and of that only to the extent that it is made "in good faith to meet an equally low price of a competitor." The Act thus places emphasis on individual competitive situations, rather than upon a general system of competition. Respondents are here seeking to justify delivered prices which discriminate in favor of buyers in Chicago and at points nearer, freightwise, to Chicago than to Decatur, by a pricing system involving phantom freight and freight absorption. We think the conclusion is inadmissible, in view of the clear Congressional purpose not to sanction by § 2(b) the excuse that the person charged with a violation of the law was merely adopting a similarly unlawful practice of another.

AUTOMOTIVE JOBBER "GROUP BUYING" METHOD OF PURCHASING

Manufacturer's published rebate schedule to trade		1	2	3	4	5	6
		Actual net re- batable pur- chases each member jobber	Manu- facturer's schedule rebate rate ap- plicable	Manufac- turer's schedule rebate amount due	Manu- facturer's "group" rebate rate	Manufac- turer's "group" rebate amount paid	Actual price difference
Net purchases	Rebate						
			Percent		Percent		
		1. \$10,926.64	15	\$1,639.00	20	\$2,185.33	\$546.33
		2. 4,883.52	7	341.85	20	976.70	634.85
		3. 19,813.71	15	2,972.06	20	3,962.72	990.66
		4. 34,902.59	16	5,584.41	20	6,980.50	1,396.09
		5. 2,107.24	3	63.22	20	421.45	358.23
		6. 34,578.28	16	5,532.52	20	6,915.65	1,383.13
		7. 2,432.54	5	121.63	20	486.54	364.91
		8. 263.35	None		20	52.67	52.67
		9. 44,940.96	16	7,190.55	20	8,988.15	1,797.60
		10. 8,312.32	13	1,080.60	20	1,662.47	581.87
		11. 13,933.59	15	2,090.04	20	2,786.70	696.66
		12. 4,500.89	7	315.06	20	899.99	584.93
		13. 11,386.24	15	1,707.94	20	2,277.43	569.49
		14. 17,050.24	15	2,557.54	20	3,410.06	852.52
		15. 31,821.79	16	5,091.49	20	6,364.36	1,272.87
		16. 16,638.77	15	2,495.82	20	3,327.75	831.93
		17. 5,803.64	9	522.33	20	1,160.75	638.42
		18. 17,307.94	15	2,596.19	20	3,461.61	865.42
Totals.....		281,604.25		41,902.25		56,320.83	14,418.58

1949 Standard line sales to customers in certain trading areas, from Commission exhibit Nos. 340 and 350-D

1	2	3	4	5	6	7	8	9
Customer and location	Member of buying group	Gross Billing	Cash Discount	Rebate-able Amount	Rebate		Comparison of	
					Amount	Percent	Rebate lost	Cash Discount taken
Selma, Ala.:								
Selma Parts Service.....	Automotive Parts.....	\$507.74	\$10.56	\$434.49	\$46.67	10.74		
Auto Parts Co.....	do.....	2,026.31	40.53	1,770.36	53.46	3.02	\$136.67	\$40.53
Charlotte, N. C.:								
Southern Bearings & Parts.....	Warehouse Distributors, Inc.....	3,678.01	70.89	3,387.00	677.40	20.00		
Wholesale Auto Parts.....	do.....	11,772.67	835.45	38,377.49	5,822.89	15.17	1,853.63	835.45
Burlington, N. C.:								
Morton Bearings & Parts Co.....	do.....	1,193.55	23.01	1,129.81	225.96	20.00		
Norton Bearings & Parts Co.....	do.....	1,831.76	15.13	1,625.94			325.19	15.13
High Point, N. C. Automotive Co.....	do.....	855.23	16.48	778.91	155.78	20.00		
Southern Bearings & Parts.....	do.....	826.26	16.52	778.61	22.99	2.95	132.75	16.52
Statesville, N. C.:								
Southern Bearings & Parts.....	do.....	1,199.31	23.12	1,098.57	219.72	20.00		
Auto Parts & Electric Co.....	do.....	10,131.08	202.62	9,614.56	1,373.55	14.29	518.99	202.62
Rockingham, N. C.:								
Southern Bearings & Parts.....	do.....	1,100.99	21.22	975.66	195.13	20.00		
Smith Auto Parts.....	do.....	2,126.43	42.53	1,997.90	48.82	2.44	350.83	42.53
Winston-Salem, N. C.:								
Southern Bearings & Parts.....	do.....	1,099.45	21.19	981.76	196.55	20.00		
Motor Parts Co.....	do.....	3,725.80	74.52	3,410.97	231.54	6.79	450.59	74.52
Columbus, Ga.:								
C&B Parts Service Co.....	Automotive Parts Distributors, Inc.....	19.44	.41	6.24	.95	15.22		
Bemington Auto Parts Co.....	do.....	2,952.47	59.05	2,740.94	132.36	4.83	284.78	59.05
Sallaf Auto Parts.....	do.....	2,314.97	46.30	2,231.17	65.45	2.93	274.21	46.30
Jackson, Miss.:								
Robinson Brothers.....	Mid-South Distributors, Inc.....	12,113.54	242.27	11,386.24	2,277.43	20.00		
Ryan Supply Co.....	do.....	10,222.33	204.45	9,614.81	1,309.79	14.25	552.85	204.45
Weatherall Auto Supply.....	do.....	3,631.94	61.01	2,867.78	139.57	4.87	433.90	61.01
Meridian, Miss.:								
Motor Supply Co.....	do.....	8,807.64	176.15	8,312.32	1,662.47	20.00		
Adams Supply Co.....	do.....	5,274.06	105.48	4,953.02	426.17	8.60	425.96	105.48
Charleston, S. C.:								
H. Steeken & Co.....	Warehouse Distributors, Inc.....	9,103.25	175.47	8,381.04	1,676.21	20.00		
C. D. Franke & Co., Inc.....	do.....	2,468.24	49.36	2,266.18	109.27	4.84	342.04	49.36
Greenville, S. C.:								
Scurry & Nixon.....	do.....	8,713.80	167.96	8,189.42	1,637.88	20.00		
Kaufman Brothers.....	do.....	8,663.21	173.86	8,326.82	1,031.12	12.38	634.50	173.86
Knoxville, Tenn.:								
Tenn. Mill & Mine Supply.....	Mid-South Distributors, Inc.....	18,479.72	369.60	17,050.24	3,410.06	20.00		
Service Auto Parts Co.....	do.....	21,154.00	483.08	22,385.46	3,401.58	15.20	1,074.50	483.08

We agree with the finding of the hearing examiner that the respondent has not sustained the burden of proving its defense.

First, the meeting of the lower price of a competitor was not directed to individual competitive situations. Respondent's argument on this point is summarized in the following statement from page 8 of its brief:

Generally, when the various "groups" were formed, customers of appellant, who were receiving a rebate of less than 20 percent, had been invited to and were about to become members of the particular group then being formed. In each instance competitors of appellant approached the group at their organizational meetings and offered to sell an ignition line at a greater discount or rebate (a lower price) than appellant was selling its customers who were about to become members of such "group." Appellant's customers told appellant's salesmen, district sales managers, or general sales manager, as the case might be, of the offer which had been made to the "group" and through the "group" to its members by appellant's competitors, and told appellant's representatives that if appellant did not meet the price offered by its competitors, it would lose their business. In each instance after such a conversation, and only after such a conversation, appellant authorized a sales representative to make an offer to the "group" of a price as low as but never lower than the price offered by competitors in order to retain the business of its customers who were about to become members of the "group". These prices were negotiated prices arrived at between appellant and the "group" dealing at arm's length. They were not prices predicated upon an annual volume rebate based upon the total purchases of the "group." These offers were all made prior to the institution of this or any similar proceeding at a time when appellant believed that the prices offered by its competitors were lawful prices which it had a right in good faith to meet to retain the business it enjoyed.

Respondent's customers were the members of the various buying groups. These members bought and sold respondent's products for profit. The hearing examiner correctly found that "the group buying organization was in reality a bookkeeping device for the collection of rebates, discounts, and allowances received from sellers on purchases made by its jobber members." Under the group buying procedure, the price to individual members would vary according to the aggregate purchases of all the members and of the individual member's share thereof. The net price to any member was a matter of computation after the figures for the particular period were in. In other words, the plan was not adapted to meet the individual competitive situation, but was rather a general system of competition designed to meet similar general systems of competition. See *FTC v. A. E. Staley Manufacturing Co.* (1945) 324 U.S. 746; *FTC v. Corn Products Refining Co.* (1945) 324 U.S. 726; *FTC v. Cement Institute* (1948) 333 U.S. 683.

Second, the operation of the system was not limited to retaining customers who had been offered a better price. Through the operation of discriminatory prices, it in fact secured new customers as is shown by the record.

Third, respondent's group buying programs were not in good faith within the limitation of the 2(b) defense. On this point, the hearing examiner found as follows:

21. If, as contended by the respondent, it granted a cumulative annual rebate to members of groups, based upon the aggregate purchases of all the members because its competitors were offering such rebate based upon the aggregate purchases of the members of a group, it could not be considered that such action was in good faith since the respondent well knew that the rebates offered by its competitors as well as the rebates offered by respondent to group buyers were unlawful in that the differences in price accorded group and non-group purchasers could not be justified by showing differences in the cost of manufacture, sale or delivery since their source is a rebate system, based, not on the quantities or other factors involved in any particular sale, but rather upon the combined dollar amount of all sales to a group.

This conclusion is supported by the *Standard Oil Co. v. Brown* (1956), 238 F. 2d 54 decision, where the court said in explaining decisions of the Supreme Court:

* * * If the seller discriminates in price to meet prices that he knows to be illegal or that are of such a nature as are inherently illegal, as was the basing point system in the *Staley* case, supra, there is a failure to prove the "good faith" requirement of Section 2(b).

In any event, all Commission orders operate prospectively. They lay down rules for future operation. The group buying program of respondent with its system of retroactive aggregate rebates has now been declared to be illegal. The same conclusion has been reached by the Commission and by the courts as to similar programs operated by some of respondent's competitors. In its future conduct, respondent cannot justify the operation of an illegal pricing system by claiming it is to meet similar systems of competitors which have also been declared to be illegal.

Respondent also argues that the hearing examiner was in error in permitting the piercing of the corporate veil of the respective groups. The hearing examiner found "the group buying organization was in reality a bookkeeping device for the collection of rebates, discounts, and allowances received from sellers on purchases made by its jobber members." Respondent claims that this finding is incorrect, that the sales were made and the discounts and rebates paid to the various buying groups and that the group organizations are

separate and distinct legal entities apart from their stockholders or members.

The buying groups were organized under state laws. Considerable evidence was introduced as to the formation of one group. The by-laws provided that:

The object of this Association is the general welfare of society and of the members in particular and the members are not stockholders in the legal sense of the term and no dividends or profits shall be divided among the members.

* * * * *

Each member shall be entitled to have returned to him the whole of the net earnings of the surplus resulting to the Association from such member's trading operations from, to, or through, the Association, such net earnings being considered as the profit of each member from the day of the accrual of such earnings after the deduction of the necessary expenses incurred in the operation of the Association.

* * * * *

The board of directors or the executive committee shall make contracts with manufacturers and distributors for the sale of merchandise as brokers, factors, or agents to members.

The certificate of membership received by each member provided that the person named had been elected a member entitling him to buy from or through the Association. The membership fee was \$250 and dues were fixed annually by the membership. Members might be expelled by a three-fourths vote. New members might be admitted by unanimous vote. A member withdrawing or being expelled forfeited all rights or interest in the Association or "to contract with or through the Association for the purchase of merchandise or other articles."

It is, of course, a general rule that a corporation and its stockholders are deemed separate entities and the rights and obligations of each are determined accordingly. Nevertheless, as was said by the court *In re Clark's Will*, Minn. 1939, 284 N.W. 876, "Courts simply will not let interposition of corporate entity or action prevent a judgment otherwise required."

Corn Products Refining Co. v. Benson, Secretary of Agriculture (1956) 232 F. 2d 554, was an appeal from an order of the Secretary of Agriculture denying applicants trading privileges on all markets for one day because of alleged violation of the Commodity Exchange Act and regulations thereunder. The disputed matters involved contracts with a wholly owned subsidiary in hedging operations. The court said:

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* * * The existence of a separate corporate entity should not be permitted to frustrate the purpose of a federal regulatory statute—"corporate entity may be disregarded when failure to do so would enable the corporate device to be used to circumvent a statute." * * * Merely because the corporate entities are disregarded for one specific purpose does not require that they be disregarded for other or all purposes, but to fail to disregard them under the circumstances presented here would fail to give effect to the provisions of the Commodity Exchange Act. * * *

In *New Colonial Ice Co., Inc. v. Helvering, Commissioner of Internal Revenue* (1934) 292 U.S. 435, involving the collection of taxes, the court said: "As a general rule a corporation and its stockholders are deemed separate entities and this is true in respect of tax problems. Of course, the rule is subject to the qualification that the separate entity may be disregarded in exceptional situations where it otherwise would present an obstacle to the due protection or enforcement of public or private rights."

Other cases have announced the same principles. See *Majestic Co. v. Orpheum Circuit* (1927) 21 F. 2d 720 and *Pierce v. National Bank of Commerce* (1926) 13 F. 2d 40.

The findings of the hearing examiner in this matter were correct and based on evidence properly in the record.

The appeal of respondent is denied. The findings and order of the hearing examiner are adopted as the findings and order of the commission, and it is directed that an order issue accordingly.

FINAL ORDER

Respondent Standard Motor Products, Inc., having filed an appeal from the initial decision of the hearing examiner in this proceeding; and the matter having been heard by the Commission on briefs and oral arguments of counsel; and the Commission having rendered its decision denying the appeal and adopting as its own the findings, conclusions and order contained in the initial decision:

It is ordered, That respondent Standard Motor Products, Inc., shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order contained in said initial decision.

Decision

IN THE MATTER OF

THE CALIFORNIA SPORTSWEAR & DRESS ASSOCIATION, INC., ET AL.

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

Docket 6325. Complaint, Apr. 4, 1955—Order, Dec. 27, 1957

Order dismissing complaint charging three associations of dress manufacturers, dress jobbers, and dress contractors, respectively, and two labor unions in the \$40 million California sportswear industry, with making illegal agreements to control production and fix prices, holding the agreements to be immune from the antitrust laws inasmuch as they did not aid or abet a management conspiracy to suppress competition but were closely related to wages and conditions of employment and were among "congressionally permitted union activities."

*Mr. George W. Williams*¹ and *Mr. Rufus E. Wilson* supporting the complaint.

Mr. Eugene B. Shapiro, of Los Angeles, Calif., for The California Sportswear & Dress Association, Inc., and certain named respondent members; *Mr. Wilbur E. Quint*, of Los Angeles, Calif., for Associated Sportswear Manufacturers of Los Angeles and certain named respondent members; *Mr. Milton J. Levy*, of New York, N.Y., for California Apparel Contractors Association and members; *Buchalter, Nemer and Field*, by *Mr. Jerry Nemer, Rifkind and Elstein*, by *Mr. George A. Elstein, Minter and Feder*, by *Mr. Robert S. Feder, Mr. J. George Bragin, Mr. Joseph Stell*, and *Mr. Oliver B. Schwab*, all of Los Angeles, Calif., and *Moss & Moss*, of Philadelphia, Pa., for individual members of respondent associations; *Mr. Morris P. Glushien* and *Mr. Wilbur Daniels*, of New York, N.Y., and *Mr. Basil Feinberg*, of Los Angeles, Calif., for respondent International Ladies' Garment Workers' Union and affiliated respondents; and *Mr. J. Albert Woll*, by *Mr. Richard H. Frank*, of Washington, D.C. and *Stevenson & Hackler*, by *Mr. Charles K. Hackler*, of Los Angeles, Calif., for respondent International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, and *Joseph M. Mihalow*.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

STATEMENT OF THE CASE

The Federal Trade Commission issued its complaint against the above-named respondents on April 4, 1955, charging them with having

¹ Mr. Williams' participation in the proceeding ceased after the presentation of the case-in-chief, he having retired from the Commission shortly thereafter.