

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SHEET METAL WORKERS' INTERNATIONAL
ASSOCIATION, AFL-CIO, LOCAL UNION NO. 36;
and LOCAL NO. 1, INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, AFL-CIO,

Defendants

CIVIL ACTION

No. 66 C 58 (2)

APPENDIX

DEFENDANT I.B.E.W. LOCAL 1's

PROPOSED FINDINGS OF FACT AND

CONCLUSIONS OF LAW

This cause having regularly come on for trial commencing on June 15, 1967, upon plaintiff's claim against defendant International Brotherhood of Electrical Workers, AFL-CIO, Local Union No. 1 under Section 707 of the Civil Rights Act of 1964, 42 U.S.C. 2000e-6, and counsel for the plaintiff and defendant having appeared and the Court having heard the evidence and considered the memorandum of counsel for each party, it now enters the following findings of fact and conclusions of law:

FINDINGS OF FACT

GENERAL

1. Local 1, International Brotherhood of Electrical Workers, AFL-CIO, (hereinafter called "Local 1")^{represents} electrical workers in the construction, manufacturing and service industries in the City and County of St. Louis and some 24 surrounding counties in the Eastern and Southern parts of the State of Missouri. Local 1 represents employees in these industries for the purpose of bargaining with employers concerning wages, hours and other terms

and conditions of employment and in labor disputes (Step 3, Para. 1).

2. Local 1 has approximately 5,000 members, 2,000 of whom have construction classifications (Stipulation #3, Para. 2).

3. Local 1 is the bargaining representative for about 95% of electricians engaged in construction on major residential, commercial and industrial projects in the City and County of St. Louis; it has collective bargaining agreements with contractors which hire a substantial majority of construction electricians in this area (Stipulation #3, Para. 3 and 5). The construction electricians who are members of Local 1 work under the terms of a collective bargaining agreement negotiated between Local 1 and representatives of St. Louis Chapter, National Electrical Contractors Association (hereinafter called "NECA"), an electrical contractors organization; there is a standard form of agreement which all of these employers are a party to. (Stipulation #3, Para. 6, Pl's Ex. 6, the Agreement).

4. At Local 1, applicants for membership must be working at the electrical trade under an IBEW Local 1 collective bargaining Agreement (Stip. #3, para . 10, Lanemann deposition 55-6). The Local Union Executive Board investigates all applications for membership (Gibbons deposition, Oct. 28, 1966, page 3). This investigation involves sending out inquiries to employers of the applicant as to his ability and work performance (Gibbons depo. Oct. 28, page 3-4). The membership is then presented with a recommendation for or against admission of the person and the membership decides by majority vote (Gibbons depo. October 28, p. 4-5). For some classifications an examination is required, such as construction classifications of Class A, Residential,

X Residential and non-construction classifications of Class C (Maintenance Electrician), Class E, Radio, Amplifier Men and Public Address; the examination relates to the type of work that the classification requires (Gibbons depo., Oct. 28, p. 5-6).

5. Every member in attendance at a membership meeting votes on all applications for membership, regardless of his own classification, (Lanemann depo., p. 48).

6. Some classifications within the Union hold meetings of their own once a month, such as production, manufacturing, crane men and the sign group (Pl. Ex. 5, By-Laws, Art. XIII, Sec. 1; Lanemann depo. p. 49). These classifications can also attend the "regular" meetings of the union membership, on the first and third Fridays of each month (Lanemann depo. p. 49); all members have a duty to attend a "regular" meeting at least once a month (Pl. Ex. 5, By-Laws, Article III, Sec. 1 & 3). There are also special "units" of members organized within the Local Union in outlying counties; these units hold meetings of all members (regardless of classification) working in the area of which the unit is comprised (Pl. Ex. 5, By-Laws, Article).

7. A person who is a member may change his classification after he has had five years experience; the Local Union Executive Board investigates the applications for changes in classification, makes a recommendation to the membership as a whole; the person must take an examination before the Examining Board if applicable for the new classification (Gibbons depo., Oct. 18, p. 33).

8. Members with non-construction classifications who desire to work in construction can go out in peak employment periods to gain experience in construction to qualify for change to a construction application (Lanemann depo. p. 19-23; Pl. Memo. 28-29). 1/

9. Members are also admitted through organizing campaigns, which are handled under the direction of the Business Manager through his appointed Business Representative (Lanemann depo. p. 53-4). Among the objects of the International Union is to organize all workers in the entire electrical industry, (Pl. Ex. 4, International Constitution, p. 5).

10. Apprentices are recommended for membership after serving a 1,000 hour probationary period (Stip. 3, Para. 9). In recent years, 40-50 persons become apprentices each year (Gibbons depo. Oct. 18, p. 40-1).

1/ The procedure of a non-construction member gradually shifting into construction is typified by the case of the present Business Manager, Norman Lanemann, who is now a Class A Wireman (construction); he started out as a BA production worker, then did residential work, and ultimately became a Class A Wireman (Lanemann depo. p. 3). The Class A Wireman works on all construction; the residential man is supposed to work only on residential (Lanemann depo. p. 7-9); BA production classification is in manufacturing (Lanemann depo. p. 10). Lanemann worked 5 to 7 years in each classification before appearing before the Executive Board and asking for a change of classification; he learned the skills in the construction field by being on the employment list and going out on construction work when the regular construction Wireman were not available; he took the residential training program at Hadley School before he started working in the residential construction field, and from the residential construction field learned the skills of a Class A Wireman; he took an examination for each change of classification (Lanemann depo. p. 16-18).

Negro Membership in IBEW Local 1

11. At various times between 1938 and 1955, Local 1 did not respond to opportunities to organize Negro contractors. Three Negro contractors testified, Stuart, Harding and Witt. Wilbur Stuart sent in applications for 7 of his employees in 1938; he was told by the Business Manager that the rank and file would not accept Negroes, (Tr. 71). James Harding in 1949 or 1950, when glaziers on a project refused to work with his men, was told by Local 1 that he could work on jobs without objection by Local 1, where there were no AFL Building Trades employees working, (Tr. 51-3); in 1952 or 1953, Harding withheld bidding on the New Age Federal Savings and Loan job because of objection from the IBEW Business Manager, (Tr. 53-4). In 1955 at the Ragsdale Beauty Shop, Harding continued to work in spite of a picket, (Tr. 55). Frank Witt, made trips in 1946 and 1948 to the union hall to sign up; in neither case did he hear anything further from the Union, (Tr. 101-2, 103-4).

12. During 1954 a group of Negro contractors, including Harding and Stuart, were approached by a Business Representative of IBEW Local 1 about signing up with the Union; after assenting, they heard nothing further, (Tr. 56-8, 73-5). Minutes of the meetings of the membership of Local 1 in 1955 show that members voted against letting the Business Manager's office organize the Negro contractors.

13. It appears that in 1961, Local 1 had no Negro members; the then Business Manager announced a meeting that the membership would be notified before any meeting where a Negro applicant was to be considered (Pl. Ex. 2, Minutes of Oct. 20, 1961). There

is no evidence that any applications from Negroes were before the Union at the cited 1961 meeting.

14. Since 1962 Local 1 has had over 160 disputes with contractors who had substandard wages and working conditions for electrical work; only two of these disputes involved Negro contractors or employees (Stip 3, Para 19).

15. In early 1964 Local 1 engaged in substandard wage picketing of Witt Electric at the Champ Dairy Farm at Elsberry, Missouri (Tr 105-6, 371). Witt offered to sign up with the Union; the Business Representative said that he was not authorized to discuss it and that Witt should go to the Union hall about it; Witt did not go to the Union hall (Tr 107-8, 139). As a result of the picketing, the owner of the farm replaced Witt with a Local 1 contractor (Tr. 139-40). In the light of three factors I do not find that the Champ Dairy incident evidence of racial discrimination: 1) Local 1 engaged in disputes over substandard wages and conditions with many contractors, 98% of them white; 2) standards picketing is widely engaged in by unions, Claude Everett Construction Co., 136 NLRB 321, 49 LRRM 1757; for the Local 1 Business Representative to have indicated interest in signing up Witt would have converted the picketing to an organizational or recognition purpose and prevented further standards picketing, Penny Construction Co. 144 NLRB No. 114, 54 LRRM 1237 (1963), which the evidence reflects the business representative had no authority to do; and 3) Witt did not respond to the suggestion that he go to the Union hall about signing up with the Union.

16. Since July 2, 1965, each of three Negro contractors, who testified Harding, Witt and Stuart had been told that they were welcome in Local 1; two, Harding and Witt, before this suit was filed.

17. This suit was filed on Feb. 4, 1966, without prior notice to the Union (Tr 342).

18. Witt Electric had been contacted in January several weeks before the filing of this suit about becoming a Local 1 contractor, and several days before the suit was filed had made definite arrangements with Business Manager Norman Lanemann to come in with his men to sign up. He and two Negro employees took the examination in February and became construction members in March, 1966. (Tr 100, 126-30, 369-75). Witt was the only Negro contractor that the Business Manager knew of who was not tied up by the Midwest Contractors Association-Congress of Independent Unions contract (Tr 369).

19. A day or two before the suit was filed the Business Manager happened to meet James Harding of Harding Electric and invited him to try signing up with Local 1 (Tr 362). Harding Electric was a member of Midwest Contractors Association and party to the collective bargaining agreement with Local 99, CIU. This contract ran from June 15, 1965 to March 1, 1967. Until early December, 1966, the 60-90 day period before its expiration, Local 1 could not legally sign a contract with Harding. (Def. Ex B, the MCA-CIU contract; Tr 59, 64-5, 156-7, Deluxe Metal Furniture Co. 121 NLRB No. 135, 42 LRRM 1470; Leonard Wholesale Meats, 136 NLRB No. 103, 49 LRRM 1901).

20. As soon as it could legally do so, later in the year 1966, Local 1 petitioned for an NLRB election, which proceeding was contested by the CIU; after a hearing the NLRB ordered an election and Local No. 1 was certified as the collective bargaining representative of Harding's employees late in February, 1967 (Tr 64-5). His ten employees, all Negro, became members of Local No. 1 in April, 1967 with construction classifications (Tr 49-50).

21. In 1960, Arthur J. Kennedy, Sr., a Negro sheet metal contractor, organized the Midwest Contractors Association (hereinafter called "MCA") (Tr 142-3); it has some 85 active members; 18 are Negro (Tr 77-8). Twenty five of the 85 members are electrical contractors; five of these are Negro contractors (Tr 90).

22. In mid-December, 1966, during the 60-90 day period when a Union other than the CIU could intervene, there was a meeting between representatives of MCA and the Building and Construction Trades Council of St. Louis (Tr 156-7, 166,78). Various AFL-CIO Unions including Local 1 had representatives at this meeting, including the electricians (Tr 78-9, 166-7). The Unions present all offered to enter into contracts with members of Midwest Contractors Association (Tr 79, 157-8). At a meeting of the membership of MCA shortly thereafter, the members voted unanimously to negotiate no further with the AFL-CIO Unions (including Wilbur Stuart, who was present at the meeting with the AFL-CIO Unions and at the MCA membership meeting), Tr 80-81, 91-2, 93, 158-9.

23. During the weeks that followed this mid-December meeting, Lanemann made repeated calls to Wilbur Stuart, leaving his name and number and requesting that Stuart contact him; Stuart never did (Tr 387, 86, 93-4). Wilbur Stuart, since the organization of the Congress of Independent Unions (herein called "CIU") in 1961, has had no further interest in the IBEW. He has everything that he wants with the CIU. (Tr 87-8).

24. Arthur Kennedy testified that he believes there is no longer a racial problem in the building trades unions of the AFL-CIO; it is a thing of the past. The remaining problem is an economic one, how small contractors such as those in the Midwest Contractors Association can pay the wages of the AFL-CIO building

trades unions(Tr 159-60). Kennedy is Director of Welfare of the City of St. Louis and founder and still President of MCA; from 1960-64 he was Chairman of the Labor and Industry Committee of the NAACP (Tr 142, 156).

25. By July 2, 1965, the effective date of the Civil Rights Act of 1964, Local 1 had a pproximately 25 Negro members. By the time this suit was filed on February 4, 1966, that number was approximately 35; all of these Negro members were in non-construction classifications. As of February 4, 1966 no Negro members had construction classifications. From July 2, 1965 to February 4, 1966 no Negroes, other than Walter Hampton, discussed below, applied for membership in a construction classification. Since February 4, 1966, 12 Negroes have applied for membership in construction classifications; all have been admitted. (Stipulation #3, Para. 15, 11a.)

26. Responses to questionnaires sent to applicants for membership inquiring about relationship of the applicant to members or former members or apprentices in the Union indicate:

25 of 29 persons admitted as journeymen members with construction classifications in the period July 2, 1965 to August 31, 1966 responded; 23 respondents were white, 2 Negro; 8 were related, about 1/3 of the 25 (Stip 2, Para 1)

Looking at this same group, but just for the period July 2, 1965 through February 4, 1966, 14 of 14 responded; 5 were related, a little over 1/3 (Stip 2, Para 2)

36 persons who became members in non-construction classifications during the period Sept. 1, 1966 to Dec. 27, 1966 responded; 35 were white, 1 Negro; 11 were related, a little under 1/3.

27. Other than Walter Hampton, whose application for membership was treated in the same manner as the union treats all others, there is no evidence that any Negro since July 2, 1965 has applied for union membership without achieving it.

28. All persons applying for membership must be working at the trade in the jurisdiction of Local 1, that is, for an IBEW employer (Stip 3, Para 10; Lanemann Depo 55-6).

29. Walter Hampton, a young Negro man, with five years experience in electrical construction, made two trips to the Union Hall, about October 22 and November 8, 1965 (Tr 9, 20-1, 33, 34, 28). In October, Hampton asked to join the Union and was told by the Business Manager that he would first have to be working for a Local 1 contractor (Tr 25-6, 36-7, 351). Hampton denied that the Business Manager told him to go into the Hiring Hall and sign the out-of-work list and wait his turn (Tr 37) but the Director of the National Park Service corroborated that this is what Hampton told him a few minutes after his conversation with Lanemann. (Def Ex A, Tr 338-9) Hampton at the time was not out-of-work. (Tr 20, 27, Pl Ex 1, back of card) I find that Hampton was treated in the same manner as other applicants for membership and that he was given correct information in being told to first go to the Hiring Hall.

30. On Hampton's second trip to the Union Hall he did sign a card registering on the out-of-work list; he immediately left the Hiring Hall and never returned. (Tr 27, 29, 44-5, Pl Ex 1) Again, he was not out-of-work (Tr 27). He was placed in the correct priority group in the hiring hall system. Referrals from the hiring hall ordinarily require physical presence there, although sometimes phone calls were made when a man was not available in the hall. As with the first trip Hampton denied ever hearing of the hiring hall. I find from corroborated evidence on the first trip to the hall of Hampton's being told of the hall, wording on the card referring to the out-of-work list, and other surrounding circumstances, that Hampton must have had some knowledge

he was registering at the hiring hall (Tr 42, 383-4, Pl. Ex. 1, Pl Interrog Answers 19-20 Para C at Tr 408-10) In any event, there is no evidence that anyone was improperly referred out ahead of Hampton.

31. Both as to Hampton's application for membership and his registration at the hiring hall, he was treated no differently than all others. The evidence does not support a finding that he was treated differently because of his race.

Hiring Hall Operation

32. The Hiring Hall at IBEW Local No. 1 was created in November, 1958 through a collective bargaining agreement between the Union and the St. Louis Chapter, National Electrical Contractors Association, (herein called "NECA") (Pl. Ex. 6, 1958 and subsequent contracts between the Union and NECA).

33. The contract provides for 4 priority groups. Group I, the highest, requires 5 years experience in electrical construction, residence in the area, passing an IBEW journeyman examination, and 1 years service (within the last 4) under a collective bargaining agreement between the parties. Group IV, the lowest (on paper), requires only 1 years experience in electrical construction. (Pl. Ex 6, Art. III, Sec 5). In practice there is a Group "O" for those with less experience that ranks below Group IV (Tr 361).

34. Employers who are parties to the agreement must call the hiring hall for men; if the hall cannot supply a man, the employer may hire on his own by using a temporary employee letter. (Pl Ex 6, Art III, Sec 3; Tr 528-532)

35. Statistics compiled by plaintiff from photocopies of hiring hall records since 1958 show that of 12,548 referrals, 7.7% or 1,041 have been to non-members of the IBEW; 11.9% or 1,617 have been to members of Local 1 with non-construction classifications. (Pl Memo pp 28-29)

36. The record does not support a finding that the hiring hall has discriminated against Negroes or non-members.

The Electrician's Apprentice Program

37. The Secretary-Director of the Electricians Joint Apprenticeship Committee (herein called "JAC") is Michael Gibbons, President of Local 1 (Gibbons depo, Oct 18, p 4). The Secretary-Director's job is full-time and salaried, as an employee of the JAC. He administers the program on a daily basis (Tr 381).

38. The Agreement between Local 1 and NECA (Pl Ex 6) provides for the establishment of the JAC, with three members representing the Union and three NECA. The Chairman of the JAC is an employer representative (Gibbons dep Oct 18 p 6; Tr 380). The Agreement provides (Art. VI Sec 3) that the JAC has supervision of all matters involving apprenticeship; in the event there is a JAC deadlock there is procedure for referral of the dispute to a Local 1-NECA committee. The JAC meets monthly to supervise the program (Tr 313-4).

39. Apprentices are selected in accordance with standards which include objective tests and interviews (Gibbons depo Oct 18 p 26-30, 42-3). An answer is either right or wrong (Tr 321). At least two men, one Union and one employer representative, interview each applicant (Gibbons depo Oct 18 p 24; Tr 316). Gibbons grades the tests (Gibbons depo Oct 18 p 25).

40. I find that the Electricians Apprentice Program is not "controlled" by Local. As a partner in its operation it does have a substantial voice, but it shares control with NECA.

41. Until 1964 sons of union members were given preference in applying for the program. Following the publication of Title 29-Part 30, CFR, Non-Discrimination in Apprenticeship

the standards were amended to provide for the selection of the best qualified applicants based upon objective criteria and testing and interviews; they expressly provide that selection shall be on the "basis of qualifications alone." (Pl Ex 7, Standards; Bruns Depo p 59, 70, 2) Thousands of existing applications were destroyed for fear of not being in compliance with Title 29 if they were used (Bruns depo p 42).

42. The Union in early 1964 amended its by-laws to delete Article XIV. It had provided that sons of members were to be given preference as apprentices. (Pl Ex 5, by-laws; Tr 353-4)

43. The amended standards were accepted by the U. S. Dept. of Labor, Bureau of Apprenticeship and Training in April 1964 as being in compliance with Title 29. In 1965, after reviewing the operations of the program, as provided for in Title 29, the Bureau of Apprenticeship and Training found the program in compliance. (Stip 3, para 8)

Negroes and the Electricians Apprenticeship Program

44. Four Negro applicants passed the examinations; three of these were interviewed and placed in the program; the fourth failed to appear for the interview (Stip 3, Para 13b). The first of these Negroes placed in the program was among the group of July, 1965, applicants; this group was tested in 1965 and interviewed in January, 1966; he was placed in the program in mid-February, 1966 at the same time other successful applicants from this group were placed (Stip 3, Para 11b).

45. At the request of Plaintiff questionnaires were sent to recent apprentice applicants concerning relation by blood or marriage to members of Local 1. With respect to the July, 1965 apprentice applicant groups :

A - Of the 51 placed, 48 responded (47 white and one Negro). 60% of those responding were related.

B - Of 378 rejected, 250 responded (and of those showing their race, 235 were white and 3 Negro). 53% were related.

C - Considering the applicants in terms of race:

1 of 4 Negroes responding was accepted, or 25%;

47 of 382 whites responding were accepted, or 17%

(Stip 2, Para 6 & 7)

With respect to the March-June, 1966 group of apprentice applicants:

A - Of 88 accepted, 73 responded (67 white and 3 Negro).

40% of those responding were related; (Stip 2, Para 8)

B - Of 80 who failed the tests 60 responded (56 white and 3 Negro). 43% were related. (Stip 2, Para 12)

C - Considering the applicants in terms of race:

3 of 12 Negroes responding were accepted, 25%; 67 of

204 responding were accepted, 33%. (Stip 2, Para 8,

9, 10 and 12)

46. All of the evidence concerning the apprenticeship program indicates that it seeks the best qualified applicants through use of objective criteria. There is no evidence of racial discrimination.

Publicizing the Electrician's Trade

47 Starting in 1964, notices of availability of the apprentice program were sent to the public and parochial school systems, Bureau of Apprenticeship and Training, and Mo. Division of Unemployment (Gibbons depo Oct 13 p 35). Following the opening of the Apprentice Information Center at the Missouri Division of Employment Security in December,

1965, the JAC has provided it with full and current information on the standards and procedures of the program (Tr 391, 406).

48. The Apprentice Information Center has a system for distribution information on opportunities in and procedures for the apprentice program to school counselors in predominantly Negro schools, civil rights organizations, employment and vocational services, newspapers (including those directed to readers in the Negro community), radio and television stations. Representatives of the school also appear before Negro audiences to explain apprentice opportunities, on some occasions with a representative of the Electricians JAC. (Tr 391-407)

49. Local 1, the JAC, and NECA representatives have, both before and since the filing of this suit, independently engaged in activities to bring to the attention of the Negro community the opportunities in the electrical trade and apprentice program. These activities have included: sponsoring a program for counselors from predominantly Negro schools, Negro high school students, and representatives of civil rights groups; appearances at high school career days in schools with Negro student bodies; and appearances on vocational programs of lower schools with Negro student bodies. (Tr. 299-310)

Factual Conclusions

50. As late as 1955 Local 1 refused to sign up negro contractors and their employees. There is no evidence of negro applicants after 1955. There is evidence that in late 1961 Local 1 had no negro members.

51. I do not find evidence of resistance by Local 1 to the Civil Rights Act of 1964 or of any intent to interfere with legal rights of negroes to membership, apprenticeship or employment opportunities.

52. When the first federal regulations appeared on non-discrimination in apprentice programs (Title 29 Part 30, CFR) in 1964, the JAC acted promptly to revise its program to comply with the regulations.

53. The Union acted, too, in early 1964. Its by-laws had long given preference in apprenticeship to sons of members. That by-law provision was deleted.

54. Since 1964 the apprenticeship program has operated with objective standards, seeking the best qualified applicants, regardless of race.

55. By July 2, 1965 Local 1 had 25 non-construction members; 35 by the date of filing of this suit, seven months later. Non-construction members have opportunities, over the years, to gain work experience and schooling to acquire construction classifications, if they wish to do so.

56. The sole incident of alleged discrimination since July 2, 1965, concerns Walter Hampton.^{1/} I do not find that Local 1 discriminated against Hampton. And, no matter how one views the Walter Hampton incident, one cannot reasonably infer an

^{1/} No complaints had been filed against Local 1 alleging discrimination (Tr 408-10, Answer of Atty Gen to Interrog)

"intent" to discriminate, considering Local 1's Concurrent efforts to sign up negro members.

57. There was no other evidence of application for construction classifications of negroes since July 2, 1965 (or for some period before then). Local 1 solicited applications from two negro contractors before this suit was filed. They have come into Local 1 with their employees. All other negro contractors have so far declined Local 1's offer to sign contracts with them.

58. The hiring hall system was established in 1958 by contract between Local 1 and NECA. The evidence does not support a finding either that it was designed to or has discriminatorily operated.

59. Before and since this suit, representatives of Local 1, the JAC and NECA have been actively engaged in efforts to inform the negro community of opportunities in the electrical trade and apprentice program and that negroes are welcome.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of this action. 42 U.S.C. 2000e-6.
2. Defendant Local 1, International Brotherhood of Electrical Workers, AFL-CIO, is a labor organization engaged in an industry affecting commerce as those terms are defined in the Civil Rights Act of 1964. 42 U.S.C. 2000e- (d) and (e).
3. Any actions and conduct occurring prior to July 2, 1965 are not violations of the Act. 42 U.S.C. 2000e-15(a) and (b); Senators Clark and Case, 110 Cong. Rec. 6992-4 (April 8, 1964).^{1/}
4. Section 703 (j) of the Civil Rights Act of 1964 expressly prohibits the granting of preferential treatment to Negroes or to any group because of race, color, religion, sex or national origin on account of an imbalance which may exist with respect to the number or percentage of Negroes who are members or apprentices of Local 1 in comparison with the total number or percentage of Negroes in the community, State of Missouri, or in the available work force. Section 703 (j), 42 U.S.C. 2000e-2(j); Justice Department's Statement inserted in the Congressional Record by Senator Clark, 110 Cong. Rec. 6986 (April 8, 1964); Senator Dirksen, 110 Cong. Rec. 12381-5 (June 5, 1964); and Senator Humphrey, 110 Cong. Rec. 15333-34 (July 2, 1964). The fact that the racial composition of Local 1's membership and Apprentice Program is predominately white is not evidence of discrimination.

^{1/} Bowe v. Colgate-Palmolive Co. (S.D. Ind. 1967) 65 LRRM 2714. In any event, there is no evidence of rejection of Negro applicants since 1955. By 1964, as noted above, there is clear evidence of Local 1's intent to comply with procedures to open its doors to Negroes.

5. (a) The Act requires proof that not only is the defendant engaged in a pattern or practice^{1/} of resistance to the full enjoyment of any of the rights secured by this title, but that the pattern or practice is intended to deny the full exercise of the rights, 42 U.S.C. 2000-6(a); Senator Dirksen, 110 Cong. Rec. 12381-5 (June 5, 1964); Senator Humphrey, 110 Cong. Rec. 13766 (June 18, 1964).

(b) I conclude and find that the evidence does not establish that Local 1 has engaged in a pattern or practice of resistance with an intent to deny the rights secured by Title VII. The evidence does not establish that any Negro has been excluded or expelled from membership in Local 1; nor does the evidence establish that Local 1 limited, segregated or classified its membership on the basis of race.

6. (a) Referral systems are lawful and not discriminatory per se. Local 357, Int'l Brotherhood of Teamsters, etc. v. NLRB, 365 U.S. 667 (1961); Local 100, United Association v. Borden, 373 U.S. 690 (1963). Referral systems which require minimum training or experience qualifications for employment or provide for priority in opportunities for employment based upon length of service with such employer are lawful. Section 8(f) of the Labor Management Relations Act, as amended, 1959, 29 U.S.C. 158 (f); Local #42, Int'l Association of Heat and Frost Insulators, etc., 164 NLRB No. 123; and Local 367, IBEW, 134 NLRB No. 21.

(b) Discrimination cannot be inferred from the face of an instrument containing a referral system, when the instrument specifically provides that there will be no discrimination. Local 357, Int'l Brotherhood of Teamsters, etc. v. NLRB, 365 U.S. 667, 675 (1961). When there is no evidence that a referral system was in fact unlawfully operated, and the contract provides for a protective clause,

^{1/} Single, insignificant, and isolated acts of discrimination do not justify a finding of a pattern or practice under Section 707. Senator Humphrey, 110 Cong. Rec. 13776 (June 18, 1964).

it cannot be assumed that a union conducts its operations in violation of law or that the parties to the contract did not intend to adhere to its express language. Local 357, Int'l Brotherhood of Teamsters, etc. v. NLRB, 365 U.S. 667, 676 (1961).

(c) I conclude and find that the evidence does not establish that the operation of Local 1's referral system has classified, failed or refused to refer for employment any individual because of his race.

7. (a) The Electricians Joint Apprenticeship Program is in compliance with Title 29 PART 30 Non-Discrimination in Apprenticeship and Training, which was published in the Federal Register (28 F.R. 11313) and became effective on January 17, 1964. Title 29 provides for periodic review of programs by the Bureau of Apprenticeship and Training (U.S. Dept. of Labor). In 1965 the Electricians Program was reviewed and found to be non-discriminatory. The purpose of PART 30, Sections 30.1 through 30.16, is to promote equality of opportunity in apprenticeship and training programs, and to prevent discrimination based on race, creed, color or national origin in all phases of apprenticeship. Title 29 PART 30 was issued by the Secretary of Labor under the authority of 29 U.S.C. 50.

(b) I conclude and find that the qualifications, standards and procedures of the Electricians' Joint Apprenticeship Program are fair and objective, and that there is no evidence that any Negro has been discriminated against in the admission to, or employment in, the Apprenticeship Program.

(c) I further conclude and find that the Joint Apprenticeship Committee has, since 1964 and continuing to the present time, engaged in widespread activities to provide information to the Negro community about the opportunities in the trade and non-discriminatory selection procedures. The JAC has co-operated fully with the Department of Labor's Apprenticeship Information Center since its inception

in December, 1965, all of which is more than that required by
Title VII¹ / .

An Order will be entered dismissing with prejudice plaintiff's
cause of action against Local 1.

This the _____ day of _____, 1967.
St. Louis, Missouri.

UNITED STATES DISTRICT JUDGE

¹ / The affirmative action required of unions under the Civil Rights Act of 1964 is set forth in Section 711 (a) and is limited to the posting of notices prepared by the Equal Employment Opportunity Commission summarizing pertinent provisions of the Act and information concerning the filing of a complaint. Congress refused to enact the proposal of the House Judiciary Committee which would have authorized the inclusion in the notices of "such other relevant information which the Commission deems appropriate to effectuate the purposes of this Title". Section 711 (a), 42 U.S.C. 2000e-10(a); Senator Dirksen, 110 Cong. Rec. 12381-5 (June 5, 1964); Report to Accompany H.R. 7152, 88th Congress, 1st Session, November 20, 1963; Section 712 (a).

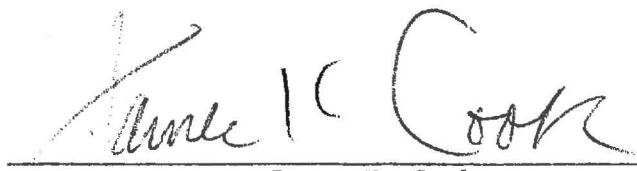
CERTIFICATE OF SERVICE

I, James K. Cook, hereby certify that on November 7, 1967,
I served the foregoing proposed Findings of Fact, Conclusions
of Law, and supporting Brief upon counsel for the plaintiffs in
this case by mailing a copy thereof by United States air mail,
special delivery, and postage prepaid as follows to:

Gerald W. Jones, Esquire
Western Section
Civil Rights Division
Department of Justice
Washington, D. C. 20530

and by delivering a copy in person to:

Veryl L. Riddle, Esquire
United States Attorney
1114 Market Street
St. Louis, Missouri


James K. Cook

SCHUCHAT, COOK & WERNER
ATTORNEYS

705 OLIVE STREET - ROOM 524 - MAIN 1-2636
ST. LOUIS, MISSOURI 63101