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)

MEMORANDUM OF DEFENDANT LOCAL 1, I.B.E.W.

IN SUPPORT OF ITS PROPOSED FINDINGS OF FACT

AND CONCLUSIONS OF LAW

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November 7, 1967

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POST-TRIAL MEMORANDUM OF DEFENDANT IBEW LOCAL 1 IN SUPPORT OF ITS PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. INTRODUCTION

This suit was filed by the United States on February 4, 1966. Claim 1 alleging tortuous interference with contract against this and five other defendants was dismissed by the Court on pre-trial motion. Claim 2 with respect to this defendant and defendant Sheet Metal Workers International Association, Local 36 was tried by this Court on four days during the period from June 15 through June 20, 1967.

In the intervening 16 months, the parties exchanged interrogatories, took various depositions, and filed with the Court detailed pre-trial submissions. As reflected by the Court's Orders and by various exhibits in evidence, plaintiff also with respect to defendant IBEW Local 1: Inspected and copies (for over a 16 year period) all constitutions and by-laws; minutes of meetings of the membership and minutes of meetings of the Executive Board; all membership applications and membership records; collective bargaining agreements with National Electrical Contractors Association, St. Louis Chapter; written examinations and answers of applicants for membership (in classifications requiring examination); applicant data sheets and master working cards of the hiring hall from its inception in 1958, which in turn plaintiff tabulated through use of an IBM machine. With respect to records of the Electricians' Joint Apprenticeship Committee plaintiff inspected and photocopied: All minutes of the Joint Apprenticeship Committee; all applications, supporting documents, examinations and answers, interview sheets and other documents concerning applicants and apprentices. At plaintiff's request,

questionnaires were sent to thousands of members, apprentices, and rejected applicants as to family relationships to Local 1 members.

Thus, through discovery procedures plaintiff had the time and opportunity to minutely examine the procedures and operations of defendant IBEW Local #1 and Electricians' Joint Apprenticeship Committee.

If this defendant was engaged in a pattern or practice of wilfull resistance to the Civil Rights Act, plaintiff had abundant opportunity to discover evidence to support its allegations.

II. THE EVIDENCE

A - General

IBEW Local 1 is a labor organization representing employees 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 part of the State of Missouri. The Union represents employees in dealing with employers concerning wages, conditions of employment and in labor disputes. (Stipulation #3, Paragraph 1).

IBEW Local 1 has approximately 5,000 members, 2,000 of whom have construction classifications, Stipulation #3, Para. 2. IBEW 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 IBEW 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, and 4, Attachment C (the current Collective Bargaining Agreement), which is also included in plaintiff's Exhibit 6).

B. Membership in Union

1 - Requirements for admission and various classifications.

The constitution of the parent organization, International Brotherhood of Electrical Workers, sets forth certain requirements for admission, namely, 16 years of age, good character, passing an examination when required by Local Union, residence in and employment at the electrical trade in the jurisdiction of the Local Union, Stipulation #3, Paragraph 10; Plaintiff's Exhibit 4, the IBEW Constitution, Article XXI, Section 1, and Article XXII, Section 1. The Local Union's By-Laws provide for some 30 separate membership classifications, Article X, Section 1, IBEW Local #1 By-Laws, Pl. Ex. 5. The International Constitution provides that the names of all applicants are to be read at a regular meeting of the Local Union, and that there is to be a committee or that the Executive Board is to pass on and report upon applications; Art. XXII, Sec. 7; Art. XXII, Sec. 8 provides that if there is a favorable report that a ballot or vote shall be taken, as the Local Union may decide; if there is a negative vote the applicant must wait six months to reapply.

At Local 1, applicants for membership must be working at the electrical trade under an IBEW Local 1 collective bargaining Agreement, Stipulation #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, 1966, page 3-4. The membership is then presented with a recommendation for or against admission of

the person and the membership decides. (Gibbons depo. October 28, 1966, p. 4-5). For some classifications an examination is required, namely, Class A, Residential, X Residential, Class C (Maintenance Electrician), Class E, Radio, Amplifier Men, commonly called P. A. Men, Public Address; the examination relates to the type of work that the classification requires, Gibbons depo., Oct. 28, 1966, p. 5-6. Examinations are conducted by the Examining Board, three members elected by the membership. (Lanemann depo., p. 59-60; Pl. Ex. 5, Local Union By-Laws, Article VI).

Voting by the membership on individuals may be done in a group or individually, (Gibbons depo., Oct. 28, p. 6-7).

Members from other Locals of the IBEW, called travelers, may seek to transfer into this Local Union; the Executive Board again makes an investigation and the matter is voted upon by the Local Union membership. Many travelers applications are turned down, (Gibbons depo., Oct. 28, pages 8-9).

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

Some classifications within the Union also hold meetings of their own, the fourth Monday of each month, for production, manufacutring, crane men and B.A. (Pl. Ex. 5, By-Laws, Art. XIII, Sec.1). The sign group also has a special meeting night, (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; in fact, they have a duty to do so at least once a month (Pl. Ex. 5, By-Laws, Article III, Sections 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, P. Ex. 5 (By-Laws), Article II. The International Constitution provides that where a union, such as Local 1, has more than one branch of the trade, that each branch of the trade is to define its own collective bargaining agreements, P. Ex. 4, Art. XV, Sec. 5.

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.[1/]

Members are also admitted through organizing campaigns, which are handled under the direction of the Business Manager through his appointed Business Representative; Business Representatives

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1/ It is plain that many of the present members with more skilled classifications have worked their way up the ladder within the Union. Thus, the present Business Manager, Norman Lanemann, who is presently a Class A Wireman (construction) 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. Thus, 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 emplyment 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. pages 16-18.

have the people being organized fill out cards, which are then filed for an election with the National Labor Relations Board, (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). The responsibility for organizing results is that of the Business Manager, (Pl. Ex. 4, Int'l Constitution, Art. XIX, Sec. 8; Tr. 378). The Business Representatives of Local 1 usually do the organizing although Norman Lanemann as Business Manager has done some himself, (Tr. 379). No Business Representatives of Local 1 are authorized to do any organizing without the approval of Norman Lanemann, (Tr. 390)

C. Negro Membership in IBEW Local 1

1. Old Contacts Between Union and Negro Contractors. At various times some years ago, IBEW Local 1 did not respond to opportunities to organize Negro contractors. Three Negro contractors testified. Wilbur Stuart, a Negro electrical contractor, 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, a Negro electrical contractor, in 1949 or 1950, when glaziers on a project refused to work with his men, spoke to the Business Manager and to an International officer; it was agreed that Harding, who was then non-union, 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, a Negro contractor, when he was asked to leave a job because he was non-union in 1948, went to the union hall to make an application; he had done the same thing in 1946; in neither case did he hear anything further from the Union, (Tr. 101-2, 103-4). In early 1964, IBEW Local 1 picketed Champ Dairy Farm at Elsberry, Missouri, where Witt was the electrical contractor, (Tr. 105-6). Witt told the Business Representative, James Quinn, that he was willing to join the Union; Quinn told him that he was not authorized to discuss the matter, and that Witt should go to the union hall; Witt did not do so, (Tr. 107-8, 139). Witt was replaced by E.R. Belt & Associates, a Local 1 contractor, on the job, (Tr. 110); Witt worked with him to complete the job, (Tr. 139-40).

On another job where Witt feared the question of his being non-union might come up, Apex Photo, although there was no contact from the union, Witt gave part of the work to Belt Electric and supervised, (Tr. 112-4).

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; then they heard nothing further, (Tr. 56-8, 73-5). Minutes of the meetings of the membership of IBEW Local 1 indicate that the question of having the Business Manager's office organize the Negro contractors was considered at the May, June and July, 1955 meetings, with the motion to organize losing at the July meeting. Minutes of the October 20, 1961 meeting indicate that the Business Manager, Paul Nolte, following a discussion on Negroes coming in to IBEW Local 1, stated that if and when a

vote on the subject came up that a letter would be sent to the members, P. Ex. 2, minutes, excerpts.

2. Contacts Since July 2, 1965.

Since July 2, 1965, each of these three Negro contractors, Harding, Witt and Stuart had been told that they were welcome in Local 1.

Business Manager, Norman Lanemann, had heard that Witt Electric was not organized and not tied up by a CIU contract; he heard from Ed Belt of Belt Electric that he was a good contractor,)Tr. 369-75). He made arrangements to contact Witt through Ed Belt in January some three weeks before the suit was filed on February 4, 1966, (Tr. 372). Lanemann himself first contacted Witt about the end of January, 1966, (Tr. 373). Witt testified that he was contacted by Belt in the mid or latter part of January, 1966 about an opportunity to join Local No. 1, (Tr.100). Witt actually brought his men to a meeting at Norman Lanemann's home on February 5, 1966, the first Saturday in February, (Tr. 126-7). Lanemann had spoken to him to arrange the meeting three or four days to a week before, and Witt knew at that time that the Union was ready to proceed with signing him up if he and his men were ready, (Tr. 125-6). There were three others in addition to Frank Witt, all Negroes, who signed cards to become members with him, (Tr. 127-8); one of them called the night of the examination and told Witt that he couldn't make it, without any explanation, (Tr. 128). The union agreed that Witt could finish his old work, under his old wage rates, without having to pay union scale on it, (Tr. 129-30). Frank Witt and the two others who took the examination in February, Leon James, and H.C. Witt, became members in March, 1966, (Tr. 98, 101).

Harding Electric Company was party to the Local 99 CIU-Midwest Contractors Association Collective Bargaining Agreement, running from June, 1965 to March 1, 1967, (Tr. 59, 64-5; Def. Ex. B, the MCA-CIU contract). James Harding had a discussion with

Business Manager Norman Lanemann on February 3 or February 4, 1966 in which Lanemann invited Harding to consider Local No. 1, indicating that he hadn't tried since Lanemann became business manager (in 1962), Tr 62. Some months later Harding contacted Lanemann and they had a personal meeting in March or April of 1966; Harding was supposed to resign from the CIU; the CIU refused to cancel his contract, although they had let other contractors do so, Tr 62-3.

As soon as it could legally do so, later in the year 1966, Local No. 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. Following that Harding executed a collective bargaining agreement with Local No. 1, Tr 49. His ten employees were all Negro and they became members of Local No. 1 in April, 1967 with commercial or residential classifications, Tr 49-50.

In 1960, Arthur J. Kennedy, Sr., a Negro sheet metal contractor, and then Chairman of the Labor and Industry Committee of the NAACP, organized the Midwest Contractors Association (hereinafter called "MCA"), Tr 142-3; it has some 186 contractor members on its books; 85 to 90 are active, Tr 77-8. Twenty five of the 85 active members are electrical contractors, Tr 90. Five of these are Negro contractors, Tr 90. Eighteen of the active members (or about 20 percent) of the contractors are Negro, Tr 78.

The month of December, 1966 was the so-called "soft period" or 60 to 90 day period before the termination of the collective bargaining Agreement between Midwest Contractors Association and Local 99 of the CIU, Tr 156-7, Def. Ex. 2, the Local 99-MCA Agreement (indicating March 1, 1967 termination date.)[1/] In

1/ From the time of its execution in June, 1965, to the 90th day prior to its termination, the NLRB would not have accepted a petition from a rival labor organization (rival to Local 99, CIU) with respect to any employer who was a member of MCA, Deluxe Metal Furniture Co., 121 NLRB #135, 42 LRRM 1470, Leonard Wholesale Meats, 136 NLRB # 103, 49 LRRM 1901.

mid-December, 1966, there was a meeting between representatives of Midwest Contractors Association and the Building and Construction Trades Council of St. Louis, Tr 156-7, 166, 78. This meeting was initiated by Arthur Kennedy, who arranged it with Arthur Hunn, President of the Building and Construction Trades Council, Tr 157. Various AFL-CIO Unions 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. The representatives of MCA were to take the proposal and specific wage and contract information back to their members, Tr 79-8, 157-8. At a meeting of the membership of MCA in December, 1966, or January, 1967, they voted unanimously to negotiate no further with the AFL-CIO Unions (including Wilbur Stuart, who was present at the meeting), Tr 80-81, 91-2, 93, 158-9.

Norman Lanemann, Business Manager of IBEW Local 1 was present at the December, 1966 meeting between MCA and the Building and Construction Trades Council, Tr 76, at which the Unions present indicated their willingness to enter into contracts with members of MCA, Tr 79. Two electrical contractors, formerly members of Midwest Contractors Association, did withdraw, Tr 81-2, 83, 92, namely, Harding Electric and Doug Johnson; Johnson is white, Tr 77. Business Manager Norman Lanemann had contacted Harding and Johnson before the mid December, 1966 meeting about signing up with his Union, Tr 386, and they did, Tr 386-7, 387-8. 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.

Arthur Kennedy testified that he believes there is no longer a racial problem in the building trades unions of the AFL-CIO. He stated that the racial problems are now 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 wage rates of the AFL-CIO building trades unions (Transcript 159-60). Kennedy, a Negro, 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.

By July 2, 1965, the effective date of the Civil Rights Act of 1964, IBEW Local 1 had approximately 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.)

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, Footnote 1.

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. Footnote 2.

The Walter Hampton Incident. Walter Hampton, a young Negro man who was told that he had completed his apprenticeship under the Local 99 CIU-Midwest Contractors Association Program in the spring of 1965, had gone into the Army in January, 1966, Tr 9, 20-1. He worked for Harding Electric from 1960 through 1963, Tr 12, 20. He worked for Woods Electric after leaving Harding until the end of October, 1965, then he went to work for Stuart Electric--all Negro contractors, Tr 20, 27, Pl.Ex.1 (applicant data card). He made two trips to the union hall,

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Footnote 1. By December 31, 1966 the number of Negroes in non-construction classifications had reached about 70 (Stip 3, Para 15).

Footnote 2. In fact, other than the incident with Frank Witt at Champ Dairy at Elsberry, Missouri, in early 1964, when Witt did not go to the Union hall to make application, there is no evidence that any Negro has applied for union membership without achieving it, since the 1954 effort to organize the Negro contractors was defeated by a negative vote of the membership in 1955.

one on November 8, 1965, and the other two to three weeks earlier, Tr 33, 28, 34. He had been contacted about going to work on the Arch for Sachs Electric Company, the company with the electrical contract on the Arch, Tr 22-25, 34. Hampton testified that he asked for an application for union membership so that he could go to work for Sachs and was told by a man that he couldn't apply for membership until he was working for an IBEW contractor and that he had no evidence to show that he was working for Sachs; so Hampton made a telephone call to Leroy Brown, Superintendent of the National Park Service and left the Union Hall, Tr 25-6, 36-7, Footnote 1.

Norman Lanemann testified that when the young Negro man was told that he had to be working at the trade to become a member, he replied that he was to go to work for Sachs Electric on the Arch; Lanemann told him that there was no call from Sachs for a man and that he should go in the back to the hiring hall and put his name on the list so that he would be referred out like anyone else when his name came up, Tr 351.

Hampton had no recollection whatsoever that he was told that he could go into the hiring hall and sign up, that he would have to wait his turn, Tr 37. However, Hampton did state that he called Brown and gave him the full story before he left the Union Hall, Tr 37-8. The memorandum of Leroy Brown, Superintendent of the Jefferson National Expansion Arch, of October 22, 1966, Defendant's Ex. A, indicates that Hampton told Brown that

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Footnote 1. Hampton testified that he did not know to whom he was speaking, Tr 25. Norman Lanemann, Business Manager of IBEW Local No. 1 testified about a conversation with a young Negro man who had been referred over by Louis Sachs near the end of the year although he was not sure of the date, Tr 349-51. The correlation between their stories makes it plain that it was the same incident.

he would have to wait his turn. Leroy Brown's recollection was that Hampton had been told at the Union Hall that they had available or on call a good many men ahead of him, Tr 339, Tr 338. Louis Sachs had spoken to Norman Lanemann on the telephone before Hampton appeared at the Hall to say that he was sending a young Negro man over that he wanted to put to work; Lanemann had told him that it was fine, that the man could sign up like anyone else; Lanemann surmised that the young man that appeared was the one sent over by Sachs but it wouldn't have made any difference to Lanemann in any event, Tr 375-6.
The treatment accorded to Walter Hampton, when he was told that he would have to be working for an IBEW contractor to be eligible for membership, was in accord with the regular procedures of the Union for all applicants for membership, Stipulation No. 3, Para. 10, Lanemann Depo., p. 55-6, Footnote 1.

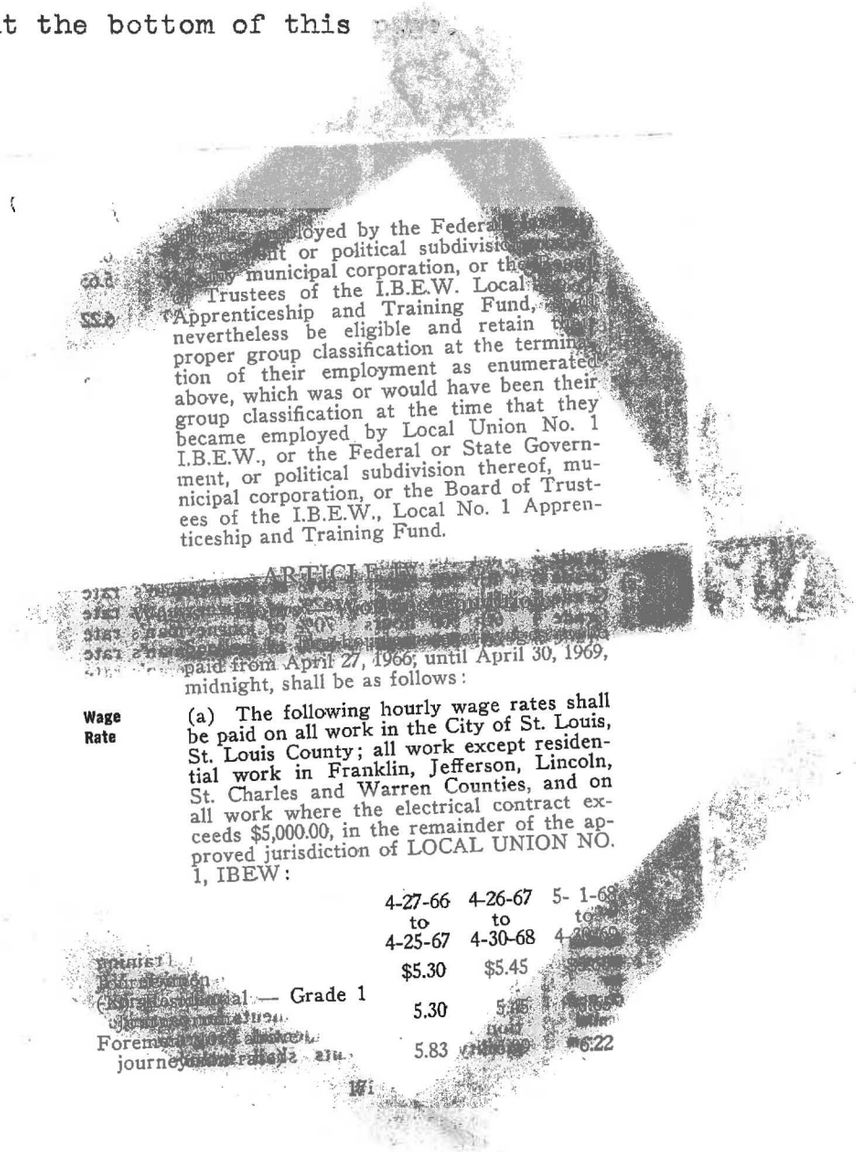
Footnote 1. This statement is a reasonable inference from all of the evidence introduced; it is not intended as argument; other facets of the Walter Hampton incident are taken up in the argument. None of the evidence presented by the Government indicates that anyone, white or Negro, was considered for membership in the Union who was not working for an IBEW contractor, that is, under the jurisdiction of the Union. While the Government called a witness from the Payroll Department of Sachs Electric Company, Tr 507, and introduced records subpoened from Sachs Electric Company, Pl. Ex. 23, the Government chose not to call Louis Sachs as a witness. Louis Sachs told Norman Lanemann on the telephone that he had a young Negro man that he wanted to put to work; Lanemann replied that he should send him over to sign up on the Hiring Hall list which was the only response Lanemann could have made. Sachs knew that under his contract with Local No. 1, that there were two possible ways for him to hire an electrician; one, to put in a requisition for a man and have the next available person on the Hiring Hall list sent out; two, if no one was available from the Hiring Hall, was to have given Walter Hampton a temporary employee letter, as Sachs often did, Tr 528-33, Defendant Exhibits V and W (temporary letters given to two persons by Sachs in October, 1965). At the time that Sachs sent Walter Hampton over to the Union Hall, there is no evidence either that he had an order in for men (for the Arch or elsewhere) nor that he was seeking to hire Hampton through the use of a temporary letter. Lanemann gave Hampton simple and correct advice, that the first step toward union membership was to sign up at the Hiring Hall to be referred out to work for an IBEW contractor. While Hampton denied any recollection of Lanemann's suggestion about signing up at the Hiring Hall, the testimony of Leroy Brown corroborates Lanemann's story. Apparently, Hampton, who was merely taking time off from his regular job, then with Woods Electric, had no interest in signing up and waiting around for referral out to an IBEW contractor.

Walter Hampton made a second trip to IBEW Local No. 1 Hall, taking time off at the request of his then employer Wilbur Stuart, Tr 27; on this date he filled out a Hiring Hall "Applicant Data Sheet", November 8, 1965, Tr 29, 33, Pl.Ex.1 (the applicant data sheet or card). This second trip is discussed below in this Brief in the sections dealing with Local No. 1's Hiring Hall operation. Walter Hampton's testimony is that on this second trip he filed an application to join the union, Tr 29-31, 43. The union's search could not determine which business representative received this particular card, Tr 352. So, the union can't directly rebut this evidence. But, the reasonable inference from all the surrounding evidence supports only a finding that on this second trip Walter Hampton signed up for the Hiring Hall, not that he was signing an application, or had reason to believe that he was signing an application for union membership, Footnote 1.

Footnote 1. Lanemann's corroborated testimony concerning the previous incident was that he had told Hampton to go back to the Hiring Hall, that he would have to be working for an IBEW contractor to apply for membership. On the second trip Hampton testified that he was sent from the receptionist's window to a room at the west end of the building. The card that he filled out refers to the requirement that the card be completely filled out and true in order for the applicant to remain on the Hiring Hall registration list, Pl. Ex. 1. Hampton testified that he was told nothing about the operation of the Hiring Hall, that he didn't observe any bulletin boards near the window in the hiring hall and that he just didn't recall anything at all about the subject of referral, Tr 43-4. The Hiring Hall room is to the west of the building, Tr 383. There is a sign referring to it as a Hiring Hall, Tr 384. Right next to the window in the Hiring Hall is a glass-enclosed bulletin board with names of the unemployed and with a description of the Hiring Hall referral system, Tr 383-4 (Sachs, as an employer, is also required by the Collective Bargaining Agreement to have a copy of the referral system posted in its offices, Pl. Ex. 6 (Collective Bargaining Agreement). Further, the Plaintiff's interrogatory answers, filed before Plaintiff commenced photographing IBEW records in August, 1966, state that Walter Hampton was given a low rating which made it unlikely that he would secure work through the union, Tr 408-10, Attorney-General Interrogatory Answer 19-20, Paragraph C. If Hampton had not been told anything about the Hiring Hall and his position in the Hiring Hall, how could plaintiff have had this information to answer the interrogatory?

D. Hiring Hall Operation

Structure and General Operation of the Hiring Hall. 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, (Pl. Ex. 6, 1958 and subsequent contracts between the Union and NECA). The contract provision under the August 1, 1963 contract between the Union and NECA, as amended June 7, 1966 (which are essentially the same as those first negotiated in 1958) embodied in Article 3, entitled Hiring Procedures, are appended at the bottom of this



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municipal corporation, or th
Trustees of the I.B.E.W. Local
Apprenticeship and Training Fund,
nevertheless be eligible and retain t
proper group classification at the termin
tion of their employment as enumerated
above, which was or would have been their
group classification at the time that they
became employed by Local Union No. 1
I.B.E.W., or the Federal or State Govern-
ment, or political subdivision thereof, mu-
nicipal corporation, or the Board of Trust-
ees of the I.B.E.W., Local No. 1 Appren-
ticeship and Training Fund.

ARTICL

paid from April 27, 1966, until April 30, 1969,
midnight, shall be as follows:

Wage Rate

(a) The following hourly wage rates shall be paid on all work in the City of St. Louis, St. Louis County; all work except residential work in Franklin, Jefferson, Lincoln, St. Charles and Warren Counties, and on all work where the electrical contract exceeds $5,000.00, in the remainder of the approved jurisdiction of LOCAL UNION NO. 1, IBEW:

	4-27-66 to 4-25-67	4-26-67 to 4-30-68	5- 1-68 to
	$5.30	$5.45	
— Grade 1	5.30	5.45	
Fore journey	5.83		6.22

Briefly summarized Article 3 provides as follows:

Section 1 - Orderly Procedure of Referral. The purpose is to provide an orderly procedure of referral for employment applicants, preserving legitimate interests of employees within the area, and eliminating discrimination in employment because of membership or non-membership in the Union.

Section 2 - Exclusive Source of Referrals. The Union is the exclusive source of referrals.

Section 3 - Rejection of Applicants and Furnishing of Employees. The Employer may reject any applicant referred and determines the tenure of all persons hired. The Union agrees to furnish men to work under the terms of the contract.

Section 4 - Selection and Referral of Applicants without Discrimination. Union agrees to refer applicants without discrimination because of membership or non-membership in the Union without regard to any contrary Union by-laws, policies or regulations.

Section 5 - Register of Applicants. The Union is to maintain a register based on groups listed below and to place each applicant in his highest priority group. Registration lists are available for inspection by NECA and applicants each work day between eight and ten A.M.

> Group 1. Applicants with five or more years experience in electrical construction (in any of the classifications listed in the contract), who are residents of the area constituting the normal labor market (defined elsewhere in the contract), who have passed a written journeymen's examination for their classification given by an IBEW Local and who have been employed at least one of the last four years under a collective bargaining agreement between the parties.
>
> Group 2. Experience and residence requirements the same as Group 1. Applicants must have passed a written examination (but not necessarily a journeymen's examination) given by a local of the IBEW and have been employed at least one of the last three years under a collective bargaining agreement between the parties.
>
> Group 3. Same experience requirement as Group 1. No residence requirement. No examination requirement. Applicant must have worked at least six months in the last three years under a collective bargaining agreement between the parties.
>
> Group 4. All applicants with one year's experience in the electrical construction industry. No other requirements.

Section 6 - Temporary Employees. If the Union can't fill a request within 48 hours by an employer, the employer is free to hire on his own. The employer must notify the business manager of the Union of the persons so hired who are "temporary employees" and who are subject to replacement when applicants become available through the Hiring Hall.

Section 7 - Definitions.

(A) Four separate labor markets are defined--e.g. the city and county of St. Louis is one; Franklin and Warren counties constitute another, etc.

(B) The definition of the areas is related to the prevailing wage areas under the Davis-Bacon Act.

(C) Resident is a person maintaining a permanent home in one of the four areas defined in (a).

(D) Examinations are defined to include experience or rating tests before November 1, 1958 (when the system went into effect), but thereafter only written exams given by Local No. 1. Reasonable intervals of time for giving exams are once a month. Applicants with five years of experience are eligible for exams. Applicants failing have to wait six months to retake the examination.

Section 8 - Out of Work List. The Union is to maintain such a list which is to list applicants within each group in chronological order of the dates of registration of availability for employment. Separate lists are set up for industrial-commercial and residential construction; applicants are to register on the list on which they have been primarily employed. An applicant may place his name only on one list.

Section 9 - Order of Referral. Employers are to tell the Union of the number of applicants needed in either industrial-commercial or residential work and the geographical area of the job. Applicants are to be referred first from the industrial-commercial Group 1 list of applicants from the area (one of the four areas defined in Section 7a) where the job is to be performed, unless the employer specifically requests residential applicants. When the Group 1 list in the area is exhausted from industrial-commercial applicants, residential applicants are to be referred from Group 1. When the Group 1 list in the designated (one of the four) geographic area is exhausted, the Group 2, and if necessary the Group 3, list in that area is used.

Section 10 - If Groups 1, 2 and 3 in the area are exhausted, then lists from the other three geographical areas are used, in chronological order.

Section 11. When Groups 1, 2 and 3 have been exhausted in all four geographic areas, then the Union is to dispatch persons from Group 4 in the geographic area in which the job is located. When that group is exhausted, referral is made from Group 4 in the other three geographic areas.

Section 12 - Loss of Position on List When Employed. Once a person has been employed for a minimum of two work days, his name is placed at the bottom of the list. (That is,a job lasting less than two days entitles the person sent out to maintain his original place on the Hiring Hall list).

Section 13 - Status of Rejected Applicants on List. If an employer turns down a person referred to him, the applicant maintains his place on the list. An applicant may refuse two jobs without losing his position on the list; refusal of a third job places him at the bottom of the list.

Section 14 - Re-registration. Applicants must re-register every 90 days to retain place on the list.

Section 15 - Exceptions. Exceptions from the chronological order of referral are permitted:

a. Special skills. When an employer requires special skills in his request, the first applicant on the list possessing those skills (rather than necessarily the first chronological applicant) is referred out.

b. Age ratio. (Another section of the contract, Article 4, Section 26 provides that every fourth man in a shop is to be 55 years or older if such men are available). When the age ratio clause requires referral of an older man, the first applicant on the list of the age will be referred out.

Section 16 - Appeals Committee. The Appeals Committee consists of two members appointed by the Union, two appointed by NECA and one public member.

Section 17 - Duties of Appeals Committee. Any complaint from a man, employer or applicant is to be referred to the Committee which has the power to make final and binding decisions and to enforce reasonable sanctions. Any applicant shall first exhaust any and all remedies he may have through the Appeals Committee.

Section 18 - Posting of Referral Procedure. A copy of the portion of the contract setting forth the referral procedure must be posted on the bulletin board at the offices of the Local Union and the offices of the employers.

Section 19 - Employment Procedure for Apprentices. They are to be hired and transferred in accordance with the Apprenticeship Agreement and Standards. Upon completion of apprenticeship and examination, apprentices are to be deemed to have necessary experience to be placed in the apprentice's proper group.

Section 20 - Retention of Status in Group. Persons employed full time by the local union, going into government service, etc. are entitled to return to their former status in the Hiring Hall system.

The Hiring Hall is in the west part of the Union Building, Tr 383. A window separates the Hiring Hall room from the office of the Business Representative administering it, Tr 383-4. The referral system procedure is posted on a bulletin board eight to ten inches to the right of this window, Tr 383-4. The Hiring Hall is under the supervision of the Business Manager although he has little connection with its operations, which are handled by business representatives who alternate in the job, Tr 357-8. The Hiring Hall hours are from eight to ten, except Saturdays and Sundays, Lanemann Depo. 36, Tr 378.

Applicants fill out an Applicant Data Card (such as Pl. Ex. 1, the Applicant Data Card on Walter Hampton), Lanemann Depo., p. 36, Tr 345. The Business Representative, when finished for the day, gives the cards to the girl in the office who handles the referral system, Tr 345. This girl then codes and grades them according to information on the card, Tr 345-6. She makes up a master working card (see various master working cards in Def. Ex. U) showing dates referred to various employers in summary form on an individual. The master working card is made up that same afternoon or the next morning after a person registers, Tr 345-6. The girl codes the group number in the lower right hand corner of the Applicant Data Card (see cards in Def. Ex. U and Walter Hampton Card Exhibit D), Tr 359-60. She uses the Agreement to determine group numbers, Tr 361. The Applicant Data Cards are kept in a Cardex file in groups of twenty-five, Tr 365. When this file is looked at from the outside, it shows just the bottom line for each of the twenty-five cards which shows the code numbers, the name, and whether the person is a member or non-member; members and non-members are ultimately filed in separate places for permanent filing purposes, Tr 365-6, 364.

To be referred out from the Hiring Hall a man must be physically present in the Hall, Lanemann Depo., 38-40, Tr 349; Heeney depo. 101-2. Business Representatives call men not present in the Hall only when seeking someone with special skills, such as a welder or cable-splicer, Lanemann, Depo., p. 40, Tr 349. This procedure has been in effect since April, 1966; prior to that time the procedure was slightly different, Tr 349. During the period before April, 1966, after going through all of the men present in the Hall, if there were jobs still open, the Business Representative would make telephone calls to try to find someone to perform the work, Tr 348-9. This arrangement was changed in April, 1966 after a new agreement had been signed in March because of questions about fairness, where reaching some of the people not present in the Hall required long-distance calls, Tr 349.

According to Business Manager Norman Lanemann, the purpose of the Hiring Hall is to rotate the work among the men, so that one is not always working while another is always idle, Tr 367.

While there are only four groups provided for in the contract, a fifth classification is used, Group "0". These are people without experience who file applications, Tr 361, Lanemann depo. p. 35.

Both members and non-members are referred through the Hiring Hall; their grouping is determined from their experience, Tr 37-8. Pl. Ex. 10 consists of microfilm records of Hiring Hall applicant data cards and Master Working Cards from 1958 through August, 1966; Pl. Ex. 10a is a summary of certain information from these cards made through an IBM tabulation. In its brief for the first time, the plaintiff has made some further compilations for the microfilm in Pl. Ex. 10, Memorandum of Plaintiff, pages 28-9. These figures corroborate that a significant number

of non-members use the hiring hall and are referred out.

Footnote 1.

Plaintiff presented no evidence that there was any discrimination against Negroes in referrals from the Hiring Hall. The only evidence concerning any Negro applicant and the hiring hall was that relating to Walter Hampton, Footnote 2.

Walter Hampton and the Hiring Hall. Walter Hampton filled out an Applicant Data Card for the Hiring Hall on November 8, 1965, Pl. Ex. 1, Tr 33. Walter Hampton indicated that no one ever said anything to him about the Hiring Hall or being referred out to work and that he thought only that he was filling out a membership application card. However, the corroborating evidence to the contrary and all the surrounding facts and circumstances (see Page 16 above), Footnote 1/ do not support this recollection of Walter Hampton's that he had no idea he was registering for work.

Pl. Ex. 1 indicates that there was an erasure from an original coding and that the card was coded for Group 4. The Master Working Card, Def. Ex. D, which has the group number in the upper right hand corner, shows an erasure and then a correction

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Footnote 1. The compilation in Plaintiff's Memorandum on page 29 indicates that 7.7% of the referrals made from the Hiring Hall have been of non-members, totaling 1,041.

Footnote 2. Witt testified about his experience in using the hiring hall, as an employer. The 1st referral was a Negro who was unsatisfactory; the 2nd a white who was not satisfactory to him. Next, he hired a Negro who was cleared by the Union and is satisfactory (Tr 115-23). There was no evidence of discrimination in job referral with respect to the one Negro applicant that the union referred to Witt, e.g. that it had failed to refer the man to any earlier (white) employer requesting men; in fact, Plaintiff elicited no evidence about the man, not even his name.

"four per NRL". The Business Manager, Norman Lanemann, whose initials are NRL testified that he did not recall the particular card; at the time there was a new girl in the office who was doing the grading; Lanemann suggested that she may have asked him and he told her that the number should be 4, Tr 347. It is very rare that a girl will come to him with this type of question since there is ordinarily a business representative available, Tr 347-8. The master working cards are made up the same afternoon that the cards are received or the next morning and any corrections such as this would have been made then, Tr 346, 348.

Hampton did recall that there were men sitting around in the room where he filled out the card, Tr 42. Hampton left immediately after filling out the card and went back to work for his then employer, Wilbur Stuart, the same day, Tr 44. He continued to work for Stuart Electric until two weeks before he went into the Army late in January, 1966, Tr 44-5. He never returned to the Union Hall, Tr 45. On the Master Working Card made up for Walter Hampton, Defendant Exhibit D, there is a notation "card pulled 3/21/66 (called for work) in armed forces per GB". The initials G.B. are those of a business representative who died in November, 1966, George Bresnan, Tr 353. Bresnan was one of the four or five business representatives who rotated on the Hiring Hall desk, Tr 358.

Group 4 is the correct coding or classification for Walter Hampton under the Hiring Hall provisions of the Collective Bargaining Agreement. There is no evidence there was a job open at the particular time that Hampton was physically present in the Hiring Hall filling out the card for whom there was no one available in the Hall with a higher group number or earlier time of registration. There is no evidence that any job that

was available was filled by a telephone call to any man below Hampton on the list rather than by using men physically present in the hiring hall, before March 21, 1966, when a call was placed to Walter Hampton. In short, the evidence does not support a finding that Walter Hampton's application for work was treated any differently than the manner in which applications were handled for other persons at the Hiring Hall.

E- The Electricians' Apprenticeship Program

Control. The Secretary-Director of the Electricians' Joint Apprenticeship Committee (hereinafter called "JAC") is Michael Gibbons, who is President of IBEW Local 1, Gibbons depo., 10/18/66, p. 4. He has held the position since February of 1965 as Director of the JAC; he has been President of the Union since some time in 1962, Gibbons depo., 10/18/66, p. 4. His predecessor in the job of Director was H. Lee Bruns, who served in a full time basis starting in 1955, until February, 1965, Bruns depo., p. 5, Gibbons depo., 10/18/66, p. 4. Bruns was President of IBEW Local 1 from 1956 until 1962, Bruns depo., p. 3. The Secretary-Director's job is full time and salaried. He administers the program on a daily basis, Tr 381.

The collective bargaining Agreement between IBEW Local 1 and NECA (Plaintiff's Ex. 6) provides for the establishment of a Joint Apprenticeship Committee. Article VI provides that there are to be three members representing NECA and three members representing the Union. The Chairman of the JAC is Dale Moulder, who is an employer member, the Secretary-Director of St. Louis Chapter, NECA, Gibbons depo., 10/18/66, page 6, Tr 380. Section 3 of Article VI of the Agreement provides that the JAC has supervision of all matters involving apprenticeship in conformity with

the Agreement and with the registered apprenticeship standards; in the event of a deadlock there is a procedure for handling before the Joint Labor Management Committee, on which the Union and NECA have equal representation. There is also a Joint Apprenticeship and Training Trust Fund Agreement which handles the financing of the Apprenticeship Program, Defendant's Ex. M (The Trust Agreement), Art. VI, Sec. 9 and 10 of Pl. Ex. 6 (The Collective Bargaining Agreement). Here again the Union and employers have equal representation.

Apprentices are selected in accordance with the apprenticeship standards, which include objective tests and interviews, Gibbons depo., 10/18/66, pages 26-30, 42-43. An answer is either right or wrong, Tr 321. At least two men, one representing the Union and one representing the Employers interview each applicant, Gibbons depo., 10/18/66, p. 24, Tr 316. Gibbons grades the tests, Gibbons, depo., Oct. 18, p. 25. The tests are administered at the Union hall by Billy Bruns and Proske, who are apprentice teachers, Gibbons depo., 10/18/66, p. 25, Tr 315, 319; they are both IBEW members, Tr. 319, Footnote 1. The JAC meets monthly, the whole committee, to supervise the program, Tr 313-14. Employer members attend all testing sessions as well as the interviews, Tr 313-16. Employer and Union members of the JAC interviewing applicants work entirely independently of each other, without comparing notes in determining the qualifications of applicants, Tr 317-18.

Footnote 1. Since April, 1967, all testing is performed by the Missouri Division of Employment Security as announced in Apprenticeship Information Center Bulletin #14 of 4/27/67, Tr 394. This change was made by the JAC because new government policy permits the furnishing of a range of grades to the JAC which information was not available to the JAC before, Tr 395.

Operation of the Apprenticeship Program.

Applications are accepted at the JAC office, which has been located at the Union hall, Bruns depo., p. 9, 22, Footnote 1. The JAC office is separate from the Union's office and has its own sign plainly visible to one coming in the front entrance of the building, Tr 384-5.

Until 1964 the applications were kept in chronological order and there was a list of some five to six thousand applicants; sons of Union members were given preference over the whole list, Bruns depo., p. 59, 70-72. In March, 1964 the provision of the Union's By-Laws concerning preference to members' sons was deleted, Tr 353-4, Pl. Ex. 5(By-Laws, Article XIV.) All of the accumulated old applications were destroyed, for fear of not being in compliance with Title 29, Part 30, Code of Federal Regulations, which came out in early 1964, Bruns depo., page 42.

The standards for the apprenticeship program have been approved by and registered by the Bureau of Apprenticeship and Training of the United States Department of Labor as being in accordance with standards recommended by the Federal Committee on Apprenticeship since 1941. Following the publication of Title 29, Part 30, CFR, Non-discrimination in Apprenticeship, 28 F.R. 11, 313, the JAC amended the standards for the program. These amendments were accepted for registration by the Bureau of Apprenticeship and Training April 10, 1964. (Stipulation No. 3, Para. 8, Pl. Ex. 7, The Apprenticeship Standards Booklet, now in effect; Def. Ex. J, Registration Certificate from Bureau of Apprenticeship and Training of 1941; Def. Ex. K, Letter from Bureau of Apprenticeship and Training of April 10, 1964, accepting the revised standards.)

Footnote 1. Starting in April, 1967, the JAC worked out an arrangement with the Apprentice Information Center at Missouri Division of Employment Security so that applications may be made at that office now, as well as at the JAC office, Tr 394.

Briefly, the program provides for five years of training, 8,000 hours on the job and 880 hours of related classroom instruction, Pl. Ex. 7 (Standards), Gibbons Depo. 10/18/66, p. 37-8. Apprentices go to school one day a week for eight hours at O'Fallon Technical High School, Tr 38. There is a probationary period of 1,000 hours in which the apprentice is closely watched by his employer and the school instructors, and once in awhile someone is dropped from the program during this period, Tr 44-5. At the end of the five year period the apprentice is given a journeyman's examination; no apprentice has ever failed, Tr 48.

To determine the number of apprentices to be placed each year a survey is made of the work situation as to what is on the drawing boards in offices of engineers and architects and the contracts that employers have; a questionnaire is sent to employers requesting advice as to the number of apprentices they will need during the coming year. Forty to fifty apprentices a year have been accepted in recent years. (Gibbons depo. 10/18/66, p. 40-1).

The Standards (Plaintiff's Ex. 7) provide for selection of apprentices as follows (on page 3):

> Selection of apprentices under this program shall be made on the basis of qualifications alone and all applicants will be afforded equal opportunity under these standards without regard to race, creed, color, religion, national origin, or ancestry (except to the extent that such physical handicaps affect the applicant's qualifications for the trade of craft) in accordance with objective standards which permit review after full and fair opportunity for applications; and this program shall be operated on a completely non-discriminatory basis.

The first step is for a person to file an application. The JAC sets the date for testing and the date for cut-off of applications for the tests. Applicants are notified to appear for the test

with birth certificates and a form authorizing the high school to send the JAC a transcript of their record. The tests are graded. The applicants who pass the test are placed on a list in the order of their test scores, Footnote 1. (Gibbons depo. 10/18/66, p. 17-19).

Four tests are given on which the applicants are graded; these tests are identical for all. The tests are: adaptability, math, mechanical ability, and mechanical comprehension. They are also given the Kuder (Vocational) Preference Test, which is not graded but which is just for the information of the interviewers. (Gibbons Depo. 10/18/66, p. 19-21). Shortly after the tests, those who pass are called in for interviews, conducted by at least one employer and one union member of the JAC. From the interviewer's evaluation forms a compound evaluation sheet is filled out which is an average of the scores given the applicant by each interviewer, Tr 25-27. All persons who are interviewed are then listed in order of their scores, Gibbons Depo 10/18/66, p. 29-30. A contractor who wants an apprentice must take the next man on the list, Gibbons Depo. 10/18/66, p. 30. A physical examination is the only requirement that costs the applicant any money; for that reason it is not required until it is known that a boy is going to be placed with a contractor, Gibbons Depo., 10/18/66, p. 36. As set forth in the Standards (Pl. Ex. 7, inside cover) there is an appeals procedure through which an applicant may protest any allegation of unfair treatment.

Footnote 1. In recent periods about 140 to 200 persons have shown up to take the test. Forty to forty-five are scheduled each night and about thirty show up. (Tr. 322). Notices to take the test are sent by registered mail, return receipt requested, Gibbons Depo., 10/18/66, p. 22.

Besides the Apprenticeship Program to train persons to become Class A Journeyman Wiremen, the JAC is involved in two other Apprenticeship Programs. One is a program for training Class C Maintenance Men. The JAC does not select these apprentices; they are selected by their employer. Once selected the JAC does handle their training. (Gibbons depo., 10/18/66, page 6, 31, 32, 34). The other program is a form of upgrading for members of the Union only. Persons with non construction classification are taken into the program to learn residential wiring, and eventually to become X Residential Journeymen. (Gibbons depo., 10/18/66, page 32-3, Tr 341). The C Maintenance and A Wireman Apprentices attend the same classes; the Residential Apprentices have their own classes, Bruns depo., page 31.

Negroes and the Electricians Apprenticeship Program

As stated in Stipulation No. 3, paragraph 11 (b).

> "Prior to the filing of this suit on February 4, 1966, there had been no Negroes placed for employment through the IBEW-NECA Joint Apprenticeship Program. No one applying for the Apprenticeship Program during the period from July 2, 1965 to July 4, 1966 was placed for employment during that period because processing of the applications, all of which were from the year 1965 had not been completed. Reginald Ollie, the only Negro applicant who passed the written examinations in 1965 was interviewed in January, 1966; he was mong the successful 1965 applicants who were placed for employment starting in mid-February, 1966"

The Stipulation goes on to state that during the period from the effective date of the Civil Rights Act of 1965 to October 24, 1966, of 69 persons who were placed for employment as apprentices; three were Negro, Stip. 3, para. 13(b), Footnote 1.

Footnote 1. In detail, paragraph 13(b) of the Stipulation provides: During the period July 2, 1965 to October 24, 1966, 69 persons were placed for employment by the Electricians Apprenticeship Program of IBEW Local 1, 3 of whom were Negroes, namely, Reginald Ollie (placed for employment in mid-February, 1966) David R. Jeffress (placed for employment in October, 1966), and Willis B. Hall (placed for employment in October, 1966). These were three of the only four Negro applicants who (according to information available to the parties) met the age and education requirements and who passed the written examination; the fourth Negro applicant, Templeton Woods, Jr., failed to appear for his oral interview.

Of the four Negro applicants during this period who passed the written test, three showed up for the interview and these three were the ones who were placed.

While the Director of the Apprenticeship Program isn't in a position to know how many Negro applicants there are, the former Director, H. Lee Bruns, could remember only havong seen one, Bruns depo., p. 67-8. Gibbons, the Director since 1965, recalled that there were about 11 Negro boys whom he observed at the last series of tests, two of whom passed (Gibbons depo. of 10/18/66, p. 53-4). Footnote 1.

At the request of plaintiff, the parties sent out questionnaires concerning the race and relationship to union members of various groups of apprentice applicants. The results are contained in Stipulation No. 2.

With respect to the group of apprenticeship applicants of July 19, 1965:

A. Of the 51 accepted and placed, 48 responded to the questionnaires, 47 white respondents and one Negro respondent. 29 of the 48 were related to someone in Local 1 or its Apprenticeship Program by blood or marriage, or 60 percent, (Paragraph 6 of Stipulation 2).

B. Of 378 rejected, 250 responded to questionnaires; of the respondents indicating their race, 235 were white and 3 were Negro. 132 of the rejected persons responding were related by blood or marriage to someone in IBEW Local 1, or 53 percent. (Paragraph 7 of Stipulation No. 2).

Footnote 1. The group Gibbons referred to would have been those who had made application prior to June 30, 1966, and were tested in July, 1966, Gibbons depo., 10/18/66, p. 50. Not everyone who files an application gets to the tests. Some applicants are disqualified from an examination of their application form for age, living outside the jurisdictional area, and not having completed high school or an equivalency diploma, Gibbons depo. 10/18/66, p. 21-2.

C. These two paragraphs of the Stipulation, with respect to the July, 1965 applicants, indicate that of four Negroes responding to the questionnaire, one was accepted, or 25 percent rate of acceptance. With respect to white applicants responding, 47 out of 282 were accepted, 17 percent acceptance.

Stipulation No. 3, paragraph 8 further states:

> On February 11, 1965 the standards of the Apprenticeship Program were reviewed by the National Office for Program Review of the Bureau of Apprenticeship and Training, pursuant to Title 29, C.F.R. - Part 30, Non Discrimination in Apprenticeship, and found to be in compliance with that regulation.

Defendant's Ex. L, is a letter from the Bureau of Apprenticeship and Training, Department of Labor, dated February 11, 1965, stating the results of the review.

Plaintiff presented no evidence of discriminatory treatment of any Negro applicant for the Apprenticeship Program.

Publicizing of Opportunities in Apprenticeship Program

For the first two years under the new standards, notice of the opening of the program was sent to William Kottmeyer, Superintendent of Schools in St. Louis, Monsignor Curtin, Superintendent of Parochial Schools, Mr. Apel of the Bureau of Apprenticeship and Training in St. Louis, and to Mr. Delargy of the Missouri Division of Unemployment, Gibbons depo., 10/18/66, page 35.

In December, 1965, the Apprenticeship Information Center was established at the offices of the Missouri Division of Employment Security, Tr 391. Its purpose is to gather information from various apprenticeship committees and other employers of apprentices for dissemination to schools, business organizations, minority organizations and other interested persons, Tr 391-2.

Michael Gibbons, Director of the JAC, supplies it with information concerning qualifications and openings for radio publicity and the other forms of communication used by the Apprenticeship Information Center (hereinafter called "A.I.C."), Tr 406. In the information that the A.I.C. sends out, it indicates that the JAC is supplying the information, Tr 406-7.

On the mailing list of the JAC for its bulletins (in addition to those named above and more specifically) are the Human Development Corporation, School Counselors, the NAACP, CORE, and ACTION, Tr 394, Footnote 1. The first mailing went to school counselors and guidance departments on January 28, 1966 and listed the requirements and application period for the Electricians' Program and various other programs. Other mailings concerning the Electricians' JAC were Bulletin No. 2 of March 11, 1966, Bulletin No. 7 of November 3, 1966, Bulletin No. 12 of April 6, 1967, and Bulletin No. 14 of April 24, 1967,Defendant's Ex. E.

The A.I.C. also provides news releases to various news media throughout the area and Defendant's Ex. F. is a listing of the news media, together with some of the releases, Tr 396-7. The list specifically includes five St. Louis newspapers labelled as the "Negro press", various community wide neighborhood newspapers and all of the radio and TV stations in the area. Defendant's Ex. F indicates that news releases concerning the Electricians' Program started going out on March 21, 1966, and have continued, sometimes with headlines specifically referring to the Electricians' Program in community wide papers such as the St. Louis Globe and St. Louis Post Dispatch.

Footnote 1. The mailing list also includes the St. Louis Council on Human Relations, City Department of Welfare, Jewish Employment & Vocational Service, Work Experience Project, the Urban League, the Community Coordinator in Kinloch, Mo., Vocational Counselling Service of greater St. Louis, Pruitt-Igoe Out-Station, Easton-Taylor District Out-Station, Kinloch Out-Station, and various other out-stations in predominantly Negro residential areas, (mailing list attached to Defendant's Ex. E).

Def. Ex. G shows the contents of radio releases that started going out on March 21, 1966, and continued thereafter.
A.I.C. Representatives also make public appearances, at schools and before minority organizations to explain apprenticeship programs generally and to show a film entitled "Skills for Progress", Tr 398-9. Defendant's Ex. H shows some of the programs and places where appearances have been given and indicates that as early as January 12, 1966, a counselor from the A.I.C. visited Kinloch High Schools's counselor to explain the qualifications and referral procedures of various apprenticeship programs and to leave a copy of the Apprenticeship Fact Sheet listing the requirements for electricians and other crafts.
Mr. Dahl indicated that Michael Gibbons from the Electricians participated with him in a school program in May of 1966, and on two other occasions, Tr 405-6. A.I.C. also supplies occupational guides on the electricians' trade showing the work performed, working conditions, employment outlook, earnings, requirements for entrance into the trade, etc. Def. Ex. I-1.

Joseph Schaeffer, Sales Manager for Sachs Electric Company, and a member of the Board of Directors of St. Louis Chapter National Electrical Contractors' Association, testified concerning efforts to communicate to young people in the Negro community opportunities in the electrical field and in the Apprenticeship Program, Tr 299, 311, 300. Schaeffer first appeared at the request of Arthur Kennedy at the Ashland School in December, 1965, a school body that was 100 percent Negro, Tr 299-300; he explained that the selection procedures for the JAC program were non-discriminatory.
On January 28, 1966, IBEW Local 1 joined with NECA in jointly sponsoring a program on opportunities in the electrical field,

Tr. 301,311. The program was scheduled for February 23, 1966, and invitations were sent to various representatives of the Negro community. Half a dozen counselors from schools in predominantly Negro areas, five Negro high school boys, representatives of the Urban League and NAACP, a Negro alderman attended, Tr 301-2. Speakers included Michael Gibbons and representatives of the employers; they tried to outline opportunities, qualifications and to encourage the sending in of applicants, Tr 303.

On April 29, 1966, Joseph Schaeffer and Michael Gibbons jointly appeared on the Career Day program at Soldan High School, which has a 100 percent Negro student body, Tr 304. They spoke to three groups of boys during the day. Gibbons spoke on qualifications for the Apprenticeship Program, how and where to apply, procedures for selection of apprentices, instructions and other matters. Schaeffer spoke on opportunities in the electrical industry, Tr 305.

On May 18, 1966, Joseph Schaefer, Michael Gibbons and George Bresnan participated in a program at the Enright Middle School, which has 100 percent Negro student body. George Bresnan was a Business Representative of IBEW Local 1. They spent the day at the school and spoke to six different groups of pre high school boys and girls. Because of the younger age of the audience and the presence of girls, Schaeffer in talking about opportunities in the electrical industry also spoke of clerical and stenographic jobs and of women working in electrical manufacturing. Gibbons and Bresnan spoke about the responsibility required to employers and the importance of school records on attendance. They explained what apprenticeship training was all about. (Tr 305-8).

On May 25, 1966, there was a conference held at the Union hall for all school counselors for St. Louis County, and for those who had not been able to attend the conference earlier in the year. The group was predominantly white; there were Negro school counselors in attendance. Norman Lanemann, the Union's Business Manager, who gave the opening talk stated that the Union has no discrimination in its make-up. Gibbons, Schaeffer and Walter Murphy (an employer representative of Crest Electric Company) presented material to the meeting. Stress was placed on the availability of their services for career days in schools. (Tr. 308).

In August of 1966, Schaeffer appeared at a 100 percent Negro elementary school, Dunbar, with Mike Gibbons to present an all day program for eighth grade students, Tr. 309-10. On August 19, 1966, a similar program was presented at the Blewett School, with a 100 percent Negro student body, together with Roy Sachse, Business Representative of Local 1. At the Dunbar and Blewett Schools leaflets were handed out for the children to take home to discuss with their parents, (Tr. 309-10).

SUMMARY OF ARGUMENT

Introduction. This is a very long brief primarily because plaintiff has sought to imply that almost every facet of the Union's structure and activities discriminates against Negroes. While some of the implications of plaintiff's argument and proposed decree seem so unrelated to the evidence in the case as to need no answer from the Union, because of the seriousness of the subject matter the Union has sought to deal with most of them.[1/]

No Complaints Against Union. First of all, it is worthy of note that there have been no complaints filed against this Union by anyone alleging racial discrimination, according to the Attorney General's Answers to Interrogatories. This is in sharp contrast with the first decided, Section 707 case, Vogler v. McCarthy, ____ F. Supp. ____ (E.D. La.,1967) where the suit was preceded by a number of individual charges of discrimination and conciliating efforts.

1/ The "Appendix to Plaintiff's Memorandum in Support of its proposed Findings of Fact and Conclusions of Law" has no page numbers. For the purpose of identification, counsel for the Union has numbered the pages with a capital A in front of the number, so that the first page is A-1 and the last page is A-26.

An example of material unrelated to evidence is paragraph IIIa of the proposed Decree (Appendix page A-23); plaintiff proposes that defendant submit copies of all tests to be used for job referrals, apprenticeship and membership, together with how they are supposed to be administered, and scoring processes. This presupposes that such tests have been used to discriminate against Negroes. As the court discovery orders and depositions filed with the court reveal, plaintiff had access to and copied all of the tests, test procedures, test papers and scores of both the Union and the Joint Apprenticeship Committee. Yet, plaintiff did not introduce one piece of evidence with respect to the tests, test scores, or procedures used for tests, much less anything to show that they have been used to discriminate against anyone.

Only One Questionable Allegation Concerns Conduct since Effective Date of Act - Walter Hampton. After pursuing elaborate and exhaustive discovery procedures and extensive investigation by Government attorneys and investigative agents, plaintiff has only one concrete allegation of discrimination since the effective date of the Act, namely, Walter Hampton. Assuming for the moment (solely for the purpose of argument) that Local 1 did refuse to admit or refer Hampton because of his race, that is one complaint. The Act provides for an individual complaint to be filed with the EEOC, or, initially with any existing state agency. It is not the basis for an Attorney General's suit.[1]

Plaintiff's own Witnesses Show Union is Not Resisting Law. Consider each Negro witness the plaintiff introduced other than Hampton. Frank Witt, a Negro contractor, had no contact with the Union since early 1964; he was invited to join Local 1 together with his Negro employees before this suit was filed.[2]

1/ The Walter Hampton incident presents two questions: 1) was there discrimination in handling his request for Union membership or 2) was there discrimination in treatment of his registration on the out-of-work list.

1) As set forth in the Stipulation between the parties, it has been the practice of Local 1 for at least 5 years to accept applications only from persons working under its jurisdiction; so, the Business Manager in telling Hampton that he should first get a job with a Local 1 contractor by signing up at the hiring hall was not discriminating; it was standard procedure applied to all persons.

2) The out-of-work list question is complicated by the fact that Hampton testified that he didn't know he was registering on the out-of-work list when he filled out the applicant data card, in spite of corroborated evidence that the Business Manager had previously told him that he had to start out by registering in the hiring hall and waiting his turn for job referral and in spite of wording on the card itself referring to the applicants providing true information in order to remain on the hiring hall registration list. In any event, Hampton wasn't out of work, and returned immediately, the same day, to his regulat job without ever waiting around at Local 1 for referral to a job.

2/Faced with a conduct such as Local 1's recruiting of Negroes before the suit was filed, plaintiff can do nothing but suggest that it was because of pending discrimination charges in the NLRB case; the only Negroes involved in that case were plumbers and had nothing to do with the Electricians' Union, and there was no allegation that Local 1 was duscruminating agaist Negroes in that case. Actually, as noted, no charge of racial discrimination had been lodged against Local 1 (Attorney General's Ansers to Interrogatories). The Attorney General's suit came out of the blue, without prior notice to Local 1. But plaintiff can't have it both ways. Plaintiff alleges Local 1 was discriminating against Walter Hampton at this very same time that it was recruiting Negro members. The law requires an intent to discriminate. It is not reasonable to infer that Local 1 would have been intentionally discriminating against one Negro while soliciting others to apply.

James Harding, a Negro contractor, had had no contacts with Local 1 for over 10 years; a day or two prior to the filing of this suit he had met the Business Manager of the Union and received an affirmative response to his inquiry about entering into a contract with Local 1; at the earliest date that it could legally do so Local 1 took all of his 10 employees into the Union.

Wilbur Stuart, a Negro electrical contractor, had no contact with Local 1 since 1955; he testified that he has not been interested in affiliation with Local 1 since the CIU was formed in 1961. He and all the other Negro (and white) contractors in Midwest Contractors' Association unanimously voted to stay away from Local 1. He has not even returned telephone calls from the Business Manager of Local 1. The final witness, Arthur Kennedy, founder and still President of Midwest Contractors' Association, testified that the racial problem with the AFL-CIO Building Trades Union is behind us and that the problem is now an economic one.

These are all of plaintiff's witnesses concerning Negro contractors and Negro electricians. What evidence do they present of discrimination by Local 1 since July 2, 1965? None. Their evidence is Negroes have come in to or have been offered the opportunity to come in to Local 1, and there is no evidence to the contrary.

Plaintiff's Efforts to Stretch 10 Year Old Incidents. Faced with this evidence concerning the conduct of Local 1 since July 2, 1965, the Government has tried to stretch old incidents into evidence of a continuing and current pattern. Going back over the last 5 years, plaintiff could produce evidence of only one incident of contact between Local 1 and any Negro, the Champ Dairy picketing of Witt Electric, that plaintiff could allege as discriminatory conduct. To make this into discriminatory conduct, one must stretch the inferences and ignore material facts.

Local 1 did picket Witt at Champ allegating substandard conditions. The Stipulation indicates that during this period of year Local 1 gave notice of disputes on over 150 non union jobs, only two of which were Negro (Stipulation No. 3, paragraph 19). Going back another 5 years to 1956, the only suggestion of discriminatory conduct by plaintiff is a reference in the minutes of a 1961 meeting by the then Business Manager Nolte that the members would be given advance notice before any Negro's application for membership would be presented. It is true that this does support an inference that there were no Negroes in the Local in 1961. It doesn't show that anyone applied and was turned down. The evidence shows the contrary, by July 2, 1965 there were 25 Negro members of the union; since then, over 50 more Negroes have become members. Thus, there were no Negro applicants that plaintiff could show were rejected for the period of the last 10 years.[1/]

Plaintiff, of course, ignores and skips over the fact that by July 2, 1965 there were 25 Negro members in Local 1, irrefutable evidence, if Nolte's 1961 comments at a meeting be deemed evidence of a discriminatory patterm, that the pattern had been broken before the Act went into effect. When convenient, plaintiff talks about the Local as being divided between construction and non-construction classifications, and indicates that there were no Negroes in construction classifications on July 2, 1965, which is true, nor on February 4, 1966, which is also technically true, although there were Negroes on their way toward becoming members with construction classifications but who were not scheduled to take the exams until February and were not admitted until March of 1966, and an

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1/ Witt testified that he did not in early 1964 go down to the Union hall to file an application as suggested by the Business Representative with whom he discussed Union membership.

apprentice who had passed his exam and was on his way in. The separation between construction and non-construction classifications is not what plaintiff suggests it is in its effort to switch from the whole Union to the construction classifications to show discrimination.

There is a pattern by which many non-construction members move into construction classifications as they gain experience and training; and there are other definite correlations discussed in the Argument below.

Hiring Hall Seniority Clause is Legal. Plaintiff argues that the requirement for entry into the first three priority groups in the hiring hall of having had 6 months to 12 months work experience under the collective bargaining agreement with NECA (within the last 3 or 4 years) discriminates against Negroes. This presupposes that plaintiff has presented substantial evidence that within recent years Local 1 has kept Negroes from getting experience under the collective bargaining agreement; as noted above, that evidence is lacking. Assuming, solely for the sake of argument, that such evidence were present, the statute does not provide forsetting aside seniority systems. The work experience clause is a seniority clause, similar to that in many collective bargaining agreements between employers and unions, which provides a system for giving some degree of job preference to employees based on work experience for the employer or employers who are a party to the collective bargaining agreement. Section 703h of the Statute expressly protects existing seniority systems. As the Justice Department itself stated before Congress and as other legislative history indicates, the Civil Rights Act does not require, indeed, does not permit abandonment of existing seniority rights in order to give job opportunities to those who may have been discriminated

against in the past.[1/]

No Evidence that Hiring Hall has Discriminated Against Non-Members.

Since plaintiff doesn't have any evidence (other than the doubtful case of Walter Hampton) concerning attempts by Negroes to use the hiring hall, plaintiff has expanded its attack on the hiring hall to assert that it discriminates against all non-members of the Union. Of course, as indicated in cases cited by plaintiff,

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1/Senators Clark and Case, 110 Cong. Record 6992-4 (April 8, 1964):

> "Title VII would have no effect on established seniority rights. Its effect is prospective and not retrospective. Thus, for example, if a business has been discriminating in the past and as a result has an all-white working force, when the Title comes into effect the employer's obligation would be simply to fill future vacancies on a non discriminatory basis. He would not be obliged - or indeed, permitted - to fire whites in order to hire Negroes, or to prefer Negroes for future vacancies, or, once Negroes are hired to give them special seniority rights at the expense of the white workers hired earlier." (underlining added).

The Dept. of Justice itself stated to Congress, Cong. Record p. 6986 (April 4, 1964) in summary that Sen. Clark read into the record:

> "First it has been asserted that title VII would undermine vested rights of seniority. That is not correct. Title VII would have no effect on seniority rights existing at the time it takes effect. If, for example, a collective bargaining contract provides that in the event of layoffs, those who were hired last must be laid off first, such a provision would not be affected in the least by Title VII. This would be true even in the case where owing to past discrimination, prior to the effective date of the title, white workers had more seniority than Negroes..." (underlining added).

Senator Humphrey in his "Concise Explanation of the Civil Rights Act of 1964", Cong. Rec., p. 15334 (July 2, 1964) stated:

> "The title contains no provisions which jeopardize union seniority systems..."

Curiously, considering the legislative history of the Civil Rights Act quoted above, in its proposed decree, the Justice Department would require the union to accept as members any Negro (but not any white person) who met the qualifications of the least qualified white person admitted since 1961. (Pl. Memo, appendix, p. A-22, Para. II, f & g).

if Local 1's hiring hall discriminates against non-members, it is in violation of the Labor Management Relations Act of 1947, as amended. It is strange, indeed, that in the 8 years of its operation, plaintiff has not been able to show that there is one unfair labor practice charge that has been filed against Local 1 with respect to the hiring hall.

Plaintiff would abrogate the procedures of the Labor Management Relations Act and the function of the National Labor Relations Board in administering the law and have this court declare that the hall discriminates against non-members, without considering actual cases concerning the widespread discrimination alleged, on the basis of an IBM run that plaintiff made from records it had copied during discovery procedures (and tabulated for the first time in its brief).[1/] Since 90% of the referrals were to Local 1 members or travellers, the system must be discriminatory, so plaintiff argues. What about the almost 10% of referrals that were made to non-union members? If those thousand or so referrals were made, Local 1 must not have had a very effective means of keeping non-members out. In short, the statistics prove nothing.

Nepotism Not Shown by Facts. Again, searching for something to substitute for actual evidence of discrimination against Negroes (and still clutching another pre-conceived notion), plaintiff asserts that Local 1 continues a policy of nepotism in admission of union members. Here again plaintiff presented no rejected applications, no improperly graded examinations, no cases of preference for relatives over other applicants. Of 25 persons responding to a questionnaire who were admitted to the Union with construction classifications during the period from July 2, 1965

1/ This was a subject plaintiff decided to go into at the last moment before trial, following settlement negotiations with defendants, Tr 195.

through August 31, 1966, 8 had relatives in the Union, something less than one-third. (Paragraph 1 of Stipulation No. 2).[1/]

Apprenticeship Evidence Reveals No Pattern of Discrimination - But a Pattern of Effort to Interest Negro Applicants. Plaintiff presented no evidence whatsoever of any case of discrimination against a Negro apprentice applicant. It photographed thousands of files of applicants, test, answer sheets, interview summaries and evaluations. It presented no evidence from these files. One would have thought that having presented no evidence that the charges of discrimination with respect to the apprenticeship program were no longer being pursued by plaintiff. Further, defendant's evidence showed that the program had been reviewed as recently as 1965 by the Bureau of Apprenticeship and Training and found to be in compliance with Title 29 - Part 30, Code of Federal Regulations (28 FR, 11313) on non discrimination in apprenticeship. That regulation has fairly elaborate procedures for record keeping and periodic review as to selection procedures by the BAT. In spite of no evidence from plaintiff as to discrimination, contrary evidence from defendant of findings of no discrimination by the BAT, plaintiff's decree would revamp the whole apprenticeship program. The proposed decree provides: III g, the JAC is to accept any Negro applicant with qualifications equal to or higher than those possessed by the least qualified white persons accepted since 1961 (regardless of the qualifications of other white applicants). (Appendix Page A-22); III a, there are to be set up a new set of apprentice standards and procedures and these are to be submitted to the court proposed tests, proposed

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1/ This is only a few percentage points off of the number admitted into non-construction classifications during the period December 1 to December 27, 1966, when 11 out of 36 were relatives; plaintiff contends that the Local Union has no control over admission of persons in the non construction classifications (although this assertion by plaintiff is not in keeping with the evidence).

testing procedures (with no regard to the fact that the Department of Labor, Bureau of Apprenticeship and Training has approved the present standards and selection procedures as meeting Title 29 and being non discriminatory, Appendix A-23). The adoption of new standards and selection procedures and its certificate of compliance from the U.S. Department of Labor with Title 29, Part 30, plainly have no significance to the U.S. Department of Justice.

Statute is Prospective. The Civil Rights Act of 1964 was a compromise. While proponents of the law always declared it was not intended to require preferential treatment of minority groups in order to remedy past discrimination, to satisfy persistent doubts, in the final compromise meetings in Congress, the parties wrote into the law Section 703 j, which expressly states that the Statute is not to be interpreted to require preferential treatment for any minority group. As Senator Humphrey, a strong proponent of the legislation explained, 110 Congressional Record 15, 333-34 (July 2, 1964), "A Concise Explanation of the Civil Rights Act of 1964":

> The Title does not provide that any preferential treatment in employment shall be given to Negroes or to any other persons or groups. It does not provide that any quota systems may be established to maintain racial balance in employment. In fact, Title prohibits preferential treatment for any particular group. (underlining added).

As one reads plaintiff's memorandum and proposed decree, it is plain that the Justice Department has a different view of the intent of this part of the Statute as it does with respect to seniority provisions.

The law was passed in recognition of the fact that there has been racial discrimination by employers and unions in the past. But, it is a prospective law.[1/] It requires for violation future acts by an employer or union. To have future acts there must be attempts by actual Negroes to seek admission to unions or admission into apprenticeship programs. Far from showing such

1/Bowe v. Colgate-Palmolive Co. (S.D. Ind. 1967) 65 LRRM 2714, 2718

denials, the evidence in this case shows that all of the Negroes who have applied were admitted.

Plaintiff would read into the law a requirement that an employer or union which may have discriminated in the past has an affirmative duty to now go out and recruit minority groups - to organize Negro contractors, to spend money to advertise and publicize in the Negro community its desire to have Negro applicants and members. As morally desirable as these activities may be, the statute passed by Congress simply doesn't place these duties upon employers or unions, regardless of their history before July 2, 1965.[1/]

Evidence Does not Show Intent to Resist Act and Deny Rights to Negroes - Evidence Shows Positive Intent to Comply with Law. The evidence, fairly considered, does not support the allegations of prejudice, tokenism and other adjectives that plaintiff uses to belittle or brush off the substantial evidence that refutes its allegations with respect to Local 1.[2/]

A violation of Section 707 cannot occur from an isolated incident, nor from some incidental or unintended discrimination. Section 707 requires that there be "a pattern or practice of resistance" and that the pattern or practice is "intended to deny"

1/ In any event, the evidence indicates that Local 1 and the JAC, before and after the suitm have been soliciting Negro applicants.

2/ For example, Reginald Ollie, the first Negro placed as an apprentice, was placed in mid February, 1966, a few weeks after the suit was filed. So, plaintiff blandly asserts that there are Negro apprentices only because of the filing of this suit. Plaintiff ignores the stipulated evidence that Reginald Ollie was part of the group of July, 1965 applicants who were being processed, none of whom were placed before February, 1966. Plaintiff ignores the evidence that no other Negro applicant prior to Ollie had passed the written test. Plaintiff which examined tests of all of the applicants over a period of years presented no evidence to show that these tests were not objective and fairly administere

the exercise of rights under the Statute. The evidence in this case simply doesn't show that Local 1 has engaged in violation of the Civil Rights Act.

Defendant submits that the conduct of Local 1 is totally inconsistent with any practice of resistance to the Act and inconsistent with an intent to defy the law. Consider:

A) Prior to 1964 sons of members of the Union got preference over all other applicants for apprenticeship. Immediately following publication in 1964 of Title 29-Section 30, CFR, on Non-Discrimination in Apprenticeship, the Union and Employer representatives of the JAC destroyed all pending applications and entirely revamped the procedure for selecting applicants, to provide objective standards for selecting the best qualified; the new standards were approved by the U.S. Bureau of Apprenticeship and Training in April, 1964. (It is common knowledge that many apprenticeship programs have never been brought into compliance with Title 29.)

B) By April, 1964, the Union had deleted from its by-laws, Article 14, which provided that sons of members had preference for apprenticeship. It was no small thing for a craftsman to lose his long recognized right to hand down to his son his trade.

C) In February, 1965, the BAT completed a review of the JAC program and found it to be in compliance with Title 29 on non-discrimination.

D) At the time the Act went into effect, Local 1 had 25 Negro members, and that number had grown to 35 seven months later at the time when this suit was filed, and to 70 by January, 1967.

E) The initial contacts had been made prior to the filing of this suit to bring in two Negro electrical contractors,

which has resulted in Local 1 acquiring 12 Negro members with construction classifications; later all other Negro contractors were offered contracts and voted to stop further negotiations with Local 1.

F) As soon as the Apprentice Information Center began its activities in January, 1966, of disseminating information to disadvantaged and minority groups, the Joint Apprenticeship Committee began to furnish information to it of the availability of opportunities in the Electricians' Apprenticeship Program.

G) Prior to the filing of this suit, Local 1 and NECA had made arrangements for and sent out invitations for a jointly sponsored conference of school counselors from predominantly Negro public schools, representatives of Civil Rights organizations and Negro high school students, to provide them with information concerning opportunities in the electrical trade, and procedures for admission to the Apprenticeship program.

H) Representatives of the JAC and of the Union have repeatedly participated in programs in predominantly Negro schools to explain to Negro youths of all ages the availability of opportunities at the trade.

This evidence does not support findings or conclusions that Local 1 has an intent to resist the Civil Rights Act, but rather just the opposite. Local 1 has been working in a meaningful way to make known its open policy and to increase Negro participation in its membership and in the Joint Apprenticeship Program. The complaint should be dismissed.

A R G U M E N T

Introduction. On page 2 of its Memorandum plaintiff refers to the old voluntary dismissal as to three defendants; plaintiff then goes on to recite the contents of voluntary programs that these defendants agreed to. This recital (which has nothing to do with the facts and law in the case remaining before the Court) seems intended to suggest unwillingness on the part of IBEW Local 1 to enter into a voluntary program which was not and is not the fact. Counsel for plaintiff and IBEW Local 1 reached agreement on the terms of a voluntary program, which the Justice Department insisted be approved by the Union itself before it could be presented to the Attorney General for approval; after the Union approved the program, counsel for defendants were informed that new requirements were necessary before the matter could even be submitted to the Attorney General. Further, IBEW Local 1 both before and after the filing of the suit has been engaging in many of the activities recited in the Voluntary Program, plus some not mentioned.

PLAINTIFF'S EFFORTS TO AVOID CONSIDERATION OF NON-CONSTRUCTION CLASSIFICATIONS

In Footnote No. 18 on page 28, plaintiff states that "the claim in this case relates to discrimination in the construction classifications..." Plaintiff did not state any such limitation in its pleadings which refer to a policy of the defendant in failing to accept Negroes as members, failing to accord Negroes who are accepted as members the privileges and advantages of membership on the same basis as white members, the exclusion of Negroes from membership, etc. Nor did plaintiff state this limitation when it was engaged in discovery procedures. Plaintiff

examined and photocopied applications and Master Card records of all members, and inspected and photocopied examinations required of non-construction as well as construction members together with their answers, and with various other records of defendant concerning all of its members. Defendant suggests that plaintiff is now trying to narrow the case to construction classifications so as to escape the implications present in the evidence concerning non-construction classifications which adversely affect plaintiff's whole case.

Thus, on pages 43 and 44 of Plaintiff's Memorandum, plaintiff notes that construction workers are higher paid; it then goes on to state that employers, rather than the Union, determine who become non-construction members. This was not what Gibbons says at the pages cited in his October 18, 1966 deposition. It is true that non-construction employers do not have contracts to use the hiring hall (Lanemann Depo. page 34). Non-construction employers do sometimes request the Union to provide men (Lanemann Depo. pages 23, 34-5). Merely because non-construction employers may not use the Union as the source for employees, it does not follow that the Union has no control over taking them into membership. The evidence indicates that applications are required of all prospective members, followed by investigation by the Executive Board and approval by the Union membership by vote. And, in a number of non-construction classifications, examinations must be passed by the applicants. (Gibbons Depo. October 28. pages 3-6). So, plaintiff's conclusion that the employer controls admission into non-construction classifications is not correct.

Plaintiff's problem is that there were 25 Negroes already members on July 2, 1965 in non-construction classifications; there were 35 Negro members by February 4, 1966; and by January 3, 1967 there were 70 (in addition to the dozen in construction classifications). Plaintiff cannot persuasively argue that the defendants always have and continue to exclude Negroes

(Memorandum,page 60)because of these figures.[1/]

Granted that some of the non-construction classifications have meeting nights of their own, such as the Sign Group and the BA Production Group. So, too, do the outlying units (consisting of the construction and non-construction classifications) have meeting nights of their own. (Article II, By-Laws, Pl.Ex.5). These are in addition to "regular" meeting nights of the Union which are open to all members to attend. (In fact, it is the duty of each member to attend at least one "regular" meeting each month, Article II, By-Laws, Pl.Ex. 5). All members vote on all applicants, construction and non-construction. (Lanemann Depo. page 48).

There are other important ways in which the non-construction classifications are related to construction classifications. As Plaintiff's Memorandum indicates, persons acquire membership in construction classifications through organizing of the person's employer, the apprenticeship program, and through direct application to the Union. There is a fourth procedure which plaintiff ignores, namely, non-construction members applying for a change of classification to construction. There are two approaches. One is the X-Residential Training Program, referred to in Article IV, Section 1 of the Collective Bargaining Agreement (Pl. Ex. 6); it is a program for upgrading the skills of Union members (Gibbons Depo. October 18, page 32). A

1/ Plaintiff continuously in its Memorandum uses evidence to infer the point it is trying to prove and ignores inferences that contradict its views. For example, plaintiff cites the minute entry in 1961 of a comment by the then Business Manager, Paul Nolte, that no Negro applicant would be presented for a vote by the membership without giving the membership advance notice as evidence that Local 1 was discriminating against Negroes in 1961; that minute entry has nothing to do with whether Negro applicants were for construction or non-construction classifications. The presence of 25 Negroes as members in 1964 in non-construction classifications plainly indicates that either Nolte's statement was not actually followed by himself or subsequent Union leadership; or in any event, that the Union is voting Negroes into membership. Plaintiff ignores this inference.

second approach is for non-construction members, who desire to do so, to use the hiring hall to go out on construction work when qualified construction men are all working, as in periods of heavy construction work, and to get schooling on the side. Business Manager Norman Lanemann, who now holds a Class A Membership, started out as a production member. (Lanemann Depo. pages 16-18). He went out on construction jobs when the opportunity presented itself and took a course in residential wiring at night school. After a number of years, he applied for a change of classification to construction as a Residential Wireman. After more than five years in the residential classification, he applied for a change of classification to "A" Wireman. That Norman Lanemann was not an isolated case is illustrated by plaintiff's statistics on the hiring hall over an eight-year period which show that 11.9% or 1617 referrals to construction jobs went to non-construction members of IBEW Local 1 (Pl. Memo. p. 29).[1/]

Presumption of Guilt by Statistics and Conduct Before Date of Act. Plaintiff urges that there is a strong if not conclusive presumption of discrimination in the statistics on Negro membership, which at the very least shifts the burden of proof from plaintiff's shoulders and requires defendant to assume the burden of proving that it has not been discriminating. Plaintiff cites jury and voting cases (Pl. Memo, p. 28, 55-6). Tied into this

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1/ It does not necessarily follow that because construction work pays higher wages that it is more desirable work in the eyes of all members. The occupational hazards and seasonal nature of construction work are common knowledge. Thus, Lee Bruns, who was President of the Union for six years and a member of the Executive Board for ten years and who is now again working as an electrician, retains a C Maintenance Classification. (Bruns. Depo. pp. 2-4, 26). Presumably he was in as good a position as anyone in the Union to take advantage of opportunities to meet the requisites for a change of classification to construction had he desired to do so.

statistical presumption, it is plaintiff's argument that if it can prove a pattern of discrimination existed at sometime prior to the Act, the defendant must prove that the pattern no longer exists. (Pl. Memo. p. 60-61). Defendant believes that the facts in evidence affirmatively establish that Local 1 has not been discriminating against Negroes and rebuts these presumptions. Defendant, however, urges that no such presumptions exist under the law.

Title VII of the Civil Rights Act of 1964 is a prospective law that deals with future violations.[1/] It created rights that did not exist before, and in this sense it substantially differs from voting and jury cases which deal with rights to vote and serve on juries that had been in existence for decades. Speakers in Congress plainly indicated that there existed in the past substantial discrimination in job opportunities, but the law was not intended to redress discriminatory patterns that had existed in the past.

Section 703 (j), 42 USC 2000e-2 (j) provides:

> Nothing contained in this Title shall be interpreted to require an employer, employment agency, labor organization, or joint labor-management committee subject to this Title to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex or national origin in any community, state, section, or other area, or in the available work force in any community, State, section or other area.

This section of the Statute was added as one of the final amendments before passage. It is one of the so-called compromise provisions resulting from conferences between Senator Dirksen and proponents of the bill. It's legislative history is worth reviewing:

1/ Bowe v. Colgate-Palmolive Co. (S.D. Ind. 1967) 65 LRRM 2714, 2718.

Senator Humphrey, 110 Cong. Rec. 15333-34 (July 2, 1964) -

"A Concise Explanation of the Civil Rights Act of 1964"

> /"The title does not provide that any preferential treatment in employment shall be given to Negroes or to any other persons or groups. It does not provide that any quota systems may be established to maintain racial balance in employment. In fact, the title prohibits preferential treatment for any particular group."/ (underlining added)

Senator Humphrey, 110 Cong. Rec. 12295-99 (June 4, 1964)

> /"Ninth. A new subsection 703 (j) is added to deal with the problem of racial balance among employees. The proponents of this bill have carefully stated on numerous occasions that title VII does not require an employer to achieve any sort of racial balance in his work force by giving preferential treatment to any individual or group. Since doubts have persisted, subsection (j) is added to state this point expressly. This subsection does not represent any change in the substance of the title. It does state clearly and accurately what we have maintained all along about the bill's intent and meaning."/

The Justice Department summary read into the record by

Senator Clark, 110 Cong. Rec. 6986 (April 8, 1964)

> "Finally, it has been asserted title VII would impose a requirement for 'racial balance'. This is incorrect. There is no provision, either in title VII or in any other part of this bill, that requires or authorizes any Federal agency or Federal court to require preferential treatment for any individual or any group for the purpose of achieving racial balance. No employer is required to hire an individual because that individual is a Negro. No employer is required to maintain any ratio of Negroes to whites, Jews to gentiles, Italians to English, or women to men. The same is true of labor organizations. On the contrary, any deliberate attempt to maintain a given balance would almost certainly run afoul of title VII because it would involve a failure or refusal to hire some individual because of his race, color, religion, sex, or national origin. What title VII seeks to accomplish, what the civil rights bill seeks to accomplish is equal treatment for all." (underlining added)

In this same regard there is some legislative history on the subject of seniority which is relevant because it expresses the prospective application of the law rather than any retrospective application. The comments are by two strong proponents of the legislation, Senators Clark and Case 110 Cong. Rec. 6992-4 (April 8, 1964).

> "Title VII would have no effect on established seniority rights. Its effect is prospective and not retrospective. Thus, for example, if the business has been discriminating in the past and as a result has an all-white working force, when the title comes into effect, the employer's obligation would be simply to fill future vacancies on a non-discriminatory basis." (underlining added)

These Congressional statements indicate that Congress knew some organizations would be all-white; this in and of itself was not to be deemed a basis for violation. All-white organizations had no duty other than in the future to treat persons on a non-discriminatory basis.

If this is so, how can it be said (particularly, when this suit was filed, just seven months after the Act went into effect) that Congress intended the courts to apply any kind of statistical presumption of a pattern of discrimination. Section 703 (j) and the legislative history noted make it about as clear as it can be, that Congress went out of its way to make plain that there was to be no presumption from statistics showing small or no minority participation.

In this same vein, if the comments above of Senators Clark and Case mean anything, how can there be a presumption of guilt or a shifting of burden of proof if the Government shows a pattern of practice of discrimination pre-existing the Act? If the remarks of Senators Clark and Case mean what they say that even if a party has been discriminating in the past, it has no obligation except to obey the law in the future, with respect to future applicants, it would be strange indeed to hold that the Justice Department can file a suit and by showing pre-Act discrimination raise a legal presumption of guilt that places the burden upon the party to come into court and show that it is not discriminating.

There is also the long-standing presumption of law, contrary to that advocated by the Attorney General, namely the principle that it may be assumed that a party obeys the law; regardless or a party's conduct before the effective date of the law, violations since that date must be established, NLRB vs. Local 50, Bakery and Confectionary Workers, 245F. 2d 542, 547 (2nd Circuit 1957), NLRB vs. Shawnee Industries Inc., 333-F. 2d 221, 225 (10th Circuit 1964), Tobin vs. Kansas Milling Co, 95-F. 2d 282, 287 (10th Cir. 1952), Fleming vs. Bernardi, 1 FRD 624 (N.D. Ohio194

The So-called "Built in Restrictive Mechanisms"

In pages 44-49 of its Memorandum, plaintiff refers to nepotism, the vote of membership, and hiring hall priorities as built-in restrictive mechanisms.

a) Nepotism

Most of plaintiff's discussion on nepotism concerns three apprentices who had relatives in the Union and knew through them about the Apprenticeship Program and the Summer Helper Program. 1/

The evidence indicated that over 95 percent of persons selected for the Summer Helper Program, during the summers that it has been in existence, were selected by employers; the Union only selected in a few instances when an employer requested it to do so, (Tr. 342-44). Further, the evidence does not indicate that the Summer Helper Program has had any adverse impact on Negro applicants for apprenticeship. All Negro applicants who passed the written tests and bothered to show up for the interview were admitted to the Apprenticeship Program, (Stip. 3, Para. 13b). The written tests have nothing to do with knowledge of electricity; they test aptitudes and intelligence, (Gibbons Depo. Oct. 18, p. 19); as one of the apprentice applicants stated, he was surprised that there was nothing on the written test about electricity, (Heeney Depo. p. 99).

The statistics themselves, (Stipulation No. 2, para. 1, 3 & 4) show that in all journeyman classifications, construction and non-construction, roughly one-third of the people applying

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1/ Up to 1964 there was a provision in the Union's by-laws and a system granting preferential treatment to sons of members for apprenticeship. Since the evidence indicates that the provision was deleted in 1964 and a system established of selection based on objective criteria to secure the best qualified applicants, the pre-1964 preference adds nothing to Plaintiff's 1966 case.

were relatives of members of Local 1. It is not much of a showing of nepotism. Two-thirds of the Union membership came from other sources.

The statistics for the group of apprenticeship applicants from July, 1965 show that 60% of those responding were related to members; the same statistics show that 53% of the July, 1965 applicants who were rejected were related to members. (Stip. 2, Para. 6&7). The statistics on apprentices from the March 1, 1966 through June 30, 1966 group that were accepted indicated that twenty-nine out of seventy-three responding, about 40% were related, (Stip. 2, Para. 8); of this group seventeen of forty-nine responding, about 34% who were not qualified to take the test were related, (Stip. 2, Para. 9); of this same group, of those failing the written test, twenty-six of sixty respondents, about 43% were related, (Stip. 2 Para. 12). Of the July 1, 1966 through December 31, 1966 group of apprentice applicants (who had not been tested at the time of the mailing) thirty-nine of 136 answering questions were related, about 30%.

These statistics show that the rate of apprentices placed who were related to Union members was 40% in one period and 60% in another. In each period the number of applicants related to Union members who failed to pass the test was just about the same ratio. This rebuts any inference of preference to Union members' relatives.

It is common sense that relatives of Union members know more about the apprenticeship program than non-relatives. So, too, do relatives of an employer or of a college alumnus know more about jobs at the employer or opportunities for admission to a college.

It does not follow from this that, under the law, a predominantly white union or employer, has some duty other than to treat future applicants - relatives or not - without discrimination.

The only "affirmative action" required of unions and employers under the Civil Rights Act is set forth in Sec. 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.[1] There is no other requirement of posting or communication to prospective applicants - e.g. as to employment, union or apprenticeship opportunities.

At one time in Congress the bill was in a form that gave the EEOC authority to require posting of "other relevant information". Congress deleted this provision in order to limit the obligations that the EEOC could place on Unions or Employers.[2]

1/ Section 711 (a) of the Civil Rights Act of 1964, 42 USC 2000e-10 (a)

> /"Sec. 711 (a) Every employer, employment agency and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts from or, summaries or, the pertinent provisions of this title and information pertinent to the filing of a complaint."/

2/Senator Dirksen, 110 Cong. Rec. 12381-85 (June 5, 1964)

> /"Section 711: This section requires employers, employment agencies, and labor organizations to post upon their bulletin boards excerpts from this title. The provision requiring the posting of 'such other relevant information which the Commission deems appropriate' was deleted and a provision providing for the posting of summaries of pertinent provisions of the title and information pertinent to the filing of a complaint is substituted for it."/

Report to Accompany H.R. 7152, 88th Congress, 1st Session, November 20, 1963, Section 712 (a).

Significantly, in this case, the evidence indicates that for a number of years the Union and the JAC has been making positive efforts to communicate to the Negro community the existence of the program, its non-discriminatory nature, the objective procedure for selecting applicants on merit, and their desire to have Negro applicants. These far-reaching efforts to communicate with its Negro community seems unlikely from a union that according to plaintiff is engaged in a pattern of intentional resistance of the Act.

b) Vote of Membership

The evidence indicates that in the thirties the membership rejected applications from a Negro contractor and that in 1955 the membership voted against authorizing the Business Manager to organize Negro contractors. The minutes also show that in 1961 the Business Manager stated that the members would be given prior notice before an application from a Negro was presented for vote at a meeting. In IBEW Local 35 v. Commission on Civil Rights, 30 LRRM 2447 (Conn. Superior Ct.,1952); 33 LRRM 2307 (Conn. Supreme Ct. of Errors, 1953); 33 LRRM 2779 (Conn. Superior Ct., 1954) there was continuing and current evidence that the vote of Union membership was being used to thwart the Fair Employment Practices law of Conneticut by denying admission to Negro applicants. There is no evidence here that the vote of the membership has ever been used to thwart a fair employment practice law; its last use was in 1955. The evidence is just to the opposite in this case. Prior to the effective date of the Act, 25 Negroes had been voted on and admitted to membership; now the number has risen to over 80. So, the evidence refutes, rather than substantiates plaintiff's contention that the vote of the membership is being used to discriminate against Negroes.

c) The Hiring Hall is not discriminatory

The hiring hall is a creation of the collective bargaining agreement between the Union and NECA. Its provisions were created by and are subject to negotiation between the parties. It is reasonable to infer: its work experience and skill (examination) requirements are relevant to the employers' desire for experienced and competent workmen. That the seniority provision, requiring at least one year's (or for Group 3, 6 months) service under the collective bargaining Agreement within a recent period of time is similar to the normal concept of seniority which employees desire in any industry; it is modified, in that it relates to a group of employers, rather than one employer because of irregular employment in the construction industry, and the attachment of employees to a group of employers in a given area rather than to a single employer. The residence and geographic area provisions result from the tendency of construction workers to consider themselves attached to a particular trade in a particular area. The plan results in some degree of stability in the labor market; the employers have a direct interest in the maintenance of an adequate and permanent supply of labor in a given geographic area; the seniority provisions, giving preference to regular employees, gives them an incentive to stay in this labor market. Section 8 (f) (4) of the Labor Management Relations Act, as amended, 29 USC 158 (f) (4) expressly authorizes employers and unions to enter into such contractual arrangements. Contracts with language almost identical to that in the Local 1 - NECA Agreement have been before the National Labor Relations Board and Courts in a number of cases in which they have been found to be legal, Local 367, IBEW 134 NLRB 132 (1961); Catalytic Construction Co. (Local 42, Heat Insulators) 164 NLRB No 123 (1967); and generally Local 100 v. Borden, 373 US 690, 83 S. Ct. 1423 (1963). But, as noted, besides being legal, this type of hiring hall arrangement is designed to meet the needs of the industry.[1/]

1/ See "Legal Status of the Building & Construction Trades Unions in the Hiring Process" by Louis Sherman, 47 Georgetown Law Journal, 203 (195

Thus, it can hardly be said that the hiring hall provisions of the collective bargaining Agreement in this case has any illegal purpose. Having no evidence that its establishment was for the purpose of discriminating against Negroes, having no complaints from Negroes that it has discriminated against them, plaintiff proceeds on the theory that it discriminates against non-members of the Union, and that it discriminates against Negroes because they were non-members. Even though it has no evidence of discrimination against Negroes attempting to use the hiring hall, plaintiff urges that the hiring hall is going to discriminate against Negroes because of the one year work experience requirement under the collective bargaining Agreement, on paper at least.

This one year service provision is a seniority clause which is expressly authorized by Section 703 (h) of the Civil Rights Act (see discussion above, page 42). This one year service requirement is a very limited degree of seniority; many employers base seniority on cumulative years of experience - an employee with 20 years of service is ahead of all those with fewer years. This argument must rest on evidence that people who are not in the Union are discriminated against at the hiring hall. Plaintff's Memorandum discusses at some length NLRB vs. Local 269, IBEW, 357 F 2d 51 (3rd Cir., 1966) where a priority hiring hall system similar to that in the Local 1 - NECA Contract was found to be illegal. The Third Circuit Court expressly notes that it did not find the contract language necessarily evidence of discrimination. It does find discrimination on a basis of evidence of discriminatory referrals by Local 269 as to a number of specific individuals; then when these individuals thwarted the Local's attempt to discriminate against them by filing NLRB charges, Local 269 raised the experience requirement under the collective bargaining Agreement from one year to five years. It was then

that the cited case was brought against Local 269. The court found discriminatory intent because of the operation of the hiring hall in actual cases.

The Local 269 case is thus no precedent for Local 1, where in eight years there has been no NLRB charge against Local 1's operation of the hiring hall.

The statistics show substantial use at Local 1 by non-members. In discussing the Local 269 case, Pl. Memo., pp 59-59a, plaintiff goes on to refer to the collective bargaining experience clause as similar to a "grandfather clause", but that whole concept relates to a finding that the hiring hall system did discriminate against non-members, which was true in the Local 269 case, but which has not been established with respect to Local 1. The major premise upon which plaintiff's argument against the hiring hall rests - that it discriminates against non-members - is contrary to the evidence.

The Hiring Hall and Walter Hampton.

As indicated in the Statement of Facts (page 15 above) and elsewhere in this Brief, the only reasonable conclusion with respect to Walter Hampton's request to become a union member is that there was no discrimination. He was treated in the same fashion as anyone else would have been treated in being told that he first had to be working for a contractor in the jurisdiction of Local 1.

Corroborated evidence shows that Lanemann went further than this and explained to Hampton that what he should do was to proceed back to the hiring hall and register on the out-of-work list. Sachs had called Lanemann earlier and told him that he was sending a young Negro man down whom he wanted to put to work; Lanemann had said "fine" that he would be signed up on the hiring hall register. The Justice Department implies that Lanemann was

discriminating against Hampton because he didn't put him to work when he showed up at the hiring hall and implies that Sachs telephone call meant that Sachs had an opening that the Union was not filling. But the Government, which put on a witness with some records from Sachs Electric Company, did not put Louis Sachs on as a witness and did not establish that Sachs had an unfilled opening. Nor did it establish that there was no one at the hiring hall waiting to go out. So, in telling Hampton to sign up on the out-of-work list, Lanemann was doing the correct thing. For, unless Sachs had a call in for men that was not being filled, the Union had no authority to send a man out, ahead of other registrants on the list, just because a contractor called and said he was sending the man down. 1/

Plaintiff's Memorandum on the same page (p. 36) suggests that the Business Manager was discriminating because he didn't give Hampton adequate explanation about the hiring hall; it says, "If any explanation was given to Hampton, it was manifestly insufficient, inasmuch as Hampton left without filling out an application of any kind on this occasion." This conclusion requires tinted glasses. Hampton denied any recollection that anything was said about going to work, that he was applying for a job, or that he was told about the hiring hall out-of-work list, he was only applying for union membership. But, corroborated evidence, shows that he told Leroy Brown that he would have to sign up and wait his turn, and that there were others ahead of him. Just what Lanemann should have done to "make" Hampton sign the out-of-work list on that first trip, plaintiff does not say. Obviously, the reason that Hampton did not choose

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1/If the Union was not supplying men of the type that Sachs needed, and did not have them available at the hiring hall, Sachs could have sent down a temporary employee letter with Hampton, but this was not done either.

to wait his turn is an explanation that must come from Hampton; and Hampton had no recollection that he was told this or that he told it to Leroy Brown.

There is even more difficulty with Hampton's second trip to the union hall when he did sign an applicant data card for the hiring hall. Again, Hampton testified that he knew nothing about the hiring hall, and that he did not know he was registering for it; the Union in this instance could not determine who it was that spoke to Hampton. In any event, Hampton did sign a card for registration at the hiring hall, and the question is whether there was discrimination against him from that date forward. In Plaintiff's Memorandum (p.37-9) there is a lot of discussion about types of referrals in October and November (and, incidentally, considerable evidence of referral of non-union members) and statements concerning how quickly some people were referred out. First of all, as noted above, since Hampton didn't have a temporary employee letter and didn't sign up for the hiring hall on his first trip in October, what happened prior to the second trip to the hall when he did sign a card, is irrelevant. Next, plaintiff seems to suggest that whoever the business representative was that took Hampton's card on the second trip in November (2⅔ weeks after his first trip), should have known that Sachs wanted Hampton and not referred anybody else out to Sachs (see Pl's Memo., p. 38, subpara. on Lester B. Waller). Just how the representative was to have known this, plaintiff does not explain.

Plaintiff suggests that it has searched in vain for evidence that would explain Hampton's non-referral before March 21, 1966, when the records indicate a telephone call was made to him (Pl. Memo. p. 38, footnote 24). The answer is evident enough. Except for the time he took to fill out the applicant data sheet, Hampton was never physically present in the hiring hall;

he'd only taken off for a short period of time at the direction of his regulat employer, Stuart Electric, to go down to Local 1's Hall, and he returned immediately from the hall to his job at Stuart Electric the same day, where he continued to work until two weeks before he went into the Army in late January, 1966. During the period up to April, 1966, if there was a call for men, the business representative would go through the men present at the hiring hall; and if jobs were still open, the union might start calling men who were not present in the hiring hall to fill the contractor's needs. In the same footnote on page 38 of Pl. Memo., it notes that a large number of applicants in Group 0 were referred out in November, 1966, (sic. 1965), and that Lanemann testified that Group 0 men were only contacted by telephone. Lanemann did not say that this was the "only" way that Group 0 men were referred out.[1/] Group 0 men physically present are referred out; as the collective bargaining agreement indicates, employers are free to reject any applicant referred to them, (Pl. Ex. 6, Art.3, Sec. 3).

What the evidence does not show is that anyone who was referred out before Hampton was called on March 21, was not

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1/ With respect to Group 0 (which is really class 5, and is not provided for in the Collective Bargaining Agreement covering the hiring hall), Lanemann indicated that they put into Group 0 people with no electrical experience "or" those from manufacturing groups. Then, going on, and obviously talking about the second category, those from manufacturing groups, Lanemann stated that if a manufacturer called for a man with some sheet metal experience, and they could find a card on such a man and that they would call the man and tell him to go down to the manufacturer, (Tr. 361); this is in keeping with Lanemann's deposition testimony concerning persons from production shops who sign cards at the hiring hall and might be called, if not already employed, to go out to a manufacturer who would check with the Union Hall on the availability of a man, Lanemann Depo., p. 35. It does not conflict with Lanemann's general statement that men who were physically present were referred out before phone calls were made. Nor does it conflict with other evidence in the case; for example, Anthony Heeney, before he was accepted into the apprenticeship program, testified that he sat around the hiring hall, starting in November, 1965, every day before he was sent out to do some Christmas wiring at a shopping center, Heeney depo., p. 102; Heeney was Group), Pl. Ex. 10 (hiring hall record

physically present in the hiring hall (if he was below Hampton's rank in the hiring hall). Plaintiff had copies of all the hiring hall records, had numerous agents making field investigations, and took numerous depositions. Hampton was the only incident of alleged discrimination the plaintiff had to work with occurring after July 2, 1965. If any of the persons, lower ranking than Hampton, had been referred out of the hiring hall without being physically present, there can be no doubt plaintiff would have produced such a person.

The statute requires a willful intent to discriminate. Plaintiff uses the Hampton case as evidence of a continuing intent to discriminate by the Union's failing to telephone Hampton before March 21, 1966. Even if this were so, considering all of the evidence of the Union's affirmative and successful steps to bring Negroes into the union (including into construction classifications both as journeymen and apprentices) before this suit was filed on February 4, 1966, why would the Union have been intentionally discriminating against this one Negro applicant in the hiring hall? No matter how one views the Hampton case itself, considered in the context of the Union's actions in seeking Negro members and apprentices during this time, one cannot reasonably infer a motive of intent to violate the Act.

Electrician's Apprenticeship Program

Just how far plaintiff has had to go in search of evidence that might in any way reflect on Local 1, regardless of its evidentiary value, is illustrated by plaintiff's handling of the 1961 commencement of the Local 99 CIU - Midwest Contractor's Association Apprenticeship Program at O'Fallon Technical High School. Plaintiff presented evidence on the subject from two witnesses, Walter Hampton and Arthur Kennedy; plaintiff refers

to it twice in its memorandum, p. 35 and p.51, as a part of the alleged pattern of discrimination. When the CIU electrical apprentices went to O'Fallon to start apprentice classes, the teacher would not admit them. That teacher, Bruns, was an IBEW member and the son of the President of the IBEW. What a member of a 5,000 men union does, even if he happens to be the son of the president, hardly constitutes a showing of action on behalf of the union, as plaintiff knows. That Bruns had no authority to determine who attended the classes at public school that he taught is plain from the evidence. 1/

And as the evidence reflects, the Local 99 CIU - MCA group was composed of whites as well as Negroes; the whites did not get in that first day either.

The emphasis on this incident is to make up for an absolute deficiency of evidence showing discrimination by the Electrician's Apprenticeship Program. Starting in 1964 the program has been revised to provide for standards to seek the best qualified applicants, regardless of race, creed or color, and regardless of relation to a member of the union. After copying and examining all the apprenticeship records since 1964, including examination papers and answers, interview sheets, etc. (literally tens of thousands of papers), the plaintiff presented no evidence of any deviation from objective standards. Since 1964 four Negroes have passed the written examinations; three of these showed up for the interview and these three were

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1/Since this evidence really didn't prove anything about Local 1, there seemed to be no reason for defendant to produce witnesses concerning this matter. Arthur Kennedy said the difficulty was over their not being AFL-CIO apprentices. But, it is apparent from the testimony of plaintiff's witnesses that the Local 99 - MCA apprentices went to the school on the wrong day. The school work for apprentices is one day a week, Tr. 144. The group originally went over on the Monday; they ended up in a Friday class, Tr. 19, 33. This suggests that part of the difficulty in getting in on the first day may have been related to which class they were to enter.

admitted to the program. As discussed in detail in the facts Local 1, NECA and the JAC have actively been communicating to the Negro community the availability of the program and their desire to have Negro applicants.

Plaintiff's Proposed Findings of Fact Are Not Supported by Substantial Evidence in the Record as a Whole.

Many of the points in plaintiff's proposed findings of fact have been rebutted by other parts of this brief. A critical part of the proposed findings seems to start on page A-9 of plaintiff's Appendix, with para. 10, which states that Local 1 has been and is continuing to engage in a pattern of racial discrimination with respect to Negro membership. All of plaintiff's findings rest on consideration only of construction classifications, which defendant has pointed out is not a valid distinction nor a valid basis for determining Local 1's intent as to membership of Negroes. But, proceeding with plaintiff's proposed findings, concerning only construction classifications:

(a) Starting on page A-9, Para. 10(a) of its Appendix, plaintiff refers to discrimination in refusing to organize Negro contractors, in picketing of jobs which Negro contractors had and states that Local 1 has accepted a token number of Negroes since the filing of the suit. Support for these proposed findings must jump a 10 year gap in history. The refusal to organize Negro contractors was over 10 years ago. The only picketing of a Negro contractor in the last ten years was that of Witt in early 1964, and it was not dis-

criminatory.[1] None of the alleged activities occurred since July 2, 1965. In short, the proposed finding that there is a "continuing practice" is not supported by evidence in the record. The only evidence concerning Local 1 and Negro contractors since July 2, 1965, is that both before and since this suit was filed, Local 1 has been seeking to organize them. Two joined, Witt and Harding, the others

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1/ During the last five years, Local 1 has sent notice of disputes in 161 cases where jobs were let to electrical contractors paying sub-standard wages; only two of these went to Negro contractors, Stipulation No. 3, Para. 19. The other 159 were white. This hardly supports a finding that during the past five years, there has been any kind of pattern of harrassment of Negro contractors.

Local 1 was engaged in standards picketing against Witt at Elsberry, that is, against substandard non-union wages, (Tr. 371). This is a widely used form of picketing by unions, see Claude Everett Construction Co.,136 NLRB 321, 49 LRRM 1757. As noted above Local 1 had sub-standard wage disputes in over a hundred cases,less than 2% of which involved Negro contractors. Under the law, a union cannot continue to engage in standards picketing if the picketing is really for recognition, that is, to organize the contractor. Penny Construction Co., 144 NLRB No. 114, 54 LRRM 1237 (1963).

If a union business representative engaged in standards picketing responds to the picketed employer's inquiries about union membership by saying in a direct fashion that the union will sign the person up, the picketing's purpose is then deemed recognitional, see Penny Construction Co., supra. The union is then precluded from further picketing for standards purposes; knowledgable employers can use this device to stop standards picketing; recognition picketing is limited to 30 days or less by Section 8(b) (7) of the Labor Management Relations Act, as amended, 29 USC 158 (b) 7.

Plaintiff does not suggest that Witt was so motivated, but the business representatives at the scene would have no way of knowing. When an invitation was extended to Witt to sign up with Local 1 in January, 1966, he took some time to think about it.

have refused.[1/]

(b) In sub-paragraph (b) of Para. 10 on page A-10 of the Appendix, plaintiff states that Local 1 has rejected the applications for memberships of qualified Negro construction journeymen both before and after July 2, 1965. Again, all the evidence on this point before the date of the Act goes back more than 10 years, except for the questionable Witt incident at Champ Dairy in 1964. The only evidence concerning such matters since the Act went into effect is the isolated case of Walter Hampton. As defendant has noted (page 15 above), with respect to his request for membership, Hampton was treated just the way that everyone else has been in being first referred to the hiring hall to get a job with a Local 1 contractor. All the other evidence concerning Negro applications for membership since July 2, 1965 was that Local 1 has been soliciting them and that all applicants have passed the examination and have been taken into the Union. So, again, there is no evidence to support a finding of a continuing practice.

(c) In sub-paragraph c of the Para. 10 Appendix on page A-10, careful analysis is revealing. The first sentence states

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1/ On page 53 of its Memorandum, Plaintiff sloughs off the offer of Local 1 and other AFL-CIO unions to sign contracts with employers in Midwest Contractors Association (which includes five Negro electrical contractors) saying no effort was made to organize the employees of the contractors. Unbelievably (almost), up until it had to find some argument to play down this offer by Local 1 to take in five additional Negro contractors, most of the allegations of discrimination that plaintiff leveled at Local 1 were directed against its failure to sign up Negro contractors - see Pl. Memo. pp. 16, 29, 30, 31, 32, 39, 40, 46, 47, 50 & 52.

that Local 1 has followed a policy of nepotism in preference to relatives in selecting new members; it cites Article 14 of the By-Laws, which gave preference to sons in the apprenticeship program, but which was deleted in 1964. It cites the deposition of Bruns at pages 71-72, which is the same thing, where Bruns explained that until 1964, sons of members were given preference on the waiting list of apprentice applicants. Bruns also testified that this waiting list and all pending applications were destroyed in 1964, when the new apprenticeship standards were adopted, Bruns depo., page 42. Plaintiff also cites the depositions of Heeney and Krueger; these are two apprentices who had relatives in the Union; they were admitted in 1966 under the new apprenticeship standards. Plaintiff introduced no evidence to show that Krueger and Heeney had their examinations marked incorrectly or that they were rated improperly in the interviews. In short, there is no evidence in the record to support a finding since 1964, that there has been any preference to relatives.

The next sentence in sub-paragraph c, states that 45% of the new members in construction classifications since July 2, 1965, have been relatives. This 45% is a combination figure of new journeymen construction members and two new groups of apprentices. The first of the two apprentice groups had 60% related to members; the second had 40%. As noted, there is no evidence that this figure resulted from anything other than selection of the best qualified apprentice applicants on the basis of examinations and other objective standards. The percentage of new journeymen members who were related (Stip. No. 2, para. 1) is eight out of 25, about 31%; while there is not as much in the record concerning procedures for selecting new members as there is concerning procedures for selecting apprentices, there is nothing to show that the relatives got in by deviation

from standard procedures for admission of new members which include application, investigation of background and examinations.

In the last sentence of sub-paragraph c, plaintiff concludes that since Negroes are not among members that nepotistic preference inherently discriminates against them. From the facts in evidence, this conclusion is not supported. The higher percentage figures are from the apprenticeship program where there is substantial evidence showing that the Union and JAC have been going out of their way to attract applicants from the Negro community and where there is undisputed evidence that all applicants are selected on objective criteria by merit. The 31% figure on new members other than apprentices hardly shows a substantial degree of nepotism; 69%, or better than two to one, are not related to members, and, in any event, there is no evidence, in spite of plaintiff's intensive study of defendant's records that relatives were given special preference.

(d) On page A-11 in sub-paragraph d of Para. 10, of the Appendix, plaintiff states that the requirement that applicants be approved by majority vote of the members discriminates against Negroes. The only evidence to support this goes back to 1955 and earlier dates. There is no evidence since the date of the Act to support the finding. <u>All</u> the evidence shows just the contrary, that all Negro applicants have been voted into membership.

In paragraph 11 of its proposed findings of fact, starting on page A-11 of its Appendix, plaintiff asserts that Local 1 has designed and operated its hiring hall "in such a manner as to afford Negroes inferior employment opportunities." In sub-paragraph a), plaintiff states that Local 1 referred white applicants while refusing to refer a Negro who made prior application; this refers to the Walter Hampton application where plaintiff failed to show that anyone who was not physically

present in the hiring hall was referred out ahead of Hampton. Plaintiff refers to the testimony of Frank Witt when he requested referrals from the hiring hall as establishing that the Union refers members on a segregated and discriminatory basis; the evidence was that one Negro and one white man were referred to Witt by the Union. The Statute does not deal with racial discrimination against an employer, if that is what the plaintiff is referring to. Showing that a Negro was referred to Witt does not show that the referrals were discriminatory. Again, plaintiff had access to all of defendant's records. Presumable, the man supposedly discriminated against here would have been the one Negro referred to Witt; plaintiff did not even bother to elicite his name, much less to present any evidence showing that he was improperly referred.

In sub-paragraph b of Para. 11, starting on page A-11 of its Appendix, plaintiff alleges that the hiring hall clause requiring one year work experience under the collective bargaining agreement inherently discriminates against Negroes. This assertion, in turn, is based upon a necessary finding that the hiring hall has in the past and continues to discriminate against non-members. Statistics show that over 1,000 non-members have been referred out from the hiring hall; as a case cited by plaintiff indicates (IBEW Local 269 v. NLRB) discrimination against a non-member would be a violation of the Taft-Hartley Act, subject to an NLRB charge; the system has been in effect since 1958 and there has been no such charge.

The evidence simply does not support plaintiff's proposed findings.

Cases on Employment Discrimination Relied on by Plaintiff

Plaintiff refers repeatedly in its Brief to the recent New Orleans case decided in June of 1967, involving the Asbestos Workers Union, Vogler vs. McCarty, Inc. (U.S. vs. Local 53,

Asbestos Workers), ___ F. Supp. ___ (E.D., La.), to support its arguments about pattern and practice, nepotism, and vote of the membership.[1] Some critical facts in the Vogler Decision were quite different from those present in the case now before the Court.

In Vogler an applicant had to have written recommendation from three members; there is no requirement for any recommendation for an applicant to Local 1.

In Vogler a vote of the majority of the members was required; that is true with respect to Local 1, but the evidence shows that before and since the Act, the vote was not used to prevent the entrance of any Negro applicant; twenty-five Negroes were members before July 2, 1965.

There was a policy of Local 53 restricting its membership to sons or close relatives of members. Local 53 started people as "improvers" and not as apprentices. In the four years preceding the Decision it had accepted 72 improvers, all relatives; 69 were sons or stepsons of members, and the other three were nephews raised by members as sons. At Local 1 the statistics show that for all classifications the number of persons admitted who are related are about one-third of total admissions.

In contrast to Local 53, where there were no objective standards for selection of "improvers", Local 1 has objective

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1/ It is of interest to note in the first paragraph of the Decision that Judge Christenberry states: "The Complaint was filed only after the Equal Employment Opportunity Commission had completed a thorough investigation of charges of discrimination by the defendant, had found reasonable cause to believe that the charges were true, and having failed in its attempts to conciliate the matter, had referred the case to the Acting Attorney General." This is in sharp contrast with the present case where the Justice Department Interrogatory Answers indicate that no complaint had been filed with the EEOC nor with other government agencies; far from making any effort to conciliate the matter, the Justice Department filed it without any kind of notice to defendants.

standards; of the last two groups of apprentices selected, those related were 60% and 40% respectively.

Local 53 had a practice of referring white journeymen members of other trade unions, including Plasterers Local 93 for work as asbestos workers; it had refused to refer Negro members of Plasterers Local 93; there is no showing that Local 1 referred white members of other unions and refused to refer Negro members of other unions. Judge Christenberry's conclusion that the requirements of relationship to a member, recommendations by three members, and a majority vote of the membership served to bar Negroes from the Asbestos Workers was justified on the facts. The facts to justify such a conclusion with respect to Local 1 do not exist.

So, too, in the facts in Lefkowitz (State Commission on Human Rights) vs. Farrell, 57 LRRM 2005 (N.Y. Sup. Ct. 1964), 60 LRRM 2509 (App. Div., 1965), a case concerning the Sheet Metal Workers Apprenticeship Program, there are critical differences. While there was a joint Apprenticeship Committee, the evidence showed that it had failed to act, and that the union alone selected apprentices; the employer members of the JAC acknowledged that the interviews were in theory only and didn't take place and that it had turned responsibility over to Local 28. Applicants had to be sponsored by someone such as a union member or by an employer or friend. No apprentice referred by the union had ever been turned down. In comparison, the evidence in the present case shows that the Union-Management Joint Apprenticeship Committee is functioning, supervising testing, interviewing all applicants, meeting monthly to supervise the whole program. There is no requirement for sponsorship by anyone. The selection procedures are being followed by the Electricians JAC.

CONCLUSION

Plaintiff Has Not Proven a Pattern or Practice of Resistance. (Rather the Evidence Shows Affirmative Acts of Acceptance).

Section 707 provides:

> "...Whenever the Attorney General has reasonable cause to believe that any person of group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured bu this title, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described..." (underlining added)

Its legislative history indicates that it was to be a weapon against recalcitrants who were defying the Act or who were guilty of repeated discrimination.[1/]

As the underlining of Section 707 points up, there must be (1) a pattern or practice of (2) resistance and (3) an intent to deny rights. As Senator Humphrey stated:

> "As a further safeguard, the bill requires a showing that those engaged in the pattern or practice had the intention to deprive others of their rights under Title II or Title VII." (underlining added). 110 Cong. Rec. 13, 776 (June 18, 1964).

The rights protected are set out in Section 703 (c) - the right to union admission and to job referral without discrimination because of race; in Section 703 (d) the right to admission into an apprentice program without discrimination because of race.

1/ Sen. Humphrey made clear that Section 707 was not for single or isolated acts of violation, 110 Cong. Rec. 13 776 (June 18, 1964):

> "The point is that single, insignificant, isolated acts of discrimination by single businesses would not justify a finding of a pattern or practice, and thus the fears which have been expressed are groundless."

Assuming for the moment that Local 1 had discriminated in the past, by the time the Act went into effect Local 1 had Negro members and was in the process of acquiring more. Had the Justice Department engaged in the contact and conciliation efforts contemplated by the Statute, instead of precipitously filing the suit, it would have discovered this. 1/

In early 1964 Union and Employer representatives on the JAC promptly responded to Title 29 - Part 30, CFR, Non-Discrimination in Apprenticeship, by destroying all pending applications. They established new standards for selection of apprentices based on objective criteria, designed to select on merit.

The Union in early 1964 deleted from its by-laws preference for sons of members, the age-old birthright of a craftsman to pass on to his son his trade. Plaintiff may disparage or treat lightly this conduct, but it is no small thing for a workingman to part with.

These are not the acts of a union that is resisting and intentionally denying employment opportunities to minority groups.

Prior to July 2, 1965 Negroes had started coming into the Union, and were doing so in an increasing number, up to 35

1/ While Section 707, which provides for Attorney General suits, does not provide expressly for conciliation procedures before a suit is instituted, consiliation and mediation is the basic concept of the Statute, as expressed in Section 706. 706 (a) provides that after a charge is filed, if the EEOC has reasonable cause to believe that it is true, that it is to endeavor to eliminate the practice by "informal methods of conference, conciliation, and pursuasion." The Section goes on to provide that nothing that is done during these mediation proceedings is to be made public in any way. It is plain in the legislative history that the provision for Attorney General suits under Section 707, which was added at the time of the Dirksen compromise proposals, was to somewhat make up for the provision in Section 706 that places the burden on the individual (rather than permitting the EEOC to do so) of filing suit in court. 707 was to bring the power of the Justice Department to play in cases where there was a recalcitrant employer or union, not responding to EEOC mediation or suits by individuals. Note comments by Judge Christenberry on the conciliation efforts that preceded the Vogler case.

by the time the suit was filed. Starting in 1964 the JAC was sending letters to all of the area's school systems soliciting applications. In 1965, the Bureau of Apprenticeship and Training of the Department of Labor reviewed the Apprenticeship Program and found that it met the standards for non-discrimination. The JAC and representatives of the Local Union have been engaging in school appearances, programs for school counselors - with respect to predominantly Negro schools - and other activities directed towards communicating with minority groups.

Before the suit was filed, Local 1 had made clear to two Negro contractors its willingness to enter into contracts with them. Since it is indisputable that the suit was filed, without notice, after Local 1 had offered to contract with Witt and Harding, the Justice Department seeks to suggest that the Union was acting in fear of discrimination charges, and refers to the NLRB charge that was then pending as inducing the Union to admit Negroes. That NLRB proceeding against Local 1 and a number of other unions had to do with the failure of members of these unions to work at the Arch because of the presence of a CIU contractor, Smith Plumbing Company; Smith's employees were Negro. The NLRB charges, however, did not allege discrimination (and in any event it would involve the Plumbers Union) but alleged a secondary boycott. So, it is pretty far fetched to suggest that Local 1 was seeking to organize Negro contractors because of the NLRB charges. (Pl. Memo., p. 41).

But, even if it were so, plaintiff seeks to use the inference only to play down positive acts of Local 1 to bring Negroes into its organization. Plaintiff ignores this same inference when it deals with the Walter Hampton incident. Thus, if Local 1 was fearful that it was in jeopardy because of NLRB charges concerning the Arch, and that this jeopardy involved racial

discrimination, and, if, as the Justice Department alleges, Local 1 had and was continuing to discriminatorily refuse to refer out Walter Hampton, why would Local 1 have continued to engage in the alleged discrimination against Walter Hampton?

Why would Local 1 discriminate against one Negro while at the same time soliciting numerous other Negroes as members?

In summary, the evidence does not support a finding or conclusion that Local 1 has been in a pattern of resistance to the Act. And, there is a total lack of evidence to support a finding of intent to deny job opportunities to Negroes. The Union has gone beyond the requirements of the Statute to communicate its desire for Negro apprentices and members.