

AGREEMENT DATED AS OF FEBRUARY 7, 1970,

BETWEEN

THE UNITED STATES OF AMERICA,

LOCAL UNION NO. 46 OF THE WOOD, WIRE
AND METAL LATHERS INTERNATIONAL UNION,

and

THE JOINT APPRENTICESHIP COMMITTEE OF THE
EMPLOYING METALLIC FURRING AND LATHING
ASSOCIATION OF NEW YORK AND LOCAL UNION
NO. 46 OF THE WOOD, WIRE AND METAL LATHERS
INTERNATIONAL UNION

AGREEMENT OF SETTLEMENT

AGREEMENT dated as of the 7th day of February, 1970, between the UNITED STATES OF AMERICA ("USA"), by its attorney, and LOCAL UNION NO. 46 OF THE WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION ("the Union"), and THE JOINT APPRENTICESHIP COMMITTEE OF THE EMPLOYING METALLIC FURRING AND LATHING ASSOCIATION OF NEW YORK AND LOCAL UNION NO. 46 OF THE WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION ("JAC")

WHEREAS the Union is a local union of the Wood, Wire and Metal Lathers International Union ("the International"), and

WHEREAS the work jurisdiction of the Union includes two distinct types of work, inside work and outside work, as hereinafter defined, and covers the following territory: Greater New York, N. Y.; Nassau, Suffolk and Westchester Counties, and part of Rockland County, and

WHEREAS the Union enjoys the exclusive right to refer men for employment within its work jurisdiction and territory and to require the employers with whom the Union

has collective bargaining agreements to request the referral of men by the Union whenever the employers wish to employ men, and

WHEREAS the JAC, and the Union before it, administers apprenticeship programs whereby apprentices are trained for inside work, and become members of the Union, the JAC most recently having compiled an apprentice waiting list, beginning in August, 1966, from which men have been indentured from time to time, none of whom has yet completed his apprenticeship, and

WHEREAS on May 22, 1968, the USA commenced an action (68 Civ. 2116) ("the action") in the United States District Court for the Southern District of New York ("the Court") against the Union and the JAC under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, charging in substance

that the Union and the JAC are engaged in a pattern or practice of resistance to the full enjoyment by Negroes of the rights to equal employment opportunities that are secured by Title VII, including equal opportunities with respect to the apprenticeship program and with respect to employment within the work jurisdiction and territory of the Union, and

WHEREAS the trial of the action is now scheduled to begin on February 19, 1970, and

WHEREAS the parties have reached an agreement that is intended to ensure the full enjoyment by Negroes of the rights to equal employment opportunities that are secured by Title VII, and to provide a basis for the settlement of the action without the necessity of a trial, and

WHEREAS the following terms as used hereafter in this Agreement have the following meanings:

(a) "employer" shall mean a person with whom the Union has a collective bargaining agreement,

(b) "inside work" shall mean furring and metal lathing and all other "Work Covered" as described in the collective bargaining agreements between the Union and employers engaged in such work,

(c) "outside work" shall mean reinforced concrete and all other "Work Covered" as described in the collective

bargaining agreements between the Union and employers engaged in such work,

(d) "permit" and "work permit" shall mean the registration card for outside work that is issued by the Union to persons who are neither members of the Union nor members of other local unions of the International,

(e) "workmen" shall mean persons who are members of the Union, or who are members of other local unions in the International, or who are holders of permits,

(f) "open employment list" shall mean the list for inside work or the list for outside work, or both, as the case may be, maintained by the Union at its offices at 1322 Third Avenue, New York, N. Y., from which all workmen shall be referred to jobs with employers,

(g) "apprentice" shall mean a person who has been indentured and is working as an apprentice in the apprenticeship program of the JAC,

(h) "apprentice applicant" shall mean a person who wishes to make or has made application to become an apprentice, and includes a person whose application has been selected and who is being retained on a waiting list,

(i) "the 1966 apprentice waiting list" shall mean the present waiting list of apprentice applicants compiled by the JAC beginning in August 1966,

(j) "on a nondiscriminatory basis" shall mean, with respect to the employment opportunities hereinafter described, without engaging in a pattern or practice of resistance to the full enjoyment by Negroes of equal employment opportunities, and without any discrimination against Negroes,

(k) "Minority referral sources" shall mean the Workers Defense League and Fight Back, and such other organizations or agencies as the parties may by agreement designate,

NOW, THEREFORE, IT IS AGREED:

1. Present apprentice program. The 1966 apprentice waiting list shall be invalidated.
2. Affirmative action apprenticeship program. The JAC shall forthwith indenture 25 non-white apprentices to be referred by minority referral sources. Such apprentices shall be 18 to 30 years of age with credit received for military service as hereinafter provided, must have completed at least ~~high school~~ high school and must have the physical ability to do the work. If the apprenticeship of any of the 25 men shall terminate prior to completion, upon each such termination the JAC shall forthwith indenture another such non-white apprentice, it being the commitment of the JAC and the Union to ensure that a total of 25 non-white apprentices shall acquire membership and journeymen status in the Union as a result of this affirmative action apprenticeship program. Except as set forth above, the affirmative action apprenticeship program shall in all respects be identical to the regular apprenticeship program of the JAC. The affirmative action apprenticeship

program shall in no way limit or affect the participation of non-white apprentices or apprentice applicants in any other apprenticeship program of the JAC.

3. Apprenticeship requirements. The sole requirements for apprenticeship shall be as follows: Apprentice applicants must be 18 to 25 years of age at the time of application, must have completed at least 2 years of high school and must have the physical ability to do the work. In computing the age requirement an applicant shall receive credit for time spent on active duty in the armed forces of the United States as a draftee or for the period of an initial enlistment, and shall receive credit for time spent on the 1966 apprentice waiting list provided the applicant was eligible under all of the standards applicable to such list.

4. Selection of apprentices. Apprentice applicants shall be selected by a random method, and shall be ranked in order of selection. The JAC shall determine before an apprenticeship program is announced the number of men to be indentured in the first class and the number, if any, to be retained on a waiting list. No person shall become an ap-

practice in any manner other than stated above, except pursuant to the affirmative action apprenticeship program described above.

5. Work permits for apprentice applicants. Any applicant retained on the apprentice waiting list shall be entitled to receive a work permit for outside work, upon request. The right of an applicant to hold such a permit shall terminate upon his indenture as an apprentice.

6-7. Equal employment opportunities. With respect to registration on the open employment lists, job referral from the open employment lists, job layoff, job transfer, job assignment, work conditions and overtime, the rules and procedures of the Union shall apply equally to all workmen, and shall afford to Negro workmen employment opportunities equal to those afforded to other workmen; all workmen shall be treated on a nondiscriminatory basis and without any preference on account of union membership or on account of time worked under a collective bargaining agreement, except that experience in the trade may be used as a basis for preference if it relates to the ability of the workmen to perform the work required. Within 6 months of the date upon which this Agreement becomes fully effective, as hereinafter provided, the Union will develop and present to the Administrator and the USA objective rules and procedures to implement the foregoing provision. Such rules and procedures

shall be agreed upon by the Administrator and the parties hereto, or failing such agreement, shall be determined by the Court.

8. Overtime. Overtime shall be divided equally among the gang on the job doing the particular work involved. In cases where this division of overtime is impractical, an exception can be made for good reason given.

9. Suspension and termination. The suspension and termination of any right to work to which the holder of a work permit is entitled or to which a member of another local of the International is entitled shall be governed by the same rules and procedures as are applicable to the suspension and termination of the equivalent rights of members of the Union.

LMS:

10. Work permits. Permits shall be issued by the Union in accordance with work requirements to persons who are determined to be eligible for such permits by the Union or by minority referral sources. The Union may terminate and resume the issuance of work permits in accordance with work requirements from time to time, and in the event of termination, no permits whatsoever shall be issued until such time as issuance is resumed.

The Administrator shall as soon as practicable make an objective study of the issues relating to the issuance of work permits based upon the needs of the industry and taking into account the purpose of achieving equal employment opportunity, which study may include such factors as the total number of work permits to be issued, the number of permits to be issued from time to time, and the manner of issuance, and based upon such study shall recommend such changes, if any, as he deems advisable in the system for the issuance of permits.

Any change in the system for the issuance of permits shall require either the agreement of the parties hereto or the approval of the Court.

11. Admin trator. The Court shall appoint an impartial person (from an agreed list of names if the parties are able to agree upon such a list) to implement the provisions of this Agreement and to supervise its performance.

The Administrator shall be empowered to take all actions, including the establishment of record-keeping requirements, as he deems necessary to implement the provisions of this Agreement, to ensure the performance of this Agreement and to remedy any breach thereof. The Administrator shall decide any questions or disputes or complaints arising under this Agreement, including questions of interpretation of the Agreement and claims of violations of this Agreement acting either on his own initiative or at the request of any interested person. All decisions of the Administrator shall be in writing and shall be final.

Nothing contained herein shall give the Administrator the right to amend, modify or change the substantive terms of this Agreement, nor shall he have any power or authority other than that granted to him in this Agreement.

The compensation of the Administrator and his expenses shall be paid by the Union and the JAC. The amount of compensation to be paid to the Administrator shall be agreed upon in advance by the Administrator and the parties hereto, or failing such agreement, shall be fixed by the Court.

The Administrator shall remain in office for an initial period of 3 years, and thereafter shall remain in office until such time as the Court shall determine, under all of the circumstances of the case, that it is unnecessary to continue the Administrator in office, i.e. that in the absence of the Administrator it is reasonably certain that there will not be re-established any pattern or practice of resistance to the full enjoyment by Negroes of equal employment opportunities and any discrimination against Negroes. The circumstances of the case referred to above include, without limitation, the procedures then being followed by the Union and the JAC, the history of their performance of the Agreement, the facts upon which the action is based, and the degree to which Negroes are then enjoying equal employment opportunities. Upon any application to discontinue the Administrator, the burden of persuasion shall be upon the Union and the JAC.

12. Accounting and Management Consultant Services.

The Administrator shall retain, for one year and for such further period as he deems appropriate, an accounting or management consultant firm to assist in the implementation of this Agreement, including the design and installation of a record-keeping system adequate to enable the Administrator to resolve complaints arising under this Agreement, to ensure the performance of this Agreement and to remedy any breach thereof, and to review and monitor periodically the performance of this Agreement by the Union and the JAC.

13. Public Information Program The Administrator

shall conduct a public information program for the purpose of demonstrating to non-whites that they now have equal opportunities with respect to apprenticeship training and employment. As part of such a program, the Administrator shall from time to time notify community groups, secondary schools, and public organizations and agencies engaged in job referral, of specific opportunities. With respect to apprenticeship training, each opportunity shall be announced and publicized at least 30 days in advance of the date for commencement of the application period. In the operation of the public information program, the Union shall render such assistance and perform such functions as the Administrator shall reasonably require.

14. Reporting

A. Within 10 days after the close of each month, the Union shall file with the Court, and serve upon the Administrator and the United States, a verified report showing for the applicable period:

1. The number of members of Local 46 and the number of members of other locals of the International and of permit holders then currently registered at the hiring hall, by race.

2. Under the categories of inside and outside work, the total number of workmen by race who performed work during that period and a tabulation of the total hours worked by them, including a breakdown between straight and overtime hours, in each of the following categories:

- a. Members of Local 46
- b. Members of other locals of the International
- c. Permit holders

3. The total number of permits issued during that period by race.

4. An estimate based upon available information as to the number of new permits to be issued during the subsequent period.

B. The Union shall file with the Court and furnish to the Administrator and to the United States copies of all reports submitted by it to the Equal Employment Opportunity Commission, the Bureau of Apprenticeship Training, the State Division of Human Rights and the City Commission on Human Rights.

C. The Union shall furnish to the United States and the Administrator such other reports and information as they may reasonably require.

15. The USA. Notwithstanding any other provision of this Agreement: the USA shall have the right to conduct such inquiry as it deems necessary into the implementation and performance of this Agreement, and in aid of such inquiry to inspect and copy all records of the Union and the JAC at any and all reasonable times, upon request, and to utilize the procedures for discovery contained in the Federal Rules of Civil Procedure; the USA shall have the right to apply to the Court for appropriate relief for breach of any provisions of this Agreement and resolution of any other issues relevant to the implementation and performance of the Agreement.

16. Security. Within 10 days after the date upon which this Agreement becomes fully effective, as hereinafter provided, the Union and the JAC shall give a bond or undertaking complying with Fed. R. Civ. P. 65.1 and Rules 29 and 30 of the General Rules of the Court in the amount of \$100,000 as security for their implementation and performance of this Agreement, including without limitation security for payment of the compensation and expenses of the Administrator and of the accountants or management consultants retained by the Administrator.

17. Other rights and obligations. Nothing in this Agreement shall be construed to deny, impair or otherwise affect the rights and obligations of any persons under applicable laws, regulations and any other governmental directives, or in the case of the Union and the JAC, to excuse compliance with any programs designed to increase the employment and union membership of non-white workmen, as for example, on-the-job-training programs.

18. Amendment. The sole method by which this Agreement can be amended is by written consent of the parties, "so ordered", or otherwise approved by the Court.

19. Effectiveness of Agreement. This Agreement shall be binding upon the parties when executed, but shall not otherwise become effective unless it is approved by the Court. The parties shall submit to the Court an order upon consent providing for the approval of this Agreement in settlement of this action in the form annexed hereto as Exhibit A, and the Agreement shall become fully effective upon the date of filing of an order of the Court approving the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused
this Agreement to be executed, as indicated below, as of the
day and year first above written.

WHITNEY NORTH SEYMOUR, JR.
United States Attorney for the
Southern District of New York,
Attorney for the United States of America.

By Lawrence W. Schelling
LAWRENCE W. SCHELLING,
Assistant United States Attorney.

LOCAL UNION NO. 46 OF THE WOOD, WIRE
AND METAL LATHERS INTERNATIONAL UNION

By the following officers:

John Tierney
JOHN TIERNEY,
Financial Secretary-Treasurer and
Business Manager.

Thomas Reynolds
THOMAS REYNOLDS,
President.

David J. Richardson
DAVID J. RICHARDSON,
Business Agent.

Michael J. Brennan
MICHAEL J. BRENNAN,
Business Agent.

Peter J. McGovern
PETER J. MCGOVERN,
Business Agent.

James Maher
JAMES MAHER,
Business Agent.

THE JOINT APPRENTICESHIP COMMITTEE
OF THE EMPLOYING METALLIC FURRING
AND LATHING ASSOCIATION OF NEW YORK
AND LOCAL UNION NO. 46 OF THE WOOD,
WIRE AND METAL LATHERS INTERNATIONAL
UNION

By

JEREMIAH BURNS,
Co-Chairman,

and

PETER J. McGOVERN,
Co-Chairman.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

-v-

WOOD WIRE AND METAL LATHERS
INTERNATIONAL UNION, LOCAL UNION
46; and THE JOINT APPRENTICESHIP
COMMITTEE OF THE EMPLOYING METALLIC
FURRING AND LATHING ASSOCIATION OF
NEW YORK AND LOCAL NO. 46 OF THE
WOOD WIRE AND METAL LATHERS
INTERNATIONAL UNION,

Defendants.

CONSENT DECREE
68 Civ. 2115

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Upon the consent of the parties, endorsed hereon by their attorneys, and upon the Agreement between the parties, dated as of February 7, 1970, (the Agreement) submitted in this action simultaneously with the submission of this order, it is ordered, adjudged and decreed, as follows:

1. The Agreement is hereby approved as a basis for settlement of this action and the defendants are hereby directed to implement and perform the Agreement in accordance with its terms and with the provisions of this order.

2. Failure to comply with this order, including breach of this Agreement, shall be punishable as a contempt of court.

3. Defendants shall mail a copy of this order and the Agreement to each of the members of Local 46, to each of the members of other local unions of the International who are registered for employment with the Union, to all persons who hold work permits issued in 1970, and to all

employers with whom Local 46 has a collective bargaining agreement, by certified mail, personal return receipt requested, or shall otherwise ensure that such persons receive actual notice of this order and the Agreement, and shall make and retain a verified list of the names and addresses of the persons to whom such mailing was made or who otherwise received such actual notice. Within 30 days of the date of filing of this order, defendants shall file with the Court and serve upon plaintiff an affidavit of compliance with the foregoing provisions of this paragraph setting forth that such mailings have been made, that such verified list has been made and retained, and describing any other action taken by defendants to ensure the receipt of actual notice of this order and the Agreement.

4. This order and the Agreement shall be binding upon defendants, their officers, agents, servants, employees and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

5. _____ is hereby appointed as the Administrator under the Agreement.

6. This action is hereby marked "settled," without prejudice, pending further order of the Court, and the Court hereby retains continuing jurisdiction over the action for all purposes, including without limitation, the purpose of enabling any of the parties to apply to the Court for such further orders and directions as may be necessary or appropriate, and for the purpose of the enforcement of compliance with this order and the Agreement and the punishment of violations thereof.

Dated: New York, N.Y.

February , 1970

U. S. D. J.

Consented to:

WHITNEY NORTH SEYMOUR, JR.
United States Attorney for the
Southern District of New York,
Attorney for Plaintiff,

By: _____

LAWRENCE W. SCHILLING
Assistant United States Attorney

DORAN, COLLERAN, O'HARA & DUNNE
Attorneys for defendant Local Union 46
Co-Counsel for defendant Joint Apprenticeship
Committee,

By: _____

WALTER M. COLLERAN

M. CARL LEVINE, MORGULAS & FOREMAN
Co-Counsel for defendant Joint Apprenticeship
Committee,

By: _____

ALBERT FOREMAN