

CRCI.6.18

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,
by RAMSEY CLARK, Attorney
General,

Plaintiff,

v.

H. K. PORTER COMPANY, INC.,
a corporation, UNITED
STEEL WORKERS OF AMERICA,
AFL-CIO, an incorporated
association, and LOCAL
UNION NO. 2250, UNITED
STEEL WORKERS OF AMERICA,
AFL-CIO, an unincorporated
association,

CIVIL ACTION NO. 67-363

Defendants.

BRIEF IN SUPPORT OF
PLAINTIFF'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECREE

MACON L. WEAVER
United States Attorney

STEPHEN J. POLLAK
Assistant Attorney General

THOMAS R. EWALD
FRANK M. DUNBAUGH
ANDREW J. RUZICHO
JOHN T. NIXON
HERBERT A. GOLDSMITH, JR.
Attorneys
Department of Justice

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

DEPARTMENT OF JUSTICE

SECURITY DIVISION

UNITED STATES OF AMERICA,)
by RAMSEY CLARK, Attorney)
General,)
)
Plaintiff,)

v.)

CIVIL ACTION NO. 67-363

H. K. PORTER COMPANY, INC.,)
a corporation, UNITED)
STEEL WORKERS OF AMERICA,)
AFL-CIO, an incorporated)
association, and LOCAL)
UNION NO. 2250, UNITED)
STEEL WORKERS OF AMERICA,)
AFL-CIO, an unincorporated)
association,)
)
Defendants.)

BRIEF IN SUPPORT OF
PLAINTIFF'S PROPOSED
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND REMEDY

I.

THE NATURE OF THE ACTION

This is an action by the United States pursuant to Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e) against the H. K. Porter Company, Inc., and the United Steel Workers of America. The action seeks to enjoin the defendants from engaging in unlawful acts and practices that deprive Negro employees at the Connors

Steel Workers in Washington, D.C., of employment opportunities or other benefits, which their claims because of their race. More specifically, relief is sought from the socially discriminatory system of classification of employees in departments and restrictions on transfers and from the use of standards that give white employees preference for promotions over Negro employees as a class. The action seeks specific relief and specific orders to insure the fair operation of a nondiscriminatory system of employment at the plant.

II.

THE PARTIES

The plaintiff is the United States of America. Its standing to sue is established by Section 707 of the Act, ^{1/} which provides in substance that whenever there is reasonable cause to believe that any person is engaged in a pattern or practice of resistance to full enjoyment of any of the rights to equal employment opportunity secured by Title VII, the Attorney General may bring an action requesting the relief necessary to ensure the full enjoyment of those rights.

The defendants are H. K. Porter Company, Inc. (hereinafter referred to as the company) and the United Steel Workers of America (AFL-CIO) and its Local 2250

^{1/} 42 U.S.C. 2000e-6(a)

(hereinafter referred to as the union, which in control requires a majority of the votes of the International and the Local union). The union operates the Connors Steel Plant in Birmingham. The union is the exclusive collective bargaining representative of employees at the plant. The conduct of the company as employer is regulated by Section 703(a) of the Act and that of the unions as labor organizations by Section 703(c).

III.

THE CONNORS STEEL PLANT

The principal business of the Connors Steel Plant is producing finished steel products from scrap metal.

B. Campbell Blake is Vice-President of the B. K. Porter Company and General Manager of the division of which the Connors Plant is a part. The Plant Manager is J. B. Reeves. The Director of Plant Personnel is Norman E. Wagner.

The present International Representative of United Steel Workers of America in the district that includes Birmingham is H. B. Ritch. Local 2250 represents the employees in the collective bargaining unit at the plant through officers and a grievance committee, who also function as the bargaining committee.

There are 739 employees in the bargaining unit, of whom 418 are white persons and 321 are Negroes.^{2/} The operations they perform include melting the scrap, casting

^{2/} Pl. Ex. 3. These figures include 7 white employees and 20 Negro employees who are in the labor pool and not in a seniority Department. See Appendix C which is a table showing the number of employees, by race, in each department.

it into billets, rolling the billets into bars, and various other steps, and also the study of rolling the steel product to various specifications.

The company has divided the jobs of employees into operating departments. The company and the union also have agreed on a system of classification of the jobs and employees into "seniority departments" for the purpose of distributing job opportunities in the collective bargaining unit among employees. The operating and seniority departments are not identical. Some supervisory personnel have authority over operating departments that include employees from more than one seniority department. For example, the employees in the scrap yard seniority department and in the railbreaker seniority department have a single supervisor.^{3/} The same is true of the electric furnace employees and the bricklayers.^{4/} The employees in the mill tonnage and the mill auxiliary seniority departments are both under the Mill Superintendent for operating purposes.^{5/}

The company and the union also have agreed on lines of progression within seniority departments. Most of the departments have only one line of progression, but the mechanical department has four.^{6/} The highest paying job

^{3/} Deposition of Norman B. Wagner (hereafter Wagner Dep.) pp. 31-32.

^{4/} Wagner dep. pp. 15-34.

^{5/} Wagner dep. p. 24

^{6/} Def. Ans. to Interrogatory 9 (1st set).

in a line of progression to at least 10 percent of the total work force. The largest is electric furnace with 131 employees and the smallest is building maintenance with three. Over seventy-five percent of the 712 employees assigned to seniority departments at the Connors Plant are assigned to one of the six largest departments; electric furnace, mill auxiliary, electrical, mill tonnage, finishing and mechanical. There are also three moderate-sized seniority departments - cold draw, fabricating, and brickmason. The nine largest seniority departments include 688 employees, more than 90% of the total work force. The number of employees, by race, in each of these departments is:^{8/}

<u>Department</u>	<u>White</u>	<u>Negro</u>	<u>Total</u>
Electric Furnace	93	38	131
Mill Auxiliary	12	104	116
Electrical	83	11	94
Mill Tonnage	74	5	79
Finishing	15	62	77
Mechanical	57	8	65
Cold Draw	24	11	35
Fabricating	6	28	34
Brickmason	11	16	27
Other Departments	36	18	54
	<u>411</u>	<u>301</u>	<u>712</u>

In terms of educational qualifications and seniority there is very little difference between the present Negro employees and white employees. The median educational level for

7/ Appendix B shows the names of the seniority departments, the jobs and lines of progression, and the number of employees of each race who were in each department at the time of the trial August 12-21, 1968.

8/ See Appendix C for statistics, by race, of employees in all departments.

1962, the date of the hiring of the first Negro employee in
the plant. The date of the hiring of the first white employee
is January 21, 1951. The date of the hiring of the first
is April 13, 1951.¹⁰

IV.

NEGRO EMPLOYEES DEPRIVED OF PROMOTION OPPORTUNITIES DUE TO RACIAL BIAS IN EMPLOYMENT

Employment opportunities are best understood in terms of actual and potential earnings. At the Connors Steel plant, where all employees were hired and assigned to jobs strictly according to their race until October 1962, Negro employees were assigned only to the lower paying jobs and excluded as a class from higher paying jobs which were reserved for white persons. The company did not permit Negro employees to advance to white jobs.

In October 1962, the company, with the union's acquiescence, established new standards and procedures for promotions to higher paying jobs which no longer included the strict racial prohibitions but which limited, in three ways, the opportunity of Negro employees to advance to these jobs. First, the new standards locked into the system the preferential position previously granted to white employees by providing that, regardless of relative seniority or other qualifications, incumbent Negro employees could only be promoted after incumbent white employees had been promoted.

⁹ / See Appendix G, which is a table of the education of employees, by race and by grade.

¹⁰ / See Appendix H, which is a chronological list of employees by hiring date.

Second, the company's promotion policies at the time of the lawsuit were discriminatory. Lines of progression that offer the best advancement to high pay levels were probably all. Third, the company adopted transfer policies, including tests, which prevented these Negro employees from obtaining the same opportunities in other lines of progression that were available to their white contemporaries there.

From October 1962 until after this suit was commenced, the company has discriminated against Negro employees by applying a standard for promotions that gives white employees priority over Negro employees because of their race, by requiring Negro employees to obtain transfers to become eligible for the same job opportunities that white employees are offered through direct promotions, by insuring that most Negro employees will not advance to the same pay levels as the white employees who were hired at the same time, and by filling most of the vacancies in lines of progression that offer the best promotion opportunities with newly hired white persons while keeping most of the incumbent Negro employees in lines of progression where there are no opportunities for promotion to higher paying jobs.

As a consequence of these racially discriminatory acts and practices, the Negro employees at the Connors plant are deprived of actual and potential earnings equal to those available to white employees. The employment system at Connors is structured so that the four largest predominantly white departments offer the best opportunities for employees to reach jobs at the high pay levels. By contrast, the three largest predominantly Negro seniority departments provide the least opportunities for advancement.

3. White and Negro Employees Who Received Average Hourly

Half the employees in the bargaining unit had average hourly earnings over \$3.75 during the first six months of 1968, and the other half had average hourly earnings under \$3.75.^{11/} Seventy-three percent of the white employees earned more than \$3.75. Eighty percent of the Negro employees earned less than \$3.75:

Average hourly earnings	White	Negro
Over \$3.75	237	61
Under \$3.75	101	254
Totals	405	315

The graph on the following page shows by race the number of employees who had earnings over \$3.75 per hour and the number who had earnings under \$3.75 per hour in each of the nine largest seniority departments during the first six months this year.^{12/}

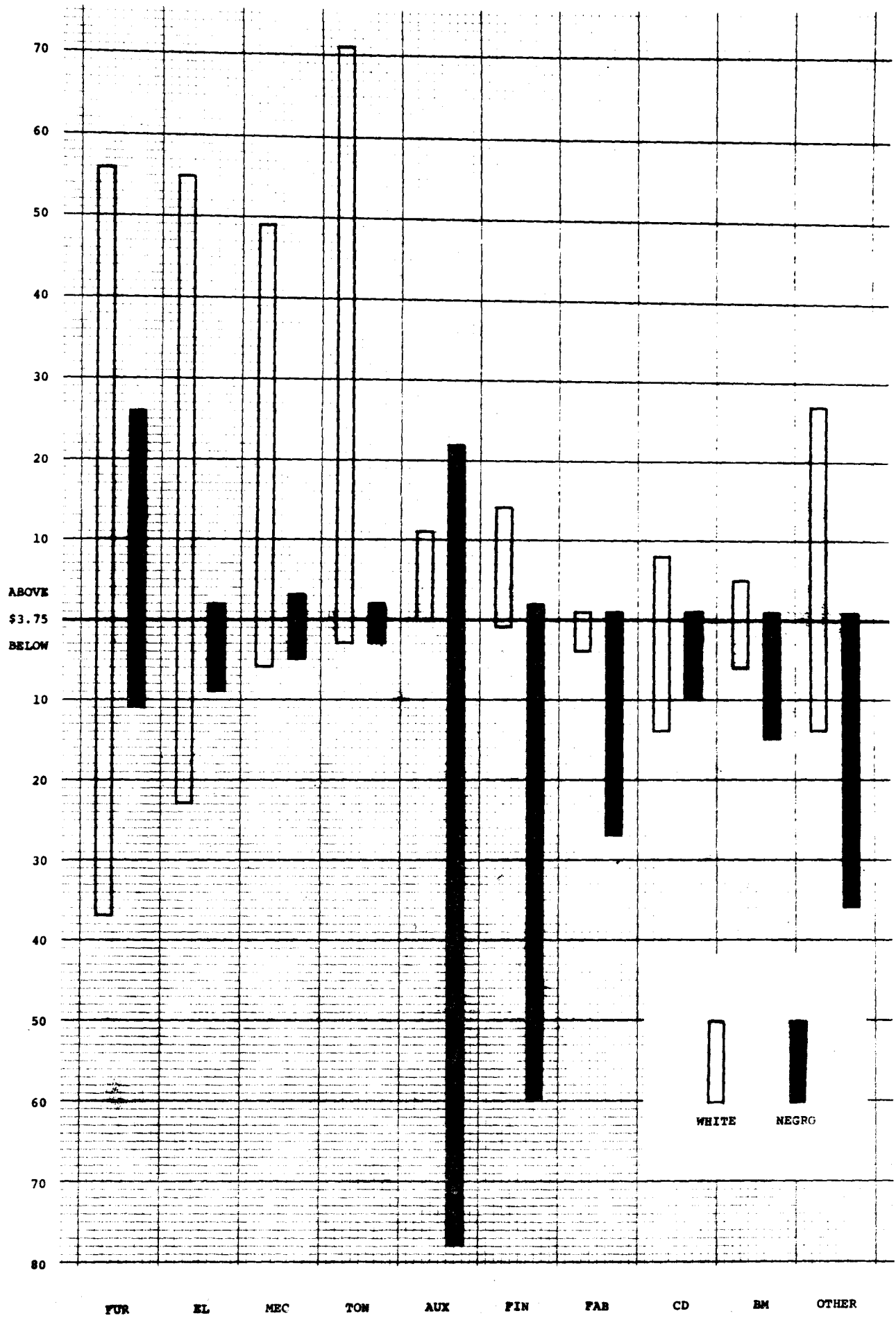
^{11/} Def. Ex. 74.

^{12/} Def. Ex. 74. The departments are identified on the graph as follows:

- FUR Electric Furnace
- EL Electrical
- MCC Mechanical
- TOH Mill Tonnage
- AUK Mill Auxiliary
- FIN Finishing
- FAB Fabricating
- CD Cold Draw
- BI Brick Room

NUMBER OF EMPLOYEES WITH AVERAGE HOURLY EARNINGS ABOVE AND BELOW \$3.75
 DURING THE PERIOD JANUARY THROUGH JUNE, 1968, BY DEPARTMENT, BY RACE

80



The principal element of an employee's earnings is the basic hourly wage rate of the job to which he is assigned.^{13/} The rate for each job in each department is established under the collective bargaining agreement.

The company assigns white employees 90% of the time to jobs earning a base hourly wage higher than \$2.50 an hour, while at the same time Negro employees are assigned to jobs paying less than \$2.50 about two-thirds of the time. During the period October 22, 1967 through January 6, 1968,

13/ An employee's total earnings are derived from the following: (1) basic hourly wage; (2) overtime premium; (3) shift premium; and (4) incentive pay. These factors affect total earnings in the following proportions:

Basic Wage	76.5%
Incentive Bonus	18.0%
Overtime Pay	4.2%
Shift Premium	1.3%
	<u>100.0%</u>

The union contract (Pl. Ex. 32) provides for 32 levels of basic hourly compensation. They range from a low of \$2.32 $\frac{1}{2}$ per hour and increase in $\frac{7}{16}$ increments to a high of \$11.00 per hour. The range is different within each seniority department. For example, in the mill tonnage seniority department the jobs range from \$2.91 $\frac{1}{2}$ to \$4.61 $\frac{1}{2}$, while in the finishing seniority department the range is from \$2.33 $\frac{1}{2}$ to \$3.11 $\frac{1}{2}$. (See Pl. Ex. 46).

the number of Negroes and white workers and Negro employees, by basic hourly wage rates, was as follows:

14/

HOURS WORKED, BY RACE, BY RATE

<u>BASIC HOURLY RATE</u>	<u>WHITE</u>	<u>NEGRO</u>
\$4.615	2,120.0	.0
4.465	1,548.0	.0
4.090	1,873.5	.0
4.015	1,076.0	.0
3.940	142.0	.0
3.790	32.0	.0
3.715	8.0	.0
3.640	3,087.5	.0
3.565	530.5	.0
3.490	15,942.5	.0
3.415	7,605.5	.0
3.340	13,633.5	.0
3.265	8,505.5	3,253.0
3.190	6,210.0	.0
3.115	6,099.0	.0
3.040	4,997.5	.0
2.965	15,924.0	3,205.5
2.890	15,329.0	3,720.0
2.815	13,329.0	1,393.5
2.740	13,532.5	3,252.0
2.665	10,055.0	1,433.5
2.590	11,172.0	3,734.0
2.515	5,105.5	5,572.0
2.440	3,564.5	12,935.5
2.440	6,099.5	16,394.0
2.365	11,517.5	61,241.5
	<u>164,061.5</u>	<u>116,730.5</u>

Of the 301 Negroes working at Connors Steel only 23 -- fewer than 8% -- are permanently assigned to jobs which have a base rate of \$3.00 or more per hour, while over 45% of the white employees are permanently assigned to such jobs.

15/

14/ The source of the statistics used in this table is P. R. 66. See also Appendix D, which contains an analysis by seniority department.

15/ P. R. 66 and Prof. Ans. to Interrogatory 7 (3rd set).

... of the company's total production and sales, and the fact that the company's total production and sales are increasing rapidly. The company's total production and sales are increasing rapidly.

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Whether employment opportunities at the Connors works are measured by employees' average hourly earnings,^{16/} by the pay rates of the jobs in lines of progression,^{17/} or by the volume of work at high pay rates which is available in a department, the four largest predominantly white seniority departments -- electric furnace, electrical, mechanical, and mill tonnage -- are high opportunity departments. The three largest predominantly Negro departments -- mill auxiliary, finishing, and fabricating -- are low opportunity departments.

Together these seven departments include 89% of the employees in the plant.^{18/} They account for 86% of the hours worked and 80% of the earnings.^{19/} Seventy-five percent of the white employees in the plant are assigned to the high opportunity departments. Sixty-five percent of the Negroes employed by the company are assigned to the low opportunity departments. The number of employees by race assigned to each type of department is:^{20/}

Type of Department	White	Negro
High Opportunity	397	62
Low Opportunity	33	184
Others	71	45
Totals	711	391

^{16/} See graph, p.

^{17/} See Appendix 1.

^{18/} Pl. Ex. 3.

^{19/} Pl. Ex. 6, covering the period October 22, 1967 through January 6, 1968.

^{20/} See Appendix C.

The potential for creating income is much greater in the high opportunity departments. For example, the mill tonnage employees average \$1.17 an hour more than the mill auxiliary employees. The earnings, by department, are as follows:

21/

AVERAGE HOURLY EARNINGS

<u>High Opportunity Departments</u>	<u>Employee Hours Worked</u>	<u>Average Hourly Earnings</u>
Mill Tonnage	25,664	\$4.42
Mechanical	29,413½	4.16
Electric Furnace	41,237	4.13
Electrical	<u>34,207½</u>	<u>4.01</u>
	130,522	4.16
<u>Low Opportunity Departments</u>		
Mill Auxiliary	42,406	3.25
Finishing	32,469	3.18
Fabricating	<u>16,861½</u>	<u>3.08</u>
	91,736½	3.19
<u>Other Departments</u>	<u>52,513½</u>	<u>3.33</u>
Total	280,792	3.67

21/ This table is based on computations made from Pl. Ex. 68. See also Appendix D, p. 23.

Although the high opportunity departments account for less than 5% of the total hours worked in the plant, more than 85% of the available work on a trade hourly rate of \$3.00 or more is found in these departments. The low opportunity departments have less than one-third of the total hours worked in the plant, but nearly 70% of all work performed at \$2.50 or less.

HOURS WORKED, BY RATE ^{22/}
BY TYPE OF DEPARTMENT

Type of Department	Basic Hourly Rates			
	Over \$3.00	\$3.00-\$3.50	\$2.50-\$3.00	Under \$2.50
High Opportunity	9,129	58,979	57,644	4,770
Low Opportunity	1,111 ^{1/2}	2,903	22,315	66,427
Others	1,177	7,010 ^{1/2}	25,771	24,555
Totals	10,417 ^{1/2}	68,892 ^{1/2}	105,730	95,752

The lack of earning potential in the low opportunity departments is most markedly demonstrated when one considers the length of time an employee must wait before he reaches a job earning \$2.50 or more per hour. For example, in the fabricating department, the most recent promotion to this level was on November 30, 1966, when Wallace Somerville was promoted to Gauger (\$2.51^{1/2}) after having been a Tableman (\$2.36^{1/2}) since May 5, 1947.^{23/} There are 18 other employees behind Somerville on the fabricating department seniority who have not yet been considered for the gauger job.^{24/}

^{22/} Pl. Ex. 60. See Appendix D, which contains an analysis of these statistics by department.

^{23/} Def. Ans. to Interrogatory 7 (3rd set).

^{24/} Pl. Ex. 3.

The following table shows the length of time the employee most recently promoted to a \$2.50 job worked in his department before receiving his promotion. It also shows the number of employees in his department who remain behind him in jobs paying less than \$2.50.

<u>High Opportunity Departments</u>	<u>Length of Service</u>	<u>Employees Below \$2.50</u>
Mill Tonnage	0	0 ^{25/}
Mechanical	3½ yrs., 1 mo.	11
Electric Furnace	3 mos.	11
Electrical	0	2 ^{26/}
<u>Low Opportunity Departments</u>		
Mill Auxiliary	13 yrs., 5 mos.	65
Finishing	11 yrs., 9 mos.	44
Fabricating	19 yrs., 6 mos.	18

White and Negro employees in the plant are offered unequal opportunities through a discriminatory system of employment, which the company created as a dual racially segregated system and which it preserves in its essential features by applying discriminatory standards for promotions, by restricting Negro employees to lines of progression having the fewest high paying jobs, and by filling the lines of progression having the best paying jobs with newly hired white persons.

25/ The entry level job in mill tonnage pays more than \$2.50. See Appendix B.

26/ There are two job positions below the \$2.50 level in the electrical department. Five employees were assigned to the department on February 18, 1933. Two were assigned to the below \$2.50 jobs and three were assigned directly to the above \$2.50 jobs. Def. Ans. to Interrogatory 7 (3rd set).

V.

THE DEFENDANT COMPANY ESTABLISHED
A RACIALLY SEGREGATED DUAL
SYSTEM OF EMPLOYMENT

It is not by coincidence that over 80% of the employees in the high opportunity departments are white and that more than 85% of the employees in the low opportunity departments are Negro.^{27/} The company hired and assigned all employees according to their race prior to October 1962 and it has not changed those assignments since that time. Of the 712 present employees assigned to seniority departments, 532 were assigned to their present departments during the period when the company was making racial assignments.^{28/}

A. Employees Were Hired, Assigned, Promoted and Transferred on a Strict Racial Basis Prior to October 1962

Until October 1962, the company restricted every job in the bargaining unit to employees of one race. There were 109 jobs reserved exclusively for white employees and 70 jobs set aside for Negro employees.^{29/}

Although every Negro job, except labor pool,^{30/} was assigned to a seniority department which had one or more white jobs, no Negro job was in the same seniority unit with any white job for purposes of job assignments or promotions.

^{27/} Appendix C.

^{28/} Pl. Ex. 3

^{29/} Def. Ans. to Interrogatories 3 and 4 (3rd set).

^{30/} Prior to October 1962, the company assigned only Negro employees to the labor pool. Wagner dep., p. 431.

Within the 14 seniority departments then existing, the company maintained 38 racially segregated lines of progression - 21 lines of white jobs and 17 lines of Negro jobs.^{31/} Each department had at least one line of progression for each race.^{32/}

Within each department white employees competed for advancement with other white employees and Negro employees competed with other Negro employees on the basis of departmental seniority which was uniformly measured by the length of continuous service in the department.^{33/} Company and union policy prohibited all Negro employees from exercising their seniority on any white job and exempted all white employees from serving in any Negro job as a prerequisite to entering the white line of progression. The defendants kept separate seniority lists for employees of each race.^{34/}

Since every vacancy in a seniority department was created by a vacancy in either a white line of progression or a Negro line of progression, the company hired employees, assigned them to departments, promoted them to jobs, and

^{31/} Def. Ans. to Interrogatories 3 and 4 (3rd set).

^{32/} In the large predominantly white departments the Negro lines of progression were very short. For example, in the mechanical department there were two Negro jobs in one line and another Negro job in a line by itself. The electrical and electric furnace departments each had one two-job Negro lines. Def. Ans. to Interrogatories 3 and 4 (3rd set).

^{33/} Collective bargaining agreements of September 1, 1959 (Pl. Ex. 20) and September 1, 1962 (Pl. Ex. 4).

^{34/} Wagner dep. pp. 86-87.

permitted them to transfer between departments only according to the race of the employees and the racial quotas required to fill the needs of the company's system of segregated jobs in seniority departments and in the labor pool.^{35/}

When a vacancy occurred in a white job, the company ignored the qualifications and seniority of Negro employees who were in the same seniority department with the vacant white job. Under the segregated employment system white persons who had never worked at Connors were given preference over Negro employees.

For example, in September, 1962, two weighmen were needed in the finishing department. Since this was a white job, the company hired two new white employees to fill the vacancies.^{36/} At the time there were at least 61 Negro employees, twelve with more than ten years seniority, already working in lower rated jobs in that department.^{37/} Three of these employees have since been found by the company to be qualified to perform the job of weighman.^{38/} One, Edward Jefferson, a high school graduate,^{39/} who has been in the finishing department since 1956, was promoted on January 12, 1968, to the first permanent vacancy to occur in the weighman job since October 1, 1962.^{40/}

^{35/} One of the defendant company's witnesses, after an interview with the general manager of the Connors Works in 1964, wrote as follows: "Prior to 1962 the Company operated a segregated employment and promotion system. Strict departmental seniority rules allowed White employees to progress up the promotion ladder whereas Negro employees were confined to rather menial tasks in a segregated department or sub-department. . . [C]ertain jobs in the past were designated as 'White jobs' and certain ones designated as 'Negro jobs' and recruiting was done accordingly." Dr. Richard Rowan in Def. Ex. 72, pp. 9, 11.

^{36/} Waymond Adams and Charles Brewster. Def. Ans. to Interrogatory 7 (3rd set).

^{37/} Pl. Ex. 3.

^{38/} Testimony of Norman Wagner, August 21, 1968.

^{39/} Application for Employment of Edward Jefferson, Pl. Ex. 61.

^{40/} Def. Ans. to Interrogatory 7 (3rd set).

During the years prior to 1962, twenty-nine Negro employees in the electric furnace department were bypassed for promotion because of their race. Each time a white job became vacant in the department, the company awarded it to a newly hired white employee or transferred a white employee to electric furnace from another department. The qualifications of the Negro employees were not considered. Since the removal of the strict racial qualification, twenty-four of these Negro employees have established their ability by performing satisfactorily on the jobs previously denied them. ^{41/}

When white and Negro employees both entered a department the white employees started out making more money than the Negroes. The entry job for white employees had a higher base wage rate than the entry job for Negro employees in every seniority department except mechanical and laboratory. In those two departments the entry jobs paid the same. ^{42/}

The disparity in the earning power of white and Negro employees increased sharply as the employees gained seniority. In eleven of the 14 departments Negro employees could not advance to a wage rate higher than the entry rate for white employees. ^{43/} However, the entering white employees

^{41/} See Appendix A, pp. 26-41.

^{42/} Appendix B.

^{43/} The three exceptions were the electric furnace where the Pitman (N) made more than the Weighman (W), fabricating where the Bender Operator (N) and the Stirrup Machine Operator (N) made more than the Tagman (W) and mechanical where the Millwright Helper (N) made more than the Oiler Helper (W). Also in the mechanical department, the Blacksmith Helper (N) started out at a higher rate than the Blacksmith Apprentice (W), but the Negro did not advance, while the apprentice received periodic increases which raised his base wage above the helper's.

in each of the other three departments were advanced by their first promotion to jobs earning more than the highest paid Negro employee in their department.^{44/}

Prior to October 1962, there were no Negro jobs in the plant which earned as much as the entering white job in the finishing department. Every white line of progression had one or more jobs that paid more than the highest paying Negro job in the plant.^{45/}

B. The Racially Segregated Groups of Jobs in the Rolling Mills

The same jobs that are now in the mill tonnage and mill auxiliary seniority departments were in one department prior to October 1962. It was called the mill department.^{46/} As in other departments at that time, there were separate seniority units for the white and Negro jobs in the mill department. The basic hourly wage rate for every white job was higher than the rate for every Negro job.^{47/} Negro

^{44/} The lines of progression are set forth in Def. Ans. to Interrogatory 3 (3rd set). The present pay rate for jobs can be found in Pl. Ex. 46.

^{45/} Appendix B.

^{46/} Minutes of Company-Union meeting of April 18, 1961. Pl. Ex. 54, p. 11. The records contained in the company's personnel office Cardex card file show that the departmental designation given to employees assigned to the present mill tonnage and mill auxiliary departments was "mill" department at least through 1964. Pl. Ex. 10L and 10M. The company's weekly rolling mill line-up sheets show jobs presently assigned to these two departments on the same line-up sheets as recently as August 1966. Pl. Ex. 12. Both defendants claim that there were two separate seniority departments in the rolling mills prior to October 1962. It made no difference in the operation of the employment system whether two employees or two jobs, one white and one Negro, were in racially segregated lines of progression within the same department or were in two different departments so long as employees and jobs were segregated by race. In neither event could any employee exercise his seniority on jobs in both groups.

^{47/} Def. Ans. to Interrogatories 9 (1st set) and 4 (3rd set) and Pl. Ex. 46. The mill department included, among the white jobs, the highest paying jobs in the bargaining unit.

employees were not eligible to work white jobs and white employees were not assigned to work Negro jobs, although Negro and white employees often worked side by side in the mills, as they do today.

The catcher, a Negro employee, and the layover, a white employee, worked together. They stood at opposite ends of a "hotbed". After a bar had been rolled and came to rest on the hotbed they grabbed opposite ends of the bar and moved it to the side of the hotbed.^{48/}

In 1961, five Negroes who held the catcher job filed a grievance complaining that white employees in the layover job were performing both the catcher and layover jobs when fence posts were being produced. Personnel Director Norman Wagner answered the grievance saying, "[W]ithin the Mill Department there are two distinct Progression and Regression Groups: Auxiliary and Rolling. The established Force and Quota for Fence Posts calls for four layovers but no catchers. The layover job is now, and has always been, in the Rolling Group's Line of Progression; whereas, the catchers are contained in the Auxiliary Progression Line." The company denied the grievance pointing out that there were other products for which "catchers are scheduled but no layovers are."^{49/}

^{48/} Testimony of Wornzie Jackson, August 12, 1968. According to the testimony of B. Campbell Blake, the layover also performs additional duties.

^{49/} Minutes of company-union meeting of April 18, 1961. Pl. Ex. 54, pp. 11-12.

Other employees in the Negro group also worked together with white employees in the mill department. The Negro crane follower and the white yardman worked together in the billet yard, where billets were selected to be taken to the reheating furnaces in the mills.^{50/} Although experience in the crane follower job could qualify an employee to work the yardman job without further training,^{51/} a crane follower could not advance to the yardman job, because the two jobs were in separate racially segregated seniority units.

The heater helper, a white employee, had the duty of pushing billets out of the reheating furnace onto the rolls in the rolling mill. After each hour of pushing out, the heater helper turned over the pushout work to the furnace helper, a Negro, who performed it for one-half hour.^{52/} With the furnace helper and heater helper jobs assigned to separate racially segregated seniority groups, the Negro "pushout" never could be promoted to the white "pushout" job.^{53/}

^{50/} At a company-union meeting on November 30, 1965, the union representative, in seeking to upgrade the job of yardman, pointed out that the yardman had to pick up and set down heats "as directed by the crane follower." The company spokesman said that "the responsibility for selecting the right heat was not upon the yardman but rather upon the crane follower and yardman." Pl. Ex. 15, pp. 4-5.

^{51/} In 1965, after Negroes became eligible to hold formerly white jobs, the union felt that the crane follower should be next in line for advancement to the yardman job. Pl. Ex. 15, p. 22. See also testimony of James Dixie, August 12, 1968, who has worked both jobs.

^{52/} Def. Ans. to Interrogatories 22 (3rd set). Testimony of _____, August 12, 1968.

^{53/} Both the furnace helper and heater helper jobs are referred to in the plant as "pushout". Recently when the union filed a grievance requesting more relief or less work for the pushouts, the grievance was filed on behalf of both the mill tonnage and mill auxiliary seniority departments. Pl. Ex. 64, p. 32.

On the night shift, the Negro roll change helper worked together with the white roll changer grade III removing rolls after the day's production and installing new rolls for the next day.^{54/}

The mill department jobs are still being performed in the rolling mills. Now there are two separate seniority departments, mill tonnage^{55/} and mill auxiliary. All of the Negro mill department jobs, including catcher, crane follower, furnace helper, and roll change helper, are in mill auxiliary. The white jobs of layover, heater helper, and roll change grade III are in the mill tonnage department. The white yardman job and two other white jobs from the mill department are in mill auxiliary.

^{54/} Testimony of Wornzie Jackson, August 12, 1968.

^{55/} The mill tonnage department also is called the "rolling department." See seniority lists, Pl. Ex. 3.

VI.

THE DEFENDANTS CONTINUE TO
PREVENT NEGRO EMPLOYEES
FROM OBTAINING EMPLOYMENT
OPPORTUNITIES EQUAL TO THOSE
AVAILABLE TO WHITE EMPLOYEES

Of the 322 Negro employees now employed at the plant, 276 were there prior to October 1962.^{56/} At that time these employees were situated in jobs, lines of progression, and seniority departments because of their race.

In October 1962, the company abandoned its policy of strict racial segregation on jobs and created new seniority units that included both white and Negro employees. At that same time the defendants adopted standards and procedures that prevent Negro employees from being considered equally with white employees for promotions. They failed to provide relief to Negro employees from the racially discriminatory assignments to jobs and departments which the company had made. Since then the defendants have restricted Negro employees from transferring to departments offering better job opportunities. On July 1, 1968, more than 75% of the 276 Negro employees who remain from October 1962 were still in traditional Negro jobs.^{57/}

56/ Pl. Ex. 3

57/ Pl. Ex. 3 and Def. Ans. to Interrogatory 7, (3rd set)

A. The Reorganization of Racially Segregated Seniority Units in October 1962

In order to become eligible to do business with the government and with government contractors,^{58/} the company undertook in September 1962 to meet the obligations of Executive Order 10925, which provides:

The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

On October 4, 1962, representatives of the company and the union held a special meeting to discuss compliance with the Executive Order. At the meeting J. B. Reeves, the Plant Manager, announced that the company intended to "erase any color line that existed within the various departments and this would result in different lines of progression being established."^{59/}

To "erase the color line" the defendants had to remove the racial restrictions from individual jobs and place white and Negro employees and jobs together into the same

^{58/} Pl. Ex. 25 and 26.

^{59/} Pl. Ex. 27

seniority units. After the October 4 meeting the Director of Personnel combined each group of Negro jobs with a group of white jobs in the same department and arranged the jobs in a line of progression. He did not combine every group of white jobs with a group of Negro jobs.^{60/} He did not consider removing any jobs from one department and placing them in another department.^{61/} He left all of the employees in the departments to which they had been assigned under past racial quotas. All 100 Negro employees and all of the jobs in the Negro seniority group in the rolling mills were placed together with ten white employees and their jobs into one seniority unit - the mill auxiliary department - while more than 65 white employees in the rolling mills were left in a separate department - mill tonnage - by themselves. More than 190 Negro employees were assigned to three departments - mill auxiliary, finishing, and fabricating - where there are 33 regular positions in traditionally white jobs, only two of which have become vacant in the six years since October 1962.

In arranging the jobs into new lines of promotion the Personnel Director did not consider the duties of the individual jobs or consider the order in which the white and Negro jobs should be lined up,^{62/} except to

^{60/} Pl. Ex. 1. See Appendix B.

^{61/} Wagner Dep. p. 84.

^{62/} Wagner Dep. p. 84

compare the pay rates that had been set for them under the racially segregated system and to line them up in that order.^{63/} According to the minutes of the company-union meeting of October 24, 1962, "The lines of progression had been established using the base rate of each individual job as the determining factor for its placement in the line."^{64/}

Nine of the new lines of progression formed this way resulted in the highest paying Negro job being placed under the lowest paying white job. In six other lines the top Negro was paid more than, or the same as, the entry level white job.^{65/} Three other lines consisted only of white jobs.

The new lines of progression based solely on pay level did not take into account any functional or training relationships that may have existed between jobs. For example, the yardman and crane follower jobs^{66/} are both in the mill auxiliary line of progression, but they are separated from each other by nine other jobs. Four of the nine are performed at the opposite end of the mill from the billet yard, where the yardman and crane follower work.^{67/} Two are night shift roll change jobs, not performed during the day time production shifts when the yardman and crane follower are working.^{68/}

^{63/} Wagner Dep. p. 80

^{64/} Pl. Ex. 30, p. 3.

^{65/} See page , supra.

^{66/} See the discussion of these jobs in Section V B, supra.

^{67/} Trucker, shearman, catcher, and gauger. Pl. Ex. 2. Testimony of , August 12, 1968.

^{68/} Roll change helper and roll change cleanup. Pl. Ex. 2. Testimony of Will Goodman, August 12, 1968.

The other three jobs - skidman, charger and furnace helper - are performed in the furnace area. These jobs involve taking billets brought from the billet yard under the direction of the yardman and crane follower and moving them into the furnace and onto the rolls.^{69/} They are related to the yardman job^{70/} and to the mill tonnage jobs of heater helper and heater.^{71/}

The new lines of progression established in 1962^{72/} are still in effect today.

69/ Pl. Ex. 2; Testimony of Lester Mc Aphee and Will Goodman, August 12, 1968; Def. ans. to Interrogatory 22 (3rd set)

70/ For example, the crane follower and the yardman are supposed to assist the skidman in getting the billets on the skids which carry the billets to the furnace. Pl. Ex. 64, pp. 41-42.

71/ See the discussion of the relationship between the furnace helper and heater helper jobs in Section V B, supra.

72/ The present lines of progression are contained in Def. Ans. to Interrogatory 9 (1st set). Changes since 1962 are set forth in Def. Ans. to Interrogatory 2 (3rd set), which shows that the only regular jobs moved from one department to another are two former white jobs from the specialty shop that were placed in the newly erected building maintenance department after the specialty shop was discontinued.

B. The Defendants Created a Racially Discriminatory Standard for Promotions

In the fall of 1962, while purporting to lift the racial barriers, the company and union took steps to insure that the Negro employees at Connors would never be able to compete on an equal basis with their white contemporaries in the same department.

The first meeting between the company and the union concerning compliance with the Executive Order took place only a month after the same parties had adopted a new collective bargaining agreement dated September 1, 1962.^{73/}

This agreement called for departmental seniority to be used as the standard of preference for promotions. The contract provided:^{74/}

The parties recognize that promotional opportunity and job security in event of promotions, decrease of forces and rehiring after lay-offs should increase in proportion to length of continuous service, and that in the administration of this section the intent will be that wherever practicable, full consideration shall be given continuous service in such cases.

. . . .

All seniority shall be on a departmental basis. No employee shall hold seniority in more than one department. An employee's seniority in his department shall be determined by his length of continuous service in that department. (Emphasis added)

^{73/} When the 1962 contract expired it was succeeded by a new agreement dated October 1, 1965. In the new contract the company and the union changed the seniority section by adding new provisions on transfers to seniority departments, (Sec. 8, sub 4 and 5) a new provision to protect against disqualifications, (Sec. 8, Sub 7) and a provision on temporary assignments, (Sec. 8, Sub 8) and by deleting the sentence, "An employee's seniority in his department shall be determined by his length of continuous service in that department," which had appeared in the agreement of September 1, 1962. Compare Pl. Ex. 4 with Pl. Ex. 6 (Sec. 8, par. 2).

^{74/} Pl. Ex. . . . Union contract dated September 1, 1962, Sec. 8.

By October 1962 there were in each of the largest departments Negro employees who had earned substantial departmental seniority without being permitted to exercise it to obtain assignments to white jobs. For example, among the employees in the electric furnace department today, there are 71 persons whose seniority dates antecede October 1, 1962. The following table shows that the Negro employees were about on a par with the white employees in terms of departmental seniority in October 1962:

SENIORITY IN THE ELECTRIC FURNACE DEPARTMENT
AS OF OCTOBER 1, 1962

<u>Seniority</u>	<u>White Employees</u>	<u>Negro Employees</u>
More than 15 years	4	2
10-15 years	7	8
5-10 years	11	11
Less than 5 years	19	9
	<u>41</u>	<u>30</u>

On October 4, 1962, at their first meeting to discuss compliance with the Executive Order, the company and the union recognized that the elimination of the strict racial classification of jobs, together with the application of departmental seniority as provided by their collective bargaining agreement, would result in both white and Negro employees being considered for promotion to future vacancies in higher paying jobs in proportion to their length of service in the department. ^{75/}

^{75/} The contract provides that seniority is considered only when "ability to perform the work" and "physical fitness" are relatively equal. In practice, however, vacancies at H.K. Porter are offered to the employees having seniority rights. Wagner Dep., p. . . The personnel director could recall only one instance in which lack of ability was the basis for offering a job to a junior man without first letting the senior employee try out on the job. Wagner Dep., pp. 125-126.

The standard of departmental seniority would promote Negro employees, who had been there longer, ahead of junior white employees. The company and the union adopted the standard of "job seniority" as a device to prevent that result.

The "job seniority" system agreed to by the company and the union in October 1962 contained two basic elements. First, the parties agreed that no employees would be displaced from their present jobs as a result of the reorganization of lines of progression. That part of the agreement protected junior white employees from being displaced by senior Negro employees in the jobs they then held. Although that aspect of the agreement did not conflict with the collective bargaining agreement of September 1, 1962, it postponed relief from discrimination until vacancies occurred and, therefore, increased the need for prompt and effective relief through other means.

Second, the parties vested all white employees with a right to preference for promotion to all higher paying jobs in the department in addition to the jobs they then were working or had worked in the past. The minutes of the company-union conference of October 4, 1962 report:

The parties were in accord that this new policy [giving all employees equal consideration, without regard to race, color, or creed on jobs as they become open] would not affect those employees who had progressed to specific jobs prior to the establishment of the policy; they would be considered as having seniority on that job, and all higher rated jobs. (Emphasis added)

Since all white employees then held jobs above all Negro employees in all but three lines of progression,^{76/} it was inevitable that those white employees would reach each job in their department before any Negro employee would reach it and therefore would have priority for promotion to the next higher rated job. That part of the agreement established an order of priority among the employees in each department which depended on their level of advancement under the discriminatory system and not on their length of service in the department. It guaranteed to the youngest white employees the same advancement they would have enjoyed if the racially segregated white lines of progression had remained separate and undisturbed. It put the oldest Negro employees on a waiting list for any vacancies the white employees might leave and gave them priority for consideration only over junior Negroes and those persons who had no seniority in their departments at all.

^{76/} See footnote 43, p. 19

In the three departments where the Negro and white lines of progression overlapped, a complex priority question arose with respect to filling vacancies which occurred in the formerly white job next above the highest rated formerly Negro job in the merged line of progression. Frequently the vacant job had previously been worked on a temporary basis by white employees whose regular jobs were lower in the line of progression than the Negro job next below the vacancy. The company and union agreed that even temporary assignment to a job would vest the employee with job seniority rights.^{77/} Thus, the white employee in the lower rated job could bypass the Negro job and the Negro employees in that job and could take a permanent place ahead of those Negro employees for all future advancement opportunities in the department.

The company and union officials also considered in detail how much job experience on temporary assignment would qualify an employee to exercise job seniority rights.^{78/} According to the minutes of the company-union meeting held on October 24, 1962:

Mr. Reeves stated the parties were on record as agreeing that appearing on a posted schedule would constitute establishing job seniority on a specific job, and he was willing to further agree that in those departments where more than one shift operated, an

^{77/} Pl. Ex. 29 and 30.

^{78/} Pl. Ex. 30.

employee would be considered to have established job seniority on a specific job if he had continued on that job from one workweek into the next; he pointed out that any period less than this could result in a younger employee gaining job seniority in some older employee on a different crew, but using this method was practical and could be satisfactorily worked. He further stated that in those departments where only one shift operated, an employee who worked a job for only one turn would be considered as having established seniority on that job.

In October 1962, there were two white employees in the entering white job of oiler helper in the mechanical department. Because of the relative pay rates the oiler-helper job was placed below the Negro job of millwright helper in the merged welder-millwright line of progression. The employees holding these two jobs at the time of the merger were:

<u>Employee</u>	<u>Department Seniority Date</u>
Millwright Helper Job	
W. Bagmon (N)	2/1/45
W. Humphrey (N)	9/25/56
H. Alexander (N)	9/3/59
Oiler Helper Job	
H. Oakes (W)	3/29/62
O. Walters (W)	6/26/62

According to the company Bagmon voluntarily declined promotion to jobs above millwright helper. ^{79/}

The other four employees were promoted to lube maintenance men (the white job next above the Negro millwright helper job) in the following order: ^{80/}

	<u>Promotion Date</u>
1. Oakes	10/6/63
2. Walters	1/19/64
3. Humphrey	8/30/64
4. Alexander	9/13/64

In the fabricating department the overlap between Negro and white jobs was removed by a wage inequity grievance after the 1965 union contract. ^{81/}

^{79/} See Appendix A, p. 130.

^{80/} Def. Ans. to Interrogatory 7 (3rd set). The only white employee who was in the mechanical department in October 1962 and whose priority for promotions in the welder-millwright line is lower than any Negro employees' is C. Blue. He did not enter the line of progression until March 23, 1964.

^{81/} The white tagman job which was below the Negro jobs of shearman and guager in the merged line of progression was upgraded so that its base hourly wage rate is now higher than those of the formerly Negro jobs. Def. Ans. to Interrogatory 2 (3rd set). It is interesting that in this case the employees moved with the job, while when the catcher job (N) was upgraded ahead of gauger (N) and yardman (W) in mill auxiliary, the catchers and gaugers reshuffled according to their seniority, but the yardmen did not. Ibid. Pl. Ex. 15, Def. Ex. 28.

In the electric furnace department only one white employee who is still in the department failed to obtain priority for promotions over all Negro employees in the department through job seniority.^{82/}

Thus the defendants obtained preference for every white employee but one over every Negro employee in the same line of progression. The result preserved for all white employees in the plant the full benefit of their departmental seniority and, with the one exception that occurred in the electric furnace department, the defendants' agreement deprived every Negro employee in the plant of any seniority credit that could be used in competition with white employees for promotions.

The defendant's job seniority agreement applied to new jobs that were to be created in the future, as well as to all jobs that already existed in October 1962. The company established two new jobs, called tower leaderman and towerman, in 1964 when it began operating a new continuous casting tower that cast molten steel by a new method.^{83/} The company wrote job descriptions for the new jobs,^{84/} obtained union

^{82/} L. Tennyson. See Appendix A, p. 42. Tennyson had been in the department less than four months. The Negro employees ahead of him had from one to nineteen years' seniority.

^{83/} Def. ans. to Interrogatory 5 (3rd set). Wagner dep. pp. 201-209.

^{84/} Pl. Ex. 11.

agreement on a rate of pay for them, assigned the jobs to the electric furnace department, inserted them in the line of progression according to their pay rates, and began training incumbent employees on the towerman job.^{85/}

From March 1964 to March 1967 the company promoted 28 white employees to the new towerman job, giving them preference over all Negro employees in the department. Of those Negro employees, eleven had more departmental seniority than all of the white employees promoted and 14 others had more seniority than at least one of the white employees.^{86/} The company advanced a Negro employee to towerman for the first time on March 31, 1967.^{87/}

The company has filled vacancies in the new job of tower leaderman in the same manner. From July 1964 to March 1968 it gave 14 white employees permanent promotions to tower leaderman over 22 senior Negro employees, eleven of whom had served in the department longer than all of the 14 white employees who were promoted. No Negro employee has been promoted to tower leaderman.

^{85/} Wagner dep. pp. 202-207

^{86/} Def. Ans. to Interrogatory 7 (3rd set).

^{87/} Ibid.

The creation of seniority rights on "all higher rated jobs" insured that the order of priority among employees for promotions would be fixed for all time. The Director of Personnel testified at the trial that he knew in October 1962 that with the use of job seniority junior white employees (in length of service in the department) would advance to higher paying jobs ahead of senior Negro employees. He said that the company still uses job seniority as a standard. According to Wagner, a Negro employee with the greater length of continuous service for promotion until the white employee voluntarily forfeits his seniority to the Negro employee or he becomes disqualified from a job through poor performance or one of the two employees retires or dies or gets fired.^{88/}

Job seniority was a new standard inconsistent with the standard of departmental seniority provided by the collective bargaining agreement. But the company and the union made no changes in the written language of the

^{88/} Trial testimony of Norman Wagner, August 20, 1968.

seniority section of the September 1, 1962, agreement to reflect the results of their October 1962 meetings. ^{89/}

Job seniority denies promotions to qualified Negro employees at the Connors Works. Paul Bray, a Negro, was 19 years old when the company hired him on January 21, 1953. He had completed one year at Miles College. ^{90/} The company assigned him to fill a vacancy in the Negro line of progression in the electric furnace department. (The entering job, crane follower, pays \$2.36½ per hour today.)

The company hired Leslie Beavers, a white man, five days after Bray. Beavers then was 34 years old. He had a seventh grade education. The company assigned him to the entering white job, weighman, in the electric furnace department. (Weighman now pays \$2.51½ per hour.)

Between that time and January 1962, the company assigned to the electric furnace department another 28 white men who are still there. The last of these, John Dunnaway was assigned to the department on March 31, 1961. At that time he was 35 years old. He had a ninth grade education. The company started each of the 28 white employees as a weighman. All of them had advanced to utility man by January 1962. Twenty had reached ladle helper and seven of these had advanced with Beavers to

^{89/} One sentence that appeared in the seniority section of the 1962 contract, " An employee's seniority in his department shall be determined by his length of continuous service in that department", was deleted from the seniority section of the 1965 contract. Pl. Ex. 4 and Pl. Ex. 6.

^{90/} Pl. Ex. 10F and Def. Co. Ex. 93.

ladleman.

In October 1962 Bray was in the highest rated Negro job. When the company lined up his job with the white jobs, his job was below the jobs then held by Beavers, Dunnaway, and the 27 other junior white employees. By then he had worked in the electric furnace department for ten years.

Since then, when job vacancies have occurred, the company has offered promotions to Beavers, Dunnaway, and the 27 other junior white employees ahead of Bray. He has held permanent assignments satisfactorily in four of the jobs for which he was bypassed in their favor - utility man, ladle helper, ladleman, and towerman.

Beavers now is a melter assistant (\$4.09).
Dunnaway became a towerman (\$3.34) in February 1967 and
Bray was promoted to towerman ten months later.^{91/} Their
average hourly earnings for the first six months of 1968
were as follows:^{92/}

<u>Name</u>	<u>Departmental Seniority Date</u>	<u>Average Hourly Earnings</u>
P. Bray (N)	1-21-53	\$4.20
L. Beavers (W)	1-26-53	\$5.99
J. Dunnaway (W)	3-19-61	\$4.42

^{91/} Def. Ans. to Interrogatory 7 (3rd set). See Appendix A, pp. A-32 through A-41.

^{92/} Def. Ex. 74.

Paul Bray is 35. Under the defendants' system he reasonably can expect to retire without further advancement. There are nine employees in the highest rated job, melter assistant. All are white. One, L. Beavers, is junior to Bray. In the second highest job, melter helper, there are 13 employees, all white, three senior to Bray and ten junior to him. In the next job down, tower leaderman, there are four white employees, all junior to Bray. In the towerman job, which Bray now holds, there are 14 white employees who entered the department after Bray but have priority for promotions ahead of him by the rules of job seniority. There also are two Negro employees who have more departmental seniority than Bray and who advanced to towerman ahead of him.

Thus, even if the eleven white melter assistants and melter helpers and the two Negro towermen who entered the department ahead of Bray retire before he does, there is a waiting line of 29 junior white employees, fourteen of whom are on the towerman level with Bray, ahead of him for the 13 vacancies those retirements will create.

C. The Defendants Have Failed to Provide Relief to Negro Employees from Racially Discriminatory Assignments to Jobs and Departments.

The defendants agreements of October 1962 and the new contract dated October 1, 1965, preserved the advantages that white employees obtained over contemporary Negro employees as a result of the company's assignments of employees to racially segregated seniority units.

1. The Transfer System
before October 1962

Under the strictly segregated system of employment at the Connors Steel Plant before October 1962, the defendants assigned the highest paying jobs to white seniority units, from which Negroes were excluded because of their race.^{93/} The company filled vacancies in white seniority groups by transferring white employees to them from other departments as by hiring white persons as new employees and assigning them to the vacancies. Because of their race Negro employees were ineligible to compete for those vacancies against white employees or against white persons who were not then employed by the company, regardless of those Negro employees' qualifications or their length of service in the plant. The company filled vacancies in Negro seniority units by transferring Negro employees or by hiring Negroes.

^{93/} Def. ans. to Interrogatories 3, 4,
and 5 (3rd set), Pl. Ex. 46.

The company assigned each new white employee to a seniority department his first day on the job. It assigned some Negro employees to seniority departments; it assigned others to the labor pool, ^{94/} where they accrued no departmental seniority.

There were no provisions in the collective bargaining agreements ^{95/} which established transfer procedures. The company usually notified an employee that a vacancy existed in a department of which he was not a member by assigning him to work in that department, filling the vacancy on a temporary basis. ^{96/} After a period of time, if his work was satisfactory to the supervisor and the employee and both supervisors involved were agreeable, the personnel office was notified that he had transferred his seniority to the new department. ^{97/} Although the company beginning in 1955 required most white employment applicants to take written aptitude tests before hiring, there were no aptitude tests required for transfers by Negro employees, or by white employees who had not taken the pre-employment tests or who had made low scores.

^{94/} Wagner Dep. pp. 416, 431-432.

^{95/} Pl. Ex. 20 (agreement of 1959) and Pl. Ex. 4 (agreement dated October 1, 1962).

^{96/} Wagner Dep. pp. 407 - 410

^{97/} Ibid.

The collective bargaining agreements provided in effect that an employee who transferred from one seniority department to another gave up his seniority in the old department and began accruing seniority in the new department after the transfer. ^{98/}

2. Changes in the system
in 1962 and 1965

The company and the union made changes in the transfer system as a result of the October 1962 meetings and made additional changes in the collective bargaining agreement of 1965.

The minutes of the 1962 meetings ^{99/} do not record any agreements specifically relating to changes in standards or procedures for transfers between departments. However, the company and the union agreed that incumbent Negro employees would not be promoted to white jobs unless they took and passed a battery of written aptitude tests, which none of them had been required to take previously, and thereafter the company also required all employees who sought transfers from one department to another to take aptitude tests, if they had not done so already. A year later the

98/ Both the agreements of 1959 and 1962 provided:

"All seniority shall be on a departmental basis. No employee shall hold seniority in more than one department. An employee's seniority in his department shall be determined by his length of continuous service in that department."

Pl. Ex. 20 and 4 Sec. 8, second paragraph.

99/ Pl. Ex. 26, 28-30.

parties abandoned the aptitude test requirement for Negro promotions within the departments to which they were assigned. But they retained the aptitude test requirement for transfers and wrote the requirement into the language of the seniority section of the collective bargaining agreement in 1965. ¹⁰⁰ The aptitude test is required of all seeking to transfer, regardless of their date of hire and their length of company service. ¹⁰¹

The company and union retained the rule that a transferring employee received no credit in the new department for seniority previously earned. That provision also was made explicit in the 1965 contract, ¹⁰² as follows:

"Transfers will be made only when vacancies exist in the department to which transfer request was made. Upon transfer the transferred employee will be assigned to the entrance job and begin immediately to accumulate seniority in that department. Thereafter he will not accumulate any additional seniority in his original department except to the extent provided in Paragraph (h); nor shall he take with him to his new department any seniority accumulated in his original department or any other department."

¹⁰⁰ Sec. 8, Sub - sec. 5(b) Pl. Ex. 4, p. 34. The transfer testing program is discussed in Section VI, infra.

¹⁰¹ Employees hired before 1955 who have applied for transfers since October 1, 1962, and have been required to take aptitude tests include: O. J. Shaw (W) and Crawford Dumas (N). Def. Ex. 20, pp. 1, 3

¹⁰² Sec. 8, sub-sec. 5(d), Pl. Ex. 4, p. 35.

Subparagraph (h) ^{103/} sought to give transferring employees the right to work in their old departments in event of a layoff in the new department. That provision left undisturbed the rule against an employee's receiving any credit toward advancement in the new department for seniority he previously had earned prior to making the transfer.

^{103/} The provisions of sub-paragraph (h) and the related sub-paragraphs (e), (f), and (g) (Pl. Ex. 4, pp. 35-36) are as follows:

- (e) The seniority accumulated in the original department by the transferred employee prior to his transfer shall be retained by him and may be exercised in that original department under the conditions and provisions of Paragraph (f), (g), (h), and (i) of this Sub-section 5.
- (f) If the transferred employee should elect to return to his original department, he shall be retransferred to a job to which he is entitled to under the provisions of Paragraph (h) of this Sub-section. If the transferred employee fails to satisfactorily perform the work in the new department, he will be retransferred to his original department to a job to which he is entitled to as provided in Paragraph (h) of this Sub-section.
- (g) If regular work is not available in the new department for the transferred employee as the result of a decrease in the work force or a variation in manpower requirements he shall have the right to perform work in his original department to the extent that his retained seniority permits him to do so, but only until such time as regular work is again available for him in his transferred to department.

Employees working in their original department under the provisions of this Paragraph (g) may exercise their retained seniority to the extent provided in Paragraph (h). Such employees will continue to accumulate seniority in their new department while working in their original department and will not accumulate any seniority in their original departments while working in such original department.

- (h) An employee who retransfers or is retransferred to or performs work in his original department pursuant to Paragraphs (f) and (g) shall have forfeited and have no right to the job which he held and all higher rated jobs in such original department at the time he transferred to the new department if such job has been filled by another employee; regardless of the seniority of the employee who has filled such job. Such employee shall be entitled to and assigned in accordance with and to the extent permitted by his retained seniority in his original department to such job in his original department which is lower rated than the job which he held at the time he transferred to the new department and is then held by an employee who has less seniority than the seniority retained by such employee in his original department.

Except for adding the aptitude test requirement, the company and union made no changes in the transfer procedures in October 1962. The company continued to follow the same method of individual departments filling vacancies until October 29, 1965, when the parties signed a new collective bargaining agreement.^{104/}

The 1965 contract outlined a new procedure to be followed in making transfers between departments. The new procedure required an employee seeking a transfer to make a written request^{105/} and to take an aptitude test if he had not passed one already.^{106/}

The procedure provided that transfers would be made only when vacancies existed in the department to which an employee requested transfer.^{107/} There was no provision for notice of vacancies to be given to all employees in the plant, and the company did not make it a practice to notify employees generally when vacancies occurred.^{108/}

^{104/} Wagner dep. p. 406, Pl. Ex. 43.

^{105/} Sec. 8, Sub-sec. 5(a), Pl. Ex. 4.

^{106/} Sec. 8, Sub-sec. 5(b), Ibid.

^{107/} Sec. 8, Sub-sec. 5(d), Ibid.

^{108/} A general notice of seniority department vacancies was distributed to employees on January 31, 1968, for the first time. (Wagner dep. pp. 359, 364) The company has never posted notices of vacancies in individual jobs for bidding. (Wagner dep. p. 118)

The 1965 contract also provided a procedure by which probationary employees could obtain seniority in a department.^{109/} The method resembled the procedure by which incumbent employees had obtained transfers from one department to another up to that time, and the company used it thereafter as a departmental assignment and transfer procedure for some employees who no longer were on probation.

^{109/} Pl. Ex. 4, p. 24. Sec. 8, Sub-sec. 4 "Probationary Employees" provided:

When a probationary employee has been assigned to, and works in a department for 4 months, upon written request his seniority shall be transferred to that department from the labor Pool.

3. The Defendants Maintain Racially Discriminatory Restrictions on Transfers and Advancement to High Pay Levels

The defendants' employment system maintains two basic restrictions on transfers by employees from one department to another. First, an employee who transfers receives no credit toward advancement in the new department for seniority he previously has earned in the plant. Second, every employee seeking to transfer is required to take and pass the company's pre-employment aptitude tests, if he has not already done so, and to make the minimum scores required for admission to the new department.

Both requirements purport to apply to white and Negro employees indiscriminately. But in the circumstances of the employment system that the defendants have created both requirements impose a heavier burden on Negro employees' advancement to high pay levels than they impose on advancement by white employees.

The rule against seniority credit is a holdover from the segregated employment system that existed up to October 1962. Transfer testing started after the company-union meetings of October 1962, when Negro employees first became eligible for promotion to formerly white jobs. One of the results of those meetings was a system of seniority departments that grouped a majority of the Negro employees into three predominantly Negro departments where they had no prospects for

promotion out of lower paying traditionally Negro jobs. The same system grouped most of the white employees into four predominantly or exclusively white departments to which most of the high paying jobs in the plant were assigned. Most Negro employees in the plant needed to transfer to obtain the same advancement opportunities that most white employees who did not have them already would receive by direct promotions.

Of the 276 present incumbent Negro employees who were in the plant in October 1962, the defendants assigned 30 to electric furnace, six to mechanical, two to electrical, and none to mill tonnage. Every Negro who has been admitted to those departments since then has begun in the same status as a new employee after having taken the company's pre-employment test battery.

The absence of seniority credit insures that Negro employees, who were excluded from those departments and assigned elsewhere under the racial quota system prevailing up to October 1962, will never advance to the same levels as their white contemporaries who entered those departments immediately upon being hired. The aptitude test requirement restricts the opportunities of those Negro employees for whom a transfer without seniority credit would represent improvement in their employment status..

The unequal operation of the rule against seniority credit toward advancement in a new department is illustrated by comparing the history of Will Goodman, a Negro employee,

with that of four white employees hired at approximately the same time. The company hired Goodman on November 6, 1956.^{110/} The company assigned him to a Negro job in the mill. From that time until February 1968 he worked all of the Negro jobs in the mill, including the job of furnace helper ("pushout") and catcher. In the reorganization of October 1962 the defendant assigned the seniority unit that included Goodman and all other Negro employees in the mills to the same seniority department with three white jobs. On February 8, 1968, nine days after the company posted a notice of vacancies in the mill tonnage department for the first time in its history, Will Goodman applied for transfer to that department. He passed the company's pre-employment aptitude test^{111/} and was transferred on February 18, 1968. He received a permanent assignment to the lowest level job in mill tonnage -- ringout-saw operator and roll change grade III.

Billy Holmes, a white employee, was hired July 20, 1956 and assigned immediately to the group of white jobs in the rolling mill which form the mill tonnage department. He received successive promotions thereafter until he reached his present permanent assignment, layover, on the fourth job level in the department. (As a layover, Holmes has the duty of working with a Negro catcher moving steel bars across the

^{110/} Pl. Ex. 3.

^{111/} Def. Ans. to Interrogatory 10 (3rd set).

hot bed.) Holmes reasonably can expect to advance to the top job in the department, roller, if all of the employees senior to him in company age retire before he retires, and if he continues to advance as vacancies open for which he is eligible. By contrast, there are 20 white employees who are ahead of Goodman in order of priority for promotion in the mill tonnage department who were hired after Goodman. Unless one or more of those junior employees leave the department before he does, his advancement will be limited to the heater helper job. (In that job he will perform the same "pushout" functions that he performed as a furnace helper before he transferred.)

If Goodman had obtained a transfer to any of the other three departments that offer advancement opportunities to the higher paying jobs in the plant -- electrical, mechanical, or electric furnace -- he would not have the same prospects for advancement to high pay levels that he has in mill tonnage. In the electrical department, there are 20 employees who were hired after Goodman but who would have priority for promotion ahead of him if he transferred. If he entered the line of promotion at the bottom and followed those junior employees toward the top, and they remained employees until the day he retired, his advancement would be limited to the fab shop crane operator job. Goodman's nearest contemporary among the employees in the electrical department is Charles A. Williams, a white employee whom the company hired February 2, 1957, and assigned to that department. Williams' most recent job assignment is charging -- maintenance crane operator, a

job four steps above fab shop crane operator. Williams has had the charging-maintenance crane job for more than two years.

In the mechanical department, using the same set of assumptions, Goodman could have expected to advance as high as the handyman job, which pays a base hourly wage of \$2.89 ¹¹². Charles H. Newsome, a white employee hired May 5, 1957, six months after Goodman, was assigned to the mechanical department immediately upon being employed. He reached the handyman job before 1962, while Negro employees were excluded from the department by the racial quota assignment system. Newsome was promoted from handyman to the millwright job four years ago. The millwright job pays a base hourly wage of \$3.34 ¹¹³.

If Goodman had transferred to the electric furnace department in February 1968, his advancement probably would have been limited to the ladle helper job. Carl Nix, a white employee who is in that department, was originally hired September 18, 1958. He was assigned first to the mill. On April 1, 1959 he transferred to the electric furnace department and started at the entry level white job weighman. He became a ladle helper before 1962. He since has been promoted four times and now holds a permanent assignment as melter helper, the second highest paying job in the department, four steps above the ladle helper job.

¹¹²/ Pl. Ex. 46

¹¹³/ Ibid.

The aptitude test requirement for transfers also has operated unevenly as an entrance requirement for high opportunity departments. The most extreme example is in the jobs in the mill tonnage department. Negro employees were prohibited from entering that group of jobs until October 1962. The first Negro employee entered that department on December 19, 1966. Every Negro employee who has become a member of that department has been required to pass an aptitude test which most of the white employees in that department have not taken, as shown by the following table.

APTITUDE TEST HISTORIES AND
PRESENT JOB ASSIGNMENTS OF MILL TONNAGE
EMPLOYEES^{114/}

<u>Permanent Job</u>	<u>White Employees</u>		<u>Negro Employees</u>	
	<u>Total</u>	<u>Number Tested</u>	<u>Total</u>	<u>Number Tested</u>
Roller	4	0	0	0
Roll change roller	2	0	0	0
Guideman	1	0	0	0
Roller helper	6	0	0	0
Heater	4	0	0	0
Rougher	10	0	0	0
Heater helper	2	0	0	0
Enterer	8	0	0	0
Roll change grade II	2	0	0	0
Manipulator operator	4	0	0	0
Layover	7	1	0	0
Spellman	2	1	0	0
Hot saw operator	2	2	0	0
Transfer operator	2	0	0	0
Ringout-saw operator/ Roll change grade III	<u>18</u>	<u>18</u>	<u>5</u>	<u>5</u>
Totals	74	22	5	5

114/ Sources of information: Def. ans. to Interrogatories 7, 10 and 12 (3rd set).

4. The Racially Discriminatory Transfer Test

Of the persons who have taken the pre-employment and transfer tests which the company began to require in October 1962, a larger percentage of white persons than Negroes make scores that the company considers to be "passing" scores. Personnel Assistant James Harris, the principal person in charge of giving the Science Research Associates test battery at the plant, testified at his deposition that a larger percentage of white persons than Negroes pass the tests.^{115/}

The statistics of company hiring insofar as they are reflected in assignments of new employees to the labor pool and directly into departments, support his statement. From 1963 through 1967, the period in which the company says it administered the pre-employment test battery at the plant, new employees entered the labor pool in the following numbers:^{116/}

	<u>NEW EMPLOYEES ASSIGNED TO LABOR POOL</u>	
	<u>W</u>	<u>N</u>
1963	3	2
1964	52	5
1965	28	0
1966	20	9
1967	<u>20</u>	<u>12</u>
	123	28

¹¹⁵ / Harris deposition p. 23 - 24

¹¹⁶ / The statistics include all employees in Def. Ex. 65 except four (2 white and 2 Negro) who entered the labor pool as a result of the shutdown of their previous department, the specialty shop.

In addition to the employees in the foregoing table the company hired 20 white persons and assigned them directly to seniority departments.^{117/} All 20 took the S.R.A. test battery.^{118/} None were required to spend time in the labor pool.^{119/}

Since October 1962 sixty-one employees have taken the tests for transfer from one seniority department to another or for entrance into a seniority department from the labor pool.^{120/} Of those sixty-one employees, 21 are white persons and 40 are Negroes. Seventeen (80%) of the white employees and twenty (50%) of the Negro employees "passed."

The defendants' transfer aptitude tests cause the rejection of a disproportionate number of Negro applicants for admission to departments without at the same time serving any known legitimate business purpose. Management representatives have expressed a mixture of purposes and intentions with respect to testing incumbent Negro employees. Some of their statements can be taken as showing interest in using tests to predict the performance of Negro employees in the top level of jobs in all departments. Other statements

^{117/} See Appendix H.

^{118/} Def. Ans. to Interrogatory 10 (3rd set).

^{119/} Def. Ex. 65.

^{120/} Def. Ans. to Interrogatory 10 (3rd set).

reflect only an intention to establish a kind of fairness by subjecting Negro employees as incumbents to a procedure that most recent white applicants for employment had undergone before hiring.

At the company-union meeting of October 4, 1962, where the company announced the new written test battery requirement for Negro employees seeking promotion to white jobs, which it continued in effect until the following year, N. E. Wagner stated that since 1953 (the minutes were changed to read 1955), the company had required aptitude tests to be taken by white employment applicants but not by Negro applicants and had education requirements for white employees but not for Negroes. "In now giving equal consideration to these colored employees," he said, "it would be necessary to evaluate them according to their education and aptitude as determined by tests to be given."^{121/}

It appeared from the trial testimony of the general manager of Connors Steel that one interest of the company in imposing promotion test requirements on incumbent Negro employees and in placing transfer test requirements on all

^{121/} Pl. Ex. 26, pp. 2-3. At a later meeting the company stated that white employees hired before 1953 were "permitted to advance to higher jobs if they were otherwise qualified without taking aptitude tests and meeting certain educational requirements, and the colored employees hired prior to 1953 would be evaluated on this same basis." Therefore, only Negro employees hired after 1953 would be required to meet education qualifications and take aptitude tests for promotions. (Minutes of company-union meeting October 8, 1962. Pl. Ex. 28, p. 15.) The company also stated that Negro employees "would be allowed to progress to a temporarily vacant job before taking the tests, but if it was a permanent opening, these employees would have to be evaluated through aptitude tests before they would be allowed to advance." Ibid. See also Pl. Ex. 26, p. 3.

employees after October 1962, where no such requirements had been in effect before, was to create as "parallel" a situation between white and Negro employees as could be achieved.^{122/}

The general manager told a visitor in 1964 that without tests the company had "had to make a subjective evaluation" of Negro employees' abilities to hold white jobs,^{123/} and that it felt there was "no noticeable difference between the performance of Negro and white workers" on the job.^{124/} On the one hand, he said that in the future the company would require all employees to take tests to establish qualifications and that it appeared to the management "that the net effect will be for Negroes to have fewer jobs in the immediate future, since they will not be able to pass the tests in as many cases as white^{125/}s." On the other hand, he admitted that requiring incumbent Negro employees to take tests "to determine how they would stand in relationship to the White employees" was a mistake. "They were asked to take the test post-employment whereas Whites had been asked to take it as part of pre-employment standards. As a result of complaints, the company abandoned plans to move backward and have Negroes take the tests."^{126/}

^{122/} Trial testimony of B. Campbell Blake.

^{123/} Def. Ex. 72, p. 11.

^{124/} Ibid., p. 12.

^{125/} Ibid., pp. 10-11.

^{126/} Def. Ex. 72, p. 10.

The defendant company does not use aptitude tests to predict the performance of incumbent Negro employees on the job. First, it has failed to establish practical goals for testing to achieve. Establishing as a requirement for admission to a new department that employees have the potential to advance to the most responsible, highest paying jobs in the plant^{127/} is not a practical purpose for employment testing. As plaintiff's witness Dr. Richard Barrett pointed out, there are always more jobs at the entry level than at the top, and there will never be room at the top for everyone. The requirement of qualification suited to the top level of jobs is particularly unrealistic when applied to incumbent Negro employees at the Connors Steel Plant because the racially discriminatory standards of promotion and the absence of credit in a new department insure that incumbent Negro employees will never be considered for the highest paying jobs, regardless of their qualifications on test scores.

Second, the company has made no analysis of even those upper level jobs for which it claims to be testing, in order to determine the various kinds and degrees of skills and human characteristics required to perform those jobs at an acceptable level of efficiency. The Personnel Director, who created the company's aptitude testing program in 1962, testified that there

^{127/} Pl. Ex. 26, p. 2.

was no job analysis. The company does not keep job descriptions of the various jobs in the plant, except for a few jobs in the continuous casting tower, which it installed in 1964.^{128/} Without a careful job analysis the selection of appropriate tests becomes guess work, as does the whole process of attempting to predict employee performance. This critical step requires detailed study, as Dr. Barrett testified. Without a job analysis it is impossible to select a test which is related to the jobs or which is designed to test for those characteristics that acceptable performance of the particular jobs requires.

Without taking those necessary initial steps the Personnel Director obtained sample tests from various publishers, selected a battery published by Science Research Associates, decided on cut-off scores for entry into each department, and began giving the tests and passing and failing employees.

Even after obtaining the tests the company failed to try them out to see whether they predicted employee performance on any of the top level jobs in question to any useful degree of accuracy. Before this determination

^{128/} Def. objections to plaintiff's third set of interrogatories and affidavit of Norman E. Wagner dated April 1, 1968, in support of objection to Interrogatory 22. Pl. Ex. 11.

could be made it would have been necessary that there exist a system or method of employee measurement.

If there is no method of rating employees no correlation between test scores and employee performance can be determined. Since none existed at the time testing was introduced, it would have been necessary to devise one. Employee measurement can take several forms -- foreman's rating, production record, progress in the line of progression, a combination of those forms, or some other form. The more objective the criteria used the more accurate a correlation can be made. There are two procedures by which the tests could have been tried out. One would have been to give each test to all transfer applicants and then (as had been the procedure before October 1962) transfer them without regard to scores. After they had been in the new jobs long enough for their performance to be measured, their test scores could have been compared with their performance ratings. If more high scorers on the tests were good employees than were poor employees, and more low scorers were poor employees than were good employees, then the tests could have been considered valid predictors of performance in those job. If there was no relationship between test scores and job performance, the tests would have had no validity.

The other procedure that could have been followed would have involved dividing incumbent employees in a department into two groups, one composed of good employees

and the other composed of poor employees. The tests then would have been given to these incumbents. If the tests had any validity to predict performance, the group of good employees should have had more individuals with test scores above the average and the group of poor employees should have had more individuals with test scores below the average.

At Connors Steel the defendant company has failed to use these or any other methods of checking the tests it has used against the performance of employees in the top levels of jobs, for which the company purported to institute testing. It has not given the tests to any employees who have held the higher rated mill tonnage jobs of roller, roll change roller, guideman, roller helper, heater, rougher, heater helper, enterer, or roll change grade II.^{129/} Thus, the company has not determined whether employees who perform well on those jobs make better aptitude test scores as a group than employees, if any, whose performance on those jobs is at a lower level of efficiency. The company does not know whether the cut-off scores for admission to the mill tonnage department are likely to admit employees who would perform well on any of those jobs and to screen out persons whose level of performance on the jobs would be lower than those admitted.

^{129/} Section VI C3, supra.

In the electrical department, the electrician foreman, the leaderman, and seven of the eleven first class electricians have not been asked to take any aptitude test. Four first class electricians took tests at the Alabama State Employment Service before October 1962. There are fourteen crane operators who hold permanent assignments to the ladle crane tower, spell crane A, ladle crane furnace, and maintenance crane jobs - the four overhead crane operating jobs that carry the most responsibility and pay the highest wages. The company's tests have not been tried out on those employees. None of the fourteen have taken any aptitude test, according to the company.^{130/}

In the mechanical department two machinists have taken aptitude tests; fourteen have not. Six of the seven welders have not taken any aptitude tests. The millwright foreman, the millwright ladleman, and three of the millwrights have not taken any aptitude tests. Eight millwrights took the Alabama State Employment Service tests before October 1962, and the only millwright to have taken the company's Science Research Associates battery is Willie Humphrey, the only Negro millwright, who took and passed the aptitude tests for "upgrading" when they were required for Negro employees seeking promotion to white jobs.

^{130/} Def. ans. to Interrogatory 10 (3rd set).

The company has omitted to try out any aptitude tests on any of the melter assistants. Eight of the present melter helpers have taken no tests; four took the State Employment Service tests before October 1962.

Finally, the company has failed to determine whether white persons who take the tests make significantly higher scores than Negroes because of race and not because of any significant difference in ability to learn and perform the jobs in question. The risk that aptitude tests will have that result was pointed out by plaintiff's witness Dr. Richard Barrett in his testimony at the trial. A primary reason for that result is that most standardized tests have been developed on predominantly white populations.^{131/}

The effect of different cultural factors on the performance of white and Negro aptitude test takers was held to invalidate the use of a set of standardized aptitude tests in Hobson v. Hanson, 269 F. Supp. 470 (D.C. 1967), a case involving the use of tests for student placement in an integrated school system. There the tests were designed to predict academic performance and had been standardized

^{131/} See also Pl. Ex. 48, Differential Selection Among Applicants From Different Socioeconomic or Ethnic Backgrounds (May 1967).

on a white middle class school population. The Court found that although the tests might be worthwhile predictors for middle class white students, they were less precise and less accurate, to the point of being worthless, as predictors for low income Negro children.

Dr. James Tanner, the management consultant whom the company retained to examine its test program in 1963, testified to his study, which required only a couple of days to complete. On cross-examination he was shown the manual for the AGCT test, one of those comprising the battery. His attention was directed to the sections of the manual indicating that the test was developed and "validated" through use on a large group of white soldiers, to the sections indicating that women score differently on the test from men, and to the section indicating that almost no study has been made of the effectiveness of the test for industrial use. Asked if this material would cause him to have any concern over the possibility that the test might discriminate against Negroes, Dr. Tanner replied:

"I wouldn't fret over it."

In elaborating upon this answer Tanner explained that he realized that the average employer is not really concerned that a test might discriminate against members of a minority group if the test achieves other results desired by the employer.

The use of aptitude tests at Connors Steel has been arbitrary and unreasonable to such an extent that the defendant union, had it chosen to attack the test requirement as a qualification for transfers, probably could have done so successfully. Such an attack would hardly be unique. There are a number of arbitration cases in which unions have attacked the use of tests where the company had not taken reasonable steps to correlate test scores with success or failure on the job. The arbitrator in National Cooperative Refining Association, 44 Labor Arbitration Reports 92 (1964) stated the propositions clearly. The matter involved use of tests as a qualification for entrance into the instrument department. The arbitrator held:

"It is obvious, and the Union freely concedes, that the Company has the right to require candidates for instrument work to pass an appropriate test. The question here is whether the tests that the Company used were reasonable; that is, whether the tests relate to qualities that are essential to success in instrument department work, and whether the standard of adequacy (the passing grade) is experimentally defensible...."

"The suitability of a particular objective test for screening candidates for an occupation, or that any particular score on a test is indicative of a lack of qualities requisite in that occupation cannot be assumed. It must be determined by experimentation. When a test has been given to a large number of candidates for an occupation and the test results correlated with performance in the occupation, and when this correlation reveals a consistent relationship between particular test performances and success (or failure) in

the occupation, we may be in a position to affirm with confidence that the tests are a reliable screening devise (sic) and that some particular score is critical. Without such a basis of experience, however, the significance of the test results are speculative at best, and the use of any particular score as critical is indefensible."

See also Latrobe Steel Co., 34 Labor Arbitration Reports 37 (1960), and Central Soya Co., 41 Labor Arbitration Reports 1027 (1963).

D. The Company Has Hired White Persons and Assigned Them to Departments Offering Higher Paying Jobs in Preference over Incumbent Negro Employees.

The company made the following departmental assignments of newly hired employees in the labor pool during the years 1963 through 1967:^{132/}

Year	Furnace, Electrical, Mechanical, & Tonnage		Auxiliary, Finishing, & Fabricating		Other Departments	
	<u>W</u>	<u>N</u>	<u>W</u>	<u>N</u>	<u>W</u>	<u>N</u>
1963	2	0	0	0	1	0
1964	46	0	0	0	4	1
1965	1	0	1	1	4	2
1966	4	0	2	0	8	4
1967	<u>10</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>6</u>	<u>4</u>
Totals	63	1	3	1	23	11

The company permitted transfers of employees to the following departments from other seniority departments during the years 1963 through 1967:

Year	Furnace, Electrical, Mechanical, & Tonnage		Auxiliary, Finishing, & Fabricating		Other Departments	
	<u>W</u>	<u>N</u>	<u>W</u>	<u>N</u>	<u>W</u>	<u>N</u>
1963	3	1	0	0	0	0
1964	2	4	0	1	0	1
1965	1	0	0	0	1	1
1966	3	2	0	0	4	2
1967	<u>10</u>	<u>1</u>	<u>1</u>	<u>0</u>	<u>3</u>	<u>3</u>
Totals	19	8	1	1	8	7

^{132/} See Appendix H.

VII

THE RELIEF

At H. K. Porter's Connors Steel Plant in Birmingham the vast majority of Negro employees have been denied equal earning power with their white contemporaries. The defendant's system of job assignments prevents Negro employees who were denied training and promotion because of their race from ever attaining equal status with white employees having similar qualifications.

With very few exceptions, new employees have always had to start at the bottom of their line of progression and advance to the higher paying jobs according to seniority order. Thus, the skills necessary to advance have traditionally been acquired through on-the-job training. Only with certain limited craft jobs, such as painter, have skills acquired before employment at Connors had any effect on an employee's opportunities for promotion.

Under the system of racially segregated jobs and lines of progression, Negro employees were prohibited from participating in the same training program that the company provided for white employees. As a result, the company taught white employees to perform jobs that qualified them for advancement to higher rated jobs, while teaching Negro employees to perform jobs having little or no advancement potential. Thus, the present inability of Negro employees to earn equal pay with white employees of comparable seniority is due to the company's own discriminatory training program and its failure to

improve the advancement potential of the great majority of traditionally Negro jobs.

The defendants have failed to show, and indeed they could not show, that there is a significant difference in the ability of white and Negro employees to learn and perform the various jobs in the plant. The median education of each group is nearly the same -- 11 years for white employees and 10 years for Negro employees. Of the thirty employees with the highest average hourly earnings, only five have more than a 10th grade education and half of them have less.

There are two principal problems in this plant. First, most Negro employees are bottled up in low opportunity departments where they have no chance for training and promotion to the high paying jobs in other departments. Second, senior Negro employees in all departments have been permanently placed behind junior white employees in the priority for training and promotion to the higher rated jobs in the department.

To remedy this situation the defendants must seek means for moving Negro employees from lines of progression which lack advancement potential to lines which provide a reasonable opportunity to earn as much as white employees with equal seniority. Quarles v. Phillip Morris, Inc., 279 F. Supp. 505 (E.D. Va. 1968). In addition, the defendants must establish priorities for promotion which will ensure that Negro employees who were by-passed for promotions by junior white employees on a racial basis can obtain their rightful place in the order of priority

for advancement. United States v. Local 189, United Papermakers and Paper Workers, 282 F. Supp. 39 (E.D. La. 1968). And if the employees are to be able to take advantage of the opportunities thus created, the company must develop a training program, beyond the usual temporary assignment on-the-job training, so as to qualify the Negro employees for advancement as quickly as possible.

The facts of this case suggest a great many things the defendants could do to provide equal employment opportunities for their Negro employees and members. An imaginative program might employ changes in several different relationships. For example, jobs could be transferred from one department to another ^{133/} so that no one department would have a heavy concentration of low paying jobs or high paying jobs. Jobs in the same department could be organized in several different lines of progression ^{134/} to achieve the same result and to provide shorter routes to the better jobs. ^{135/}

^{133/} When the Specialty Shop was closed, two jobs were transferred to the newly created building maintenance department and one was moved to the fabricating department.

^{134/} There are at least four lines of progression in the mechanical department. See Appendix B.

^{135/} In the rolling mills at Connors there are two lines of progression. The mill tonnage department has twenty jobs in one line of progression and the mill auxiliary has twenty-one jobs. (See Pl. Ex. 46) At the Algoma Steel Plant in Canada, the rolling mills have seven, five of which are comparable to those at the Connors Steel Plant, with the largest having only 5 jobs. See Def. Ex. 71.

A better distribution of earning opportunities could be achieved by upgrading some of the low paying Negro jobs and moving them to higher positions in their respective lines of progression. There has been no general job evaluation study at the Connors Plant since 1962 when the company openly discriminated against Negro employees. That such a study might be in order is suggested by the fact that until recently the white layovers were paid more than the Negro catchers, although they performed substantially the same work. When the catcher job was upgraded in 1965, the other jobs in the Negro line of progression were not given equivalent increases. As a result, the employees on the gauger job, who used to be worth more to the company than the catchers, are now paid less than the catchers.

When lines of progression are changed, by upgrading a job or otherwise, the employees do not necessarily have to follow the jobs they hold. The decision by the company in October 1962, that all employees would stay in the jobs they held before the merger of Negro and white lines of progression was a departure from the normal practice. Prior to 1964, the night shift roll change jobs and the day shift rolling mill production jobs in the all-white mill tonnage department were in separate lines of progression. When these lines were merged in 1964, all jobs in both lines were declared vacant and refilled according to the departmental seniority of the employees. The same principle is illustrated by the upgrading of the catcher job. When it was placed above the gauger job in the line

of progression, it was declared vacant and claimed by the most senior employees in the line of progression who at that time were the gaugers.^{136/}

Applying this principle, it could be urged that the most effective and most immediate remedy would be to vacate all jobs and reassign all employees to jobs on the basis of their company seniority.^{137/} The practical difficulty with such a plan is that the company has not trained the senior Negro employees to handle the jobs to which they would be entitled and it is unlikely that they could all be trained at once. In addition, this would result in white employees being demoted to lower paying jobs which might cause considerable personal hardship.

A more gradual approach would be to leave employees in their present jobs, but to fill all future vacancies, including vacancies in the highest rated jobs, on the basis of company seniority. This would also require the company to undertake an extensive training program for Negro employees, but would result in only a few newly trained men working at one time. The argument that an employee must first work all the intermediate jobs before he is qualified for the higher rated jobs is not valid. There are many instances of employees who have skipped jobs in the line of progression.

^{136/} It is interesting to note that the catcher job also passed the yardman job (white) in terms of pay rate, but the yardmen were not included in the reshuffle of employees.

^{137/} See 80 Harv. L. Rev. 1260 (April 1967).

Furthermore, the company can include in its training program any work experience on the intermediate jobs that it feels is necessary without requiring the employee who is entitled to advance to wait for normal vacancies in such jobs. The problem with relying entirely on this type of relief is that it would delay equal employment opportunities for most senior Negro employees beyond the date of their retirement.

In designing relief for the Negro employees at the Connors Steel Plant one could reevaluate the jobs, reorganize the departments and lines of progression and establish new standards and procedures for training, promotions and transfers. A plan can be devised which would optimize the opportunities for Negro employees to advance to the higher paying jobs until they catch up with their white contemporaries who have benefited from the racial discrimination practiced by the defendants. This is what the company and the union should be required to do, but it would be an undue burden on the court to have to become involved in, and to supervise the details of how it is done. History has taught us, for example, what a burden has been placed upon the courts in the supervision of school administration in school desegregation cases. The problem may multiply many times if the courts now assume to undertake that kind of supervision with every individual, distinct company that may come before it in cases arising under Title VII.

It was the recognition of this very problem that lead the federal courts finally in school desegregation cases to look to the system as a whole and the results achieved. See U.S. v. Jefferson County Board of Education, 372 F. 2d 836, affd. en banc 380 F. 2d 385 (5th Cir. 1968), Green v. County School Board of New Kent County, 391 U.S. 430 (1968). We propose therefore that in a case such as the one before this court, a proposed Decree need have only three basic elements: (1) a general injunction against discrimination following the prohibitory language of the statute; (2) a general affirmative order requiring the defendants, by whatever means they choose -- whether through reorganization, training programs, readjustment of lines of progression -- to put their Negro employees, as soon as practicable, in an opportunity position equal to their white contemporaries; and (3) an affirmative order requiring periodic reports to the court from which the court and the parties can periodically review compliance with the decree and determine the extent of progress in achieving employment opportunities.

Admittedly, this proposed decree is result oriented. It provides a relatively uncomplicated method by which the court can measure the performance of the defendants. It avoids the necessity for the court to isolate and analyze the function of every job and the relative qualifications of every employee, and relieves the court from having to supply or approve the details of all such relationships.

It is a well established principle that the federal courts, sitting in equity, have the power and the duty to fashion such relief as will give full effect to the broad purpose of the statute under which the action is brought. Alabama v. United States, 304 F. 2d 583 (5th Cir. 1962).

The broad purpose of Title VII of the Civil Rights Act of 1964 is expressed in its own caption: "Equal Employment Opportunity." Until the defendants provide training and promotion to their Negro employees in the same way they have provided training and promotional opportunities to their white employees and until the Negro employees' take-home pay equals what they would have had if they had not been discriminated against on account of their race, the employment opportunities for them are not equal. This should be the focus of the court; this should be the measure of the performance of the defendants.

IN THE UNITED STATES DISTRICT COURT FOR THE
 NORTHERN DISTRICT OF ALABAMA
 SOUTHERN DIVISION

UNITED STATES OF AMERICA, by)
 RAMSEY CLARK, Attorney General,)
)
 Plaintiff,)

v.)

CIVIL ACTION
 NO. 67-363

H. K. PORTER COMPANY, INC.,)
 a Corporation, UNITED STEEL)
 WORKERS OF AMERICA, AFL-CIO,)
 an unincorporated association,)
 and LOCAL UNION NO. 2250,)
 UNITED STEEL WORKERS OF)
 AMERICA, AFL-CIO, an)
 unincorporated association,)
)
 Defendants.)

PROPOSED DECREE

Pursuant to the findings of fact and conclusions of law entered this date;

IT IS HEREBY ORDERED that the Defendants, the H. K. Porter Company, Inc., the United Steel Workers of America, AFL-CIO, and Local Union No. 2250, United Steel Workers of America, AFL-CIO, each of them, their officers, agents, successors and all persons acting in concert with them are hereby enjoined from:

- a. Limiting, segregating, and classifying employees at the Connors Steel Plant in ways which deprive and tend to deprive such employees of employment opportunities because of their race and color,

- b. Maintaining an employment system at the Connors Steel Plant which discriminates against Negro employees with respect to the compensation, terms, conditions, and privileges of employment because of their race and color, and
- c. Engaging in any other act or practice which has the effect of discriminating against the Negro employees at the Connors Steel Plant because of their race and color.
- d. Continuing to use job seniority and test results as standards for promotion.

IT IS FURTHER ORDERED that the defendants implement a program of training and promotion for all Negro employees hired prior to October 1, 1962, which will provide a reasonable opportunity for such employees to advance as soon as practicable, to jobs equivalent to those held by white employees with comparable seniority.

IT IS FURTHER ORDERED that the defendant company make reports to the court and serve copies of such reports on counsel for the plaintiff, as follows:

- a. Within one month after this decree, the company shall report all changes in employment status and permanent job assignments from May 27, 1968 until the date of this decree. This report shall include all new hires, layoffs,

terminations and departmental transfers, and all changes of permanent job assignments since those reflected in defendants answer to Interrogatory No. 7 of the plaintiff's third set. With respect to each assignment or status change, the report shall show the name, race, and hiring date of the affected employee and the effective date of the change.

The report shall also include a departmental seniority list updated to reflect the assignments to departments as of the end of the report period.

- b. On January 15, 1969, the defendant company shall report the earnings of each employee for the period July 1, 1968 through December 31, 1968. This report shall show the name, race, hiring date, seniority department and date, number of hours worked, and total earnings of each employee. This report shall rank the employees in order of their average hourly earnings ranging from highest to lowest.
- c. Within one month after the entry of this decree the defendant company shall report what steps it has taken with respect to changing the organizational

structure of jobs and lines of progression and with respect to changing the standards and procedures for assignments, promotions, and transfers to jobs and departments.

- d. On April 15, 1969, and every six months thereafter until further order of this Court, the defendant company shall submit progress reports updating the information provided in the reports called for in sub-paragraphs a and b above.

This Court shall retain jurisdiction of this cause for the purpose of issuing any and all additional orders as may become necessary for the purpose of modifying and enforcing this decree.

The plaintiff shall recover his costs and disbursements.

Done this day of , 1968 at
Birmingham, Alabama.

UNITED STATES DISTRICT JUDGE