

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 ROADWAY EXPRESS, INC.,)
)
 Defendant.)
 _____)

CIVIL ACTION NO.
C-68-321

WRITTEN OPENING STATEMENT
OF THE UNITED STATES

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TABLE OF CONTENTS

	Page
I. Introduction	1
A. Background	1
B. Relevant Statutes and Regulations	2
C. Description of Roadway Express, Inc.	4
D. Roadway's Equal Employment Policies	8
II. Roadway's Employment Policies and Practices De- prive Negroes of Equal Employment Opportunities in Violation of Title VII of the Civil Rights Act of 1964.	10
A. The Statistics Establish a Prima Facie Vio- lation of Title VII	10
B. Roadway Discriminatorily Exclude Negroes From Jobs as Over-the-Road Drivers	14
1. Statistics	14
2. Discrimination in Initial Hiring	16
(a) Rejected Negroes	16
(b) Reputation	22
(c) Subjective Standards	23
(d) Recruiting	29
3. Discriminatory Refusals to Transfer Negroes	32
C. Roadway Discriminates Against Negroes in Hiring Practices in Other Jobs	38
1. Granting Absolute Discretion to Terminal Officials who Applied Subjective Stand- ards to Reject Negro Job Applicants ...	38
(a) Discretion and Standards	39
(b) Rejection of Qualified Negroes ...	43
(1) Office and Administrative Jobs	43
(2) City Driving and Dock	50
2. Discrimination Selection of Regular Em- ployees from Casual Pool	51

	Page
(a) Birmingham	52
(b) Memphis	55
(c) Kansas City	56
(d) Louisville	57
(e) Harrisburg	58
3. Discriminatory Selection of Recruitment Sources	59
(a) College Recruiting	59
(1) Choice of College	61
(2) Selection of Recruits	63
(b) The Non-Use of Minority Group Sources for Employee Recruitment..	65
D. Roadway Discriminates Against Negro Employees in Affording Work Opportunities ...	70
1. Promotions	70
2. Transfers	73
3. Terminations	77
4. Working Conditions	80
III. Relief	81
IV. Conclusion	86

APPENDICES

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I. Introduction

A. Background

This suit was commenced on May 2, 1968, under Title VII of the Civil Rights Act of 1964. The complaint charges that Roadway Express, Inc. discriminates against Negroes in its employment practices, and the answer denies the charge. The parties have conducted extensive discovery, including the taking of 106 depositions, and at the pretrial conference of August 11, 1969, the United States agreed to submit this written opening statement before the pretrial conference, in anticipation of a tentative trial date of October 6, 1969. In this statement we attempt to outline the facts and issues in the case and the relief sought in sufficient detail to give the defendant notice of what we think our case is.

This is not a post-trial brief, and detailed citations to the evidence are therefore not included.

We have nevertheless attempted to cover each area of proof in as much detail as possible, bearing in mind the fact that 19 depositions have not yet been transcribed and that the defendant has not yet produced for our inspection all the relevant documents requested.^{1/}

B. Relevant Statutes and Regulations

Title VII of the Civil Rights Act of 1964 (78 Stat. 253-266) is contained in 42 U.S.C. §§2000e-2000e-15. Section 703(a) provides:

- (a) It shall be an unlawful employment practice for an employer--
- (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin;
 - or
 - (2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Under sections 701(b) and 716(a) Title VII became effective as to employers with over 100 employees on July 2, 1965. Under Section 701(b) "the term 'employer' means a person engaged in an industry affecting commerce who has twenty-five or more employees . . . and any agent of such a person. . . ."

^{1/} This statement also serves as a statement of incidents as required by the pretrial order, as to witnesses not covered by prior statements of incidents.

Enforcement machinery is provided by Sections 705-714. Sections 705-706 and 709, 710, 711, 713, and 714 relate to private suits and to enforcement through the Equal Employment Opportunities Commission (EEOC). EEOC gathers employment statistics, investigates charges of discrimination, makes findings as to reasonable cause, and attempts to achieve voluntary compliance. Section 707(a) provides:

(a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this title, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

Section 707(b) confers on the United States District Courts jurisdiction over cases brought under Section 707(a) and provides that the court has "the duty . . . to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited."

Executive Order No. 11246, September 24, 1965, 30 F.R. 12319 provides, in Section 202, that all government contracts include an agreement by the contractor not to discriminate on account of race. The

contractor agrees to "take affirmative action to ensure that applicants are employed . . . without regard to their race. . . . Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination. . . ." The contractor also agrees to post equal employment posters, include an equal employment statement in its job advertisements, send an equal employment statement to unions which represent its employees, and to furnish such information and reports as may be required.

C. Description of Roadway Express, Inc.

Roadway Express, a Delaware corporation, is a common carrier transporting motor freight throughout 28 states. At the time this action was filed it had 121 terminals and a general office (in Akron, Ohio), and employed 8,690 employees. At present there are 132 terminals, including 27 with over 50 employees.

Roadway Express [hereinafter Roadway] moves inter-city freight on truck routes approved by the Interstate Commerce Commission, on trucks which go from one terminal to another and which are driven by "line haul" or "road" drivers. The goods are transported intra-city (from sender to terminal or from terminal to recipient) by persons called "city drivers" or "pickup and delivery" ("P. & D.") drivers or "driver-salesmen," who also may be required to load and unload the goods. At the terminals there are dock workers (also called "checkers") who load and

unload them.^{2/} Other workers "jockey" the equipment around the terminal yard. Some terminals have garage installations at which major servicing of the equipment is done. Most terminals have salesmen, who sell Roadway's services, and clerical and maintenance personnel. All these functions may be performed by "regular" or "casual" employees.

Roadway's dock workers, garage workers, and drivers work under collective bargaining agreements, primarily with the International Brotherhood of Teamsters. Some other employees such as clerical workers work under collective bargaining agreements at scattered terminals.

Each function at a Roadway terminal has its supervisors. On the docks there are dock foremen, who in turn are supervised by operations managers. City drivers are given their work by the City P & D dispatcher, and road drivers by a line haul dispatcher. There are foremen and managers in the garages. Terminals which have significant road and garage operations generally have a terminal manager and assistant over the dock, city, sales, billing and clerical operations, a road driver superintendent over the road driving operations, and a fleet manager over the garage operations.

The level of operation above the individual terminal is the district. There are 14 geographic

^{2/} At some terminals city drivers also do dock work when needed, and some terminals have combined the two jobs into "combination" men.

districts under district managers, and above them there are 4 geographic divisions, under division vice presidents or managers. Finally, there is the Akron General Office. The structure as a whole is illustrated by the following organizational chart, copied from the Roadway Wage and Salary Manual.

Roadway's policies are made in the Akron General Office, and that office monitors compliance with them. Of major interest to this case is the office of the Vice President for Employee and Labor Relations, Daniel M. Gunn. That office includes under it an Employees Relations Department headed by Harry Sykes and a Labor Relations Department headed by Fred J. Schrank. Ultimate control over hiring, firing, promoting and transferring of personnel rests in the Employee Relations Department, and control over collective bargaining rests in the Labor Relations Department -- both under the supervision of Mr. Gunn.

ROADWAY EXPRESS
ORGANIZATION CHART

G. J. ROUSH - CHAIRMAN

R. W. CORNS - VICE CHAIRMAN

J. ROBERT WILSON - PRESIDENT

O. E. LIIPFERT
Executive
Vice President
Field Operations

D. GUNN
Vice President
Employee and
Labor Relations

J. L. TORMEY
Executive
Vice President
Finance and
Administration

R. R. JOHNSTONE
Secretary

P. J. Johnson
Vice President
Sales

E. K. Sarkkinen
Vice President
Maintenance

D. W. Faris
Assistant
Secretary

D. M. Leary
Vice President
Operations

J. C. Crawford
Controller

E. W. Hall
Vice President
Central Division

C. F. Zodrow
Treasurer

W. A. Shuey
Vice President
Western Division

W. F. Stiegele
Vice President
Traffic

W. F. Spitznagel
Vice President
N.E. Division

J. T. Topping
Division Manager
S.E. Division

D. Roadway's Equal Employment Policies

At the time this suit was filed Roadway employed approximately 8,690 employees, of whom 288 were Negroes. Of these, 286 Negroes were garage workers, city drivers, dock workers and service workers, 2 were office and clerical employees (out of 1,143 office and clerical employees), and none were road drivers (2,110 white road drivers), office or managers (1,344 white), or professional, technical or sales personnel (232 white). The statistics are developed at greater length, infra.

Defendant's position is "that the composition of its work force is, and has always been, a result of its policy and practice to provide equal employment opportunities and rights to all persons without regard to race, color, religion, sex, or national origin," (Answer, paragraph 7) and that Roadway's policy is to hire the best qualified applicants. Roadway officials emphasize that the company's policy has always been the same, and that no change in policy resulted from the passage of the Civil Rights Act of 1964 (Chapin, p. 35; J. Wilson, p. 11).

This policy is set forth in the Roadway Manual, which also lists provisions of state and federal law governing equal employment opportunities. There have also been some memoranda of general application from the Akron office to the terminals respecting equal employment opportunity.^{3/} The policy is expressed

^{3/} Those memoranda are:

June 27, 1961 from Mr. Sykes
August 18, 1965 from Mr. Roush
September 15, 1965 from Mr. Sykes
September 24, 1965 from Mr. Gunn
November 9, 1965 from Mr. Gunn
May 10, 1968 from Mr. Gunn

in almost identical terms by every company official who is asked: to hire the best qualified applicant, regardless of race (see depositions of Gunn, p. 196; Topping, p. 47; Karlburg, p. 56; Burns, p. 28; Faires, p. 71; Chapin, p. 30; J. Wilson, p. 5; Johnston, II, p. 48). No witness satisfactorily explained how this "equal employment policy" worked in practice. Roadway issued no instructions as to how to recruit qualified applicants on a non-discriminatory basis or how to insure that qualified Negro applicants were in fact being given fair consideration. Nor did Roadway review the decision of low level officials not to hire or promote or retain qualified Negroes. As the Manager of Labor Relations for the Central States [a former district manager] said (Burns, p. 153):

. . . insofar as I was concerned, I left much of it up to the terminal manager, and his instructions were to comply with our policy and to hire the best qualified person that was available at the time the job was open.

A Roadway terminal manager who testified that there was no Roadway policy of discriminating against Negroes explained what he meant, as follows (Deese, p. 144):

I would say that my definition for discrimination against negroes in employment would be to encourage people not to hire them or attempt to encourage them not to use them.

II. Roadway's Employment Policies and Practices Deprive Negroes of Equal Employment Opportunities in Violation of Title VII of the Civil Rights Act of 1964

A. The Statistics Establish a Prima Facie Violation of Title VII

The statistics show a total absence of Negroes from some jobs and token representation in others. This pattern holds true throughout most of Roadway's terminals. Indeed, of the 132 terminals 101 terminals employing 2,405 employees employ no Negroes at all. Since 1966, the first year for which racial statistics are available, there has been scarcely any progress, as is shown by the following charts.

The company wide Roadway Express statistics showing the number of Negroes and whites in various job categories in the past few years are as follows: ^{4/}

<u>Job and Computer Code</u>	<u>1966</u>		<u>1968</u>		<u>1969</u>	
	<u>White</u>	<u>Negro</u>	<u>White</u>	<u>Negro</u>	<u>White</u>	<u>Negro</u>
Road Drivers 4231	1841	2	2109	0	2268	3
City Drivers 4235	1235	96	1680	120	1883	145
Dock Workers 4341	971	90	1357	133	1578	178
Garage Workers 4119	462	36	494	32	485	31
Office Personnel 4311	1471	14	2461	11	2790	31
Total	5980	238	8101	296	9004	388

^{4/} Statistics for 1967 have not been completely tabulated. The tabulations in this brief do not include other minority groups such as Spanish-Americans. There are 77 such employees.

Until 1968 all Negro personnel listed as "office personnel" held janitorial positions (see Appendix A). The statistics also show that Negroes who have been hired by Roadway Express have been concentrated in city driving and dock jobs.

The statistics on the following chart indicate when the employees who appear on the 1969 computer printout were hired. 5/

Job and Computer Code	Hired Before 7/2/65		Per Cent Negro	Hired Between 7/2/65 & 5/2/68		Per Cent Negro	Hired Since 5/2/68		Per Cent Negro
	W	N		W	N		W	N	
Road Drivers 4231	1507	0	0	507	0	0	254	3	1.1
City Drivers 4235	1147	92	7.4	565	43	7	170	9	5.0
Dock Workers 4341	665	67	9.1	591	61	9.3	331	50	13.1
Garage Workers 4119	332	21	5.9	137	8	5.5	15	1	6.2
Office Personnel 4311	1019	7	.6	1088	8	.7	658	14	2.0
TOTAL	4670	187	3.8%	2888	120	3.9%	1428	77	5.1%

5/ This printout lists persons employed at Roadway as of February 1969 and therefore does not include persons who terminated their employment at Roadway before that time. Similar figures for 1966 and 1968 appear in Appendix B.

There were 112 terminals that hired 1095 whites and no Negroes between July 2, 1965 and May 2, 1968.

According to 1960 Census figures in fourteen of the twenty-seven terminal cities with fifty or more employees, there is a non-white male civilian labor force of 493,367.^{6/}

The Akron General Office -- which was itself all white when this suit was filed -- has known the racial statistics for the various terminals since at least 1966, when Roadway began filing equal employment reports required by federal agencies. Not only were the statistics called to Roadway's attention on numerous occasions by representatives of the Post Office Department,^{7/} but on at least four separate occasions the United States Equal Employment Opportunity Commission called to Roadway's attention charges of job discrimination and at least once were set out in the internal Roadway memorandum (Sykes to Gunn 11/6/67). Roadway's top management chose each time to assume, without investigation,

^{6/} The fourteen cities are: Akron, Atlanta, Baltimore-Washington, Birmingham, Boston, Charlotte, Cincinnati, Dallas, Fort Worth, Harrisburg, Houston, Kansas City, Memphis, Nashville, Winston-Salem.

The other cities where there are 50 or more employees are: Akron, Buffalo, Cambridge, Chattanooga, Chicago, Cleveland, Columbus, Detroit, Indianapolis, Kearny, Milwaukee, St. Louis, Toledo.

^{7/} The Post Office Department had the responsibility for monitoring Roadway's compliance with the provision of Executive Order 11246, requiring fair employment by government contractors. Roadway has contracts with the Post Office.

that the statistics were meaningless.^{8/} The Director of the Employee Relations Department, who prepares the statistics, uses "them as a guide to see where we have minority people now that we didn't have a year ago" (Sykes, p. 61), but does not look at them to see where there might still be problems: "Well, you may have problems all over, but it may not be because of the fact we don't have any Negroes. Many times they are not available." (Id. p. 62) See also Gunn, pp. 23-27; Faires, p. 71; Burns, pp. 151-155. Cf. E. Hall, p. 43 (Division Vice President not familiar with the statistics for his terminals.)

^{8/} Cf. United States v. Hayes International Corp., No. 26809, 5th Cir., August 19, 1969, at p. 10: "the employment statistics discussed -- amply demonstrated a preliminary showing that the company hiring practices violated Title VII."

B. Roadway Discriminatorily Excludes Negroes
From Jobs as Over-the-Road Drivers

1. Statistics

As of the date this suit was filed, May 2, 1968, defendant had no Negro road (line haul) ^{9/} drivers. This fact was known to both Daniel M. Gunn, the Vice President in charge of the Labor and Employee Relations Department, and Harry A. Sykes, Director of the Employee Relations Department. In an inter-office memorandum from Mr. Sykes to Mr. Gunn dated November 7, 1967, Mr. Sykes stated that as of January 1, 1967, all of defendant's 2006 road drivers were white.

The February 1969 IBM Printout of employees, furnished by defendant to the Post Office Department, shows the following for employees in job ^{10/} classification "4231" (line haul drivers):

^{9/} Two Negroes, Carl D. Bogan and Charles D. Neal, were classified as road drivers during part of their employment at New Haven. They have not been so classified since October 7, 1966. See Section II. B. 3., below. There was a Negro road driver in Charlotte at one time as well (Hines, p. 15).

^{10/} Mr. Gunn, in his July 26, 1966 letter to Henry S. Reffner, the Post Office Contract Compliance Examiner in Cleveland, stated that "4231" was the ICC code number for line haul drivers.

<u>Hired Prior to July 2, 1965</u>		<u>Hired Between July 2, 1965 and May 2, 1968</u>		<u>Hired After May 2, 1968</u>	
<u>Total</u>	<u>Negro</u>	<u>Total</u>	<u>Negro</u>	<u>Total</u>	<u>Negro</u>
1507	0	507	0	257	3

Thus, as of the date of the Printout, defendant employed 2271 line haul drivers (including 764 hired since the effective date of Title VII), of which 3 (0.1 percent) were Negro. All were hired after this suit was commenced and comprise 1.2 percent of all line haul drivers so hired (based upon the Printout). Plaintiff is aware of only two other Negroes hired as road drivers since the date of the Printout, Howard Smith and James Butler, both hired at the Harrisburg terminal (see Section II. B. 2., below).

2. Discrimination in Initial Hiring

These statistics result from discriminatory refusals of road driving jobs to qualified Negroes and from other employment practices which keep at a minimum the number of Negro applicants for road jobs.

(a) Rejected Negroes

Experienced and qualified Negro over-the-road drivers have applied for jobs at a number of Roadway locations and have been rejected, both before and after the effective date of Title VII of the Civil Rights Act. Soon after this lawsuit was filed, Roadway hired three such qualified applicants.^{11/}

Those Negro road drivers who have unsuccessfully sought employment with Roadway and whose names we know are listed in the following chart, which also shows the date and place of each man's application or inquiry about employment:^{12/}

Akron

Harold Brown	1958 (winter)
--------------	---------------

Charlotte

Marcus Black	February 16, 1966
Sam Clark	February 16, 1966
Charles W. Walker	February 16, 1966

^{11/} W. D. Boggs and John R. England, hired at Cincinnati, August 10, 1968; R. W. Miller, hired at Harrisburg, June 22, 1968. In the summer of 1969, two more Negroes were hired as road drivers at Harrisburg -- Howard Smith and James Butler.

^{12/} The chart does not include those Negro employees of Roadway who sought transfers to road driving jobs, discussed *infra*. One of those, William Bing at Atlanta, had indicated when he applied at Roadway in 1963 that he was interested in a road job. He was hired as a casual driver in the city.

Cincinnati

*William B. Boggs	1962, 1963, and 1968
Ivosa Brown	uncertain
Newt Dupree	about November 1968 and thereafter
Jesse James, Jr.	uncertain
Ronald Eugene Price	1965 or 1966

Cleveland

William Herter	1967
Peter Mitchell	uncertain

Memphis

*Willie Perkins	January 17, 1968
Mack Henry Williams	January 19, 1968

Winston-Salem

*James Cooper	September 18, 1967; December 1968 or January 1969
Burke Smith	May 1967
Dennis Thomas	1967
*Leroy Wilson	September 18, 1967

*Deposed

In inspecting the files containing applications for Memphis road driving positions, we have identified these additional rejected applicants who appear to be Negro:

1. Driver, Rueben Lee
2. Hall, Leon A.
3. Hardin, Bobby E.
4. Keel, Bobby
5. Preston, Billy C.

6. Rice, Danny S.
7. Roser, Richard Eugene
8. Stevens, Talbert Wayne
9. Taylor, Willis, Jr.

The experiences of known Negro applicants for line-haul driving jobs at Roadway illustrate both overt discrimination and the discriminatory application of subjective standards to "disqualify" Negroes.

Harold Brown, an experienced Negro line-haul driver, called the Roadway terminal in Akron in response to a newspaper ad for road drivers in the winter of 1958. He described his driving experience and qualifications over the phone. The Roadway official he spoke with said that Mr. Brown's qualifications would be checked with his former employers and that he would be called if Roadway was interested in him. Several days later Roadway did call and set up an appointment for him to come in to the terminal because his qualifications checked out satisfactorily. When he appeared in person, he was told by the man who had called him in that Brown couldn't be hired because of a company policy against hiring Negro over-the-road drivers.

William Boggs, who was one of the two Negro over-the-road drivers hired by Roadway at Cincinnati after this suit was filed,^{13/} had previously applied at Roadway on two separate occasions, about 1962 or 1963. On both occasions he was told that "they wasn't doing any hiring," and he was not given an application

^{13/} The two were hired as a sleeper team operating out of Cincinnati.

blank to fill out (Boggs, p. 5-7). However, road drivers number 214 through 245 on the January 1, 1969 Cincinnati seniority list have 1962 and 1963 seniority dates. These 1962 and 1963 hires were all white. When he inquired about a job in 1968, he was given an application and told by Mr. Gentry there was a good possibility he would be hired because a suit "was being filed against them for discrimination or something of that nature" (Boggs, p. 4). Mr. Gentry said the company would try to find a person to run with Mr. Boggs on a "sleeper" tractor and that if Boggs could find himself a partner, Boggs should tell him to come up and apply (Boggs, p. 8-9). In Memphis also, the safety supervisor told a Negro applicant for a road job in early 1968 that "if he got him a partner, he could get him a job" (Martin, p. 22, 26). Willie Perkins said that he came to apply at Memphis in early 1968 because another Negro driver was asking Negroes to apply for a job as his "partner." Yet the testimony of Roadway officials is that drivers are not hired as sleeper teams and that the team assignments are as a result of driver bidding on the basis of their seniority (e.g., Patterson; Burns, p. 99-101; Sims, p. 36-40). Boggs and another Negro, John R. England, were hired together on the same day and operated as a sleeper team until the August 1969 change of operations eliminated

sleeper runs.^{14/} Neither of them ever drove a Roadway sleeper cab with a white driver as partner.

Mr. Perkins applied at Roadway in Memphis on January 17, 1968. He was rejected at his initial interview (before any test or other screening) on the ground that he was employed as a city driver by another trucking firm. On the very next day, Jack Brown, a white city driver then employed by East Texas Motor Freight, and previously employed as a city driver at Roadway from 1960 to 1966, was hired as a road driver at the Memphis terminal. On March 5, 1968, Walter James Fowler, a white man, was hired as a road driver at the Memphis terminal shortly after leaving his city driver position at Texas-Oklahoma Express in Dallas "for employment with Roadway Express". On December 18, 1967, Robert B. Cross, a white man and a former casual city driver-checker for Roadway, applied for a road driver position at Memphis while still employed, on layoff status, by Time Freight where he had been a city driver since March of 1966. On March 14, 1968, he was hired at the Memphis terminal as a road driver. In January of 1968, Ray Winston DeVall, a white road driver, began working from the Memphis terminal pursuant to a company change of operations. He was initially hired in August of 1967 at Winston-Salem notwithstanding his position of city driver in Danville, Virginia at the time of his application to Roadway. Mr. Patterson testified that Roadway had a policy against hiring city drivers for road jobs, but that it did not always apply to city employees of other trucking companies. Mr. Patterson also officially approved the hiring of Brown, Fowler and Cross (see their PR 3's).

^{14/} The existence of this team was a matter of some note to Roadway officials. One terminal manager testified: "There was a [Negro] team out of Cincinnati. . . . I saw them in Harrisburg once and I heard they had been at our terminal in Laurel" (Joe Hall, p. 46).

James Cooper and Leroy Wilson, both qualified Negro road drivers, applied together on September 18, 1967, at Roadway in Winston-Salem. They filled out application blanks and were interviewed briefly by a Roadway official who told them that Roadway wasn't hiring any drivers at the time, but that they would be called if an opening developed. They were not called, although 80 road drivers on the January 1, 1969, Winston-Salem seniority list were hired after September 18, 1967. At least three white road drivers were hired within a few weeks after that date -- on September 30, October 1, and October 26, 1967. At his deposition, Mr. Belcher, the road driver superintendent, was examined about the qualifications shown on Wilson's and Cooper's written applications. He testified that their qualifications compared favorably with those of white road drivers hired around the time Wilson and Cooper applied.

William Herter applied at Roadway in Cleveland about two years ago and was told only that they had all the seven road drivers they needed at that time. Peter Mitchell, another Negro road driver living in Cleveland, put in an application a few years ago because of "talk" about government contractors being prohibited from discriminating and has never heard anything from Roadway. According to the IBM printout supplied to the Post Office Department in 1969, two Cleveland road drivers had dates of hire in 1967 or 1968. Furthermore, only 34 miles away in Akron Roadway hired at least 90 over-the-road drivers (all of them white) between July 2, 1965 (the effective date of Title VII) and the posting of the January 13, 1969 seniority list.

(b) Reputation

This history and the lack of Negroes among Roadway's line-haul driver complement prior to 1968 strongly suggests the conclusion that the company did not welcome Negro applicants for line-haul positions. That conclusion has been drawn both by qualified Negro over-the-road drivers who have considered applying for such positions with Roadway and by Roadway employees who have approached company officials with questions about opening up over-the-road jobs to Negroes.

In Atlanta John T. Johnson, a Negro garage employee qualified to be a road driver, approached the driver superintendent in 1966, on behalf of several Negro employees interested in road jobs, to verify a rumor that Roadway was beginning to hire black line-haul drivers. He was told by Mr. Sims that the company wasn't hiring any then, but that if they did, Johnson would be the first to know. He heard no further from company officials about road driving opportunities (Johnson, p. 17-20). A Negro city driver in Memphis similarly approached the district safety manager to ask when Roadway would start hiring Negro road drivers (Martin, p. 14-15; Rogers, p. 19-20). See also McCoy, p. 13-14 and the section on transfers, infra.

Negroes employed as road drivers for other firms have avoided applying at Roadway until they had some reason to believe that the company would

now hire Negroes where it had not in the past. See, for example, the experience of Peter Mitchell in Cleveland, supra.

(c) Subjective Standards

Roadway's system for hiring road drivers fosters racial discrimination by allowing low level managerial employees (all white) to exercise complete discretion, using subjective standards, to reject qualified Negro applicants.

Roadway has a decentralized system of hiring over-the-road drivers, as it does for virtually all non-managerial positions. As a general rule, line-haul drivers are hired only at points where a driver-domicile is established (Rogers, p. 17; McCoy, p. 25-26). Responsibility for recruiting, screening, evaluating, and hiring applicants is primarily in the driver superintendent at each domicile, who now usually reports directly to the district manager rather than to the manager of the terminal where he is stationed (Burns, p. 16, 19, 32, 88; Sims, p. 5; Ware, p. 107; Patterson). At least at Cincinnati, however, the road driver superintendent until recently was a subordinate of the terminal manager (Burns, p. 37). Where there are only a few road drivers stationed, the terminal manager or other local operations personnel may supervise them and be responsible for hiring new drivers when necessary (Rogers, p. 15).

The Akron General Office and intermediate administrative personnel control the number of new drivers hired rather closely. Under special circumstances the Employee Relations Department, division vice presidents, and district managers, must approve the hiring of any additional road drivers (Ware, p. 65; see also memorandum from Schrank to Leary, April 24, 1969, in files on August 1969 Change of Operations). In instances where the general office has not limited the number of drivers that may be hired, however, the driver superintendent is free to select his own personnel and put them to work. It is rare if not unheard of for his supervisors to question his decision to reject an applicant, whatever the reason for rejection. Roadway has no procedure at all for determining whether driver superintendents are indeed hiring "the best qualified applicants."

Decentralized hiring of road drivers leads to variation in local practice regarding handling of job inquiries or applications. The driver superintendent may delegate some of his responsibilities for screening applicants to other personnel. The driver superintendent at Harrisburg, when he was deposed in July, had an assistant who shared screening and hiring responsibilities (Ware, p. 9, 20-23). Where there is no driver superintendent, the terminal manager may designate someone to interview line-haul driver applicants (Rogers, p. 15). At some locations, responsibilities for hiring road drivers are sometimes delegated to the driver

foremen (Ware, p. 61). Under usual circumstances, the foremen may conduct initial interviews and hand out application forms, although applications are reviewed by the safety supervisor or driver superintendent (Ware, p. 20; Rogers, p. 49-50).

Because the over-the-road operations are kept administratively separate from the local terminal operations at those places where large numbers of line-haul drivers are domiciled, a walk-in applicant for a road job may encounter first some terminal official who has no authority to hire road drivers. There is no established procedure for calling such a person to the attention of the driver superintendent, or for forwarding to the superintendent those applications received in terminal operations offices which show line-haul driving experience sufficient to meet Roadway standards (Ware, p. 91). Similarly, there is no established procedure for referring a man who applies at one location where no line-haul drivers are then being hired to another location where they may be (see, e.g., Rogers, p. 17, 18; and the experience of employees with road driving qualifications at terminals where there is no road operation, e.g., McCoy, p. 12-16, 25-26; George Salazar and Lorenzo Robertson, Houston).

When the line-haul driver applicant makes his interest in a job known to someone at Roadway, he may or may not be given an application to fill out. He may simply be told that that particular location does not need drivers (Boggs, p. 6-7; William Herter).

One unsuccessful Negro applicant finally wrote to the Akron General Office to obtain an application blank after he had requested a form from the Atlanta, Winston-Salem, and Ashville offices and they didn't "seem to have any" (Burke Smith, letter to Akron General Office, about April 1967).

Once an applicant has completed a Roadway application form and submitted it to a Roadway official he may be disqualified at any step of a further screening process. If he is hired, he will have undergone one or more interviews, a practical driving test and written tests, a physical examination, and telephone checks or other investigation to verify the information he provided in his application and interview. Again the procedures followed as to timing of each step and the weight attached to each portion of the screening process vary from one location to another (see e.g., Ware, p. 21-22; Rogers, p. 22-24; Burns, p. 227). At some locations part of the screening responsibilities are delegated; the practical road driving test, for example, may be given by the driver superintendent, his assistant, the safety supervisor, a driver foreman or a line-haul driver (e.g., Ware, p. 22-23; Sims, p. 55-57; Rogers, p. 27).

If a person applies on a day when road drivers are not being hired, his qualifications may never be considered unless he happens to reapply at a later time when there are vacancies to be filled. Mr. Belcher testified that he does not review earlier applications on file but considers only those persons who apply on the days he is hiring.

In selecting new hires Roadway officials say that they apply standards somewhat higher than the driver qualifications required by the federal government in its regulation of motor carriers (see 49 C.F.R. Part 391). Roadway's stated requirements are set forth in the Roadway Manual at I pp. 45, 46. It is clear, however, that the basic standards have been "bent" in many instances. Mr. Ware, for example, testified that the requirement of one year's experience on the type of tractor and semi-trailer equipment Roadway uses on the road could be "bent" if the applicant shows on a road test that he can handle the equipment well (e.g., Ware, p. 54-55). Similarly, a person need not be familiar with the specific type of transmission in the tractor used to road test him (Ware, p. 22, 23). If he does handle the particular equipment used on the test satisfactorily, he is assumed qualified to handle the other types of equipment used over-the-road, regardless of differences in transmission (Rogers, p. 41). If a driver has experience with gasoline tractors and semi-trailers, he is not disqualified for lack of diesel experience (Ware, p. 55). Lack of experience in all kinds of weather does not necessarily disqualify a man (Ware, p. 38). If he has had some special training, the practical experience requirement may be disregarded (Ware, p. 44, 54; memoranda from W. A. Cutler to A. G. Belcher, August 29, 1966, and from Belcher to Cutler, September 2, 1966).

It apparently is a matter of discretion with the individual evaluating an applicant whether the applicant must be qualified or disqualified on the basis of driving ability shown on the initial road test. At Cincinnati and Harrisburg the applicant might be given a second test after he had taken a "student trip" or otherwise practices the driving skills needed to qualify (Burns, p. 189; Ware, p. 60-61). Mr. Ware testified that the majority of Harrisburg applicants who have failed the road test "had two shots at it" (Ware, p. 26). Mr. Sims and Mr. Patterson stated however that applicants at Atlanta and Memphis are not given a second road test (Sims, p. 56).^{15/} The extent to which the decision of the person evaluating an applicant's practical driving ability is reviewed also varies from place to place. Mr. Sims discusses with his driver foremen their recommendations about an applicant's qualifications, but has never overruled their evaluation (Sims, p. 57). At Harrisburg several evaluations are pooled in making a decision (Ware, p. 22).

A driver's physical qualifications and "past history of safe driving," two of the "specific hiring standards" mentioned in the Roadway Manual,

^{15/} Files of road drivers hired at Memphis indicate that drivers who did poorly on the test have been given an opportunity to improve on a student trip or during their probationary period.

are particularly susceptible to subjectivity when applied to individual applicants. Mr. Burns testified that he "wouldn't want to pin down" any specific frequency of accidents that would disqualify. "It'd have to be on an individual basis" (Burns, p. 178; Sims, p. 52, 81-82). The chart in Appendix C lists some white line-haul drivers hired by Roadway in spite of questionable safety records. The chart in Appendix D illustrates instances where Roadway's physical condition standards have been "bent" in hiring white line-haul drivers.

(d) Recruiting

The discretion in hiring road drivers extends also to methods of recruiting road drivers. Predictably, the white officials exercise their discretion by turning to white sources when they need new road drivers. About the only generally used recruiting device is word-of-mouth notice of the need for road driver applicants given to road drivers already on the payroll (Burns, p. 104; Sims, p. 20; Ware, p. 75). Roadway's heavy reliance upon their present employees to spread the word that the company has road driving vacancies insures that many of the applicants who hear about vacancies will be personal acquaintances of employees. Of the 750 personnel files of currently employed road drivers which were examined by plaintiff during discovery and which include all drivers hired between July 2, 1965 and March 1969, 446 (59 percent) drivers had indicated upon their applications that they had friends or relatives at Roadway. With a

road driver force virtually 100 percent white until June 22, 1968, Roadway's reliance on employee referrals, without using other sources as well, was inherently discriminatory.

Although Mr. Burns testified that it is "difficult to find qualified road drivers of any type, color [sic] or otherwise," he did not discuss with other supervisory personnel possible methods by which they could locate qualified Negro drivers (Burns, p. 36). Only Dennison, Texas (employing one road driver in 1968), and St. Louis (employing 78 road drivers) mentioned on the terminal manager questionnaire that they have ever notified a minority group organization of vacancies for road drivers.

Mr. Sims testified that he notifies officials of the union local at Atlanta of his road driver vacancies, and the persons hiring road drivers at Cambridge, Nashville and Chattanooga apparently use the union as a source (Sims, p. 19; questionnaires).

Mr. Sykes of the Employee Relations Department has "suggested" to persons in the field a method of newspaper advertising in several cities and initial screening of applicants by telephone, which would broaden the range of qualified applicants made aware of employment opportunities at Roadway (Sykes, p. 54-55). Nevertheless, only three of the terminals employing road drivers indicated on the August 1968 questionnaire that they use newspaper advertising to recruit road drivers.

Mr. Sims, who supervised over 280 road drivers in February 1969, testified that he has never used newspaper ads (Sims, p. 23), and Mr. Burns said the use of newspaper ads in Cincinnati is "rare" (Burns, p. 104).

3. Discriminatory Refusals to Transfer Negroes

The continuation of Roadway's line-haul driving force as a segregated job classification is buttressed by the company's refusal to allow Negro employees in racially integrated classifications to transfer to road driving jobs. Many white employees have been allowed such transfers. Such transfers would be "promotions" for almost all Roadway city drivers, if judged on the criterion of increased earning power. The disparity in earnings between city and road drivers is illustrated by the chart in Appendix E which compares 1968 earnings of the two groups in Memphis. Roadway has characterized the transfer to road driving as a promotion or advancement. An Employment Evaluation Survey (January 29, 1967 to August 12, 1967), which was prepared by D. M. Gunn and submitted to the Post Office Department, listed white employees at the Cleveland and Toledo terminals who had been "promoted" from city driver to road driver.^{16/}

a. Denial of Transfers to Negroes

Atlanta

William E. Bing, a Negro qualified for over-the-road driving, has been a regular city employee for Roadway in Atlanta since 1964. On numerous occasions since he has worked there, he has spoken with company officials about the possibility of his obtaining a road-driving job. He spoke with one Roadway official, Mr. Sims, about 1964 and was told that Sims was not hiring any Negro road drivers but that "he planned to hire some" (Bing, p. 20). When

^{16/} See also memo from P. J. Rooney to H. A. Sykes, dated March 14, 1962, on "upgrading" P & D drivers to Road Drivers; Gunn, pp. 39-46, 54.

he persisted in his inquiries to Sims and asked to fill out an application at times he knew road drivers were being hired, Sims attempted to discourage him and finally said that Bing would have to resign before he could be considered for a road job (Bing, pp. 21-22; cf., Sims, pp. 98-100). An Atlanta terminal official, Mr. Derryberry, also told Bing that Roadway was going to hire some Negro road drivers, "but he didn't know when" (Bing, p. 24). Derryberry and other Roadway officials told Bing that the matter was outside their jurisdiction and that they could do nothing to help him (Topping, p. 75). Bing was never given an application to fill out for a road job.^{17/} The Atlanta terminal manager testified that when Bing asked to become a road driver "I think I advised him that if he wanted to change into the road driver classification it was a separate seniority list; that it would be necessary for him to abandon his local seniority and then re-apply for a road driving job" (Deese, p. 128).

Once during the time that Bing was attempting to obtain a road job, he and two other Negro employees, John Johnson and Wesley Shorty, went to Sims' office together to inquire about road jobs. The men decided that Johnson, who is an experienced road driver now working as a garage employee in Atlanta, should speak to Sims alone first. Johnson asked Sims if the company

^{17/} Mr. Bing had stated his interest in road driving on applications he filed with Roadway before he was hired in 1964, but was apparently not considered then for a road job. Mr. Bing has filed suit under Title VII of the Civil Rights Act of 1964 against Roadway Express, Inc., in the Northern District of Georgia (Civ. No. 11, 144), alleging that defendants have denied equal employment opportunities to Negroes. The action is still pending.

was hiring any Negro road drivers and was told no, but that Johnson would be the first to know if they did (Johnson, pp. 19, 32, 48). On another occasion Johnson approached the terminal manager on the dock "asking to transfer into the road classification," and the terminal manager told him "that it would be necessary for him to abandon his seniority and be considered for re-hire in the road operation" (Deese, pp. 129-30).

Memphis

Before January 1968, there were no road drivers domiciled at the terminal in Memphis. White employees working as city drivers in Memphis had been told by the terminal manager, however, that he would recommend them as road drivers if they wanted to apply for road jobs in Atlanta (Brewer, p. 13).

When they learned that the company was beginning a road operation in Memphis about the first of 1968 and accepting applications for line-haul driving positions in Memphis, a number of city drivers, white and Negro, attempted to apply for such positions. They were told that no applications could be accepted from Memphis city drivers (Haynes, pp. 5-6; Martin, pp. 14-15; Brewer, p. 5; Sparks, pp. 15-16; McClore, p. 18; Weeks, pp. 5-6). Some of the white drivers inquired of Roadway terminal management personnel (all white) privately and were told that white city drivers could not be permitted to go on the road because if they were, Negro city drivers could "force their way on the Board also, and that we had a

sleeper operation in Memphis and that just wouldn't be a desirable situation" (Sparks, pp. 17-18; see also Weeks, ^{18/} p. 5; Haynes, p. 8; Brewer, p. 6).

Although only about 20 percent of the Memphis city drivers are Negro, 7 of the 10 top positions of the 1968 seniority list are held by Negroes. Two of these men, Robert Martin (#10 on the list) and Willie McClore (#8 on the list), testified that they had asked for road driving applications or tests and had been refused.

Laurel

Walter L. McCoy, a city driver at the Baltimore-Washington terminal (Laurel), spoke to several Roadway officials in 1963 or 1964 about the possibility of getting a road job. His first conversation was in 1963 with the terminal manager, who told him that he would have to "relocate some place else" but did not specify where (McCoy, p. 13). When the Harrisburg terminal was hiring road drivers McCoy asked Mr. Snelson, a Roadway district official, and Mr. Krosnowski, the terminal manager at the time, about getting on as a road driver there. Both men told him that the company did not hire colored road drivers, and Krosnowski advised him to "stop beating [his] brains out" in attempts to obtain a road job (McCoy, pp. 13-14).

At the times Mr. McCoy inquired, no road drivers were domiciled in Laurel. A white casual, P. J. Hefflefinger, who had begun working at Laurel about a

^{18/} Another white employee, who was a union steward at the time, spoke about road driving opportunities to several Memphis supervisors on behalf of the city employees and was told by one of them, "If it wasn't for the race situation, I am sure some of these boys would be given an opportunity" (Moffitt, p. 10).

year after McCoy did was made a road driver operating out of Harrisburg on April 25, 1966, about the time McCoy was inquiring about such a job (McCoy, pp. 14-15; Richardson, p. 77).

b. Granting Transfers to White Employees

White employees in various job categories at Roadway have moved to road driving jobs during the same period when Negroes have been denied this opportunity. Roadway has afforded white employees this opportunity in four ways.

First, in several northern terminals where there are either no Negro city drivers or very few Negro city drivers Roadway follows procedures, such as merged city-road seniority lists, under which city drivers may transfer to the road and vice versa. Some of those terminals and the racial composition of their city and road driving forces as reflected on the 1969 IBM print-out are:^{19/}

	<u>City Drivers</u>		<u>Road Drivers</u>	
	<u>W</u>	<u>N</u>	<u>W</u>	<u>N</u>
Cleveland	39	1	6	0
Columbus ^{20/}	24	0	--	--
Harrisburg	48	1	121	1
Toledo	24	0	42	0

(see testimony of Turner, Schrank, Ware). White employees who have taken advantage of this opportunity include James Rovito, Toledo; Joseph F. Bernardo, Cleveland; Raymond Hall, Toledo; Dominic Staccone, Toledo.

^{19/} South Bend (12 white and 0 Negro city drivers) had a merged seniority list when it had a road operation. Memo from J. B. Gentry to F. J. Schrank in District XIV change of operation file. New Haven, where there are two Negro city drivers (Bogan and Neal), apparently had a merged seniority list before its road operation ceased. Bogan and Neal were road drivers during part of that period.

^{20/} The IBM printout for Columbus lists the road drivers under the city driving code number.

Second, Roadway has allowed white employees to resign as city drivers or switchers and almost simultaneously be rehired as road drivers. Ronald Rife, a white city driver in Harrisburg (prior to the adoption of the merged seniority list), testified that before he resigned as a city driver he was guaranteed a road driving job (see also Ware, pp. 67-71). Some examples of this practice are listed below:

Merle Owen Tjaden, Toledo	
applied for road driving job,	6-27-68
resigned as city driver,	7-13-68
hired as road driver,	7-13-68
William Franklin Kaylor, now in Memphis	
resigned as city driver,	4-5-57
hired as road driver,	4-2-57
Victor Roberts, now in Memphis	
resigned as city driver,	10-31-62
hired as road driver,	11-2-62
Ronald P. Rife, Harrisburg (See Ware depo., pp. 67-71)	
resigned as driver-checker,	5-10-67
hired as road driver,	5-13-67
Lloyd Albert Trask, Toledo	
applied for road driving job,	6-27-68
resigned as city driver,	7-13-68
hired as road driver,	7-13-68
Jimmy H. Wright, Winston-Salem	
resigned as switcher,	2-18-68
rehired as road driver,	2-20-68
Paul L. Miller, Winston-Salem	
casual city driver,	1966-1967
road driver,	July 1967-January 1968
city driver,	January to May 1968
resigned as city driver,	5-10-68
hired as road driver,	5-10-68

By contrast, in Memphis the opportunity was not offered at all, and in Atlanta Bing and Johnson were told they would have to relinquish all job seniority before being considered for a road job.

Third, Roadway has allowed white city drivers to become road drivers after they had left Roadway to work for other firms. Those persons include Richard George Fields, Akron; Jack Boyd Brown, Memphis (discussed, supra); and Wilfred E. Bridges, Winston-Salem.

Finally, Roadway has given road driving jobs to whites who had been employed at Roadway as casuals working in the city. These persons include:

1. Ollie Clyde Haislip, Nashville

2. William Lee Cooper, Toledo

(Mr. Cooper was also a city driver for another trucking firm in Toledo at the time Roadway hired him on the road.)

3. Frederick C. Sherman, Toledo

4. Winston F. Green, Memphis

5. Floyd G. Gatewood, Cincinnati

6. George J. Pohlman, Cincinnati

7. Edsel Picklesimer, Harrisburg

8. P. J. Hefflefinger, Harrisburg

9. Sydney V. Bromhall, Dallas

(formerly casual city and road driver)

C. Roadway Discriminates Against Negroes in Hiring Practices in Other Jobs

1. Granting Absolute Discretion to Terminal Officials who Applied Subjective Standards to Reject Negro Job Applicants.

(a) Discretion and Standards

The system of hiring new employees invites racial discrimination and at the same time insures that top Roadway management will not review discriminatory rejections of Negroes. Roadway sets general standards for employment and gives its all white terminal officials wide discretion in applying them. Decisions to hire receive some review by the Akron General Office, but that office is not even informed of decisions to reject applicants.

Here, we first show the extent of discretion and subjectivity involved in deciding whom to hire and then discuss specific refusals to hire Negroes.^{21/}

The Roadway terminal manager is responsible for the hiring, training, disciplining and discharging of subordinate personnel (Roadway Wage & Salary Manual, p. 2 Chapin, p. 4-5; Faires, p. 13; Hassan, p. 41). The terminal manager may delegate this responsibility to other supervisory personnel (Roadway Wage & Salary Manual, Chapin, p. 15-16; Faires, p. 17-18; Joe Hall, p. 15; Hassan, p. 52; Karlberg, p. 20; Turner, p. 33; Richardson, p. 21, 58). District, division and general office officials are responsible for the hiring, training, disciplining and discharging of personnel subordinate to them (Roadway Wage & Salary Manual).

^{21/} We omit any further discussion of road drivers.

The Roadway manual outlines minimum hiring standards for all employees (Page I-45),^{22/} and specific hiring standards for administrative, office and clerical, road and city drivers, dock employees, garagemen and mechanic helpers and mechanics (p. I-45-47). These specific hiring standards generally deal with age, educational, physical, experience and availability to work factors and little, if any, interpretation of them is necessary in order to determine if an applicant satisfies them. No specific hiring standards are set

22/ Minimum Standards

- 1) Ability to perform the work requirements of the particular job vacancy.
- 2) Good personal character and integrity.
- 3) Good health and physical condition and ability to meet specific physical requirements as may be applicable.
- 4) Neat and clean personal appearance.
- 5) Honorable discharge if a veteran.
- 6) Free of felony or undesirable arrest record.
- 7) Has telephone or has telephone easily available.
- 8) Meets or exceeds established "norms" on tests.
- 9) Financially responsible-not subject to garnishment.
- 10) Employment would not conflict with company policy regarding employment of relatives.
- 11) Satisfactory record of prior employment.
- 12) Compatability with present employees and/or members of the public with whom the individual might come in contact with in the course of immediate or future employment.

out for supervisory or management personnel except as they are classified as administrative, office or clerical employees, and for these positions the only standards are a high school education, potential ability for advancement and between 17-50 years of age (18 preferred).

The Roadway manual does not interpret the general minimum hiring standards. The person responsible for hiring has absolute discretion in the application and interpretation of these minimum standards and in making slight variations from the standards (J. Wilson, p. 30; Sykes, pp. 21, 49; Faires, p. 90; Johnston II, pp. 60-61; Geis, pp. 29-30, 73). The Roadway manual does contain a section captioned qualifying and disqualifying requirements and factors (p. I-52).^{23/} However this section

23/ Qualifying Requirements - No commitment regarding employment is to be made before:

- a) References have been checked and previous employers in the area have been checked.
- b) Any lapse of time between periods of employment have been satisfactorily explained.
- c) Applicable tests have been graded and/or reviewed to determine whether minimum company standards are met.
- d) For sales and supervisory employees, the applicable retail credit reports are received as well as replies to reference inquiries sent to prior employers located outside the local area.
- e) Specific prior approval is received from the Employee Relations Department regarding applicants previously employed by the company.

Footnote continued on following page.

does not guide the hiring officer in his consideration of the specific hiring standards but rather supplements them. There are no standards set out for the use of these "qualifying and disqualifying" requirements and their interpretation and use is left to the absolute discretion of the hiring officer (J. Wilson, p. 30; Sykes, p. 21, 49; Faires, p. 87, 90; Richardson, p. 25; Hill, p. 44, 46, 47; Hassan, p. 32, 52, 70, 75; Chapin, p. 41-2).

23/ Footnote continued from preceding page.

Disqualifying Factors:

- a) Employment would result in violation of the company's policy regarding the employment of relatives.
- b) Inability to give satisfactory reasons for leaving previous places of employment.
- c) Prior earnings substantially in excess of the amount now considered acceptable in the absence of justified reasons, such as, moving from a high wage level area to a low wage level area, etc.
- d) Record of frequent job changes.
- e) Unexplained gaps in employment.
- f) Involvement in domestic difficulties.
- g) Claims on the part of the individual that he/she "has reformed".
- h) Attempts to falsify or cover up matters of record.
- i) Tendency to blame others for their own mistakes and/or failures.
- j) Representing reasons for leaving prior employers as being inability to agree with company policy and/or the existence of personality clashes.
- k) Boasting as to abilities.
- l) History of frequent personal injuries and/or illnesses.

The presence of unreviewed discretion within the "hiring" offices has also led to the embellishing of the manual "standards" and "requirements" with local criteria. Such matters as availability of transportation, academic grades, cleanliness, background, good credit rating, character, ambition, motivation and neatness are but examples of the added criteria applied by hiring officers in making employee selections. (Greer; Chapin, p. 41; Craig, p. 19; Richardson, p. 25; Geis, pp. 29-30; Hassan, p. 70; Hill, p. 44).

The standards applied may vary from one applicant to the next or from one terminal to the next. This is clear from the testimony of such matters as whether an arrest automatically disqualifies an applicant (compare Hill, p. 44; Richardson, p. 25; Hassan, p. 32 with Johnston, II, p. 62; Deese),^{24/} financial responsibility (Faires, pp. 86-87, job history (Weir, pp. 37-38, Johnston, II, p. 71; Hill, p. 44), falsifications on the application (Johnston, p. 71; Faires, p. 90).

(b) Rejection of Qualified Negroes

(1) Office and Administrative Jobs

Roadway has provided some 15 applications of rejected Negro applicants for office and administrative jobs in 1967 and 1968. Most of the applications do not reflect the reasons for rejection. The following instances illustrate the manner in which Roadway officials exercised their discretion to reject qualified Negro applicants.

^{24/} Johnston said it depended on whether the offense was serious, but he could not distinguish serious from nonserious offenses (pp. 65-66).

William L. Lindsay, a retired Negro air force veteran with various vocational, administrative and clerical courses and 21 semester hours of college academic courses to his credit, applied for an office position June 17, 1966, at the Akron, Ohio terminal. He was not hired. Lindsay met the specific hiring standards as set out in the Roadway Manual for administrative, office and clerical employees (p. I-45), and examination of his application and employment record would indicate that he met or exceeded the "minimum standards" for all employees outlines in the Roadway Manual (p. I-45).

Lindsay was referred to Roadway by the Ohio State Employment Service which had been informed that a clerical position was available at the Akron terminal. An interview was arranged by a job counselor at the Ohio State Employment Service. Lindsay met with a Roadway official at the appointed time, filled in an application and took a battery of tests. The tests included a typing exam and a comprehensive multiple choice exam. Lindsay was not informed of the results of the tests other than that he was told he had done "real good" on them. The person administering the exam, after grading them, told Lindsay that he had to talk to the manager and that he would be right back to Lindsay. After waiting nearly an hour Lindsay was informed by this same person that the job was no longer available, but that Lindsay's name would be placed on top of the list and that he would be informed when there was a vacancy. He was never contacted by Roadway

even though Roadway records indicate that the Akron terminal hired at least 5 white male administrative-clerical employees from June 17 to December 31, 1966.

The Ohio State Employment Service job counselor, Mrs. Greer, upon hearing of the failure of Roadway to hire Lindsay telephoned Roadway for an explanation and was told: "Well, you know he's colored."

Neither Lindsay nor Mrs. Greer was given any indication that the failure of Roadway was grounded on his failure to meet "hiring standards or requirements". The Manual requires that if an applicant's employment history, education or test performance is not satisfactory he is to be told that "his qualifications do not meet the requirements of the particular job". (Roadway Manual, p. I-48). Lindsay was never so told.

Ronald Pittman was referred to Roadway's Akron, Ohio terminal in 1969 for a position as a network control operator. The basic qualification for this type position as related by Roadway to the referring agency was an ability to type 25 words per minute. Pittman, who had been tested by the Ohio State Employment Service on a typewriter at 37 words per minute, applied for the position and was given a typing test by Roadway. Pittman was informed that he had failed the typing test, doing only 12 words per minute. Roadway told the Ohio State Employment Service typing examiner that Pittman had only typed 12 words per minute and that a further reason for Roadway's failure to hire Pittman was his lack of an automobile or other adequate transportation means to get to a job at Roadway.

The ownership of an automobile or availability of other means of transportation does not appear as a hiring standard or requirement (Roadway Manual, p. I-45-46), nor does it appear as a disqualifying employment factor (Roadway Manual, p. I-52). On the same day the agency referred Pittman, a Negro, they referred a Caucasian, Jeremy Jurma, who was hired even though Roadway knew he had to walk two miles to and from work.

Lennox Bunday, a Negro seeking part-time work to supplement his regular income, responded to an advertisement calling for a dispatcher, full or part-time, at the Boston, Massachusetts terminal. Bunday telephoned the terminal and ascertained that the position was still open and arranged for an interview. After discussing with the Roadway official his experience and education (which reflected clerical, typing and teletype skills) Bunday was given an application. It was suggested to Bunday that because of his lack of dispatching experience and the presence of considerable office type experience in his record, it would be better for him to apply for a vacant billing clerk's position. Bunday did apply for a position as a billing clerk June 20, 1968 and was given several tests and interviewed for that position (Application of Bunday). Bunday was told that the basic requirement of a billing clerk was an ability to type and prepare bills of lading (Bunday, page 8). Bunday has had typing courses and worked in positions calling for the use of typing skills (Bunday, pages 16-17).

Bunday was given a battery of four exams calling for mathematics skills, word comparison, sentence structure, etc., plus a typing test (Bunday, page 9). Bunday was told his exams were okay, but he was not given a grade for them (Bunday, page 10).

Bunday was not told that the position was filled or that his qualifications did not meet the standards of the job (Roadway Manual, page I-48). The Roadway official that conducted the testing and interviewing of Bunday told Bunday that he would let him know about the job (Bunday, page 14). According to Bunday, Roadway was "hard pressed" to fill the job and he was to be informed shortly as to the status of his application (Bunday, pages 14, 15). He never was (Bunday, page 15).

The Boston terminal manager testified that a white applicant was hired as a billing clerk at about the time of Bunday's application (Karlberg, page 53). The white applicant, according to Karlberg, was "the most qualified applicant" (Karlberg, page 54), but his testimony does not reflect any reasons for this conclusion or for the failure to communicate to Bunday his rejection based on lack of qualifications. "At least eight administrative clerical positions were filled at the Boston terminal between June 20 and December 31, 1968 with white male employees.

Shedrick Mitchell, a Negro honor student majoring in Economics with emphasis in transportation at the University of Rhode Island and Bryant College, applied for an "office" job at the Providence, Rhode Island terminal in November of 1967 (application of Mitchell). At the time of making application for a job at Roadway,

Mitchell was majoring in transportation and was seeking a job in the freight industry relating to his major and to augment his experience in transportation (Mitchell, page 6).

Mitchell learned of an opening at the Providence Roadway terminal and telephoned Roadway and made an appointment (Mitchell, page 7). On the day of the appointment Mitchell went to the Roadway terminal and waited about 45 minutes for the interviewer to return to the office (Mitchell, page 14). When Mitchell was finally met by a Roadway official, he was taken into an office and given two exams, aptitude and mathematics (Mitchell, page 7). Both exams were administered in an office in which business was conducted, and people were coming and going, asking the official (who was monitoring the exams) questions and talking to him. Mitchell testified that the door of the office was left open, and that the flow of people in and out of the office and the noise from adjoining offices was disconcerting to him (Mitchell, pages 7, 8). Even though he felt that the Roadway interviewer was only "going through the motions", Mitchell filled out an application and discussed the position with the interviewer after completing the exams (Mitchell, page 8). Mitchell was never informed of his test results.

After completing the exams, the application and the interview, Mitchell was told that other persons were being screened for the position and that he would be "let know one way or the other" (Mitchell, page 15). Mitchell understood this to mean that the interviewer would

telephone him when a decision had been made as to whom to hire and would inform him whether or not he was to get the job (Mitchell, page 16). He was never contacted by Roadway (Mitchell, page 16). At least four administrative-clerical positions were filled by white persons at the Providence terminal in November and December of 1967 and January of 1968.

In only one of the above enumerated cases of Negro applicants was the applicant informed of his failure to meet Roadway qualifications (Pittman), yet the manual sets forth the requirement that unsuccessful applicants be told either that the position is filled or that they do not meet the qualifications (Roadway Manual, page I-48, no. 6). In none of the above cases is there any indication that interview notes were kept as required by the manual (Roadway Manual, page I-48, no. 7). In addition there is no indication that the employment screening process as set out on pages I-53-56 of the Roadway Manual was followed in any one of the above cases. None of the four applicants were advised of the Roadway management training program, and three of them (Bunday, Lindsay, Mitchell) appear to have the requisite educational and/or experience background that should entitle them to consideration for that program.^{25/}

^{25/} The management training program is not limited to college graduates (Geis, p. 29). There is no set number of persons to be hired for that program (May, p. 45; Sykes, p. 26-7). The application of Shedrick Mitchell for an office job while in college studying transportation is not unlike the application of Fred May while he was in college. The difference is that May was given employment as a billing clerk until his graduation and then entered the management training program under a prior agreement (May, p. 22-24). May is now a Roadway Division Employee Relations Manager and Mitchell has never been employed by Roadway.

(2) City Driving and Dock

Most of the evidence of discrimination against Negroes wishing city driving or dock job is detailed in the section on casuals. There is, in addition, evidence of summary rejections of Negro applicants for such jobs. Thus, the defendant provided some 15 rejected applications of Negroes for dock or city jobs in 1968, of which none showed any reason for rejection. Roadway rejected seven of nine referrals from the O.I.C. in Harrisburg without even screening them. Three Negroes at Waterbury were rejected without explanation (there wasn't even a retail credit check on two of them) (Johnston, II, p. 113-117; Harvey, p. 19; Freeman, p. 19; Arrington, p. 8).^{26/}

^{26/} These three Negroes were listed as casual employees on the Waterbury terminal questionnaire, but none of them was ever employed as a casual.

2. Discriminatory Selection of Regular Employees From Casual Pool

For the purposes of this section the term "casual" is used to denote a part-time or non-tenured employee of Roadway Express working in a job classification covered by a collective bargaining agreement (see Gunn, p. 155). Generally, such persons are used to fill in for absent "regular" employees (i.e., full-time union employees) and during peak periods. In general, the main source of new employees for the dock and local driving operations is the pool of casual workers (see, e.g., Weir, p. 67; Hill, pp. 26, 492; Chapin, p. 37; Derryberry, p. 44; Hasson, p. 90). Roadway discriminates in its utilization of this source by denying regular status to qualified Negro casuals.

The standards for, and qualifications of, new employees apply to casuals as well as regulars (see, e.g., Joe Hall, p. 40; Johnston II, p. 64). Thus, by definition, a person hired as a casual must be qualified to be a regular employee. The selection of casuals who are to be made regular is a subjective exercise performed mainly by foremen, dispatchers, operations managers, assistant managers, and managers (see, e.g., Weir, p. 64; Johnston II, p. 82; Hasson, p. 81). The precise method used varies from terminal to terminal but those

managerial personnel deposed all testified that they choose the "best qualified man" available. The statistics with regard to regular employees show that qualified Negro casuals have consistently been passed over for regular employment in favor of whites.

Negroes who worked as casuals for varying periods of time have been fired or terminated without reason or for reasons not based on objective criteria related to work performance or need. Qualified Negroes have been maintained as casuals while white persons with questionable records and qualifications have been elevated to the status of a regular. Standards have been "bent" so that unqualified whites could be made regular.

The discrimination against Negro casuals is illustrated by the examples which follow.

(a) Birmingham

In Birmingham the testimony by Negro casuals who were never made regular relates to 1966 (preceding this suit) and to 1968 (after the suit was filed). Mr. Weir has hired about 40 regular employees since he became terminal manager on June 19, 1966. He can recall hiring only three Negroes: Clinton Washington, Ronald Hatcher and Lee Burkes, (Weir,p55) all of whom were hired after this suit was commenced. Most of the regular workers were chosen from the casual pool (Weir,p67).

While the records are fragmentary, we know that since January 1965 at least 24 Negroes have worked as casuals, only three of whom were made regulars. 27/

The records leave to conjecture the question of why -- but for race -- one casual is promoted to a regular job while another is not. In 1966 there were at least nine Negro casual workers, including some who testified on deposition: Joe Louis Cammack, Elmer Jones, Willie H. Thomas, and Henry James Woodson. Each was qualified to perform the work. Roadway used each of them for 1-2 months, and then sent each a letter: "Please be advised that Roadway Express, Inc. no longer has a need for your services." No reason was given and the recipients knew of no reason why they should be fired. During the same period at least 3 white casual employees were made regulars: J.D. Watkins, G.H. Clifton, and W.G. Turner. Their qualifications -- especially in hindsight -- were

27/ The ones not mentioned in this brief are listed in appendix F to this brief, along with 7 other Negroes identified as disqualified casuals but whose files do not reflect when they worked.

questionable. Clifton, a city driver, had had two accidents before being hired and had a preventable accident on August 29, 1966 while working as a casual for Roadway. ^{28/} He was promoted to a regular the following week. Watkins, a friend of another Roadway employee, was promoted even though he had held 4 jobs within 4 years and had been arrested for suspicion of burglary. The following year he resigned as a result of suspected dishonesty. Turner was fired for dishonesty at the same time Watkins resigned. (see Weir, p. 40 ff).

In 1968 Roadway hired at least 34 drivers and checkers at Birmingham. Most of these were casuals who made regular. Shortly after this suit was brought, Clinton Washington, a Negro casual driver with a 1-A draft classification was made regular. Two months later he was drafted. After that two other Negroes -- L. Burkes and R.C. Hatcher -- were made regulars, but 6 Negroes were declared "disqualified" and were dropped. One of them, Dwight Moore, testified that when he asked his foreman, Tommy Tucker, why he had been disqualified Tucker told him he didn't know. (Moore, p.14). The application of another,

^{28/} The records of Cammack, Thomas, and Woodson reflect that none of them had had any accidents.

Jerry Bailey, notes that his prior employer "says very good worker."

As with other initial hires, the testimony shows that the decisions as to which casuals to promote was made solely on subjective criteria, was made without any review by Akron, and almost always resulted in giving white casuals preference over Negroes.

(b) Memphis

Of the 41 city drivers and checkers on the January 1, 1968 Memphis seniority list who had become regular employees since July 2, 1965, only 3 were Negroes. Since that time Roadway has promoted 19 more casuals (6 Negroes and 13 white) to regular jobs, mostly after commencement of this suit. The records reflect at least 59 Negro casuals at Roadway between 1966 and 1969 (see Appendix G). On August 5, 1968, Roadway reported it had twelve Negro casual employees (Terminal Manager Questionnaire). Since then only two of them have been made regulars (Claude Dell Elliott and Oscar K. Taylor). Three of the remaining ten testified as to their efforts to become regular employees (George C. Davis, H.C. Young, and Julius Britton). All were passed over in spite of their qualifications. Davis, who had 3 1/2 years

of college, asked for a promotion to O.S. & D. Clerks and was told there were no openings. A month later a young white man was hired for the job (Davis, p. 10).^{29/} Davis worked as a casual for four years, although the operations manager testified that casuals desiring steady employment would normally either be made regulars or be fired within two years (Hill, p. 26).

(c) Kansas City

None of the 77 regular employees at the Kansas City terminal are Negroes, nor can the terminal manager recall ever having a Negro regular employee since he began work there in 1958 (Crutcher, p. 52). At least six Negroes have worked there as casual employees (Terminal Manager Questionnaire). Two of them testified that they had worked as casuals there and had repeatedly requested promotions to the status of regular employees in about 1964 (Depositions of Lawrie and Ritchie). At least 25 white persons have been made regular dock or city employees since that time.

^{29/} Roadway has hired 4 white O.S. & D. clerks at Memphis since September 10, 1966, when Davis filled out his application as a dock worker. Three appear to have been hired since March 1967 when he asked for the O.S. & D. job. The white clerks and their dates of hire are: P.D. Elkins, 9/19/66; J.S. Kaley, 3/27/67; M.E. Sonney, 9/11/67; and J.B. Holmes, 10/29/68 (see Admin. Breakdown Sheet and IBM Printout).

(d) Louisville

Of the 41 employees at the Louisville terminal, 13 were hired as regulars since July 2, 1965. No Negroes became regulars between July 2, 1965, and the filing of this suit.^{30/} During this period, there were at the Louisville terminal at least 16 Negro casuals, four of whom testified.^{31/} During this period, too, the terminal manager felt obliged to bend Roadway's standards and hire white employees who did not meet them. In hiring a white dock worker who was bankrupt and had been convicted of reckless driving, the terminal manager explained:

I have had real problems getting what I feel are qualified men in the Louisville area. This problem is prevalent with most carriers in this area. It is my opinion that Van Meter represents the best I could find out of at least 20 applications and personal interviews. ^{32/}

^{30/} C.A. Richardson, a Negro, became a regular June 24, 1968, after at least 3 years as a casual. William A. Brown, who worked as a casual in 1967 and 1968, was made regular on February 4, 1969. See personnel files and PR 24s.

^{31/} The four who testified were Charles S. Doby, Aaron Fletcher, Alexander Hall, and Doc Eddie Kimes. The others are listed in Appendix H.

^{32/} Memo from Mr. Geis to Mr. Cutler, dated 11/2/66, from file of Willie Van Meter, hired 7/26/66.

Yet, the same week as Van Meter was made regular, Charles Spencer Body was working as a casual, as he had been since 1959 and continued to do up to this very year. Doby had requested on numerous occasions to be made a regular (Doby, p. 8). Even though he was considered qualified to work for Roadway 10 years as a casual his request was never honored. Two other Negro casuals (Fletcher and Kimes) were not made regular, apparently on the basis of convictions for involuntary manslaughter (one of which involved an automobile accident). During the same period white employees with criminal records were made regulars. 33/

(e) Harrisburg

Of the 225 persons listed as dock workers in Harrisburg, 137 were hired between July 2, 1965, and the filing of this law suit. Only 5 Negroes were made regulars during this time span. Three Negroes seeking permanent work testified that Roadway worked them as casuals for a few weeks in 1967 and then, without giving any explanation, stopped calling them in (Lowell M. Johnson, p. 10, 15; Christian Robertson, p. 23-26; Melvin Walker, p. 12-14).

33/ See, e.g., William Drone, who had an 8th grade education and drunk driving conviction; Clause Hopper, with an arrest for disorderly conduct and 3 accidents, one of which was chargeable; Carroll Richardson, with an assault and battery arrest; and, Willie Van Meter, supra.

3. Discriminatory Selection of Recruitment Sources

(a) College Recruiting

Roadway has conducted a college recruiting program, to recruit and hire college trained persons who have management or sales potential, for at least 11 years (Clapp, p. 10). During that entire time Roadway has not hired any Negroes through this program. Indeed, until 1968, Roadway had not conducted any recruiting visits to predominantly Negro colleges, and during the history of its college recruiting program since 1965 Roadway has made only five visits to Negro colleges, compared with 435^{34/} visits to predominantly white colleges. The evidence show that the all-white character of Roadway's college recruiting program results from the racially discriminatory method of selecting colleges to visit and of interviewing and selecting college recruits.

The college recruiting program offers college graduates opportunities for immediate training and advancement. Once hired, the college recruit is placed on a training schedule at one of the Roadway terminals for a period of 34 weeks to a year (Faires, p. 8). During the training program the new hire is classified a management trainee (Clapp, p. 42). The management training cycle consists of practical working experience in each or most of the job categories at a Roadway terminal. Having completed the training, the management trainee is next assigned a regular job in the Roadway operation, usually in sales or freight handling (dock foreman, dispatcher, sales representative). Many of the present terminal managers and

^{34/} Not included in this count are Mount St. Mary College, visited on 2/7/69; Capital Union, visited on 2/28/69; Tindlam College, visited on 2/11/69. We have no information as to their racial makeup.

middle management personnel at Roadway are graduates of the management training program (Johnston I, p. 12; May, p. 22-24; Turner, p. 7; Topping, p. 6; Geis, p. 13).

Most management trainees are recruited by Roadway officials making a visit to colleges and soliciting interviews with candidates and providing candidates with information about Roadway. After receiving applications and conducting interviews, a screening process is used by which the applicants are judged as to qualifications for employment. Other steps in the selection process usually include retail credit checks, aptitude testing and further interviews at a terminal location (May, p. 11, 12, 15, 16, 30; Clapp, p. 62, 63; Weir, p. 46; Johnston II, 60-72). Having satisfied those persons responsible for selection of management trainees with his capacity and qualifications, the applicant would be offered a management trainee position at a terminal (Johnston, p. 4-16; Geis, p. 27).

Until 1968 the college recruitment program was operated at a district and sometimes a terminal level (Sykes, p. 24; Turner, p. 37). The responsibility for selection of colleges to be visited and the person to conduct the interview at the various colleges was left to the district or terminal (Turner, p. 37). Recruiting was done by a district or terminal only for that district or terminal rather than for Roadway as a whole (Sykes, p. 24). In 1967 and 1968 the Roadway college recruiting program was altered by the designation of managers of employee relations for each division, to work under the direction of the Division Vice President (Clapp, p. 13, 16; May, p. 27; Sykes, p. 24). Among the duties of the Manager of Employee Relations is the

responsibility of directing and in large part conducting the division's college recruiting program (Clapp, p. 13; May, p. 28; Sykes, p. 24; Topping, p. 35). The substance of the system did not change, insofar as the lack of standards or central direction is concerned. The discussion which follows applies both to the old and the new system.

(1) Choice of colleges. The choice of which college to visit has never been controlled or reviewed by the Akron General Office (Turner, p. 38; Sykes, p. 28; Clapp, p. 29; May, p. 38), nor has Roadway formally adopted standards for choosing the colleges (Sykes, p. 27; Turner, p. 37). The testimony shows that the colleges are selected by all white personnel of Roadway who apply subjective and inherently discriminatory standards. They have based college selection on such factors as location, size, placement office activity, prior Roadway activity at that school, history of recruits from that school, curriculum and degrees offered (Clapp, p. 29; May, p. 38-39; Turner, p. 37). Both division employee relations managers acknowledged that in considering which colleges to conduct recruiting programs at, they considered what they personally knew of the college and what they might have heard about it (Clapp, p. 33-37; May, p. 38-41). They relied heavily upon whether or not the college had previously been visited by Roadway recruiters; if it had it was likely to be kept in the schedule of colleges to be visited (Clapp, p. 29; May, p. 39). Some of these standards are inherently discriminatory:

1. History of recruits from the school -- this could only lead to selection of white schools;
2. Prior Roadway activity at that school -- this excludes almost all black schools;
3. Personal knowledge of the school by the white Roadway managerial personnel -- this favors white schools.

The other standards are nebulous.

Appendix I lists the locations of colleges visited by Roadway recruiters and the locations of colleges with predominantly Negro student bodies not visited by Roadway. Examination of the chart will indicate the many instances of geographic proximity of the colleges visited and not visited. The fact that many of the predominantly Negro colleges are located in the same city or very near to the city where Roadway visited other colleges reflects either a policy of discrimination in college selection or a studied indifference to the existence of predominantly Negro schools.

Of the 181 schools visited since the school year 1965-1966 (excluding the 5 predominantly Negro schools visited in 1968-1969) the average percent of Negroes in the student bodies is 2.4 percent ^{35/} (see

^{35/} The following are schools visited; but due to lack of statistical information, they were not counted in the percentage of Negro students in student bodies: Southern Illinois University Edwardsville Campus; University of Missouri at Columbia, Fairleigh Dickinson at Rutherford and Lenneck; Niagara Union; Wisconsin State University at Oshkosh and Whitewater; The Defiance College; Lawrence College in New York; Wright State University; and State College of Brockport.

Appendix I). Fair selection of colleges would have brought the percentage closer to the 6 percent national average.^{36/}

(2) Selection of Recruits. The recruiters are not trained in the techniques of personnel management (see Clapp, p. 4; May, p. 4), but exercise complete discretion in selecting trainees (Clapp, p. 55-57; May, p. 63, 69; Sykes, p. 30; Topping, p. 35; Edward Hall, p. 37). A standard interview form (PR 25) may be used by the interviewer to judge characteristics of the interviewee, but there are no instructions or guides to its use and it is not always used (Clapp, p. 50-51; May, p. 53, 70). It is axiomatic that without guidelines and standards persons will vary in their evaluation of personal qualities: "One man's meat is another man's poison" (Chapin, p. 36-37). The form is replete with opportunities for various interpretations and scoring based upon the personality of the interviewer, and based solely on his discretion.

After the initial determination that Roadway is interested in an interviewee, the next step is consideration of the completed application (May, p. 56, 58; Clapp, p. 61) and a retail credit report may be ordered on the applicant (Clapp, p. 63). As in the initial interview there are no standards or norms to guide the review of the information found in the application and absolute discretion rests

^{36/} This statistic obtained from the Department of Health, Education and Welfare, 1968.

with the reviewer (usually since 1968 the Division Employee Relations Manager) (Clapp, p. 61; May, p. 63; Sykes, p. 30). Finally, the applicant may be invited to a terminal for further interviews. The Division Employee Relations Manager or District Manager conducting the terminal interview has the authority to offer a job to the applicant (Clapp, p. 65; May, p. 60; Topping, p. 35). It is thus possible for an applicant to be rejected at any of three stages in the recruitment program. No review exists for rejections made at any of these stages.

In this fashion, Negro applicants were interviewed at at least 5 predominantly Negro schools in 1968-1969, including 7 at North Carolina A & T and 3 at Winston-Salem State, yet none were offered employment. The records of the division employee relations manager do not indicate why the interviewed Negroes were not offered employment and the Employee Relations Manager could not recall the reasons (Clapp, p. 76; May, p. 79).

(b) The Non-Use of Minority Group Sources
for Employee Recruitment

1. Roadway has for years followed a deliberate policy of drawing employees from white but not Negro recruitment sources. Since 1965 Post Office contract compliance officers, in conducting fair employment compliance reviews at various Roadway terminals, have found the primary sources of employee recruitment to be employee referrals and walk-in applicants -- and the evidence in this case corroborates that finding. Reliance on these sources as the primary means of recruitment is discriminatory when used by a company that is virtually all white: Negroes are not likely to be referred by white employees of Roadway, and they lack access to knowledge that Roadway is accepting walk-in applications at a particular time.^{37/} Therefore the Post Office officials have urged Roadway officials at a local and corporate level to use minority group organizations as recruitment sources and have pointed out that such groups could be utilized to alleviate manpower shortages and to increase minority employment (Purefoy to Gunn, July 13, 1967 and June 9, 1967; Reffner to Jones, June 8, 1966; Spencer to Gunn, May 26, 1967). Roadway has insisted that even though its employment records reflect very low minority employment, even in cities of considerable minority population, it has no duty to take affirmative action

^{37/} Employee referrals are least apt to produce Negro employees in those job categories from which Negroes have been excluded in the past: road driving, office work, sales, and managerial or supervisory positions.

to change this pattern (Gunn to Lytle, October 17, 1967; Topping to Perry, May 23, 1966) and that it would not do so (Gunn to Lytle, October 17, 1967; Sykes to Spencer, May 29, 1967).

Even in those instances where the Post Office compliance examiner was able to reach an accord with the local Roadway terminal manager to establish contact with minority groups (Birmingham) the agreement was vetoed by the general office (Sykes to Spencer, May 29, 1967). Some terminal managers testified that they were given the names of minority group organizations in their cities by Post Office examiners during compliance visits. One manager (who used private employment agencies and the local union as sources of employees) testified that he did not contact the groups suggested by the compliance examiner (Chapin, p. 31) and another manager was not sure whether or not he had followed up on the leads suggested to him (Hassan, p. 100).

After this suit was filed in 1968 a questionnaire was sent to each Roadway terminal manager to elicit information about employment practices, including recruitment. An examination of the 128 questionnaires returned by terminal managers shows that 31 terminals reported job vacancies to minority group sources:

- 23 reported vacancies in office jobs.^{38/}
- 25 reported vacancies in dock jobs.

^{38/} The testimony of several terminal managers (Karlberg, p. 41; Hassan, p. 100) and minority group contacts (Hindler, Greer, Craig), suggests that these vacancies largely were for clerical help, not for supervisory office positions.

25 reported vacancies in city driving jobs.

2 reported vacancies in road driving jobs.

0 reported vacancies in garage jobs.

4 reported vacancies in other jobs such
as janitor.

Only six terminals reported filling a job vacancy through use of a minority group source. These terminals hired three office employees, three dock workers, one city driver, no road drivers, no garage and two other workers through minority group sources. Seventy-eight terminals reported using walk-ins to fill vacancies. Seventy-five terminals used present employees and 42 used local union halls to fill vacancies.

The questionnaires overstate the number of terminals which used minority group sources prior to filing of this suit. The Roadway General Office files containing copies of correspondence between terminals and minority groups reflect that of the 25 letters written informing minority groups of employment opportunities at Roadway 24 were written after this suit was filed. In addition, of the 31 terminals that indicated reporting job vacancies to minority groups, 7 did not report the name of the minority group as requested by question 3 of the questionnaire and 7 listed such groups as Snelling & Snelling, Local No. 413 Teamsters Union, Alabama State Employment Agency. While such groups may function somewhat as employment referral agencies they are not known generally in the community as minority group sources or organizations.

Any use by individual terminals of minority group recruitment sources appears to be in spite of, not because of, Roadway policy. The Roadway Manual lists various employment sources which may be used, but does not include in the list minority group organizations as "sources or methods" of securing applicants (Roadway Manual, p. I-43). The failure of Roadway to give direction to terminal managers in the use of minority group organizations is also attested to by the testimony of Roadway officials and terminal managers (Karlberg, p. 55; Chapin, p. 30-31).

Not one terminal notified a minority group source of Roadway's management training program, always seeking applicants (May, p. 46; Sykes, p. 27-28). A college degree is not a requisite for the management training program (Geis, p. 27).

2. There is evidence that in certain instances where minority group sources have been told of vacancies by Roadway that it was not a bonafide attempt to utilize such services. Harriet Hendlar in Boston, Massachusetts testified that after consultation with the terminal manager at North Reading he agreed to seek dock employees through her agency, the Massachusetts Commission against Discrimination. Mrs. Hendlar

testified that she thereafter tried on several occasions to contact Mr. Karlberg, the terminal manager, to determine if he had any dock vacancies. He was always unavailable when she called. Mrs. Hendlar testified that she had referred Negroes for similar positions in Boston and was confident that had Karlberg notified her of vacancies she could have referred qualified dock workers to Roadway.

Leroy Craig, the executive director of Opportunities Industrialization Center of Harrisburg, Pennsylvania, testified that after he initiated contact with Roadway's Harrisburg terminal he was never able to receive a resume of employment qualifications required by Roadway. Craig testified that he desired the specifications necessary so that he could make referrals of qualified applicants (p. 18). All that Craig received in the way of qualification specifications were "general" requirements such as "being able to do the work, being healthy, being able to come to work on time and this type of thing" (p. 19). Craig testified that his inability to get Roadway to define its employment qualifications gave him "nothing to structure a [referral] program to" (p. 21). The general employment qualities listed to Craig by Roadway were basic employment qualifications and the refusal to list the specific jobs classification qualifications made it impossible for Craig to make intelligent, realistic and appropriate referrals to Roadway.

There is testimony that Roadway asks minority group organizations to fill only the vacancies that are the hardest to fill by any employment agency, such as experienced teletype operators, key punch operators and female rate or billing clerks for night shifts (Hendlar, Greer). At the same time that Roadway is giving minority group organizations such job orders the company does not often give them the opportunity to refer applicants for dock and city and road driving jobs, semi-skilled office jobs or supervisory positions, jobs for which they could furnish applicants (Greer, Hendlar).

D. Roadway Discriminates Against Negro Employees In Affording Work Opportunities

Negro employees are treated differently from whites in ways which deny them equal work opportunities. The areas of this part of defendant's discriminatory activities are broadly four in number: promotions; transfers; terminations; and working conditions.

1. Promotions

Negro employees are not considered for promotion from the rank of bargaining unit employee (e.g., dock worker or city driver) to that of supervisory employee (e.g., dock foreman or city dispatcher).^{39/} Many white employees have been given such promotions,

^{39/} That such promotions are made is evidenced in the Employee Evaluation Survey submitted by defendant's Vice President in Charge of Employee and Labor Relations, Daniel Gunn, covering the period of from January 29, 1967 to August 12, 1967. During this period, according to the survey, ten such promotions (i.e., from a bargaining unit position to a supervisory position) were made at nine different terminals. All ten were white employees.

but no Negro ever has. Roadway has requested white employees to take such promotions, while during the same time period denying promotions to qualified Negroes who requested them.

(a) George C. Davis, a Negro with three and a half years of college education, began in September 1966 as a casual dock worker at the Memphis terminal and worked as such, never being made regular, for a year and a half (Davis, p. 3, 6). In March or April 1967 he applied to John W. Cook, the assistant terminal manager, for employment as an OS & D Clerk. Cook told him that none was needed. Davis testified that a white person was hired as an OS & D clerk one month later. Davis thought his name was "Sonny" (Davis, p. 9-10).

The terminal administrative breakdown sheet shows four persons as OS & D clerks and the IBM Printouts show that all four are white and that their dates of hire are:

<u>Name</u>	<u>Date of Hire</u>
P. D. Elkins	9-19-66
J. S. Lakey	3-27-67
M. E. Sonney	9-11-67
J. B. Holmes	10-29-68

(b) In 1968, Robert E. Martin, a Negro city driver, applied to John W. Cook for the position of dispatcher. At that time, Martin had been employed by Roadway for approximately thirteen years. His application was not granted. Martin made the same request to the terminal manager, John Fulk. This

^{40/} See also the statements of incidents concerning Nathaniel King and W.D. Flowers, and their depositions, which have not yet been transcribed.

request was also denied. Previously, a similar request was made to U. C. Jones, then assistant manager. Jones laughed and walked away (Martin, p. 2, 4, 9, 17-20).

(c) James L. Mabone, a Negro, was employed at the Memphis terminal from 1953 to 1966 as a city driver and dock worker. During this period he requested from his supervisors an application for the position of foreman. His requests were not granted. Finally, after seeing at least ten white persons, some of whom he helped train, receive such promotions Mabone resigned.

(d) John W. Brown, a Negro, testified that white dock workers and drivers at Memphis have been promoted to supervisory positions (Brown, p. 9). From about 1957 or 1958 until December 1965, the year of his discharge,^{41/} Brown desired a promotion from his dock and driving positions to OS & D or file clerk (J. Brown, p. 5, 9-10, 17). Because of the ratio of white employees to Negro and because of Roadway's hiring practices, Brown felt that it would be futile for him to apply for such promotion (J. Brown, p.18).

The evidence as to treatment of white bargaining unit employees at Memphis provides a contrast. One white city driver said that he and other white employees were asked by terminal officials to seek

^{41/} Brown was discharged from his city driver position, after being employed at Memphis for approximately fourteen years, for having an unauthorized person in his cab (J. Brown, p. 3, 5).

supervisory positions (Brewer, p. 20-23). Records from the Memphis terminal indicate that at least five white bargaining unit employees have been promoted to supervisory positions since 1965 (Personnel files of Woods, Klepzig, Shackelford, Reitano, Perry).

2. Transfers

We have already described the discriminatory refusal of transfers to Negro city drivers who wish a road driving job. The same pattern is found in other instances -- particularly where there are "Negro" (e.g., janitor or washer) and "white" (e.g., service lane of garage) jobs.

a. At the Winston-Salem (Kernersville) terminal, the garage operation is headed by John F. Healy, the Fleet Manager (Healy, p. 3). It contains the following seven departments: tractor (general repair); trailer; service (safety) lane; tire; wash (steam clean); motor rebuild; and, parts (Healy, p. 5). John W. Holloway manages the trailer shop, which includes the service lane and tire shop (Healy, p. 6). R. E. (Bud) Joyce manages the tractor shop (Healy, p. 6-7).

Negroes work only in the tire shop and steam cleaning departments ^{42/} (Healy, p. 48). Persons who work in these departments are classified as garagemen and, except for helpers in the

^{42/} Healy did testify that one James McLendon, a Negro, was a "B" mechanic in the motor rebuilt shop and that Mr. McLendon had been employed since about 1955 or 1956 (Healy, p. 51-52). However, his name does not appear on the July 1, 1969 garage seniority list (made plaintiff's Exhibit No. 1 for the deposition).

parts department, are the lowest paid employees of the garage department (Healy, p. 36-38).

The IBM Printouts (1966-1969) show a drop in the number of Negro employees:

<u>Year</u>	<u>Garage Employees</u>	<u>Negroes</u>	<u>Percentage of Garage Employees Who are Negro</u>
1966	118	13	11.0
1969	140	9	6.4

Theodore Price was hired in the tire department on April 27, 1964 and has been there ever since (Garage Seniority List, July 1, 1969). When he first started, there were five men in that department, all Negroes. There are now three Negroes and five white persons (Price, p. 5-7).

After the terminal was moved from Winston-Salem proper to Kernersville,^{43/} Price asked Jack Holloway if he could transfer into the service lane. Shortly previous to that time persons had been transferred from the service lane to the trailer department (Price, p. 10-11). Two of these persons were H. Preston, Jr., on May 27, 1965, and A. R. Shutt, on September 13, 1965 (Price, p. 10-11; Garage Seniority List, July 1, 1969). Mr. Holloway replied that there would be no more transfers (Price, p. 10-11). Since that time, new men, all white, have been hired into the service lane (Price, p. 14; Garage Seniority List, July 1, 1969).

At about the same time that Price was attempting to transfer, D. E. Binkley, a white man, requested a transfer to the grease pit of the tractor shop. He first went to Bud Joyce, manager of the tractor shop and then to Jack Healy (Deposition of Binkley).

^{43/} This move was completed after the effective date of the Act (Healy, p. 27).

Getting no satisfaction from these gentlemen he went to E. C. Long, then the shop steward. Mr. Long had two fruitless meetings with Mr. Joyce and then, along with a Mr. Durham, then the union business agent, had a meeting with Mr. Joyce and Mr. Healy (Deposition of Long). He was told that Roadway could not transfer Binkley because Price was senior to him and if Binkley were to be allowed to transfer Price would have to be also (Deposition of Long; Deposition of Binkley).^{44/}

William W. Brown, Negro, had nearly four years of college education at Johnson C. Smith University and at Carver College, both in Charlotte. He was employed at Winston Salem from April 4, 1969 until March 27, 1969. He spent the entire nine years in their wash department, his job being to steam wash the tractor trailers in order to remove the dirt which had accumulated on them during their use (Deposition of W. Brown).

Because of the nature of his job, Brown developed a recurring illness. He explained that this was due to simultaneous exposure to the heat of the steam and the cold night air. He attempted to transfer to another department in 1963. He approached Earl Landreth, a mechanic's foreman who referred him to Bud Hughes, then garage superintendent. His attempts were fruitless (Deposition of W. Brown).

^{44/} It was also said that Binkley had eyesight problems.

In 1969, Brown went to W. R. Calloway, assistant manager of the tractor department, and requested a transfer. Calloway told him he would have to take a test and Brown said he was willing to do so. Calloway replied that no tests were being given. Brown resigned shortly thereafter (Deposition of W. Brown).

b. Henry C. Young, a Negro high school graduate, began working at the Memphis terminal in October or November, 1967, as a casual janitor (Young, p. 3, 5, 9). He resigned that position in August 1968 because he was not earning enough money to make a living (Young, p. 9-10, 13).

While employed at Roadway, Young asked John W. Cook for a chance to be a dock worker. Cook replied that Young could not make it on the dock because he was too small and that Young should be happy with the position he had (Young, p. 12). Young was five feet nine and one-half inches tall and weighed about one hundred fifty-one pounds (Young, p. 12, 15). A cursory inspection of a few of the Memphis personnel files reveals the following information concerning white regular dock workers:

<u>Name</u>	<u>Date of Hire</u>	<u>Height</u>	<u>Weight</u>
James B. Nance	February 23, 1959	5'6"	160
Esker Keenum	October 11, 1965	5'7"	145
Deral F. Wall	February 27, 1967	5'11"	150
Freddie L. McMaster	July 24, 1967	5'6"	150
Carl F. Pulley	January 29, 1968	5'10"	155
Thomas W. Peyton	April 29, 1968	5'0"	172

Before coming to Roadway, Young had worked on the dock, handling freight, at Braswell Freight Line for about nine months (Young, p. 4-5).

c. James O. Stewart, a Negro, has been employed at the Birmingham terminal for eleven years as a janitor (Stewart, pp. 4, 5-6, 9). Previously, he was a dock worker for West Brothers and Hoover Trucking for a period of one year, off and on (Stewart, p. 4). In 1967 or 1968, Stewart asked Mr. Weir, the terminal manager, if he could transfer and become a dock worker. Mr. Weir denied this request, replying that the company did not hire anyone over thirty-five years of age, and that Stewart was too old. Stewart was forty-two at the time (Stewart, pp. 7-8). Within the next few weeks, J. S. Keeton, a white man 39 years old, was hired (Stewart, pp. 8-9; file of J. S. Keeton). Mr. Stewart, in 1965 when he was 40, had been ordered to move 3500-4000 pounds of carbon black which the dock workers refused to move. He finished the job in short order (Stewart, pp. 6-7).

3. Terminations

a. Roadway Express began operating the West Brothers facility in Selma in April, 1969. At that time, five Negroes were employed by West Brothers as checkers and city drivers. These men were the only persons so employed by West Brothers. Their names are: Edward E. Stubbs; Johnnie J. Callens; Timotheus Paries; Charles Morgan; and, Phillip Norris. Each of the Negroes employed by West Brothers at the time Roadway bought the facility was phased out of work by May, 1969. Their places were taken by white men, one of whom is named Louis Stone.

Callens was told that he and the other Negroes would be called back to work by Roadway once the West Brothers equipment had been moved off the facility. As of September 1969, this had not occurred.

b. Fred Williams, a Negro, was employed as a city driver at Memphis from 1964 to 1968. In January 1968, he filed a complaint with the EEOC based upon Roadway's refusal to hire Negro road drivers (and more specifically, upon their refusal to allow him to become a road driver).

Later that year, Roadway received a garnishment order for a 1966 debt. Williams informed Mr. Cook that the debt had been paid and that he had the cancelled checks to prove it. He was nonetheless fired. Williams paid the debt (\$93.80) for a second time and his attorney obtained a release from garnishment. This notwithstanding, Cook refused to rehire him.

c. Charles Washington, a Negro with three to four years experience as a dock worker, began as a casual dock worker at Nashville on October 27, 1967. On October 30, 1967, at the request of union shop steward, Turner Brim, he was given permission by his supervisors to leave work, because he was not a member of Local 480. On October 31, 1967, Washington transferred into Local 480 and called Bob Hazlett, the assistant terminal manager. Hazlett told Washington he was no longer eligible for employment, because he had left work on the 30th.

d. At the Nashville terminal Willie Ransom, a Negro casual dock worker, and Leonard Gibbs, a Negro regular city driver, were subjected to harassment by their white foremen. The harassment included denying them the use of tow motors to move freight, verbal racial hazing ("Are you related to Stokely Carmichael") and calling Gibbs to tell him not to come to work. In each case the assistant terminal manager condoned the actions of the foremen, and Ransom and Gibbs each lost their jobs.

e. The terminal manager himself resorted to similar tactics, in Louisville, in order to force the termination of a Negro employee, James Russell (see depositions of Evans and Russell).

f. Clifton L. Fulton, a Negro casual dock worker at Winston-Salem, testified that in July of 1968 he reported to work one day and was told that he had resigned when in fact he had not. He subsequently straightened this out with Mr. Flinchum, the assistant terminal manager (Fulton, p. 28-29). Later, in November of 1968, he was told when he reported to work that he had missed two or three consecutive days and as far as Roadway was concerned he had quit. Fulton attempted to explain that one of those days he was first called for work and then was called back and told not to come in but he got nowhere. He realized he would never be made a regular and this is how his employment ended (Fulton, p. 31-33, 37).

g. Bernard Taylor, a Negro who worked as a casual janitor in Akron, was terminated in July 1968. He was told he was fired because he was "overqualified" (see statements of incidents submitted February 3, 1969).

4. Working Conditions

The all white foremen and operation managers control many aspects of the driver-checkers' work, and in many instances they engage in discriminatory practices.

a. At Louisville those casuals desiring work report at the dock or the city operation and the Roadway official in charge chooses those whom he wants to work (Kimes, p. 12-13; A. Hall, p. 10-11; Doby, p. 16). Whites are chosen before Negroes and if Negroes get work, they get what is left over after the whites have been taken care of. This is true regardless of who reports for work first. If more workers are needed men are called at home (A. Hall, p. 10-16; Kimes, p. 12-13; Doby, p. 16-17). At Memphis and Nashville Negro casuals George C. Davis and Leonard Gibbs testified as to discrimination in calling casuals to work.

b. Julius R. Britton, a Negro, after his first day of work as a casual dock worker at Memphis was not told the procedure for reporting back to work. It was not until two weeks later that he learned from a friend that he would have to call Roadway to tell them when he was available (Britton, p. 7-9). Britton applied for full-time work but was never told by Roadway the procedure for becoming a regular (Britton, p. 4, 13-14).

c. Negroes at Winston-Salem (Carlton Huntley, p. 3, 5-8, 15-17, 23) and Memphis (Willie McClore, p. 31-32, 34, 36-38) testified that their foremen assigned them to heavier loads. When Huntley was

given an easy load a white dock worker asked what he was doing with a "white man's" load. Similarly, at Winston-Salem (Huntley, Fulton, Black, Plowden) and Nashville (Ransom, Gibbs) white dock workers get first call on the tow motor.

III. Relief

In a case such as this, "where an employer has engaged in a pattern and practice of discrimination on account of race, etc., in order to insure the full enjoyment of the rights protected by Title VII of the 1964 Civil Rights Act, affirmative and mandatory . . . relief is required." United States v. Hayes International Corp., 5th Cir., No. 26809, Aug. 19, 1969, (p. 14 slip op.). See 42 U.S.C. §2000e-6(b). Relief in cases such as this should be based on certain well-established principles.

First, the decree should insure that henceforth Roadway's practices will be nondiscriminatory. To insure this the Court should utilize the full and elastic resources of equity by fixing specific relief. 42 U.S.C. 2000e-5(g); Local 53 v. Vogler, 407 F.2d 1047 (5th Cir. 1969); Dobbins v. Local 212, 292 F. Supp. 413, 447 (S.D. Ohio 1968). In a case where discrimination stems in part from the exercise of untrammelled discretion in applying subjective standards and procedures, the specific relief should include the adoption of objective, reviewable standards and procedures for hiring and otherwise dispensing job

opportunities. United States v. Atkins, 323 F.2d 733, 745 (5th Cir. 1963); Local 53 v. Vogler, supra at 1053; Dobbins v. Local 212, supra at 447; United States v. Local 73, S.D. Ind., C.A. 1P68-C-45, Aug. 15, 1969.

Second, "the court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." Louisiana v. United States, 380 U.S. 145 (1965). This means that time worked in jobs open to Negroes should be given equal seniority status with time worked in white jobs. Local 189 v. United States, 5th Cir. No. 25956, July 28, 1969, p. 31. It also means that Roadway should be required to take affirmative action to apprise Negroes of job opportunities at Roadway. United States v. Local 73, supra.

Finally, the Court should provide for the monitoring of compliance with the decree, by requiring the maintenance of records and the submission of periodic reports. Dobbins v. Local 212, supra at 460-465; Alabama v. United States, 304 F.2d 583, 585 (5th Cir.), aff'd 371 U.S. 37 (1962) (per curiam).

A. Preventing Future Discrimination

The facts in this case demonstrate the need for an affirmative, specific decree against Roadway. In fashioning relief to prevent future discrimination we believe the Court should cover the following areas in its decree:

(1) Standards and Review. In every aspect of the case the proof shows discrimination arising from a lack of standards or procedures or of review of employment decisions. What is needed here is a decree requiring Roadway to:

(a) formulate fair standards and procedures as to recruiting, hiring, transferring, promoting or otherwise affording job opportunities. The procedures should include notice to present and prospective employees as to standards and application procedures; they should insure proper consideration of all applicants; and notification of rejections as well as acceptances. The standards should be no more stringent than those applied to white persons in the past.

(b) record the reasons for the action taken on applications.

(c) review at the district, division or General Office decisions as to rejections as well as acceptances.

(2) Discriminatory Practices. The decree should not only enjoin such discriminatory practices as excluding Negroes from road driving and managerial positions, but should also include affirmative relief requiring non-discriminatory recruiting practices. This means requiring Roadway to recruit at Negro colleges as well as white

colleges, to use minority group employment sources as well as employee referrals and walk-ins, and to use Negro as well as white recruiters.

B. Eradicating the Effects of Past Discrimination

First, the decree should include provisions requiring Roadway to provide those discriminated against the opportunity to transfer to jobs from which they have been excluded in the past. There are several such categories, and the relief should take into account the differences between them.

(1) In Memphis, both Negro and white holders of jobs in integrated city classifications have been discriminatorily denied an opportunity to apply for road jobs, as have Negroes in Atlanta and elsewhere. Discrimination against those individuals should be remedied by offering each of them the opportunity to qualify for the road job. Because Roadway failed even to examine the qualifications of many of these people at the time they sought road jobs, their qualifications now must be judged by the standards actually applied to Roadway's white drivers. Unless they are disqualified as judged by those standards, they should be made road drivers, with seniority for purposes of layoff, recall, and bidding on work assignments measured by the time of the discriminatory denial.

(2) Many Negroes presently employed by Roadway in integrated city and garage categories did not have the same opportunity at the time they applied for employment to be considered for road driving jobs as was afforded white persons. If they were qualified to be road drivers at the time they applied at Roadway, they also should be given an opportunity now to move to road jobs with the seniority rights they would now have if they had originally been employed as road drivers.

(3) Other Negroes have gained experience during their employment for Roadway which may have qualified them to become road drivers (e.g. city drivers). These individuals should now be given an opportunity, without being required to first resign their present jobs, to apply and be considered for road driver positions as those positions become available.

(4) Negroes in Negro or integrated garage jobs should be given similar opportunities to transfer to white jobs.

(5) Negroes who have been denied promotions to supervisory or office jobs should be given first opportunity to fill vacancies in such jobs.

(6) Negro casuals discriminatorily passed over for jobs as regulars should be given first opportunity to become regulars.

Second, the decree should require affirmative action to correct past discrimination by actively seeking Negro employees, particularly for road driving and supervisory jobs.

Third, those employees, casual and regular, as to whom the proof shows discriminatory terminations should be offered reinstatement, with full seniority. This includes the former West Brothers employees at Selma.

Fourth, those Negroes whose applications the proof shows were discriminatorily rejected should be offered jobs, with seniority as of the time of the rejection.

C. Record Keeping and Reporting

The decree should require records to be maintained which reflect the standards and procedures and their application. It should require periodic reports similar in form to the IBM printout of employees by race and job category and terminal and date of hire showing also transfers and promotions and terminations; the report should include a tabulation of this information.


IV. Conclusion

At the trial of this case the United States plans to present the proof outlined in this written opening statement. We believe that proof requires the entry of a decree along the lines presented in section III and in our letter of April 22, 1969.

Respectfully submitted,

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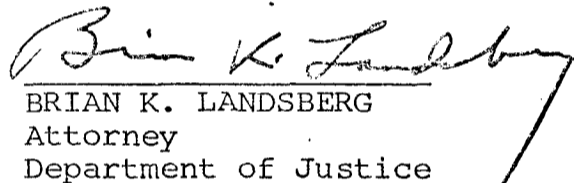

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CERTIFICATE OF SERVICE

I, BRIAN K. LANDSBERG, certify that I served the foregoing Written Opening Statement of the United States upon counsel for the defendant in this case by mailing a copy thereof by United States mail with postage prepaid to:

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This the 18th day of September, 1969.


BRIAN K. LANDSBERG
Attorney
Department of Justice

