

FILED MAY 31 1967  
A. DALLAM O'BRIEN, JR.  
CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF LOUISIANA  
NEW ORLEANS DIVISION

PAUL VOGLER, JR. and )  
CASIMERE JOSEPH, III )

v. )

McCARTY, INC., a Corporation )  
and LOCAL 53 OF THE INTERNATIONAL )  
ASSOCIATION OF HEAT AND FROST )  
INSULATORS AND ASBESTOS WORKERS, )

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

Plaintiff,

v. )

LOCAL 53 OF THE INTERNATIONAL )  
ASSOCIATION OF HEAT AND FROST )  
INSULATORS AND ASBESTOS WORKERS, )

Defendant.

CIVIL ACTION

NO. 66-749

CIVIL ACTION NO.

66-833

CONSOLIDATED CASES

CHRISTENBERRY, J.

The United States filed number 66-833 against Local 53 of the International Association of Heat and Frost Insulators and Asbestos Workers (hereinafter referred to as Local 53 or the union) on December 15, 1966, under Section 707 of the Civil Rights Act of 1964, 42 U.S.C. 2000e-3(a) & (b). The complaint was filed only after the Equal Employment Opportunity Commission had completed a thorough investigation of charges of discrimination by the defendant, had found

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reasonable cause to believe that the charges were true, and, having failed in its attempts to conciliate the matter, had referred the case of the Acting Attorney General. On the basis of the information before the Commission and further investigation by the Department of Justice, the Acting Attorney General determined there was reasonable cause to believe that the defendant Local 53 is engaged in a pattern and practice of resistance intended to deny to Negroes and Mexican-Americans their right to be free of discrimination in employment on account of their race, color or national origin.

On motion of the United States, the hearing on motion for a preliminary injunction was consolidated with that in Number 66-749, a prior action under Section 706 (a) of the Act, 42 U.S.C. 2000e-5(a) filed November 25, 1966, by three private individuals against Local 53 and two insulation contractors.

A full evidentiary hearing was held on these motions on January 19, 20 and 24, 1967, and the Court having considered the evidence, both oral and documentary, the stipulations of fact and the arguments of counsel now makes the following findings of fact and conclusions of law.

## I. FINDINGS OF FACT

1) The defendant Local 53 is a labor organization within the meaning of 42 U.S.C. 2000e-(d) which represents workmen engaged in the asbestos and insulation trade in the Southeastern portion of Louisiana, including the metropolitan areas of New Orleans and Baton Rouge, and some counties in the State of Mississippi. It exists for the purpose of dealing with employers on behalf of employees concerning terms and conditions of employment, including grievances, labor disputes, wages and hours of work. <sup>1/</sup>

2) The defendant Local 53 is engaged in an industry affecting commerce within the meaning of 42 U.S.C. 2000e-(e). <sup>2/</sup>

3) The defendant Local 53 effectively controls employment and training opportunities in the insulation and asbestos trade in New Orleans and Baton Rouge, Louisiana and the surrounding area. It is established by contract as the exclusive bargaining agent for all asbestos workers employed by every major insulation and asbestos firm in that territory. Although not by contract, in practice it operates a referral system at the Union office through which it either furnishes or approves each journeyman and helper hired by these contractors in the asbestos trade. Generally, workmen are sent to employers by the

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<sup>1/</sup> Testimony of Gerald W. O'Brien, Business Agent of Local 53; Constitution and By-Laws of the International Association of Heat and Frost Insulators and Asbestos Workers (gov't ex. 13); Collective Bargaining Agreements between Local 53 and the Master Insulators Association of New Orleans and Baton Rouge, Louisiana (gov't ex. 14 & 15).

<sup>2/</sup> Local 53 has more than 100 members and is recognized as the representative of employees of employers engaged in an industry affecting commerce.

defendant in accordance with the fluctuating needs of the contractors in the industry. When workmen are not available through the Union, contractors solicit men on their own but must send them to the Union for referral before placing them on a job. As there is no formal apprenticeship program in this industry, the sole opportunity for learning the trade is on the job training, available only to helpers working under the auspices of the defendant Local 53.<sup>3/</sup>

4) The defendant Local 53 pursues policies and practices which adversely affect the employment opportunities of persons on account of their race, color or national origin. These policies and practices and the conduct of the defendant pursuant thereto constitute a pattern and practice of resistance designed and intended to deny to individuals the full employment of their rights guaranteed by Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

- a. In that portion of Louisiana in which Local 53 exercises Title jurisdiction there are approximately 45,556 Negro males and 100,676 white males between the ages of 18 and 30.<sup>4/</sup>
- b. There are currently approximately 1,200 men employed as asbestos workers by contractors by contract to recognize Local 53 as the exclusive bargaining agent for such employees. Of

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<sup>3/</sup> Collective Bargaining Agreements (gov't ex. 14 and 15); Testimony of Gerald W. O'Brien, James Poche, Louis James Elliot, Harold T. Branton; Records of Union Referrals (gov't ex. 1).

<sup>4/</sup> Stipulation number four.

these 1,200 men, only 282, including 64 improvers (apprentices), are actually members of Local 53. The remainder are either members of other locals of the International Asbestos Workers Union (Travellers) or non-members working with union approval (permit men). Of these 1,200 men there is not one Negro, nor, within the membership of the defendant, are there any persons of Mexican-American descent. 5/

- c. The need for tradesmen in the insulation industry in this area is today nearly three times that which existed two years ago. In July of 1965, men affiliated with Local 53 worked a total of 58,690 hours; by November of 1966, that number had reached 160,548. 6/
- d. In order to be considered for membership in Local 53, an applicant must obtain written recommendations from three members. 7/
- e. In order to be accepted into membership an applicant must obtain the approval of a majority of the members voting by secret ballot at a Union meeting. 8/
- f. It is the policy of the defendant Local 53 to restrict its membership to the sons or close relatives of other members. Local 53 does not admit new men as mechanics, regardless of their qualifications. In the past four years the defendant has accepted 72 first-year improvers as members. Sixty-nine of these are sons or stepsons of members; each of the other three is a nephew who was raised by a member as his son. Only such sons are even considered for membership. 9/

5/ Testimony of Gerald W. O'Brien; Records of Union Referrals (gov't Ex. 1); List of Local 53 members (gov't Ex. 11); List of Current Improvers (gov't Ex. 16).

6/ Stipulation number one.

7/ Testimony of Gerald W. O'Brien; sample application for membership (gov't Ex. 17); applications for membership of Current Improvers (gov't Ex. 2).

8/ Constitution (gov't Ex. 13); testimony of Gerald W. O'Brien.

9/ Testimony of Gerald W. O'Brien; list of Current Improvers (gov't Ex. 16); stipulation number two; letter dated December 4, 1965, from Gerald O'Brien to H. H. Warthen (gov't Ex. 2).

- g. Aside from citizenship, age and physical fitness requirements the defendant Local 53 has imposed no qualifications or standards related to the trade upon persons seeking improver membership or referral to employment as a mechanic's helper. 10/
- h. It is the practice of the defendant Local 53 to refer white persons of limited experience in the trade to employment as mechanic asbestos workers. 11/
- i. It is the practice of the defendant Local 53 to refer white journeyman members of other trade unions, including Plasterers Local 93, to employment as mechanic asbestos workers. 12/
- j. In a traditionally all white union such as Local 53, each of the requirements for membership -- relationship to a member, recommendations by members and majority vote of the membership -- effectively denies to Negroes the opportunity to join the union without regard to race. Since there are no Mexican-Americans in Local 53, these requirements, equally effectively, deny to Mexican-Americans the opportunity to join the union without regard to national origin.
- k. It is the policy and practice of the defendant Local 53 to refuse to consider Negroes for membership in the Union. 13/
- l. It is the policy and practice of the defendant Local 53 to refuse to refer Negroes to employment and to refuse to accept Negroes for referral to employment. 14/

10/ Testimony of Gerald W. O'Brien; applications for membership of Current Improvers (gov't Ex. 2); testimony of Ronald Dimitry.

11/ Testimony of Gerald W. O'Brien; testimony of Ronald Dimitry.

12/ Testimony of Gerald W. O'Brien; testimony of Eugene Ball.

13/ Testimony of Gerald W. O'Brien.

14/ Testimony of Gerald W. O'Brien; testimony of Louis J. Elliot.

- m. Notwithstanding a critical labor shortage in the insulation industry, the defendant Local 53 has intentionally limited its membership to such an extent that its membership is less than one-fourth what the industry requires. 15/
- n. The defendant Local 53 has refused to consider for membership or refer to employment members from the available Negro labor force and the Negro journeyman members of the Plasterers Local 93 and nine young Negro men who were seeking employment as asbestos helpers solely because they are Negroes. 16/

15/  
Testimony of Gerald W. O'Brien; testimony of James Poche; Records of Union Referrals (gov't Ex. 1); list of Local 53 members (gov't Ex. 11); stipulation number one.

16/  
Testimony of Gerald W. O'Brien; testimony of Leo Chester Green; testimony of Charles Mogilles; testimony of Casimere Joesph; testimony of David Bartholomew; Urban League Referral Cards and application form of Leroy Chandler (gov't Ex. 8); Urban League Referral Cards for David Bartholomew, Jr., George Nathan French, Elvin J. Young, Norman Watson, Monroe Bean, Clifford H. Thompson, Girod Tillman, Jr. (gov't Ex. 5).