

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

JAN 31 1967

FILED

A. DALLAM O'BRIEN, JR.

CLERK

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

SECTION A

CIVIL ACTION NO.

66-833

SECTION A

CONSOLIDATED CASES

PRELIMINARY INJUNCTION

This matter having come on for hearing on
January 19, 20, and 24, 1967, on motions for preliminary
injunction, and the Court having heard oral testimony,
received stipulations of fact, examined documentary
exhibits and considered the arguments of counsel, and
the Court having further entered findings of fact and
conclusions of law in accordance with Rule 52 of the
Federal Rules of Civil Procedure,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Pending the final determination of these cases, the defendant Local 53, its officers, agents, employees and members, and all persons in active concert or participation with them are hereby enjoined from:

- A. Excluding from membership any individual because of his race, color or national origin.
- B. Maintaining any of the following requirements for membership:
 - i) recommendation or endorsement by present members,
 - ii) relationship by blood or marriage to present members,
 - iii) election to membership by present members.

2. It is further ordered that the defendant Local 53, its officers, agents, employees and members, and all persons in active concert or participation with them shall:

- A. Admit immediately into membership as mechanic members, with all the rights and privileges of such membership, subject only to the payment of appropriate dues and entrance fees, the following persons:

Leo Chester Green
Hurlin Mogilles
Charles Mogilles
Juan Galaviz

- B. Offer to refer for immediate employment as first year asbestos helpers, and, upon request, refer for such employment with the full opportunity for on the job training normally afforded such workers, each of the following who desire to be so referred:

Casimere Joseph
Leroy Chandler

George French
Elvin J. Young
Norman Watson
Monroe Bean
Clifford H. Thompson
Girod Tillman, Jr.

- C. Except as provided in paragraph 2A, suspend the admission of new members, either as mechanics or improvers, until November 1, 1967, in accordance with the program for developing new membership standards as required herein.
- D. Except in the case of present members of the defendant Local 53, who may continue to contract for positions without the specific assistance of the defendant Local 53, refer individuals for employment without regard to race, color or national origin in accordance with the following:
- i) Direct Referrals. Defendant Local 53 shall continue its practice of referring non-members for employment in the trade as mechanics and improvers and shall refer all persons who apply for permits to work as asbestos workers to available employment chronologically, according to the date and time of application, without regard to race, color or national origin and without any preference based on a relationship to or prior association with present members or other persons employed in the trade; provided, however, that prior to November 1, 1967, Negro and white applicants seeking permits directly from Local 53 shall be referred out alternately, one Negro and one white, so long as there are available persons of both races who have so applied. The above stated practice will be implemented at the New Orleans and Baton Rouge Offices maintained by the defendant Local 53.
 - ii) Employer Referrals. At times when there are no applicants for direct referral, defendant Local 53 shall issue mechanic and improver permits to non-members referred by employers. All non-members so referred shall be issued permits without regard to race, color or national origin.
 - iii) Records. Defendant Local 53 shall maintain a daily record of every non-member who applies for referral to employment

the employer to whom referred, the date and time of referral, the status in which referred -- mechanic or improver (helper), whether the non-member was directly referred or was sent for referral by an employer, the date and time the individual applied to Local 53 for direct referral (if such is the case), and the race of every non-member referred in either category.

iv) Right to Inspect. Counsel for the plaintiff shall be given the right to inspect the records maintained in accordance with the provisions of D iii at reasonable times.

v) Notice

a. Defendant Local 53 shall give written notice of the referral policy required herein to the following persons and organizations:

1. Each contractor with whom the Local has a contract.
2. The following high schools and vocational schools in New Orleans and Baton Rouge which are listed as formerly all-Negro schools by the Louisiana School Directory published for the 1966-1967 school year.

NEW ORLEANS

George Washington Carver Senior High
3059 Edna Street
New Orleans, Louisiana 70126

Walter Cohen
3620 Dryades Street
New Orleans, Louisiana 70115

McDonogh No. 35
600 Camp Street
New Orleans, Louisiana 70130

Booker T. Washington
1201 South Roman Street
New Orleans, Louisiana 70125

VOCATIONAL SCHOOL

Orleans Area Vocational-Technical School
Post Office Box 8222

BATON ROUGE

Capitol Senior High
1000 North 23rd Street
Baton Rouge, Louisiana 70802

McKinley Senior High
800 East McKinley Street
Baton Rouge, Louisiana 70802

Scenic
Post Office Box 3527
Baton Rouge, Louisiana 70807

Southern University Laboratory
Post Office Box 9414
Baton Rouge, Louisiana 70813

VOCATIONAL SCHOOL

Capitol Area Vocational School
Post Office Box 2012
Baton Rouge, Louisiana 70821

3. Louisiana State Employment Service.

- b. Defendant Local 53 shall file with the Court and serve on all counsel on or before June 15, 1967, a written report that the required notice has been given and shall attach copies of all letters used in complying with this Order.

E. Membership policies.

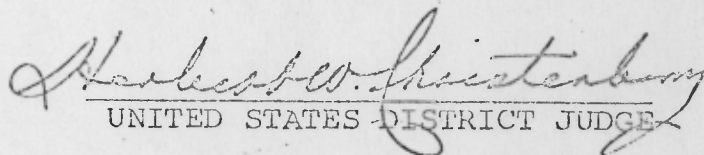
The defendant Local 53 shall develop a plan for the admission of persons to membership, which plan shall include objective criteria related to the trade, and procedures for admitting new members. The objective criteria may include experience at working in the trade gained after the date of this Order, but shall not include race, color, national origin or any preference based on a relationship to or prior association with present members or other persons employed in the trade or a membership vote. The plan shall provide for the admission without further application of all of those persons listed in paragraph B above who have worked in the trade since the date of their first referral under the terms of this Order. In developing such plan the defendant Local 53 shall determine, from reviewing the present and

projected future demand for skilled workers in the trade in its geographic area, the number of mechanic and improver members reasonably needed to meet such demands, and shall determine the size of its membership by reference to such facts. On or before July 15, 1967, defendant Local 53 shall serve and file on all counsel a written report setting forth the admission criteria and procedures so developed. Objections may be filed to such proposals and a hearing requested on or before September 1, 1967. The membership plan so developed shall be implemented on November 1, 1967, or as soon thereafter as it is finally approved by the Court.

3. The defendant Local 53, its officers, agents, employees and members, and all persons in active concert or participation with them are further enjoined from interfering in any way with persons exercising rights pursuant to this Order or with persons encouraging the exercise of such rights.

4. The Court retains jurisdiction over these cases for such additional and supplemental orders as may be required.

This the 31st day of May, 1967, New Orleans,
Louisiana.


UNITED STATES DISTRICT JUDGE

31 1966

A. DALLAM O'BRIEN, JR.

CLERK

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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

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. ^{1/}

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

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

^{1/} 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

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. ^{3/}

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 Trade jurisdiction there are approximately 45,556 Negro males and 100,676 white males between the ages of 18 and 30. ^{4/}
- 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

^{3/} 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).

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 applications 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

- 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

- 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. 3); Urban League Referral Cards for David Bartholomew, Jr., George Nathaniel French, Elvin J. Young, Norman Watson, Monroe Bean, Clifford H. Thompson, Girod Tillman, Jr. (gov't Ex. 5).

II. CONCLUSIONS OF LAW

- 1) The Court has jurisdiction of this action.

Section 707 (b) of the Civil
Rights Act of 1964, 42 U.S.C.
2000e-6(b)

- 2) The defendant is a labor organization engaged
in an industry affecting commerce as those terms are defined
in Title VII of the Civil Rights Act of 1964.

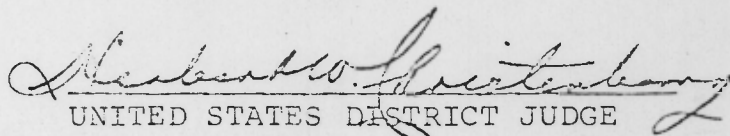
Section 701 (d), (e), 42 U.S.C.
2000e- (d), (e)

- 3) The policies and practices of the defendant
and its conduct pursuant thereto constitutes a pattern and
practice of discrimination within the meaning of Title VII
of the Civil Rights Act of 1964.

Section 707 (a), 703 (c), (d),
42 U.S.C. 2000e-6(a), 2000e-
2(c) and (d)

- 4) Where a labor organization has engaged in a
pattern and practice of discrimination on account of race,
color and national origin as described in the preceding
findings of fact, in order to insure the full enjoyment of
the rights protected by that statute, Title VII of the Civil
Rights Act of 1964, requires affirmative and mandatory pre-
liminary relief. Accordingly, a preliminary injunction
will be issued.

New Orleans, Louisiana, May 31, 1967.


UNITED STATES DISTRICT JUDGE