UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA By Ramsey Clark, Attorney General Plaintiff, -vs- INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL NO. 38, ET AL, Defendants.	CIVIL ACTION NO. C 67-575 ANSWER OF DEFENDANTS

In answer to the Complaint the defendant Electrical Joint Apprenticeship and Training Committee (hereinafter referred to as Joint Apprenticeship Committee) and the defendant International Brotherhood of Electrical Workers Local No. 38 (hereinafter referred to as Local 38) state:

(1) Defendants deny that this action was brought seeking relief for violations of Title VII of the Civil Rights Act of 1964.

(2) Defendants admit that this Court has jurisdiction under the statutes stated.

(3) Defendants admit that Local 38 is an unincorporated association of approximately 1500 working men engaged in electrical construction work with its principal office in Cleveland, Ohio and its jurisdiction covers the counties stated.

(4) Defendants deny that defendant Local 38 is a labor organization within the meaning of 42 U.S.C. 2000e(d) and denies that it is engaged in an industry affecting commerce within the meaning of 42 U.S.C. 2000e (e).

ANSWER

(5) Defendants admit that defendant Joint Apprenticeship Committee is an unincorporated body composed of six members of whom three are representatives of defendant Local 38 and three are representatives of the Greater Cleveland Chapter of the National Electrical Contractors Association, Inc. and admit that defendant Joint Apprenticeship Committee administers but deny that it controls the Apprenticeship Program in the electrical construction industry in Cleveland and deny it determines which persons shall be admitted to this Apprenticeship Program but it states that it determines which of those who pass certain tests shall be admitted and admit that it holds some of its meetings in the building owned by Local 38 in Cleveland, Ohio.

(6) Defendants deny the allegations contained in paragraph 6 of the Complaint.

(7) Defendants admit that defendant Local 38 maintains a hiring hall on a non-discriminatory basis for the referral of electrical workers to those contractors with which it has a collective bargaining agreement and deny that as a general practice the hiring hall is an exclusive source of workers to meet the labor needs of all the contractors in the electrical construction industry, but state that contractors under signature to collective bargaining agreements with defendant Local 38 by such agreements are bound to use the hiring hall. However, each contractor may refuse to employ any or all employees referred through said hiring hall. Defendants deny that defendant Local 38 controls the substantial portion of the employment opportunities for electrical workers within its jurisdiction.

(8) Defendants deny that defendant Local 38 has pursued since July 2, 1964 and deny that it continues to pursue a policy and practice of discriminating against Negroes on account of their race, with respect to union membership and employment opportunities in the electrical trade within its jurisdiction

deny that such policies and practice exist and denies that it is implemented in any way and:

(a) denies that it refuses in the operation of its hiring hall to refer Negro applicants for employment on the same basis as white applicants are referred, and states that it does refer Negro applicants for employment on the same basis as white applicants are referred.

(b) denies that it gives in the operation of its hiring hall a priority to its members and denies that Negroes have been excluded because of their race from membership but states that Negroes are members of Local 38.

(c) denies that it refuses Negroes membership and state that it has Negroes as members.

(d) denies that it refuses to enter collective bargaining agreements with electrical contractors who are Negroes or who employ Negroes on the same terms and conditions it offers electrical contractors who are white or who employ only white persons but state that it has for sometime had collective bargaining contracts with the three largest contractors who are Negroes and is willing to enter collective bargaining agreements with any other Negro contractor who will assume the financial obligations every white and Negro contractor under such agreements now assume.

(e) denies that it has failed or refused to take steps to eliminate the effects of its previous policies and practices of discriminating on the basis of race but sets forth that the only allegation of discrimination presented to it by the plaintiff was that the defendants had discriminated against thirteen (13) Negroes in the 1964 and 1965 Apprenticeship Tests and that without investigating the charges and immediately on such presentation defendant Local 38 and the defendant Joint Apprenticeship Committee offered the

thirteen (13) said Negroes immediate employment as apprentices in July, 1967 and admission in the Apprenticeship class thereafter commencing on September 20, 1967; Richard Woods, Willie McKenzie, Jr., Vincent Crawl, three of the 13 Negroes accepted the offer and are now at work and in the said Apprenticeship Class, that three others, Damon Billingslea, Ellison Carter and Andrew Blanch are in the military service and their offers remain open; that four, William Harris, Tyrone Price, Kenneth Roberts and Ernest Jackson came into Local 38's office for further information but did not accept the offer; that one letter to Carl Wright sent to the address given by the plaintiff was returned by the Post Office and the remaining two, Ralph Jones and Ollice Pitts, never answered their offers in any way.

(9) Defendants deny that defendant Joint Apprenticeship Committee has pursued and continues to pursue a policy and practice of discriminating against Negro applicants for admission to the Apprenticeship Program on account of their race and deny that this policy has been implemented in part or otherwise by applying subjective criteria in the selection process in such a way as to exclude from the Apprenticeship Program Negroes whose objective qualifications were equal or superior to those of white applicants who were accepted.

(10) Defendants deny that by reason of the policies and practices alleged in the preceeding paragraphs that Negroes have been "almost totally excluded" on account of their race from the Apprenticeship Program and deny that Negroes were excluded from membership in defendant Local 38 as apprentices and as journeymen and deny that Negroes have been denied employment opportunities in the jurisdiction of defendant Local 38 because of their race. Defendants state that defendant Joint Apprenticeship Committee has judged Negroes to be eligible for the Apprenticeship Class and that Negroes have

and are in the Apprenticeship program.

(11) These defendants deny that their policies and practices and conduct constitute a pattern of resistence to the full enjoyment by Negroes of their right to equal employment opportunities as guaranteed by Title VII of the Civil Rights Act of 1964 and deny that there is a pattern and practice which is of the nature or intended to deny the full exercise of that right and deny that the Attorney General has reasonable cause to believe that defendants are engaged in such a pattern of resistance as required by 42 U.S.C. Section 2000e-6 (a).

WHEREFORE, defendants pray that the Complaint be dismissed with their costs and attorneys fees.

AFFIRMATIVE DEFENSES

Defendants set forth the following affirmative defenses:

(1) Defendant Local 38 participates on a joint basis with the Greater Cleveland Chapter National Electrical Contractors' Association in supporting and maintaining the defendant Joint Apprenticeship Committee. In the program now are about 250 apprentices of whom 3 are Negroes and 70 more are accepted for classes commencing September 20, 1967 and February 20, 1968, of whom 8 are Negroes and 3 Negroes are offered apprenticeship who are in the armed services (See paragraph 8 of Answer above). The standards for selection of apprentices always have been officially approved by the Bureau of Apprentice and Training of the United States Department of Labor. These apprenticeship standards embody objective testing procedures, as well as certain objective standards such as age requirements, a high school diploma, and credits for specific high school courses in addition to credits given at an interview conducted by an equal number of representatives from the union and management.

Title 29-Part 30 Code of Federal Regulations was issued

January 17, 1964 to eliminate discrimination in apprenticeship programs. The defendant Joint Apprenticeship Committee amended the standards of its apprenticeship program to meet the requirements of Title 29, and filed the amended standards with the Bureau of Apprenticeship and Training which officially accepted and registered these amendments. On February 11, 1965, the Ohio State Apprenticeship Council in cooperation with the Bureau of Apprenticeship and Training, United States Department of Labor issued a written ruling stating that upon review the standards of the defendant Joint Apprenticeship Committee are in compliance with the non-discrimination regulations, Title 29-Part 30, Code of Federal Regulations. On July 19, 1967 the defendant Joint Apprenticeship Committee amended and revised the Standards and Selection Procedures to comply with a complaint by a Department of Labor official. These again were registered with and then approved as being in compliance with Title 29-Part 30 Code of Federal Regulations by the Bureau of Apprenticeship and Training, Department of Labor.

Despite this compliance with Title 29-Part 30 as approved by the Department of Labor, the Attorney General refuses to accept these Standards and Selection Procedures because it is not willing to accept compliance unless and until such preference is given to Negroes as to correct a racial imbalance (existing since prior to the effective date of the Civil Rights Act of 1964) in regard to Negroes in the Apprenticeship Program in comparison to Negroes in the community or work force served by defendants which preference to correct such an imbalance is a violation of the said Act, 42 U.S.C. 2000e - 2 (j).

(2). Six persons, five Negroes and one Caucasian who were applicants to the 1966 Apprenticeship classes filed charges in November, 1966 that they were discriminated against by defendants with the State of Ohio Civil Rights

Commission which investigated the charges and dismissed them finding "no probable cause." These same six with two other Negroes filed charges with the Equal Employment Opportunity Commission along with the Attorney General and the said Commission investigated these charges together and the Attorney General notified defendants in May, 1967 that it would file suit unless defendants wished conciliation and then after efforts at conciliation filed this suit.

By letter dated September 5, 1967 the Commission notified defendant Local 38 that it had decided that the four named persons, Kenneth Roberts, Ernest Jackson, Richard Woods, and Wilbert Baker had been discriminated against by these defendants "by utilizing its /apprenticeship/ testing procedure to prevent the four Negro charging parties and other Negroes from obtaining admission to the Apprenticeship Training Program." Yet, as stated in paragraph 8 of the Answer above at the request of the Attorney General three of those four chargees, Richard Woods on August 7, 1967, and Kenneth Roberts on August 15, 1967 were put to work as apprentices, while Ernest Jackson turned down on July 31 the offer to become an apprentice.

The said Commission in the same September 5, 1967 letter advised these defendants that "A conciliator will contact you within a few days to discuss means of correcting the discrimination involved, and ways of avoiding it in the future . . . If the Commission is unsuccessful in its efforts to secure voluntary compliance, it must so notify the complaining party (sic) and advise him of his right to seek relief in a Federal Court."

42 U.S.C. Section 2000e -5 (e) provides in part as follows:

> "Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance."

Thus, the Attorney General will soon be intervening in four other suits in this Court against defendants to obtain part or all of what it claims in this action and in three of the four suits, it will be supporting lawsuits by persons who at the Attorney General's request were accepted as apprentices or refused the offer to become apprentices made by defendants, all in violation of Rule One and Two of the Code of Federal Procedure banning a multiplicity of actions by governmental departments and Commissions as well as private litigants and to secure the just, speedy and inexpensive determination of every action.

(3) The only charges filed against defendants are these charges herein set forth in (2) immediately above and these charges with one exception are included in the 13 Negroes the Attorney General requested defendants to offer employment as apprentices and to place into the 1967 Apprenticeship Class, which the defendants did as related in (2) above. The Attorney General, however, brought this suit to force defendants to grant preferential treatment to Negroes on account of an imbalance in defendants membership and apprenticeship programs which existed since prior to the effective date of the Act, which imbalance exists with respect to the total number or percentage of Negroes in defendants membership and apprenticeship program in comparison with the total number or percentage of Negroes in the work force or population in the counties in the jurisdiction of defendants which preferential treatment is banned by the Act itself, 42 U.S.C. Section 2000 (e)-2 (j); the Attorney General also brought this action to force defendants to grant a preference to Negroes by using/quota system of 13.2 percent, i.e. that defendants membership be expanded by 13.2 percentage of the whole membership or approximately 198 immediate new members, all of which were to be Negroes, without any allegation of discrimination except for imbalance; that said quota system is banned by the Act as shown by the Act's legislative history;

the Attorney General also brought this suit to force defendants to establish a second hiring hall exclusively for Negroes which by its terms would grant preference to Negroes in violation of the Act.

WHEREFORE, defendants pray for an order dismissing the complaint and for a further order enjoining plaintiff from:

(a) proceeding by suit or otherwise to force defendants to correct by preferential treatment of Negroes the imbalance arising prior to July 2, 1965 which exists between the number of Negroes in the membership and apprenticeship program in comparison with the total number of Negroes in the work force in the counties covered by the jurisdiction of defendants.

(b) proceeding by suit or otherwise to force defendants to adopt a quota system in membership of Local 38 and the apprenticeship program based on the percentage of Negroes in the work force or population in the counties covered by the jurisdiction of defendants.

(c) proceeding against defendants in a multiplicity of suits based on the same cause of action.

(d) proceeding against defendants by suit or otherwise to abolish, correct or revise the apprenticeship Standards and Selection Procedures which are approved by the Department of Labor, or until the Attorney General and Department of Labor can agree on such apprenticeship Standards and Selection Procedures.

Defendants pray for such additional relief as this Court may direct, and for their costs and attorneys fees.

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SERVICE

The within Answer of defendants was served upon Robert Rotatori, Federal District Attorney, Federal Post Office Building, Cleveland, Ohio, by mail on the 25th day of September, 1967.