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



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

Plaintiff,

v.

H. K. PORTER COMPANY, INC., a corporation,

Defendant.

CIVIL ACTION

67-363

ORDER

This cause having come on for hearing on the defendant's motions to dismiss, for more definite statement, and for joinder of parties defendants and the plaintiff's motion to produce, and the Court having considered the briefs and argument of counsel for the respective parties and being fully advised, and

The Court being of the opinion that:

1. The provision of §707 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-6(a), that a complaint filed thereunder set forth facts pertaining to the pattern or practice alleged takes precedence over the notice concept of pleading under Rule 8 of the Federal Rules of Civil Procedure. Since the complaint as presently framed sets forth conclusionary averments only and accordingly does not comply with this requirement of the statute that a

Exhibit "A"

complaint set forth facts, the defendant's motion for more definite statement is due to be granted.

2. The United Steelworkers of America, AFL-CIO, and its Local Union No. 2250 are parties needed for just adjudication, they can be served with process, and their joinder will not deprive this Court of jurisdiction over the subject matter of the action. The defendant's motion for an order joining them as parties defendants is accordingly due to be granted.

3. The Court, disagreeing with the defendant's position that the plaintiff's motion to produce should be deferred pending the filing of the more definite statement, is of the opinion that such motion is due to be granted at this time, subject to the qualifications herein set forth which have been agreed upon by counsel for the respective parties.

It is, therefore, ORDERED, ADJUDGED AND DECREED by the Court:

1. That the defendant's motion for more definite statement be and the same is hereby granted and that the plaintiff shall serve and file an amended complaint which contains a more definite statement of the facts pertaining to the pattern or practice alleged on or before October 15, 1967, this being the date requested by its attorneys.

2. That the defendant's motion for the joinder as parties defendants of the United Steelworkers of America, AFL-CIO, and its Local Union No. 2250 be and the same is hereby granted, that they be made parties defendants to this action and that the caption of this action shall be amended accordingly, that the plaintiff serve and file an amended complaint, naming them as parties defendants, within ten days after entry of this Order, and that summons be issued and such summons and copies of said amended complaint

and of this Order be served upon the said United Steelworkers of America, AFL-CIO, and its Local Union No. 2250 forthwith after said amended complaint is filed.

3. (a) That the plaintiff's motion to produce be and the same is hereby granted, subject to the following qualifications:

(i) The documents described in paragraph 10 of such motion are to be limited to those issued by defendant since July 1, 1965 or in general use by defendant since July 1, 1965.

~~(ii) The phrase "annually agreed upon", as it appears in the provision of the contract quoted in paragraph 3 of the affidavit in support of such motion, is to be regarded as deleted and the phrase "mutually agreed upon" substituted therefor.~~

(b) That with the foregoing qualifications, the defendant shall produce all documents described in paragraphs 1 through 10 of such motion, of which it is in possession, custody, or control, at the office of its Connors Works, Birmingham, Alabama, at 9:30 A.M. on Monday, August 7, 1967, and permit the attorneys for plaintiff to inspect, copy or photograph such documents.

4. The defendant's motion to dismiss the complaint as presently framed and the defendant's motion to dismiss for failure to join the Unions be and the same are hereby overruled.

DONE, this the 28th day of July, 1967.

Seybourn H. Lynne

Chief Judge

APPENDIX E-10

## Pattern of Discrimination

EDITORS' NOTE:—*The following statement by Senator Humphrey (D., Minn.) was made in response to a request for an explanation of the meaning of "pattern or practice" as it is used in Titles II and VII to limit the Attorney General's power to initiate suit.*

Senate
6-18-64
pp. 13776

Mr. HUMPHREY. Mr. President, it has been said during the debate that this bill gives the Attorney General vast and almost unlimited power to bring suit against private businesses for mere isolated acts of discrimination. That simply is not so.

The Attorney General may obtain relief in public accommodations and employment cases only where a pattern or practice has been shown to exist. Such a pattern or practice would be present only when the denial of rights consists of something more than an isolated, sporadic incident, but is repeated, routine, or of a generalized nature. There would be a pattern or practice if, for example, a number of companies or persons in the same industry or line of business discriminated, if a chain of motels or restaurants practiced racial discrimination throughout all or a significant part of its system, or if a company repeatedly and regularly engaged in acts prohibited by the statute.

As a further safeguard, the bill requires a showing that those engaged in the pattern or practice had the intention to deprive others of their rights under title II or title VII. That is, where several companies are involved, the Attorney General could not show a pattern or practice by proving that one company refused to serve a Negro because of his race and several other companies also refused service but for legitimate reasons. That kind of a showing would not satisfy the requirement of intent; what is required is a showing of intentional discrimination. Intention could, of course, be proved by, or inferred from, words, conduct, or both. The issue would then be whether, as a matter of fact, there was a refusal of service or employment amounting to a pattern or practice, not whether the companies acted in concert or in a conspiracy. And the bill would authorize the Attorney General to join all or some of several defendants in the same action.

The point is that single, insignificant, isolated acts of discrimination by a single business would not justify a finding of a pattern or practice, and thus the fears which have been expressed in this regard are totally groundless.

Exhibit "B"

## APPENDIX E-2

## Justice Department Reply on Title VII

EDITORS' NOTE: *At the request of Senator Clark (D., Pa.), the Justice Department prepared a rebuttal to arguments made by Senator Hill (D., Ala.) to the effect that Title VII undermines vested seniority rights, denies unions their representation rights under other labor laws, and requires racial quotas. The Justice Department's paper and Senator Clark's accompanying remarks follow.*

Senate

4-8-64

p. 6986

Mr. CLARK. I have also had prepared by the Department of Justice a summary statement in rebuttal to the argument made by the Senator from Alabama [Mr. HILL] to the effect t ahttitle VII would undermine the vested rights of seniority; that it would deny to unions their representation rights under the National Labor Relations Act and the Railway Labor Act; that the operation of title VI would in some way affect adversely the rights of organized labor; and that title VII would impose the requirement of racial balance.

I submit that those assertions of the able senior Senator from Alabama are untenable.

Mr. President, I ask unanimous consent that the rebuttal to the argument prepared at my request by the Department of Justice be printed in full in the RECORD at this point in my remarks.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

REPLY TO ARGUMENTS MADE BY SENATOR HILL

[Seniority Rights]

First, it has been asserted that title VII would undermine vested rights of seniority. This is not correct. Title VII would have no effect on seniority rights existing at the time it takes effect. If, for example, a collective bargaining contract provides that in the event of layoffs, those who were hired last must be laid off first, such a provision would not be affected in the least by title VII. This would be true even in the case where owing to discrimination prior to the effective date of the title, white workers had more seniority than Negroes. Title VII is directed at discrimination based on race, color, religion, sex or national origin. It is perfectly clear that when a worker is laid off or denied a chance for promotion because under established seniority rules he is "low man on the totem pole" he is not being discriminated against because of his race. Of course, if the seniority rule itself is discriminatory, it would be unlawful under title VII. If a rule were to state that all Negroes must be laid off before any white man, such a rule could not serve as the basis for a discharge subsequent to the effective date of the title. I do not know how anyone could quarrel with such a result. But, in the ordinary case, assuming that seniority rights were built up over a period of time during which Negroes were not hired, these rights would not be set aside by the taking effect of title VII. Employers and labor organizations would simply be under a duty not to discriminate against Negroes because of their race. Any differences in treatment based on established seniority rights would not be based on race and would not be forbidden by the title.

[Union Representation]

Second, it has been asserted that it would be possible to deny unions their representation rights under the National Labor Relations Act and the Railway Labor Act. This is not correct. Nothing in title VII or anywhere else in this bill affects rights and obligations under the NLRA and the Railway Labor Act. The procedures set up in title VII are the exclusive means of relief against those practices of discrimination which are forbidden as unlawful employment practices by sections 704 and 705. Of course, title VII is not intended to and does not deny to any individual, rights and remedies which he may pursue under other Federal and State statutes. If a given action should violate both title VII and the National Labor Relations Act, the National Labor Relations Board would not be deprived of jurisdiction. To what extent racial discrimination is covered by the NLRA is not entirely clear. I understand that the National Labor Relations Board has presently under consideration a case involving the duties of a labor organization with respect to discrimination because of race. At any rate, title VII would have no effect on the duties of any employer or labor organization under the NLRA or under the Railway Labor Act, and these duties would continue to be enforced as they are now. On the other hand, where the procedures of title VII are invoked, the remedies available are those set out in section 707(e), injunctive relief against continued discrimination, plus appropriate affirmative action including the payment of backpay. No court order issued under title VII could affect the status of a

Exhibit "C"

labor organization under the National Labor Relations Act or the Railway Labor Act, or deny to any union the benefits to which it is entitled under those statutes.

[Racial Quota]

Third, it has been asserted that the operation of title VI will in some way affect the rights of organized labor. This is incorrect. Title VI deals with programs of Federal financial assistance. I know of no financial assistance rendered to lagor organizations under the National Labor Relations Act or the Railway Labor Act, the Davis-Bacon Act, or the Walsh-Healey Act. These organizations benefit, as do all American workers, from the beneficent policies of these statutes, but there is no flow of cash, goods, or credit from the Federal Government to these organizations and it is to such assistance that title VI is directed. Title VI would no more authorize the suspension of a union's status as a collective bargaining agent because of discrimination than it would authorize the Bureau of Customs to stop collecting duty on goods competing with those produced by an employer who discriminates. There is simply no such authority anywhere in the bill.

Finally, it has been asserted title VII would impose a requirement for "racial balance." This is incorrect. There is no provision, either in title VII or in any other part of this bill, that requires or authorizes any Federal agency or Federal court to require preferential treatment for any individual or any group for the purpose of achieving racial balance. No employer is required to hire an individual because that individual is a Negro. No employer is required to maintain any ratio of Negroes to whites, Jews to gentiles, Italians to English, or women to men. The same is true of labor organizations. On the contrary, any deliberate attempt to maintain a given balance would almost certainly run afoul of title VII because it would involve a failure or refusal to hire some individual because of his race, color, religion, sex, or national origin. What title VII seeks to accomplish, what the civil rights bill seeks to accomplish is equal treatment for all.

Mr. CLARK. Mr. President, it is clear that the bill would not affect seniority at all. It would not affect the present operation of any part of the National Labor Relations Act or rights under existing labor laws. The suggestion that racial balance or quota systems would be imposed by this proposed legislation is entirely inaccurate.