

LAW OFFICES OF
THURLOW SMOOT
55 PUBLIC SQUARE
CLEVELAND, OHIO 44113
PHONE: 781-1930

October 18, 1967

Mr. Owen Fiss, Attorney
Department of Justice
Civil Rights Division
Department of Justice Bldg.,
Washington, D.C.

Re: United States of America
International Brotherhood
of Electrical Workers,
Local 38, et al.,
Case No. C-67-575

Dear Mr. Fiss:

I have your letter of October 13. I have consulted with my clients, and this letter reflects their thinking. It is my understanding that this offer of settlement was that you were to name names of any persons who you allege have been discriminated against, and that we would immediately attempt to remedy such discriminations. Your letter fails to mention a single name or place or date. We discuss these areas as numbered in your letter as follows:

1) Admission of Journeymen.

You state "that we have found that Negroes have been denied membership on account of race, and we therefore believe that it is necessary to offer them the opportunity to become members".

If you would name those people "who have been denied membership on account of race" and the date they were so discriminated against, we would have something to work on, but since you merely state that they are ineligible for the apprenticeship program and therefore should become journeymen members, it is impossible to talk in regard to unnamed persons, without dates of alleged discrimination and something of the surrounding facts. When you gave us the 13 names of Negroes who it was alleged were discriminated against in the apprenticeship program, we immediately set forth to correct that alleged discrimination (See our Answer for the details on this).

You know from an examination of the Executive Board minutes

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that the union does not and has not for many years taken any persons in as journeymen without coming in through the apprenticeship system (except three Negroes admitted in 1957 or 1958). Therefore, it is difficult to believe that there is any discrimination in this area. This is the area where you heretofore said that settlement would have to be made by us on the basis of a quota of 13.2 percentage of the membership in Local 38; in this union of 1,500 members, this would mean that 198 Negroes would immediately be admitted to membership. This, of course, is not based on discrimination, but on imbalance occurring before the Act was passed, and it seems from your continuing refusal to give us anything as to actual discrimination that you are still merely trying to correct that imbalance.

2) Admission of Apprentices.

Last summer you gave us the names of thirteen Negroes who you alleged had been discriminated against in the 1965 and 1966 apprenticeship examinations. As shown in the Answer, the defendants have done their best to straighten this matter out by offering unqualified admission into this Fall's apprenticeship program to each of those thirteen persons (for details see the Answer), and in an endeavor to correct the criticisms leveled by the Attorney General in the examination itself, the defendants chose to hereafter use the National Joint Apprenticeship program for apprentices sponsored by IBEW and NECA (National Electrical Contractors Association), which provided for the O.S.E.S. to give the mechanical aptitude written test and the Cleveland Board of Education to continue giving the intelligence quotient (I.Q.) tests, and that the remaining testing should be done by the defendant Apprenticeship Committee itself, which is composed of three contractors and three members of Local 38. This test is along certain special lines set forth in the National plan which has been approved by the Department of Labor under Title 29.

The result of the test this summer should pretty well show that these were productive in raising the numbers of Negroes in the apprenticeship class. 343 white and Negro persons applied for the apprenticeship this last summer. 13 were eliminated because they did not graduate from high school; this left 330 applicants; 5 failed to show up to take the written test, and 295 took the test. 108 were eliminated there or failed to show up to take the oral test, so that 187 took the oral test. These applicants were 172 white and 15 Negro. The final results showed that 63 white ap-

plicants or 7/18 of those being interviewed were selected, while of the 15 Negro applicants taking the oral test, 4 were selected, which is 4/15 of the Negro applicants. Three of the thirteen alleged discriminatees are included in this class; so in a class of 70, 1/10 are Negroes, or seven Negro apprentices in this class. It is clear that the system of selection adopted by the defendants this summer is working without discrimination.

There are now two other apprentices in the system, one in the second, one in the fourth year of apprenticeship, and one who just graduated as a journeyman and into membership in Local 38, and there are three Negro members of Local 38. Since Local 38's present officers were elected and assumed office in July, 1967, there have been seven Negroes added to the apprenticeship system. Thus, the apprenticeship program is straightening itself out.

However, again you say that "finally to eliminate the effects of past discrimination, we believe the defendants should offer to admit to the apprenticeship program all Negroes who have been excluded because of their race". The defendants have done exactly that! You also continue, "and should engage in an informational program, apart from that already affected through other agencies, designed to dispel the idea that they discriminate against Negroes in any of their activities or operations." This has been done, and Local 38 has worked with the Worker's Defense League, so that the results were that some 50 Negroes were among the 343 applicants for the apprenticeship class this year, which is considerably more than had ever applied before from among the Negroes. Again using statistics, about 1/7 of the whites who applied became apprentices, and 1/8 of the Negroes became apprentices. The difference here is probably a matter of education. So, the program is successful, and the defendant Apprenticeship Committee is informing all and sundry about it. The Attorney General said last summer defendants should offer to admit to the apprentice program "all Negroes who have been excluded because of their race". Defendants agreed and when the Attorney General gave the names of actual discriminatees to the defendants, they put as many as would accept in the apprentice program and now the Attorney General repeats the same phrase as if defendants had not done everything plaintiff asked them to do on these alleged discriminations.

3) The Job Referral System.

Here plaintiff states that "in the operation of the referral system, Negroes have been almost totally excluded from participating in that hiring". Again, no names are given, and I am sure that plaintiff is merely stating that because there are not any Negroes in this system (prior to this summer), that they were excluded because of race. That is first an assumption that some Negroes applied for such work, and second, the imbalance in regard to Negroes occurred before the Act was passed. And again the plaintiff is not giving names of any discriminatees, probably because there are no names of any persons who were discriminated against, and plaintiff is merely making the assumption that because there are no Negroes in, they must have been denied entrance. This does not follow because there must be a showing that Negroes applied to be in the referral system before there can be an accusation of discrimination. If they applied and were turned down, there is no reason the names cannot be furnished now so that we can check it out, and if there is any possibility of discrimination, the defendants will correct it. Otherwise, the Attorney General's suggestions are simply a way of correcting the imbalance which existed before the Act was passed, and which by the terms of the Act and all the legislative history is a violation of the Act. However, this summer 9 Negroes applied for work through the referral system and were referred by Local 38 and hired by contractors and are working!

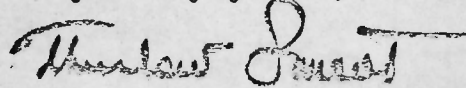
4) Affiliation with Negro Contractors.

In this area, again, the Attorney General says "that Negro contractors have been denied the opportunity to affiliate with Local 38 on non-discriminatory terms". Again we find the Attorney General not giving us any names or dates so that we can check such a broad statement. Local 38 does not know of any such discrimination, particularly because it has under contract three Negro contractors in Cleveland and have had them under contract for a number of years. There are undoubtedly small Negro contractors, as there are white contractors, who will not become affiliated with the union because they do not wish to carry unemployment compensation or workmen's compensation on just one or two employees, as the union sensibly requires. The union also requires some showing of financial responsibility. If the Executive Board believes that there is not sufficient financial responsibility shown, then it requires a bond covering the payment of wages and benefits be entered into. This has

not been used discriminatorily. If, however, the Attorney General has any knowledge that there has been discrimination in this area, if he will only furnish it to us, it will promptly be checked out, but we cannot remedy it without any such discrimination being shown to us, and again we cannot help but feel that the Attorney General does not have any evidence of discrimination.

My clients wish to come into compliance with the Civil Rights Act voluntarily, and now, but it cannot do so when the Attorney General continues to refuse to advise us of any discrimination that has occurred. He just repeats the broad statements upon which the only proof is the fact that there are so many Negroes and so many whites, and there is more of one than the other in Local 38. This is not proof.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Thurlow Smoot". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Thurlow Smoot
Attorney for the Defendants

TS:gf