

1971 WL 125

United States District Court, N.D. Ohio, Eastern
Division.

United States of America, Plaintiff

v.

International Brotherhood of Electrical Workers,
Local 38 et al., Defendants.

Case No. C67-575

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March 16, 1971

journeyman membership in Local 38. Local 38 shall not require, as a precondition to the admission of any Negro to membership, any vote of the membership or of any board composed of members of Local 38 or any other requirement not provided for in this Order. Local 38 may require that persons directly admitted to journeyman membership pay the admission fee of \$325, ten percent to be payable within one hundred eighty (180) days thereafter.

Opinion

GREEN, D. J.

*1 This action is before the Court on remand from the Sixth Circuit Court of Appeals for entry of an order granting the plaintiff specific relief. Evidentiary hearings have been had thereon, and several conferences have been held by the Court with counsel at which the question of an appropriate order was discussed.

As a result of the efforts to resolve this problem, the parties have reached substantial agreement upon the terms of a decree which covers all issues except "the allocation of costs and the defendants' obligations with respect to future selection of apprentices, the standards and procedures to be followed with respect thereto, and with respect to the composition of the defendant EJAC." That agreement is reflected by a proposed decree submitted by the plaintiff. There is, however, one aspect of the plaintiff's proposed decree on which the parties cannot agree.

It is plaintiff's position that Negro electricians who enter Group I of the union's referral system should be admitted to membership in the union upon application, and without any vote of the membership as a precondition to admission to membership. That position is reflected in paragraph 11 of the proposed decree, which provides:

11. Applicants who take and pass the journeyman's examination referred to above shall be offered admission to

The union opposes this proposal. It is urged that the same would suspend certain provisions of the Constitution of the International Brotherhood of Electrical Workers as to Local 38, and that such relief is not called for on this record.

The Court is aware that there are decisions in which union laws regarding voting on membership have been set aside by judicial decree, see *Local 53 of the International Association of Heat and Frost Insulators and Asbestos Workers v. Vogler*, [1 EPD P 9952, 59 LC P 9195] 407 F. 2d 1047 (CA 5, 1969). In those cases, however, there was evidence of past discriminatory practices with regard to admitting Negroes to union membership.

In this record, there is no evidence of such discrimination. As far as it appears from this record, every Negro who has become eligible for, and applied for, membership in Local 38 has been approved by vote of the general membership. Consequently, this Court believes that the relief requested in paragraph 11 is not appropriate herein. A similar situation was considered by the court in *United States v. Sheet Metal Workers International Assn.*, [2 EPD P 10,083, 61 LC P 9319] 416 F. 2d 123 (CA 8, 1969), wherein a request for the same relief was denied. The court stated:

*2 We cannot accept the government's view insofar as it relates to Local 1. There is nothing in the record to indicate that its members, once the policy of admitting Negroes generally is

established, would refuse to vote in individual Negroes who successfully passed a journeyman's examination. While Local 1 has discriminated against Negroes, it has used other techniques. Under such circumstances, we are reluctant to require that the voting procedure be eliminated. We also note that this decision requires the District Court to retain jurisdiction of this matter until it is reasonably satisfied that the Locals are no longer discriminating. It will, therefore, be able to hear and determine any charge involving an allegedly discriminatory vote of the membership on an applicant. *id.*, p. 135.

Under paragraph 26 of the proposed decree, this Court continues to maintain jurisdiction over this action. If it should be alleged at some future time that the union is practicing discrimination with regard to membership, the Court will be able to deal with that situation if, and when, it arises.

The Court has, therefore, determined to substitute in the decree previously submitted the following in place of

plaintiff's requested paragraph 11:

Applicants who take and pass the journeyman's examination referred to above shall be advised in writing of their right to apply for journeyman membership in Local 38. Any applicant who seeks journeyman membership in Local 38 shall be subject to all rules and regulations of Local 38 and the International Brotherhood of Electrical Workers pertinent thereto.

As defendants' counsel has approved the proposed decree as originally submitted in all particulars other than paragraph 11, with the foregoing modification the decree as submitted by plaintiff and approved by counsel, will be entered by the Court.

All Citations

Not Reported in F.Supp., 1971 WL 125, 3 Fair Empl.Prac.Cas. (BNA) 362, 3 Empl. Prac. Dec. P 8190
