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IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF MISSOURI

EASTERN DIVISION

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| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>v.<br><br>THE SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION NO. 36, AFL-CIO; AND THE LOCAL NO. 1 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,<br><br>Defendants. | CIVIL ACTION<br>NO. 66 C 58(2) |

MEMORANDUM OF THE PLAINTIFF IN SUPPORT
OF ITS PROPOSED FINDINGS OF FACT
CONCLUSIONS OF LAW AND DECREE

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I. NATURE OF THE ACTION

A. Procedural History

This action was initiated by the United States on February 4, 1966. The complaint seeks relief from alleged violations of Section 707 of Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e through 2000e-15).[1/]

The defendants are the Sheet Metal Workers Local Union No. 36, AFL-CIO (hereafter referred to as Local 36),

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1/ Originally there were two claims one of which was dismissed by the Court. It sought relief from alleged tortious interference with the performance of a contract between the United States and a contractor on a construction project commonly referred to as the Arch project.

and the Local Union No. 1 of the International Brotherhood of Electrical Workers, AFL-CIO (hereafter referred to as Local 1).

Four of the original defendants, which included three other local AFL-CIO construction unions and the Building and Construction Trades Council of St. Louis, Missouri, were dismissed -- three of them without prejudice on the basis of voluntary programs they agreed to adopt.[2/]

The trial on the merits of the claim against the remaining defendants, Local 1 and Local 36, was held June 15 - 20, 1967. The Court heard the testimony of 26 witnesses and received in evidence 96 exhibits. At the close of the trial, the Court invited all parties to submit proposed findings of fact, conclusions of law, decree, and a supporting brief.

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2/ The voluntary programs adopted by Local 562 (Pipefitters) and Local 35 (Plumbers) provide in essence that they will consider all applicants for membership, work referral and apprenticeship training without discrimination; develop community relations programs designed to welcome, encourage, and solicit Negroes into their unions and into work opportunities connected with the trades they represent; apply objective, uniform standards in determining the qualifications of all applicants; adopt procedures whereby Negroes, during the next five years or until Negroes are fairly represented in their membership, are not barred from or limited in equal employment opportunities because of a numerical limitation on membership or advantages of prior union affiliation of any kind; publicize freely their procedures and standards relating to work opportunities; keep records reflecting the progress and effect of their programs; and make these records available to the Department of Justice for review.

The Building and Construction Trades Council agreed to cooperate with and encourage Local 562 and Local 35 in the implementation of their programs.

B. Description of the Defendants and Their Operations

1. IBEW Local 1

Local 1 is a labor organization representing persons employed in electrical construction, manufacturing, and service industries in the St. Louis area. These industries affect commerce. Local 1 represents these employees for the purpose of dealing with employers concerning terms and conditions of employment including grievances, labor disputes, rates of pay, and hours and is the bargaining representative for approximately 95% of the electricians engaged in the electrical construction industry on major residential, commercial and industrial projects in the City of St. Louis and St. Louis County. (Stip. No. 3, par. 1, 2, 3).

Local 1 has approximately 5,000 members. About 2,000 of these members have "construction" classification. (Stip. No. 3, par. 2.) The three primary construction classifications of membership in Local 1 are Class A wireman, residential wireman, and X-residential wireman. A Class A wireman is qualified to do all types of electrical work, i.e., repair and construction on residential, commercial or industrial projects. (Pl. Ex. 5 [By-Laws of Local Union No. 1]; Dep. of Lanemann, pp. 8-9.) A residential wireman generally can do everything a Class A wireman does, but technically he is supposed to do only residential construction work. (Dep. of Lanemann, pp. 8-9.) An X-residential wireman is one who undergoes a special residential wireman training program and who, after completing such training, must do only residential work for at least five years. (Pl. Ex. 6, pp. 110-111; Tr. 341-342; Dep. of Gibbons, p. 32.)

As the bargaining representative for electricians employed in the construction industry, Local 1 has negotiated with the St. Louis Chapter, National Electrical Contractors Association, terms of a collective bargaining agreement which apply to all electrical contractors with whom Local 1 enters into such agreements. Local 1 has entered into such agreements with contractors which hire the substantial majority of construction electricians in the City of St. Louis and St. Louis County. (Stip. No. 3, pars. 5-6; Pl. Ex. 6.) These agreements provide that Local 1 shall be the sole and exclusive source of referrals of persons for employment to these contractors. (Pl. Ex. 6, p. 104.) Even though these agreements allow employers to secure employees from other sources if the Local cannot provide such employees within 48 hours of request, they further provide that persons hired under such circumstances will be replaced by employees referred by the Local as soon as the Local has employees available to refer. These agreements also require all journeymen and apprentices working for contractors to maintain their membership in Local 1 in good standing, and require any employee of such a contractor who is not already a member to join Local 1 after 31 days of employment.[3/]

Local 1 operates a hiring hall through which referrals are made. Generally, referrals for employment are determined in the following order of priority:

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3/ Pl. Ex. 6, pp. 102, 106. Further evidence of Local 1's control over employment opportunities in the electrical construction industry in the St. Louis area is found in the testimony of Daniel Agee, H. Lee Bruns, Norman Lanemann, and Walter Hampton. (See Tr. 174-178, and Dep. of Bruns p. 58.)

Group I - All applicants who have five or more years experience in the electrical construction industry in any one or more of the classifications listed [in the Collective Bargaining Agreement], are residents of the geographical area constituting the normal industrial-commercial construction labor market or normal residential construction labor market,4/ have passed a standard written, objective journeyman's examination of their respective classification given by a duly constituted Local Union of the IBEW and who have been employed for a period of at least one year in the last four years under a collective bargaining agreement between the parties to [the] agreement.

Group II - All applicants for employment who have five or more years experience in the electrical construction industry in any one or more of the classifications listed [in the agreement] who are residents of the geographical area constituting the normal industrial-commercial construction labor market or normal residential construction labor market, have passed a written examination given by a duly constituted Local Union of the IBEW, and who have been employed for at least one year in the last three years in the electrical construction industry under a collective bargaining agreement between the parties to [the] agreement.

Group III - All applicants for employment who have five or more years experience in the electrical construction industry in any one or more of the classifications listed [in the agreement], and who have been employed for at least six months in the last three years in the electrical construction industry under a collective bargaining agreement between the parties to [the] agreement.

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4/ The geographical jurisdiction of Local 1 encompasses the City of St. Louis and 25 counties in the State of Missouri, including St. Louis County. (Stip. No. 3, par. 1.) This jurisdictional area is broken down into four "normal industrial-commercial construction labor markets" and "normal residential construction labor markets." One such area consists of the City of St. Louis and St. Louis County. (Pl. Ex. 6, p. 106.)

Group IV - All applicants for employment who have worked at the electrical construction industry for more than one year. 5/

(Pl. Ex. 6, pp. 105-106.) For purposes of referral, Group I is given priority over Group II, Group II over Group III, etc. Although not set out in the agreement, there is in practice a fifth grouping designated Group 0 (Tr. 347, 361; See also Pl. Ex. 10) for applicants with no experience in the electrical construction trade. 6/

Membership in construction classifications in Local 1 is obtained basically in three ways: (1) through the apprenticeship training program (Tr. 383; Dep. of Bruns, pp. 45-47; Dep. of Gibbons (Oct. 18, 1966) p. 48); (2) through direct application as a journeyman in a construction classification (Dep. of Lanemann, pp. 45, 52-55; Dep. of Gibbons (Oct. 28, 1966) pp. 3-5); and (3) through the X-residential program (Pl. Ex. 6, pp. 110-111).

The apprenticeship program is established in the collective bargaining agreements between Local 1 and electrical contractors. It is sponsored by a joint

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5/ The only bargaining agreements into which Local 1 enters which have these hiring hall provisions are those which pertain to the construction industry. However, in practice it is possible for persons with non-construction classifications to be referred out through the hiring hall when the lists of construction people are exhausted. These referrals are accomplished through the issuance of "out-of-classification" work cards by Local 1 which authorize persons other than Class A wiremen to do Class A wireman work. (Dep. of Lanemann, pp. 33-36, 150-151; see also Pl. Ex. 10.)

6/ According to the business manager of Local 1, persons in Group 0 are not actually referred for employment but are only told to seek employment with some manufacturer. (Tr. 361). The referral records, however, show that Group 0 persons have in fact been referred out to employment with contractors. (Pl. Ex. 10).

apprenticeship committee composed of three representatives of Local 1 and three representatives of an association of electrical contractors. (Stip. No. 3, par. 7.) In practice, Local 1 controls the apprentice training program. The current union representatives on the joint committee, appointed by the president of the union, are all officials of Local 1 -- the business manager, a business agent, and the chairman of Local 1 Education Committee. (Stip. No. 3, par. 7.) The operations of the apprentice program are carried on at the Local 1 union hall. Apprentice applications must be obtained at the Local 1 hall and apprentice applicants are tested there. (Dep. of Gibbons [October 18, 1966] pp. 49-50; Tr. 315, 319.) Michael Gibbons, the president of Local 1, is the secretary-director of the Joint Apprenticeship Committee. (Stip. No. 3, par. 7.) In his role as secretary-director, Gibbons actually administers the apprentice program on a day-to-day basis. (Tr. p. 381.) The chairman of the committee, who is a contractor representative, has no practical function in the actual administration of the program. (Tr. p. 380.) Gibbons also grades the apprentice tests. (Dep. of Gibbons (October 18, 1966) p. 25.) The two apprentice instructors, who are responsible for evaluating the progress of the apprentices in their school training, are members of Local 1. (Dep. of Gibbons (October 18, 1966) p. 39.)

Standards for this apprenticeship program (Pl. Ex. 7) provide, inter alia, that an applicant must serve a probationary period of 500 hours. At the

end of that period the applicant is to be recommended to Local 1 for membership if his record is satisfactory. On July 26, 1966, the Joint Apprenticeship Committee decided to increase the probationary period from 500 hours to 1000 hours for all apprentices accepted in 1966 and thereafter. (Stip. No. 3, par. 9.) The apprentice program, successfully completed, is designed to produce journeyman electricians trained for construction work. (Dep. of Gibbons (October 18, 1966) pp. 6-7.)

Membership as a journeyman in construction classifications in Local 1 may be obtained directly in two ways: (1) through application for membership after having been referred for employment in construction work through the Local 1 hiring hall (Dep. of Lanemann, pp. 16-19 ) and (2) through the organizing of the employees of an electrical contractor. (Dep. of Lanemann, pp. 53-55; Tr. Lanemann 378.) Applications for membership must be obtained at the Local 1 union hall. An applicant for construction classification in either of these two categories must take an examination administered by Local 1. His name is then presented to the union membership for a vote. If he successfully passes both, he is initiated into membership. (Dep. of Lanemann, pp. 45-50; Dep. of Gibbons (October 28, 1966) pp. 3-5.)

With respect to the organizing of the employees of a particular contractor, however, the membership vote is sometimes taken on the whole group being organized. (Dep. of Bruns, pp. 43-45.) That source of union

membership is an expression of Local 1's desire to bring under the union's control those persons and jobs which will enhance its control and, hence, bargaining power, over the labor market in the electrical construction industry. (Dep. of Lanemann, pp. 53-54; Pl. Ex. 5 [Constitution p. 61]).

The X-residential program is designed to train persons in residential wiring (Pl. Ex. 6, p. 110; Dep. of Gibbons [October 18, 1966] pp. 32-33). To be eligible the applicant must be employed under a collective bargaining agreement to which Local 1 is a party; and according to the Director of apprentice training, this training program is available only to persons already members of the union in non-construction classifications (Dep. of Gibbons [October 18, 1966] pp. 32-33). The program requires that a trainee go through nine training steps of 500 hours each after which he becomes a full journeyman entitled to full journeyman wages (Pl. Ex. 6, p. 110).

2. Sheet Metal Workers Local 36

Local 36 is a labor organization representing sheet metal workers in the construction industry in the St. Louis area. The workers represented are engaged in an industry affecting commerce. Local 36 exists for the purpose of bargaining with employers concerning wages, hours and other terms and conditions of employment of its members (Stip. No. 4, par. 1).

Local 36 has approximately 1,275 journeyman members and approximately 116 apprentices in training (Stip. No. 4, par. 12). The entire membership of Local 36

is engaged in the construction industry (Tr. Taylor, pp. 476-477). Local 36 does not have any formal classifications of membership but among the membership are specialists in certain aspects of the trade. These areas of specialization include welding; layout work, i.e., designing functional items from a sheet of metal; architectural sheet metal work, which is mostly copper work; and field erection work, which is the installation of fabricated sheet metal items. Some sheet metal workers specialize in one phase of the work whereas others are qualified in all phases (Dep. of Zimmerman, pp. 9-10).

As the bargaining representative for sheet metal workers employed in the construction industry in the St. Louis area, Local 36 negotiates with sheet metal contractors the terms of collective bargaining agreements. Prior to 1965 these negotiations were carried on between Local 36 and the Sheet Metal and Air Conditioning Contractors Association of St. Louis, an organization composed of contractors and sub-contractors employing persons engaged in the sheet metal industry. However, in 1965 and 1966 Local 36 was certified by the National Labor Relations Board as the collective bargaining representative of sheet metal employees in individual shops and thereafter, in 1966, negotiations were carried on by Local 36 with contractors on an individual basis (Stip. No. 4, par. 4).

Local 36 negotiated new contracts in 1966 (Stip. No. 4, par. 2, Attachment E). The immediately prior agreement (hereafter referred to as the old agreement) had been in effect since July 1, 1963 (Stip. No. 4, par. 2, Attachment D). The old agreement required that Local 36 be given the first opportunity to furnish sheet metal

workers as contractors need them and that, in the event Local 36 could not fill the contractor's request within 48 hours, the contractor could secure workmen from other sources. The contractor could request a particular worker or a worker with a particular skill, and a worker could request the contractor to request him. In practice, all union members have had jobs and have not been on the "out-of-work" list. When they finished one job, they got another and were then "referred" by the union to the contractor (Dep. of Zimmerman, p. 25; Pl. Ex. 13, June 25, 1963). All applicants for employment, both union and non-union, had to register at the Local 36 union hall and were required to become members within eight days of employment if they were not already members (Pl. Ex. 21, pp. 17, 22). After becoming members, persons could accept employment only as allowed by the union. (See, e.g., Pl. Ex. 17, pp. 13, 19 [By-Laws, Art. XV, Sect. 3(i); Working Rule 6].)

The new agreement negotiated by Local 36 continues the same referral procedure provided for in the old agreement until January 1, 1968 (Stip. No. 4, par. 2, Attachment E. [Art. IV, Sect. 1]). Effective January 1, 1968, the new agreement provides for the operation of an exclusive referral system similar to that currently operated by Local 1. Under this new procedure Local 36 is to be the primary source of referrals for employment and applicants are to be placed in groups which, similar to those maintained by Local 1, will give priority to those persons having worked for contractors holding collective bargaining agreements with Local 36 (Stip. No. 4, par. 2, Attachment E

[Art. IV, Sect. 2]).[7]

Local 36 had contracts under the old bargaining agreement with 200 sheet metal contractors (Stip. No. 4, par. 3). Terms of the new agreement have, as of April 15, 1967, been negotiated by Local 36 into contracts with 150 sheet metal contractors in the jurisdictional area of Local 36 (Stip. No. 4, pars. 3, 4). These contractors represent most of the sheet metal contractors in the construction industry in the City of St. Louis and the 44 counties in Missouri falling within the jurisdiction of Local 36.[8]

Membership in Local 36 is obtained either through the apprenticeship training program, by direct application as a journeyman sheet metal worker (often as a result of a non-union shop being "organized") or by transfer from another local.

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7/ Local 36 also follows the practice of bringing in members of sister locals from outside Local 36's geographical area when additional sheet metal workers are needed and discourages applications for membership when work is not plentiful (Dep. of Zimmerman, pp. 26, 37-38; Dep. of Schultz, [December 14, 1966] pp. 79, 80).

8/ (Stip. No. 4, par. 5.) Significant also, as an indication of Local 36's continuing control over sheet metal labor in the St. Louis area, are the following membership statistics which show a constant increase in the membership since 1947:

1947 - 700
1961 - 1050
1964 - 1100
1965 - 1175
1966 - 1250
1967 - 1275

(Dep. of Zimmerman, p. 13; Stip. No. 4, pars. 10, 11, 12.)

Under the terms of the collective bargaining agreements between Local 36 and sheet metal contractors an apprenticeship program has been established which is under the administration of the Joint Apprenticeship Committee. This Committee is composed of three representatives of Local 36 and three representatives of the sheet metal contractors (Stip. No. 4, par. 6). The apprentice training program is in fact, however, under the dominance and control of Local 36. First of all, the operations of the sheet metal apprenticeship program are conducted at the Local 36 union hall (Stip. No. 4, par. 8) and, with rare exceptions, applications for the program are obtainable only there (Tr. 457-458; Dep. of Schultz, [December 14, 1966] p. 25). In addition, a member of Local 36, Edward Schultz, is both the secretary of the joint committee and the person responsible for the instruction of the apprentices. Schultz is also a member of the Executive Board of Local 36 (Stip. No. 4, par. 7). In his role as secretary of the committee, Schultz is in fact the administrator of the program in its day-to-day operation. He refers the apprentice to employers when they need one and he computes the scores upon which their eligibility for referral is determined (Dep. of Schultz [October 19, 1966] pp. 6, 31-32).

The purpose of the apprenticeship program is to train young men as journeymen sheet metal workers; and upon their successful completion of this program, which consists of from 8,000 to 10,000 hours or approximately four to five years training, they are accepted into union membership as journeymen (Dep. of Schultz [December 14, 1966] pp. 36-37; Pl. Ex. 21 [Addendum to Standard Form of

Union Agreement, Art. XII]; Dep. of Zimmerman, p. 28).

Journeyman applicants for membership in Local 36 fall into two categories--those who individually apply to the union for membership and those who become members through the union's practice of "organizing" the employees of non-union sheet metal contractors (Dep. of Zimmerman, pp. 12-16, 29-32). Two application forms are involved in the process of applying individually for union membership--an application for journeyman sheet metal examination, and an application for membership (Pl. Ex. 11; Pl. Ex. 14; Dep. of Zimmerman, pp. 28-32). The application for the examination is the first form the applicant completes (Dep. of Zimmerman, pp. 31-32). It elicits information which tends to reflect his experience in the trade (see Pl. Ex. 14). The applicant then is scheduled to take a test which is administered by the apprentice instructor, a Local 36 member (Dep. of Zimmerman, pp. 32, 33; Tr., p. 443). The testing involves no passing or failing score and no score is reported to anyone; the tester simply reports his judgment of the applicant and his recommendation for or against membership (Dep. of Schultz [December 14, 1966], p. 41; Tr. 444-445, 455). The applicant then, if he "passes" the test, is allowed to complete the application for journeyman membership (Pl. Ex. 11; Dep. of Zimmerman, p. 32). The applicant is also required to pay an initiation fee which, in the case of a journeyman applicant of this type, is equal to 100 times the current hourly rate of pay, which presently would be $531.00 (Dep. of Boyd, p. 10; Tr. 472). This fee is not always exacted at the time of application, and applicants are in fact referred for employment and allowed to pay the fee in installments (Dep.

of Zimmerman, p. 32; Dep. of Boyd, p. 10). When the initiation fee is paid in full, the applicant is initiated into membership. No vote by the membership is required. Although the application form and the constitution require the countersignatures of "two good standing members of the local," this is not required in practice--such applications are routinely signed as a matter of course by members of the Executive Board (Dep. of Zimmerman, pp. 32-36; Tr. 479; Pl. Ex. 16 [International Const. Art. XVI, Sec. 2]).

As to those persons who become applicants for membership due to an "organizing" of a contractor's employees, no test is required (Tr. 473). Consequently, only the application for membership form is filled out. (See, e.g., Tr. 232-234, 238-239, 242-247.) The initiation fee in the case of these applicants is much lower, ranging from $25 or $50 to $150 per applicant (Tr. 473; Pl. Ex. 11).

## II. DISCUSSION OF THE EVIDENCE

### A. Introductory Statement

The evidence in this case speaks to a small but significant aspect of employment opportunities for Negroes in the St. Louis area--opportunities in the sheet metal and electrical construction trades. Jobs in those trades essentially are controlled by the defendants, Local 36 and Local 1, respectively. They have the bargaining agreements with the builders; they run the hiring halls through which tradesmen are employed by the builders.

Negroes have not been passing through those hiring halls--not because there are no eligible or qualified Negroes in the area; but because they are not among defendants' members.

This condition came about by design. For a long time the defendants have pursued policies calculated to

reserve construction jobs for their members and to restrict their memberships to white persons. Their affirmative organizational efforts have always embraced white shops and shunned Negro shops. They have always bargained with white contractors and refused to bargain with Negro contractors. Their recruitment of apprentices has always been from white sources and through the sponsorship of white contractors.

On those occasions when Negroes came to the defendants in search of job opportunities, they were rebuffed. When the Negroes resorted to their own union, the defendants used their coercive power to restrict the job opportunities that that organization could make available to Negroes.

Despite the passage of the Civil Rights Act of 1964, the picture has not changed. The union mechanisms through which discrimination was previously practiced openly have not changed in either form or substance, though the discrimination is less apparent. The availability to eligible and qualified Negroes of job opportunities controlled by the defendants has not noticeably changed.

This section of the brief is devoted to an exposition of these facts in detail.

B. Local 36, Sheet Metal Workers Union

1. We begin with the statistics, showing that the result of the discriminatory practices described hereafter is the almost total exclusion of Negroes from Local 36.

St. Louis has a population of 750,026. This total includes 251,083 males over the age of 14 years, of whom 187,914 are white and 63,169 are non-white. (1960 Census of Population, Vol. 1, Part 27, Table 27, pp. 27-153.)

Local 36 has a total membership of 1275. The record reflects the following increase in membership since 1947 and apprenticeship since 1965:

| | Members | | | Apprentices | | |
|---|---|---|---|---|---|---|
| | W | N | T | W | N | T |
| 1947 | 700 | 0 | 700 | - | - | - |
| 1961 | 1050 | 0 | 1050 | - | - | - |
| 1964 | 1100 | 0 | 1100 | - | - | - |
| July 2, 1965 | 1175 | 0 | 1175 | 98 | 1 | 99 |
| February 4, 1966 | 1250 | 0 | 1250 | 109 | 1 | 110 |
| April 15, 1967 | 1275 | 0 | 1275 | 114 | 2 | 116 |

(Dep. of Zimmerman, p. 13; Stip. No. 4, pars. 10-12). One hundred twenty-two members were initiated from July, 1965 to August, 1966 (Pl. Ex. 20G), all white.

2. For Local 36, as with any union, the key to its continued vitality, growth, and bargaining power is its constant effort to organize non-union sheet metal shops. For example, from June, 1965 through August, 1966 fully one-third of the persons who filed official application forms and were initiated into Local 36 were from non-union shops that the union had "organized." (Computed from Pl. Ex. 11, Tr. 473, 481.) When Local 36 organizes a sheet metal shop, the owner, the employees and the union all benefit. The owner can now take on jobs without fear of being picketed. The union has more members and more bargaining power. And the employees not only gain the full benefits of membership in the union, but also are afforded preferential treatment: their initiation fee is lower and they need not pass a test to qualify as a journeyman. (See, e.g., Tr. 238, 245-46, 450-453, 472-474.) These preferences have always been

conferred on white employees of non-union shops; the union has never afforded such benefits to similarly situated Negroes.

The Local 36 business manager testified that "our union and our international union has a policy of attempting to organize the unorganized" (Tr. 473), but in fact the Negro firms have not been organized. One Negro contractor, Arthur Kennedy, has been in the sheet metal business since 1937 (Tr. 153), and his shop was non-union until formation of the CIU in 1961 (Tr. 154), yet Local 36 made no attempt to organize his shop between 1937 and 1961 (id.). All during this time period Local 36 was organizing other contractors throughout its jurisdiction, (see, e.g., Dep. of Boyd, p. 20) and its organizers purportedly were trying to call on all unorganized shops. (Id. at 21.) But not until almost a year after this suit was filed did the defendant attempt to organize the Kennedy (Negro) shop (Tr. 154). During the earlier years the union did, of course, have contacts with non-union Negroes. For example, on May 24, 1951, it was reported at a Local 36 Executive Board meeting that a "colored man was operating the power shear at Higgins shop" (Pl. Ex. 12A, p. 47). On several occasions union members were called before the executive board because Negroes had performed jobs that fell within the union's jurisdiction (Pl. Ex. 12A, p. 1, January 12, 1950; p. 31, December 7, 1950; Pl. Ex. 12B, p. 33, February 26, 1953). Yet the union made no efforts to organize these Negroes.

Shops become organized in one of two ways. If the union's business agent knows of a non-union shop: ". . . he'll contact them, and explain to the employees the

benefits of belonging to a union, the conditions, the fringes, welfare pension, so on and so forth. And it's just a selling job the way I see it . . . ." (Dep. of Zimmerman, p. 16). Or, as very often happens a contractor will request that the union organize his shop, so that he can work on union jobs. (Id. at 13.) Not only has Local 36 failed to attempt to organize Negro shops, but it has, since the passage of the Civil Rights Act[9/] and even during the pendency of this lawsuit, rebuffed the attempts of a small Negro contracting firm, Lee and Wells, to affiliate with the union(discussion infra.) One of Local 36's heaviest influxes of members occurred between April and November of 1965, when 101 new members were initiated (Pl. Ex. 20G) and many more transferred in from other locals (Tr. 477). Apparently because of a boom in construction (Tr. 477) the contractors were "in desperate need of men" and the union said it would help them (Pl. Ex. 12G, p. 11, July 1, 1965). With Title VII of the Civil Rights Act coming into effect, Clarence Lee, a Negro sheet metal worker, called the union hall in the Summer of 1965 and asked for information concerning joining the union. The person who answered the phone told him that someone from the local would return his call, but Mr. Lee never heard from the union (Tr. 259). This treatment of a Negro contractor differs markedly from the union's

9/ It should be noted that shortly after the Civil Rights Act was passed, the union, at several meetings, discussed the question of Negro employment as sheet metal workers (see, e.g., Pl. Ex. 13G, p. 18, August 24, 1964; p. 19, September 8, 1964; Pl. Ex. 12F, August 20, 1964; Dep. of Zimmerman, p. 67). The minutes are silent as to how (or whether) the question was resolved.

treatment of white shops: "the boss in the shop had a business agent come out and sign the shop up and put us under contract, and I paid my initiation fee at the hall" (Tr. 232). Another white sheet metal worker, who works in a three-man shop, testified that the owner and two employees became members of Local 36 by contacting the business agent who came out to the shop and "explained the benefits and stuff of the union" (Tr. 244-245).[10/]

Lee and Wells finally got an answer about what they would have to do to join the union in April of 1967 when each of them telephoned the union hall. In April, 1967, Mr. Lee phoned the union hall and spoke with the business manager, Mr. Zimmerman. Lee told Zimmerman who he was and that he and his partner were interested in joining the local, but "he said the fee was $500 per man" (Tr. 272).[11/] Even though Lee and Wells would be joining the local as members rather than signing a contract with the local as sheet metal contractors, Mr. Zimmerman said that they would have to pay a $1000 bond that was required of all contractors to insure that they would pay the men for the vacation stamps (Tr. 263, 267-268). Mr. Wells also called the union, and received even less encouragement.

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10/ In each of these white "organizations" the new members were initiated without taking any journeymen's examination and on the payment of a $150 initiation fee (Tr. 234, 238, 246). The waiving of the test may explain why some men who are barely old enough to even be apprentices are journeymen. (For example, Gerald P. Schulte, 18 years old, was initiated on July 8, 1965, upon payment of a $50 fee; Clifford A. Long, 18 years old, was initiated on a $50 fee on October 14, 1965 [Pl. Ex. 11, pp. 8, 31]).

11/ Zimmerman's successor as business manager testified that the amount of the initiation fee for a shop coming in under an "organization":

> "depends upon where the shop is located, and do you want these people. . . . You couldn't organize a shop, a two-man shop, for example, in, let's say, Sullivan County and expect the people to pay $531 initiation fee." [Emphasis added.]

(Tr. 486-87).

The phone conversation was as follows: "I asked him are they taking in Negroes in their union. . . . He replied, it will cost you $2000. . . . Nothing else was said. He hung up and I hung up" (Tr. 517-518). Faced with this high fee Lee and Wells (who had been non-union sheet metal workers since 1946 and 1948 respectively) joined the CIU within a week of these conversations (Tr. 272, 522).

Because of the policy of excluding Negroes, the discrimination in organizing white but not Negro shops, and the discrimination in the terms of becoming a member, there are no Negro journeymen. The other method of entry into Local 36 is through the apprenticeship program.

3. It is incontestable that up until February of 1961 Negroes could not be apprentices in the sheet metal trade. For until that time Negroes were not allowed to take the apprenticeship classes at O'Fallon Technical High School (Pl. Ex. 13F, p. 37, February 14, 1961). The exclusionary rule was changed very shortly before the President of the United States issued Executive Order 10925 on March 7, 1961. Later that year the Missouri Fair Employment Act passed and the following year St. Louis passed an ordinance banning employment discrimination. It was apparently around the same time that the Local 36 President suggested that the local should adopt a non-discriminatory system for selecting apprentices; the President's suggestion was not adopted (Pl. Ex. 13G, p. 19, September 8, 1964).

In 1962 the Apprenticeship Committee standards did not require any test in order to become an apprentice, and the employers were allowed to select and recommend persons to be placed with them as apprentices (Dep. of Schultz [October 19, 1966] p. 36-37). On July 16, 1963, a month after Executive Order 11114 had extended to federally assisted construction projects the non-discrimination requirements of Executive Order 10925, Dorriss Strong, who had been selected by the Mound Rose Cornice Company as an apprentice, became the first Negro apprentice of Local 36 (Stip. No. 4, par. 13; Tr. 433; Dep. of Schultz [October 19, 1966] p. 45 and [December 14, 1966] p. 54).

On January 17, 1964, 29 C.F.R. Part 30, "Non-discrimination in apprenticeship and training," took effect, and the Regional Director of the Bureau of Apprentice and Training sent a copy to Local 36 (Def. Ex. O). Six months later the Civil Rights Act was enacted. On September 8, 1964, the business manager reported to the members that "we must inaugurate article 29 as directed by the Department of Labor." (Pl. Ex. 13G, p. 19, September 8, 1964). The program required by the Department of Labor was finally adopted on December 21, 1964 (Dep. of Schultz [October 19, 1966] p. 9) and was approved on February 11, 1965 by the Department of Labor (Stip. No. 4, par. 9).

On May 28, 1965, the Secretary of the Apprenticeship Committee sent schools in the area a copy of the apprentice qualifications and procedures. According to Schultz's letter applications would be available at the union hall every weekday from nine in the morning until four

in the afternoon every week of the month (Dep. of Schultz of October 19, 1966, p. 14; Def. Ex. R). There was no further publicity about the apprenticeship program until after the filing of this lawsuit. However, the record is replete with instances of union members and their relatives continually being supplied with information about the apprenticeship program (See, e.g., Tr. 205-6, 212-4; 225-6; Dep. of Schultz, October 19, 1966, p. 16). The union, just one month before this suit was filed, suggested that "our members ask their sons or other young people interested to . . . get on this list now before school ends" (Pl. Ex. 13G, p. 64, January 11, 1966). Shortly after the suit was filed the union finally arranged to put an article in the newspaper about the apprenticeship program (Tr. 440-441; Def. Ex. S). Local 36's business manager told the news reporter that not a single Negro had "taken the initiative to apply" (Def. Ex. S). A Negro reading the article would have also learned, for the first time, that he could apply at 7:30 p.m. the third Monday of every month; this was the result of an unpublicized change from the previous practice (Tr. 449-450). The reason for the change was that taking applications everyday "interfered too much with the other business at the office." (Dep. of Schultz [October 19, 1966] p. 15).

On November 30, 1966, for the second time in its history, Local 36 accepted a Negro as an apprentice. (Stip. No. 4, par. 13.) Two weeks later the Secretary of the Apprenticeship Committee said "it seems like we have enough applications now. We are probably getting too many applications so there will be no reason to advertise any more." (Dep. of Schultz [December 14, 1966] p. 17).

4. Local 36 has reinforced its overtly discriminatory practices with other practices which seemingly have no racial significance but which, in practical terms, insure that white persons receive preferential treatment because they are white. First, there is Local 36's open and avowed nepotistic policy. For example, at one executive board meeting:

> a motion was made duly seconded we enforce the rule, on our books as to members sons or sons of our employers having preference when a new apprentice is allowed.

(Pl. Ex. 12A, p. 48, May 31, 1951.) The manifestations of the policy include a recent union request that its members encourage their sons and young friends to sign up early for the apprentice program (Pl. Ex. 13G, p. 64, Jan. 11, 1966), constant consideration by the union executive board of requests for membership or apprenticeship made by members on behalf of friends and relatives [Pl. Ex. 12A, p. 59, October 4, 1951; p. 64, December 13, 1951; Pl. Ex. 12B, p. 3, April 3, 1952; p. 17, August 14, 1952; Pl. Ex. 12C, p. 3, July 14, 1954; p. 8, September 2, 1954; p. 60, March 15, 1956; p. 64, April 19, 1956; p. 66, May 3, 1956; Pl. Ex. 12F, p. 4, October 5, 1961; p. 68, May 14, 1964; p. 71, July 2, 1964; Pl. Ex. 12G, p. 8, April 8, 1965; p. 10, May 13, 1965], and dissemination of information about the apprenticeship program by union members to friends and relatives (see, e.g., Tr. 203-206; 210-214; 222-224; 224-229).[12/] The importance of this practice is

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12/ One such apprentice had been living in Casper, Wyoning when, in June of 1965, a friend wrote him that Local 36 was looking for apprentices. He moved to St. Louis and received his apprenticeship in three months, in violation of the one year residence requirement. (Tr. 205-206; Pl. Ex. 18, par. A. 3).

increased by the union's failure to print or disseminate to Negroes any information whatever about the requirements and procedures for journeyman membership (Dep. of Boyd p. 18). Nowhere is the result of this practice more vividly displayed than in the statistics: about one third of the persons whom the union has accepted as apprentices since the effective date of Title VII are related to Local 36 members (Stip. No. 4, Second Part, par. 18).[13/] Whatever may be said about the propriety of giving preference to friends and relatives, the nepotism in Local 36 is tainted by the policy of excluding Negroes from the union . . . because of that policy the union membership is all white, so that only white persons can benefit from nepotism.

Local 36 gained another restrictive device in its latest collective bargaining; a new referral system that gives every possible protection to the job security of present members of this all-white union at the expense of non-members and future members. This new referral system, which minimizes the opportunites for Negroes to work as sheet metal workers, was adopted even though this lawsuit was pending; it is presently scheduled to take effect on January 1, 1968 (Pl. Ex. 21). Under the new system, referrals will no longer be made on a first come first serve basis as they have in the past. The first worker to fill out an out of work card could be the last one to get a job -- if he has not been employed as a member of Local 36 for at least a year. The agreement establishes

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13/ We do not have statistics on friends.

four groups of applicants for employment. No worker in groups II, III, or IV can obtain work as a sheet metal worker unless all workers signed up in Group I have work. The net effect of the qualifications for placement in Group I is that only persons who have been Local 36 members for a year or more would be eligible for that priority.[14/] The result is that even if a Negro could now join Local 36, those persons who joined the union during the period when Negroes were excluded (including approximately 122 persons who joined between July 2, 1965 and August 1966) would be put in a preferred position if this clause is allowed to take effect. This would, in turn, make it more difficult for the Negro to get the year's experience needed to qualify for group I.[15/] The Negro's problem is compounded by the fact that both Group I and Group II require four years'[16/] or more experience in the sheet metal trade. . . . experience

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14/ One of the requirements for placement in Group I is that the worker "have been employed for a period of at least one year in the last four years under a collective bargaining agreement between the parties to this contract." Since referred employees must join the union within eight days of the beginning of their employment, the only way to work under a collective bargaining agreement is to join Local 36. As the President of the Union explained to his members: "A referral system is the closest thing a Union can have regarding a 'Closed Shop'." (Pl. Ex. 13F, p. 120, April 23, 1963). In explaining the proposed system, the President continued: "3. Members would be placed in groups. We would like to emphasize at this time that all members presently in Local No. 36 would go into the 'A' group or the No. 1 group." (Ibid., emphasis added.)

15/ The new referral provision is thus in direct conflict with another provision which appears in the collective bargaining agreement for the first time: "The Union shall refer applicants for employment without discrimination against such applicants by reason of membership or non-membership in the union, race, creed, religion, color, national origin, sex or ancestry. . . ." (Pl. Ex. 21).

16/ The four year requirement is geared into the apprenticeship program, which runs four years (note that the IBEW apprenticeship program runs five years, and that five years' experience is required for the top two IBEW priority groupings). An apprentice who passes the journeyman test will automatically be put in Group I, since he will have had four years' experience in the trade and will have been employed all four years under a collective bargaining agreement between the parties.

which has been available only to a handful of Negroes because of Local 36's control over the sheet metal trade. The referral provision virtually guarantees that few Negroes will gain the experience needed to get into a high priority grouping, because all of the regular groups (all but Group IV, which relates only to summer employment) require some experience in the trade. Local 36 thus tells Negroes: the only way you can get a non-apprenticeship sheet metal job is through referral; however, you can't be referred if you haven't worked sheet metal jobs for at least a year. If an employer specifically requests Local 36 to refer John Doe, Negro, to him the union is at present obliged to do so; but under the new referral provision the union would be forbidden to meet the request. If, however, the employer requests Richard Roe, a worker in Group I (and accordingly white), the union would be obliged to honor the request even under the new provision. Negro sheet metal workers in their late fifties and sixties may at first think that at least they can obtain job security under the new system, because it provides: "Every fifth man employed by the Employer covered by this Agreement shall be 55 years or more of age provided such men are available. . . ." However, this provision, too, protects the older white union members but not the Negro who was excluded from the union most of his life; it continues: "however, all names in the higher priority groups, if any, shall be exhausted before any such overage reference can be made." (Pl. Ex. 21). The union adopted -- indeed insisted upon -- this particular referral system with

with full knowledge of its consequences for the Negro. Business Manager Zimmerman "stated our purpose and intent is to keep out an undesirable element and keep our older members employed on a fair ratio. We are willing to organize and accept qualified people even if they are 'one-eyed Chinamen.'" (Pl. Ex. 13G, p. 95, August 3, 1966).

C. I.B.E.W. Local 1

1. St. Louis has a population of 750,026. This total includes 251,083 males over the age of 14 years, of whom 187,914 are white and 63,169 are non-white.[17/]

The following table reflects the approximate racial composition of the Local 1 membership in construction classifications, in non-construction classifications,[18/] and in apprenticeship status, on significant dates:

| | Construction Members | | Non-Construction Members | | Construction Apprentices | |
|---|---|---|---|---|---|---|
| | White | Negro | White | Negro | White | Negro |
| July, 1965 | 2000 | 0 | 3000 | 25 | 220 | 0 |
| February, 1966 | 2000 | 0 | 3000 | 35 | 220 | 0 |
| January, 1967 | 2000 | 12 | 3000 | 70 | 220 | 3 |

(Stip. No. 3, pars. 2, 11, 12, 15). For the seven years beginning 1960 through 1966, Local 1 has averaged at least 50 new members a year. (Pl. Ex. 8).

The union's hiring hall referred applicants to a total of 13,589 construction jobs between 1958 and August, 1966. (Pl. Ex. 10.) The distribution of jobs to union members and non-members was as follows:

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17/ 1960 Census of Population, Vol. 1, Part 27, Table 27, pp. 27-153.

18/ The claim in this case relates to discrimination in the construction classifications, but the statistics in the non-construction classifications are included for purposes of completeness.

| | Number Referred | Percentage Referred |
|---|---|---|
| IBEW Members | 12,548 | 92.3 |
| a. Local 1, Construction | 9,223 | 67.9 |
| b. Local 1, Non-construction | 1,617 | 11.9 |
| c. Other IBEW locals; St. Louis area residents | 576 | 4.2 |
| d. Other IBEW locals; non-residents of St. Louis area | 1,132 | 8.3 |
| Non-members of the IBEW | 1, 041 | 7.7 |

(Compiled from Pl. Ex. 10).

2. Outright discrimination against Negro electricians by Local 1 during the 1950's is virtually admitted.[19/] This is confirmed by witnesses Stuart, Witt, and Harding who testified that Negroes had sought to join Local 1 and had been rebuffed from the 1930's through the mid 1960's; that Negro contractors sought unsuccessfully to have Local 1 organize their shops during the same period; and that Negro contractors were harassed by Local 1 from working on electrical construction jobs. The following is a chronology of the more significant acts of discrimination on the part of Local 1 during this period.

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19/ When questioned by the Court, counsel for the defendant acknowledged the existence of discrimination "back in the early 1950's" and was unable to specify any particular time when the union's policy changed. (Tr. 328-330).

(a) In 1938 an IBEW business agent threatened to picket the owner of the Club Plantation where Wilbur Stuart, a Negro electrical contractor, was working. Stuart immediately negotiated with Arthur Shading, IBEW business manager, to have his seven employees join the union. A check for $2100 for membership fees for Stuart's men was given to Mr. Shading. Mr. Shading returned the check in 90 days and stated that the rank and file members would not accept Negroes into the union. (Tr. 70-71).

(b) Wilbur Stuart and other Negro electrical contractors negotiated, in 1945, with Local No. 1 to admit Negroes into the union. These negotiations were unsuccessful, and no Negroes were admitted. (Tr. 72).

(c) Frank Witt, a Negro electrical contractor, applied for membership in the union in 1946. He never received a response from the union. In 1948 he was asked by the owner of a service station to stop work on an electrical repair job at the station because the owner had been threatened by the union with a picket line. At that time he again filed application to join the union and again received no response. (Tr. 102-104).

(d) In 1950, the union threatened to put up a picket line at a service station on Fountain and Finney Avenue in St. Louis where James Harding, a Negro electrical contractor, was working. Harding was told by officials of the IBEW that he could only work on a job where no AFL union contractor was involved. (Tr. 52-53).

(e) In the early 1950's, the owner of the Missouri Diecasting Company was threatened by the union with a picket line while James Harding was performing some electrical work for the company. Harding was allowed to complete the job after a Local 1 official agreed to renew their unwritten agreement of 1950. (Tr. 54-55).

(f) In 1952 or 1953, Harding was told by Business Agent Nolting (Nolte) of Local 1 that he would not be permitted to do the electrical construction work on the New Age Federal Savings and Loan Company even though it was a Negro project. (Tr. 53-54).

(g) In 1954, a series of meetings was held between representatives of Harding Electric, Curtis Electric, Woods Electric, Stuart Electric and Duke Electric, all Negro electrical contractors, and representatives of Local 1 to determine whether Local 1 would organize these shops. At the last meeting these contractors were told that the membership

had to vote on their applications. The contractors were never contacted again. (Tr. 57-58, 72-74). While these negotiations were still in progress, the union picketed a job on California and Shenandoah Avenues in St. Louis where Wilbur Stuart was working. When Stuart went down to the union hall the business manager gave him a work permit. (Tr. 74).

(h) After the series of meetings in 1954 during which several Negro contractors sought to affiliate with Local 1, the membership of Local 1 on July 1, 1955, (after earlier postponing a vote on two occasions so that all members could be contacted) defeated a resolution that the union should organize Negro contractors. (Pl. Ex. 2B, p. 18).[20/]

(i) In August, 1961, Missouri enacted a law prohibiting racial discrimination by labor unions (Section 296.010 et seq., R.S. Mo., Supp. 1961). In October of that year, Walter Hampton, a young Negro high school graduate, sought to register in an electrician apprentice class attended by the Local 1 apprentices. Hampton had qualified for the apprenticeship program of the CIU, a union which

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20/ This was a deviation from the well established procedure whereby the business manager, or a business representative working under him, organizes a shop without seeking prior approval of the membership. (Dep. of Lanemann, p. 62).

had been established because of the failure of Negroes in their attempts to secure affiliation with Local 1. The apprentice classes were held at O'Fallon Technical High School, which is a part of the St. Louis Public School System, and taught by two members of IBEW, Local 1. One of the instructors was William Bruns, the son of the president of Local 1. Bruns told Hampton and the other CIU apprentices that they could not attend the class. Several days later after the intervention of the school principal, Hampton was permitted to attend and to complete the course. (Tr. pp. 13-21, 143-148; Dep. of Gibbons [October 18, 1966] pp. 37-38).

(j) The minutes of Local 1 reflect that on October 20, 1961, union president H. Lee Bruns "explained the discrimination of the colored apprentices." The minutes also disclose that at the same meeting, there was a general discussion of Negroes coming into the union. Decision on this matter was postponed, and the Business Manager advised the members that, if this question should come up for a vote, all members would be notified. (Pl. Ex. 2C, p. 47). Voting on admission of new members is ordinarily a routine matter. Subsequent minutes do not indicate that the matter was discussed further or that a vote was taken, and no Negroes in construction classifications were

admitted to the union prior to the institution of this suit. (See generally, Pl. Ex. 2B, 2C).

(k) In 1963 or 1964, Frank Witt, a Negro contractor, lost two valuable jobs as a result of picketing and interference by the union, and his offer to join the union was rejected by representatives of Local 1. These incidents are discussed in greater detail infra.

The foregoing chronology brings us up to the date of the Civil Rights Act. As will be seen in the next part, the passage of the Act effected no change in Local 1's policies and practices.

3. Local 1's discriminatory policy survived both the enactment of the Missouri statute prohibiting racial discrimination by unions (1961) and an ordinance of the City of St. Louis to the same effect (1963. See Stip. No. 3, par. 4, Attachment F). It also continued after July 2, 1965, when the Civil Rights Act of 1964 became effective. The evidence shows that, months after the effective date of the law, Local 1 was still affirmatively seeking to keep the union, and the hiring hall referral list, all white. After February 4, 1966, when this suit was instituted, Local 1 admitted a few Negroes to membership and apprenticeship, but determined to operate the referral system on a racially segregated basis.

The union's practices of affirmative discrimination, continuing through mid-1967, can be appraised by the

experiences over the years of Walter Hampton, a young Negro journeyman electrician, and Frank Witt, an experienced Negro electrical contractor.

(a) Walter Hampton

Walter Hampton is a young Negro high school graduate with an excellent background in electrical construction work. In 1961, after he had qualified for the electrical apprenticeship program, and after his difficulties with the son of IBEW Local 1's president described in the chronology set forth in the preceding section, Hampton attended classes at O'Fallon Technical High School, together with the apprentices of Local 1. Hampton completed this course, as well as his apprenticeship with the CIU. He had experience with several contractors. In approximately the spring of 1965, Hampton completed his apprenticeship and was advised that his classroom time and on the job training were equivalent to five years experience. Except from the point of view of Local 1 -- which would not have admitted him on account of his race -- he was a fully qualified journeyman electrician. (Tr. pp. 13-25, 151-152).

In mid-October 1965, some three months after the effective date of Title VII and a few months after Hampton completed his apprenticeship, Mr. Louis Sachs of the Sachs Electric Company met with Hampton to determine whether he was qualified to work for Sachs Electric Company on the Gateway National Arch construction

project.[21] Mr. Sachs was satisfied with Mr. Hampton's qualifications and directed him to the union hall. Mr. Sachs also telephoned Norman Lanemann, the business manager of the union, to advise him that he was sending Hampton down so that he could work for Sachs Electric (Tr. pp. 22-24, 152, 375-376).

When Hampton arrived at the union hall and advised Lanemann that he had been sent by Mr. Sachs to join the union and that he wanted to work for Sachs Electric Company, Mr. Lanemann advised him that "I am sorry, we don't have any calls from Sachs Electric for electricians on the Arch," and that Hampton could not join the union unless he was employed by a contractor. (Tr. pp. 25-26, 376). On the witness stand at the trial in this action, Lanemann admitted both that Sachs had called him to tell him he was sending down a Negro applicant and that he told Hampton that Sachs had no openings. (Tr. 351, 376).[22]

Following his inability to obtain work through the Local 1 hiring hall, Hampton went to work at lower wages for Wilbur Stuart, a Negro contractor. On November 8, 1965, while at work, his employer, Stuart,

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21/ Previously in 1965, the possible employment of Hampton by Sachs on the Arch Project was raised at a contract negotiations meeting between government representatives and a number of other persons, including a representative from Local 1. (Tr. pp. 150-151).

22/ Lanemann claims that he told Hampton at this time that he should sign up on the referral sheet. If any explanation was given to Hampton, it was manifestly insufficient, inasmuch as Hampton left without filling out an application of any kind on this occasion. (Tr. 25-26, 351, 375-377).

advised Hampton of a telephone call that he was to go to the union hall, which he did. At this time he asked for an application "to join the union". He was furnished an application which he completed. The application was, in fact, one for work referral rather than for membership. Union procedures were not explained to him. (Tr. 27-30; Pl. Ex. 1)

From the time that Hampton filed the above-described application until after his induction into military service on January 24, 1967, Hampton heard nothing from the union. (Tr. 9, 30-31). Local 1 did not attempt to contact him for referral until March 21, 1966, after this suit had been filed. (Pl. Ex. 1).

During both October and November, 1965, there were numerous employment opportunities for qualified construction electricians in the St. Louis area. During October, 1965, which is the month when Louis Sachs sought to employ Hampton, at least eighteen persons, all white, were referred to Sachs Electric Company on the very same day that they applied. At least eight of these were Group 0, and under the collective bargaining agreement, Hampton, as a member of Group 4,[23/] would be entitled to priority in referral over these persons. From November 8, 1965, the date on which Hampton filed his application for referral, until November 30 of that year, Local 1 referred fifty persons to Sachs Electric Company, and at least thirty-four of these filed applications for referral with the union after

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23/ The system of priorities in Local 1's hiring hall is described in greater detail in Section I, supra. Group 0 consists of persons with no experience in electrical construction. Group IV embraces applicants who have been in the trade for a year or more. Had Hampton been a member of Local 1, he should presumably have been assigned to Group I.

Hampton did. Twenty-eight of these thirty-four were placed in Group O and had lower priority than Hampton. A total of 203 applicants in Group O were referred by the union to other electrical contractors between November 8 and November 30, 1966. (Pl. Exs. 10, 10B, 23A).[24/]

Some specific examples of white persons who received hiring hall preference over Hampton are illustrative.

(1) Lester B. Waller, a C-maintenance electrician who had served a maintenance apprenticeship and was classified in Group O, registered for employment on November 8, 1965, the date of Hampton's application and was referred to Sachs Electric -- which had asked for Hampton -- on November 9;

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24/ We have searched the record for evidence that would explain Hampton's non-referral on some ground other than race. We have found none. The only possibility as to which one might speculate is not borne out by the record -- that somehow physical presence in the hiring hall was a prerequisite for referral. Lanemann testified that Group O persons are never referred that way; they are referred out by telephone (Tr. 361). When Local 1 finally, on March 21, 1967, decided to refer Hampton, they used the telephone. (Pl. Ex. 1). When Local 1 decided to honor a Negro contractor's request for a referral, they told the contractor to contact the man by telephone (Tr. 117). When, according to Lanemann, he instructed Hampton on how to obtain a referral, he said: "The thing for him to do would be to go back in the hiring hall, put his name on the list and he would be referred out just like everybody else. His name would be available and if work was available, why fine. . . . But put your name on the list like everybody else, when your turn comes we will send you out." (Tr. 351).

(2) Leslie L. Shoulta, another C-maintenance electrician classified in Group O, was referred to Sachs on November 10, the very day on which he applied;

(3) Charles R. Harris, another member of Group O registered for employment on November 8, and was referred to Mack Electric Company on November 9. How long he remained at Mack is unclear, but the records of Sachs Electric Company reflect that he worked there from November 22 to November 26.

(See Pl. Exs. 23-A and 10).

(b) Frank Witt

Frank Witt, a Negro contractor whose early experiences are described in the chronology in the preceding section, began his unsuccessful attempts to join Local 1 in 1946 and, after failing to receive a response, filed another application in 1948, again without receiving a response. Witt did not affiliate with the C.I.U. and, until 1966, remained a nonunion contractor. (Tr. 117-118, 369).

In 1963 or 1964, Witt was selected by Joseph Champ to do the electrical work on the Champ Dairy, which was then under construction. This job had a value of approximately $48,000. Champ testified that he regards Witt as an excellent electrician and that Witt had done electrical work for him for 10 years. (Tr. 135-136). At the commencement of the wiring work, Local 1 set up a picket line to protest the award of the contract to Witt. Witt immediately

made it known to Local 1's business representative Quinn that he was willing to join the union, but Quinn denied that he had authority to discuss union membership with him. In fact, according to Local 1's business manager Lanemann, it is the business representative's duty under the IBEW constitution to organize shops (Dep. of Lanemann pp. 52-54). Champ and Witt then met again with union representatives and asked if there was any way in which Witt could be made eligible for the job, but the representatives said that it was not the policy of the organization to allow Witt to be a member. Champ thereafter had to award the contract to a union contractor, E. R. Belt, but retained Witt for supervisory duties since the contractor was unfamiliar with the work. (Tr. 105-111, 134-141).

In 1964, following his loss of the Champ Dairy project, Mr. Witt was asked to do electrical work on the Apex Photo Shop, a job valued at approximately $20,000. The owner advised Witt that the union had made it known that Witt would not be permitted to do the construction work and again Witt relinquished the job to Belt, who again did the work under Witt's supervision. Witt, however, was permitted to do the machinery hookup work after the construction work was completed. (Tr. 111-114).

In March, 1966, Witt became the first contractor with Negro employees to be organized by Local 1 and he and two employees became the first Negro members of the union in a construction classification (Stip. No. 3, pars. 11a, 12, 14). His acceptance into the union resulted from a contact by white contractor Belt -- the

same man who had replaced him on the Champ Dairy and the Apex Photo Shop jobs. Belt, who apparently was speaking on behalf of the union (Tr. 372-373), told him:

> that the organization . . . it was about time the organization was going to move to get a Negro into the organization and that I [Witt] had the first shot. (Tr. 132).

The contact by the white contractor apparently was made during the last week of January or the first week of February, 1966, when a discrimination charge was pending before the NLRB against Local 1 (see _____ NLRB _____ (1967), Case Nos. 14-CC-348-359) and shortly before this suit was instituted. Witt met with Business Manager Lanemann on the day after this suit was filed and, shortly thereafter, took the journeyman's examination and became a union member, together with two of his Negro employees. (Tr. 98-101).

Following his admission into Local 1 and the organization of his shop, Witt had three occasions (all after this suit was instituted) to ask that electricians be referred to him through the union's hiring hall. Mr. Witt's testimony regarding what happened with respect to these three requests for referral is uncontradicted. In September or October 1966, Mr. Witt telephoned Mr. Weller, the referral agent at the union hall, and requested one or two journeymen electricians. In Mr. Witt's words:

> The first response I got from Mr. Weller was that the reason he hadn't been able to honor my request was the fact that I

> don't have a good boy I can give you, and so I asked him what did he mean by a good boy. I told him I was looking for a journeyman electrician so he said well, I don't have a colored boy. I told him I'm not interested in a colored boy, I am interested in a member of the Local that is a journeyman, that is all I am interested in. I don't care if he is Chinese or what have you. (Tr. 116).

Thereafter, Weller called Witt and told him he had a man he "could possibly send out," and gave Witt the man's telephone number.[38/] Witt told Weller that he did not want to contact the man personally, and that he wanted an electrician to be sent to him in accordance with normal procedures (Tr. 117).

When, about a week after Witt's initial request, an electrician was sent to Mr. Witt through the hiring hall, he was a Negro. Mr. Witt offered to allow him to establish himself as a permanent employee, but the man's attendance record was poor and he was unable to work full hours. As a result, Witt requested another man, and Weller immediately referred one -- this time a white man whose abilities were limited, and whose production was inadequate. This man stayed about three to four weeks. Finally, in May, 1967, Witt requested another man. On this occasion Mr. Quinn was in charge

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38/ Mr. Lanemann's testimony makes it quite clear that, ordinarily, the union contacts the electrician and sends him to the contractor and does not require the contractor to make telephone requests on his own. (See Tr. 349, 361). In addition, the normal procedure under the collective bargaining agreement, followed when Negroes are not involved, is for the union to be given 48 hours to refer a man through the hiring hall; thereafter, the contractor may find his own man. (Pl. Ex. 6, p. 106). The procedure in Witt's case was, of course, entirely different.

at the hiring hall rather than Mr. Weller and he immediately sent Witt a Negro electrician, whose services proved to be satisfactory. (Tr. 117-121).[39/] (c) The remaining nine Negro journeymen in construction classifications now in the union consist of the employees of James R. Harding. Harding's bargaining agreement with the union had its origin in early February, 1966, when Business Manager Lanemann approached him in the hallway in the federal court building during a hearing in connection with discrimination charges involving the Arch dispute. Lanemann implied that Local 1 might be open to Harding and his employees. Harding was unable to join at the time because of his agreement with the C.I.U., but several months later "I called him [Lanemann] and asked him was there a possibility, were the doors open to join, and he said yes." (Tr. 62). Finally, in April 1967 Harding was successful in opening the door that had been closed to him since at least 1954. (Tr. 50-65).

Thus, since the institution of this suit Local 1 has accepted twelve Negro members, the total Negro membership on the construction side. Local 1 was able to control the admission of Negro members to construction classifications, under the collective bargaining agreement for the construction industry. By contrast, on the lower paying (Dep. of Gibbons [October 18, 1966] p. 6) non-construction side, the industrial companies,

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39/ Two of the three men whom Local 1 referred to Witt (a Negro contractor) were thus Negroes, even though only about .6% of the Local 1 construction membership is Negro.

rather than Local 1, control hiring (see id at 8-9), and therefore determine who will be union members.[40/] By the time of the trial at least 70 Negroes had become members by this latter route, notwithstanding Local 1's discriminatory policies.

4. Local 1, like Local 36, has built-in restrictive mechanisms which inherently discriminate against Negroes.

(a) Nepotism

Local 1 is to a considerable extent an organization in which, quite apart from any question of policy, relatives and friends of current members enjoy a significant advantage over outsiders. This is reflected in the testimony in this case. Daniel Agee, white, testified at the trial how he learned of opportunities in the electrical trade through his father, a Local 1 member; how he obtained employment in the electricians summer helper program; and how he next became a Local 1 apprentice -- all in spite of the fact that he has treated the whole matter as a part-time venture and has simultaneously been pursuing his goal to become a mechanical engineer rather than an electrician. (Tr. 172, 174-182). Anthony Heeney, white, another Local 1 apprentice, testified how he became aware of opportunities in the electrical trade through his brother, a Local 1 member; how this

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40/ The construction and non-construction sides are completely separate and distinct. The apprenticeship program of IBEW is designed for construction electricians. (Dep. of Gibbons, October 18, 1966, pp. 6, 31-32). The by-laws contain separate provisions for non-construction personnel, and this group has a separate advisory Committee and separate monthly meetings. (By-laws, Art. XIII, Pl. Ex. 5, p. 24.) The two groups have separate collective gargaining agreements. (Dep. of Lanemann, pp. 29-31).

enabled him to obtain employment in the summer helper program and, eventually, to become an apprentice. His father and two brothers are all members of Local 1. (Dep. of Heeney, p. 105-106.) William Krueger, white, another apprentice, told how he had known about the apprenticeship program ever since he could remember. His uncle is John Weller, one of Local 1's business representatives, and he has three cousins in the union. (Dep. of Krueger, p. 126-127.) These witnesses were thus free from the unfamiliarity and lack of guidance which, for example, confronted Walter Hampton when he went to the Local 1 hall.

The nepotistic policy was an express part of Local 1's by-laws until 1964 (Pl. Ex. 5, Art. XIV). Under that policy an applicant for apprenticeship, no matter how well he did on his apprenticeship examination and no matter how early he made his application, would not be placed as an apprentice until all sons of union members on the list had been placed (Dep. of Bruns, pp. 71-72). While this policy was stricken from the by-laws in 1964, presumably in response to 29 C.F.R., Part 30, which forbids it, the fact is that even since the effective date of Title VII almost 50 per cent of the persons accepted as apprentices or members were relatives of Local 1 members (Stip. No. 2, pars. 1, 6, 8).

So long as the vast majority of the members and apprentices of Local 1 are white, practices which favor their relatives over other potential members or apprentices discriminate against Negroes.

(b) Vote of the Membership

Article XXII of the Constitution of the International Brotherhood of Electrical Workers provides that every applicant for membership in any local union must be approved by a majority vote of the membership of such local. (Pl. Ex. 4). This provision is incorporated into Local 1's procedures by Article XII, Section 1 of the by-laws. (Pl. Ex. 5). The "vote of the membership" requirement has contributed to the exclusion of Negro electricians from membership in Local 1.

The union minutes reflect that on May 4, 1955,[41/] "It was moved and seconded that the business manager organize the Negro contractors." A motion to table this motion was carried. The members then voted to postpone action on the motion to organize Negro contractors until a later meeting, and to notify all members that the matter would be voted on. The minutes further reflect that on July 1 the motion to organize Negro contractors was defeated by a vote of the membership. (Pl. Ex. 2B, pp. 10, 18).

In August, 1961, the Missouri Legislature enacted a statute prohibiting racial discrimination by labor unions. Supra, p. 32. The minutes of October 20, 1961, contain the following entry:

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41/ There is also testimony in the record that in 1938 Wilbur Stuart and his employees were not allowed to join Local 1 because "the rank and file would not accept Negroes." (Tr. 70-71).

> There was a general discussion regarding the colored coming into Local Union No. 1. Business Manager Paul J. Nolte stated that, if and when a vote would come up regarding this matter, a letter would be sent to members. (Pl. Ex. 2C, p. 47).

There is no indication in subsequent minutes that any vote was taken, and no Negroes were admitted to the construction classifications in the union prior to the filing of this suit.

Local 1's Business Manager Lanemann, when asked upon his deposition whether anyone's approval was necessary before a business representative attempts to organize a contractor, testified as follows:

> No. If we had to get somebody's approval we'd never get them in the local union, I guess, in many cases. (Dep. of Lanemann, p. 62).

The minutes of numerous union meetings reflect that white persons are routinely admitted to membership, generally without discussion or debate, following the approval of their applications by the Executive Board, which considers their qualifications. (See Pl. Exs. 2A, 2B, 2C, 2D). It was not until after the filing of this suit that the Local 1 membership ever voted in a Negro construction electrician (Pl. Ex. 2D, February 18, 1966).

The requirement of a vote of the membership for admission to the union has operated to exclude Negroes from membership on account of their race. The membership of this Local remains overwhelmingly white, and

the rentention of this requirement can only further frustrate the attempts of Negroes to become members of the union on an equal basis with white persons.

(c) Hiring Hall Priorities

In the operation of its hiring hall, Local 1 gives preference to applicants according to the system of priorities set forth in Part I.B. of this brief. The qualifications set forth in Group I, including the passing of the standard journeymen's examination, five years experience in the trade, and one year's employment pursuant to a collective bargaining agreement, are generally possessed only by journeymen members of Local 1. All electricians in construction classifications admitted to membership in Local 1 during the past five years have been working for a contractor with whom the Local has a collective bargaining agreement. The union's referral records show that of 1040 persons referred for employment in Group I through August 1966, 1036 were members of the union. (Stip. No. 3, par. 10; Pl. Ex. 10, 10A). Walter Hampton, who had all of the real qualifications of Group I members, but was neither a union member nor white, was placed in Group IV and was not referred.[42/]

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42/ The proof shows that more than 90% of the Local 1 job referrals went to persons who were members of Local 1 or IBEW members working on travel cards from other IBEW Locals. (Travel cards are provided for by the International Constitution, Article XXV.) (Pl. Ex. 10, 10A).

The system of priorities making a year's work under the union agreement a basis for hiring hall preference has been in effect since 1958, and has been included in current collective bargaining agreements which remain in effect at least until April 30, 1969. (Stip. No. 3, par. 10). At the time suit was filed, no Negroes had worked for a year under a collective bargaining agreement with Local 1; their attempts to do so had been rebuffed.

Since Negroes have been excluded from membership in Local 1 and referral through its hiring hall on account of their race, the hiring hall preference accorded by Local 1 to persons who have been employed for one of the last four years under a collective bargaining agreement to which Local 1 is a party operates in a discriminatory manner against Negroes.

D. THE RELATIONSHIP BETWEEN THE DEFENDANTS AND THE CIU

In about 1960 a group of Negro contractors organized Local 99 of the Congress of Independent Unions as a labor organization of craftsmen in the St. Louis area separate and distinct from the AFL-CIO.[43/] The formation of Local 99 at that time was triggered by a desire of Negro craftsmen to participate in an upcoming construction project in a Negro rehabilitation area (Tr. 59); and it was a response necessitated by a long tradition of exclusion of Negro craftsmen by the defendants from the building and construction trade unions. We learn from the minutes of the Local 1 meeting of May 4, 1955, for example, that it was "moved that Negro contractors be organized; moved that matter be tabled and discussed in June; membership to be notified." Thereafter, at the membership meeting on July 1, 1955, the motion was considered, voted on and defeated (Pl. Ex. 2-B, pp. 10, 18). And counsel for the defendant Local 1 stated at the hearing of this case: "There is evidence that back in the early 1950's and before that time the union [Local 1 IBEW] had not responded to contacts from Negro electrical contractors who were seeking to join up or enter into contracts with the organization." (Tr. 328).

At about the time of the formation of Local 99, CIU, Arthur J. Kennedy, a Negro and owner of Kennedy and Sons Sheet Metal Shop, organized the Midwest Contractor's Association (MCA) (Tr. 143). Negro craftsmen could then bargain collectively with Negro contractors.

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43/ See the testimony of Harding (Tr. 58); Stuart (Tr. 85); and Hampton (Tr. 14).

This new arrangement for bargaining by Negro craftsmen, however small and ineffective, met with strong and persistent resistance by the defendants. When a CIU sponsored group of electrician apprentices, which included three Negroes and two whites, tried to attend apprenticeship classes at the O'Fallon Technical High School in October 1961, the instructor, who was a member of Local 1 IBEW and son of its president, refused to let the group enter the class until he was ordered to do so by the principal of the school (Tr. 13-14, 17-19, 146-148). And in the same month Local 36 reported in its minutes "Business Manager Utz reported on the ever increasing number of incidents arising all in relationship to the problem of Negro membership in the Building and Construction trades." (Pl. Ex. 12-F, p. 5 October 12, 1961).

During the following five years the defendants followed coercive practices such as picketing to squeeze CIU Negroes and non-union Negroes out of construction jobs. For example, on May 28, 1963 a minute entry from Local 36 reported:

> He also reported on a recent Bldg. Trades mtg. he attended and of their decision to pull any job where known "CIU" members are employed. (Pl. Ex. 13F, p. 124.)

The policy of "pulling jobs" worked by Negroes was effectively carried out. Frank W. Witt, a Negro electrical contractor, was forced to turn over two significant electrical jobs, one worth $48,000 and the other worth $20,000, because, in his words, "they let it be known they wouldn't allow us to do the job." (Tr. 111-113).



made by the [illegible]

Negro construction workers (Tr. 56-58, 75, 153-154).

Ten months after this law suit was filed a committee from the Building and Construction Trades Council, AFL-CIO, (of which these defendants are members) held a meeting with a committee from the Midwest Contractor's Association (of which 18 contractor members are Negroes). The meeting was allegedly to discuss affiliation of the MCA with the AFL-CIO. (Tr. 77-78). No representative of the CIU was present. No effort was made to organize CIU construction workers; rather the meeting was with their employers. The employers' committee voted to discontinue negotiations with the AFL-CIO, and to deal instead with the CIU. (Tr. 75-81; 156-159, 165-167). It must be inferred that these employers found no benefit to them in the prospect of negotiating a contract with the AFL-CIO which is in a position to demand much higher wages and better fringe benefits for its members than is the CIU, with which their companies already were affiliated.[46]

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[46] Compare wage scale of CIU (Def. Ex. B, pp. 30-31) with that of the defendants (Pl. Ex. 6, p. 110; Pl. Ex. 21, [Art. VIII, Section 1, Standard Form of Union Agreement, Sept. 12, 1966]):

Electricians

| | | |
|---|---|---|
| 1. | IBEW, Local 1 | |
| | X-Residential Journeyman, Grade 1, 4/27/66 to 4/25/67 | $5.30 |
| | Journeyman (commercial-industrial), 4/27/66 to 4/25/67 | $5.30 |
| 2. | CIU, Local 199 | |
| | Residential Journeyman, April 1, 1966 | $3.25 |
| | Commercial Journeyman, April 1, 1966 | $3.75 |

Sheet Metal Workers

| | | |
|---|---|---|
| 1. | SMW, Local 36 -- journeyman -- July 1, 1966 | $5.11 |
| 2. | CIU, Local 99 -- journeyman -- April 1, 1966 | $3.25 |

The separation of white and Negro craft unions thus still exists in St. Louis -- a separation which was forced into being by these defendants and their affiliated locals, and which continues to be perpetuated by them. The fact that some Negroes "have their own union" thus cannot serve as a shield for, or a defense to, discrimination by these defendants.

III. LEGAL CONSIDERATIONS

The controlling law in this case is to be found in Section 703(c) and Section 707(a) of Title VII of the Civil Rights Act of 1964. Section 703 relates to the basic obligation of labor unions; and Section 707 authorizes the Attorney General to sue.

Essentially Section 703 prohibits labor unions from discriminating against any individual on account of race. That discrimination is prohibited in specific areas of union activity which in any way would adversely affect employment opportunities within the control of the union on account of race. These areas include, for example, exclusion from union membership; limiting union membership; classifying individuals for employment or referral for employment; racial segregation affecting membership; and the failure or refusal to refer individuals for employment.[47/] Section 703(d) applies the

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47/ Section 703 provides as follows:

(c) it shall be an unlawful employment practice for a labor organization --

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin.

(2) to limit, segregate, or classify its membership, or to classify or fail or refuse

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prohibition to apprenticeship or other training programs.[48] It is thus clear that every significant sphere of union activity is covered by the non-discrimination requirement.

When we look at the racial composition of the defendant unions we learn from that fact alone (1) that the organizing efforts of these defendants have embraced whites and have excluded Negroes; and (2) that the recruitment of apprentices by these defendants has brought white persons but not Negroes into the unions. When we examine the job referral statistics we learn from that fact alone that virtually all jobs within the control of these unions are performed by their members, who are white. We need go no further to establish a pattern of discrimination within the meaning of Title VII; because statistics that show the systematic exclusion of Negroes over a long period of time from participation in jobs controlled by

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47/ to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

48/ Section 703(d) provides:

(d) It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

unions raise a strong presumption, if not a conclusive one, of a pattern of discrimination.[49/]

But the evidence in this case fully explains how it came to be that these defendants are essentially white unions. The evidence reflects that both unions have long had a policy of excluding Negroes from membership and apprenticeship on account of race. This exclusion has been effected in many ways, including the policy of orgainizing white shops while openly refusing to organize Negro shops; rejecting qualified Negro applicants for employment and for membership; forcing non-member Negroes

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49/ The familiar judicial pronouncement that "statistics speak loud and courts listen" has its origin in cases involving racial discrimination. State of Alabama v. United States, 304 F.2d 583, 588 (5th Cir.), aff'd 371 U.S. 37 (1962). The significance of statistical proof in discrimination cases, while often recognized in voting cases (see, e.g., South Carolina v. Katzenbach, 383 U.S. 301, 330 (1966); Louisiana v. United States, 380 U.S. 145 (1965)) and school cases (Davis v. Board of School Commissioners of Mobile County, 364 F.2d 896, 901 (5th Cir. 1966); Board of Education of Oklahoma City v. Dowell, 375 F.2d 158, 163 (10th Cir. 1967), cert. den. 387 U.S. 931 (1967)), and hospital desegregation cases (see e.g., Cypress v. Newport News General Hospital, 375 F.2d 648, 654 (4th Cir. 1967)) has found its most common expression in cases involving discrimination in the selection of jurors -- no doubt because jury cases date back to the Fourteenth Amendment itself. The Supreme Court has repeatedly held that where the evidence shows that no Negro has served on a jury for many years there is "a very strong showing that...Negroes were systematically excluded from jury service because of race," and the state then has the burden of showing that the exclusion was not caused by racial discrimination. Patton v. Mississippi, 332 U.S. 463, 466 (1947). See also the cases cited therein, and Whitus v. Georgia, 385 U.S. 545, 552 (1967); Reece v. Georgia, 350 U.S. 85, 88 (1955).

There is a striking parallel between jury and employment cases in the nature of the activity that triggers the presumption. Jury commissioners, by one method or another, affirmatively go looking for people to bring into jury service; labor unions affirmatively recruit and organize employees to bring into union membership. In both circumstances, when their reach extends to the white community and ignores the Negro community the white statistical pattern is inevitable, and the inference of a racial inclusion or exclusion is inescapable. When on the other hand the pattern of statistics is less visibly racial, as for example where the percentage

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out of construction jobs; giving job referral preferences to their own members over non-member Negroes; giving preference to friends and relatives of members in considering applications for apprenticeship and membership; failing to inform Negroes of apprenticeship or journeymen opportunities; and racial assignments of those few Negroes who get referred to jobs.

The defendants' violations of Section 703 fall into two categories, as is true in many racial discrimination cases. The Supreme Court long ago described these two categories when it said that the Constitution forbids "sophisticated as well as simple-minded modes of discrimination." Lane v. Wilson, 307 U.S. 268, 275 (1939). This case, of course, presents strong examples of overt, unsophisticated racial discrimination. When Local 36 quoted a higher cost for Lee and Wells to join the union than it charges similarly situated white persons, this was a simple discrimination against "any individual because of his race," in violation of Section 703(c)(1). The treatment of Walter Hampton falls into the same category, as does the policy of organizing white shops but not Negro shops. Such practices are easy to see and easy to remedy. However, the defendants employ a variety of "sophisticated" machines of discrimination. For example, if we know that a union practices nepotism, that does not necessarily tell us that the union discriminates on account of race. Yet the nepotism

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49/ of Negro inclusion is no longer negligible or token, the presumption is weakened if it exists at all. See, e.g., Swain v. Alabama, 380 U.S. 202, 208 (1965). The presumption is thus not a question of racial balance or imbalance, rather it is an unavoidable recognition of a racial result. Compare Section 703(j), Title VII.

practiced by the defendants effects a racial discrimination just as surely as their policies of organizing white but not Negro shops. For these are all-white unions, which have achieved that complexion through racial discrimination. In such a context the law forbids any arrangement by which friends and relatives of union members are given preference over others (see, e.g., Ross v. Dyer, 312 F. 2d 191, 194-196 (5th Cir. 1963); Meredith v. Fair, 298 F. 2d 696 (5th Cir. 1962); Hunt v. Arnold, 172 F. Supp. 847 (N.D. Ga. 1959); Lefkowitz v. Farrell, 9 R.R.L.R. 393, 400-401 (N.Y. Comm. on Hmn. Rts. 1964), aff'd 252 N.Y.S. 2d 649, 652, 657 (Sup. Ct. N.Y. Co. 1964); Connecticut Comm. v. IBEW, 28 L.R.R.M. 98, 100 (1951), aff'd. 140 Conn. 537 (1953)).[50/] Local 1's membership vote falls into the same category (see also Cypress v. Newport News Gen. Hospital, 375 F. 2d 648 (4th Cir. 1967); Hawkins v. North Carolina Dental Society, 355 F. 2d 718 (4th Cir. 1966); Vogler v. McCarty, supra). The other sophisticated means of discrimination are the defendants' referral systems, both the Local 1 system now in effect and the Local 36 system scheduled to become effective January 1, 1968. Congress explicitly recognized that hiring hall practices were especially open to discriminatory operation. It therefore made it an unlawful employment practice for a labor organization to employ a referral system "which would deprive or tend to

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50/ In Vogler v. McCarty, ___ F. Supp. ___ (E.D. La. 1967), the Court held:

> 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.

deprive any individual of employment opportunities. . . . because of such individual's race," and also made it unlawful to employ such a system which would "adversely affect" the status of an individual "as an applicant for employment, because of such individual's race." (Section 703(c)(2).) The facts with respect to these referral systems boil down to this: The defendants have made it virtually impossible for Negroes to work for a year under a collective bargaining agreement, but give priority in hiring hall referrals to their members, who have, of course, had ample opportunity to meet this requirement. Such a system inevitably perpetuates the discrimination which the defendants have practiced in the past.

In Local Union No. 269, IBEW, 149 NLRB 768, enforced NLRB v. Local 269, IBEW, 357 F. 2d 51 (3rd Cir. 1966), the respondent IBEW Local was charged with discriminating against non-members in hiring hall referral under a priority system similar to that in the present case. 357 F. 2d 53, at note 1. At issue was the validity of a Group 1 preference substantially identical to that used by Local 1. (Supra, p. 5.) In the course of its judgment against the Union, the Labor Board said:

> "It is evident that in the years preceding the adoption of the amendments to the 1962 contract, members of Respondent Union Local 269, for no reason other than their union membership, had been favored in work referrals. Therefore, when the Respondent Union and Association adopted the 1962 amendments prescribing for the first time five years employment under past contracts of Local 269, as requirements for assignment from the new priority group I, the inevitable consequence was to give to Local 269 members continued preference in referral. It is clear that

> only by virtue of their union membership were they given first opportunity to accumulate the necessary work experience to satisfy the requirements of priority referral from group I. To ignore this clear fact would, as the Trial Examiner observed, run counter to the simplest realities." 149 NLRB at 773.

The Third Circuit, in enforcing the Order of the Board, said:

> "Minus the history of Local 269's referral practices, the contract provisions regarding qualifications for referral priority are not necessarily evidence of discrimination. Taking that history into account, however, it's clear that those provisions, when they are carried out, will give preference to applicants who are members of Local 269 and other locals of IBEW." 357 F. 2d at 55-56.

The logic of the Local 269 decisions establishes discrimination against Negroes here just as it showed discrimination against non-members in the case before the Board and the Third Circuit.[50A/]

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50A/ The unions' system of priorities resurrects a kind of grandfather clause rather like the one invalidated in Guinn v. United States, 238 U.S. 347, 364-365 (1915), where the Supreme Court said:

> "It is true it contains no express words of an exclusion, from the standard which it establishes, of any persons on account of race, color, or previous condition of servitude prohibited by the Fifteenth Amendment, but the standard itself inherently brings that result to existence, since it is based purely on a period of time before the enactment of the Fifteenth Amendment and makes that period the controlling and dominant test of the right of suffrage."

See also Franklin v. Parker, 223 F. Supp. 724 (M.D. Ala. 1963) modified on other grounds and aff'd 331 F. 2d 841 (5th Cir. 1964) (Negro may not be denied admission to state university under otherwise lawful policy requiring graduation from accredited college, since State had enforced segregation and Negro colleges were not accredited); Meredith v. Fair, 298 F. 2d 696, 702 (5th Cir. 1962), cert. den. 371 U.S. 828 (1962), (otherwise valid requirement that applicant for admission to university have recommendation from two alumni held invalid where all alumni were white and State had enforced segregation).

The defendants have pursued these discriminatory practices, both the simple-minded and the sophisticated ones, up to the present time. The discrimination, of course, reaches to a time far before the effective date of Title VII. What happened before July 2, 1965 is extremely important in this case, not because it shows that the defendants were violating the law before 1965 (they were, in fact, violating state and local law and federal regulations), but because of the understanding they give us about the defendants' practices since July 2, 1965. And these pre-Act practices are important because of their present impact on the Negro community which still does not know whether, as one Negro witness put it, "the door is open" now (Tr. 62). Above all we must remember that the pre-Act machines of discrimination remained unchanged after the passage of the Act, except that we no longer see entries in the defendants' minutes saying that the membership voted against accepting Negroes. The meaning of the defendants' actions must be judged in the light of all the circumstances surrounding them, and our examination of these circumstances cannot be limited by any artificial time barrier.[51/]

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51/ As the Supreme Court said in Federal Trade Commission v. Cement Institute, 333 U.S. 683, 705 (1948): "...testimony of prior or subsequent transactions, which for some reason are barred from forming the basis for a suit, may nevertheless be introduced if it tends reasonably to show the purpose and character of the particular transactions under scrutiny [cases cited]." And in Machinists Local v. Labor Board, 362 U.S. 411, (1960), the Supreme Court quoted with approval from a decision by the NLRB (p. 416 n. 6): "Events obscure ambiguous, or even meaningless when viewed in isolation may, like the component parts of an equation become clear, definitive, and informative when considered in relation to other action. Conduct, like language, takes it meaning from the circumstances in which it occurs."

Just as it is clear that the defendants' practices violate Section 703(c), so also it is clear that the practices are not "single, insignificant, isolated acts of discrimination" but are "repeated, routine, or of a generalized nature." (Explanation by Senator Humphrey of the meaing of "pattern or practice," 110 Cong. Rec. 14270.) The proof in this case conclusively shows a "pattern or practice of resistance" to the rights secured to Negroes by Section 703(c). The proof also shows an intent to deny the full exercise of rights secured by Section 703(c). The defendants engaged in conduct which, "by its very nature," contains "the implications of the required intent." Teamsters Local v. Labor Board, 365 U.S. 667 at 675 (1961), citing Radio Officers v. Labor Board, 347 U.S. 17, 45 (1953). (See also Remarks of Senator Humphrey, 110 Cong. Rec. 14270: "Intention could, of course, be proved by, or inferred from, words, conduct, or both.").

It is thus beyond question that the defendants have violated Section 703(c) and the United States is entitled to relief under Section 707.

IV. THE RELIEF

A court of equity has broad powers to fashion remedies which will best serve the ends of justice and effectuate the policies of Congress. This principal was expressed as follows by the Supreme Court in Mitchell v. DeMario Jewelry, 361 U.S. 288, 291-292 (1960) where it quoted Porter v. Warner Co., 328 U.S. 395, 397-8 (1946), as follows:

> Unless otherwise provided by statute, all the inherent equitable powers of the District Court are available for the proper and complete exercise of that jurisdiction. And since the public interest is involved in a proceeding of this nature, those equitable powers assume an even broader and more flexible character than when only a private controversy is at stake. . . . [T]he court may go beyond the matters immediately underlying its equitable jurisdiction . . . and give whatever other relief may be necessary under the circumstances. . . .
>
> Moreover, the comprehensiveness of this equitable jurisdiction is not to be denied or limited in the absence of a clear and valid legislative command. Unless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied. 'The great principles of equity, securing complete justice, should not be yielded to light inferences, or doubtful construction.' Brown v. Swann, 10 Pet. 497, 503 . . . .

The Court has a special duty to exercise those remedial powers in a case where the United States is the plaintiff pursuant to a Congressional mandate, and the matter at stake is the denial of Congressionally secured rights.[52/]

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52/ "In prescribing a suit to be brought by the sovereign for equitable relief, the statute [Civil Rights Act of 1957] contemplates that the full and elastic resources of the traditional court of equity will be available to vindicate the fundamental constitutional rights sought to be secured by the statute." State of Alabama v. United States, 304 F.2d 583, 590 (5th Cir) aff'd 371 U.S. 37 (1962).

The Congressional policy in Title VII is to secure the right to "equal employment opportunity". The form and substance of the relief, therefore, must be geared to effectuate that policy, and Congress accordingly authorized the Attorney General to request "such relief.... as he deems necessary to insure the full enjoyment of the right, herein described." (Sec. 707(a)).

Experience in cases involving patterns of racial discrimination teaches that relief cast only in negative, prohibitory terms is not adequate.[53] Just as in a school desegregation case the court does not merely enjoin segregation,[54] so also in a Title VII case the court must provide specific and affirmative relief. Vogler v. McCarty, supra.

The need for specific and affirmative relief is especially great here because of the complexity and variety of the defendants' discriminatory practices and because of the potential for discrimination inherent in the unions' existing procedures.[55] We have therefore

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53/ See, e.g., the history of delay in Clark v. Board of Education of Little Rock School Dist., 374 F. 2d 569 (8th Cir. 1967).

54/ See, e.g., Brown v. Board of Education, 349 U.S. 294 (1955); Clark v. Board of Education of Little Rock Sch. Dist., supra.

55/ Any attempts by the defendants, after this suit was filed, to mitigate the relief by bringing a token number of Negroes into membership must be unavailing. "It is the duty of the courts to beware of efforts to defeat injunctive relief by protestations of repentance and reform, especially when abandonment seems timed to anticipate suit, and there is probability of resumption." United States v. Oregon Medical Society, 343 U.S. 326, 333 (1952).

proposed a decree which contains a general injunction and specific provisions geared to the defendants' discriminatory procedures and practices.

Paragraph I is a prohibitory injunction rather in the language of Section 703(c) and (d), the provisions of Title VII which the defendants have violated. Paragraph II prohibits in specific terms each discriminatory practice proved in this case and sets a fair standard for the admission of Negroes to the unions. The effect of Paragraph II is to require the defendants to provide Negroes with employment opportunities on the same basis as they have provided them to whites in the past.[56/]

56/ The priority groups for work referral would be modified by paragraphs IIa and b of the decree. Because Negroes as a class have been excluded from opportunities for work experience within the framework of the unions, those Negroes who are qualified by the journeyman standards cannot be further penalized by the work experience requirement. Under the proposed decree such persons could be referred under Group I priority for the next five years, by which time the experience requirement can be reinvoked without discrimination. The suspension of the experience requirement applies only to those qualified Negroes who are now beyond apprenticeship age.

The fact that the referral system is part of a collective bargaining agreement between the defendants and non-parties is of no significance, as the Supreme Court has said:

> the thrust of the antitrust laws cannot be avoided merely by claiming that the otherwise illegal conduct is compelled by contractual obligations. Were it otherwise, the antitrust laws could be nullified. Contractual obligations cannot thus supersede statutory imperatives. United States v. Leow's Inc., 371 U.S. 38, 51 (1962).

Since the defendants have not followed uniform standards and qualifications[57], nondiscrimination requires them to bring Negroes in who meet the minimum level established for whites.[58] The Court must guard against the imposition, by the defendants, of new and higher standards and qualifications to which Negroes would be subjected even though present white members have not been. Cf. Louisiana v. United States, 390 U.S. 145, 155 (1965); United States v. Duke, 332 F.2d 759, 769-770 (5th Cir. 1964).

57/ For example Pl. Ex. 14 includes the application forms and tests of 19 persons for whom it was possible to determine the test score and whether the applicant has passed or failed the test. The lowest score is that of Thomas M. Dierkes, who scored 126.2 and was initiated into the union. Five other applicants who earned higher scores nevertheless failed the test and were not allowed to join the union. One of them earned a score of 200.8, and thus scored higher than 8 applicants who were allowed to join the union. The reason for this disparity may be reflected by the testimony of the man who administered the test:

> Q. Do you report any score to anyone else?
>
> A. No.
>
> Q. You don't report?
>
> A. Other than I thought they passed or that they were qualified in this area or that area, or all-around.
>
> Q. In other words, the only thing you report is the fact that you think or you don't think the man is qualified to become a member, is that correct?
>
> A. Yes, that is correct.

(Tr. 455.)

58/ Theoretically, this would include even the standards met by members who entered the union many years ago. This, however, might place an impossible burden on the defendants, so we have limited this relief in the proposed decree to use only the minimum standards met since 1961. We chose 1961 as a convenient and reasonable date, because that is the year Missouri enacted its fair employment law.

Paragraph III of the proposed decree affords the defendants the opportunity to present for the Court's approval proposed standards and qualifications for membership and apprenticeship which would be fair, uniform and objective. By so doing the defendants could define, in the manner most convenient to them, how they will meet their obligations under Paragraph II.[59/] Paragraph III also requires that the defendants inform the Negro community of the new opportunities which this decree would make available.[60/] Other affirmative steps include inviting certain readily identifiable Negroes who have in the past been excluded from membership to now make application for membership under non-discriminatory conditions.

Paragraph IV requires the defendants to maintain detailed records of apprenticeship, membership and work referrals and to make them available to the United States at reasonable times. The defendants are to file a semi-annual report with the Court, showing their progress toward compliance. (See, e.g., Kelley v. Altheimer, Arkansas Public School District No. 22, 378 F.2d 483, 498 (8th Cir. 1967.)

Paragraph V of the proposed decree requires the defendants to notify contractors and union members so that all affected persons will be familiar with their rights and responsibilities. (See, e.g., Vogler v. McCarty, supra.)

59/ This is the procedure that has been almost universally used in school desegregation cases. Brown v. Board of Education, supra. It is also the procedure followed by the New York court in the state fair employment practices case of Lefkowitz v. Farrell, supra.

60/ The defendants' organizing and recruiting efforts should be designed to reach and convince the Negro population of St. Louis that the doors of Local 1 and Local 36 are truly open to them on a non-discriminatory basis. In short, the defendants have an obligation to be resourceful and imaginative in searching for ways to reach a segment of the population to whom apprenticeship and membership in the Building Trades unions have not even been a realistic possibility to consider. An example of such an approach is the current campaign of the National Guard to recruit Negroes, using radio, newspapers, handbills, and billboards in a manner calculated to reach the Negro audience.

For the reasons set forth in this brief the United States respectfully urges the Court to enter the attached Findings of Fact, Conclusions of Law, and Decree.

Respectfully submitted,

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Department of Justice

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF MISSOURI

EASTERN DIVISION

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| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>v.<br><br>THE SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION NO. 36, AFL-CIO; AND THE LOCAL NO. 1 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,<br><br>Defendants. | CIVIL ACTION<br>NO. 66 C 58(2) |

APPENDIX TO PLAINTIFF'S MEMORANDUM IN SUPPORT OF ITS PROPOSED FINDINGS OF FACT CONCLUSIONS OF LAW AND DECREE

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF MISSOURI

EASTERN DIVISION

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| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>v.<br><br>THE SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION NO. 36, AFL-CIO; AND THE LOCAL NO. 1 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,<br><br>Defendants. | ) | CIVIL ACTION NO. 66 C 58(2) |

PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause having regularly come on for trial commencing on June 15, 1967, upon the plaintiff's claim against Local No. 1 of the International Brotherhood of Electrical Workers, AFL-CIO, and the defendant Sheet Metal Workers International Association, Local No. 36, AFL-CIO, and counsel for the plaintiff and each of these defendants having appeared and the Court having heard the evidence and argument of counsel for each party, it now enters the following findings of fact and conclusions of law:

## FINDINGS OF FACT

The Court finds the following facts with respect to the Sheet Metal Workers International Association, Local No. 36:

1. The Sheet Metal Workers International Association, Local Union No. 36 (hereafter referred to as Local 36) is a labor organization representing employees engaged in the sheet metal trade in St. Louis and surrounding areas. (Stip. No. 4, par. 1). It has approximately 1,275 members whom it represents in dealing with employers concerning terms and conditions of employment, including grievances, labor disputes, wages, and hours. (Stip. No. 4, pars. 1, 12). It is certified to represent employees under the provisions of the National Labor Relations Act and is chartered by the Sheet Metal Workers International Association, AFL-CIO, an international labor organization. (Stip. No. 4, par. 4; Pl. Exs. 16, 17). Local 36 has collective bargaining agreements with most of the sheet metal contractors in the construction industry. (See Stip. 4, par. 5).

2. Local 36 is an all white union and always has been. Between the effective date of Title VII of the Civil Rights Act of 1964 and August 1966, Local 36 initiated 122 new members, all of whom are white. (Stip. No. 4, pars. 10-12, 17; Pl. Ex. 20G; Tr. 443-445; Dep. of Schultz [December 14, 1966] p. 54).

3. Local 36 has engaged in and is continuing to engage in a pattern of racial discrimination by making membership readily available to white persons but not to Negroes.

a. Local 36 has an official "policy of attempting to organize the unorganized." (Tr. 437).

In practice a large number of the members of Local 36 have come into the union through such "organizations." (See, e.g., Pl. Ex. 11.) Prior to the initiation of this suit Local 36 had never attempted to organize Negro sheet metal workers or shops, although there were qualified Negro sheet metal workers and shops known to Local 36 and not affiliated with any union; Local 36 would have attempted to organize them but for their race. (Tr. 153-154; 259; Stip. No. 4, par. 17; Pl. Ex. 12A, p. 1, January 12, 1950; p. 31, December 7, 1950; p. 47, May 24, 1951; Pl. Ex. 12B, p. 33, February 26, 1953.) White persons interested in having their shops "organized" by Local 36 can readily obtain information; the normal practice is for the business agent to come to the shop and talk to the contractor and his employees and explain the union rules and benefits and procedures and costs of joining. (Zimmerman Dep., p. 16; Tr. 232, 244-245.) Local 36 has failed to provide these services for Negroes seeking union organization. (Tr. 259, 517-518.)

b. Local 36 has afforded preferential treatment to white workers coming in under an organization. Such workers pay an initiation fee varying between $50 and $150 and need not take a journeyman's examination. (Tr. 245-246, 450-453, 486-487; Pl. Ex. 11.) Less than two months before the trial of this case, Local 36 quoted as the price for organizing a two-man Negro shop the figure $2,000. (Tr. 517-518, 272.)

As a result, the Negroes seeking to join Local 36 instead joined Local 99, the CIU, a union which had earlier been formed by other Negro tradesmen. (Tr. 265, 272, 522.)

c. Local 36 has an official policy of nepotism. (Pl. Ex. 12A, p. 48, May 31, 1951; Pl. Ex. 13G, p. 64, January 11, 1966.) Local 36 gives special consideration to requests which members make on behalf of their friends and relatives who seek membership in the union. (Pl. Ex. 12A, p. 59, October 4, 1951; p. 64, December 13, 1951; Pl. Ex. 12B, p. 3, April 3, 1952; p. 17, August 14, 1952; Pl. Ex. 12C, p. 3, July 14, 1954; p. 8, September 2, 1954; p. 60, March 15, 1956; p. 64, April 19, 1956; p. 66, May 3, 1956; Pl. Ex. 12F, p. 4, October 5, 1961; p. 68, May 14, 1964; p. 71, July 2, 1964; Pl. Ex. 12G, p. 8, April 8, 1965; p. 10, May 13, 1965.) The union has never printed or disseminated to Negroes any information whatever about the requirements and procedures for journeyman membership (Boyd Dep., p. 18); members commonly and freely disseminate such information to white non-members by word of mouth. (Tr. 203-206; 210-214; 222-224; 224-229.)

d. Apprenticeship is the other main source of members. (Stip. No. 4, paras. 14 and 15; Def. Ex. S.) As described below in finding No. 5, the Local 36 apprenticeship program results in journeyman membership being more readily available to white persons than to Negroes.

4. The defendant has not followed uniform standards in determining whether persons have passed or failed the journeyman examination. (Pl. Ex. 14; Tr. 455.)

5. Local 36 participates in a joint apprenticeship program and exercises the dominant control over it. (Stip. No. 4, paras. 6, 7, 8; Tr. 457-458; Schultz Deps. of October 19, 1966, pp. 6, 31-32 and December 14, 1966, p. 25.) As of April 15, 1967, there were 114 white and 2 Negro apprentices in the Local 36 program. (Stip. No. 4, par. 12.) Of the two Negro apprentices, one began his apprenticeship under the sponsorship of a white contractor at a time when apprentices were selected by contractors rather than by the union. (Stip. No. 4, par. 13; Tr. 433; Schultz Deps. of October 19, 1966, p. 45 and December 14, 1966, p. 54.) The other Negro was accepted as an apprentice on November 30, 1966, after the filing of this suit, and a third Negro was accepted as an apprentice one month before the trial of this case. (Stip. No. 4, par. 13.) Negroes were entirely excluded from apprenticeship in the sheet metal trade until 1961 when the CIU began its apprenticeship program. (Pl. Ex. 13F, p. 37, February 14, 1961.) In 1962, the union failed to follow a suggestion that it adopt a non-discriminatory system for selecting apprentices. (Pl. Ex. 13G, p. 19, September 8, 1964.) Local 36 never publicized any change which may have occurred in its policy of excluding Negroes from apprenticeship until after the filing of this lawsuit. (Compare Def. Ex. R and Schultz Dep. of October 19, 1966, p. 14 with Def. Exs. S and T.) The past history of discrimination, the failure to adequately publicize its adoption of a new apprenticeship program, and the fact that applications

could only be made one evening a month at the union hall (Tr. 449-450) resulted in few Negroes applying for apprenticeship. However, Local 36 actively encouraged white youngsters to apply for apprenticeship. (Tr. 205-206, 212-214, 225-226; Pl. Ex. 13G, p. 64, January 11, 1966, Dep. of Schultz of October 19, 1966, p. 16.)

6. During the pendency of this action Local 36 negotiated a new collective bargaining agreement and obtained a hiring hall referral system new to Local 36. (Pl. Ex. 21.) That referral system, which will take effect on January 1, 1968 (Pl. Ex. 21 [Addendum to Standard Form of Union Agreement, September 12, 1966, Art. IV, Sect. 12(A)(B)]) unless enjoined, would afford Negroes inferior employment opportunities in the sheet metal trade, on account of their race.

a. The new referral system would establish four groups of applicants for employment. No worker in a lower group (e.g., Group III) could obtain a referral unless all workers in the higher groups (e.g., Group I) had work. (Pl. Ex. 21 [Addendum to Standard Form of Union Agreement, September 12, 1966, Art. IV, Sect. 2(B)].)

b. Group I would consist of persons with four years' experience in the sheet metal construction industry who have passed a journeyman's examination and have worked for at least one of the past four years under a Local 36 collective bargaining agreement. In practice, this group would consist entirely of Local 36 members, including persons who were members when the

collective bargaining agreement was entered into. (Pl. Ex. 21 [Addendum to Standard Form of Union Agreement, September 12, 1966, Art. IV, Sect. 2(B), Art. V, Sect. 1].) These members would have work referral priority over Negroes who have been excluded from Local 36 on account of race. The only new members who would immediately enter Group I are the former apprentices (Pl. Ex. 21 [Addendum to Standard Form of Union Agreement, September 12, 1966, Art IV, Section 2(B)]), another discriminatorily constituted group.

c. Group II would consist of persons with four years' experience in the sheet metal construction industry who have passed a journeyman's examination given by any local of the Sheet Metal Workers International Association. (Pl. Ex. 21 [Addendum to Standard Form of Union Agreement, September 12, 1966, Art. IV, Sect. 2(B)].) It would be predominantly white, because Local 36 has succeeded in excluding most Negroes from gaining the required experience. It would consist primarily of new members and members of other locals.

d. Group III would consist of persons with one year's experience in the sheet metal construction industry (Pl. Ex. 21 [Addendum to Standard Form of Union Agreement, September 12, 1966, Art. IV, Sect. 2(B)]), and would therefore also be predominantly white. It would be the lowest priority group, except for Group IV, which would provide students with summer jobs. (Pl. Ex. 21 [Addendum to Standard Form of Union Agreement, September 12, 1966, Art. IV, Sect. 2(B)].)

e. No provision whatever is made for referring, for job training purposes, inexperienced persons, the category into which the overwhelming majority of Negroes fall at present. Because every referral grouping for regular employment requires experience in the trade and because Local 36 controls employment opportunities for most sheet metal construction jobs in the St. Louis area (Stip. No. 4, par. 5), Negroes would have only a very limited opportunity outside the apprenticeship program to acquire the experience needed to qualify for referral.

The Court further finds the following facts with respect to Local No. 1 of the International Brotherhood of Electrical Workers, AFL-CIO:

7. The International Brotherhood of Electrical Workers, Local Union No. 1 (hereinafter referred to as Local 1) is a labor organization representing employees engaged in the electrical trade in St. Louis and the surrounding areas. It has approximately 2000 members and 220 apprentices in electrical construction classifications. It represents these members in dealing with employers concerning terms and conditions of employment, including grievances, labor disputes, wages and hours. It is certified to represent such employees under the provisions of the National Labor Relations Act; and it is chartered by the International Brotherhood of Electrical Workers, AFL-CIO (Stip. No. 3, paras. 1, 2 and 3).

8. Local 1 effectively controls employment opportunities in the electrical construction trade in the St. Louis area. It has collective bargaining agreements with electrical contractors who hire a substantial majority

of the electrical construction workers in the St. Louis area. (Stip. No. 3, pars. 5-6; Pl. Ex. 6.) Local 1 operates a hiring hall which, by provisions of its collective bargaining agreements, is the sole and exclusive source through which electrical construction workers may be referred to contractors who are parties to these agreements. Only if the union is unable to provide an employee within 48 hours of the employer's request may an employer secure his own, subject to the union's right subsequently to replace him. (Pl. Ex. 6, p. 104.) Of more than 13,000 electrical construction jobs referred through Local 1's hiring hall during the past eight years, more than 90% have been filled by members of Local 1 and other IBEW locals. (Compiled from hiring hall cards and data sheets, Pl. Ex. 10.)

9. Local 1 is virtually an all-white union. As of February 4, 1966, the date when this suit was filed, all of Local 1's journeymen and apprentices in electrical construction classifications were white. Since that time Local 1 has brought 12 Negroes into its membership as journeymen in construction classifications and has accepted 3 apprentices in its apprenticeship training program as a direct result of federal intervention. (Stip. No. 3, pars. 2, 11, 12 and 15; Tr. 62, 98-101, 372-373.)

10. Local 1 has engaged in and is continuing to engage in a pattern of racial discrimination by making membership readily available to white persons but not to Negroes:

a. Local 1 has actively sought to organize white employees of white construction contractors and to bring them into the union. (Dep. of Lanemann, pp. 52-62.) It has refused to seek to organize Negro electrical construction

contractors, or to allow Negroes to join the union. (Tr. 13-20, 52-58, 70-72, 98-104, 105-111, 116-118, 134-141, 143-148; Pl. Ex. 2B, p. 18; Pl. Ex. 2C, p. 47.) At the same time, Local 1 has picketed and otherwise harassed Negro electrical construction contractors and their Negro employees seeking to work on electrical construction projects. (Tr. 52-53, 54-58, 72-74, 102-114, 134-141.) By this means, Local 1 has successfully forced Negro electrical workers out of some important construction jobs. (Tr. 53-54, 102-114, 134-141.) Local 1 has accepted a token number of Negroes since the filing of this suit. (Stip. No. 3, par. 11(a).)

b. Local 1 has rejected the applications for membership of qualified Negro electrical construction journeymen on account of their race, both before and after July 2, 1965. (Tr. 13-30, 52-58, 70-72, 98-111, 116-118, 134-141; Pl. Ex. 2B, p. 18; Pl. Ex. 2C, p. 47.)

c. Local 1 has followed a policy of nepotism and of preference to relatives in the selection of new members. (Pl. Ex. 5, Art. XIV; Dep. of Heeney, pp. 105-106, Dep. of Krueger, pp. 126-127, Dep. of Bruns, pp. 71-72.) As a result of this policy, 45% of the new members who have joined the union in construction classifications since the effective date of Title VII have been relatives of current members. (Stip. No. 2, pars. 1, 6 and 8.) Since Negroes, for all practical purposes, are not among the members, this nepotistic preference inherently discriminates against them.

d. Local 1 conditions acceptance of applicants for membership on a majority vote of the members. (Pl. Ex. 4, Art XXII; Pl. Ex. 5, Art. XII, Sec. 1.) On several occasions, the organization of Negro contractors and the admission of Negroes to the union have been either defeated or tabled by a vote of the membership. (Pl. Ex. 2B, pp. 10, 18; Pl. Ex. 2C, p. 47; Dep. of Lanemann p. 62.) In the light of the racial composition of Local 1 and of its history of discrimination, the requirement of a vote of the membership as a condition for becoming a member of the union discriminates against Negroes.

11. Local 1 has designed and operated its hiring hall work referral system in such a manner as to afford Negroes inferior employment opportunities in the electrical construction industry:

a. Local 1 has discriminated against Negroes in the operation of its hiring hall. For example, it referred white applicants to jobs with electrical contractors while refusing referral to a Negro who made prior application and who possessed qualifications superior to those of the white persons who were given priority. (Tr. 13-31, 152, 351, 361, 375-376; Pl. Exs. 1, 10, 23A.) Local 1 referred on a segregated and discriminatory basis electrical construction workers to a recently affiliated Negro contractor. (Tr. 116-121.)

b. In referring electricians through its hiring hall, Local 1 gives first preference to persons who have worked for five years in the trade and who have worked one of the last several

years under a collective bargaining agreement to which the Local is a party. (Pl. Ex. 6, pp. 105-106.) In practice, this system of priorities operates to give members of Local 1 preference over non-members. (Pl. Exs. 10, 10A.) Since Negroes have been virtually excluded from membership in Local 1 and have been denied the opportunity, on account of their race, to work in the trade pursuant to a collective bargaining agreement to which Local 1 is a party, this system of priorities inherently discriminates against Negroes.

## CONCLUSION OF LAW

1. This Court has jurisdiction of this action. 42 U.S.C. 2000e-6(b).

2. Each of the defendants is a labor organization engaged in an industry affecting commerce as those terms are defined in the Civil Rights Act of 1964. 42 U.S.C. 2000e-(d) and (e).

3. The Attorney General is authorized to institute this action to enjoin the defendants from engaging in a pattern and practice of discrimination against Negroes in employment on account of their race. 42 U.S.C. 2000e-6.

4. In determining whether there has been racial discrimination, statistics often tell much and courts listen. State of Alabama v. United States, 304 F. 2d 583, 588 (5th Cir. 1962), aff'd 371 U. S. 37 (1962). Where Negroes have been almost totally excluded from membership as in the defendant unions, a prima facie case is made of deliberate discrimination against Negroes. See United States v. Jefferson County Board of Education, 372 F. 2d 836, 887 (5th Cir. 1966), aff'd en banc ____ F. 2d ____ (5th Cir. 1967); United States v. Louisiana, 225 F. Supp. 353 (E. D. La. 1963) (3-judge Court), aff'd 380 U. S. 145 (1965). Since the defendants in this case are labor unions and affirmatively recruit and organize employees to bring into union membership, these statistics are particularly meaningful. Vogler v. McCarty, supra; Cf. Whitus v. Georgia, 385 U. S. 545 (1967); Reece v. Georgia, 350 U. S. 85, 88 (1955); United States ex rel Goldsby v. Harpole, 263 F. 2d 71, 77-79 (5th Cir. 1961), cert. den. 361 U. S. 839 (1959).

5. In considering whether the defendants are discriminating against Negroes in violation of 42 U.S.C. 2000e-2 evidence of the defendants' conduct prior to July 2, 1965, is relevant as shedding light on the significance of events since that date and on the purpose, character, and effect of defendants' conduct. Federal Trade Commission v. Cement Institute, 334 U. S. 683, 705 (1948); Machinists Local 1424 v. Labor Board, 362 U. S. 411, 416 (1960); Vogler v. McCarty, supra; see also Kennedy v. Lynd, 306 F. 2d 222, 228 (5th Cir. 1962), cert. den. 371 U. S. 952 (1963); United States v. Lynd, 301 F. 2d 818 (5th Cir. 1962). Such acts are also relevant to show whether present conduct is repeated, routine, or of a general nature and, therefore, constitutes a pattern or practice of discrimination within the meaning of 42 U.S.C. 2000e-6.

6. Title VII prohibits sophisticated as well as simple minded modes of discrimination. Cf. Lane v. Wilson, 307 U. S. 268, 275 (1939). The statute forbids not only open discrimination, such as the outright refusal to admit all Negroes to membership, but also adherence to any course of conduct which has, as its inevitable or probable consequence, the exclusion of Negroes from employment opportunities on account of their race. Vogler v. McCarty, supra. See also Akins v. Texas, 325 U. S. 398, 403 (1945); United States ex rel Seals v. Wiman, 304 F. 2d 53 (5th Cir. 1962), cert. den. 372 U. S. 915 (1963); Rabinowitz v. United States, 366 F. 2d 34 (5th Cir, 1966).

7. The defendants may not accomplish through indirection what Title VII forbids them to do directly. Under Title VII, employment opportunities may not be made contingent in any way upon a status or condition which the defendants have prevented Negroes from achieving on account of their race or color. This is true no matter when Negroes were prevented from achieving such status or condition, and whether such prevention was lawful or unlawful at that time. Vogler v. McCarty, supra; Local Union No. 269, IBEW, 149 N.L.R.B. 768, enforced sub nomine N.L.R.B. v. Local 269, IBEW, 357 F. 2d 51 (3rd Cir. 1966); Lane v. Wilson, 307 U. S. 268 (1939); Guinn v. United States, 238 U. S. 368 (1915); Franklin v. Parker, 223 F. Supp. 724 (M. D. Ala. 1963), modified on other grounds and aff'd, 331 F. 2d 841 (5th Cir. 1964).

(a) The preference given by each of the defendant unions, in referral through their hiring hall, to persons who have worked for one year pursuant to a collective bargaining agreement with that union, denies Negroes equal employment opportunities on account of their race. Ibid.

(b) Since the defendants effectively control employment opportunities in their respective trade and have afforded white persons but not Negroes the opportunity to obtain

experience in said trades, the practices of giving priority in work referrals to persons with five years experience in the trade denies Negroes equal employment opportunities on account of their race. Ibid.

(c) In the context of the defendant unions' virtually all-white memberships in the pertinent classifications, the preference in admission to union membership and apprenticeship accorded by each of the defendants to relatives of current members inherently discriminates against Negroes on account of their race. Vogler v. McCarty, supra; Lefkowitz v. Sheetmetal Workers Local 28 & Farrell, 9 R.R.L.R. 393, 400-401 (N.Y. Comm. on Human Rights 1964), aff'd 42 Misc. 2d 958, 252 N.Y.S. 2d 649, 652, 657 (Sup. Ct. N.Y. County 1964); Connecticut Comm. v. IBEW Local 35, 28 L.R.R.M. 98, 100 (1951), aff'd 140 Conn. 537, 102 A 2d 366 (1953); see also Ross v. Dyer, 312 F. 2d 191, 194-196 (5th Cir. 1963).

(d) In the context of the virtually all-white membership of Local 1 in the pertinent classifications and in the light of the union's history of discrimination, the practice of requiring a majority vote of the union membership as a precondition to the acceptance of a new applicant for membership discriminates against Negroes on account of their race. Vogler v. McCarty, supra; Cypress v. Newport News Gen. Hospital, 375 F. 2d 648 (4th Cir. 1967); United States v. Logue, 344 F. 2d 290 (5th Cir. 1965).

8. The discriminatory acts, practices, policies and procedures set forth in the foregoing Findings of Fact constitute a pattern and practice of resistance to the full enjoyment by Negroes of the rights secured by Title VII of the Civil Rights Act of 1964 within the meaning of 42 U.S.C. 2000e-6. 110 Cong. Rec. 14270; see United States v. Mayton, 335 F. 2d 153, 159 (5th Cir. 1964). Where, as here, the defendants have engaged in acts and practices of which racial discrimination is the natural and probable consequence, they shall be deemed to have intended that result within the meaning of 42 U.S.C. 2000e-6(a). Radio Officers v. Labor Board, 347 U. S. 17, 45 (1954); Rabinowitz v. United States, 366 F. 2d 34, 56-57 (5th Cir. 1966).

9. The United States is entitled to injunctive relief herein "to insure the full enjoyment" by Negroes of the rights secured by Title VII. 42 U.S.C. 2000e-6(a). The acceptance by the defendants of a few Negro members and apprentices in the context of various official investigations, and particularly after the institution of this action, does not obviate the plaintiff's right to injunctive relief. It is the duty of the courts to beware of efforts to defeat injunctive relief by protestations of repentance and reform, especially where, as in this case, any changes in prior unlawful practices are more apparent than real, where they seem timed to blunt the force of a lawsuit, and where there is no assurance or probability of future compliance. United States v. Oregon Medical Society, 343 U.S. 326, 333 (1952); United States v. W. T. Grant Co., 345 U. S. 629, 632 (1953); United States v. Atkins, 323 F. 2d 733, 739 (5th Cir. 1963); Cypress v. Newport News Gen. Hospital, 375 F. 2d 648, 658 (4th Cir. 1967); Brooks v. County School Board of Arlington County, 324 F. 2d 303 (4th Cir. 1963).

10. In granting relief in a case brought under 42 U.S.C. 2000e-6 the Court is obliged to utilize the full and elastic resources of equity by fashioning specific remedial relief to ensure to Negroes the full enjoyment of the right to equal employment opportunities. Mitchell v. DeMario Jewelry, 361 U. S. 288, 291, 292

(1960); State of Alabama v. United States, 304 F. 2d 583, 590 (5th Cir. 1962), aff'd 371 U. S. 37 (1962); Vogler v. McCarty, supra.

This the ____ day of _____, 1967, St. Louis, Missouri.

_____
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF MISSOURI

EASTERN DIVISION

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| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>v.<br><br>THE SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION NO. 36, AFL-CIO; AND THE LOCAL NO. 1 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,<br><br>Defendants. | CIVIL ACTION<br>NO. 66 C 58(2) |

PROPOSED DECREE

Upon the basis of the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

I. That the defendants Local No. 1 of the International Brotherhood of Electrical Workers, AFL-CIO, and the Sheet Metal Workers' International Association, Local Union No. 36, AFL-CIO, their agents, officers, employees, members, successors, and all persons acting in concert or participation with them, be and they hereby are permanently enjoined from:

a. Engaging in any act or practice for the purpose or with the effect of discriminating against any individual because of his race, color, or national origin;

b. Excluding or expelling from their membership any individual because of his race, color, or national origin;

c. Limiting, segregating, or classifying their membership, or classifying or failing or refusing to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, or national origin;

d. Causing or attempting to cause any employer to discriminate against an individual on account of his race, color, or national origin;

e. Discriminating against any individual because of his race, color, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

II. More specifically, said defendants and said persons are enjoined from:

a. Giving priority in work referrals to their members or to persons with work experience under a collective bargaining agreement;

b. Requiring experience in the trade as a prerequisite to referring Negroes to jobs during the next five years if the Negro applicant for work referral meets the following qualifications:

1. He is, at the time of this decree, over the age of twenty-five in the case of referrals by Local 1 and over the age of twenty-three in the case of referrals by Local 36;

2. He has passed the journeyman's examination provided for in the collective bargaining agreement.

c. Giving any preferences or privileges in work referrals, membership, or apprenticeship to relatives and friends of union members;

d. Requiring the vote of existing union members for the initiation or acceptance of new members;

e. Failing to attempt to organize and otherwise recruit Negroes to the same extent and under the same conditions as white persons have been organized or recruited in the past;

f. Failing for the next five years to accept into membership as a construction journeyman and to accord all the benefits thereof to any Negro applicant who possesses qualifications equal to or higher than those possessed by the least qualified white person who has been accepted into membership as a construction journeyman since 1961;

g. Failing for the next five years to accept as a construction apprentice and to accord all the benefits thereof to any Negro applicant who possesses qualifications equal to or higher than those possessed by the least qualified white person who has been accepted as a construction apprentice since 1961.

III. The defendants, their members and agents, are further ordered to take the following affirmative steps:

a. Submit to this Court for approval within forty-five days of this decree a detailed plan, consistent with Paragraph II of this decree, setting forth fair and objective standards and procedures for use in the admission of new members, in the admission of new apprentices, and in the referral of persons to construction jobs. The plan shall include copies of any tests which the defendants propose to use, together with a description of how the tests are to be administered and what, if any, scores are to be considered as passing or failing or as entitling the person taking the test to any priority. The plan shall also set forth an informational program by which the defendants propose to bring to the attention of the Negro community the fact that Negroes may now become members in the defendant unions and obtain work referrals through the defendant unions without regard to race. A copy of said plan shall be served upon the United States which will have the right within 20 days thereafter to file with this Court its objections, if any.

b. Invite Walter Hampton, Clarence Lee, Vernon Wells, and all members of the CIU in electrical and sheet metal classifications to apply for membership in the appropriate union (Local 1 or Local 36). The invitation shall be made under the following conditions: Those persons

invited to join Local 36 may do so upon payment of a $50 initiation fee, without taking an examination. Those persons invited to join Local 1 shall be admitted upon passing the journeyman's examination (unless they have already passed an equivalent examination) and upon paying the initiation fee; they shall be admitted without a vote of the membership. As to persons working under a CIU collective bargaining agreement, the invitations shall be made at such time as may be consistent with the National Labor Relations Act.

c. The defendants shall continue to notify the Missouri State Employment Service and all school systems within its jurisdictional area of apprentice openings. The defendants shall also furnish along with the notice sufficient application forms and copies of the apprenticeship rules for them to be disseminated to potential applicants. The applicant shall be allowed to file his application in person, by mail, or through the Missouri State Employment Service or his school.

IV. Said defendants are further ordered to file with the Court within six months from the date of this decree, and each six months thereafter, and to serve on the United States a report showing for the period covered the number of applications for apprenticeship, for membership, and for work referral, by race, and the action taken on each such

application. The report shall list all rejected applications and shall specify the reason for each rejection. The defendants shall also maintain complete records relating to work referrals, admission to membership, and admission to apprenticeship. Such records shall include:

a. The name, address, age, race, work experience, and education of each applicant for work referral, for membership, and for apprenticeship training;

b. The action taken as to each such application including the date and time of application for work referral, the date and time of actual referral to employment, the name and address of the employer to whom referred, and the hourly wage actually paid with connection to such referral and, as to applicants for membership and apprenticeship, if any such applications are denied or no action is taken upon them, the record shall show the specific reasons for such denial or inaction and the underlying facts supporting such reasons;

c. An exact record of any test or oral interview that may be administered, the performance of each applicant taking any such test or interview, and the specific scoring and evaluation of each answer given by any applicant taking any such test or interview. For purposes of recording oral interviews it shall be sufficient to show each question asked, each answer given, and the scoring for each.

All such records, along with current priority lists, shall be made available to the United States for inspection and copying at any and all reasonable times.

V. The defendants are further ordered to give written notice of the contents of this decree to each of their members and to each construction contractor with whom they have collective bargaining agreements; and to file with this Court and serve upon the United States within 20 days of this decree a written report showing that the required notice has been given, and shall attach to the report copies of all letters used in complying with this order.

VI. The Court retains jurisdiction of this action for such additional and supplemental relief as may be required.

VII. The costs of this proceeding are hereby taxed against the defendants.

Done this _____ day of _____, 1967, St. Louis, Missouri.

_____
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I, GERALD W. JONES, hereby certify that on September 17, 1967, I served the foregoing proposed Findings of Fact, Conclusions of Law, Decree and supporting Memorandum upon counsel for the defendants in this case by mailing copies thereof by United States air mail, special delivery, and postage prepaid as follows:

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