IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

PAUL VOGLER, JR. and CASIMERE JOSEPH, III v. McCARTY, INC., a Corporation and LOCAL 53 OF THE INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS WORKERS, UNITED STATES OF AMERICA, by RAMSEY CLARK Acting Attorney General, Plaintiff, v. LOCAL 53 OF THE INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS WORKERS, Defendant.	CIVIL ACTION NO. 66-749 SECTION A CIVIL ACTION NO. 66-833 SECTION A CONSOLIDATED CASES MEMORANDUM IN SUPPORT OF PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PRELIMINARY INJUNCTION

STATEMENT

These consolidated cases present to a Court for the first time the application of Title VII of the 1964 Civil Rights Act to an all white craft union and pose for the Court the essential responsibility of enforcing the congressional design that America citizens will no longer be denied the opportunity to earn a living solely because the

color of their skin or their parental heritage does not match that of the union members. They are significant, not only as cases of first impression under a vital new law, but more importantly, because they will provide the judicial response to the absolute exclusion of all Negroes from 1200 jobs in New Orleans and Baton Rouge.

The Court has heard the testimony and reviewed the exhibits and factual stipulations. We have proposed findings of fact and conclusions of law which we believe the evidence justifies. Accordingly, we will not review the facts in detail in this brief, but will discuss the terms of Title VII and the intent of Congress as applicable to this case, and present the legal justification for the relief suggested in the proposed form of preliminary injunction previously submitted to the Court.

The evidentiary facts essential to this discussion can be stated succinctly: Local 53 is an all white union of 282 members. It operates as the exclusive bargaining agent for workers in the insulation trade in the New Orleans and Baton Rouge areas. Persons are considered for membership only if they are sons (or, occasionally, other close relatives) of union members, obtain the recommendation of three present members and are approved on secret ballot by a majority of the membership. Through its referral system the union

determines who is permitted to work in the trade.[1] Over 900 non-members work as asbestos mechanics or helpers, all of them with written referrals from Local 53. None of these workers is Negro.[2] Although the need for asbestos workers in the area is critical, at least nine Negro applicants for helper status and three well qualified Negro members of a closely related craft union, the plasterers , have been rejected for membership or referral. The union concedes these refusals were grounded on race alone and affirms the only reasonable inference, that it is the policy of the union neither to accept Negroes for membership nor refer them to employment.

1/ Local 53 thus determines who will work in the insulation industry. From January through November of 1966, workmen referred by or through Local 53 worked a total of 1,131,109 hours at salaries ranging from $2.22½ to $4.45 per hour, with a double rate for overtime. Stipulation number one; Collective Bargaining Agreement (gov't Ex. 15)

2/ In the area of Louisiana served by this union, there are approximately 146,232 males between the ages of 18 and 30 of whom 45,556 are Negroes. (Stipulation No. 4). The fact that there are no Negroes working in the trade is thus strong evidence of the discriminatory practices engaged in by Local 53. Section 703(c), (d) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-2(c) (d); Reece v. Georgia, 350 U.S. 85 (1955); Hernandez v. State of Texas, 347 U.S. 475 (1954); Scott v. Walker, 358 F. 2d 561 (5th Cir. 1966); United States ex. rel. Harpole v. Goldsby, 263 F. 2d 71 (5th Cir., 1959); United States v. Manning, 205 F. Supp. 172 (W. D. La. 1962).

The form of order which we have proposed is designed to provide appropriate and effective relief from these discriminatory policies and practices but to do so in a way which honors the traditional function of a labor organization, does not intrude upon the existing balance between labor and management, and conforms as nearly as practicable to the practice of the industry. Within this framework the proposed order will eliminate the inherently discriminatory aspects of the defendant's system, remedy to some extent the effects of past discrimination and prevent discrimination in the future, while permitting the defendant to establish relevant standards for membership and referral. This memorandum will support this approach by demonstrating that the language and purpose of Title VII precludes the continuation of the present practices, requires affirmative steps to make possible increased Negro participation in the trade, and justifies the development of new membership policies free from discrimination but reasonably related to the trade.

ARGUMENT

I. THE LANGUAGE, PURPOSE AND HISTORY OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 REQUIRES LOCAL 53 TO DISCONTINUE IMMEDIATELY ITS DISCRIMINATORY MEMBERSHIP AND REFERRAL POLICIES.

In relevant part Title VII of the Civil Rights Act of 1964 42 U.S.C. 2000e provides:

> Sec. 703.
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> (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;
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> (2) to limit, segregate, or classify its membership, or to classify or fail or refuse 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
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> (3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

Under Section 703(d) it is also an unlawful employment practice for:

> any . . . labor organization . . . 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.

Individual complainants, such as those in No. 66-749, after filing a complaint with the Equal Employment Opportunity Commission, may bring suit to enjoin such conduct. "If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate * * *" (Sec. 706(g).

In Section 707 the statute provides that the government may also bring suit under certain circumstances

and describes the type of relief which the court can grant:

> Sec. 707. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this title, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint . . .
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> * * *
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> (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

It is apparent from this language of Title VII that Congress intended not only to declare the right to equal employment opportunities but to insure these rights through appropriate injunctive relief in the courts.

The history of this legislation confirms that in Title VII Congress intended to deal with precisely the kind of discrimination found in this case. In explaining the need for this Title in a civil rights act dealing principally with the right to vote, equal enjoyment of public facilities and accommodations and the desegregation of schools, the concurring report in the House of Representatives explains--

> The right to vote . . . does not have much meaning on an empty stomach. The impetus to achieve excellence in education is lacking if gainful employment is closed to the

> graduate. The opportunity to enter a restaurant or hotel is a shallow victory where one's pockets are empty. The principal of equal treatment under law can have little meaning if in practice its benefits are denied to the citizen. House Rep. No. 914, Part 2, on H. R. 7152, 88th Cong., 1st sess. (December 2, 1963), p. 26.

The facts before the House Judiciary Committee revealed that while Negroes comprise only eleven per cent of the labor force in the United States, twenty-two per cent of those unemployed are Negroes. House Report No. 914, Part 2, on H. R. 7152, 88th Cong., 1st Sess. (December 2, 1963), p. 27. While not alone, high on the list of causes of this disparity is the fact that otherwise qualified Negroes are purposefully excluded from meaningful employment. In his 1963 Civil Rights message to Congress, on the eve of his submission of the proposed Civil Rights Act of 1963, President Kennedy stated the need for equal employment legislation in practical, economic terms:

> Unemployment falls with special cruelty on minority groups. The unemployment rate of Negro workers is more than twice as high as that of the working force as a whole. In many of our larger cities, both north and south, the number of jobless Negro youth -- often 20 per cent or more -- creates an atmosphere of frustration, resentment, and unrest which does not bode well for the future.
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> * * *
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> . . . [R]acial discrimination in employment must be eliminated. Denial of the right to work is unfair, regardless of its victim. It is doubly unfair to throw its burden on an individual because of his race or color. Men who serve side by side with each other on the field of battle should have no difficulty working side by side on an assembly line or construction project.

* * *

> This problem of unequal job opportunity must not be allowed to grow, as the result of either recession or discrimination. I enlist every employer, every labor union, and every agency of government whether affected directly by these measures or not--in the task of seeing to it that no false lines are drawn in assuring equality of the right and opportunity to make a decent living. House Doc. No. 124, 88th Cong., 1st Sess. (June 19, 1963.)

Congress recognized, in addition to the obvious unfairness to the individual Negro, that our economy could not attain its maximum potential so long as ten per cent of the Nation's population are excluded from lucrative and productive work. House report No. 914, Part 2 on H.A. 7152, 88th Cong., 1st Sess., p. 29 (December 2, 1963); Senator Clark, 110 Cong. Rec. 7204, 7205 (April 8, 1964); Senator Case, 110 C.R. 7240-41 (April 8, 1964); Mr. Ryan, 110 C.R. 1570 (D.E.)(February 1, 1964); Senator Humphrey, 110 C.R. 6548 (March 30, 1964); Senator Kuchel, 110 C.R. 6562 (March 30, 1964); Mr. Libonati, 110 C.R. 2737 (Feb. 10, 1964); Mr. Reid and Mr. Lindsay, 110 C.R. 1566 (d.e.) (Feb. 1, 1964); Mr. Gallaher, 110 C.R. 2611 (Feb. 11, 1964); Mr. Celler, 110 C.R. 2600, 2604 (February 8, 1964).

Congressional concern over discrimination in labor organizations rests on the fact that such organizations, operating with the sanction of federal law, control jobs which should be open to all. Thus, federal legislation permits a labor union to become the exclusive bargaining agent for the entire class of employees working in an industry.[3/]

3/ 29 U.S.C. 159 (a)

With sanction of federal law the union may strike, boycott and picket any employer with whom it is directly involved in a labor dispute, [4] and federal law prevents the employer from seeking an injunction to prevent it. [5]

The courts have long recognized that organizations thus nurtured and protected by the law have a responsibility to the public, and this responsibility was part of the background of Title VII. In Steele v. L. & N. R. Co., 323 U.S. 192, 198, 201-2 (1944), the Court articulated this duty as it applied to an all-white labor union:

> If, as the state court has held the /Railway Labor /Act confers this power/ to represent employees/ or the bargaining representative of a craft or class of employees without any commensurate statutory duty toward its members, constitutional questions arise. For the representative is clothed with power not unlike that of a legislature which is subject to constitutional limitations on its power to deny, restrict, destroy or discriminate against the rights of those for whom it legislates and which is also under an affirmative constitutional duty to protect those rights.
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> * * *
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> Unless the labor union representing a craft owes some duty to represent non-union members of the craft, at least to the extent of not discriminating against them as such in the contracts which it makes as their representative, the minority would be left with no means of protecting their interests, or, indeed, their right to earn a livelihood by pursuing the occupation in which they are employed . . . . It is a principle of general application that the exercise of a granted power to act in behalf of others involves the assumption toward them of a duty to exercise

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[4] 29 U.S.C. 163; 29 U.S.C. 148 (b) (4) (B) & (D)

[5] 29 U.S.C. 101

> the power in their interest and behalf, and that such a grant will not be deemed to dispense with all duty toward those for whom it is exercised unless so expressed. Steele v. L. & N. R. Co., 323 U.S. 192, 201-2 (1944) (emphasis added).6/

This power-responsibility ratio is particularly apposite to trade unions engaged in the construction industry. No record could demonstrate that more clearly than the one before the Court. This union is established by contract as the exclusive bargaining agent for all asbestos workers employed by every major insulation contractor in Southeastern Louisiana. Those contractors may deal with no other labor organization. The needs of the contractors for tradesmen vary from day to day and it is the practice in the industry, if not the requirement, that a contractor calls the union when he needs men. Moreover, the contractors may not hire personnel without first getting the approval of the union. In this industry therefore the union has the ultimate control over who works and who does not.

> [S]uch a union occupies a quasi public position similar to that of a public service business and it has certain corresponding

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6/ See also Syres v. Oil Workers International Union Local No. 23, 350 U.S. 892, per curiam (1955) (extending application of Steele to unions under the National Labor Relations Act.); Brotherhood of R. R. Trainmen v. Howard, 343 U.S. 768 (1952) (duty of fair representation prevents conduct with discriminatory effect upon Negro employees not in the union's bargaining unit); Graham v. Brotherhood of Locomotive Firemen and Engineers, 338 U.S. 232 (1949); See also Terry v. Adams, 345 U.S. 461; Marsh v. Alabama, 326 U.S. 501; Smith v. Allwright, 321 U.S. 649; Nixon v. Condon, 286 U.S. 73.

> obligations. It may no longer claim the same freedom from legal restraint enjoyed by golf clubs or fraternal associations. Its asserted right to choose its own members does not merely relate to social relations, it affects the fundamental right to work for a living. James v. Marineship Corporation, 25 C.2d 721, 155 P. 2d 329 (1944) (emphasis added)

The peculiar duty of labor unions as organizations with a quasi-public function, the legislative history and purpose of Title VII, and the language of that legislation all lead to the conclusion that Local 53 has been and is engaging in a proscribed pattern and practice of discrimination which, under the law, this Court should enjoin. We turn now to the elements of relief which we believe to be appropriate in light of the congressional purpose and the facts of this case.

II. UNDER TITLE VII LOCAL 53 SHOULD BE ENJOINED FROM CONTINUING TO SELECT NEW MEMBERS ON THE BASIS OF RELATIONSHIP TO, SPONSORSHIP BY OR VOTE OF PRESENT MEMBERS.

Under our proposed decree, Local 53 is enjoined from continuing its requirements that applicants for membership be related to a union member, be sponsored by these union members, and be voted upon by a majority of the union members. In another context at another time, these requisites to union affiliation may have served some purpose. But such requirements in an all white union inevitably adversely affect the employment opportunities of Negroes on account of race and are per se violations of Title VII.

A. Nepotism

The hereditary nature of the crafts did not originate with Local 53, nor is it unique to American labor unions. The same practice was firmly entrenched in the medieval guilds of England and the Continent. Trade unionists here, as guildsmen there, justifiably proud of their skill, have encouraged sons to enter the trade. So, Local 53 has rewarded its sons with automatic membership, to the virtual exclusion of all others.

The obvious effect of such nepotism in an all white union is the inexorable exclusion of all people who are not white. That the practice arose without a clear racial motive and discriminates against all non relatives as well as Negroes do not preserve its validity under Title VII. The validity of its practices is "Tested by [their] operation and effect." Near v. Minnesota, 283 U.S. 697, 708 (1931); Griffin v. Illinois, 351 U.S. 12, n.11 (1956); Quinn v. United States, 238 U.S. 347 (1915). In particular, "a law [or, as here, a requirement subject to scrutiny under the law] nondiscriminatory on its face may be grossly discriminatory in its operation" and, hence, invalid. Griffin v. Illinois, supra, at 17, N.11. The courts have applied this principle with particular vigor when reviewing acts which result in effective denial of equal rights to Negroes or other classes of citizens.[7/]

7/ Harper v. Virginia State Board of Elections, 383 U.S. 663 (1966); Louisiana v. United States, 380 U.S. 145, 154-155

[Footnote 7 continued on following page]

While this is the first application of Title VII to such practices, there are earlier decisions which point the way.

The decision of the Court of Appeals for the Fifth Circuit invalidating the Houston Texas School Board's application of a "brother-sister" rule to Negroes seeking admission to formerly all white schools is of particular relevance to discrimination promoted by relationship. Ross v. Dyer, 312 F.2d 191 (5th Cir., 1963). The rule which, for 40 years, had required elementary children to attend the same school as the older sibling, was applied indiscriminately to both races. Moreover, the Court noted "that there are many good reasons for this rule, such as achieving maximum value out of the family as a unit as schools encounter the many and unpredictable curricular and extracurricular problems." 312 F.2d at 196. Nevertheless the Court refused to condone its continued application, saying:

> [I]t is inescapable that, no matter how fruitful the rule may be - nor how apparently even handed may be its application - in the transition

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[Continuation of Footnote 7 from preceding page]

(1965); Goss v. Board of Education of Knoxville, 373 U.S. 683 (1963); Douglas v. California, 372 U.S. 353 (1963); Griffin v. Illinois, 351 U.S. 12 (1956); Lane v. Wilson, 307 U.S. 368, 275 (1939); Guinn v. United States, 238 U.S. 347 (1915); Hawkins v. North Carolina Dental Society, 355 F. 2d 718, 723 (C.A. 4, 1966); Kemp v. Beasley, 352 F.2d 14, 20-21 (C.A. 8, 1965); United States v. Logue, 344 F. 2d 290 (C.A. 5, 1965); United States v. Atkins, 323 F.2d 733, 742-43, 745 (C.A. 5, 1963); Ross v. Dyer, 312 F.2d 191, 194, 196 (C.A. 5, 1963); Meredith v. Fair, 298 F.2d 696, 305 F.2d 343, 351 (C.A. 5, 1962); United States v. State of Louisiana, 225 F. Supp. 353, 393 (E.D. La. 1963),

[Remainder of Footnote 7 continued on following page]

> from a segregated to a desegregated school system, it has a marked and frequently spectacular effect of preventing individual Negro children from enjoying the constitutional rights which the 1960 order in its gradual way undertook to afford. Ross v. Dyer, supra, at 196.

The specific problem of nepotism in an all white union has been dealt with in the State of New York. Lefkowitz v. Farrell, 9 R.R.L.R. 393 (New York State Commission for Human Rights, February 26 and March 20, 1964). The facts in that case disclosed that approximately 80% of the new apprentices in Local 28 of the sheet metal workers were relatives of members and affirmed the obvious preference given them. Of this system, the New York Commission concluded:

> . . . Negroes as a class are thus automatically excluded.
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> It is no defense to say that selection based on family ties affects whites and non-whites alike, and therefore does not discriminate against Negroes specifically. The consideration of family preferences is particularly significant in view of the rigid controls that Local 28 exerts over the job market for sheet metal mechanics on most of the construction projects in New York City. Local 28 is not charged with discrimination against a cross-section of all persons, but against Negroes specifically. The fact that its practices

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[Remainder of Footnote 7]

affirmed, 380 U.S. 145 (1965); Franklin v. Parker, 223 F. Supp. 724 (M.D. Ala., 1963); United States v. Penton, 212 F. Supp. 193, 199-200 (M.D. Ala. 1962), 236 F. Supp. 511 (M.D. Ala. 1964) (sub nom United States v. Parker); Hunt v. Arnold, 172 F. Supp. 847 (N.D. Ga. 1959); Lefkowitz v. Farrell, 9 R.R.L.R. 393, 400-401, affirmed, State Commission for Human Rights v. Farrell, 252 N.Y.S. 2d 649, 652, 657 (1964); Connecticut Commission on Civil Rights v. IBEW Local No. 35 (cases nos. 164-165, August 15, 1951), as discussed in 28 L.R.R.M. 98, 100, affirmed 140 Conn. 537 (1953).

> may work against some white persons at some times does not alter the fact that they work against all Negro applicants at all times. Lefkowitz v. Farrell, supra, at 400-401 (emphasis added).

The Connecticut Commission on Civil Rights faced the same issue in the electrical trade:

> The union finally contends that although it may have been arbitrary in its admission practices, the underlying purpose of such practices, is to protect the economic interests of the members, and is therefore justified. It argues further that since such practices fall with equal discriminatory effect upon both whites and Negroes they cannot be held to violate the Fair Employment Practices Act. We do not agree with the respondent's interpretation of the evidence. The union has given preference to sons and other relatives of members. The inbreeding which such nepotism nurtures may discriminate against some white persons but Negroes are thereby precluded from membership absolutely. The union has also accepted friends of the business manager ... The evil created by arbitrary admission practices is that they permit the very discrimination which the Act seeks to prevent. The mandate of the law is that there be standards, that there be reasonable standards, and that they be bona fide standards. Arbitrary practices, even if based upon an economic interest, do not square with the stern requirements of the Act. Conn. Comm. on Civil Rights v. IBEW Local No. 35, (Cases Nos. 164-165, Aug. 15, 1951) 28 L.R.R.M. 98, 100. (emphasis added)

Under fair employment statutes with proscriptions similar to those in Title VII Trade union nepotism in Connecticut and New York was enjoined, and both decisions were affirmed and enforced by their respective state courts. State Comm. for Human Rights v. Farrell, 252 N.Y.S. 2d 649, 43 Misc. 2d 958 (1964); IBEW Local No. 35 v. Commission on Civil Rights of the State of Connecticut, 140 Conn. 537 (1953).

> [W]e think the voucher requirement, imposing as it does a heavier burden on Negro than white applicants, is inherently discriminatory as applied in a county such as Wilcox. Since there were no Negro voters on the rolls in the county during the period in question, any Negro applicant had to obtain his supporting witnesses from the ranks of the white population. This court and other courts have noted that similar requirements inevitably impose a greater burden on Negroes than whites under existing dominant social patterns .... In such circumstances as these, it was unnecessary for the Government, in order to entitle it to injunctive relief, to adduce detailed proof that it was more difficult for Negroes to obtain white persons to serve as their supporting witness or to show numerous instances of refusal by white registrants to vouch for Negroes. We think the court is justified in taking note of the discriminatory effect of such a requirement in circumstances such as those presented in the instant case. United States v. Logue, 344 F.2d 290, 292-93 (5th Cir.). See also, United States v. Hines, No. 60-609 (N.D. Ala. September 17, 1964).

Semi-private organizations which control occupational opportunities are not exempt from this principle any more than is the state. Hawkins v. North Carolina Dental Society, 355 F.2d 718 (C.A. 4, 1966), is particularly in point here. The Fourth Circuit held invalid a requirement of the Society that membership therein was dependent upon obtaining the recommendation of two members, where all members of the Society were white, and where the Society had excluded Negroes in the past. The Court said (355 F.2d at 723):

> That the Dental Society in its admission practices has discriminated against Negroes is also clear. There were, at the time of the trial 1,529 licensed dentists in North Carolina, of whom 90 to 100 were Negroes. There were 1,214 members of the Society, of whom not one was a Negro. Several Negro dentists had sought membership in the society, none successfully.

B. Membership Recommendation and Vote

The principles which militate against the practice of nepotism in Local 53 necessitate as well the abolition of that union's requirements that each applicant obtain recommendations from three members and receive the favorable vote of a majority of the union members. For a Negro to meet the relationship requirement is impossible; to require a Negro to obtain recommendation from or approval of union members places upon him a burden which whites are not obliged to overcome.

Such sponsorship requirements have not withstood the test of judicial scrutiny where the effect is to prevent rightful Negro participation. In Hunt v. Arnold, 172 F. Supp. 847 (N.D. Ga., 1959), the Court invalidated the requirement of alumni sponsorship as applied to a Negro seeking admission to the University of Georgia:

> The Court takes judicial notice of the fact that it is not customary for Negroes and whites to mix socially or attend the same public or private educational institutions in the State of Georgia, and that by reason of this presently existing social pattern, the opportunities for the average Negro to become personally acquainted with the average white person, and particularly with the alumni of a white educational institution are necessarily limited. 172 F. Supp., at 856; see also Meridith v. Fair, 298 F. 2d 696 (5th Cir., 1962), reaffirmed 305 F. 2d 343 (1962)

In the voting area, this Circuit has consistently rejected sponsorship requirements for voter registration, where there were a disproportionately small number of potential Negro sponsors:

> ... Under the circumstances, when the Society's membership was racially exclusive and the recommendation of no Negro acceptable, rigid enforcement of the requirement of endorsements by members of the Society is itself a discrimination because of race. This has been the uniform conclusion of the courts in similar circumstances, for though use of such a rule in other contexts may be both reasonable and proper, applied to exclude Negroes, when no Negro, whatever his professional qualifications, can expect to receive the endorsements of the white members, it is racially discriminatory.

The New York Commission recognized that maintenance of the union sponsorship requirements in the sheetmetal workers would defeat any attempts by Negroes to join. It therefore held that this prerequisite could not stand.

> The fact that a white person may be barred because there is no union member to sponsor him is evidence only that he was barred because he lacked such union sponsorship, not because he is white. In the case of the Negro, however, his preclusion is due to the fact that he is a Negro. Mostly, the union members sponsor their relatives. The fact that there are no Negro union members to sponsor the Negro applicant makes the discrimination a racial one. Lefkowitz v. Farrell, supra, 9 R.R.L.R. at 401.

This Court knows the facts of life in Louisiana and Mississippi. The record shows there are no Negroes working under Local 53's jurisdiction and the union concedes this is not accidental. According to the union Business Agent, Gerald O'Brien, it is the policy of this union to prevent Negroes from joining and refuse to refer them for employment. Negro applicants for membership and referral have been summarily rebuffed. In this context a court of equity acting under Title VII cannot subject fair employment opportunities for Negroes to the chance that a white union member will vouch for a Negro or, given a choice, vote for him.

III. TITLE VII REQUIRES LOCAL 53 TO TAKE AFFIRMATIVE STEPS TO CORRECT THE EFFECTS OF PAST DISCRIMINATION AND TO INSURE EQUAL OPPORTUNITIES IN THE FUTURE

Under Title VII it is the duty of any labor union which has established control over employment opportunities in a trade to insure that those opportunities are open to all persons on the basis of their qualifications alone, without regard to race, color or national origin. Title VII, Civil Rights Act of 1964, 42 U.S.C. 2000e; see discussion in Part I, supra. Local 53 has failed in that duty. Thus, the design of any order entered by this Court must be to balance the equation - to require the defendant to establish standards and procedures so that, as nearly as possible, opportunities for employment and union membership are available to Negroes on precisely the same basis as they are available to whites. To be effective such an order must contain these elements: it must eliminate and counteract any inherently discriminatory standards and procedures employed by the union; it must correct the effects of past discrimination by the union; and it must insure that from this day forth there will be no disparity between the opportunities available to whites and those available to Negroes. The order which we have proposed is drawn to meet those needs.

A. Eliminating Inherently Discriminatory Standards and Procedures

We have discussed in Part II the illegality of preferences given to relatives and associates of union members. There is in addition one other aspect of the defendant's program which presently results in the disadvantage to Negroes. That is the union's failure to make known to anyone other than its white relatives and friends the requisites for membership and employment. Just as it is unlikely that white members will recommend or approve a Negro for membership, so it is unreasonable to assume that they will voluntarily communicate the availability of employment to Negroes in the area. See cases cited in Part II(B). The decree which we propose would compensate for this failure by requiring the defendant to notify the Negro community of the opportunities available and the fact that they are available on a non-discriminatory basis.

B. Correcting the Effects of Past Discrimination

Local 53 has purposefully restricted its membership to white persons. It has purposefully excluded from consideration almost one third of the labor force solely because they are Negro. It has wilfully refused qualified Negroes an opportunity to work even though there were more jobs available than it had men to refer.

Under Title VII, Local 53 has an affirmative obligation to insure equal opportunity. See Part I, supra. It must take such steps as are necessary to correct the deficiencies resulting from its past discriminatory policies. It cannot meet this obligation so long as it preserves its posture as an organization for white men only. Thus, the union must take appropriate action to discard as quickly as possible its white only cast. This should include the admission to membership of those Negroes who are qualified but who have been denied membership and employment because of their race, cf., United States v. Jefferson County Board of Education, ____ F 2d _____ (5th Cir., No. 23345, December 29, 1966), slip opinion at pp. 49-62; Clark v. Board of Education of the Little Rock School District, ____F 2d ____(8th Cir., No. 18368, December 15, 1966) slip opinion at p. 13.

The relief which we seek would accomplish this in several ways:

1. It provides for the immediate admission of three Negro plasterers who have applied and who, but for their race, would have been referred as mechanic asbestos workers. (In addition, the proposed order provides for the admission of Juan Galaviz, a Mexican-American who, because of the defendant's practice of nepotism, was never afforded a real opportunity to join.)
2. It provides for the immediate employment and automatic admission, upon demonstration of their ability, of nine young Negro

There can be no question of this Court's authority to enter such a decree in this case. Title VII confers upon the Court full jurisdiction with all the powers of equity to ". . . order such affirmative action as may be appropriate . . ." and ". . . necessary to insure the full enjoyment of the rights . . ." described in the statute, Sections 706(g) and 707(a), 42 U.S.C. 2000e - 5(g) and 6(a). "[T]he court has not merely the power but the duty to render a decree which will go so far as possible to eliminate the discriminatory effects of the past as well as bar like discrimination in the future," Louisiana v. United States, 380 U.S. 145 (1965).

> The aim of equity is to adapt judicial power to the needs of the situation. Thus relief in matters of public, rather than private, interests may be quite different from that ordinarily granted. Though language frequently employed might be thought to place this result on the nature of the litigant--the sovereign or an agency of the Government--it is really a manifestation of the principal that the nature of the relief is to be molded by the necessities. [citations omitted] The necessities will encompass, of course, special statutory objectives. "When Congress entrusts to an equity court the enforcement of prohibitions contained in a regulatory enactment, it must be taken to have acted cognizant of the historic power of equity to provide complete relief in light of the statutory purposes. As this Court long ago recognized, 'there is inherent in the Court of Equity a jurisdiction to * * * give effect to the policy of the legislature.' Clark v. Smith [38 U.S. 195], 13 Pet. 195, 203 [10 L. Ed. 123, 127]." United States v. Alabama, 304 F.2d 583, 591 (5th Cir. 1962), aff'd 371 U.S. 37 (1962)

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EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

PAUL VOGLER, JR. and CASIMERE JOSEPH, III v. McCARTY, INC., a Corporation and LOCAL 53 OF THE INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS WORKERS, UNITED STATES OF AMERICA, by RAMSEY CLARK Acting Attorney General, Plaintiff, v. LOCAL 53 OF THE INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS WORKERS, Defendant.	CIVIL ACTION NO. 66-749 SECTION A CIVIL ACTION NO. 66-833 SECTION A CONSOLIDATED CASES

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PRELIMINARY INJUNCTION

The United States filed number 66-833 against Local 53 of the International Association of Heat and Frost Insulators and Asbestos Workers (hereinafter referred to as Local 53 or the union) on December 15, 1966, under Section 707 of the Civil Rights Act of 1964, 42 U.S.C. 2000e-6(a) & (b). The complaint was filed only after the Equal Employment Opportunity Commission had completed a thorough investigation of charges of discrimination by the defendant, had found reasonable cause to believe that the charges were true, and, having failed in its

attempts to conciliate the matter, had referred the case to the Acting Attorney General. On the basis of the information before the Commission and further investigation by the Department of Justice, the Acting Attorney General determined there was reasonable cause to believe that the defendant Local 53 is engaged in a pattern and practice of resistance intended to deny to Negroes and Mexican - Americans their right to be free of discrimination in employment on account of their race, color or national origin.

On motion of the United States, the hearing on motion for a preliminary injunction was consolidated with that in Number 66-749, a prior action under Section 706 (a) of the Act, 42 U.S.C. 2000e-5(a) filed November 25, 1966, by three private individuals against Local 53 and two insulation contractors.

A full evidentiary hearing was held on these motions on January 19, 20 and 24, 1967. On the basis of that evidence, the United States proposes the following findings of fact conclusion of law and preliminary injunction. We are submitting in addition a memorandum in support of our proposals.

I. FINDINGS OF FACT

1) The defendant Local 53 is a labor organization within the meaning of 42 U.S.C. 2000e-(d) which represents workmen engaged in the asbestos and insulation trade in the Southeastern portion of Louisiana, including the metropolitan areas of New Orleans and Baton Rouge, and some counties in the State of Mississippi. It exists for the purpose of dealing with employers on behalf of employees concerning terms and conditions of employment, including grievances, labor disputes, wages and hours of work. 1/

2) The defendant Local 53 is engaged in an industry affecting commerce within the meaning of 42 U.S.C. 2000e-(e). 2/

3) The defendant Local 53 effectively controls employment and training opportunities in the insulation and asbestos trade in New Orleans and Baton Rouge, Louisiana and the surrounding area. It is established by contract as the exclusive bargaining agent for all asbestos workers employed by every major insulation and asbestos firm in that territory. Although not by contract,

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1/ Testimony of Gerald W. O'Brien, Business Agent of Local 53; Constitution and By-Laws of the International Association of Heat and Frost Insulators and Asbestos Workers (gov't ex. 13); Collective Bargaining Agreements between Local 53 and the Master Insulators Association of New Orleans and Baton Rouge, Louisiana (gov't ex. 14 and 15).

2/ Local 53 has more than 100 members and is recognized as the representative of employees of employers engaged in an industry affecting commerce.

in practice it operates a referral system at the Union office through which it either furnishes or approves each journeyman and helper hired by these contractors in the asbestos trade. Generally, workmen are sent to employers by the defendant in accordance with the fluctuating needs of the contractors in the industry. When workmen are not available through the Union contractors solicit men on their own but must send them to the Union for referral before placing them on a job. As there is no formal apprenticeship program in this industry, the sole opportunity for learning the trade is on the job training, available only to helpers working under the auspices of the defendant Local 53. 3/

4) The defendant Local 53 pursues policies and practices which adversely affect the employment opportunities of persons on account of their race, color or national origin. These policies and practices and the conduct of the defendant pursuant thereto constitute a pattern and practice of resistence designed and intended to deny to individuals the full employment of their rights guaranteed by Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

a. In that portion of Louisiana in which Local 53 exercises Trade jurisdiction there are approximately 45,556 Negro males and 100,676 white males between the ages of 18 and 30. 4/

b. There are currently approximately 1,200 men employed as asbestos workers by contractors by contract to recognize Local 53 as the

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3/ Collective Bargaining Agreements (gov't ex 14 and 15); Testimony of Gerald W. O'Brien, James Roche, Louis James Elliot, Harold T. Branton; Records of Union Referrals (gov't ex. 1).

4/ Stipulation number four.

exclusive bargaining agent for such employees. Of these 1,200 men, only 282, including 64 improvers (apprentices), are actually members of Local 53. The remainder are either members of other locals of the International Asbestos Workers Union (Travellers) or non-members working with union approval (permit men). In these 1,200 men there is not one Negro, nor, within the membership of the defendant, are there any persons of Mexican-American descent. 5/

c. The need for tradesmen in the insulation industry in this area is today nearly three times that which existed two years ago. In July of 1965, men affiliated with Local 53 worked a total of 58,690 hours; by November of 1966, that number had reached 160,548. 6/

d. In order to be considered for membership in Local 53, an applicant must obtain written recommendations from three members. 7/

e. In order to be accepted into membership an applicant must obtain the approval of a majority of the members voting by secret ballot at a Union meeting. 8/

f. It is the policy of the defendant Local 53 to restrict its membership to the sons or close relatives of other members. Local 53 does not admit new men as mechanics, regardless of their qualifications. In the past four years the defendant has accepted 72 first-year improvers as members. Sixty-nine of these are sons or stepsons of members; each of the other three is a nephew who was raised by a member as his son. Only such sons are even considered for membership. 9/

5/ Testimony of Gerald W. O'Brien; Records of Union Referrals (gov't Ex. 1); List of Local 53 members (gov't Ex.11); List of Current Improvers (gov't Ex. 16).

6/ Stipulation number one

7/ Testimony of Gerald W. O'Brien; sample applications for membership (gov't Ex. 17); applications for membership of Current Improvers (gov't Ex. 2).

8/ Constitution (gov't Ex 13); testimony of Gerald W. O'Brien.

9/ Testimony of Gerald W. O'Brien; list of Current Improvers (gov't Ex.16); stipulation number two; letter dated December 4, 1965, from Gerald O'Brien to H.H. Warthen (gov't Ex. 9)

g. Aside from physical fitness for the work, the defendant Local 53 has imposed no qualifications or standards related to the trade upon persons seeking improver membership or referral to employment as a mechanic's helper. [10]

h. It is the practice of the defendant Local 53 to refer white persons of minimal experience in the trade to employment as mechanic asbestos workers. [11]

i. It is the practice of the defendant Local 53 to refer white journeyman members of other trade unions, including Plasterers Local 93, to employment as mechanic asbestos workers. [12]

j. 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. Since there are no Mexican-Americans in Local 53, these requirements equally effectively, denies to Mexican-Americans the opportunity to join the union without regard to national origin.

k. It is the policy and practice of the defendant Local 53 to refuse to consider Negroes for membership in the union. [13]

l. It is the policy and practice of the defendant Local 53 to refuse to refer Negroes to employment and to refuse to accept Negroes for referral to employment. [14]

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[10] Testimony of Gerald W. O'Brien; applications for membership of Current Improvers (gov't Ex. 2); testimony of Ronald Dimitry.

[11] Testimony of Gerald W. O'Brien; testimony of Ronald Dimitry.

[12] Testimony of Gerald W. O'Brien; testimony of Eugene Ball.

[13] Testimony of Gerald W. O'Brien.

[14] Testimony of Gerald W. O'Brien; testimony of Louis J. Elliot.

m. Notwithstanding a critical labor shortage in the insulation industry, the defendant Local 53 has intentionally limited its membership to less than one-fourth what the industry requires. 15/

n. Notwithstanding the shortage of labor in the insulation industry and at a time when the demand for workmen far exceeded the readily available supply, the defendant Local 53 has refused to solicit or recruit members from the available Negro labor force and has refused to consider for membership or refer to employment these Negro journeyman members of the Plasterers Local 93 and nine young Negro men who were seeking employment as asbestos helpers solely because they are Negroes. 16/

15/ Testimony of Gerald W. O'Brien; testimony of James Poche; Records of Union Referrals (gov't Ex. 1); list of Local 53 members (gov't Ex. 11); stipulation number one.

16/ Testimony of Gerald W. O'Brien; testimony of Leo Chester Green; testimony of Charles Mogilles; testimony of Casimere Joseph; testimony of David Bartholomew; Urban League Referral Cards and application form of Leroy Chandler (gov't Ex. 8); Urban League Referral Cards for David Bartholomew, Jr., George Nathaniel French, Elvin J. Young, Norman Watson, Monroe Bean, Clifford H. Thompson, Girod Tillman, Jr. (gov't Ex. 5).

II. CONCLUSIONS OF LAW

1) The Court has jurisdiction of this action.

Section 707 (b) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-6(b)

2) The defendant is a labor organization engaged in an industry affecting commerce as those terms are defined in Title VII of the Civil Rights Act of 1964.

Section 701 (d), (e), 42 U.S. C. 2000e (d), (e)

3) The policies and practices of the defendant and its conduct pursuant thereto constitutes a pattern and practice of discrimination within the meaning of Title VII of the Civil Rights Act of 1964.

Section 707 (a), 703 (c), (d), 42 U.S.C. 2000e - 6(a), 2000e-2(c) and (d)

4) Where a labor organization has engaged in a pattern and practice of discrimination on account of race, color and national origin as described in the preceding findings of fact, in order to insure the full enjoyment of the rights protected by that statute Title VII of the Civil Rights Act of 1964 requires affirmative and mandatory preliminary relief in the form attached hereto.

III. PRELIMINARY INJUNCTION

This matter having come on for hearing on January 19, 20, and 24, 1967, on motions for preliminary injunction, and the Court having heard oral testimony, received stipulations of fact, examined documentary exhibits and considered the arguments of counsel, and the Court having further entered findings of fact and conclusions of law in accordance with Rule 52 of the Federal Rules of Civil Procedure,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Pending the final determination of these cases, the defendant Local 53, its officers, agents, employees and members, and all persons in active concert or participation with them are hereby enjoined from:

A. Excluding from membership any individual because of his race, color or national origin.

B. Maintaining any of the following requirements for membership:

i) recommendation or endorsement by present members
ii) relationship by blood or marriage to present members
iii) election to membership by present members

2. It is further ordered that the defendant Local 53 its officers, agents, employees and members, and all persons in active concert or participation with them shall --

A. Admit immediately into membership as mechanic members, with all the rights and privileges of such membership, subject only to the payment of appropriate dues and entrance fees, the following persons:

Leo Chester Green
Hurlin Mogilles
Charles Mogilles
Juan Calaviz

B. Offer to refer for immediate employment as first year asbestos helpers, and, upon request, refer for such employment with the full opportunity for

on the job training normally afforded such workers, each of the following who desire to be so referred:

Casimere Joseph
Leroy Chandler
David L. Bartholomew, Jr.
George French
Elvin J. Young
Norman Watson
Monroe Bean
Clifford H. Thompson
Girod Tillman, Jr.

C. Except as provided in paragraph 2A, suspend the admission of new members, either as mechanics or improvers, until August 1, 1967, in accordance with the program for developing new membership standards as required herein.

D. Refer individuals for employment without regard to race, color or national origin in accordance with the following:

i) Direct Referrals. Defendant Local 53 shall continue its practice of referring non-members for employment in the trade and shall refer all persons who apply for permits to work as asbestos workers to available employment chronologically, according to the date and time of application, without regard to race, color or national origin and without any preference based on a relationship to or prior association with present members or other persons employed in the trade; provided, however, that prior to August 1, 1967, Negro and white applicants seeking permits directly from Local 53 shall be referred out alternately, one Negro and one white, so long as there are available persons of both races who have so applied.

ii) Employer referrals. At times when there are no applicants for direct referral, defendant Local 53 shall issue permits to non-members referred by employers. All non-members so referred shall be issued permits without regard to race, color or national origin.

iii) Records: Defendant Local 53 shall maintain a daily record of every person who applies for referral to employment and every person it refers for employment in the trade, showing the name of the employer to whom referred, the date and time of referral, the status in which referred--mechanic or improver (helper), whether the person was directly referred or was sent for referral by an employer, the date and time the individual applied to Local 53 for direct referral (if such is the case), and the race of every person referred in either category.

iv) Reporting. A monthly report containing the above information shall be served and filed on February 5, 1967, and the fifth day of each month thereafter until further order of the Court.

v) Notice

a. Defendant Local 53 shall give notice to the general public through at least two notices published in either the Times Picayune or States Item in New Orleans and either the Morning Advocate or States Times in Baton Rouge.

b. Defendant Local 53 shall give written notice of the referral policy required herein to the following persons and organizations:

1. Each contractor with whom the Local has a contract.

2. The New Orleans and Baton Rouge branches of the Urban League and the NAACP.

3. The following high schools and vocational schools in New Orleans and Baton Rouge which are listed as formerly all Negro schools by the Louisiana School Directory published for the 1966-67 school year:

NEW ORLEANS

George Washington Carver Senior High
3059 Edna Street
New Orleans, Louisiana 70126

Walter Cohen
3620 Dryades Street
New Orleans, Louisiana 70115

McDonogh No. 35
600 Camp Street
New Orleans, Louisiana 70130

Booker T. Washington
1201 South Roman Street
New Orleans, Louisiana 70125

Vocational School

Orleans Area Vocational-Technical School
Post Office Box 8202
New Orleans, Louisiana

BATON ROUGE

Capitol Senior High
1000 North 23rd Street
Baton Rouge, Louisiana 70802

McKinley Senior High
800 East McKinley Street
Baton Rouge, Louisiana 70802

Scenic
Post Office Box 3527
Baton Rouge, Louisiana 70807

Southern University Laboratory
Post Office Box 9414
Baton Rouge, Louisiana 70813

Vocational School

Capitol Area Vocational School
Post Office Box 2012
Baton Rouge, Louisiana 70821

4. Xavier and Dillard Universities in New Orleans and Southern University in Baton Rouge.

5. Louisiana State Employment Service.

iv) Defendant Local 53 shall file with the Court and serve on all counsel on or before February 15, 1967, a written report that the required notice has been given and shall attach copies of all letters and advertisements used in complying with this order.

E. Membership policies.

The defendant Local 53 shall develop a plan for the admission of persons to membership, which plan shall include objective criteria related to the trade, and procedures for admitting new members. The objective criteria may include experience at working in the trade gained after the date of this order, but shall not include race, color, national origin or any preference based on a relationship to or prior association with present members or other persons employed in the trade or a membership vote. The plan shall provide for the admission without further application of all of those persons listed in paragraph B above who have worked in the trade since the date of their

first referral under the terms of this order. In developing such plan the defendant Local 53 shall determine, from reviewing the present and projected future demand for skilled workers in the trade in its geographic area, the number of mechanic and improver members reasonably needed to meet such demands, and shall determine the size of its membership by reference to such facts on or before April 15, 1967, defendant Local 53 shall serve and file on all counsel a written report setting forth the admission criteria and procedures so developed. Objections may be filed to such proposals and a hearing requested on or before May 1, 1967. The membership plan so developed shall be implemented on August 1, 1967, or as soon thereafter as it is finally approved by the Court.

3. The defendant Local 53, its officers, agents, employees and members, and all persons in active concert or participation with them are further enjoined from interfering in any way with persons exercising rights pursuant to this order or with persons encouraging the exercise of such rights.

4. The Court retains jurisdiction over these cases for such additional and supplemental orders as may be required.

This the day of January, 1967, New Orleans, Louisiana.

UNITED STATES DISTRICT JUDGE