

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

BUILDING CONTRACTORS ASSOCIATION OF
NEW JERSEY,

Plaintiff

vs.

RUTCENS, THE STATE UNIVERSITY OF NEW
JERSEY; et al.

Defendants

)
)
)
) Civil Action
) File No. 1250-65
)
)
)

BRIEF FOR THE UNITED STATES
OF AMERICA AS AMICUS CURIAE

CASES CITED

California v. Zook, 336 U.S. 725 (1949). . .	<u>Page</u> 5
Colorado Anti-Discrimination Commission v. Continental Airlines, Inc., 372 U.S. 714, (1963). . .	6

STATUTES CITED

5 U.S.C. 22	5
29 U.S.C. 50 et seq. (National Apprenticeship Act). . .	4 and 5
29 U.S.C. 141 et seq. (Labor Management Relations Act of 1947). . .	3, 6 and 8
42 U.S.C. 2000 e et seq. (Title VII, Civil Rights Act of 1964). . .	3, 6, 7, 8, 9 and 10
N.J.S.A. 18:25-1 et seq. (New Jersey Law Against Discrimination)	3 and 8

REGULATIONS CITED

29 CFR 30 (Non Discrimination in Apprenticeship and Training Regulations). . .	4, 5 and 6
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88th Cong. 1st Sess., House Labor Committee Report No. 570 on H.R. 405. . .	10
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1. NATURE OF THE PROCEEDINGS

The United States, with leave of the Court, submits this brief as prima facie because the case presents issues of substantial importance to the interpretation of Federal law and the effect of actions of Federal agencies.

The plaintiff Building Contractors Association seeks to enjoin the Civil Rights Division, Department of Law and Public Safety of the State of New Jersey and all parties to the instant action from proceeding with the administrative adjudication of certain alleged violations of the New Jersey Law Against Discrimination. The present action raises the following Federal questions:

1. Whether approval by the Bureau of Apprenticeship and Training, U.S. Department of Labor of the selection procedures of the Northern New Jersey Iron Workers Apprenticeship Program forecloses the State of New Jersey from finding that those selection procedures operate in a manner which violates the said New Jersey statute.

2. Whether the Labor Management Relations Act, 1947, precepts the jurisdiction of the State of New Jersey to adjudicate a complaint of racial discrimination regarding the selection procedures of the Northern New Jersey Iron Workers Apprenticeship Program.

3. Whether Title VII of the Civil Rights Act of 1964 precepts the jurisdiction of the State of New Jersey to adjudicate a complaint of racial discrimination regarding the selection procedures of the Northern New Jersey Iron Workers Apprenticeship Program.

The Federal District Court has ordered the defendants to show cause on December 28 why a temporary restraining order should

not be issued until the final hearing in this action. The New Jersey Civil Rights Division has found probable cause of a violation of its Law Against Discrimination and has held a preliminary hearing last November 30. A formal hearing is now scheduled for January 20, 1966.

II. ARGUMENT

NONE OF THE FEDERAL LAWS OR ACTIONS OF FEDERAL AGENCIES TO WHICH THE PLAINTIFF REFERS IN ANY WAY INFRINGE ON THE AUTHORITY OF THE CIVIL RIGHTS DIVISION, DEPARTMENT OF LAW AND PUBLIC SAFETY OF THE STATE OF NEW JERSEY FROM PROCEEDING WITH THE ADMINISTRATIVE ADJUDICATION OF CERTAIN ALLEGED VIOLATIONS OF THE NEW JERSEY LAW AGAINST DISCRIMINATION

A. The Department of Labor's Regulations on Discrimination in Apprenticeship and Training, 29 C.F.R. Part 30, do not preclude a State from inquiring into whether an apprenticeship program, registered with the Bureau of Apprenticeship and Training, U. S. Department of Labor, is complying with the State's Law Against Discrimination and whether appropriate relief for violation of such law.

Traditionally, it has been the function of the Bureau of Apprenticeship and Training under the National Apprenticeship Act, 50 Stat. 665, 29 U.S.C. 50, to promote the development of sound apprenticeship programs by employers and unions. The Bureau does not conduct or participate in the training. The apprenticeship training programs are operated by individual employers, groups of employers or joint labor-management committees. Nor does the Bureau offer any financial assistance to these apprenticeship programs. Its mission is limited to encouraging the private parties to establish apprenticeship training programs and if such programs meet certain minimum standards, the program sponsor may register the program with the Bureau.

On December 13, 1963, the Regulations of the Department of Labor on Nondiscrimination in Apprenticeship and Training, et al., were issued which set forth the policies and procedures to promote equal opportunity in apprenticeship programs registered with the Bureau. These Regulations were issued under the authority of the National Apprenticeship Act and the authority of the Secretary to issue regulations found at 5 U.S.C. 22. Neither the National Apprenticeship Act nor the Apprenticeship Regulations require programs to register with the Department of Labor. However, the Regulations require apprenticeship programs to meet the equal opportunity standards specified therein if they wish to register or continue registration with this Department.

The plaintiff association argues that the Federal Apprenticeship Regulations and the actions taken pursuant to them preclude the State from finding discrimination in an approved Federally-registered program. It is our position that the Congress in enacting the legislation under which the Apprenticeship Regulations were issued did not intend to preempt a State from taking such action under its fair employment practices law.

To hold that there is Federal preemption here would be contrary to established principles. The fact that the Federal Government and a State regulate the same subject matter in a similar fashion does not mean the State measure is automatically invalid. California v. Zook, 336 U.S. 725 (1949). The question to be determined is whether the State law conflicts with national policy and whether Congress intended to make its jurisdiction exclusive. A congressional purpose to displace local law normally must be clearly manifested. Where it is claimed that there is conflict between Federal and State regulation, it must clearly appear that the Federal provisions are inconsistent with those of the State. California v. Zook, et al.

In a more recent case upholding the authority of a State to prohibit racial discrimination in employment against a challenge of Federal preemption, the Supreme Court said:

"To hold that a state statute identical in purpose with a federal statute is invalid under the Supremacy Clause, we must be able to conclude that the purpose of the federal statute would to some extent be frustrated by the state statute. We can reach no such conclusion here." Colorado Anti-Discrimination Commission v. Continental Air Lines, Inc., 372 U.S. 714, at 722 (1963)

There would be no frustration of Federal policy here by a finding of the State that the Iron Workers Apprenticeship Program was discriminatory.

The requirements of the Federal Regulations must be met only as a condition of Federal registration. Compliance with the State Law Against Discrimination would in no way jeopardize the registration of the apprenticeship program. There is nothing in our Regulations designed to protect apprenticeship programs from the watchful and expert eyes of State fair employment practices agencies. In fact, the Regional Directors of the Bureau are directed by the Regulations to "consult with State officials regarding methods of cooperation with State fair employment practices commissions" (29 C.F.R. §30.16(c)), thereby recognizing that such State laws and our Regulations might both apply to the same conduct where it involves registered apprenticeship programs.

In sum, our Apprenticeship Regulations do not preclude a State from inquiring into whether a registered apprenticeship program is complying with the State's fair employment practices law and rendering appropriate relief for violation of such law.

B. The Labor Management Relations Act does not preempt the jurisdiction of the State of New Jersey to adjudicate a complaint of racial discrimination regarding the selection procedures of the Northern New Jersey Iron Workers Apprenticeship Program.

Whatever doubt there may have been prior to the effective date of Title VII of the Civil Rights Act of 1964, 78 Stat. 253, 42 U.S.C. 2000 e et seq., it is now clear that the National Labor Relations Board does not have exclusive jurisdiction of complaints of racial discrimination in employment. Congress enacted a statute specifically dealing with racial discrimination in employment (Title VII of the Civil Rights Act of 1964) and created a new Federal agency (Equal Employment Opportunity Commission) to oversee its administration. An integral part of the congressional scheme for attacking racial discrimination in employment was to enlist the resources of the States insofar as possible.

Title VII of the Civil Rights Act of 1964 specifically covers discrimination in admission to apprenticeship programs operated by employers, unions and joint labor-management committees. Section 703(d) provides:

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.

In view of this, it cannot be concluded that the National Labor Relations Board has exclusive jurisdiction of complaints alleging racial discrimination regarding admission to apprenticeship programs. If the NLRB had exclusive jurisdiction of such complaints, what purpose can be attributed to the Congress for including Section 703(d) in Title VII of the Civil Rights Act of 1964?

It is suggested by the plaintiff that the enforcement action of the State might require its members (the employers) to unilaterally change the terms of the collective bargaining agreement thereby requiring action in conflict with the Labor Management Relations Act of 1947, as amended, 61 Stat. 136, 29 U.S.C. 141. There has been no showing herein that the State would require the plaintiff's members to do so. However, since any State enforcement action directed to changing the bargaining agreement would be directed to the employers and the labor organizations which are parties to such agreement and who are party respondents with the plaintiff in the proceeding pending before the Division on Civil Rights of the State of New Jersey, any directed change would be binding on all parties to the agreement and therefore, there is no substance to the plaintiff's allegation that it is in jeopardy of violating the Labor Management Relations Act.

In sum, it is inconsistent with Title VII that the NLRB be held to have exclusive jurisdiction over complaints of racial discrimination in the admission to apprenticeship programs. And, as discussed below, Title VII not only explicitly provides for State action, it encourages State action to prevent racial discrimination in employment.

C. Title VII of the Civil Rights Act of 1964 does not prevent the jurisdiction of the State of New Jersey to adjudicate a complaint of racial discrimination regarding the selection procedures of the Northern New Jersey Iron Workers Apprenticeship Program.

Title VII of the Civil Rights Act of 1964 does not prevent the operation of State laws in the employment discrimination field. Section 708 states:

Nothing in this title shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this title.

The New Jersey Law Against Discrimination, NJSA 15:25-1 et seq., prohibits discrimination in employment because of race, creed, or color, national origin, ancestry, or age of any individual, or because of the liability for service in the armed forces of the United States. The provisions of that Act do not purport "to require or permit" any action in violation of the provisions of Title VII of the Civil Rights Act of 1964. The New Jersey Civil Rights Division has made no final determination regarding the alleged discrimination on the part of the plaintiff, and is entitled to the presumption that its actions will not be in violation of Title VII of the Civil Rights Act of 1964.

There has been no showing by the plaintiff that if the Civil Rights Division found prohibited discrimination to exist, it could not fashion a remedy under the State law which would not require employment practices prohibited by Title VII of the Civil Rights Act. The assertion in the complaint that the mere finding of probable cause by the Civil Rights

Division should be found by the Court to be an "act" which "purports to require or permit an unlawful employment practice" under Title VII of the Civil Rights Act should be rejected by the Court.

Title VII, in its whole structure as well as its specific procedure, is predicated on the proposition that equal employment opportunity is a matter for the States; that the process of the Federal Government is to be used only when State remedies are unavailable, unavailing or need to be reenforced. In its relationships to State fair employment practices laws, the intention of the Federal Act is both clear and firm.. The House Labor Committee Report No. 570, 88th Cong., 1st Sess., on H.R. 405 which was the predecessor of the law ultimately enacted as Title VII of the Civil Rights Act of 1964 stated:

This Act does not preempt the area of unlawful employment practices. State laws which do not require or permit the commission of an unlawful employment practice under this Act are not in any manner affected by this Act. Further, the Administrator (now Commission) is directed to seek agreements with States or local agencies to cede Federal jurisdiction where there is an effective power in the State or local agency to eliminate discrimination in employment in any cases covered by this Act and where such power is being effectively exercised. Though these determinations are the responsibility of the Administrator (now Commission), he is expected to affirmatively and diligently seek such agreements wherever practicable. Such agreements shall not be prevented by anything but substantial deficiencies in the State power or exercise of such power.

Title VII of the Civil Rights Act of 1964 and its legislative history speak explicitly and repeatedly that State action to remedy racial discrimination was not intended to be preempted. A congressional will to deny preemption could hardly be more clearly established.

III. CONCLUSION

The complaint should be dismissed.

Respectfully submitted,
