

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, by
RAMSEY CLARK, Attorney General,

Plaintiff,

v.

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL NO.
38; ELECTRICAL JOINT APPREN-
TICESHIP AND TRAINING COMMITTEE,

Defendants.

CIVIL ACTION
NO. C 67-575

MEMORANDUM OF THE UNITED STATES
IN SUPPORT OF ITS INTERROGATORIES
DATED FEBRUARY 21, 1968, SERVED
UNDER RULE 33 OF THE FEDERAL
RULES OF CIVIL PROCEDURE

Pursuant to Rule 33 of the Federal Rules of Civil Procedure the United States has served upon the defendants a set of interrogatories dated February 21, 1968. Defendants have objected to those interrogatories, and this memorandum of the United States is submitted in response to their objections.

On October 3, 1967, the United States filed a motion for production of documents pursuant to Rule 34 of the Federal Rules of Civil Procedure. Defendants filed a memorandum objecting to portions of that motion. Following a conference with the parties, the Court on January 12, 1968 ordered defendants to produce certain of the documents requested in the Rule 34 motion. That

File ✓

order required defendants to produce certain documents the Court believed were adequately identified in the Rule 34 motion. The Rule 34 motion was denied insofar as it sought to obtain certain documents prior to January 1, 1957 and it was denied insofar as it sought to obtain certain categories of documents that the Court believed were not described with sufficient specificity as to permit the Court to enforce any order purportedly requiring those documents to be produced. The present interrogatories are an attempt to deal with the lack of specificity in our Rule 34 motion. They deal with matters subsequent to January 1, 1957 and they request defendants specifically to identify what pertinent documents other than those already made available to us under the previous Rule 34 motion, are in their possession. Defendants do not contest the relevance of the information requested to this case. Instead, they object to the interrogatories on the ground that they constitute an effort to circumvent the January 12, 1968 ruling of the court, and also that they are oppressively comprehensive.

The interrogatories are in no way intended to circumvent the Court's ruling on the Rule 34 motion. On the contrary, the interrogatories are based on statements of the Court in explaining its ruling on the Rule 34 motion. It is our understanding that with respect to the categories of documents that the Court believed were not identified with sufficient specificity in the Rule 34 motion, it would be appropriate to have those documents identified more precisely by way of interrogatories and then for us to seek to have produced by way a supplemental Rule 34 motion those documents needed in connection with the preparation of our case.

The use of interrogatories served under Rule 33 to identify documents to be produced pursuant to Rule 34 is specifically provided for. Pursuant to Rule 26(b) which sets the standards for Rule 33 interrogatories, a party may inquire into "the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things" that are relevant to the subject matter involved in the pending action, or "reasonably calculated to lead to the discovery of admissible evidence." In cases where documentary evidence is exclusively under the control of one party, interrogatories under Rule 33 are one vehicle by which documents can be identified for production under Rule 34. The cases cited by the defendants supply ample authority to support the present request for answers to interrogatories. For example, in Stonybrook Tenant Association, Inc. v. Alpert, 29 F.R.D. 165, 167 (D. Conn. 1961), the court held that methods of discovery are complementary, rather than alternative or exclusive, stating that one function of interrogatories is to "secure information as to where pertinent evidence exists and can be obtained."

For these reasons, the United States requests that defendants' objections to the interrogatories be promptly denied.

Respectfully submitted,

ROBERT J. ROTATORE
Assistant U.S. Attorney

Owen M. Fiss

OWEN M. FISS
ARTHUR D. WOLF
Attorneys,
Department of Justice

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing memorandum of the United States has been mailed to Thurlow Smoot, Attorney for Defendants, 55 Public Square, Cleveland, Ohio, 44113, by placing a copy of it in the United States mail, postage prepaid, on the 4th day of March, 1968.



OWEN M. FISS
Attorney
Department of Justice
Washington, D.C. 20530