Filed
Sept. 11, 1967

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.	)	CIVIL ACTION NO. C 67-575
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL NO. 38; ELECTRICAL JOINT APPRENTICESHIP AND TRAINING COMMITTEE, Defendants.	)	

MEMORANDUM OF THE UNITED STATES
IN RESPONSE TO DEFENDANTS' MOTION
FOR A MORE DEFINITE STATEMENT

This memorandum of the United States is submitted in response to defendants' motion for a more definite statement under Rule 12(e) of the Federal Rules of Civil Procedure.

Initially, it should be noted that such motions are not favored, for as the Court in Lincoln Laboratories v. Savage Laboratories, 26 F.R.D. 141 (D. Del. 1960) observed, they could easily be misused for the "implementation of barristerial shadow boxing." See also Shore v. Cornell Electrical Corp., 33 F.R.D. 5 (D. Mass. 1963); Sopkin v. Missouri National Life

<u>Insurance Co.</u>, 222 F. Supp. 984 (E.D. Mo. 1963). This concern with dilatory motions is particularly appropriate in cases under section 707 of the Civil Rights Act of 1964 because of the congressional requirement that such cases be tried as expeditiously as possible. In subsection (b) of section 707 Congress specifically provided that the judge designated to hear the case "assign the case for hearing at the earliest practicable date and . . . cause the case to be in every way expedited."*/

Under Rule 12(e) a motion for a more definite statement is permitted only if the pleading in question "is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading." No contention could reasonably be made that the complaint filed in this case is "ambiguous" or "vague", or that

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*/ The pertinent portion of section 707(b) reads in full:

"In the event the Attorney General fails to file such a request [for convening a three-judge court] in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

"It shall be the duty of the Judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited." 42 U.S.C. 2000e-6(b).

defendants are unable to frame a responsive pleading. In fact, defendants make no such claim; their sole claim is that the presence in paragraphs 8 and 9 of the phrases "in part" and "among other ways" "would make it totally impossible for defendants properly to prepare their case." (Brief of defendants, p. 3) This claim misconstrues the purpose and scope of Rule 12(e). As has been repeatedly held:

> "It is to be noted that a motion for more definite statement is not to be used to assist in getting the facts in preparation for trial as such. Other rules relating to discovery, interrogatories and the like exist for this purpose."

Mitchell v. E-Z Way Towers, Inc., 269 F. 2d 126, 132 (5th Cir., 1959). The only purpose of the motion for a more definite statement under Rule 12(e) is to correct the vagueness or ambiguity in a pleading so as to enable the opposing party to plead responsively, and no claim has been made or could fairly be made that defendants are unable to answer the complaint of the United States.

Nor do we believe, contrary to defendants' contention, that Title VII of the Civil Rights Act of 1964 was intended to or has the effect of altering any of these established rules of pleading under the Federal Rules of Civil Procedure. As was pointed out by the Court in United States v. St. Louis Building Trades, (Civ. Act. No. 66C 58(2), E.D. Mo., July 26, 1966;

a copy of the opinion is attached), there is "nothing in the language of the statute [Title VII of the Civil Rights Act of 1964] to indicate an intention to alter established rules of pleading." This language was adopted by the Court for the Southern District of Ohio in a suit under section 707, United States v. International Brotherhood of Electrical Workers (Civ. Act. 67-101, S.D. Ohio, June 16, 1967; a copy of the opinion is attached), and that Court, in denying a motion for more definite statement, went on to add:

> The Court recognizes that counsel know that a motion for a more definite statement is properly made only if a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party is not reasonably able to frame a responsive pleading. In order to secure the just, speedy, and inexpensive determination of every action, the Federal Rules of Civil Procedure employ the "notice" pleading concept. The simplicity and brevity of statement contemplated by the Rules is indicated by the forms appended thereto.
>
> Here the essential requirement and function of notice pleading has been met. The movant has been generally informed of the nature of the action. He can reasonably be required to frame a response. Additional information can be secured by use of the liberal discovery provision of the Rules."

Similar rulings have been rendered by other district courts, e.g., United States v. Dillon Supply Co., (C.A. No. 1972, E.D. N.C., May 4, 1967), and the ruling relied on by defendants, that of the District Court for the Northern District of Alabama in United States v. H. K. Porter Company, Inc., (Civ. Act. No. 67-363, N.D. Ala., July 28, 1967) is against the weight of authority and without basis in the statute.

Finally, even assuming arguendo that Title VII were read as altering the established rules of pleading so as to require more facts to be pleaded than is usually necessary, we maintain that the complaint of the United States in this case meets those requirements. Defendants read Title VII as requiring "the facts pertaining to the pattern or practice be set forth" in the complaint, and then concedes that, absent the words "among other ways" and "in part" in paragraphs 8 and 9, the United States in its complaint "is correctly following the statute." We disagree only on the significance of the phrases "among other ways" and "in part." We do not believe that the inclusion of the words "among other ways" and "in part" means that the complaint does not "set forth the facts" as defendants read Title VII as requiring; instead these phrases, which pertain solely to the enumeration of the methods by which the policy of racial discrimination had been implemented by the defendants, are used as a means of limiting the enumeration to the most important methods by which this policy was implemented. No useful purpose would be served by detailing in the complaint every single method by which the policy of racial discrimination had been implemented by defendants and nothing in the language on legislative history of Title VII suggests that every single fact need be stated in the complaint.

CONCLUSION

The United States therefore respectfully submits that the defendants' motion is without any merit. We urge that defendants' motion be denied and that the defendants be required to file an answer promptly so that the congressional command embodied in section 707(b) of expeditious resolution of these controversies can be implemented.

Owen M Fiss

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. BUILDING AND CONSTRUCTION TRADES COUNCIL OF ST. LOUIS, MISSOURI, AFL-CIO, et al., Defendants.	)	No. 66 C 58 (2)

MEMORANDUM

This matter is pending on motions to dismiss, or in the alternative for a more definite statement, interposed by the various defendants. The defendants are the Building and Construction Trades Council of St. Louis (Trades Council), Pipefitters Local No. 562 (Pipefitters), Sheet Metal Workers Local No. 36 (Sheet Metal Workers), Electricians Local No. 1 (Electricians), Laborers Local No. 42 (Laborers) and Plumbers Local No. 35 (Plumbers). A short statement of the nature of the complaint is necessary before turning to the grounds urged as requiring dismissal.

Plaintiff's first claim is labeled a common law action for interference with contractual relations. More specifically, it is alleged that defendants (with the exception of the Plumbers) have tortiously interfered with the performance of the nondiscrimination clause, required by Executive Order 11246, in a contract between the National

Park Service and Hoel-Steffen Construction Company. Hoel-Steffen is the prime contractor for the Visitors Center at the Jefferson National Expansion Memorial (Gateway Arch). This contract included the so-called "affirmative action" covenant which required Hoel-Steffen to take affirmative action to insure equal employment opportunities at the Visitors Center. Hoel-Steffen was required to insert a nondiscrimination clause in all subcontracts for work on the project. The complaint alleges that Hoel-Steffen, in order to comply with the "affirmative action" covenant, entered into a subcontract with a plumbing contractor (E. Smith Plumbing Company) who employs members of the Congress of Independent Unions which does not discriminate against Negroes. Subsequently, after unsuccessful efforts to get the E. Smith Plumbing Company taken off the job, the Trades Council, of which all the defendant unions are affiliates, issued a statement that the rank and file of its affiliates did not wish to work at the project because non-affiliates of the AFL-CIO were to be employed. The defendant unions complied with this policy and refused to work. Plaintiff contends these actions were taken for the purpose of preventing Hoel-Steffen from complying with the nondiscrimination clause in its contract with the United States. Plaintiff prays for an order enjoining the defendants (except Plumbers) from taking any action to interfere with or frustrate the nondiscrimination and affirmative action covenants in the contract between the United States and Hoel-Steffen.

Plaintiff's second claim charges the defendants (with the exception of Laborers) with a violation of Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e through 2000e-15). This action is brought under §707 of the Act, 42 U.S.C.2000e-6, and alleges that the defendants have engaged in a pattern or practice of resistance to the exercise by Negroes of rights secured by the statute and that the pattern or practice is intended to and does deny the full exercise of those rights. Plaintiff prays that the defendants (except Laborers) be enjoined from discriminating against any individual by reason of his race with regard to union membership, apprenticeship and training programs, or from in any way acting so as to deprive an individual of, or to limit his, employment opportunities by reason of his race, or from causing or attempting to cause any employer to discriminate against any individual because of his race.

The motions to dismiss presently before the Court attack this complaint from every conceivable direction. The following grounds are urged for the dismissal of the first claim: (1) that the actions and conduct complained of are subject to the exclusive primary jurisdiction of the National Labor Relations Board (NLRB); (2) that the NLRB has taken jurisdiction of a complaint involving this same subject matter and that an injunction entered on February 7, 1966, in this Court, in cause No. 66 C 59(3), in connection with the NLRB proceedings renders the present complaint moot; (3) that the requested injunctive relief is prohibited by the Norris-LaGuardia Act, 29 U.S.C. 101-115; (4) that an adequate remedy at law exists under Title VII of the Civil Rights Act of 1964; (5) that the first claim fails to state a claim upon which relief can be granted; (6) that the first claim violates Rule 8(a)(2) of the Federal Rules of Civil Procedure in that it contains no request for judgment; and (7) that the defendants are voluntary, unincorporated associations and are not amenable to suit on this claim. The grounds urged for dismissal of the second claim are: (1) that injunctive relief is prohibited by the Norris-LaGuardia Act; (2) failure to state a claim upon which relief can be granted; (3) lack of subject matter jurisdiction due to the failure of the complaint to allege that the Attorney General had reasonable cause to believe that there is such a "pattern or practice", as allegedly required by §707 of the Act, 42 U.S.C. 2000e-6, and the failure to set out the facts constituting such a pattern or practice, as required by the Act; and (4) that injunctive relief would violate §703(j) of the Act, 42 U.S.C. 2000e-2, which prohibits preferential treatment.

In their separate motion to dismiss, the Laborers have urged that, in addition to the grounds stated above, the first claim fails to allege any facts to warrant the conclusion that Laborers intended or acted to cause Noel-Steffen to violate the provisions of its contract with the United States. The allegation that Laborers supported the Trades Council's policy statement does not support such a conclusion, since that statement expressly declares that no consideration of race was involved in the refusal to work on the project.

We have found it difficult to categorize or classify plaintiff's first claim. In one respect, the claim relates to racial discrimination. However, the legal theory invoked is simply tortious interference with contract, alleging that the defendants have acted to induce and force Hoel-Steffen to breach its contractual obligation with the United States. Several hurdles must be overcome for us to hear this claim. First, and foremost, is the fact that the defendants are all voluntary, unincorporated associations. Rule 17(b), F.R.C.P., provides in pertinent part:

> "In all other cases capacity to sue or be sued shall be determined by the law of the state in which the district court is held, except (1) that a partnership or other unincorporated association, . . . may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States , . . ."

Plaintiff has conceded that a labor union, being a voluntary, unincorporated association, does not have capacity to sue or be sued under Missouri law. However, plaintiff contends that its first claim asserts a substantive right existing under the laws of the United States, therefore, coming within the Rule 17(b) exception, because there is a federal common law right which can be invoked to attack interference with the nondiscrimination clause in government contracts. Plaintiff relies on Clearfield Trust Co. v. United States, 318 U.S.

363 (1943); United States v. Standard Oil of California, 332 U.S. 301 (1947); Romero v. International Term. Co., 358 U.S. 354, 393 (1959); Wheeldin v. Wheeler, 373 U.S. 647, 663 (1963); and United States v. Yazell, 382 U.S. 341 (1966), among others, to support its proposition that the federal courts can resort to federal common law whenever necessary to deal with essentially federal matters that require uniform treatment. In the Standard Oil case, supra, speaking of the effect of Erie R. Co. v. Tompkins, 304 U.S. 64 (1938), the Court said:

> "Conversely there was no purpose or effect for broadening state power over matters essentially of federal character or for determining whether issues are of that nature. The diversity jurisdiction had not created special problems of that sort. Accordingly the Erie decision, which related only to the law to be applied in exercise of that jurisdiction, had no effect, and was intended to have none, to bring within the governance of state law matters exclusively federal, because made so by constitutional or valid congressional command, or others so vitally affecting interests, powers and relations of the Federal Government as to require uniform national disposition rather than diversified state rulings. Cf. Clearfield Trust Co. v. United States, 318 U.S. at 366-368. Hence, although federal judicial power to deal with common-law problems was cut down in the realm of liability or its absence governable by state law, that power remained unimpaired for dealing independently, wherever necessary or appropriate, with essentially federal matters, even though Congress has not acted affirmatively about the specific question." (332 U.S. at 307)

However, a careful reading of all the cases in this field indicates that the courts have always been hesitant to fashion or call upon federal common law and have refused to do so unless a fairly urgent need was shown. See the majority opinions in Wheeldin v. Wheeler and Romero v. International Term. Co., supra. The Court went on to refuse to create a federal common law remedy in the Standard Oil case, saying:

> "When Congress has thought it necessary to take steps to prevent interference with federal funds, property or relations, it has taken positive action to that end. We think it would have done so here, if that had been its desire. This it still may do, if or when it so wishes." (332 U.S. at 315, 316; footnote omitted.)

We note that plaintiff does not contend there is a federal common law right of action and remedy for all interferences with all government contracts. Instead, plaintiff attempts to show a need for a remedy in this case by reference to the comprehensive national program and policy to eradicate racial discrimination in employment. However, in its comprehensive dealing with the problem of racial discrimination, Congress has nowhere indicated that one of the necessary remedies should be a federal common law action for tortious interference with the "affirmative action" and "nondiscrimination" covenants in government contracts. In fact, the original Bill (H.R. 7152) included a section (711(b)), which would have specifically authorized and indorsed the type of action which the President has taken in Executive Order 11246 regarding federal contracts. However, this provision was deleted from the Bill before passage. Because of the comprehensive scheme of actions and remedies which Congress has created to facilitate the eradication of this type of racial discrimination, we cannot find in this case the great need and urgency which would justify us in fashioning a federal common law remedy for tortious interference with contract. Accordingly, we hold that the defendants do not have capacity to be sued on the first claim.

Even if we were to find the first claim to be a proper federal common law cause of action and thus find the defendant's amenable to suit thereon, we would still be faced with the difficulties posed by the jurisdiction of the NLRB. The tortious interference claim is much narrower in scope than the "pattern or practice" allegations of the second claim and relates directly, and is based on, the efforts of the defendants to have the E. Smith Plumbing Company taken off the Visitors Center project. This matter, in a different form, is presently pending before the NLRB. The racial discrimination question will no doubt be a central feature of those proceedings. The immediate situation has been stabilized by an injunction previously issued in this Court. Under these circumstances, we do not feel it would be proper for us to exercise jurisdiction until after the NLRB has acted. In making this determination, we emphasize that we are not passing on the question whether our jurisdiction is pre-empted by the Labor Board's jurisdiction.

Because of our disposition of the above issues, we do not find it necessary to reach the other grounds urged in support of the motions to dismiss the first claim. An order will be entered sustaining defendants' motions to dismiss the first claim.

Turning now to plaintiff's second claim, we think it obvious that this complaint is not defective for failure to state a claim upon which relief can be granted. A complaint will be dismissed on this ground only where it is certain that plaintiff can prove no facts in support of its claim which would entitle it to relief. As we point out below, plaintiff's complaint clearly states a claim under the Civil Rights Act of 1964. We cannot say with certainty that plaintiff will be unable to prove facts in support of this claim.

Equally unavailing is the contention that the Court lacks jurisdiction because the complaint fails to allege that the Attorney General had reasonable cause to believe that defendants are engaged in a "pattern or practice of resistance to the full enjoyment of . . ." the rights secured by the Act and because the complaint fails to set forth "facts pertaining to such pattern or practice." Section 707(a) of the Act, 42 U.S.C. 2000e-6(a), provides:

> "(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 subchapter, 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 (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (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."

This section sets forth what the complaint must allege, and nowhere does it indicate that the Attorney General is required to plead reasonable cause. His signature is in effect a certification of such reasonable cause. Absent proof to the contrary, there is a presumption that public officials act in accordance with legislative directions. Goldberg v. Truck Drivers Local Union No. 299, 293 F.2d 807 (6 Cir. 1961). The statute does not contemplate that the courts shall make a preliminary determination of the Attorney General's finding of reasonable cause. Rather, the Court's function is to determine whether the defendants have, in fact, engaged in such a "pattern or practice", and to do so as expeditiously as possible. Concerning the required allegation of facts, we find nothing in the language of the statute to indicate an intention to alter established rules of pleading. The prime requirement is still notice, and the present complaint is more than adequate in this regard. Established courses of discovery are available to allow the defendants to determine the precise details of the alleged "pattern or practice".

Also lacking merit is the contention that the relief requested would violate §703(j) of the Act, 42 U.S.C. 2000e-2, which prohibits preferential treatment. The relief requested would do no more than eliminate discrimination. If we were to accept defendants' interpretation of preferential treatment, the enforcement provisions of the Act would become a nullity.

Also unavailing is the contention that there is no basis or statutory authority for a "pattern or practice suit because there is no allegation of any complaints or charges filed with either the Equal Employment Opportunity Commission or the Missouri Commission of Human Rights. While such information may be relevant to the issues at trial, it is not required in the pleading. Section 707 gives the Attorney General the authority to bring this suit, and this Court authority to decide the case, and does not impose a requirement that administrative charges are a prerequisite.

Defendants' final contention is that the injunctive relief requested under the second claim is subject to, and prohibited by, the Norris-LaGuardia Act, 29 U.S.C. 101-115. The Norris-LaGuardia Act deals with the issuance of injunctions in cases involving or growing out of labor disputes. The definition of "labor dispute" set out in 29 U.S.C. 119 encompasses the activity and conduct out of which the second claim arises. However, the declaration of public policy in 29 U.S.C. 102 clearly reveals the evil at which this statute aimed and the goals it intended to accomplish. The courts have never had any difficulty finding the Norris-LaGuardia prohibitions inapplicable when their application would not further the purpose set out in §102, but instead would conflict with the obvious policy and plans of action contemplated by later statutes. In such cases, the policy expressed in the later statutes is held to override the Norris-LaGuardia Act. This has been seen most vividly in cases arising under the Railway Labor Act; see Trainmen v. Chicago R. & I.R. Co., 353 U.S. 30 (1957); and Locomotive Engineers v. M.-K.-T. R. Co., 363 U.S. 528 (1960).

We think it is patently obvious that the purposes and policies of Title VII of the Civil Rights Act would be defeated by the application of the Norris-LaGuardia prohibitions to suits brought to enforce the rights secured thereby. Defendants point out that an express provision is included in §706(h) to make Norris-LaGuardia inapplicable to suits brought under that section. It is argued that Congress would have included a similar provision in §707 if it had intended to exempt suits by the Attorney General from Norris-LaGuardia. This argument fails to consider the manner by which §707 came to be included in the Bill. The original Bill, H.R. 7152, as introduced in the House, did not provide for suits by the Attorney General. The enforcement provisions of that Bill were primarily contained in its section 707. That section provided for civil suits to be brought by the Equal Employment Opportunity Commission. The exemption from the Norris-LaGuardia Act, contained in §707(g), applied to all of the enforcement procedures established. The Senate proposal involved a more strenuous enforcement procedure, and the legislative history reveals that many Senators were concerned with the delays that might inhere in the enforcement methods adopted by the House. Accordingly, the Dirksen-Mansfield substitute, which was presented on May 26, 1964, deleted the provision allowing the Commission to institute civil suits, and provided instead for suits by the Attorney General. Several versions of the amended Title VII were considered in the Senate. In some of these, the provision for suits by the Attorney General was included in the general enforcement section; in others, this provision was set forth in a separate section. It appears from the legislative history that the choice of location and section numbers was quite fortuitous, a matter quite understandable in view of the flurry of amendments that continued throughout the consideration of the bill. One thing is clear from the history; the intention was to exempt the equal employment opportunity enforcement provisions from the prohibitions of the Norris-LaGuardia Act. We cannot presume that Congress intended a vain act. Section 707 of the Act was included to allow quick and expeditious attack on the more flagrant cases of racial discrimination in employment opportunity. Proceedings under §707 will be a sham absent the availability of injunctive relief. Accordingly, we find that the Norris-LaGuardia Act is not applicable to suits brought under §707 of the Civil Rights Act of 1964, 42 U.S.C. 2000e-6.

Defendants' motions to dismiss the second claim will be denied.

Defendants' motions for a more definite statement will also be denied. The complaint clearly advises the defendants of the nature and basic outline of the charges. They have available a large arsenal of discovery tools to secure other details and information which will be required for trial. The motion for more definite statement is properly allowed only when the defendant cannot frame a responsive pleading on the basis of the information available from the complaint. The present complaint is not subject to such a defect.

Dated this 26th day of July, 1966.

/s/ JAMES H. MEREDITH

UNITED STATES DISTRICT JUDGE

COPY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED
JUL 26 1966

UNITED STATES OF AMERICA, Plaintiff, vs. BUILDING AND CONSTRUCTION TRADES COUNCIL OF ST. LOUIS, MISSOURI, AFL-CIO, et al., Defendants.	)	No. 66 C 58 (2)

RECEIVED
JUL 27 1966
U.S. ATTORNEY'S OFFICE
ST. LOUIS, MO.

ORDER

This matter is pending on motions to dismiss, or in the alternative for a more definite statement, interposed by the various defendants. The Court has been duly advised by briefs, oral argument and documentary evidence. A memorandum filed this date is incorporated herein by reference and made a part of this order. Now, therefore,

IT IS HEREBY ORDERED that the motions of the defendants to dismiss the first claim of plaintiff's complaint be and the same are hereby sustained and said first claim is dismissed;

IT IS FURTHER ORDERED that the defendant Laborers Local No. 42, being a party defendant to only the first claim of the complaint, be and hereby is dismissed as a party to this action;

IT IS FURTHER ORDERED that the motions of the defendants to dismiss the second claim of plaintiff's complaint be and the same are hereby denied;

IT IS FURTHER ORDERED that the motions of the defendants for a more definite statement be and the same hereby are denied.

Dated this 26th day of July, 1966.

/s/ JAMES H. MEREDITH

UNITED STATES DISTRICT JUDGE

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

FILED
JOHN D. LYTER, CLERK
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U. S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS

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

Plaintiff,

COPY

vs.

Civil Action 67-101

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL NO.
683,

Defendant

ORDER

This matter is before the Court on defendant's motion:

a) To dismiss the complaint for lack of jurisdiction; and

b) For a more definite statement.

These motions and the supporting and contra memoranda have been well considered.

Motion to Dismiss

The bases offered in support of this motion are:

1. Plaintiff's failure to allege that the Attorney General has "reasonable cause to believe" that defendant is engaged in a "pattern or practice of resistance to the full enjoyment of" rights described in Title VII of the 1964 Civil Rights Act, Title 42, United States Code, Section 2000e et seq., as required by Title 42, United States Code, Section 2000e-6(a).

2. Plaintiff's failure to set forth "facts pertaining to such pattern or practice" as is required by Section 2000e-6(a);

3. The relief sought would require defendant to grant preferential treatment to a group of persons because of race, in violation of Title 42, United States Code, Section 2000e-2(j); and

4. The relief sought goes beyond the confines of the Act.

Section 2000e-6(a), which sets out the matter to be contained in a complaint filed under that provision of the 1964 Civil Rights Act, lays down no requirement that the Attorney General expressly plead "reasonable cause to believe." United States v. Building and Construction Trades Council, Civil No. 66 C 58(2), E.D. Mo., July 26, 1966.

Dismissal of a complaint because of the failure to use so-called "magic words" would be wholly contrary to the liberal pleading provisions of the Federal Rules of Civil Procedure. In addition, under the provisions of Rule 11, Federal Rules of Civil Procedure, a signature on a complaint, such as appears here, constitutes a certification that there is good ground to support the matters contained in the complaint.

The second basis offered in support of this motion is equally unavailing. As pointed out by the Court in United States v. St. Louis Building and Trades Council, supra, there is

> nothing in the language of the statute to indicate an intention to alter established rules of pleading. The prime requirement is still notice. . . .

Paragraph 7 of the complaint sets out some of the ways in which defendant has acted which serve to constitute a practice intended to deny persons -- specifically herein, Negroes -- the full exercise of rights described in the 1964 Civil Rights Act. The practice of discrimination is alleged in the form of facts of defendant's dealings with Negro workers generally. What plaintiff has not done is to make allegations of how defendant has acted toward specific Negroes. Contrary to the assertions of defendant, the Civil Rules do not require a plaintiff to plead evidence. Paul M. Harrod Co. v. A. B. Dick Co., 204 F.Supp. 520 (N.D. Ohio 1962). We cannot assume that Congress intended to engraft formerly used laborious pleading-concepts on the "notice" requirements of the Rules, nor can we assume that Congress intended to require plaintiff to set out his entire case in the complaint rather than awaiting the trial. In this complaint, sufficient facts as to defendant's "pattern or practice" have been alleged so that defendant has notice of the contentions it need meet in the lawsuit.

The third and fourth grounds asserted in support of this motion are likewise without merit. There is nothing in the prayer of the complaint which asks for preferential treatment of Negroes. The prayer of the complaint, in keeping with the policies of Act, merely seeks equality of treatment for all. The object of this lawsuit is to secure "better" rather than "preferential" treatment of Negro workers so that their treatment will be on a par with non-Negro workers. Thus, it cannot be said that the prayer seeks a remedy exceeding the confines of the Act.

WHEREUPON, the Court determines that this branch of the motion is without merit, and therefore, it is DENIED.

Motion for More Definite Statement

This motion attacks paragraph 7 of the complaint in its various subsections. Defendant here seeks further specific factual substantiation of the matters set forth therein.

The Court recognizes that counsel know that a motion for a more definite statement is properly made only if a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party is not reasonably able to frame a responsive pleading. In order to secure the just, speedy, and inexpensive determination of every action, the Federal Rules of Civil Procedure employ the "notice" pleading concept. The simplicity and brevity of statement contemplated by the Rules is indicated by the forms appended thereto.

Here the essential requirement and function of notice pleading has been met. The movant has been generally informed of the nature of the action. He can reasonably be required to frame a response. Additional information can be secured by use of the liberal discovery provision of the Rules.

WHEREUPON, the Court determines that this branch of the motion is without merit, and therefore it is DENIED.

/s/ Joseph P. Kinneary

United States District Judge

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 the same in the United States mail, postage prepaid, on the   day of September, 1967.

Owen M. Fiss

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