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

Insurance Co., 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. 20008-6(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.
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> 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.

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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.

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