

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

UNITED STATES OF AMERICA, by	)	
RAMSEY CLARK,	)	
Attorney General,	)	
	)	
Plaintiff,	)	
	)	
	)	CIVIL ACTION
v.	)	NO. 6473
	)	
	)	
INTERNATIONAL BROTHERHOOD OF	)	
ELECTRICAL WORKERS, LOCAL NO.	)	
212, ET AL.,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM IN SUPPORT OF PLAINTIFF
UNITED STATES' APPLICATION FOR
TEMPORARY RESTRAINING ORDER

I. STATEMENT OF FACTS

Since 1961, at least 18 Negroes have filed applications for journeyman membership in Local 212. Of these 18, 9 have made application since July 2, 1965, the effective date of the Civil Rights Act of 1965; of these 9, none has been offered the opportunity to take a journeyman examination.*

Table I attached hereto synthesizes the dealings which Local 212 has had with Negro applicants for

* One, Albert Wilson, who applied in 1967, will apparently be offered the opportunity to take the scheduled June 29, 1968 journeyman examination.

journeyman membership since 1961. It shows that, with respect to these 18 persons, the Union has acted on the applications of at most seven -- two Negro applicants were initially referred to the JATC; two other Negro applicants were referred to the JATC some considerable time after application was made; and four of the six Negroes whose applications were pending (including one already mentioned above) in July 1963, were invited to take the "special Negro examination" given them. Eleven Negro applicants whose applications were "received and filed," some as early as 1963, have never been offered the opportunity for examination, or acted upon in any way, since the applications were made.

Since January 1, 1965, Local 212 has received 107 journeyman membership applications. 10 of these 107 applicants were Negro. Table II attached lists each of the 107 applicants in the chronological order of their application dates, together with the race of the applicant, the examination date, and the date of admission to union membership where applicable. The names of the ten Negro applicants are underlined. Journeyman examinations have been offered to at least 45 white persons since July, 1965; some of these persons have been admitted to membership. At least three of the applicants, all white, who have been admitted to membership since 1965 were admitted without examination.

From late 1963, when the Union gave a special journeyman's examination for Negroes, until March 1966 the union virtually ceased giving journeyman examinations. By March of 1966 employment opportunities in the electrical construction trade had improved substantially over the preceding years. At that time a Joint Competency Board for the Electrical Industry was established by Local 212 and the contractor's association for the specific purpose of administering a "competency examination." The only function of this Special Board was to administer an examination whose stated purpose was to determine those individuals qualified for referral by the union to electrical contractors. (A copy of the letter to this effect, sent by the Board to examinees is attached along with the application entitled "Hiring Hall Application for Referral.") No such Board had ever existed before, nor has any existed since. No such examination had ever been given before, nor has any been given since. Both before and after all applicants for employment were referred without being required to take any examination at all. The examination given in March 1966 was not an examination for journeyman membership and would not lead to membership in Local 212. Never before had Local 212 or any joint board or committee in which it participated given an examination which did not lead to membership. The examination was scheduled at a time when there was considerable public and private pressure on all the construction trades which had never admitted Negroes to membership.

In July 1967 the Union administered its first general membership examination since 1963. No Negroes were invited to take this examination. It was confined entirely to persons who had applied for journeymen membership and had also taken the above described competency examination.

On the morning of January 15, 1968, the deposition of Herbert J. Weikel, President of Local Union 212, was taken on behalf of the plaintiffs in this action. In the course of that deposition Mr. Weikel testified that the Executive Board of Local 212 had concluded that the 1967 journeyman exam would be administered only to those persons who had applications for journeyman membership on file and who also had taken the March 1966 competency examination (Deposition, p. 46). Mr. Weikel also testified that the Executive Board had not concluded that those who had not taken the competency exam now had inactive applications. In fact he testified: "Their applications are still on file." (Deposition, p. 47). He testified further: "I believe the mere fact that their application was kept on file and not thrown out or destroyed was showing some discrimination to those parties, to keep them on file in the active file; and if the time ever comes where we would need more journeymen in the organization at the next test they will be given consideration." (Deposition, p. 48). He concluded his testimony on this point by stating that to the best of his knowledge the Union had never disposed of an application before the applicant was tested for journeyman membership. He testified that only if someone took the examination and failed was he

required to file another application before being tested again (Deposition, p. 49).

Mr. Weikel, as President of Local 212, also serves as Chairman of its Executive Board. (Deposition, p. 12). On the afternoon of that same day, Mr. Bernard Jansen, Secretary of the Executive Board testified that the applications of all persons who had applied prior to competency examination and for whatever reason had failed to take that examination were inactive and would not be offered the opportunity to take a journeyman examination unless they filed a new application (Deposition, p. 65). Jansen further testified that this was the decision of the Executive Board (Deposition, p. 71). The minutes of the Executive Board for March 8, 1967 reflect that the Executive Board had decided to test "all men who took the Competency Exam, providing they have an application on file and had never before belonged to the IBEW."

(Executive Board Minutes, p. 73). Neither here or at any other point do the minutes reflect that the Executive Board had decided that men who applied for journeyman membership prior to the Competency Exam but who did not apply or take the competency exam would not be offered the opportunity to obtain membership. (The relevant excerpts of the depositions of Mr. Weikel and Mr. Jansen are attached.)

In the pre-trial brief of Local 212 counsel for the defendant states:

"Plaintiff Dobbins was not offered the 1967 journeyman membership exam because his application filed September 14, 1965 was one of

several which were no longer considered active after the applicants failed to appear for the March 6, 1966 competency examination and failed to advise Local 212 of their reasons for not appearing ..."

The next journeyman membership examination will be given by Local 212 on Saturday, June 29, 1968, to all persons who have current valid applications on file as of June 11, 1968. Local 212 has decided that it cannot make a discriminatory exception in favor of plaintiff Dobbins to its decision inactivating previous applications of those who failed or refused to appear for the job referral exam March 30, 1966. Thus, it would be necessary for him to file a new application by June 11, 1968 in order for him to take a journeyman membership exam on June 29, 1968."

This action was taken despite the fact that the application for the 1966 Competency Examination was headed "Hiring Hall Application for Referral Only," and each applicant was required to sign a statement asserting among other things that he agreed that the "aforesaid application is no guarantee of employment but intended for referring qualified applicants to employees when needed." In addition each applicant was advised by letter under the letterhead Joint Industry Competency Board Electrical Construction Industry: "The purpose of this examination is to determine your qualification to perform work in the Electrical Construction Industry. It must be understood that this Board has no authority to admit you to the Local Union but is intended to ascertain if you can be placed on the Labor Board."

Sometime after the competency examination was administered, defendant Local 212 decided to treat as inactive all journeymen applicants who had for whatever reason decided not to take the competency exam. The result of this decision was that all Negroes with then pending applications for journeymen membership were excluded from the active applicant file.

II. LOCAL 212 SHOULD BE PROHIBITED FROM
CONDUCTING A TEST FOR JOURNEYMEN
MEMBERSHIP WHICH DOES NOT MEET THE
REQUIREMENTS OF TITLE VII.

For the second time since 1963 Local Union 212 proposes to conduct a general examination for journeymen membership. The date set for the examination is, ten days prior to the day previously set down for trial of this case. The class of people to whom the Local proposes to administer the examination is so defined as to exclude all Negroes who have filed applications for membership prior to March 1966, 9 of whom were not at the time they applied or at any time in the interim offered the opportunity to complete the steps necessary to secure journeymen membership in the Local. Moreover, none of those Negroes has at any time been referred for employment by Local 212 to electrical contractors who are party to the collective bargaining agreement.

In the plenary hearing on this case, one of the most critical issues will be -- as to Local 212 -- whether the failure to process the applications of these Negroes for membership is a violation of Title VII of the Civil Rights Act of 1964. If it is determined that the described conduct was a violation, this court will be asked to order that the applications be processed in such a manner as to insure that these Negroes who

are qualified for membership be afforded a fair opportunity to secure it. Many of these Negroes have long years of experience in the electrical trade. In determining whether such construction tradesmen are qualified for union membership, the administration of the test defendant proposes to give may well be demonstrated at an evidentiary hearing to be entirely unsuitable. Graphic demonstration of this can be made now.

When Local 212 was administering examinations at regular intervals in 1963 and previous years a large number of persons were admitted directly to journeymen membership. However, at the last general examination -- a theoretical written examination -- in July 1967 only 3 of 44 applicants tested were admitted. The group tested was all white. 43 of the 44 tested had worked for contractors party to the Union's collective bargaining agreement. At least 21 of them had worked for such contractors for 10 years or more. 41 men failed the examination. Of these, 20 electricians who had been working for union contractors continued to work despite their failure. The scores of those who failed ranged from 59% to 0% yet each was apparently satisfactory to electrical contractors who are affiliated with Local 212 as demonstrated by their continued employment. (See attached Table III).

The administration of such an exclusionary test to Negroes who have been barred by a racially discriminatory policy from the apprenticeship program and from

work referral would on its face appear to be an inadequate means of testing their skills as electricians.

Even therefore if the Union were to now offer to test each of these Negroes and issue invitations to each of them to participate in the test, it would seem clear that the nature of the examination to be administered would have to be carefully scrutinized. The plaintiffs should have an opportunity to examine the proposed means of examination and to present evidence thereon.

An additional serious objection to offering these Negroes an opportunity to take an examination sometime after June 10, 1968 is that inadequate time would be given them to prepare for any test.

Defendant 212 has consistently maintained that membership has nothing to do with employment. Moreover by its actions in failing and refusing to process journeymen applicants in the years since 1963 with the exception of a single general test in 1967 the defendant has demonstrated for whatever reason that it can suffer no injury by the postponement of this test.

On the other hand the plaintiff United States would suffer irreparable injury by the administration of an unevaluated test to a group of persons selected by a racially discriminatory policy without notice to the public at large when this case is on the verge of trial.

The evidence offered at trial by the plaintiff will include a demonstration that one of the means of resistance to equal employment opportunities utilized by defendant Local 212 has been the full publication of membership and employment opportunities to white persons and the deliberate withholding of such information from Negroes together with the deliberate rejection of Negroes on grounds of their race with the effect of discouraging the application of Negroes.

The administration of another test to a group of persons pre-selected on the grounds of race and designed to exclude persons from union membership rather than to take in as members those persons working under union auspices for union contractors would once again operate to discourage Negro approaches to Local 212 for membership and employment no matter what the final outcome of this litigation might be.

CONCLUSION

Plaintiff United States has no objection to the administration of an examination at any time to determine the qualifications of Negroes and white persons to become journeymen members of Local 212. The plaintiff United States does object to the administration of an examination to a group which excludes Negroes who have previously applied for membership; to an examination which has not been publicly noticed in a manner designed to reach all segments of the community including Negroes;

to an examination for which reasonable notice is not given so that interested persons can apply for the examination and prepare themselves to take it; and to the administration of an examination which is not reasonably related to the skills which journeymen electricians must possess in order to perform in a manner equivalent to those persons presently working as electrical journeymen members of Local 212.

The administration of an examination which does not meet these criteria is a violation of Title VII of the Civil Rights Act of 1964 and its administration must be prohibited. In the context of the present case where the journeyman membership program has not been open to Negroes at all and in recent years only open to anyone at irregular, unstated intervals, this Court should order the administration of a journeyman examination which meets these criteria.

Respectfully submitted,

JOHN J. KIRBY, JR.

Attorney

Department of Justice