

file

- ① respond to Summat FBI
- ② respond to Objections
- ③ FBI investigation
who/what

U. S. v. Local 38, IBEW

Time Schedule: we should be ready for trial by
December 1, 1967

Projects:

- (1) Preparation of interrogatories
- (2) Preparation for request for FBI investigation.
- 9F * (3) Analysis of the investigative reports by the
President's Committee B.M. your comments
- (4) Consulting with EEOC (Mr. Muse)
- (5) Record inspection and analysis; make arrangements
for FBI photographing of records
- 82 * (6) Analyze the role of the Department of Labor,
the BAT and the Ohio State Apprenticeship Council,
(McCarthy; Kostyo; Henning; Ruttenberg)
- (7) Analysis of the investigative file of the state
Civil Rights Commission; interview investigators
- (8) Interview persons recently admitted into Local 38
or referred out for employment; (Ernie Green)
- (9) Preparation of stipulation or request for admission
- (10) Responding to objections by defendants in the course
of pre-trial discovery
- (11) Establishing a schedule for depositions
- (12) Gather and analyze information indicating the
magnitude of economic control of Local 38

Request must of habeas

Marshall
report



- (13) Preparation of the list of Negroes in some way connected with Local 38 .
- (14) Analyze the OFCC special compliance project in Cleveland; to determine the names of cooperative contractors and appreciation of the control of Local 38; Charles Doneghy *
- (15) Analyze the developments in Ohio civil rights law, the Governor's Executive Order of 1967, and subsequent legislation
- (16) Identify and gain information concerning other IBEW Locals in Cleveland -- 1377, 39 and 71

→ group of contractors * ~~was~~
NEOEA
Negro contractors

*

denver form

① Resident's Committee -

② Doneghy

① OFFC

② About contractors

③ Cent w/

③ Friendly Contractors as witnesses

④. Misc - cent w/ special information

Specialist
 - List of Negroes / dates

- Testimony

ULTIMATE FACTS TO BE PROVED IN LOCAL 38 CASE

A. Statistics:

1. Number of Negro and white journeymen and apprentices in the union.
2. Percentage of Negroes in the area [including females] [ages 18-40]
3. Percent of electrical contractors organized; percent of work done by these contractors; type of work done by non-union contractors.
4. Number of men referred out for jobs according to race.
5. Membership of union for each year over last ten years.
6. State of the electrical industry in Cleveland -- declining or expanding? Obtain Labor Department statistics; [depose contractors' own need for more electricians]
7. Number of job orders received each month and year; number of men in each group referred out for jobs.
8. Compare union and non-union wages.

B. Apprentice Program:

1. Refusal to give Negroes application in 1964 [depose union officials who gave statements to President's Committee]

2. Exclusion of three Negroes in 1965 and ten in 1966 [prove admitting score sheets and other information contained in applicants' folders]

3. Folders of lowest scoring white applicants. [What is our response if JAC introduces folders of whites who scored high, but "failed" oral interview?]

4. Failure to keep records of oral interview as required by Labor Department regulations, Ohio State Plan, and JAC's own standards.

5. Alterations of score sheets -- raising of whites and lowering of Negroes. [Recheck folders; check other folders to see if alterations are irregular]

6. Last score of Larry Gay -- non MAP.

7. Admission of discrimination by sending letter to 13 Negroes. [Depose Acton for this purpose.] [does repair doctrine apply? -- see Fiss, J.]

8. Notices to AIC -- on what date sent? How long before opening? Other methods of communication? Recruiting?

9. Nepotism -- last five years or so; number of apprentices who have fathers, brothers, friends, etc., in the union [obtain information by questionnaire? deposition? See Local 212]

10. How did each white apprentice find out about the program? [Depose a few white relatives to find out if their kinfolk were assured of admission.]

11. Number of Negroes applying is relatively small apart from MAP condidates [see United States v. Lynd]

12. Depose or interview employment counselors at Negro high schools.

C. The Referral System

1. Categories of referral [Collective Bargaining Agreement.]

2. Referrals are not made according to stated classes in CBK [depose Chapple, Acton, and Mrs. Brunner]

3. Treatment of Negro applicants; all classified as not qualified [by deposition or introduction of records]

4. Only union members can qualify for Group I; discrimination against non-union workers [violation of Taft-Hartley Act; depositions of union officials]

5. Applications of Negroes: Eddie Reese (witness), Ted Pinkston, George Suddeth, (FNU) (LNU) [depose Bill Hirsch on Reese]

6. Analyze backgrounds of men referred out the time Negroes applied for referrals; show that white men had little or no experience while Negroes had some [by deposition or introduction of records]

7. Preference is given to friends and relatives of union members in job referral [introduce referral slips with notations on back] [depose business agents on this practice]

8. Statistics on job referral system: number referred out, whites and Negroes, etc.

9. Has any Negro contractor called union hiring hall for workers?

D. Organizing of Contractors

1. What are the methods and procedures by which the union solicits white contractors for affiliation? [depose Chapple and other business representatives]

2. How are Negro contractors trained? Are they solicited as whites are?

3. Refusal to give Negro contractors consideration or to inform them of stages to take to become affiliated [Maxwell Richardson -- witness]

4. Negro contractors are confined to work on the East side and on small jobs, harassment of Negroes on other

jobs without organizing them [witnesses Smith, Richardson, Ozanne]

5. Are white non-union contractors harassed? Are they organized? Does business agent make overtures to white contractors for affiliation?

6. Obtain list of all affiliated contractors and date of affiliations, including requirements at time of admission; what happened to the workmen of each contractor? [Talk with Dave Gelb and man at Doan Electrical]

7. Preference is given to members of Local 38 who are going into contracting business [see minutes of Executive Board]

8. Current standards and requirements of affiliation [depose Acton and Chapple]

E. Admission of Journeymen:

1. Find out when and why union started accepting journeymen only through the apprenticeship program.

2. Exception made in 1957 when union tested several Negroes for journeymen and accepted three.

3. Ted Pinkston affair; Committee Relations Board.

4. From date membership closed, except through apprentice program, question all subsequent members to determine whether they went through an apprenticeship.

5. Travel cards -- IBEW Constitution, Article 25.

6. The evidence on journeymen may go to question over relief rather than substantive violation.

F. Exhibits:

1. Apprenticeship standards and procedures approved by the BAT.

2. Ohio State Plan

3. 29 CFR, Part 30

4. Collective Bargaining Agreement

5. Constitution and bylaws

6. Information in apprenticeship folders

7. Test sheets of Negroes tested in 1957

8. Statistical material, including racial composition of Cleveland, state of the electrical industry, percentage control of market, etc.

9. Applications for job referral, work referral slips, index cards, etc.

10. Document establishing JAC

G. Witnesses:

1. William Harris

2. Willie McKenzie

3. Richard Acton

4. Mrs. Brunner

5. Leroy Ozanne

6. Maxwell Richardson

7. Ted Smith
8. Eddie Reese
9. Ted Pinkston
10. MAP candidates (7)
11. Deponents
12. George Chapple
13. William Hirsch
14. Robert Morgan

DEPARTMENT OF JUSTICE

ROUTING SLIP

TO:	NAME	DIVISION	BUILDING	ROOM
1.	Mr. Fiss			
2.				
3.				
4.				

- | | | |
|---|---|---|
| ☐ SIGNATURE | ☐ COMMENT | ☐ PER CONVERSATION |
| ☐ APPROVAL | ☐ NECESSARY ACTION | ☐ AS REQUESTED |
| ☐ SEE ME | ☐ NOTE AND RETURN | ☐ NOTE AND FILE |
| ☐ RECOMMENDATION | ☐ CALL ME | ☐ YOUR INFORMATION |
| ☐ ANSWER OR ACKNOWLEDGE ON OR BEFORE _____ | | |
| ☐ PREPARE REPLY FOR THE SIGNATURE OF _____ | | |

REMARKS

Attached are some rough notes outlining the Local 38 case. I'd like to sit down with Rich and you at your convenience to discuss it.

Art
10/6/67

FROM:	NAME	BUILDING & ROOM	EXT.	DATE

① Trial date - when do we think we would be ready.

2 record.

December 1

② Take deposition

→ Chapple

- BM - 1944.

~~1944~~

- Mrs. Brownson - Rule 34 / Chapple

- Business Agents

- Richard Acton?

- BAT - SAC

- JAC

(a) ~~giving~~ Ex. Secretary Earl Egging

(b) ~~Father~~ dealt with

→ Mayie - Holt

→ Morgan

principal - leader
for vagues

1945

didn't take
in as journey men -
issued refusal slips.

→ Pinkston.

→ Pese.

→ William Harris - 120

William McKenzie

→ Hugo contractors

Ozame
Richard Sr
Smith

Interviewed by

Records analysis -

① → App. Record
② =
③ =
④ =

Pre Trial Activity

(1) Rule 34 - motion

2-3 days inspecting and copying

10 days analysis of records prior to commencing depositions

(2) Interrogatories.

(a) Monday - or this Friday.

(b) issues covered

(a). list of officers - business agents and business managers

25 category

peak load

500-600

Complete new leadership

1957. Jacques. Laurent
1st round

1964 1

1965 1

1966 1

Department of Justice -
at least 13 discriminated

3rd in

Apprenticeship

300 applicant

50 before

30 150 - written questions

(3) Economic Control

- size of membership

- size of referrals.

- number of contractors under collective agreement

- ~~work~~ wage scale.

(4) Membership standards and procedures.

- relative network.

- standards and procedures for apprenticeship

(5) Nature of contractors.

- number of employees at time of King

- whether previously a member of 38

- what financial requirements.

(3). Report time - 3 weeks

Intermittent
compliance

(a) when - after the record inspection
proceeds to some level

(b). Who - (1) primarily business agents and
business managers of local 38

(2) also - affairs of IAC.

(4). Interviews for determining witness. - FBI

(a). Regrets who attempted to get in

(b).

Requests
⑤. Admission -

Get clarified

(1) Answer is That counterclaim

(2) interview members of local 38
~~and contractors~~

(3). Pre Act

meetings

no

May 24, 1967 - initial letter - John Owen + Meade McCurdy

June 14, 1967 - initial meeting in Washington. McCurdy

June 27, 1967 - meeting in Cleveland
- sent list of ^{John Owen} proposals -
McCurdy

letter on June 28, 1967.

no points until all. July 20.

July 10, 1967.

meeting - submitted new proposals

evaluation -

→ July 17, 1967 -

July 18, 1967 -

July 21, 1967.

August 8, 1967.

go back meeting in Washington of International
last meeting McCurdy.

Phone call in Washington

Filed Suit

July 14 - 15

analyzed over weekend.

representation
concern

① EEOC asked -

②. Memoranda from
HARDON.

- return
one referral
- keep the other.

80

local 32

Ask Rotatori
if he wants to sign

Projects

BE

(1) Pulling together information from Resident's Committee

- interview the interviewees.

- determine the availability

- How to ^{open interviewees} set into evidence. if we can't get Chapple to admit

ART

(2) Interrogatories

drafts - review
problem of relatives

* list of names of all Negroes referred to
job - when to when - what *

* list of names group of all Negro members
date admitted. *

ART

(3) FBI requests - prepared - send out

* list of names of Negro
extraditors - date -
members employees.

ART

(4) Speaking to Muse

getting EEOC to hold up.

See EEOC file. finding of reasonable
cause.

BE

(5) Interview people at the Department of Labor
to get that status straightened out

- speak to Dan McCutty

- Kostko.

- Statement of IBEW international plan. how to attack

(likely to be used as
witnesses by Smart)

} have
someone put
together all that
info. print no.
into evidence
- how to get it

ART

BE

(6) Speech to Ernie Moore and interviewees.

likely to be used as
witnesses by Smart

ART

(7) Preparation of Stipulations. Requests for admission

(8) Response to ~~Amicus~~ opposition
in pretrial discovery.

- ⑨. Analyze information about economic contact
role in the market.

Business

how to introduce
this information

- ⑩. Finding of the possible cause by the State agency.

see all of these investigative report

possible relevant witnesses

Mrs. Burman
motivation on discrepancies

- ⑪. Preparing a list of requests for
record inspection

- The Executive Order in Ohio

- Speak to Charles Bernaghy.

federal contractors to talk
report on the central

Someone will get hit of different locals of IBEW -
in Cleveland and beyond.

* Judge Green Opinion
F 450 v. Rich. / HASE BAKING Co.
205 F Supp. 459

Cases

Fleming v. Bernardi, (N.D. Ohio 1941) 1 FRD 624

Moore's analysis

action by Administrator of Wage - Hour Division

defendant served an interrogatory calling
for names of employees claimed to have been
paid less + the period which they worked for
defendant.

objections overruled.

court reasoned that when Govt brings suit

waiver.

rejected argument

Walling v. Richmond Screw Anchor Co. (E.D. NY 1943)

4 FRD 265

United States v. Continental Can Co. (S.D. NY 1958)

22 FRD 241

FBI Antitrust act - unfettered action.

United States v. General Motors Corp. (N.D. Cal. 1942)

2 FRD 528

Bowles v. Acherman (S.D. NY 1945) 4 FRD 260

Subpoena duces tecum

sought to get documents sought by obtained
by Gov't from A and which
formed the basis of the suit.

real thing is that those matters which the Government
will use on trial be stated in response to interrogatories.

distinction should be made between attempt to
find out the details of the case against him —
details to which he would be entitled if the suit
were one by a private party, and which would in
any event be brought out in the trial.

p. 1583

cases holding against sweeping discovery of files

Walling v. Ernst Carriers Inc.

50 NY 1944 - 3 FRD 442

Andrews v. Trelles

EOA 1939

cited in Fleming v.
Reynolds

Informers Privilege

See Department of Justice Order.
4 also 54 USC §22 3229

40 Op. Atty Gen. No. 8 (1941)

United States v. Kohler

EO Apr 1944 9 FRD 289

Interrogation on U.S.

Called for names of persons whom FBI
agents had investigated informers
in their investigation as well as their
statements and placements furnished by them
or procured from them.

Communication made by informers to public
officers under a pledge of secrecy.

Support - 8 Wigmore, Evidence (3d ed.) § 2374
and

See

Annstein 296 F 946

Harris 277 F 569

Kullback 145 Fed 76

Hartman 2 FRD 477

O'Leary 291 F 2d 655

Leading case - Rosen v. United States 353 U.S. 53

must show - disclosure of communication
will reveal the identity
if identity known to those who would
receive then privilege no longer
applicable.

Mitchell v. Rose

252 Fed 513

Henkin v. Bell Tel. Co.

14 FRD 385

employees left the company. revealing
identity could hurt them.

See Mitchell v. Roma

265 Fed 633 - certia.?

United States v. Lorain Journal Co. (ND Ohio 1950)

10 FRD 487

Fowler v. Ninty SD Fla 1963
34 FRD

for a claim to be properly asserted
- the claim must be asserted by the head of
the department after actual personal
consideration by him.

238 F. Supp. 495 - Clark v. Pearson.

Kaiser Aluminum + Chemical v. United States

157 F Supp. 939 (Cl. Ct. 1958)

Boeing Airplane Co v. Coggeshall -

280 F 2d 654 (CA DC 1960)

see also Proctor + Grumble. 25 FRD 485

Timken Roller Bearing Co. v. United States

ND Ohio 1964, 38 FRD 51

Ordering production of reports of IRS
showing basis for deficiency
judgment.

E. W. Bliss Co. v. United States

ND Ohio 1961. 203 F. Supp. 175

need not produce inter agency opinion

"~~It~~ "a blanket inspection of Government investigation
files should not be allowed." there 1545

citing Karin A1 + Chen 157 F. Supp. 939.

See United States v. Cotton Valley Operators Committee

9 FRD 719 - 339 4.S. 940

Bank Line Ltd v. United States

163 F2d 133

Royal Exchange

13 F.R.D. 150

United States v. Reynolds. 345 U.S. 1

Suit under Tort Claims Act.

experimental air plane. crashed.

Air Force official accident report.

Military and State secrets.

Supreme Court said. "There must be a formal claim of privilege, lodged by the head of the department which has control over the matter, after actual personal consideration by that officer."

E.W.

Kaiser Aluminum v. United States

151 F. Supp. 939

K. sued US in Ct. of Claims.

Documents in question exclusively contained
recommendations and advice on
program policy for use in the government

Strong public policy - open and frank
discussion.

Testimony

objection facilitated
prepared for inter office use
and ~~discussing~~ communications with respect
to policy ~~was~~

Boeing Airplane Co. v. Coughshall

280 F.2d 654

~~E~~ Cennome v. Bunker.

5 FR Sec 2d 34.42

intra-agency reports held cases
privileged.

E. W. Bliss v. United States N.D. Ohio.

5 FR Sec. 2d 34.42, Case 1

interagency advisory opinion
held privileged. no good cause

Fusco v. Richard W. KASSE Baking Co.

205 F Supp. 459

311.22
150.00
221.22

injunctive writ under 10(j)

notice deposition and then served subpoenas ^{of Regional Director and an attorney.}

The subpoena of Fusco asked him to produce:

(1) affidavits and statements of employees of defendant

(2) all reports, memoranda, etc etc

"accumulated by the Bd or its agents in connection with, relating to or in support of unfair labor practice charges and the decision to issue the charges."

(3) affidavits, statements, reports, memoranda and paper writings "of whatever kind or nature" during your term as Regional Director in which you petitioned for a 10(j) injunction.

463 "The general conclusion is that when the government brings an action bringing an action in the exercise of its regulatory powers it is subject to discovery, as would be a private litigant. ... This general rule is subject to many qualifications, hereafter set forth in so far as pertinent."

One of the general reservations attendant upon this rule is that production will not be ordered of matters which would be contrary to public policy, internal security, or of a confidential nature."

ident. of documents
get permission

Funco

Petitioner urges that the employees' affidavits come within this category. The court does not agree with this contention, cf. Mitchell v. Bass 252 F.2d 513 (CA 8, 1958)

~~is~~ (2) either this means that they do not come within government privilege - still does not mean can have)
still must show "good cause"

also recognizing an exception for "inter agency advisory opinions or correspondence." Bless case

held that to ~~protect~~ preclude discovery of other items
~~rather~~ i.e. the blanket request for all other matters.
a.g. #2 above

also

also no good cause shown for that

with respect to the third item - i.e. other proceedings that is clearly irrelevant.

Statement of employees

~~(1) must show~~

(1) those to be witnesses.

must show good cause -

ordinary procedure to get answer in
interrogatories + independent.

(2) those not witnesses.

clearly not relevant because
of the procedural of 10(j) -

1. finding of reasonable
cause not up for
judicial determination.

Shepard National Bank of Greensboro v. Southern Ry Co.

classic case on written statements of witnesses. 299 F.2d 921, 924

rule that you get answers by interrogatory.

interview them or take deposition

then get interview reports if established.

disregard ~~requirement~~ fact that interview reports would
open new horizons. Sp. Ct. considered
deletion of good cause requirement and did not act
on that.

distinguishes all cases relied on by moving party on ground that
statements were obtained on about the time of the accident.

unlike technical details of business transactions — there are
other ways of getting the info.

intervening
here it was the difference between 1 day by respondent
and 6 day by moving party.

not enough for good cause that statements were made
by employees of the non-moving party
must also show employees were unwilling to
speak to him. can't sit back and let
the other party do all the work.

also written permission is not enough.

reasons for getting statements

(1) contemporaneous to accident

(2) hostile to interviewers

(3) unavailable

(4) hostile ~~for~~ initially unable to
interview

never selected with product argument because no good
cause is shown.

Fleming v. Burnard

1 F.R.D. 624 (N.D. Ohio - 1941)

Q: "State the names of the employees to whom the plaintiff alleges the defendant paid ~~low~~ wages ~~less~~ than that prescribed by the Fair Labor Standards Act of 1938, and the period during which such employees worked for the defendant."

It makes sharp distinction between asking for the "investigation file" and the information within plaintiff's knowledge. cites an unreported case in which a subpoena is quashed.

Government raises argument - on intimidation or fear.

forbids discrimination against any employee because of the institution of suit.

completely open.

See Broshe v. Comingore

177 U.S. 459

Edwards v. United States, 312 U.S. 473

Mitchell v. Bass

252 F.2d 513

dismissal

employees statements taken pursuant to the Fair Labor
Standards Act ~~at public~~

issue - 11 individuals not paid according to regular
standards.

at said primary issue was whether dependent's
records are accurate.

attorney said he would use the 11 named individuals.
names of the informers were disclosed without objection.

Informers privilege - Was to be invoked by the head of the
agency, after personal
consideration - United States
v. Reynolds

345 U.S. 1

~~to be~~ to be ~~in~~ in ~~the~~ the ~~case~~ case

It: Once voluntarily discloses names then
no more ~~more~~ privilege.

decide that good cause has been shown

• keeping most concerned

• more importantly, with regard to

~~information~~ give any information.

then goes to ~~the~~ discuss with product director

can't get work product under advertising
of necessity. no claim made

All. ment v. United States

Art Chapin