

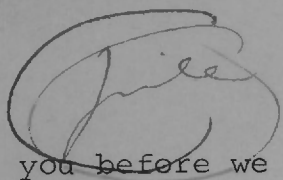
DEPARTMENT OF JUSTICE

ROUTIN SLIP

TO:	NAME	DIVISION	BUILDING	ROOM
1.	Dave Norman			
2.	Mr. Fiss			
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


I'll check with you before we
file a response.

Owen Fiss
10/26/67

OCT 26 1967

OK
DLN 10/31

FROM:	NAME	BUILDING & ROOM	EXT.	DATE

UNITED STATES OF AMERICA,
by RAMSEY CLARK,
Attorney General

- VS -

Defendants

MOTION FOR ORDER TO BAR
 PLAINTIFF FROM INTERVIEWING
 DEFENDANT'S PROSPECTIVE
 WITNESSES AND POSSIBLE AGENTS.

Churlow Sweet

Law Offices
of
Therlow Smoot

The within Motion was served upon Robert Rotatori, Esq., Federal District Attorney's Office, Federal Post Office Building, Cleveland, Ohio, by mail this 23rd day of October, 1967.

Kachyn Druška

HEARING

Hearing in this matter will be held at the convenience of the Court.

Thurlew Smoot

BRIEF

The plaintiff's attorneys in pre-trial on October 11, 1967, mentioned that they were having the FBI interviewing witnesses for them. Then in an interchange of letters attached hereto, it became obvious that many of those interviews will be of defendant Local 38 members. Such interviews are unfair and prejudicial because those members are (a) prospective witnesses for defendants herein, and (b) possible agents of defendant Local 38.

(a) Prospective witnesses of defendants.

Plaintiff is attempting to obtain under Rule 34 every single document in the defendants' possession, some going back to defendant Local 38's inception in 1895. Plaintiff has now served interrogatories requesting tremendous searching of records from 1900 to date in case of defendant Joint Apprenticeship Committee and 1895 to date in case of defendant Local 38, all to furnish the information wanted by plaintiff.

Law Offices
of
Thurlew Smoot

When they have compiled all the information for plaintiff defendants will have to interview witnesses about all this information and all defenses to this suit and most of the witnesses will be Local 38 members. Also many members of Local 38 served on the Joint Apprenticeship Committee in the 27 years since its formation and many more served as interviewers for the

said committee in its oral testing and probably will be witnesses for defendants. There is no way of knowing at this time how many members of Local 38 will be such witnesses, but since plaintiff is trying to put in issue all matters occurring this century and earlier, there obviously will be hundreds to be interviewed by defendants before defendants can ascertain whether they will be witnesses, and all this will be after plaintiff's discovery proceedings are completed.

For these members of defendant Local 38 who are to be witnesses for defendants to be interviewed by plaintiff before defendants decide to use them and interview them, will place an impossible burden on the defense of this suit.

Defendants do not have any objection to depositions of these members of Local 38, but to interview them is objectionable and prejudicial to defendants' defense.

(b) Possible agents of defendants

The National Labor Relations Board in Teamsters Local 536 (The Connecticut Foundry Co.) 165 NLRB No. 133, 65 LRRM 1570, (1967), held that in many cases rank and file members are agents of a union and the union is responsible for their acts. See also Dist. 30 UMW (Terry Elkhern Mining Co.) 163 NLRB No. 81 (1967) and Asbestos Workers Local 8 (Preformed Metal Products Co.) 163 NLRB No. 68. Union stewards have always been held to be agents of the union, Local 925 Operating Engineers (Burns & Roe) 162 NLRB No. 155 (1967); Local 25, IBEW (N.Y. Telephone Co.) 162 NLRB No. 63 (1967), and Local 38 has 200 of these!

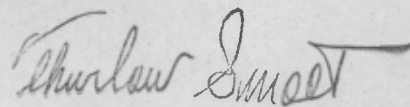
The reason plaintiff wishes to interview defendants' members and stewards is in the hope of finding something adverse to defendants and plaintiff will then at the trial herein undoubtedly ask the Court to rule that they are agents of defendant Local 38. Further everyone likes to exaggerate his responsibility and it would not be difficult for an experienced interviewer to bring out that at the important date in 1949 or some other year that the member was an "agent" of the union in whatever he was doing; then the Attorney General will ask the Court to hold that agency to be one based on an admission against interest.

To place such burdens on the defense of this case would make it impossible to properly defend the defendants.

This burden could be lifted in a manner fair to each party if the plaintiff were ordered not to interview defendant Local 38 members because the Attorney General has full opportunity to depose such persons where defendants counsel can be present.

We sincerely ask to the Court to place such limitations on plaintiff's interviewing.

Respectfully submitted,



THURLOW SMOOT
Attorney for Defendants
2141 - 55 Public Square
Cleveland, Ohio 44113
781-1930

Law Offices
of
Thurlow Smoot