

UNITED STATES DISTRICT COURT

FOR THE
DISTRICT OF NEW JERSEY

ORIGINAL FILED

NOV 23 1988

Michael Koster, Jr., Clerk

File Number

BUILDING CONTRACTORS ASSOCIATION OF
NEW JERSEY,

Plaintiff,

vs.

COMPLAINT

RUTGERS, THE STATE UNIVERSITY OF NEW
JERSEY;

ARTHUR J. SILLS, ATTORNEY GENERAL
OF THE STATE OF NEW JERSEY;

GEORGE S. PFAUS, DIRECTOR, DIVISION
ON CIVIL RIGHTS, DEPARTMENT OF LAW
AND PUBLIC SAFETY OF THE STATE OF
NEW JERSEY;

HUGH C. MURPHY, ADMINISTRATOR,
BUREAU OF APPRENTICESHIP AND TRAINING,
UNITED STATES DEPARTMENT OF LABOR;

INTERNATIONAL ASSOCIATION OF BRIDGE,
STRUCTURAL AND ORNAMENTAL IRON WORKERS,
AFL-CIO;

LOCAL UNIONS #11, #45, #373, #480,
and #483, INTERNATIONAL ASSOCIATION
OF BRIDGE, STRUCTURAL AND ORNAMENTAL
IRON WORKERS, AFL-CIO;

THE ASSOCIATED GENERAL CONTRACTORS
OF NEW JERSEY;

STRUCTURAL STEEL AND ORNAMENTAL IRON
ASSOCIATION OF NEW JERSEY, INC.;

RIGGING CONTRACTORS ASS'N OF N.J.;

IRON WORKERS JOINT APPRENTICESHIP
COMMITTEE;

ARTHUR VENNERI COMPANY;

F. H. SPARKS COMPANY;

PITTSBURGH PLATE GLASS CO.;

HUDSON STRUCTURAL IRON WORKS, INC.;

RICHARD J. HARTNETT, PRESIDENT
LOCAL #11

INTERNATIONAL ASSOCIATION OF BRIDGE,
STRUCTURAL AND ORNAMENTAL IRON WORKERS

STEPHEN FLYNN, PRESIDENT, LOCAL #45)
INTERNATIONAL ASSOCIATION OF BRIDGE,)
STRUCTURAL AND ORNAMENTAL IRON)
WORKERS:)

ARTHUR JENSEN, PRESIDENT, LOCAL #373,)
INTERNATIONAL ASSOCIATION OF BRIDGE,)
STRUCTURAL AND ORNAMENTAL IRON)
WORKERS:)

FRANK MURPHY, PRESIDENT, LOCAL #480,)
INTERNATIONAL ASSOCIATION OF BRIDGE,)
STRUCTURAL AND ORNAMENTAL IRON)
WORKERS:)

DAVID S. CUSICK, PRESIDENT, LOCAL #473,)
INTERNATIONAL ASSOCIATION OF BRIDGE,)
STRUCTURAL AND ORNAMENTAL IRON)
WORKERS:)

DANIEL J. TRAINOR, HAROLD J. ARMY,)
JOHN D. TEMPLETON, JOHN J. WADE,)
ROBERT S. WALLACE, HARRY KATCHEN,)
NEIL BUIE, JOSEPH HOFFMEIER, CHARLES)
HOLLENBECK, IRVING PEARL, all of the)
foregoing ten individuals being Trustees of)
the Ironworkers Joint Apprenticeship Committee,)
pursuant to Agreement and Declaration of)
Trust, known as "The District Council of)
Ironworkers Training Program Trust",)
))
Defendants.)

Plaintiff, Building Contractors Association of New Jersey, a corporation incorporated under the Laws of the State of New Jersey, having its principal place of business at 1180 Raymond Boulevard, Newark 2, New Jersey, complaining of the Defendants above, say:

COUNT I

1. This action arises out of a controversy as to the legality of collective bargaining agreements between the various Employer Associations including Plaintiff herein, and the various Local Unions made Defendants herein, which agreements were entered into pursuant to the Labor-Management Relations Act, 1947, as amended, 29 U.S.C. Sec. 141 et seq. and the legality of an agreement and declaration of trust establishing an apprentice training trust fund pursuant to the Labor-Management Relations Act, 1947, as amended, 29 U.S.C. Sec. 141, et seq. and the legality of examinations given and the requirements of applicants to take said examinations, all of which have been approved by the Bureau of Apprenticeship and Training, United States Department of Labor, pursuant to 29 U.S.C. Sec. 50, et seq., administered by the Trustees

of said Joint Apprenticeship Training Committee, Defendants herein, all of which collective bargaining agreements and requirements for applicants and examinations have been found by the Division on Civil Rights, Department of Law and Public Safety of the State of New Jersey, to be probable cause for a violation of the New Jersey Law Against Discrimination, N.J.S.A. 18:25-1 et seq. and jurisdiction is conferred upon this Court by the Labor-Management Relations Act, 1947, as amended, 29 U.S.C. Sec. 141, et seq., Civil Rights Act of 1964, 42 U.S.C. 1981 et seq., and because of the diversity of citizenship of the parties hereto, and the millions of dollars worth of construction financed by federal, state and municipal funds affected by the matters herein.

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2. Plaintiff, Building Contractors Association of New Jersey, was at all of the times hereinafter mentioned and still is a trade association of employers engaged in the construction industry throughout the State of New Jersey and brings this suit herein in behalf of itself and its individual members, who number in excess of 400.

3. Defendant, Rutgers - The State University of New Jersey, at all times hereinafter mentioned was and still is a body corporate and politic existing under the Laws of the State of New Jersey.

4. Defendant, Arthur J. Sills, at all of the times hereinafter mentioned was and now is the Attorney General of the State of New Jersey.

5. Defendant, George S. Pfau, at all of the times hereinafter mentioned, was and still is the Director of the Division on Civil Rights, Department of Law and Public Safety of the State of New Jersey.

6. Defendant, Hugh C. Murphy, at all times hereinafter mentioned was and still is the Administrator of the Bureau of Apprenticeship and Training of the United States Department of Labor, Washington, D. C.

7. Defendant, International Association of Bridge, Structural and Ornamental Iron Workers, A.F. of L.-C.I.O., is a voluntary labor organization consisting of a great many Local Unions and members throughout the United States and Local Unions and members employed in the construction industry in the State of New Jersey, and maintains its principal headquarters at 3615 Olive Street, St. Louis, Missouri.

8. Defendants, Locals 11, 45, 373, 480 and 483 of the International Association of Bridge, Structural and Ornamental Iron Workers, A.F. of L.-C.I.O., are each voluntary labor organizations consisting of a great many members employed in the construction industry in the State of New Jersey and negotiate collective bargaining agreements jointly under the name of the District Council of Northern New Jersey, International Association of Bridge, Structural and Ornamental Iron Workers.

9. Defendants, the Associated General Contractors of New Jersey, Structural Steel and Ornamental Iron Association of New Jersey, Inc., Rigging Contractors Association of New Jersey, are each trade associations of employers engaged in the construction industry in the State of New Jersey.

10. Defendants, Daniel J. Trainor, Harold J. Army, John D. Templeton, John J. Wade, Robert S. Wallace, Harry Katchen, Neil Bute, Joseph Hoffmeier, Charles Hollenbeck, and Irving Pearl are Trustees of the District Council of Iron Workers Training Program Trust, established pursuant to the collective bargaining agreements entered into between the aforesaid employer trade associations and the aforesaid unions, and administer the affairs of said Apprenticeship Training Program and are commonly referred to as the Iron Workers Joint Apprenticeship Committee.

11. The following Defendants are the respective Presidents of the aforesaid Local Unions of the International Association of Bridge, Structural and Ornamental Iron Workers, A.F.ofL.-C.I.O., to wit: Richard J. Hartnett, President of Local #11, Stephen Flynn, President of Local #45, Arthur Jensen, President of Local 373, Frank Murphy, President of Local #480, and David S. Cusick, President of Local #483.

12. The Defendants, Arthur Venneri Company, F. H. Sparks Company, Pittsburgh Plate Glass Company, and Hudson Structural Iron Works, Inc., are private corporations engaged in the building and construction industry in the State of New Jersey and in particular upon the premises of Defendant, Rutgers - The State University of New Jersey, pursuant to construction contracts entered into to perform work on the Newark Campus which is part of an urban renewal project and is financed with federal, state, city and private funds.

13. Pursuant to the Labor-Management Relations Act, 1947, as amended, 29 U.S.C. 141 et seq., Plaintiff Association and the other Employer-Associations mentioned herein and the individually named Employers herein are employers or representatives as defined under the Labor-Management Relations Act and the individual Unions named herein are labor organizations as defined under said statute and all of the foregoing are engaged in commerce or an industry affecting commerce as defined in said statute, which is administered by the National Labor Relations Board.

14. Said Associations and individually named Employers have negotiated with or follow the agreements arrived at in negotiations between said Associations and the District Council of Northern New Jersey, International Association of Bridge, Structural and Ornamental Iron Workers; and said parties have negotiated for many years and at all times material herein and currently are parties to collective bargaining agreements entered into as the result of said negotiations, which agreements provide for the use of local union hiring halls for the referral of iron workers, having been duly negotiated pursuant to the provisions of the Labor-Management Relations Act, 1947, as amended, 29 U.S.C. 141, et seq.

15. In said collective bargaining agreements provision is made for contributions of 1/4 of 1% of the gross wages paid to all employees represented by said unions by each employer of said employees, which contributions are forwarded to the "District Council of Iron Workers Training Program Trust" which trust is administered by ten Trustees, each individually named herein as a Defendant, who administer said trust pursuant to an Agreement and Declaration of Trust established and entered into pursuant to the applicable provisions of the Labor-Management Relations Act, 1947, as amended, 29 U.S.C. 141 et seq.

16. The Apprentice Training Program administered under said Trust by these Trustees, commonly referred to as the Iron Workers Joint Apprenticeship Committee, was established in cooperation with and pursuant to the Rules and Regulations promulgated by the Bureau of Apprenticeship and Training, United States Department of Labor, and said Bureau has approved the eligibility requirements set forth for applicants and the actual examination given to applicants for

apprenticeship training which said requirements and examination is being utilized by the Trustees of said District Council of Iron Workers Training Program Trust.

17. At all times material in the allegations set forth in the Rutgers Complaint, attached hereto as Exhibit "A", the requirements for applicants and the test administered by said Trustees were those approved by the Bureau of Apprenticeship and Training of the United States Department of Labor.

18. Rutgers, the State University of New Jersey, commenced a building program involving a new campus in Newark, New Jersey in April of 1964, commencing with the construction of a new Law Center which is to be followed by other projects including a Library, Science and Humanities Building, and a Student Center, all of which are part of an Urban Renewal Project and financed by federal, state, city and private funds.

19. The contract for the construction of the Law Center was awarded to various prime contractors and by prime contractors to subcontractors, the individually named employer companies herein being contractors who worked upon the project site as a result of said contracts.

20. On or about February 9, 1965, Rutgers filed a Complaint attached hereto as Exhibit "A", and thereafter an Amended Complaint and Reply, attached hereto as Exhibits "B" and "C" respectively, with the Division on Civil Rights of the State of New Jersey, alleging that the Local Unions joined herein do not have any non-white members and that "the maintenance of exclusive hiring halls prevents persons from being employed on the job from a source other than the hiring hall, and the maintenance of the all-white character of the union assures that only white persons will be sent from the hiring hall to the job. The combination of exclusive hiring hall and an all-white union membership thereby effectively bars non-whites from employment by preventing the employers from employing such persons, in violation of Section 12 (b) and (c) of the Law Against Discrimination" (Paragraph 10, Exhibit "A", Complaint); and that any of the individual contractors that entered into an agreement with said local unions "intended to and did secure an all-white labor force of iron workers" (Paragraph 11, Exhibit "A", Complaint); and that the entering into any exclusive hiring arrangement constitutes "an assistance and combination" with iron worker local unions "to discriminate against non-whites from employment as iron workers, in violation of

Section 12 (a) and (e) of the Law Against Discrimination" (Paragraph 12, Exhibit "A", Complaint).

21. The allegations of Rutgers were considered by the Division on Civil Rights of the State of New Jersey, and there was a Finding of Probable Cause entered by said Agency which is annexed as Exhibit "D".

22. On or about November 5, 1965 and thereafter all of the parties named in the Complaint and Amended Complaint were served with a Notice of Hearing to appear before the Division on Civil Rights of the State of New Jersey on November 30, 1965, in connection with answering the charges made by Rutgers which were the basis of the Findings of Probable Cause issued by the Division on Civil Rights, and copy of said Notice of Hearing being attached hereto as Exhibit "E".

23. Collective bargaining between Plaintiff, Defendant Associations, the individually named Contractors in this suit, and the Defendant Unions is governed by the Labor Management Relations Act, 1947, as amended, and any failure to abide by collective bargaining agreements arrived at thereby could result in labor disputes and proceedings before the National Labor Relations Board or suits for breach of contract and damages in our Federal Courts under said Federal Labor Statute, all of which can subject Plaintiff and its members to possible serious and irreparable injury in the conduct of their business.

24. The provisions of the Labor-Management Relations Act, 1947, as amended, and the collective bargaining agreements entered into thereunder and the threatened method of enforcement by the Division on Civil Rights of the State of New Jersey and its processes are in conflict and Plaintiff and its members cannot comply with both without being in jeopardy of violating one or the other.

25. In order to relieve Plaintiff and its members of such double exposure to legal proceedings or violations of either law this Court should declare which law prevails; whether a collective bargaining agreement entered into pursuant to the provisions of the Labor-Management Relations Act comes under the exclusive jurisdiction of the National Labor Relations Board because of pre-emption of Federal Law in this field to the exclusion of jurisdiction of the State Agency or whether the Division on Civil Rights of the State of New Jersey can legally alter the contractual relationships entered into pursuant to Federal Law.

COUNT II

1. All of the allegations of Paragraphs 1 through 23 of the First Count are repeated as though set forth herein.

2. The Division on Civil Rights has found probable cause that the test being administered by the Joint Apprenticeship Committee is not lawful and is designed to discriminate because (1) an applicant for apprenticeship training must have a high school diploma and (2) an applicant must have the capacity to pass tests geared to an intellectual or scholastic level not reasonably related to the skills and ability required in said trade or apprenticeship training program (Exhibit "C", Reply, Par. 5, p.3).

3. The apprenticeship program of the Trust and the test and requirements of applicants have been established by and with the cooperation of the Bureau of Apprenticeship and Training of the United States Department of Labor and have been approved by said Federal Agency; nonetheless, there has been a Finding of Probable Cause by the Division on Civil Rights of the State of New Jersey that this examination and the requirements of applicants to take same is in violation of New Jersey Law Against Discrimination and said test and requirements have been established for the "express purpose of minimizing the number of non-white applicants for admission to said program or to close the door to such applicants" (Exhibit "C", Reply, Par. 6, p.3).

4. Plaintiff and its members are currently and will be engaged in projects financed by both federal, state, city and private funds and are under an affirmative duty pursuant to Presidential Executive Orders Nos. 11,245, 11,247, 10,925 and 11,114; Title VII of the Civil Rights Act, 42 U.S.C. 1981 et seq.; the New Jersey Civil Rights Act, N.J.S.A. 10:1-1 et seq.; the New Jersey Law Against Discrimination, N.J.S.A. 18:25-1 et seq.; The Governor's Executive Order No. 21, dated June 24, 1965; and various other provisions of Human Relations Commissions and/or Equal Employment Commissions in various municipalities where work is done.

5. The Rules and Regulations and the action and approval of the Bureau of Apprenticeship and Training, United States Department of Labor of the training program, test and requirements for applicants being followed by the Joint Apprenticeship Committee, and the threatened method of enforcement of the Civil

Rights Division of the State of New Jersey to declare such tests and requirements for applicants illegal are in conflict and Plaintiff and its members cannot follow both agency actions without being in jeopardy of violating one or the other, and this Court should declare which law or agency procedure prevails and whether the New Jersey Division on Civil Rights has the authority to declare such examination and requirements for applicants pursuant to the Labor-Management Relations Act, 1947, as amended, and the Rules and Regulations of the Bureau of Apprenticeship and Training, United States Department of Labor illegal under the New Jersey Law Against Discrimination.

COUNT III

1. All of the allegations of Paragraphs 1 through 23 of the First Count are repeated as though set forth herein.

2. Title VII of the Civil Rights Act, 42 U.S.C., Sec. 2000 e-2(h) provides:

"(h) Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin."

3. Title VII of the Civil Rights Act, 42 U.S.C., Sec. 2000 e-2(j) provides:

"(j) Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to, membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area. Pub.L. 88-352, Title VII, Sec. 703, July 2, 1964, 78 Stat. 255."

provides:

"Section 2000 e-7. Effect on State laws

Nothing in this subchapter shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by an present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this subchapter. Pub.L. 88-352, Title VII, Sec. 708, July 2, 1964, 78 Stat. 262."

5. The threatened enforcement action of the Division of Civil Rights in the State of New Jersey involves the altering of legal relationships pursuant to the collective bargaining agreements between Plaintiff, its members and other employers and the unions entered into pursuant to the Labor-Management Relations Act, 1947, as amended, and the apprenticeship program entered into pursuant to the Labor-Management Relations Act, 1947, as amended, and the Rules and Regulations of the Bureau of Apprenticeship and Training, United States Department of Labor promulgated pursuant to 29 U.S.C., Sec. 50 et seq., all of the aforesaid parties and/are subject to the provisions of Title VII of the Federal Civil Rights Act; thus, the Division on Civil Rights of the State of New Jersey is currently engaged in a procedure which threatens enforcement of its Finding of Probable Cause which procedure "purports to require or permit" the doing of an act which may be an unlawful employment practice under Title VII of the Federal Civil Rights Act.

6. Because of the foregoing Plaintiff and its members, who are desirous of conforming with all laws pertaining to the subject matter herein, may be in jeopardy because to follow the Federal Agencies and Federal Law may well be in violation of the State Law, and to follow the State Law and the orders of the State Agencies can place Plaintiff and its members in violation of Federal Law; therefore, this Court is requested to declare the rights and status of the parties with broad reference to the legality or illegality of the current threatened action of the Division on Civil Rights of the State of New Jersey and whether this purports to require or permit the doing of any act which would be an unlawful employment practice under Title VII of the Federal Civil Rights Act.

WHEREFORE, Plaintiff demands judgment against the Defendants as follows:

(a) That the Court declare whether a collective bargaining

agreement entered into pursuant to the provisions of the Labor-Management Relations Act comes under the exclusive jurisdiction of the National Labor Relations Board because of Federal Law preempting this field for action by the National Labor Relations Board or whether the Division on Civil Rights of the State of New Jersey can legally alter the collective bargaining relationships and contractual commitments entered into thereunder pursuant to Federal Law by virtue of the authority vested in it by the Statutes of New Jersey;

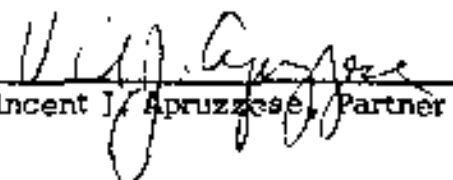
(b) That the Court declare whether the Division on Civil Rights of the State of New Jersey has the authority to determine that requirements for applicants for apprenticeship training and the examination to be administered to such applicants is illegal where said requirements and examination have been approved by the Bureau of Apprenticeship and Training of the United States Department of Labor pursuant to Federal Law and Rules and Regulations of said Agency adopted thereunder;

(c) That the Court declare the rights and status of the parties with broad reference to the legality or illegality of the current threatened action of the Division on Civil Rights of the State of New Jersey and whether this action purports to require or permit the doing of any act which would be an unlawful employment practice under Title VII of the Federal Civil Rights Act;

(d) To the extent that any of the actions of the Division on Civil Rights of the State of New Jersey may be in violation of, exceed, lack authority in law, or be in conflict with the Federal Law or the actions of Federal Agencies that the Division on Civil Rights, Department of Law and Public Safety, of the State of New Jersey, its Director, its agents and attorneys, be permanently enjoined and restrained from proceeding forward on said matters and that each and every party thereto named in this proceeding be likewise permanently enjoined and restrained from participating therein;

(e) Such other and further relief as the Court may deem just and appropriate under the circumstances.

APRUZZESE & McDERMOTT

By 
Vincent J. Apruzzese, Partner

RICHARD J. CASEY
Of Counsel

A VERIFICATION OF PLEADING

STATE OF NEW JERSEY)
) SS:
COUNTY OF ESSEX)

PAUL J. BRIENZA, of full age, being duly sworn according to law,
upon his oath says:

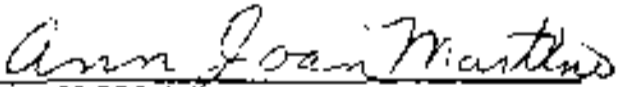
1. I reside at Picatinny Road, Morristown, New Jersey and I
am employed as Managing Director of The Building Contractors Association of
New Jersey, with principal offices at 1180 Raymond Boulevard, Newark, New Jersey,

2. The Building Contractors Association of New Jersey consists
of in excess of 400 members who are engaged in the building construction
industry throughout the State of New Jersey and annually perform millions of
dollars worth of construction in the State of New Jersey.

3. I have read the annexed Complaint and know the contents
thereof and the same are true of my own knowledge, except as to matters therein
stated to be alleged on information and belief, and, as to those matters, I
believe them to be true.


_____ **PAUL J. BRIENZA**

Sworn and subscribed to
before me this 22 day of
November, 1965.



ANN JOAN MARTINO
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 2-4-67