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OMF/daw
DJ 170-57-5
#34-035-18

United States v. International Brotherhood
of Electrical Workers, Local No. 38; Electrical
Joint Apprenticeship and Training Committee
(C.A. No. C 67-575)

I would like to bring to your attention the following coordination problem that has arisen with the Local 38 case in Cleveland, and is now at a head. The relevant chronology is as follows:

1. From May 24, 1967 to July 18, 1967, we engaged in negotiations with Local 38 in Cleveland.
2. On August 8, 1967, we filed suit against Local 38.
3. In a letter dated September 5, 1967, the EEOC advised Local 38 that it had found reasonable cause against the union and also that a conciliator will contact Local 38 within "a few days."
4. On September 25, 1967, the defendants answered our complaint and in that complaint brought to the Court's attention the fact that EEOC was about to begin negotiations with Local 38, and that as a result of that conciliation another law suit under Section 706 might be commenced.
5. Immediately after receiving the answer I contacted Gerry Frug, Cliff Alexander's special assistant at the EEOC, to make sure that EEOC did not take any action with respect to Local 38 unless we were advised or until we had an opportunity to show them our file and our minimum demands.

cc: Records
Chrono

Owen
Fiss
Kirby
Wolf

6. During the following six weeks Art Wolf telephoned Andy Muse several times in order to arrange an appointment between the two to enable them to discuss the Local 38 case. Mr. Muse was unavailable and never returned the telephone call.

7. On Wednesday afternoon, November 15, Bud Hurwitz spoke to a Jim Nunes, of the Cleveland office of the EEOC, about some other matters. In the course of the conversation, Mr. Nunes mentioned that EEOC was going to meet with Local 38 on Monday, November 20 to conciliate this matter. In the course of the conversation it appears that Mr. Nunes said they were looking for an agreement that would settle both the EEOC matter and our law suit.

8. Upon learning of this, I immediately called Mr. Frug and he in turn called Cleveland and asked to have the meeting on Monday, November 20, cancelled in order to give us time to find out what EEOC wanted and what our last offer was.

9. On Thursday morning, November 16, Art Wolf met with Mr. Muse of the EEOC and explained to Mr. Muse the nature of our case and the last offer that we made to Local 38. He also gave them a copy of our letter of October 13, which, as Judge Green suggested, we put in writing the Department of Justice's last offer. In addition, he obtained a copy of the proposed conciliation agreement of the EEOC. That agreement is essentially modeled after the proposed decree in the St. Louis case and accordingly parallels our last offer to Local 38 in many respects (though it is very general on the correct procedures to be adopted in the apprenticeship area).

10. Following the meeting between Wolf and Muse I once again spoke to Gerry Frug. He said that he had no strong feeling one way or the other but I should work it out with the new EEOC's General Counsel, Dan Steiner. I called Dan Steiner and discussed the matter with him. I explained the problems I saw with going ahead and he expressed the view that he thought the conciliation should go ahead although he will make it clear to the people conducting the conciliation that the conciliation should be brought to an end as quickly as possible, and secondly, that they should not settle for anything less than what the Department of Justice has asked for. I told Mr. Steiner that I would bring this matter to your attention.

11. Immediately thereafter, late yesterday afternoon, I discussed this with Bob Owen. He had a very strong negative reaction to EEOC's going ahead and suggested that I bring it to your attention first thing Friday morning when you return.

12. I called Dan Steiner back and told him that your First Assistant did have this reaction and asked him not to reschedule the conciliation meeting this Monday until you had time to focus on the problem. He agreed and I said I would call him back first thing in the morning, after I discussed it with you.

I believe it would be unwise and inappropriate for the EEOC to ever settle a matter once a 707 suit has been filed for the following reasons:

- (a) There is a risk that the EEOC will settle for something less than the Department of Justice is prepared to settle for. (I don't think this is a very strong factor in this case in light of the EEOC's proposed

conciliation agreement; but the real problem will be trying to keep them to that level once the negotiation begins.)

(b) The EEOC's conciliations have very little chance of succeeding if our negotiations have been thorough and fair. They certainly have other projects to commit their scarce resources to. In fact the entire Dent case is predicated on the fact that they do not have the resources to conciliate all matters and that in some instances they will have to forego conciliation because of the limitations upon their resources. (Nothing, could, of course, be truer than that in Cleveland; we have not gotten one EEOC referral from the Cleveland office.)

(c) The EEOC negotiations will be used by the attorney as a basis for asking for delays in the course of the pre-trial discovery and the trial itself. (This is a very real risk in the Cleveland case where the judge is very anxious to settle it, where Smoot has used every conceivable dilatory tactic, and where we have now pending before the Court a Rule 34 motion, defendants' objections to our interrogatories, and defendants' motion to restrain the FBI from interviewing members of the Local.)

(d) Analytically, it does not make any sense at all to have one agency of government trying to conciliate a matter when another agency of government is presently suing that agency for the same violation of the same statute, and where that latter agency had unsuccessfully attempted to conciliate the matter before suit.

Dan Steiner explained EEOC's basis for going forward in the following terms: "The person who would be handling the conciliation in Cleveland is a very experienced conciliator and he believes that he can work something out. I think we should give him a chance." The experienced conciliator is Chester Gray and I suspect that the General Counsel is trying to deal with a very sensitive morale problem. This Local 38 case started off as a joint investigation and at the time of sending our final negotiation letter we told EEOC, and the Department of Labor, from this stage on we move independently. That ruffled the usual bureaucratic feathers, including that of Chester Gray, and I gather there was some hard feeling on his part due to the fact that we filed a suit without giving him or the EEOC credit. He is now bent on demonstrating to the Negro community that he does possess power, and that his remedy is an effective one.

I understand the EEOC's morale problem but I don't think that should ever affect our discharging our responsibilities. I would recommend that EEOC not attempt to conciliate at this time, but the difficult question is whether you feel strong enough about this matter as to make a request to Cliff Alexander and whether it is likely to stick. I also recommend that this matter be handled by telephone or personal meeting rather than by letter.

For any subsequent discussions you may have on this, I am attaching a copy of the proposed EEOC conciliation agreement and a copy of our letter describing the last offer to Local 38.