



UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

OMF:clk
DJ 170-57-5
34-035-18

October 17, 1967

Mr. Thurlow Smoot, Esquire
55 Public Square
Cleveland, Ohio 44113

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

Dear Mr. Smoot:

This will acknowledge your letter of October 12, 1967, in which you requested a list of all persons whom we intend to interview in connection with this litigation, so that, in some instances, you may be present.

It is extremely unfortunate that you did not make this request at our conference with Judge Green on October 11, 1967. If you had done so, the Court could have assisted in the resolution of any differences we may now have. In any event, I believe I have a responsibility to bring this matter to the Court's attention, and accordingly I am sending him a copy of your letter together with this response.

I agree that you should be notified before current officers or managing agents of Local 38 and the Joint Apprenticeship Committee are interviewed by representatives of the Department of Justice,

cc: Honorable Ben C. Green

including agents of the Federal Bureau of Investigation. With regard to the other classes of persons to which you referred, we cannot accede to your request. To do so could seriously impair our investigation into discrimination and undermine the confidentiality with which many statements are given.

It would also be inconsistent with the established policies and practices of the Department of Justice in cases of this type. For example, on October 9, 1967, in United States v. International Brotherhood of Electrical Workers, Local No. 212 (Cincinnati), C.A. No. 6473 (S.D. Ohio), the attorney for the defendant objected to the interviewing of apprentice members of the union by the Department of Justice without first seeking his permission. The Court stated that the Government need only seek the permission of the counsel for the defendant prior to interviewing officers and managing agents of the union. It did not require that permission first be obtained from the attorney with regard to the interviewing of members of the union.

I assure you that it is not the practice of the employees of the Department of Justice, including the Federal Bureau of Investigation, to interview persons without informing them of the nature of the inquiry. I should add that if any of the persons interviewed are called as witnesses, you will, of course, be advised in advance of trial so that you will have the opportunity to speak with them also. In addition, the statements to the Department, if discoverable, will be made available to you. Needless to say, the testimony of any witness at trial is subject to your cross-examination.

I trust this arrangement will be satisfactory to you.

Sincerely,

OWEN M. FISS
Attorney
Civil Rights Division

LAW OFFICES OF
THURLOW SMOOT
55 PUBLIC SQUARE
CLEVELAND, OHIO 44113
PHONE: 781-1930

October 12, 1967

Mr. Owen Fiss, Attorney
Civil Rights Division
Department of Justice
Department of Justice Building
Constitution Avenue
Washington, D. C.

Re: United States of America, etc. vs. International
Brotherhood of Electrical Workers, Local No. 38,
et al.
Case No. C 67-575

Dear Mr. Fiss:

You advised in Judge Green's chambers yesterday that you were intending to have the FBI conduct interviews in regard to the above case.

I request that I be advised the list of persons the FBI is to interview.

I presume in my later use of discovery procedure I may find who the FBI has interviewed and find it includes defendants' prospective witnesses who were not advised of the meaning of the issues, the extent of the remedy plaintiff seeks, the importance of the case to defendants, nor that the FBI is investigating a civil case for plaintiff and not the criminal cases most people presume it concerns itself with.

I repeat that it is not sufficient for defendants to know that such interviews have occurred because the damage is done and a false position may have been unwittingly taken by reason of the general desire to help the FBI.

Of course, if the FBI is seeking witnesses for you among the negro population as such, I have no need to know the names and addresses of the interviewees now. If, however, the interviews are to be with any of the following classes, I do object:

THURLOW SMOOT

Mr. Owen Fiss

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- (1) Local 38 members or apprentices
- (2) Local 38's present or former employees
- (3) Present or former Apprenticeship Committee members or ad hoc interviewers of apprenticeship applicants or present or former employees
- (4) Contractors and members of NECA, Cleveland Chapter, who are under collective bargaining agreements with defendant Local 38.

I request that any such interviews not take place, or if you insist upon these, that they take place in my office at times when I am able to be present.

I will appreciate your prompt reply.

Very truly yours,



Thurlow Smoot
Attorney for Defendants

TS:ko