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DJ 170-79-19  
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Massenburg v. Brenco, Inc.  
Petersburg, Virginia

Attached is an EEOC referral which the Eastern Section recommends should be sent back to the Commission and which you asked me to review. I think a great deal could be said in support of the Eastern Section's recommendation, and they should be commended on their sensitivity to the problem of "bad referrals", but on balance I would not send it back to EEOC.

The EEOC has isolated a discriminatory pattern and that concerns the assignment of Negroes to the heat treatment department -- the least desirable department in light of the heat and dirt (although the pay is the same). That department is virtually all-Negro (25 Negroes, one white). And in attempting to explain that pattern, the company only gets itself in more trouble:

We can speculate that this composition occurred through the gradual attrition on the part of white personnel. Unquestionably the heat treat department is the hottest department in the plant, both summer and winter, and it could be that Negroes are constitutionally more impervious to this condition than whites. The nature of the work, which involves loading and unloading furnaces, is not as constant as the

production work on the machine lines, and it could be that Negroes prefer this working rhythm over the steady production rhythm. The heat treat department is the only department that of necessity operates continuously, and there is a considerable amount of overtime in this department. The desire of the Negroes to earn this overtime is probably the most plausible explanation.  
(Letter of July 13, 1966 to EEOC, p.11)

It should also be noted that the racial pattern can not be explained solely on the basis of attrition; while more whites than Negroes might have resigned, people had to be assigned there as replacements. In fact, the information supplied by the company shows that in February 1966, three persons were assigned there, all Negro, while during the same period whites were also hired but assigned elsewhere.

This seems to me the heart of the EEOC referral. There are other allegations and findings by the EEOC -- e.g., that concerning the fact that only one Negro is a foreman, that the executive and clerical staff is all white and that the Tool and Supply room is all white -- but none of them are of any moment (there are only 9 clerical workers and only 4 who work in the Tool and Supply room). That is one of the reasons that argue in favor of sending it back. Another reason stems from the fact that in the report of the EEOC investigator the following statement appears:

The plant was again observed on July 25th 1966: the Steelworkers were striking, the men had been out nearly a week, the plant was surrounded by pickets, strikers, and local police.

It is deemed highly probable that many changes will occur at Brenco in the very near future. The new Steelworkers local will have a high proportion of Negro membership. The Negro members should be in position to demand and get fair representation. Anything now seen and reported might be found changed upon any subsequent investigation.

This certainly could be a "peg" upon which to hang a decision to return the referral; but, quite frankly, that's all it is. The Commission should be free to disregard the recommendation of one of its investigators; and more importantly, it should be noted that according to Alexander's letter, that presumably the EEOC did go back to the company -- in the course of conciliation. I think it is fair to presume that the union activity did not make any radical changes in the discriminatory pattern that is the subject of this referral and of the effort to conciliate.

For these reasons, I am inclined to push ahead.