

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

ROBERT G. FRANKLIN,)
5615 Byrams Ford Road)
Kansas City, Missouri 64129,)

and)

GLENN E. STEELE,)
14611 Bristol)
Grandview, Missouri 64030,)

and)

EDWARD W. LEWIS,)
3051 N. 30th Street)
Kansas City, Kansas 66104)

and)

DARRYL BAILEY,)
7309 E. 109th Street)
Kansas City, Missouri 64134)

and)

LEON BOOKER,)
8716 Sni-A-Bar Road)
Kansas City, Missouri 64129)

Plaintiffs,)

v.)

Case No. 4:06-CV-0004-GAF

LOCAL 2 of the SHEET METAL)
WORKERS' INTERNATIONAL)
ASSOCIATION,)
2902 S. Blue Ridge Blvd.)
Kansas City, Missouri 64129,)

JURY TRIAL DEMANDED

Defendant.)

COMPLAINT

Plaintiffs Robert G. Franklin, Glenn E. Steele, Edward W. Lewis, Darryl Bailey, and Leon Booker (“Plaintiffs”), by their counsel, and for their claims for relief against Defendant Local 2 of the Sheet Metal Workers’ International Association (“Defendant,” “Local 2” or the “Union”), state and allege as follows:

NATURE OF THE CASE

1. This is an action for racial discrimination arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, and the Civil Rights Act of 1870, as amended by the Civil Rights Act of 1991, 42 U.S.C. § 1981. Local 2 has engaged in illegal discrimination against its African-American members, including Plaintiffs, by, among other things, violating its protocol for job placements. Plaintiffs request all available relief as is appropriate under Title VII and § 1981.

PARTIES

2. Plaintiff Robert G. Franklin is an African-American sheet metal worker and a current member of Local 2. Since becoming a member of Local 2, Franklin has continuously worked or attempted to work through Local 2 as a sheet metal worker. Franklin brings this action on behalf of himself and all similarly situated persons.

3. Plaintiff Glenn E. Steele is an African-American sheet metal worker and a current member of Local 2. Since becoming a member of Local 2, Steele has continuously worked or attempted to work through Local 2 as a sheet metal worker. Steele brings this action on behalf of himself and all similarly situated persons.

4. Plaintiff Edward W. Lewis is an African-American sheet metal worker and a current member of Local 2. Since becoming a member of Local 2, Lewis has continuously worked or

attempted to work through Local 2 as a sheet metal worker. Lewis brings this action on behalf of himself and all similarly situated persons.

5. Plaintiff Darryl Bailey is an African-American sheet metal worker and a current member of Local 2. Since becoming a member of Local 2, Bailey has continuously worked or attempted to work through Local 2 as a sheet metal worker. Bailey brings this action on behalf of himself and all similarly situated persons.

6. Plaintiff Leon Booker is an African-American sheet metal worker and, at all times relevant hereto, a member of Local 2. Since becoming a member of Local 2, and until his recent retirement because of disability, Booker has continuously worked or attempted to work through Local 2 as a sheet metal worker. Booker brings this action on behalf of himself and all similarly situated persons.

7. Defendant Local 2 is a local affiliate of the Sheet Metal Workers International Association, which represents 150,000 skilled craftspersons in the unionized sheet metal industry throughout the United States, Canada, and Puerto Rico. Local 2 is a “labor organization,” affecting commerce, as defined in 42 U.S.C. § 2000e(d), with offices at 2902 S. Blue Ridge Blvd., Kansas City, Jackson County, Missouri.

CLASS ALLEGATIONS

8. The individual named Plaintiffs (“Plaintiffs”) bring this action pursuant to Rule 23(b)(2) or, alternatively, Rule 23(b)(3) of the Federal Rules of Civil Procedure on behalf of themselves and on behalf of a class of all similarly situated persons who were discriminated against in violation of Title VII and Section 1981 as described in this complaint.

9. The members of the class are sufficiently numerous that joinder of all members is impracticable. Based upon information and belief, the class of present and former African-

American Local 2 members is approximately 45 persons.

10. There are questions of law and fact common to the class. Such questions include, but are not limited to: (a) the discriminatory application of the referral procedures, including, but not limited to, the use of exceptions to exclude and overlook African-American members in job referrals; and, (b) the uniform retaliation against African-American members with the intent to chill the exercise of rights under Title VII and Section 1981.

11. The claims alleged by Plaintiffs are typical of the claims of the class.

12. Plaintiffs and their Counsel will fairly and adequately represent and protect the interests of the class.

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1343 and 1331.

14. This Court has personal jurisdiction over Defendant because the unlawful acts alleged in this Complaint were committed in Jackson County, Missouri.

15. Venue is proper in this Court pursuant to 28 U.S.C. §1391 because (a) Defendant conducts business within the Western District of Missouri and (b) a substantial part of the acts or omissions giving rise to Plaintiffs' claims occurred in Jackson County, Missouri, which lies within the Western Division of the Western District of Missouri.

BACKGROUND

A. The Collective Bargaining Agreement

16. At various times, Local 2 and the Sheet Metal and Air Conditioning Contractors' National Association-Kansas City Chapter ("SMACNA") entered into and renewed a Collective Bargaining Agreement ("CBA") that sets forth a racially-neutral protocol to facilitate job

placement for its members.

17. This protocol was created as part of efforts to resolve, or remain in compliance with settlements of, prior claims of race discrimination.

18. In order to qualify for job placement under the CBA, a sheet metal worker must (a) be a member of the Union; (b) have more than four years of actual, practical experience at the sheet metal trade in the building and construction trades industry; and, (c) successfully complete the sheet metal apprenticeship program approved by the United States Department of Labor-Bureau of Apprenticeship & Training.

19. The CBA requires, among other things, that unemployed union members place themselves on the Union's out-of-work list (the "List") to be referred to jobs as they become available.

20. With limited exceptions set forth below, priority for job referrals must be on a "first-in, first-out" basis (the "FIFO Referral Procedure").

21. Union members are required to note the date that they placed themselves on the List, which is maintained chronologically.

22. The CBA allows the FIFO Referral Procedure to be set aside only upon the occurrence of one or more of the following situations (the "Exceptions"):

- a. A contractor or its representative requests a specific union member;
- b. A union member secures employment from a contractor as a result of the union member's own solicitation efforts;
- c. A contractor or its representative requests from the Union a sheet metal worker with a particular skill (in which case the first worker on the List who possesses the required skill must be referred by the Union); or
- d. The Union places a job foreman and/or steward with a contractor.

B. Racial Discrimination by Local 2

23. At all relevant times, Plaintiffs were sheet metal workers under the jurisdiction of Local 2 and SMACNA and were qualified for job placement under the CBA.

24. Upon information and belief, from approximately January 2000 up to and including the date of the filing of this Complaint, Local 2 has consistently engaged in racial discrimination against its African-American members in violation of federal law and the FIFO Referral Procedure. In disregard of the FIFO Referral Procedure and in instances where none of the Exceptions applied, the Union has referred white members to SMACNA contractors instead of Plaintiffs or other qualified African-American members who were entitled to placement as a result of being at the top of the List.

25. Upon information and belief, in instances where none of the Exceptions applied, Local 2 has also failed to refer Plaintiffs or other qualified African-American members on the List, and has instead referred white workers *who were not even members* of Local 2 and whose names did *not* appear on the List.

26. As a result of these discriminatory practices, qualified African-American members on the List, including Plaintiffs, received disproportionately fewer job opportunities and less wages than whites who were consistently lower on the List. This disparity has resulted in African-American members, including Plaintiffs, receiving significantly less work hours and earning significantly less in wages than their white counterparts.

27. Upon information and belief, SMACNA contractors rely primarily on the Exceptions instead of the FIFO Referral Procedure to secure the services of union members, which has resulted in the consistent hiring of white workers over their similarly qualified African-American counterparts.

28. As a result of these and other practices, a disproportionate number of qualified African-American members whose names were on the List, including Plaintiffs, were consistently unemployed in comparison to white members. These African-American members, including Plaintiffs, have earned significantly less in wages than their white counterparts.

C. The Unlawful Retaliation Against the Plaintiffs

29. To seek relief from the Union's discriminatory practices, Plaintiffs filed charges of discrimination against Local 2 and Environmental Mechanical Contractors, a SMACNA contractor, before the Equal Employment Opportunity Commission ("EEOC").

30. As punishment and in retaliation for notifying the EEOC of the discrimination, Local 2 identified Plaintiffs to SMACNA contractors as the individuals who filed charges of discrimination with the EEOC. In addition, Local 2 posted, in plain view at its union hall, the monthly billing statements for legal fees associated with the EEOC investigation and identified Plaintiffs as those responsible for these expenditures.

31. As a result of Local 2's actions, several SMACNA contractors, who were aware of Plaintiffs' charges of discrimination before the EEOC, deliberately bypassed Plaintiffs for jobs for which they were qualified and entitled to according to the FIFO Referral Procedure. Instead of hiring Plaintiffs, the SMACNA contractors hired white sheet metal workers who were lower on the List than the Plaintiffs.

32. At the conclusion of its investigation, the EEOC issued a probable cause determination that the Union violated Title VII by engaging in a pattern of denying Plaintiffs and other qualified African-American members equal opportunity for hire into sheet metal jobs. The EEOC also concluded that the Union engaged in retaliation against Plaintiffs for filing charges of discrimination with the EEOC.

33. The EEOC issued right-to-sue letters on October 6, 2005. Plaintiffs have filed this Complaint in a timely manner, within ninety days of their receipt of the right-to-sue letters.

COUNT I
Race Discrimination in Job Placement
(Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(c))

34. Plaintiffs re-allege and incorporate by reference the allegations contained in paragraphs 1 through 33 above.

35. At all relevant times, Plaintiffs were on the List, seeking job placement through the Union, and were qualified for the jobs that became available. At all relevant times, Local 2 caused and attempted to cause contractors to discriminate against Plaintiffs on the basis of race.

36. In instances in which none of the Exceptions applied, Local 2 routinely violated the FIFO Referral Procedure by referring white members instead of Plaintiffs or other qualified African-American members who were first in line for available jobs. This practice created a significant disparity in the job opportunities and wages earned for Plaintiffs and other qualified African-American members in relation to their white counterparts.

37. With the permission of Local 2, SMACNA contractors routinely relied on the Exceptions in order to hire white union members, resulting in a significant disparity in the job opportunities and wages earned for Plaintiffs and other qualified African-American members in relation to their white counterparts.

38. Plaintiffs have been damaged as a direct and proximate result of the Union's discriminatory conduct and job placement practices. In particular, Plaintiffs have suffered injuries consisting of lost earnings, interest on lost earnings, seniority, and benefits, and other damages including, but not limited to:

- a. inconvenience;

- b. insult;
- c. mental distress;
- d. embarrassment;
- e. humiliation;
- f. anxiety; and,
- g. emotional pain and suffering.

39. By violating the CBA's job placement protocol, Local 2 acted intentionally in violation of 42 U.S.C. § 2000e-2(c) and with malice and/or reckless indifference to Plaintiffs' federally protected rights, thereby entitling the Plaintiffs to, *inter alia*, back pay, compensatory, and punitive damages under 42 U.S.C. § 1981a. Alternatively, Local 2's actions resulted in an unlawful disparate impact upon the African-American members in violation of 42 U.S.C. § 2000e-2(k). In addition, Plaintiffs are entitled to recover from Defendant their reasonable attorneys' fees, as provided by 42 U.S.C. § 2000e-5(k).

COUNT II
Retaliation
(Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3(a))

40. Plaintiffs re-allege and incorporate by reference the allegations contained in paragraphs 1 through 33 above.

41. Plaintiffs engaged in a federally protected activity by reporting Local 2 and members of SMACNA to the EEOC for engaging in racially discriminatory practices. Local 2 retaliated against Plaintiffs because Plaintiffs opposed unlawful employment practices and because they made charges of discrimination and assisted and participated in an investigation and proceeding under Title VII. Local 2 did so in the following ways, among others:

- a. Identifying to SMACNA contractors that Plaintiffs were the members of Local 2 complaining to the EEOC;
- b. Posting in the union hall the monthly billing statements for legal fees associated with the EEOC investigation and identifying Plaintiffs as those responsible for these expenditures;
- c. Attempting to alienate Plaintiffs from their fellow union members; and,
- d. Allowing certain SMACNA contractors who were aware of Plaintiffs' EEOC complaint to bypass Plaintiffs for jobs for which they were qualified and entitled under the FIFO Referral Procedure in favor of white members who were lower on the List.

42. Plaintiffs have been damaged as a direct and proximate result of Local 2's intentional retaliation and, in particular, Plaintiffs have suffered injuries consisting of lost earnings, seniority and benefits, and other damages including, but not limited to:

- a. inconvenience;
- b. insult;
- c. mental distress;
- d. embarrassment;
- e. humiliation;
- f. anxiety; and,
- g. emotional pain and suffering.

43. In retaliating against Plaintiffs as described, Local 2 acted with malice and/or reckless indifference to Plaintiffs' federally protected rights, thereby entitling the Plaintiffs to, *inter alia*, compensatory, and punitive damages under 42 U.S.C. § 1981a. In addition, Plaintiffs are entitled to recover from Defendant their reasonable attorneys' fees, as provided by 42 U.S.C. § 2000e-5(k).

COUNT III

**Race Discrimination in Job Placement Interfering With the Right to Contract
(Civil Rights Act of 1870, as amended by the Civil Rights Act of 1991, 42 U.S.C. § 1981)**

44. Plaintiffs re-allege and incorporate by reference the allegations contained in paragraphs 1 through 33 above.

45. At all relevant times, Plaintiffs were members of the Union and on the List, seeking job placement through the Union, and were qualified for the jobs that became available. At all relevant times, Local 2 caused and attempted to cause contractors to discriminate against Plaintiffs on the basis of race.

46. In instances in which none of the Exceptions applied, Local 2 routinely violated the FIFO Referral Procedure by referring white members instead Plaintiffs or other qualified African-American members who were first in line for available jobs. This practice created a disparity in the job opportunities and wages earned for Plaintiffs and other qualified African-American members in relation to their white counterparts.

47. Defendant's failure to adhere to the FIFO Referral Procedure constituted racial discrimination against Plaintiffs and interfered with Plaintiffs' right to make and enforce contracts as well as their right to the full and equal benefit of all laws and proceedings for the security of persons and property as enjoyed by white citizens, all in violation of 42 U.S.C. § 1981.

48. Plaintiffs have been damaged as a direct and proximate result of Local 2's discriminatory practices. In particular, they have suffered injuries consisting of lost earnings, seniority and benefits, and other damages including, but not limited to:

- a. inconvenience;
- b. insult;

- c. mental distress;
- d. embarrassment;
- e. humiliation;
- f. anxiety; and,
- g. emotional pain and suffering.

49. Local 2's discriminatory practices were willful, wanton, reckless, and malicious and further show a complete and deliberate indifference to, and conscious disregard for the Plaintiffs' rights. Therefore, Plaintiffs are entitled to an award of punitive or exemplary damages in an amount sufficient to punish Local 2 or to deter Local 2 and others from like conduct in the future. In addition, Plaintiffs are entitled to recover from Local 2 their reasonable attorneys' fees, as provided by 42 U.S.C. § 1988(b).

COUNT IV
Retaliation
(Civil Rights Act of 1870, as amended by the Civil Rights Act of 1991, 42 U.S.C. § 1981)

50. Plaintiffs re-allege and incorporate by reference the allegations contained in paragraphs 1 through 33 above.

51. Plaintiffs engaged in a federally protected activity by reporting Local 2 and members of SMACNA to the EEOC for engaging in racially discriminatory practices. Local 2 retaliated against Plaintiffs, because they opposed unlawful employment practices and because they (a) made charges and (b) assisted and participated in an investigation and proceeding under Title VII, by methods including, but not limited to:

- a. Identifying to SMACNA contractors that Plaintiffs were the members of Local 2 complaining to the EEOC;
- b. Posting in the union hall the monthly billing statements for legal fees associated with the EEOC investigation and identifying

Plaintiffs as those responsible for these expenditures;

- c. Attempting to alienate Plaintiffs from their fellow union members; and,
- d. Allowing certain SMACNA contractors who were aware of Plaintiffs' EEOC complaint to bypass Plaintiffs for jobs for which they were qualified and entitled under the FIFO Referral Procedure in favor of white members who were lower on the List.

52. Plaintiffs have been damaged as a direct and proximate result of Local 2's retaliation and, in particular, they have suffered injuries consisting of lost earnings, seniority and benefits, and other damages including, but not limited to:

- a. inconvenience;
- b. insult;
- c. mental distress;
- d. embarrassment;
- e. humiliation;
- f. anxiety; and,
- g. emotional pain and suffering.

53. In discriminating against Plaintiffs, Local 2 acted with malice and/or reckless indifference to Plaintiffs' federally protected rights, thereby entitling the Plaintiffs to punitive damages under 42 U.S.C. § 1981a. In addition, Plaintiffs are entitled to recover from Local 2 their reasonable attorneys' fees, as provided by 42 U.S.C. § 1988(b).

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs seek judgment in their favor and against Local 2 as follows:

- 1. Declaring that Defendant has been applying the CBA job placement protocol in a discriminatory manner;

2. Ordering Defendant to interpret and apply the job placement protocol in the CBA in a non-discriminatory manner;
3. Ordering Defendant to credit Plaintiffs for their lost seniority and to provide Plaintiffs with all past, present, and future benefits entitled to union members and such other declaratory and injunctive relief as is allowed under 42 U.S.C. § 2000e-5(g);
4. Awarding Plaintiffs back pay and compensatory damages;
5. Awarding punitive and exemplary damages under 42 U.S.C. § 1981a;
6. Awarding Plaintiffs reasonable attorneys' fees, as provided by 42 U.S.C. § 1988(b) and § 2000e-5(k);
7. Awarding Plaintiff all costs, interest (including prejudgment and postjudgment interest) as to which they are legally entitled; and,
8. Granting such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues so triable.

Respectfully submitted,

ARTHUR BENSON & ASSOCIATES

By s/Arthur A. Benson II
Arthur A. Benson II #21107
Jamie Kathryn Lansford #31133
4006 Central Avenue (Courier Zip: 64111)
P.O. Box 119007
Kansas City, Missouri 64171-9007
(816) 531-6565
(816) 531-6688 (telefacsimile)
abenson@bensonlaw.com
jlansford@bensonlaw.com

and

THE LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER THE LAW

Michael Foreman
Audrey Wiggins
1401 New York Avenue, N.W.
Suite 400
Washington, D.C. 20005
(202) 662-8351
(202) 783-0857 (telefacsimile)
mforeman@lawyerscommittee.org
awiggins@lawyerscommittee.org

Attorneys for Plaintiffs