

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

ROBERT G. FRANKLIN, *et al.*,)
)
 Plaintiffs,)
)
 v.)
)
 SHEET METAL WORKERS)
 INTERNATIONAL ASSOCIATION)
 LOCAL UNION NO. 2,)
)
 Defendants.)

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

ANSWER

COMES NOW the defendant, Sheet Metal Workers International Association, Local Union No. 2, and for its answer to the plaintiffs' complaint, states as follows:

First Defense

1. Defendant admits that the defendants have brought an action under Title VII of the Civil Rights Act of 1964, and under the Civil Rights act of 1871. Stating further, defendant denies that it engaged in any form of discrimination or retaliation, and it denies that the plaintiffs are entitled to any relief.

2. Defendant admits that plaintiff Franklin is an African-American sheet metal worker. Defendant denies that Franklin has worked or attempted to work continuously as a Local 2 sheet metal worker. Defendant further denies that

plaintiff Franklin may bring this action on behalf of other sheet metal workers, or that other sheet metal workers are similarly situated to Franklin.

3. Defendant admits that plaintiff Steele is an African-American sheet metal worker. Defendant denies that Steele has worked or attempted to work continuously as a Local 2 sheet metal worker. Defendant further denies that plaintiff Steele may bring this action on behalf of other sheet metal workers, or that other sheet metal workers are similarly situated to Steele.

4. Defendant admits that plaintiff Lewis is an African-American sheet metal worker. Defendant denies that Lewis has worked or attempted to work continuously as a Local 2 sheet metal worker. Defendant further denies that plaintiff Lewis may bring this action on behalf of other sheet metal workers, or that other sheet metal workers are similarly situated to Lewis.

5. Defendant admits that plaintiff Bailey is an African-American sheet metal worker. Defendant denies that Bailey worked or attempted to work continuously as a Local 2 sheet metal worker. Defendant further denies that plaintiff Bailey may bring this action on behalf of other sheet metal workers, or that other sheet metal workers are similarly situated to Bailey.

6. Defendant admits that plaintiff Booker is an African-American sheet metal worker. Defendant denies that Booker has worked or attempted to work continuously as a Local 2 sheet metal worker. Defendant further denies that plaintiff Booker may bring this action on behalf of other sheet metal workers, or that other sheet metal workers are similarly situated to Booker.

7. Admitted

8. Defendant admits that the plaintiffs purport to bring this action as a class action, but deny that a class action is available to them under the facts and circumstances of this case. Defendant further denies that the plaintiffs are similarly situated to other African American sheet metal workers, or that any sheet metal workers have suffered discrimination as a result of race.

9. Defendant denies that any class exists that has suffered discrimination by Local 2. Defendant further denies that any class the plaintiffs purport to identify is sufficiently numerous to justify treatment as a class under Rule 23, Fed. R. Civ. P.

10. Defendant denies that there is any class of sheet metal workers that has questions of law and fact in common with the plaintiffs. Defendant further denies that it has engaged in discrimination or retaliation against any sheet metal worker.

11. Denied.

12. Denied.

13. Admitted.

14. Defendant admits that the court may assert personal jurisdiction over it, but denies that it has engaged in unlawful acts.

15. Defendant admits that venue is appropriate in this district, but denies that it engaged in any act or omission giving rise to claims by the plaintiffs.

16. Defendant admits that it has been party to a series of collective bargaining agreements with SMACNA and other contractors since 2000. Defendant denies that the contract books contain the full referral policy applicable to Local 2 the signatory contractors. Defendant further admits that the referral procedure is race-neutral on its face and in its operation.

17. In response to ¶ 17, the defendant states that the referral system in place was incorporated into a consent decree in federal court, and that the EEOC and the federal court approved of the consent decree. Defendant states that it entered into the consent decree to avoid the expense of litigation. Defendant denies that it engaged in any discrimination that would have given rise to meritorious claims of discrimination.

18. Denied.

19. In response to ¶ 19, the defendant states that all unemployed sheet metal workers are required to register on the out of work list. Defendant further states that out of work sheet metal workers may obtain employment by solicitation or request, and are not required to wait for a direct referral from the out of work list to obtain employment by a Local 2 contractor.

20. Defendant admits that referrals directly from the out of work list must generally occur on a first in first out basis. Defendant denies that direct placement off of the referral list is the primary means of obtaining work for a journeyman sheet metal worker.

21. Defendant denies that it is the responsibility of the members to note the date of their placement on the out of work list, but admits that the out of work list is maintained in chronological order, according to the date the worker notified Local 2 of his or her unemployment.

22. Defendant admits that the plaintiffs have identified some of the ways that a sheet metal worker on the out of work list may obtain employment sooner than a worker higher on the list. Defendant denies that the plaintiffs have identified all of the ways that a sheet metal worker may obtain employment sooner than someone else who is higher on the list.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

32. Defendant admits that the EEOC issued a probable cause determination regarding the plaintiff's complaints of discrimination and retaliation, but denies that the EEOC's determination is material to the determination of the legal and factual issues present in this lawsuit. Defendant

further denies that the EEOC's findings resulted from an accurate interpretation of either the facts or the law.

33. Because the plaintiffs have not identified the charges on which they base this lawsuit, Defendant does not possess sufficient information and belief to form an opinion as to the truth or falsity of the allegations set forth in paragraph 33, and therefore denies those allegations.

34. For its answer to ¶ 34, the defendant incorporates its responses to ¶¶ 1 through 33.

35. Denied.

36. Denied.

37. Denied.

38. Denied.

39. Denied.

40. For its answer to ¶ 40, the defendant incorporates its responses to ¶¶ 1 through 39.

41. Denied.

42. Denied.

43. Denied.

44. For its answer to ¶ 44, the defendant incorporates its responses to ¶¶ 1 through 43.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

49. Denied.

50. For its answer to ¶ 50, the defendant incorporates its responses to ¶¶ 1 through 49.

51. Denied.

52. Denied.

53. Denied.

54. Defendant denies each and every allegation in ¶¶ 1 to 53 except for those allegations specifically admitted in this answer.

Second Defense

Plaintiffs fail to state a claim for which relief may be granted.

Third Defense

Any injuries that the plaintiffs might have suffered occurred as a result of their own actions.

Fourth Defense

Any injuries that the plaintiffs might have suffered occurred as a result of the actions of parties for whom this defendant bears no responsibility.

Fifth Defense

The defendant undertook all actions with respect to the plaintiffs with a reasonable non-discriminatory business purpose.

Sixth Defense

The applicable statutes of limitations bar all or some of the plaintiffs' claims.

Seventh Defense

The plaintiffs have failed to mitigate any damages they might have suffered.

Eighth Defense

The plaintiffs' claims are barred by laches, in that the claims remained too long with the EEOC.

Ninth Defense

Plaintiffs' claims for equitable relief are barred in that they have come into court with unclean hands.

Tenth Defense

Portions of the plaintiffs' claims are barred by collateral estoppel and/or res judicata in that those issues have been determined in other forums.

Eleventh Defense

The plaintiffs have failed to exhaust the contractual remedies available to them.

Defendants reserve the right to assert additional defenses that might arise during the course of discovery.

WHEREFORE, defendant Sheet Metal Workers Local 2 prays that the court dismiss the plaintiffs' claims in their entirety; that the plaintiffs take nothing by their claims; and that the court grant the defendant its costs and attorneys fees incurred in defending this action.

Respectfully Submitted,

JOLLEY, WALSH, HURLEY,
& RAISHER, P.C.
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By:

/s/ Donald R. Aubry
Donald R. Aubry

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 2d day of March, 2006, he filed the above document via the court's electronic filing system, and that all counsel for plaintiffs were electronically served through that system.

/s/ Donald R. Aubry