

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ORACLE AMERICA, INC.,

Plaintiff,

vs.

U.S. DEPARTMENT OF LABOR, *et al.*,

Defendants,

and

COMMUNICATIONS WORKERS OF AMERICA,
et al.,

*Proposed Intervenors-
Defendants*

Case No. 1:19-cv-3574 (APM)

DECLARATION OF FRED REDMOND

I, Fred Redmond, declare as follows:

1. My name is Fred Redmond. I am the International Vice President for Human Affairs of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC, commonly known as the United Steelworkers (“USW” or “the Union”). The statements made in this declaration are based on my personal knowledge, materials I have reviewed, and information made available to me pursuant to my duties as an officer of USW.

2. I submit this declaration in support of USW’s proposed intervention in *Oracle America, Inc. v. U.S. Dep’t of Labor*, 19-cv-3574 (D.D.C.). In that lawsuit, Oracle seeks to strip the Office of Federal Contract Compliance Programs (“OFCCP”) of its longstanding authority to pursue enforcement actions against employers, such as Oracle, that violate the nondiscrimination

provisions of Executive Order 11,246. *See* Exec. Order No. 11246, 30 Fed. Reg. 12319 (Sept. 24, 1965).

3. I joined USW in 1973 when I went to work at Reynolds Metals Company in McCook, Illinois and became a member of Local 3911—serving as a shop steward, grievance committee member, chairman, and vice president. I also served three terms as president of Local 3911. I was appointed to the International Staff of USW in 1996 and have held a number of positions.

4. In 2005, I was elected to serve as USW's International Vice President for Human Affairs. I took office on March 1, 2006, and I was re-elected to that office in 2009, 2013, and 2017. My current term continues through March 1, 2022.

5. Among my responsibilities as an International Vice President, I oversee USW's Civil and Human Rights Department and serve as the point of contact between the Steelworkers and various civil rights organizations. I also have bargaining responsibilities in several of the Steelworkers' sectors. As relevant to this matter, I have chaired the last three bargaining rounds with Huntington Ingalls Incorporated, Newport News Shipbuilding - an employer subject to OFCCP's jurisdiction because it builds aircraft carriers and nuclear submarines for the U.S. Navy, and at which we represent over 10,000 employees.

6. USW is North America's largest industrial union. We represent approximately 600,000 members in the United States, Canada, and the Caribbean. Many of our members are employed by employers subject to OFCCP's jurisdiction.

7. Our membership reflects the gender and racial diversity of the population of the United States, and we are committed to working toward full equality and civil rights for all persons. This mission is established by USW's Constitution, a true and correct copy of excerpts

of which is attached as Exhibit 1, which provides that the objective of the Union is, among other things, “to seek to eliminate all forms of discrimination; to protect and extend our democratic institutions and civil rights and liberties; and to perpetuate and extend the cherished traditions of democracy and social and economic justice in the United States, Canada and the world community.” Ex. 1 art. II.

8. As described herein, the relief that Oracle seeks in this lawsuit—stripping OFCCP of its longstanding authority to enforce the antidiscrimination provisions of Executive Order 11,246—would significantly inhibit USW in its effectuation of this mission and may require a substantial diversion of resources to address the gap that would be left in the area of enforcing the antidiscrimination laws with respect to complaints of race- and gender-based workplace discrimination at federal contractor employers. In particular, USW would have to reconsider the way that union representatives handle claims of workplace discrimination made by union members—potentially adjusting to allow the Union to take on more claims, as opposed to referring them to OFCCP.

9. An important part of USW’s mission is to eradicate workplace discrimination. The Civil and Human Rights Department of USW—which reports to me in my role as International Vice President for Human Affairs—is the department principally tasked with effectuating the Union’s mission to root out discrimination. This Department’s priority is to provide technical expertise in handling workplace discrimination problems, including at federal contractor employers; to conduct education and training seminars on civil rights, including women’s rights; to develop resource material; and to provide district and local union representatives with updated information on the subject of human rights.

10. USW also assigns certain District- and Local-level representatives with primary responsibility for addressing these complaints of workplace discrimination and harassment. Each District has on staff a Civil Rights Coordinator, and each local union is required by our Constitution to establish a Civil Rights Committee, which typically operates under the direction of the International Union. *See* Ex. 1 art. VII § 12. In addition, some collective bargaining agreements also establish a Joint Committee on Civil Rights—which includes representatives of the employer and the relevant Local Union. These Coordinators and Committees conduct preliminary investigations of claims of discrimination, make referrals to the Grievance Committees for complaints of activity that would violate the terms of a collective bargaining agreement, and advise members on options for remediation. A true and correct copy of relevant excerpts of a sample USW collective bargaining agreement is attached as Exhibit 2.

11. However, neither the District Civil Rights Coordinators nor the Local Union Civil Rights Committees and Joint Committees, which are populated by lay members, have the capacity—including time, resources, and legal expertise—to fully address the myriad claims of workplace discrimination. The District Coordinators and Committees do not have the necessary resources to investigate important claims of workplace discrimination, especially those that would require an investigation into company-wide or facility-wide practices, and complaints of policies or practices that result in discriminatory impact on certain protected groups of employees. Our union representatives also do not possess the relevant legal expertise necessary to represent members through arbitration proceedings that would involve complex questions of federal civil rights law.

12. More generally, the labor arbitration process, established through most of USW's collective bargaining agreements, itself is not equipped to fully and sufficiently address many of

the claims of workplace discrimination and to substitute for a governmental entity such as OFCCP. A labor arbitrator's authority is established by the parties' collective bargaining agreement, and that authority is often limited to resolving questions involving the interpretation and application of the labor agreement itself and other collectively-bargained plans, and typically excludes the authority to adjudicate questions of federal civil rights laws, including claims under Executive Order 11,246, *See, e.g.*, Ex. 2, art. 12 § sec. 4 ("The arbitrator shall consider grievances involving the application and interpretation of the provisions of this Agreement."). Even if a labor arbitrator could make determinations regarding federal civil rights laws, many would lack the legal expertise necessary to do so since not all labor arbitrators have had legal training

13. Labor arbitration is intended to be an informal process for resolving disputes arising within a collective bargaining relationship and is seen as a substitute both for labor strife and for litigation of contractual disputes in the courts. While there is a generalized right to request information relevant to the matters involved with a grievance, labor arbitration does not include anything resembling a legal discovery process and the authority of an arbitrator to compel production is circumscribed. Further, unless specifically authorized by the bargaining parties, a labor arbitrator may lack the authority to award the full scope of remedies necessary to remediate claims of workplace discrimination.

14. Given the above, USW knows that labor arbitration, in general, is not the most effective or appropriate method for resolving all claims of workplace discrimination, including claims arising under federal civil rights laws, such as Executive Order 11,246. Accordingly, we typically do not include in our collective bargaining agreements provisions requiring workers to bring any work-related claims solely through the labor arbitration process—despite the U.S.

Supreme Court's affirmation that such provisions are enforceable as a matter of law, *see generally 14 Penn Plaza LLC v. Pyett*, 556 U.S. 247 (2009). It remains our strong policy preference to allow our members to seek redress for claims of workplace discrimination before federal and state agencies, including OFCCP, which are established and maintained to investigate, process, and decide such claims.

15. Thus, USW, as part of its mission to root out discrimination in the workplace, relies on the enforcement capacity of federal and state agencies, including OFCCP, to remedy claims of discrimination by Union members. To that end, the Civil and Human Rights Department provides information about OFCCP in its Civil Rights Guidelines, and instructs Civil Rights Committees to familiarize themselves with "time limits and procedures for filing civil rights complaints with the city, state, and federal agencies, so as to render assistance to those members who are compelled to invoke the various city, state, and federal laws in order to obtain their rights." *USW Civil and Human Rights Guidelines*, USW (Feb. 9, 2014) <https://www.usw.org/act/activism/civil-rights/resources/usw-civil-and-human-rights-guidelines>.

16. In addition, the Union works with OFCCP in its efforts to enter conciliation agreement negotiations for employers at which we represent members. For example, in October 2019, OFCCP entered into a conciliation agreement with the Northern Indiana Public Service Company ("NIPSCO"), where we represent members. OFCCP found that NIPSCO had discriminated on the basis of race and gender in its hiring practices. *See Class Member Locator Case Summary*, OFCCP, <https://www.dol.gov/ofccp/regs/compliance/pdf/ClassMemberLocatorCaseSummary.html> (last visited Mar. 16, 2020). In exchange for OFCCP agreeing not to file a formal enforcement proceedings, NIPSCO agreed, among other things, to pay \$1,000,000, offer employment to class members, modify its hiring practices to root out

discrimination, and provide periodic reports to OFCCP on its progress. *See Conciliation Agreement*, OFCCP, <https://www.dol.gov/ofccp/foia/files/20191018Nipsco-CA-192056And193125-MW-Redacted.pdf> (last visited Mar. 16, 2020). During the negotiation of that conciliation agreement, OFCCP engaged USW to allow us to weigh in on the application of collective bargaining agreement rights such as seniority of the class members who would be offered jobs as a part of the agreement and therefore become union members. If OFCCP had not proceeded with its case involving NIPSCO, the Steelworkers would have had no ability to redress these questions involving the employer's hiring practices because a union's authority as a bargaining agent only applies to persons who are employed by an employer and persons who have been denied employment are not employees of that employer.

17. If Oracle is successful in its ongoing lawsuit against the Department of Labor, OFCCP will no longer have the authority to enter into conciliation agreements or bring enforcement actions for violations of certain civil rights laws, like Executive Order 11,246— authority that the Steelworkers presently rely on as a critical component to the overall ways that we address workplace discrimination at our employers. As a result, USW would be required to consider expending additional resources to, among other things:

- a. Hire additional staff to enable districts and locals to more effectively investigate complex complaints of workplace discrimination;
- b. Expand the responsibilities and capacity of Civil Rights Coordinators and Committees;
- c. Provide updated training and educational materials to Districts and local unions on best practices for investigating claims of workplace discrimination and representing members through the labor arbitration process on such claims;

- d. Provide representation for members who will now seek to remediate discrimination complaints through the labor arbitration process, instead of bringing such claims to OFCCP; and
- e. Retain outside counsel to advise in complicated matters, or re-direct the responsibilities of in-house counsel.

18. In addition, USW may endeavor to change collective bargaining agreements to expand the grievance process to provide labor arbitrators with additional authority to more fully resolve claims that presently are heard by OFCCP—including by increasing an arbitrators' ability to conduct investigations into company practices and the authority to provide the full panoply of remedies currently available to employees through the OFCCP process.

19. No employer would be compelled as a matter of federal labor law to agree to any such changes. Such bargaining may require the Union to make concessions on other subjects of importance, in order to reach agreement with employers and the Union negotiators and members involved in the bargaining would have to balance these areas with all of the other priorities facing the Union and its workers.

20. In sum, it is the mission of USW to protect its members from workplace discrimination and we rely upon the existing federal and state agencies empowered to address statutory claims of discrimination. Because the Union itself is often not best situated to address such complaints, USW relies on OFCCP, and OFCCP's authority to enforce the anti-discrimination provisions of Executive Order 11,246, to effectuate that mission. Should Oracle succeed in its lawsuit, USW will be forced to consider diverting resources to fill the gap left by OFCCP in order to ensure that union members continue to possess the range of critical legal protections necessary to engage in employment free of discrimination.

21. USW has, since at least the modern era of civil rights law and enforcement, relied on federal agencies, like OFCCP, to typically handle claims of workplace discrimination. Indeed, USW's modern operations have been built around that fact—including USW's collective bargaining efforts, the way in which the Union has operationalized Civil Rights Coordinators and Committees, and the way in which union representatives handle and advise on complaints by Union members of workplace discrimination. It is difficult to predict the amount of resources USW would have to expend to change its practices and procedures in such a way as to allow the Union itself to take on claims of workplace discrimination more routinely and in a more comprehensive way. But the resource expenditure would certainly be significant and thus would draw resources away from other equally important Union efforts.

* * *

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing declaration is true and correct to the best of my knowledge, information, and belief.

Executed on March 17, 2020,



Fred Redmond

EXHIBIT 1

Constitution of International Union UNITED STEELWORKERS

MANUAL



ADOPTED AT
LAS VEGAS, NEVADA
APRIL, 2017

ARTICLE I

Name

1 This Organization shall be known as the United
2 Steel, Paper and Forestry, Rubber, Manufacturing,
3 Energy, Allied Industrial and Service Workers
4 International Union (to be known in short as the
5 "United Steelworkers" and by the acronym "USW").
6 This document shall be known as the Constitution and
7 By Laws of the International Union and it shall also be
8 the Constitution of each Local Union chartered by the
9 International Union.

ARTICLE II

Objects

10 First. To unite in this union all working men and
11 working women eligible for membership.

12 Second. To establish through collective bargaining
13 adequate wage standards, shorter hours of work and
14 improvements in the conditions of employment for
15 workers in industry.

16 Third. To engage in educational, legislative, polit-
17 ical, civic, social, welfare, community and other activ-
18 ities; to advance and safeguard the economic security
19 and social welfare of workers in industry, the
20 International Union, its Local Unions and the free labor
21 movements of the United States, Canada and the world;
22 to seek to eliminate all forms of discrimination; to pro-
23 tect and extend our democratic institutions and civil

1 rights and liberties; and to perpetuate and extend the
2 cherished traditions of democracy and social and eco-
3 nomic justice in the United States, Canada and the
4 world community.

5 Fourth. To function as an autonomous
6 International Union affiliated with other international
7 unions in national and international federations in the
8 United States, Canada and the free world; to unify and
9 solidify the International Union, its Local Unions and
10 the entire labor movement; and to provide financial and
11 other aid and assistance to labor and other organiza-
12 tions in the United States, Canada and other parts of the
13 world.

14 Fifth. To take all steps and actions consistent with
15 the Constitution and policies of the International Union
16 to implement and carry out the objects, rights, activities
17 and responsibilities of this organization.

ARTICLE III

Eligibility

18 Section 1. All working men and working women in
19 the United States, Canada, insular areas adjacent there-
20 to and the Western Hemisphere, for whom the union
21 assumes or seeks to assume the collective bargaining
22 and other responsibilities set forth in Article II, and all
23 officers, staff representatives and employees of the
24 International Union, are eligible for membership.

25 Section 2. Persons having supervisory power shall
26 be eligible for membership subject to the terms estab-