

Associated Transport, Inc. and Harold C. James

Local 182, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Associated Transport, Inc.) and Harold C. James. Cases 3-CA-2663 and 3-CB-839

February 29, 1968

PROPOSED AMENDED DECISION AND SUPPLEMENTAL ORDER*

BY CHAIRMAN McCULLOCH AND MEMBERS FANNING, JENKINS, AND ZAGORIA

On December 27, 1965, a three-member panel of the National Labor Relations Board exercising powers delegated to it pursuant to the provisions of Section 3(b) of the Act, issued its Decision and Order in the above-entitled cases, finding that the Respondent Employer and Respondent Union had violated the National Labor Relations Act, as amended, and ordered both Respondents to take certain remedial action to effectuate the policies of the Act.¹

Upon its own motion, the Board has decided to reconsider the Decision and Order of the panel.

The Board having reconsidered the matter, upon the entire record in these cases, has decided to withdraw that portion of the Decision and Order directed to Respondent Employer, Associated Transport, Inc., for the reasons stated below.²

The Board is now of the view that the complaint alleging violations of Section 8(a)(3) and (1) by Respondent Employer should be dismissed in its entirety.

Section 8(a)(3) of the Act provides in relevant part:

That no employer shall justify any discrimination against an employee for nonmembership in a labor organization . . . (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

The Charging Party, James, was delinquent in the payment of dues to Respondent Union. We have nevertheless found the Respondent Union violated Section 8(b)(2) and 8(b)(1)(A) in causing James' discharge because it had never properly apprised him that he was required to join the Union under the existing union-security clause. However, there

is no evidence that Respondent Employer was aware of Respondent Union's failure to perform the fiduciary duty it owed James. According to James' own testimony, at the interview with Terminal Manager Hays at which he was told of his suspension or discharge, he asked Hays the reason for the action against him. Hays replied, "It has something to do with your dues . . ." James did not protest that he had paid his dues or that he had not been properly informed of his dues obligation. Instead, he said only that he would call the Union as soon as he returned home. In these circumstances, we find that Respondent Employer did not have reasonable cause to believe that Respondent Union had terminated or denied James' membership for reasons other than his failure to tender the periodic dues uniformly required as a condition of acquiring or retaining membership.³ Accordingly, we find that Respondent Employer has not violated Section 8(a)(3) and (1) of the Act.

PROPOSED AMENDED REMEDY

Having found that Respondent Union has violated Section 8(b)(1)(A) and (b)(2) of the Act, we shall order it to cease and desist from engaging in such conduct in the future and affirmatively to take such action as will dissipate the effects of its unfair labor practices. We shall order Respondent Union to notify Respondent Employer, in writing, with a copy to Harold C. James, that it withdraws its objections to Respondent Employer's employment of James and does not oppose his reinstatement or the restoration of his seniority as it existed on December 31, 1964, the date of his discharge or suspension.

We shall also order the Union to make James whole for any loss of pay suffered by reason of discrimination against him, by payment to him of a sum of money equal to the amount he would normally have earned as wages, from the date of the discrimination until James' reinstatement, less his net earnings during this period. The loss of earnings shall be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289, and with interest on the backpay due in accordance with Board policy set out in *Isis Plumbing & Heating Co.*, 138 NLRB 716.

PROPOSED AMENDED ADDITIONAL CONCLUSION OF LAW

Substitute the following for Trial Examiner's conclusion of law numbered 3.

finds that no prejudicial error was committed. In agreement with the panel he affirms such rulings. Also, in agreement with the panel he adopts the findings, conclusions, and recommendations of the Trial Examiner only to the extent they are consistent with the original panel Decision and Order and with this Proposed Amended Decision and Supplemental Order

³ *Special Machine and Engineering Company*, 109 NLRB 838.

* Absent exceptions, the Board, on March 27, 1968, adopted as its final Order herein the Proposed Amended Decision and Supplemental Order
¹ 156 NLRB 335.

² Member Fanning, who did not participate in the original panel decision, has considered the entire record in this proceeding, including the Trial Examiner's Decision, the exceptions and the supporting brief. He has reviewed the rulings of the Trial Examiner made at the hearing and

"3. By causing Respondent Associated Transport, Inc. to discharge Harold C. James for reasons other than his failure to tender periodic dues and initiation fees, Respondent Union violated Section 8(b)(2) and (1)(A) of the Act."

Delete the Trial Examiner's conclusion of law numbered 4 and renumber the succeeding conclusions of law consecutively.

PROPOSED SUPPLEMENTAL ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board vacates its previous Order of December 27, 1965, with respect to that portion directed to Respondent Employer, Associated Transport, Inc., North Tonawanda, New York, and hereby orders that the complaint alleging violations of the Act by Respondent Employer be dismissed in its entirety.

IT IS ALSO ORDERED that the words "Jointly and severally with Respondent Employer" be deleted from section 2(a) of the Order directed to Respondent Union.

NOTICE

The parties are hereby notified that they have 20 days from the date of issuance of this Proposed Amended Decision and Supplemental Order within which to file exceptions thereto and supporting briefs with the Board in Washington, D.C.

MEMBER JENKINS, dissenting in part:

I agree with my colleagues' conclusions that the Respondent Union violated Section 8(b)(2) and 8(b)(1)(A) in causing James' discharge because it had never properly apprised him that he was required to join the Union under the existing union-security clause. For the following reasons, I disagree with their dismissal of Section 8(a)(3) and (1) allegations of similar violations by the Employer:

The Employer hired James as an over-the-road truckdriver in August 1956 at its North Tonawanda, New York, terminal. James worked continuously for the Employer as an over-the-road driver until December 31, 1964, when he was discharged at the request of Respondent Union. During James' entire period of employment Teamsters' Local 449 was the collective-bargaining representative of the Employer's over-the-road drivers.⁴ Additionally, Joseph Hays, Jr., the Employer's terminal manager at North Tonawanda, testified that the Employer always administered the collective-bargaining agreement covering the over-the-road drivers with Local 449, dealing particularly with Anthony Sorrentino,

business agent of that Local. Moreover, according to Hays, he believed that all the Employer's over-the-road drivers were members of Local 449, and that the Local grievance committee established to consider grievances involving the Employer's over-the-road drivers was comprised of representatives of Local 449 and no other Teamsters local. Finally, Rockwell F. DePerno, president of Respondent Union, in effect admitted that the grievance procedure established in the contract required an over-the-road driver employed by the Employer to file all grievances with a representative of Local 449 since Respondent Employer was within the jurisdiction of Local 449.

In these circumstances, the sudden demand for James' discharge made by DePerno, a union representative with whom the Employer did not normally deal, on behalf of a Local with which the Employer had no dealings, placed the Employer under an obligation at least to investigate the circumstances of the demand and to determine whether it was his responsibility under the Agreement to accede to the demand.

A brief investigation would have revealed that Local 449 rejected James' application for membership, refused to process his grievance, and that membership in Local 449 was not available to him on the same terms and conditions generally applicable to all of the other over-the-road drivers in its employ. Such investigation would have also revealed that because James was denied membership in Local 449, he became a member of Local 182 only after DePerno told him that unless he was a union member he would not be permitted to pull freight from the Utica terminal, which was within the jurisdiction of Local 182; that he was thereafter expelled from membership in Local 182 because of nonpayment of dues but was never notified of such expulsion; and finally that he was never apprised of his membership obligations prior to his termination. In short, such an investigation would have quickly established the unlawful nature of the Union's demand for James' discharge, and the curious character of the circumstances catalogued above should have impelled the investigation.⁵

Accordingly, I would hold that in acceding to the Union's unlawful demand, the employer thereby violated Section 8(a)(3) and (1) of the Act.⁶

My colleagues' dismissal of the 8(a)(3) and (1) allegations of the complaint overlooks a grave point made by the General Counsel, that under the terms of the 1964 Teamsters Agreement, only Local 449 had standing to enforce the union-security clause, and that as Respondent Local 182 acted without such legal right it violated Section 8(b)(2) of the Act

⁴ During this same period of time, Respondent's city drivers and dock employees were represented by Teamsters' Local 375.

⁵ James' silence at the time of his discharge by the Employer is not significant, for James had long been rejected by Local 449, had been expelled

by Local 182, and undoubtedly believed at that moment any protest on his part would be fruitless and that his plight was indeed hopeless.

⁶ *IUE, Frigidaire Local 801 [General Motors Corp.] v. N.L.R.B.*, 307 F.2d 679 (C.A.D.C.), cert. denied 371 U.S. 936

by causing James' discharge, and that Respondent Employer violated 8(a)(3) by acquiescing in and effectuating a demand for his discharge not authorized by the Agreement. The majority absolves Respondent Employer of any unlawful conduct by assuming, *arguendo*, that Local 449 could lawfully transfer James out of its jurisdiction to that of Local 182, so as to require James to become and remain a member of Local 182 in order to retain his

job. If, in fact, the pertinent collective-bargaining agreements (to which Respondent Employer was bound) barred Local 182 from lawfully demanding James' discharge, Respondent Employer clearly would have violated Section 8(a)(3) in honoring such demand. Thus the Board has in my view dismissed the 8(a)(3) and (1) allegations without the requisite consideration of the relevant evidence.