A & H Truck Line, Inc. *and* Johnnie A. Engler. Case 9–CA–9685

November 24, 1976

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS FANNING AND PENELLO

On April 20, 1976, Administrative Law Judge Jerry B. Stone issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and the Respondent filed a brief in support of the Decision of the Administrative Law Judge and in opposition to the exceptions of the General Counsel.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

[1] The General Counsel has in effect excepted to certain credibility findings made by the Administrative Law Judge concerning findings that the Respondent had an established practice or policy of not transferring drivers between terminals represented by different local unions It is, of course, the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect *Standard Dry Wall Products, Inc*, 91 NLRB 544 (1950), enfd 188 F 2d 362 (C A 3, 1951) We have carefully examined the record and find no basis for reversing his findings

DECISION

STATEMENT OF THE CASE

JERRY B. STONE, Administrative Law Judge: This proceeding, under Section 10(b) of the National Labor Relations Act, as amended, was heard pursuant to due notice on February 4, 1975, at Paducah, Kentucky.

The charge and amended charge were filed on September 29, 1975, and November 4, 1975, respectively. The complaint in this matter was issued on November 25, 1975. The issues concern whether Respondent has discriminatorily refused to transfer Johnnie A. Engler from its Evansville, Indiana, location to its Paducah, Kentucky, location in order to unlawfully encourage membership in Teamsters Local 236.

All parties were afforded full opportunity to participate in the proceeding. Briefs have been filed by the General Counsel and Respondent and have been considered.

Upon the entire record in the case and from my observation of witnesses, I hereby make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

The facts herein are based upon the pleadings and admissions therein.

A & H Truck Line, Inc., the Respondent, is an Indiana corporation, engaged in business in several States of the United States as a common carrier operating over designated routes, under authorization from the Interstate Commerce Commission, from its Evansville and Paducah facilities, the locations involved herein. During a representative 12-month period, Respondent received revenues in excess of $50,000 for services performed as a common carrier in the interstate transportation of goods and commodities.

As conceded by Respondent and based upon the foregoing, it is concluded and found that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED [1]

Local Union No. 215 and Local Union No. 236, affiliated with the International Brotherhood of Teamsters, Chauffeurs and Warehousemen and Helpers of America are, and have been at all times material herein, labor organizations within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Preliminary Findings; Supervisory Status*[2]

At all times material herein, the following named persons, employed by Respondent in the position set opposite their respective names, are, and have been, supervisors as defined in Section 2(11) of the Act and agents of Respondent acting on its behalf:

Lawrence Mattingly—Executive Vice President
Richard Young—Director of Safety and Driver Supervision

B. *Background*

1. A & H Truck Line, Inc., Respondent, is, and has been for many years, engaged in business in several States of the

[1] The facts are based upon the pleadings and admissions therein
[2] The facts are based upon the pleadings and admissions therein

United States as a common carrier. It appears that it has had for many years a number of terminals and that at the present it has 17 terminals, including terminals at Evansville, Indiana, and Paducah, Kentucky. Respondent appears to have had for many years a large employee complement, and it now has a total of approximately 700 drivers (city and over-the-road) and maintenance employees. At the present 390 to 400 employees of Respondent are employed in the category of city drivers, 120 to 125 employees are employed in the category of over-the-road drivers, and the remainder of its 700 employees are employed as maintenance employees. Respondent's general business office is located at its Evansville terminal, its largest terminal. Approximately 96 of Respondent's over-the-road drivers are employed at the Evansville terminal. The remainder of the over-the-road drivers are located at 10 of the other 16 terminals. The Respondent employs 1 over-the-road driver at Paducah, Kentucky, and employs 20 to 22 city drivers at its Paducah terminal.

2. The Respondent has had a collective-bargaining relationship with various Teamsters locals for a number of years. The details, however, as to such relationship or collective-bargaining contracts governing such relationship have not been specifically presented.

It is clear and the facts reveal that Respondent, Local 236, Local 215, and apparently a number of other Teamsters locals are parties, along with other employers and other Teamsters locals, to a current collective-bargaining agreement known as the national freight agreement This agreement sets forth that the agreement in effect creates a multiemployer-multiunion collective-bargaining unit for the employees in the bargaining unit defined therein. Said bargaining unit includes employees who are in the categories of (1) city and (2) over-the-road drivers.

It is clear from the testimony of witnesses and an examination of said contract that the national freight agreement governs the employer-local unions-employee relationship as to city drivers and over-the-road drivers at the Paducah and the Evansville terminals. It is clear from the stipulations of the parties and the overall evidence that the parties construe that Local 215 represents, as exclusive collective-bargaining representative, all of the employees in the described collective-bargaining unit in the national freight agreement (said description including both city drivers and over-the-road drivers) who work within the geographic area of the jurisdiction of Local 215, and that employees are subject to typical union-security requirements. Similarly, it is clear that Local 236 represents, as exclusive collective-bargaining representative, such employees who work in such categories within the geographic area of the jurisdiction of Local 236, and that employees are subject to typical union-security requirements.

It is clear that the employees covered by the national freight agreement who work for Respondent within the geographical jurisdictional area of Local 215 either (1) constitute a separate collective-bargaining unit which is deemed to be a part of an overall multi-employer-multiunion national bargaining unit, or (2) constitute a separate and clearly identifiable part, on the basis of geography and local representation, of a national bargaining unit.

3. The question of seniority rights and application and determination thereof as regards Respondent's Evansville, Paducah, and apparently all other terminals, is largely governed by the national freight agreement and supplemental agreements thereto. In major effect, employees enjoy "Terminal" seniority rights Because of the nature of work requirements, it appears that "city drivers" layoffs are determined on the basis of the need at a local terminal and that local terminal seniority is applied for such layoffs. It appears that the assignment of over-the-road drivers to the various terminals is done on the basis of need for drivers in such terminals, that some terminals do not have over-the-road and that most of the over-the-road drivers are assigned to Evansville so as to allow flexibility in handling the needs of all the terminals. As a result when there is a need for a layoff, because of the built-in flexibility, the overall needs for all terminals are best met by initial layoffs being made at Evansville. This is not a question of company or multiterminal seniority. Terminal seniority is used as to the layoffs at Evansville or at other terminals.

As indicated, the national freight agreement sets the guideline for determination of problems as regards seniority when new companies are absorbed. In such case, seniority is determined by Respondent and the involved unions In merger cases, the contract requires that the seniority of employees in the "merged" companies be dovetailed into existing seniority. As to change of operations, the shifting of jobs and employees from one terminal to another, a joint area committee determines the ultimate handling of seniority and establishment of seniority placement. As to the establishment of "new branches," company seniority in bidding for jobs prevails. In the closing branches, employees have first opportunity, on their company seniority basis, to bid for new openings.

4. The parties dispute whether Respondent has a policy against the transferring of an employee from a job in an area where the employees are represented by one union to an area where the employees are represented by a different union. It is undisputed that Respondent does not have a written policy governing such type transfers excepting in a limited manner as referred to in the national freight agreement. The said agreement, as noted, has provisions regarding employees bidding for openings pursuant to seniority rights when branches are closed. The said agreement also provides for the use of company seniority in the bidding for new jobs.

Evidence was presented with respect to certain changes in operations or transfers as having a bearing upon the issue of whether Respondent had an unwritten policy against transfers of employees from jobs in the geographic jurisdictional area of one union to the geographic jurisdictional area of another union. Such facts and evidence are set forth as follows. (1) Such evidence reveals that in 1969, 1970, or 1971 Respondent acquired a trucking line called Tennessee Cartage, that at such time an over-the-road driver named Looney was domiciled in Princeton, Kentucky, an area within the geographic jurisdiction of Local 215 of the Teamsters, that Looney's job was, however, at the Nashville, Tennessee, terminal, an area apparently within the geographic jurisdiction of another Teamsters local, that Respondent for a while had temporary control or management, that at such time or later Looney transferred

his membership from Local 215 to the Nashville Local In my opinion, this evidence merely reveals a transfer of membership in a union and not a transfer of job In any event the facts reveal that any change that was made appears consistent with contractual guidelines concerning the merging of operations. (2) The parties litigated the question of a transfer of an employee named Bolin from Indianapolis, where employees were represented by an Indianapolis Teamsters local to Terre Haute, where employees were represented by another local. Engler testified to the effect that Bolin had prior thereto transferred from Evansville, Indiana. No details otherwise were presented as to such transfer from Evansville to Indianapolis. As to Bolin's transfer from a job at Indianapolis to Terre Haute, the evidence reveals that Bolin lived in West Terre Haute at the time of the transfer. It appears that there was only one over-the-road driver position at Terre Haute. It would not appear therefore that a problem existed as regards the dovetailing of Bolin's seniority into the existing seniority board at Terre Haute.[3] The evidence is sparse and practically nonexistent otherwise concerning the circumstances of the transfer of Bolin from Indianapolis to Terre Haute The evidence does not reveal whether there was or was not a reasonable basis to believe that the local union at Terre Haute would have reason to represent local area unit employees in contention for the opening involved. There is no evidence that any employee, in any area represented by local Teamsters unions as part of the unit covered by the national freight agreement, filed a grievance contending a right to bid on such job.[4] However, there appears to have been some grumbling by some employees in the Evansville local (No. 215 of the Teamsters). It appears that after the transfer of Bolin from Indianapolis, Indiana, to Terre Haute, Indiana, Respondent, perhaps because of questions by some union local or the grumbling of employees, filed a change of operations and presented the same for approval to the joint area committee pursuant to the national freight contract. (3) Evidence was presented with respect to the acquisition of the Hargis Truck Lines in 1954 and the negotiation by Respondent with several local unions over the placement of certain drivers in their respective geographic jurisdictional area of the bargaining unit and the establishment of seniority. It appears that the acquisition of such truck line resulted in an overage of drivers at certain locations and the need for readjustment of placement of jobs. Essentially, the matter seems to have been handled similar to the method for handling a change in operation excepting there occurred negotiations with the respective local unions (4) Evidence was also presented with respect to what appears to have been a change in operation (change of jobs from one location to another) involving transfers of over-the-road drivers from Evansville, Indiana, to Owensboro, Kentucky, and from Evansville, Indiana, to a town called Jasper. These transfers were handled on a voluntary basis and were worked out between Respondent and Local 215, the representative of employees in the areas involved.

5. In late February 1975, Engler spoke to Richard Young, Respondent's director of safety and driver supervision, about his desire to transfer from his over-the-road driver's job at Evansville, Indiana, to the over-the-road driver's job at Paducah, Kentucky, when the incumbent driver retired. Young told Engler in effect that this could not be done because two unions were involved. (Local 215 of the Teamsters at Evansville, Indiana, and Local 236 of the Teamsters at Paducah, Kentucky.) Engler thereafter wrote Respondent's executive vice president, Mattingly Mattingly replied by letter, dated April 10, 1975, and indicated his understanding that the alternatives available to Respondent for the possible filling of the over-the-road driver position at Paducah, Kentucky, if it came open were (1) the hiring of a new man from the Paducah area or (2) handling the matter on a voluntary transfer basis with posting and bidding for the job based on seniority. Mattingly indicated that he believed the latter preferable since there were drivers on furlough, and additional furloughs might be necessary. Later, Engler also had conversation with Respondent's vice president of operations, Les Abernathy. Abernathy also told Engler that a problem concerning a possible transfer to the Paducah, Kentucky, driver's slot was the fact that two unions (Local 215 and Local 236) were involved in such transfer question.

Young credibly testified to the effect that he had told all the drivers that he had hired that the policy was not to transfer employees from jobs within the geographical jurisdiction of one local to the geographical jurisdiction of another local Young and Mattingly credibly testified in composite effect to the effect that there were practical reasons for a policy against the transfer of employees from jobs in a geographical jurisdiction of one union to a job in a geographical jurisdiction of another union. Thus, there were problems as to where to place employees on the seniority lists, problems about having to post such jobs for bids, and problems created by the timing requirement needed to insure that all interested employees could bid.[5]

Considering all of the above, I am persuaded that Respondent had a practice or policy concerning the transfer of work between the geographical jurisdictional area of the bargaining unit of one union to another as follows. Respondent had a general policy or practice against such transfers because of the administrative problems relating to posting and to avoid argument with the Local Union over the rights of the employees to retention of work in their geographical area. Where emergency or specific need for

[3] It appears that "seniority" is maintained by separate classification Thus, city drivers have a different seniority from over-the-road drivers

[4] The national freight agreement does not appear to present guidelines for the handling of such a transfer The supplemental agreements to such agreement are not in evidence in this case The evidence further does not reveal that Respondent has accorded, as a matter of right, the opportunity to bid on a seniority basis for such jobs, excepting in situations wherein Respondent, as a matter of need, decided to do so

[5] Although there is evidence in the case to reveal that Local 236's representative told Young in late June or thereafter that, in effect, the Local wanted a local area man to get the opening, there is no evidence that such communication had been made at the time Young initially told Engler of the problem concerning two unions and the possible job opening The evidence indicates, however, that there were layoffs of unit employees in the geographical jurisdictional areas of both Local 215 and 236 It appears reasonable to believe that Respondent was aware, since there were such layoffs, that Local 236 would contend for retention of work for bargaining unit employees in its geographical jurisdictional area It would appear reasonable that Respondent would be aware at the time of any work shortage that the Local Union involved would be representing such employees as to such interest in the retention of work

Respondent outweighed these problems, Respondent considered that it could make such transfers and would, if necessary, exercise such option. I am persuaded that the limited number of instances of change of operations and voluntary transfers left Vice President Mattingly with the belief that Respondent would exercise its choice of alternatives in a prudent manner and with regard to a view of aiding in decreasing the overall question of layoffs. I am also convinced that Young, faced with the problem of transfers more directly, correctly determined from past experiences that the use of voluntary transfer, at least for the convenience of the employee, was the exception and not the rule, and that the practice and policy was against the use of such voluntary transfers. Thus, I am persuaded that Respondent had a general but not inflexible policy against the voluntary transfer of employees from the geographical area serviced by one union to a geographical area serviced by another local union.

C. *The Alleged Discrimination*

The General Counsel contends and Respondent denies that on or about September 12, 1975, Respondent discriminatorily refused to transfer Johnnie Engler from its Evansville, Indiana, location to its Paducah, Kentucky, location in order to unlawfully encourage membership in Teamsters Local 236.

Engler has been employed by Respondent as an over-the-road driver since August 12, 1959, at Respondent's Evansville terminal. Such terminal is within the geographical jurisdictional area of Respondent's employee complement covered by the national freight agreement represented by Local 215 of the Teamsters. Respondent's employees covered by such contract are subject to union-security conditions of employment. Engler is and has been a member of Local 215 of the Teamsters. At some point of time in Engler's employment by Respondent, Engler has served as a union steward for Local 236. There is absolutely no evidence to reveal any hostility at any time toward Engler by Respondent, by Local 215, or by Local 236 of the Teamsters because of his union or protected concerted activities or attitude concerning Local 215 or Local 236 or Respondent. Nor is there any evidence to reveal that Respondent or Local 236 has at any time had any reason to believe that Engler would create any problem by his union or protected concerted activities if he (Engler) were transferred to Paducah.

At some point of time after Engler commenced employment with Respondent at the Evansville terminal, apparently recent in point of time, Engler married a widow who had a 15-year-old son. Prior to Engler's marriage, his new wife and son had lived at Burna, Kentucky. Because Engler liked the part of country where Burna is located, and because Enlger considered the Burna, Kentucky, environment better for his new son, Engler moved to Burna, Kentucky, but has continued to work out of Respondent's Evansville terminal.

Burna, Kentucky, is located near Paducah, Kentucky, where Respondent has another terminal. Respondent's employees at Paducah, Kentucky, are within that geographical area of the collective-bargaining unit of Respondent's employees covered by the national freight agreement defined as the geographical jurisdictional area of Local 236 of the Teamsters. As previously indicated, Respondent's employees at Evansville, Indiana, are within the geographical area of the collective-bargaining unit of Respondent's employees covered by the national freight agreement defined as the geographical jurisdictional area of Local 215 of the Teamsters.

The facts are clear that in early 1975 Engler was interested in transferring from his over-the-road driver position at the Evansville terminal to a similar position at the Paducah terminal so as to be closer to his home in Burna, Kentucky. It appears that Engler had made this interest known to the one over-the-road driver at the Paducah terminal. The over-the-road driver at the Paducah terminal was an employee named Archie Harris. Toward the latter part of February 1975, Harris told Engler that he (Harris) was retiring in July 1975 and suggested that, if Engler were interested in making a transfer to Paducah, he should start making preparations. Engler then contacted Richard Young, Respondent's director of safety and driver supervision, and asked whether it would be possible for him to be transferred to the Paducah terminal. Young told Engler in effect that there was no way possible to do so because there were two locals (unions) involved

Apparently a few days later, on March 5, 1975, Engler wrote Lawrence Mattingly, Respondent's executive vice president, and requested a transfer from the Evansville terminal to the Paducah terminal.

On April 10, 1975, Mattingly wrote a letter to Engler as follows:

April 10, 1975

PERSONAL AND CONFIDENTIAL

Mr. Johnnie A. Engler
Road Driver
Evansville, Indiana

Dear Mr. Engler·

My apologies for the delay in answering your letter of March 5, 1975. I appreciate your request was an important personal matter and an explanation on my part is in order This time of the year I become quite covered up with tax returns, budgets, etc.; and I placed your letter along with some other files requiring an answer. Unfortunately, I have just dug my way down to this.

To my knowledge, we have not yet received a letter of resignation from Mr. Archie Harris; and as a result have not made any decisions concerning his replacement. As I understand the alternatives available to us with regard to hiring his replacement, they would be as follows:

1. Hiring a new man from the Paducah area, or
2. Consider this a voluntary transfer and post same on our road board and give everyone an opportunity to make this voluntary transfer, and our decisions would be based solely on seniority.

At the moment, I would imagine we would follow the second alternative since we have a number of drivers furloughed, and our projections of business at this mo-

ment are that additional furloughs may be necessary. Therefore, it would seem rather foolish to hire a new employee when we have furloughed experienced people.

As soon as we have received a formal letter of resignation from Archie, I will again contact you with our final decision; and it would be my suggestion that if you haven't heard from me by June 1 that you call my office. Thank you for your interest.

Sincerely,
Lawrence R. Mattingly
Executive Vice President

Thereafter, on June 2, 1975, Mattingly wrote another letter to Engler as follows:

June 2, 1975

PERSONAL AND CONFIDENTIAL

Mr. Johnnie A. Engler
Road Driver
Evansville, Indiana

My letter to you date April 10 was diaried ahead until today, as I had hoped I could give you more definite information regarding the replacement.

A check with the transportation department as recent as this afternoon indicates that Archie is planning to retire July 1 of this year.

Mr. Abernathy will, of course, make the decision as to how his replacement is to be handled, and I would suggest that if you have any questions, you might contact him at an early opportunity.

Sincerely,
/s/ Lawrence R. Mattingly
Lawrence R. Mattingly
Executive Vice President

Apparently on June 3 or 10, 1975, Engler contacted Abernathy, Respondent's vice president for operations, concerning his interest in a transfer and was invited to Abernathy's office for a discussion concerning the transfer possibilities. Shortly thereafter Engler went to Abernathy's office for such discussion. Abernathy told Engler in effect that he would like to see him get the transfer but that there were two locals involved. Abernathy told Engler in effect that one way of getting around the problem of two locals was for Engler to resign at Evansville and be rehired at Paducah. Engler told Abernathy in effect that he thought this would be in conflict with prior company policy to the effect that if an employee quit or was fired, the employee was through. Abernathy indicated that this policy would not affect a gentlemen's agreement as discussed. Engler then asked Abernathy about the effect of a resignation and rehiring on his fringe benefits. Abernathy told Engler in effect that he did not think there would be an effect on fringe benefits but that he would check into it. Abernathy told Engler that the over-the-road driver in Paducah would not be replaced as long as there were over-the-road drivers laid off in Evansville. Abernathy told Engler that he (Abernathy) was taking a vacation and that he was turning the matter concerning the replacement of the Paducah driver over to Richard Young.

In the meantime, in June, July, August, 1975, Dupree, of the Paducah Local (Local 236), spoke to Young and told Young that he did not want to give up the position of over-the-road driver at Paducah, that he did not want the position filled by anyone transferred in there because his own people were laid off.

In July 1975, Dupree, or Local 236, had conversations with James Elkins, terminal manager at Paducah, concerning the filling of the over-the-road driver position. The details of exactly what was said are not revealed by the record. After Respondent had decided on the replacement of the over-the-road driver at Paducah and after charges had been filed in this case, Elkins related to Mattingly the extent of the conversations with Dupree.[6]

Around July 25, 1975, Engler wrote Mattingly about his conversation earlier with Abernathy, about not having been contacted by Abernathy, and requested that Mattingly check into the matter of his requested transfer. Mattingly replied by letter to Engler on July 29, 1975, and told Engler in effect that he had discussed the matter with Abernathy, that the ultimate decision had to lie with what was best for the company. Said letter also indicated that the considerations as to the Paducah over-the-road driver involved not only Engler's request but also the establishing of a policy for future requests.

On September 12, 1975, Richard Young spoke to Engler and told him that he did not know that he (Engler) was still interested in the transfer to Paducah. Engler told Young he should have known of his interest, that everyone else in management knew of his interest in the transfer. Young told Engler that he had been delegated by Respondent to tell him that the transfer was denied, that the over-the-road driver position in Paducah would be filled from the Paducah local. The over-the-road driver position was filled around that time by the transfer of Floyd Rice, a city driver at Paducah, from his city driver position to the over-the-road driver position.

In addition to the foregoing, Young credibly testified to the effect that he made the decision concerning the rejection of the requested transfer of Engler and determined the selection of Rice as the over-the-road driver. Young also credibly testified to the effect that his decision was motivated by the policy of not transferring employees from one local to another, and by the administrative problems and costs thereto. Young testified to the effect that he was not motivated by pressure from Local 236 and that he did not receive pressure from Local 236 concerning the filling of the over-the-road driver position. To the extent that this testimony was intended to convey that the contentions of Local 236's representatives were not a factor in consideration as to the replacement of the over-the-road driver position, it is discredited and no weight given thereto.[7]

[6] The General Counsel contends in effect that Mattingly's testimony reveals that such conversation between him and Elkins occurred before the refusal to transfer Engler on September 12, 1975 A careful examination of Mattingly's testimony reveals that Mattingly indicated that the Dupree-Elkins conversation occurred before September 12, 1975, and that Elkins' conversation with Mattingly occurred after September 12, 1975, and before Mattingly spoke to a Board investigator

[7] Evidence was also presented to indicate that the representative of Local

Continued

Young also credibly testified to the effect that at some point of time, apparently around September 12, 1975, Engler spoke to him about the possibility of his (Engler) resigning at Evansville and being rehired at Paducah. Young credibly testified to the effect that he told Engler that this could not be done.

Later Engler filed a grievance under the national freight agreement and thereafter the grievance body decided that Respondent had not violated the contract with regards to the way it had filled the Paducah over-the-road driver position.

Contentions; Conclusions

The General Counsel contends that Respondent discriminatorily refused to transfer Engler on September 12, 1975, from a position as an over-the-road driver at Evansville, Indiana, to a position as an over-the-road driver at Paducah, Kentucky, in order to unlawfully encourage membership in Teamsters Local 236 and to discourage membership in Teamsters Local 215. Respondent contends that the refusal to transfer Engler was not based on discriminatory motivation but was based on a policy of not transferring employees from one geographical area represented by one local to a geographical area represented by another because of administrative problems as to such transfer. Respondent also contends that the complaint should be dismissed because the Board should honor the determination of the grievance procedure that the refusal to transfer Engler was lawful under the contract.

Considering Respondent's contentions concerning its argument that the Board should dismiss the complaint because of the grievance procedure's determination that the refusal to transfer Engler was lawful under the contract, I reject such contention.

It suffices to say that the evidence does not reveal that such grievance determining body passed upon a question of discriminatory consideration. Rather, the issue presented was the narrow issue of whether Respondent was acting within or outside the contract in its actions. The question of discriminatory consideration as bearing upon transfers is not subsumed in such issue. Accordingly, a grievance determination in such regard is not binding or dispositive of the issues in this case.[8]

Considering all of the facts, however, I am persuaded that the evidence does not support the General Counsel's complaint and contentions to the effect that the refusal to transfer Engler on September 12, 1975, from Evansville to Paducah was discriminatorily motivated and in violation of Section 8(a)(3) and (1) of the Act.

In making the foregoing considerations and the conclusions herein, I note that there is no evidence that Respondent has had or has any hostility toward Engler because of any of his union or protected concerted activities, nor that Respondent has any reason to believe that Engler would be a disruptive influence at Paducah because of his union or protected concerted activities. Nor is there any evidence to reveal any hostility by either Local 215 or 236 of the Teamsters toward Engler.

Although Respondent's officials and Local 236's representative spoke in terms of two locals and of members when discussing the question of replacement for the over-the-road driver position at Paducah, such terminology must be considered in the context of the facts. In this case Local 215 or Local 236, as the case may be, is either (1) the exclusive collective-bargaining agent of the employees covered by the national freight agreement, within a defined geographical area coinciding with the respective local union's jurisdiction or (2) the designated representative of the multiunion exclusive bargaining agent for the geographical area of the overall bargaining unit as defined by the geographic jurisdictional area of the Union. Both local unions are the beneficiaries of the union-security provision of the master contract

In my opinion, it is clear that in real effect Respondent was opposed to transferring Engler in part because it knew that Local 236 was opposed to the transfer of Engler because local area employees of Respondent represented by Local 236 were laid off. Respondent knew this and was aware also of the administrative expenses and problems concerning a transfer under such circumstances. I am persuaded that Respondent runs its business in a pragmatic basis, that Mattingly initially was not aware that there was a layoff factor as to employees represented by Local 236, but was aware of layoffs of employees represented by Local 215. I am persuaded that Young was aware of all such problems. In my opinion, Respondent was aware of Local 236's interest in maintaining the integrity of the bargaining unit, or section of the bargaining unit represented by it, and of representing the employees who were laid off. Such interest and consideration thereto on a geographical basis does not constitute unlawful or discriminatory consideration. I note further that there is no evidence to reveal any discriminatory practices of Respondent and Local 236 with respect to the hiring or retention of employees in the Paducah area. In sum, I find no evidence to warrant a finding that Respondent was discriminatorily motivated in fact against Engler, or that Respondent's general policy of not transferring employees from one geographical area represented by one union to another geographical area represented by another local is inherently discriminatory. Accordingly, I conclude that the facts do not reveal that Respondent has violated Section 8(a)(3) and (1) of the Act by refusing to transfer Engler from an over-the-road driver position at Evansville, Indiana, to a similar position at Paducah, Kentucky. Rather, I am persuaded from all of the facts that Respondent was motivated in its refusal to transfer Engler and in its selection of a city driver at Paducah for the over-the-road driver's position at Paducah upon the realization that Local 236 desired that the job go to an employee in the bargaining unit in the geographical area of Paducah and that this was reasonable. I am also persuaded that Respondent's general policy of not transferring employees from one local to another local's area is not unlawful because of the same above considerations.[9]

215 had offered to agree to the transfer of Engler from Evansville to Paducah, Kentucky This would appear consistent with Local 215's interest in alleviating the layoff problem in its area

[8] *Trygon Electronics, Inc* 199 NLRB 404 (1972)

[9] *Romanoff Electric Corp*, 221 NLRB 1131 (1975), *General Drivers and*

Upon the basis of the above findings of fact and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. A & H Truck Line, Inc., Respondent, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local Union No. 215 and Local Union 236, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, are, and have been at all times material herein, labor organization within the meaning of Section 2(5) of the Act

Helpers Local Union No 229, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Associated Transport, Inc) 185 NLRB 631 (1970)

3. Respondent has not violated Section 8(a)(3) and (1) of the Act by refusing to transfer Johnnie Engler on September 12, 1975, from its Evansville, Indiana, terminal to its Paducah, Kentucky, terminal.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER [10]

The complaint in this matter is dismissed in its entirety.

[10] In the event no exceptions are filed as provided by Sec 102 46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec 102 48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes