

At Schmidt's, it is clear that a responsible union agent caused employees to delay for a few minutes the unloading of Vann's truck. It is clear that a responsible Union agent tried to induce employees, but was unsuccessful, not to load his truck.

At Scott and Grauer's, only by crediting somewhat dubious evidence, can it be found that Walker, the union steward, induced employees not to unload Vann.⁶ Gannon's testimony is to the effect that he declined, of his own volition, to load Vann's truck.

Even if the evidence be viewed in a light most favorable to General Counsel's allegation, the incidents were of such short duration and were so trivial and isolated, that the Trial Examiner is of the opinion that that complaint should be dismissed. Particularly, it appears, should dismissal be recommended in view of the fact that considerably more than a year has passed since the material events occurred, and no evidence was brought forward to show that the instructions of Lanni, a high official of the Union, have since then been violated by any steward in the Philadelphia area.

On the merits of the case, therefore, the Trial Examiner will recommend that the complaint be dismissed.

CONCLUSIONS OF LAW

1. The Respondent Local Union No. 830, Brewery and Beer Distributor Drivers, Helpers, and Platform Men, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

2. The Respondent has not engaged in the unfair labor practices alleged in the complaint.

[Recommendations omitted from publication.]

⁶As a witness, called by General Counsel, employee Julian Matkowski said at one point that sometime before December 27, Walker told him to check all union books, and if a man was not a member not to unload him. He later changed his testimony and denied that Walker told him not to unload.

GENERAL TELEPHONE COMPANY OF CALIFORNIA (formerly ASSOCIATED TELEPHONE COMPANY, LTD.) and COMMUNICATION WORKERS OF AMERICA, CIO. Case No. 21-RM-189. July 28, 1953

DECISION AND ORDER AMENDING CERTIFICATION

On July 25, 1951, following a consent election, the Regional Director for the Twenty-first Region certified the Union as the exclusive bargaining representative of the employees in the following unit:

All employees classified in classifications presently compensated on a daily wage basis, excluding all other employees, guards, professional and supervisory employees [sic] as defined in the Act.

On August 23, 1951, the Union and the Employer entered into a contract ending June 30, 1952, in which the Employer recognized the Union in a unit of "all of its daily wage-earning employees." The contract covered employees who received a supervisory differential as part of their daily wages. At collective-bargaining meetings in May and June of 1952, the

Employer, for the first time, contended that daily wage-earning employees receiving supervisory differentials, herein, the disputed employees, were supervisors within the meaning of the Act. The Union contested this position and on July 1, 1952, called a strike over this issue. On July 13, 1952, the strike was terminated by a "Memorandum of Agreement" in which the parties agreed, *inter alia*, to submit the question of the supervisory status of the disputed employees to the Board for determination.

On October 22, 1952, the Employer and the Union submitted to the Regional Director for the Twenty-first Region a joint "Petition for Supplemental Determination of Representation." On November 24, 1952, the Regional Director forwarded the petition to the Board with the recommendation that it be entertained and a hearing directed. On December 29, 1952, the Board issued an Order directing "that a hearing be held herein for the purpose of resolving the question of the supervisory status" of the disputed employees. Pursuant to this Order, a hearing was held before Ernest L. Heinmann, hearing officer. All parties appeared and participated in the hearing, although the Union elected to rest upon the completion of the evidence introduced by the Employer.¹ Both parties filed briefs on the issues raised by the hearing. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.²

Upon the basis of the evidence adduced at the hearing and on the entire record in the case,³ the Board⁴ hereby makes the following findings:

The Company employs between 5,400 and 5,500 employees, of whom approximately 4,900 are compensated on a daily wage basis. The dispute between the Company and the Union concerns the supervisory status of some 400 individuals in the following 31 job classifications:⁵

¹As the Union had ample opportunity to cross-examine and to call witnesses, we find no merit to its objections that the Company prejudicially chose to call witnesses who could testify on more than one category of employees rather than calling the disputed employees themselves.

²The hearing officer properly required evidence which would permit a determination of the status of the employees at this time, rather than at the time either of the election or of the agreement to submit the question to the Board for determination. See *Southwestern Electric Service Co.*, 89 NLRB 114, 117.

³The Employer's request for oral argument is hereby denied because the briefs and the record adequately present the issues and the positions of the parties.

⁴Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Styles, and Peterson].

⁵Three categories, on which the Board directed a hearing are no longer used, namely, garage mechanic (SD), general clerk, jr. (SD), and instrument shopman (SD). We therefore make no findings concerning them.

Job title (number involved)

Supervising Operator (100)	Commercial Representative (SD) (4)
Matron (Supervisory Differential) (hereafter SD) (4)	Service Representative (SD) (50)
Chief Switchman (SD) (22)	Cashier (SD) (3)
Switchroom Foreman (27)	Engineering Assistant (SD) (2)
Equipment Foreman (35)	Draftsman (SD) (7)
PBX Foreman (8)	Pressman (SD) (1)
Splicing Foreman (4)	Control Clerk (SD) (2)
Heavy Gang Foreman (40)	Instrument Shop Foreman (6)
Light Heavy Gang Foreman (30)	Storeman (SD) (4)
Installer (SD) (15)	Supply Clerk (SD) (1)
Facility Man (SD) (1)	Utility Foreman (5)
Testboardman (SD) (3)	Toll Biller (SD) (1)
Combinationman (SD) (1)	Administrative Clerk (SD) (1)
Janitor (SD) (4)	(1)
Garage Foreman (8)	Accounting Clerk (SD) (1)
Garage Helper (SD) (1)	General Clerk (SD) (4)

We have carefully considered the voluminous evidence adduced at the hearing concerning the functions and responsibilities of the disputed employees in the classifications listed above. These classifications were created to provide some assistance to the salaried supervisors in the supervision of the rapidly growing employee force.⁶ Certain characteristics appear to be common to all classifications. All disputed employees receive, and have received since 1949, a pay differential above the wage scale paid to employees with the same seniority who report to them because, in the language of the contractual provision for such differential,⁷ they are "designated to supervise the work of other employees." In one degree or another they are all responsible for training, "supervising," assigning, and directing the work of others.⁸ They all have initial responsibility in rating their subordinates every 6 months on the "1654 Form."

The Employer argues that the collective-bargaining contracts, which show that the parties regularly have regarded the disputed employees as supervisors, the notice of job

⁶At the end of 1945, the Company employed between 1,400 and 1,450 employees; at the present time, the Company employs between 5,400 and 5,500 employees. The record shows that there are only 280 salaried supervisors

⁷I.e., the contracts negotiated by the Union in 1949, 1950, and 1951, which contained this provision regarding the disputed categories.

⁸In view of our finding herein, we need not, and do not, determine the extent to which they responsibly direct the work of their subordinates

vacancy forms,⁹ and the rating of the 1654 forms by the disputed employees should of themselves be sufficient to establish beyond peradventure of doubt that all the disputed employees are supervisors within the meaning of Section 2 (11) of the Act.

Since 1949, the disputed employees have had responsibility for rating their subordinates each 6 months on the "Progressive Wage Increase Form," or the "1654 Form." These forms, which become part of the personnel records of the Company, list 12 factors--quality of work, quantity of work, progress on job, attitude, conduct and work habits, personal appearance, safety habits, care of tools and equipment, initiative, and leadership--to be rated within 5 degrees of performance: poor, fair, average, above average, or exceptional.

The Union contends that these forms are without effect on pay increases and layoffs because such rights are controlled by the contract and that they, in any event, are mere performance reports containing merely an expression of the disputed employee's opinion after an occasional inspection of the work of another. Although the form is designated as a "Progressive Wage Increase Form," the Working Rules and Practices, Personnel Administration, Papers and Forms § 2.7.1, provide that termination notices should be originated when the increase is not justified. One stated purpose of the form is "to have data on file so that recognition can be given when transfers and promotions are being considered." The form is therefore filled out on employees who have passed the last contractual progressive wage increase. Although the contract does provide for posting of job vacancies and that transfers and promotions shall be made on the basis of seniority, the contract requires that the applicant have also the "necessary qualifications." The personnel manager testified, without contradiction, that these ratings are always considered when jobs are filled from the inside. Accordingly, we find that the authority to rate employees according to the 1654 form is authority effectively to recommend or effect changes in the status of the employees rated.¹⁰

The Union apparently contends that the disputed employees are, in any event, not solely responsible for the rating. The testimony shows that the ratings made by the disputed employees on the 1654 forms are in many cases discussed with

⁹In 1951, during the collective-bargaining conferences, the Union requested and the Company agreed that all notices of job vacancies which were posted should be uniform throughout the Company. Accordingly, early in 1952, uniform job vacancy notices were prepared and distributed to all districts of the Company. Virtually all of the existing forms, prepared for only some of the disputed categories, indicate that the incumbent must be qualified to train, supervise, and direct the work of others. Although we do not rely upon these forms for our finding of status, we do accept them as evidence of the propriety of systemwide findings concerning status.

¹⁰See *Art Metal Construction Company*, 75 NLRB 80, 84; *Aragon-Baldwin Mills, Inc.*, *Aragon Plant*, 80 NLRB 1042, 1044.

a salaried superior who himself must sign and approve the form, and in many cases the salaried superior and the disputed employee jointly participate in the rating. In some cases, particularly with respect to employees rated by the installers (supervisory differential) and the equipment foremen, a composite rating is necessary because the employee being rated has worked under several foremen in the 6-month period covered by the rating. On infrequent occasions the salaried superior may suggest a change in rating or request an explanation of a particular rating. But the evidence is clear that the effective rating is in all cases made by the disputed employee.

While the matter is otherwise by no means free from doubt, we accordingly find that the role of the disputed employees in rating their subordinates is such as to make them all supervisors within the meaning of Section 2 (11) of the Act.¹¹

We therefore find that the disputed employees are properly excluded from the unit.¹² We shall, accordingly, amend our certification with respect to these classifications of individuals.

ORDER

IT IS HEREBY ORDERED that the Certification issued herein to Communication Workers of America, CIO, be, and it hereby is, amended specifically to exclude from the certified unit, as supervisors, the supervising operators and all daily wage earners who receive a supervisory differential, employed by the Employer.¹³

¹¹ As the performance report involved in Lockheed Aircraft Corporation, 87 NLRB 40, did not affect the status of the rated employees, that case on which the Union relies is clearly distinguishable.

¹² As the record establishes that the garage helper (supervisory differential) has authority to rate his subordinates on the 1654 form, it is immaterial that he has not had occasion because of the rate of turnover of garage helpers to do so.

¹³ This is not to be construed as a new certification.

CLEARFIELD CHEESE COMPANY, INC. *and* UNITED STONE
AND ALLIED PRODUCTS WORKERS OF AMERICA, CIO.
Case No. 6-CA-513. July 29, 1953

DECISION AND ORDER

On March 30, 1953, Trial Examiner Robert E. Mullin issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that the Respondent had not engaged in certain other alleged unfair labor practices and recommended a dismissal of those allegations. Thereafter, the