

Carling Brewing Company, Incorporated,¹ successor in interest to Griesedieck Western Brewery Company and Brewery, Flour, Cereal and Soft Drink Workers Local Union No. 21 of the International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America, CIO (now AFL-CIO), Petitioner. Case No. 14-RC-1604. May 8, 1961

SUPPLEMENTAL DECISION

On December 12, 1951, after an election conducted pursuant to a stipulation for certification upon consent election, the Board certified the Petitioner as the collective-bargaining representative of the following unit: All office and clerical employees of the Griesedieck Western Brewery Company, at 1201 West "E" Street, Belleville, Illinois, except all other employees, professionals, guards, confidential employees and supervisors as defined in the National Labor Relations Act.

Thereafter, on October 28, 1960, Carling Brewing Company, Incorporated, successor in interest to Griesedieck Western Brewery Company, filed a motion to exclude from the bargaining unit employee Walter H. Koch, alleging that he is a confidential employee.² On November 28, 1960, the Petitioner filed opposition thereto denying that Koch is a confidential employee. On December 16, 1960, the Board remanded the proceeding to the Regional Director for a hearing for the purpose of taking testimony with respect to the issue raised by the motion. Such a hearing was held on January 24, 1961, before Paul A. Weil, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant 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 [Chairman McCulloch and Members Rodgers and Leedom].

Upon the entire record in the case, the Board makes the following findings:

Walter Koch was first employed as a bookkeeper by Griesedieck Western Brewery Company in 1933. In 1954, when Carling Brewing Company purchased all of Griesedieck's assets, he was secretary of Griesedieck. Carling retained him as payroll supervisor, a position which he held until March 1, 1957, when he was assigned to the personnel department as a personnel clerk. At that time, the Employer requested the inclusion of Koch in the unit represented by Petitioner,

¹ The name of the Employer reflects the change in ownership by the purchase of the Belleville, Illinois, plant of Griesedieck Western Brewery Company by Carling Brewing Company, Incorporated

² The term "confidential employee" has been defined by the Board as one who, in the regular course of his duties, assists and acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations. *The B. F. Goodrich Company*, 115 NLRB 722, 724.

and a special pay scale was decided on for him. The new wage rate called for a rate of \$200 per month. Several months later Koch was given increased responsibilities, but the title of personnel assistant was not given him until September 1959.

At the hearing, Koch testified that the duties he now performs for the Employer are the same duties he has been performing since March 1, 1957. As personnel assistant, Koch administers the Employer's workmen's compensation program, unemployment compensation program, hourly welfare plan, and Blue Cross and Blue Shield insurance program. He makes personnel record entries as required, handles credit complaints and inquiries, figures vacation and holiday pay eligibility, and processes new hires. These duties are all of a clerical nature and require only that Koch refer to his records and follow the terms of the contract between the Employer and the Petitioner when making certain administrative determinations.

At no time does Koch negotiate on behalf of the Employer concerning labor relations policies, nor does he ever represent the Employer in any formal grievance procedures. His only communication with the Petitioner's representative arises when he is consulted by the representative in regard to some matter concerning which Koch has information. In such a case, he need only refer to his records in stating the Employer's position, as for example, in determining how much vacation time an employee has earned.

In the period since Koch's job as personnel clerk was created in 1957, there have twice been collective-bargaining negotiations between the Employer and the Petitioner for new contracts, once in 1958 and again in 1960. On neither occasion did the Employer attempt to exclude Koch from the unit as a confidential employee. As stated above, Koch's duties have not changed since 1957, nor has he received any increase in salary since then. The fact that Koch no longer consults his supervisor in regard to some of his duties is only an indication that he has become more proficient in the work that he has been doing for 4 years.

The personnel manager, Alfred Henning, who administers the Employer's labor relations policies, testified that he discusses contract difficulties with Koch and that he takes recommendations from him, but Koch himself was unable to remember any recommendations that he had allegedly made. From the record, it appears that because Koch sat in on some labor relations negotiations when he was a officer of Griesedieck, he has at times been consulted by the personnel manager, since the purchase by Carling, as to the parties' understanding of certain clauses in the old contract, but that his present usefulness in this respect is at a minimum.

Henning also testified that in both 1958 and 1960 he asked Koch to determine the costs to the Company of the Petitioner's demands for

increased vacation and welfare benefits. However, this involved only a matter of computation by Koch, and not of itself sufficient to constitute him a confidential employee.³

In view of all the above factors, we find that Koch's status with the Employer has not changed since he first assumed the duties of personnel clerk in 1957. We find therefore that he is not a confidential employee.

³ In *Triangle Publications, Incorporated*, 118 NLRB 595, relied upon by the Employer, the Board found that an employee who prepared data showing the effect of wage adjustments contemplated in labor contract negotiations was a confidential employee. However, in making this finding the Board relied also on the fact that this employee was present at conferences between the general manager and office manager which related to the interpretation of labor contracts, furnished information and advised as to past and future effect of contract terms, and discussed generally the application and carrying out of labor contracts from a fiscal viewpoint. These latter factors are not present here and make Koch's case distinguishable from the Board's finding in *Triangle*.

**Texas Aluminum Co., Inc. and United Steelworkers of America,
AFL-CIO.** *Case No. 16-CA-1381. May 10, 1961*

DECISION AND ORDER

On December 16, 1960, Trial Examiner Reeves R. Hilton 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. Thereafter, the Respondent filed exceptions to the Intermediate Report and a brief in support thereof.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the entire record in this case, including the Intermediate Report, the exceptions, and the brief, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following additions.

1. In agreement with the Trial Examiner, we find that by maintaining and enforcing its broad no-solicitation rule the Respondent violated Section 8(a) (1) of the Act.

The Respondent's broad rule forbidding solicitation for membership in any organization on company property was presumptively an unreasonable impediment to self-organization and therefore unlawful in the absence of evidence that special circumstances made the rule necessary to maintain production or discipline.¹

¹ *Republic Aviation Corporation v. N.L.R.B.*, 324 U.S. 793; *Walton Manufacturing Company*, 126 NLRB 697, enf'd. 289 F. 2d 177 (C.A. 5).