

WE WILL rescind the reprimand issued to Betty Gaff for appearing at a Board hearing to testify, and the warning issued to Virginia Hirschbiel for presenting a grievance, expunge from their personnel files any matter relating thereto adversely affecting their job security, and directly notify these employees that we have taken such action.

All our employees are free to become or remain, or refrain from becoming or remaining, members of International Union of Electrical, Radio & Machine Workers, AFL-CIO, and its Local 997, or of any other labor organization.

ELECTRIC MOTORS AND SPECIALTIES, INC.,  
Employer.

Dated----- By-----  
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 176 West Adams Street, Chicago, Illinois, Telephone No. Central 6-9660, if they have any question concerning this notice or compliance with its provisions.

**Sarkes Tarzian, Inc. and International Brotherhood of Electrical Workers, AFL-CIO, Local Union 1424. Case No. 25-CA-1875. October 26, 1964**

### DECISION AND ORDER

On July 30, 1964, Trial Examiner George A. Downing issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the Act, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Decision and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Leedom, Fanning, and Brown].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the modifications hereinafter noted.

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the Board hereby adopts as its Order, the Order recommended by the Trial Examiner, and orders that Respondent, Sarkes

Tarzian, Inc., Bloomington, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, with the following modifications:

1. Amend paragraph 1(b), to read as follows:

"(b) Requiring that employees perform work at a production rate which it knows they are physically incapable of attaining, and building or attempting to build an adverse employment record against them to be used as a pretext for discharge for engaging in union or concerted activities."

2. Add the following as a new paragraph 2(b), the present paragraph 2(b) and those subsequent being consecutively relettered:

"(b) Notify the above-named employee if presently serving in the Armed Forces of the United States of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces."

### TRIAL EXAMINER'S DECISION

#### STATEMENT OF THE CASE

This proceeding under Section 10(b) of the National Labor Relations Act, as amended (61 Stat. 163, 73 Stat. 519), was heard before Trial Examiner George A. Downing in Bloomington, Indiana, on April 1 and 2, 1964, pursuant to due notice. The complaint was issued on February 27 by the General Counsel of the National Labor Relations Board on a charge dated January 13, and alleged that Respondent engaged in unfair labor practices proscribed by Section 8(a)(1) and (3) of the Act by discharging John T. Roberts on January 10, 1964, because of his union membership and activities and other protected concerted activities, and that by a course of specified conduct of interference, restraint, and coercion it fabricated a pretext for said discharge. Respondent answered, denying the unfair labor practices as alleged.

The issues as pleaded and tried center around the question whether Roberts was discharged because of his union membership and activities and/or because Roberts was one of the plaintiffs to a libel action against Respondent growing out of an incident during an election campaign, or because (as Respondent contends) of his low production and poor quality work.

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

#### FINDINGS OF FACT

##### I. JURISDICTIONAL FINDINGS

Respondent, an Indiana corporation engaged in the manufacture of electronics equipment, sells and ships annually from its plant at Bloomington to points outside the State finished products valued in excess of \$50,000. It is therefore engaged in commerce within the meaning of Section 2(6) of the Act.

##### II. THE LABOR ORGANIZATION INVOLVED

The Charging Union is a labor organization within the meaning of Section 2(5) of the Act.

##### III. THE UNFAIR LABOR PRACTICES

###### A. *The evidence*

This case is concerned entirely with alleged discriminatory treatment accorded by Respondent to employee John Roberts, who was discharged on January 10, 1964, after some 7½ years of employment, for the assigned reason that he was unable to perform his job duties satisfactorily.

Roberts, a victim of cerebral palsy from birth, was seriously handicapped, as his condition impaired his walking, his dexterity, and his overall coordination. His physical condition was noted and referred to by both E. M. Sears, Respondent's personnel manager, and Harry Rushton, service manager, during his employment interviews in August 1956; and after Roberts assured Rushton that he would not need time off the job because of his handicap, Rushton assigned Roberts to work as a troubleshooter on UHF (ultra high frequency) tuners made by Sarkes Tarzian.

Without going into detail, the evidence established that the job involved relatively light and simple work (Roberts had no prior experience) which Roberts performed satisfactorily until his transfer on July 8, 1957, to the job of tube inspector and technician in the incoming inspection department. The new job, though involving a different sort of work, was no more difficult than the first one, requiring no more physical effort and no more dexterity; and that job, too, Roberts performed satisfactorily until his final transfer on April 8, 1963, to Respondent's Walnut Street service department as a technician to repair "odd-ball" tuners.<sup>1</sup> That Roberts had developed as an employee to Respondent's entire satisfaction up to that time was demonstrated by the fact that he received, during his tenure on the first two jobs, pay raises which aggregated 50 percent (from a \$1.30 starting rate to an ultimate \$1.95) in 14 separate increases, all except 3 of which were time and merit increases.

In the meantime Roberts had become an active adherent of the Union, campaigning openly in its favor and wearing on the job a badge which bore the legend "IBEW-Organizing Committee." In addition Roberts was one of three parties plaintiff (the other two of whom are also no longer in Respondent's employ) to a damage suit for \$5,000,000 filed on January 22, 1963, against Respondent and certain of its officers and foremen claiming a libel against the employees in the bargaining unit by reason of the following:

On January 16, 1963, the local newspaper published a news story concerning the shooting through the front window of the home of Respondent's foreman, John McHenry, in which McHenry's wife was quoted as attributing the shot to the "work of union organizers." Roberts and the other employee plaintiffs met with representatives of the Union, with the Union's attorney, and with other members of the organizing committee, discussed the damage which the article did in discrediting the Union in the impending election,<sup>2</sup> and authorized the filing of a class action on behalf of themselves and other employees in the unit.

Respondent received a copy of that complaint at the time it was filed and was, of course, thereby fully apprised that Roberts was one of the plaintiffs. In addition, both Harry Rushton, service manager, and James Long, foreman (supervisor) of the service department on Walnut Street, admitted knowing of Roberts' union membership and adherence. Long testified that he and Rushton discussed the matter as early as January 1963 (as well as the union sympathies of William Hobbs, Vic Girerd, and "Corky" Sallee), and Rushton admitted that they "most likely" discussed Roberts' union affiliation before Roberts came into the service department. Respondent concedes that Roberts' supervisors were aware of his union activities.

Long testified further that in March 1963, Rushton informed him that Roberts was being transferred to the service department, that Rushton knew Roberts would not be able to do the work properly, that Roberts was being brought there in order to be terminated, and that Long should keep a good file on Roberts so that after the termination there would be a record as to why Roberts was terminated. Rushton continued that after Roberts was terminated, Sallee would be transferred to the department and that if in Long's opinion Sallee could not do the job properly, he could be terminated in the same way because Sallee was pronoun.

Around April 1 Earl Gardner, head of the department in which Roberts was employed, informed Roberts that Rushton needed all the technicians he could get at the Walnut Street plant, that Roberts was to report to Rushton the following Monday, and that in the meantime Roberts was to each a girl his operations.

Rushton in turn informed Roberts that he would be troubleshooting odd-ball tuners and that after a period of time he would be expected to repair and align 10 tuners a day. Again without going into detail as to the operations which he performed, the new job was much more difficult than Roberts' former jobs. In brief, it required Roberts to make all repairs on the tuners, including soldering many

<sup>1</sup> A term used to denote those made by manufacturers other than Respondent. It was stipulated, however, that Roberts also possibly repaired some of Respondent's tuners on that job.

<sup>2</sup> The Union lost the election held on January 25, 1963. Union observers included "Corky" Sallee and Vic Girerd, whose names figured in the evidence.

points and terminals which were close together; it was detailed work which required a great deal of dexterity and coordination. Though Roberts was able to do the work, his physical handicaps were obviously such as to place him at a decided disadvantage in competing with other (unhandicapped) employees and in meeting production quotas which were based on the output of the latter. Indeed, Roberts' output was only half of the assigned rate, for during the remaining 9 months of his tenure he averaged only around five tuners a day, and this despite undisputed evidence that Roberts frequently worked during rest or break periods and during part of his lunch time.

There was also testimony by Long that Rushton directed him to keep a good file on Roberts' work record to reflect the progress and quality of his work; that in June he discussed with Rushton the matter of Roberts' performance; and that Rushton himself prepared a draft of a warning notice which Long recopied in his own handwriting and delivered to Roberts after warning him verbally that his work was not satisfactory. The notice warned Roberts about the quality and rate of his production and informed him that "vast improvements must be made" by July 30, when the "situation" would be reviewed again.

On August 5 Rushton prepared, and Long recopied and delivered, a further warning which again recited deficiencies in quality and rate of production and which informed Roberts he would be on trial until September 6. Long testified that sometime later he spoke to Rushton again about the fact that Roberts was not producing satisfactorily and asked what was to be done about him. Rushton replied that he would call Mr. Woods (a staff attorney), and when Long inquired later whether Rushton had further information, Rushton replied that he did not and that he "guessed they were afraid to fire [Roberts]."

Long also testified that in the latter part of the summer Rushton directed him to have Joe Hash (who was then making the final inspection) make an "extra good" inspection of Roberts' tuners and have him reject as many as he could, but not to let Hash know why he was doing it. Long passed the orders on to Hash, and testified that he had personal knowledge that Hash inspected the tuners of certain employees more carefully than others, naming, in addition to new employees or trainees, Roberts, Hobbs, and Girerd.

The warnings continued. On September 6 Long placed in Roberts' file a memorandum that he had conferred with Roberts and informed him his probation would be extended for a few days. On December 12, Rushton delivered a memorandum which reviewed Roberts' record, which recited that no apparent attempt had been made at improvement, and which gave final warning that unless by January 10 he produced a tuner in every 48 working minutes and improved the quality of his workmanship, he would be terminated. On January 10, Roberts was called to Rushton's office where Rushton informed him his work was not satisfactory, that he would be allowed no more time, and that he was through. The termination notice assigned as the reason, "Unable to perform job duties satisfactorily."

In the meantime, Long left Respondent's employ on September 30, but sometime before he left he informed two employees of Respondent's plan concerning Roberts. William Hobbs testified that Long informed him that Roberts would not "be with us long" because he was there for only one purpose and that was for termination because of his union activities and because of the suit which he had filed. June Query, Rushton's secretary, testified that Long informed her that Rushton had directed him to have Hash check Roberts' tuners more closely than others for the purpose of rejecting as many as possible in order to lower his production rate. Query testified also that in the fall and winter of 1963, Rushton frequently asked her to bring him Roberts' attendance card and that it was not his practice to check on such cards except in cases where employees were absent or tardy a lot.

Other evidence which bore significantly on Respondent's treatment of Roberts was furnished by the disparate treatment which it accorded to Earl Keller, Jr., another handicapped employee who was hired in 1962 and who openly disclosed his anti-union sentiments by wearing a "Vote No" badge on the day before the election. Keller was afflicted by arthrogryposis, a congenital defect in the genes, which affected his muscles, his coordination, and his dexterity. Though the cause of his condition differed from that in Roberts' case, the effects on their respective conditions (and as outwardly manifested) were much the same.

Keller was first assigned to the service department and put to repairing odd-ball tuneis, the same work which Roberts was assigned to on his last job. Keller testified that when he was able to select all of a certain type of tuner to work on, he

could produce from 8 to 10 a day, but his overall average when he worked on all kinds of tuners was only some 4 or 5 a day. He could not remember that he was assigned a quota, and he testified that after some 2 or 3 months he was transferred from that department into the testing department, where he did the same kind of work as a troubleshooter as Roberts formerly did when he was working in the UHF department.

Finally there was testimony by Long that shortly before the hearing Rushton called him at home to come to the office, where Rushton discussed with Long the latter's anticipated appearance as a witness in this case.<sup>3</sup> Rushton referred to a "rumor going around" that Long had made a statement, and when Long made an evasive reply, Rushton continued, "You don't want to say anything to get yourself in trouble or get me in trouble," and that Long should not "say anything." Long again answered evasively, and Rushton proceeded to tell Long about a new process of cleaning tuners which the Company was developing and volunteered to let Long "in on it" so that he could use it himself after it was worked out. Rushton also gave Long advice on where to get parts for his business, and then took him on a tour of the plant where they visited with employees with whom Long had formerly worked.

I make no findings herein on testimony by some of the General Counsel's witnesses concerning statements made by Curnel Nikirk, for I find him to be an employee, not a supervisor.

Respondent's case rested mainly on the testimony of Harry Rushton, who was manager of the service department at both of its locations (South Walnut Street and East Hillside Drive). Rushton admitted some portions of Long's testimony (e.g., their discussions of Roberts' union activities), denied some of the more damning portions (e.g., the reasons for bringing Roberts into the department; the making of a record to support Roberts' termination), and failed to deny others (e.g., the call to Woods and the result; the discussion of Long's anticipated appearance as a witness herein).

Rushton testified that at the time of Roberts' transfer he needed four technicians in his department; that two of the vacancies were filled by transfer and two from outside; and that Roberts came from quality control, whose manager, Al Gardner, informed him that Roberts was available.<sup>4</sup> Admitting that he told Long to keep a good file on Roberts, Rushton testified that the reason was that Long was complaining about the poor quality of Roberts' work and that he gave Long similar instructions concerning William Hobbs and Vic Girerd, of whom Long made similar complaints. Admitting that he later drafted the warning notice, Rushton testified he did so because Long had trouble wording it properly because it was the first warning he had ever made out. Denying that he gave Long instructions to have Roberts' work inspected any differently from that of other employees, Rushton admitted he told Long to give special attention to Roberts' work and to others like him whose work was unsatisfactory and who were having quality problems.

Concerning Earl Keller, Rushton testified that he originally agreed to try Keller out for 2 weeks to see whether he could perform the job of repairing odd-ball tuners and that Keller worked on nothing else. Some 2 weeks later Rushton discussed the matter further with England, assistant personnel manager, feeling that Keller might be able to handle the job, and Keller's probationary period was extended to the normal 90 days. After about 2 months, however, Rushton had a request from the production department for technicians and transferred Keller to it. At that time he had reached no final conclusion on Keller's capabilities. He testified that Keller produced at about the same rate as Roberts later produced, or possibly a little more. Keller returned to Rushton's department in January or February 1964, where he is now analyzing and troubleshooting tuners, but he is now working on the Sarkes Tarzian brand, not on the odd-balls.

<sup>3</sup> Long left Respondent's employ on September 30 to enter (or continue) his own business. Respondent's termination report stated the reason to be, "Requested to resign due to conflicting business interests."

<sup>4</sup> E. M. Sears, personnel manager, corroborated that testimony, testifying that Gardner reported that Roberts' position could be adequately handled by an unskilled person and that there was no need to have a technician doing that job. It was actually filled by a woman after Roberts' transfer at a rate of \$1.28 as against Roberts' rate of \$1.95 at the time.

Though testifying at first that he could not answer whether it was more difficult to work on odd-ball tuners than on Sarkes Tarzian's, Rushton admitted that the production quota on the former was 10 a day but on Sarkes Tarzian's it was an 18 minimum. Admitting finally that the work on Sarkes Tarzian tuners was more simple, Rushton testified that was because the equipment made it so and because the Company did not check its own product for quality but assumed it.

Sears corroborated Rushton's testimony concerning the actual transfer of Roberts to the service department (see footnote 4, *supra*), and testified that Rushton never discussed with him any plan to transfer Roberts to the service department to terminate him. Sears testified further that at the time Roberts was discharged, there were no jobs available for which he was qualified and that Roberts' former job in quality control had been abolished through a reorganization in the department.

Respondent's witnesses also included Joseph Hash (the inspector mentioned by Long), James Combs, who made inspections after Long left, and Gerald Trusler, a foreman who followed Long. All of them testified that there was no discrimination as regarded the type of inspection which was made of Roberts' work and no instruction to inspect his work any differently than of other employees who were doing work of poor quality. However, Hash's testimony contained no mention of Long's name and no denial that Long instructed him to make "an extra good" inspection of Roberts' work.

Further testimony by Hash and Combs concerning the quality of Roberts' work bordered on the fantastic. Thus Hash testified that he rejected 80 percent of Roberts' tuners as against 10 percent in the case of qualified technicians. Combs in turn described the quality of Roberts' work as "brutal" and testified that he rejected from 60 to 70 and up to 80 percent of it. Though much of that almost incredible record of incompetence was being made during Trusler's tenure as foreman, Trusler testified that he never recommended that Roberts be transferred to an easier job or that he be put on less complicated work which he could handle better.

### B. Concluding findings

It is plainly apparent from the foregoing summary of the evidence that if Long's testimony is credited, this case represents one of those rare instances where direct proof of a discriminatory motive was presented. Cf. *N.L.R.B. v. Southland Manufacturing Company*, 201 F. 2d 244, 245-246 (C.A. 4) and cases there cited. We therefore turn immediately to the issue of Long's credibility, which Respondent attacks on the ground that his propensity for lying was demonstrated by the following:

1. Long represented in his application for employment that he received an honorable discharge from the Navy, whereas he in fact received an "undesirable" discharge.

2. When interviewed by Respondent's counsel on Friday before the hearing, Long denied he had been instructed to discriminatorily inspect Roberts' work or to direct someone else to do so. Admitting that he was lying at the time, Long testified that he was not then under oath.

3. Asserted bias by Long against the Company because he operated a competing or conflicting business and because his resignation had been requested for that reason. See footnote 3, *supra*.

Though those matters are plainly relevant for consideration, they are heavily outweighed by other facts in the record which support and corroborate Long and which require instead the rejection of Rushton's conflicting testimony.

First to be noted is that Rushton failed to deny significant portions of Long's testimony, such as his report to Long concerning his call to Woods and his more damning attempts to influence Long's testimony. Secondly, undenied testimony by Hobbs and Query corroborated Long by establishing that Long told each of them of the part he was playing as Roberts' supervisor and on Rushton's orders to effect Roberts' termination. Furthermore, their testimony refutes the claim of bias, because Long's statements were made to them *before his resignation was requested* and thus before the occasion for his alleged animus arose. Indeed, Long's statements when made were against his interest as a supervisor who might be held accountable for his own conduct in the matter.

It is also to be noted that Rushton's testimony was implausible and inconsistent in certain respects. Thus after first disclaiming knowledge whether the work on odd-ball tuners was more difficult than on Sarkes Tarzian's, Rushton admitted that work on the latter was more simple. And though disclaiming knowledge again

whether a less competent person could perform acceptably on Respondent's product, it was to the latter that Rushton assigned Keller upon his return to the department. The comparable physical conditions and performances of Keller and Roberts suggests no reason why Roberts could not also have performed acceptably on Respondent's brand from the time of his transfer to Rushton's department, and Rushton admitted that it was he or Long who made the decisions as to whether a given employee should work on odd-balls or on the Company's brand.

Aside from the foregoing the record as a whole supports Long's testimony for it contains additional indicia of discriminatory motivation. The prime example was the disparate treatment which Respondent accorded to Keller, whose condition and whose situation generally were comparable with Roberts' save in the single circumstances that Keller was openly against the Union while Roberts was openly for it. Keller, who was placed initially on the same kind of job to which Roberts was finally assigned and whose performance on that job was comparable with Roberts', was transferred to the same kind of easier job on which Roberts had performed acceptably. Shortly after the election and the institution of the libel suit, however, Roberts was transferred from the easier job to the harder one, on which Keller's performance plainly served as the basis of Rushton's knowledge that Roberts would be unable to do the job properly. Then for some 9 months, while Rushton patiently compiled a record, Roberts was permitted to continue on a job where he consistently produced only half of the assigned quota and where his performance was so fantastically poor that the inspectors were rejecting up to 80 percent of his work.<sup>5</sup> Yet from the evidence of Roberts' prior performance and from its experience with and treatment of Keller, Respondent well knew there was work available which Roberts could perform acceptably.

For the foregoing reasons I credit Long's testimony, and I find here the direct proof of a discriminatory motive which is so rarely obtainable in unfair labor practice cases. *N.L.R.B. v. Southland Manufacturing Company, supra*. As I reject Rushton's testimony to the extent it conflicts with Long's, I find that Respondent's evidence wholly failed to support its defense that Roberts' low production and poor quality work were the sole reasons for his discharge. Though there was no substantial issue as to the character of Roberts' performance on his last job (the point to which much of Respondent's evidence was directed), Long's testimony and the other evidence established that that was only pretext and that Rushton deliberately fabricated a record against Roberts to screen Respondent's plan to eliminate an adherent of the Union who had also joined as party plaintiff in the libel action against it. Evidence concerning the abolishing of Roberts' former job and of the unavailability of other work which he was qualified to perform was wide of the mark in the light of the direct proof of discriminatory motivation. Furthermore, on the latter score, Respondent's contentions were plainly refuted by its retention of Keller, whose seniority was far short of Roberts'.

I therefore conclude and find, on the basis of the entire evidence, that Respondent discharged Roberts because of his union membership and activities and because of his participation with other employees and with union representatives in the filing of the libel suit, the taking of which action was itself a protected concerted activity. *Salt River Valley Water Users' Association v. N.L.R.B.*, 206 F. 2d 325, 328 (C.A. 9) (and cases there cited), *enfg.* 99 NLRB 849. By said conduct Respondent engaged in discrimination within the meaning of Section 8(a)(3) and thereby engaged in unfair labor practices proscribed by Section 8(a)(3) and (1) of the Act.

I conclude and find further that Respondent engaged in interference, restraint, and coercion within the meaning of Section 8(a)(1) by the conduct of Long and Rushton in fabricating a pretext for Roberts' discharge by (a) requiring that Roberts perform work at a production rate which they well knew he was physically incapable of attaining and (b) attempting to build and building an adverse employment record against Roberts, consisting of written and oral warnings and placing and keeping him on probation. I find, however, that the General Counsel did not

<sup>5</sup> The only explanation which the record suggests for those incredible circumstances was supplied by Long's testimony concerning Rushton's report back to him after the call to Staff Counsel Woods that Rushton believed the Company was afraid to fire Roberts. Of course, the filing of the libel action and Roberts' open adherence to the Union would plainly have given it pause in that regard.

establish by a preponderance of the evidence the complaint allegations that Respondent directed inspectors to *disparately* reject Roberts' work, that Roberts' work was in fact disparately rejected, or that Roberts' attendance records were disparately checked.

#### THE REMEDY

Having found that Respondent engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and that it take certain affirmative action which is conventionally ordered in such cases, as provided in the Recommended Order below, which I find necessary to remedy and to remove the effects of the unfair labor practices and to effectuate the policies of the Act. For reasons which are stated in *Consolidated Industries*, 108 NLRB 60, 61, and cases there cited, I shall recommend a broad cease-and-desist order.

I shall recommend that Roberts be offered reinstatement to a job and to work of the types which he performed prior to his transfer on April 8, 1963, or the substantial equivalent thereof.

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

#### CONCLUSIONS OF LAW

1. By interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, Respondent engaged in unfair labor practices proscribed by Section 8(a)(1) of the Act.

2. By discharging John Roberts on January 10, 1964, because of his union membership and activities and because of his participation with other employees and with union representatives in the filing of the libel suit against it, Respondent engaged in discrimination to discourage membership in the Union, thereby engaging in the unfair labor practices proscribed by Section 8(a)(3) and (1) of the Act.

3. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### RECOMMENDED ORDER

Upon the foregoing findings of fact and conclusions of law and the entire record, and pursuant to Section 10(c) of the Act, I recommend that the Respondent, Sarkes Tarzian, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in International Brotherhood of Electrical Workers, AFL-CIO, Local Union 1424, or any other organization of its employees, by discharging or in any other manner discriminating against employees in regard to their hire or tenure of employment or any term or condition of employment.

(b) Requiring that employees perform work at a production rate which it knows they are physically incapable of attaining, and building or attempting to build an adverse employment record against them to be used as a pretext for discharge.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist said International Brotherhood of Electrical Workers, AFL-CIO, Local Union 1424, or any other labor organization, to bargain collectively through representatives of their own choosing, or to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities.

2. Take the following affirmative action:

(a) Offer to John Roberts immediate and full reinstatement to a job and to work of the types which he performed prior to his transfer on April 8, 1963, or the substantial equivalent thereof, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay which he may have suffered by payment to him of a sum of money equal to that which he would normally have earned from January 10, 1964, to the date of the offer of reinstatement less his net earnings during said period. (*Crossett Lumber Company*, 8 NLRB 440), said backpay to be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289, together with interest thereon at the rate of 6 percent per annum. *Isis Plumbing & Heating Co.*, 138 NLRB 716.

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under this Recommended Order.

(c) Post in its offices at Bloomington, Indiana, copies of the attached notice marked "Appendix A."<sup>6</sup> Copies of said notice, to be furnished by the Regional Director for Region 25, shall, after being signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof and maintained by it for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 25, in writing, within 20 days from the date of the receipt of this Decision, what steps Respondent has taken to comply herewith.<sup>7</sup>

<sup>6</sup>In the event that this Recommended Order be adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "a Decision and Order."

<sup>7</sup>In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith"

## APPENDIX A

### NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

WE WILL NOT discourage membership in International Brotherhood of Electrical Workers, AFL-CIO, Local Union 1424, or in any other labor organization, by discharging employees or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of employment.

WE WILL NOT fabricate a pretext for discharging employees by requiring that they perform work at a production rate which we know they are physically incapable of attaining or by attempting to build and building an adverse employment record against employees.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of their right to self-organization, to form, join, or assist said International Brotherhood of Electrical Workers, AFL-CIO, Local Union 1424, or any other labor organization, to bargain collectively through representatives of their own choosing, or to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection or to refrain from any or all such activities

WE WILL offer to John Roberts immediate and full reinstatement to a job and to work of the types which he performed prior to his transfer on April 8, 1963, or the substantial equivalent thereof, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay he may have suffered as a result of our discrimination against him.

All our employees are free to become or remain, or to refrain from becoming or remaining, members of the above-named or any other labor organization.

SARKES TARZIAN, INC.,  
Employer.

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

NOTE.—We will notify the above-named employee if presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 614 ISTA Center, 150 West Market Street, Indianapolis, Indiana, Telephone No. Melrose 3-8921, if they have any question concerning this notice or compliance with its provisions.