

Walker Electric Co., Inc. and Richard O. Holcomb,  
Jr. Case 25-CA-6656

July 25, 1975

## DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS FANNING  
AND JENKINS

On April 7, 1975, Administrative Law Judge Thomas A. Ricci issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed limited exceptions and a brief in support of the Administrative Law Judge's Decision.

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,<sup>1</sup> and conclusions<sup>2</sup> of the Administrative Law Judge and to adopt his recommended Order as modified herein.

The General Counsel excepted to the Administrative Law Judge's failure to order Respondent to restore Charging Party Richard Holcomb to his position as warehouse leadman. We find merit in this exception.

In September 1974, shortly after he testified against the Company in grievance proceedings before an arbitrator, Holcomb was demoted from his position as warehouse leadman. As a consequence of this demotion, Holcomb lost the additional 25 cents per hour paid to the leadman under the collective-bargaining agreement.

Although the Administrative Law Judge concluded that the action taken against Holcomb in September was motivated by the Company's desire to retaliate against Holcomb for his role in pressing the grievances, his recommended Order merely required Respondent to restore the 25-cent-per-hour pay cut and to make Holcomb otherwise whole for any money he may have lost by reason of the discrimination against him.<sup>3</sup>

<sup>1</sup> The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is 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.

<sup>2</sup> The General Counsel has excepted to the Administrative Law Judge's failure to make additional findings of unlawful threats. We find it unnecessary to pass on these exceptions, since any additional findings would merely be cumulative and, therefore, would not affect our remedy herein.

The Administrative Law Judge explained his failure to recommend a remedy that included Holcomb's reinstatement as warehouse leadman by observing that Holcomb had not been "removed from his job," this apparently in reference to the fact that Holcomb continued to work as a warehouseman. Furthermore, the Administrative Law Judge asserted that reinstatement was not justified here because "it is a border line question whether he [Holcomb] was functioning on behalf of management or not."

Contrary to the Administrative Law Judge, we conclude that the circumstances of this case require that we order Respondent to reinstate Holcomb and thus to restore the *status quo ante*. In this regard we note that under Section 10(c) of the Act this Board is charged with ordering "such affirmative action as will effectuate the policies of this Act." Furthermore, we note that an employee is entitled to relief from any personnel action undertaken for discriminatory motives whether such action be discharge, transfer, or, as here, demotion.<sup>4</sup> *Tan-Tar-A Resort*, 198 NLRB 1104 (1972). Accordingly, we shall modify the Administrative Law Judge's recommended Order and grant the Charging Party the full and effective remedy to which he is entitled.

## 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 as modified below and hereby orders that Respondent, Walker Electric Co., Inc., Terre Haute, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in said recommended Order, as so modified:

1. Substitute the following for existing paragraph 1(a):

"(a) Reducing the pay of employees and demoting them or in any other manner discriminating against

<sup>3</sup> The Administrative Law Judge found that an earlier pay cut of 25 cents per hour in Holcomb's wage rate was unlawfully motivated, and recommended that the Company also be ordered to restore this pay cut if in fact it had not already done so.

<sup>4</sup> For the first time in its exceptions the Respondent urges that Holcomb was a supervisor as that term is defined in the Act and hence is without the protection of the Act. Respondent's contention in this regard apparently stems from the Administrative Law Judge's comment concerning the "border line" nature of Holcomb's duties. The record indicates that at some time in the spring of 1974 Warehouse Foreman Jerry Monroe took on additional duties as a salesman. However, the record also shows that Monroe continued to function as warehouse foreman and that Holcomb and the other warehousemen continued to regard him as the immediate warehouse supervisor. Although Holcomb in his capacity as leadman did direct warehouse employees in the routine performance of their duties, there is no evidence that he was clothed with or exercised powers that the Board regards as indicia of supervisory status. Accordingly, we find that the Respondent's exception lacks merit.

them because of their union activities or because they file grievances pursuant to a collective-bargaining agreement.”

2. Substitute the following for existing paragraph 2(a):

“(a) Restore to Richard Holcomb the reduction in hourly pay imposed upon him in June and again in September of 1974, in the manner set forth in the section herein called “The Remedy”; offer Richard Holcomb immediate and full reinstatement to his former position as warehouse leadman, with all duties and functions, or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed.”

3. Substitute the attached notice for the Administrative Law Judge’s notice.

IT IS FURTHER ORDERED that the complaint herein be, and it hereby is, dismissed insofar as it alleges unfair labor practices not found herein.

## APPENDIX

### NOTICE TO EMPLOYEES

#### POSTED BY ORDER OF THE

#### NATIONAL LABOR RELATIONS BOARD

#### An Agency of the United States Government

The National Labor Relations Board having found, after a trial, that we violated the Federal law by demoting and reducing the pay of an employee because he processed grievances or engaged in union activities:

WE WILL NOT discriminate against employees or reduce their hourly pay or demote them because they file grievances pursuant to a union contract or otherwise engage in union activities.

WE WILL make Richard Holcomb whole for any earnings he lost as a result of our discrimination against him, plus 6-percent interest, and we will reinstate him to his position as warehouse leadman or, if that position no longer exists, to a substantially equivalent position, without prejudice to any seniority or other rights and privileges previously enjoyed.

WE WILL NOT threaten to discontinue Christmas bonuses unless our employees cease filing grievances through their Union.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to join or assist Local 144, Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, and to engage in other concerted activities for the purpose of collective

bargaining or other mutual aid or protection, or to refrain from any and all such activities.

### WALKER ELECTRIC Co., INC.

### DECISION

#### STATEMENT OF THE CASE

THOMAS A RICCI, Administrative Law Judge: A hearing in this proceeding was held on January 23, 1975, at Terre Haute, Indiana, on complaint of the General Counsel against Walker Electric Co., Inc., herein called the Respondent or the Company. The charge was filed by Richard O. Holcomb, an individual, on November 1, 1974, and the complaint issued on December 5, 1974. The sole issue of the case is whether Holcomb, an employee of the Respondent, suffered illegal discrimination in employment in violation of Section 8(a)(3) of the Act because of his union activities. Briefs were filed by the General Counsel and the Respondent.<sup>1</sup>

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

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE RESPONDENT

The Respondent is engaged in the wholesale sale and distribution of appliances, electrical equipment, and related products, with its principal place of business in Terre Haute, Indiana. During the past year, a representative period, in the course of its business it purchased and had delivered to that location goods and materials valued in excess of \$50,000 from out-of-state sources. During the same period it sold products from this location valued in excess of \$50,000 shipped to out-of-state locations. Its gross volume of sales business annually exceeds \$500,000. I find that the Respondent is engaged in commerce within the meaning of the Act.

##### II. THE LABOR ORGANIZATION INVOLVED

I find that Local 144, Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

##### III. THE UNFAIR LABOR PRACTICES

Among the groupings of employees which the Respondent uses in its wholesale electrical equipment distribution business is a warehouse, where about 10 persons, called warehousemen, work. There has normally been a foreman

<sup>1</sup> The hearing was continued *sine die* on January 23 so that a deposition could be taken of Joe Walker, a witness for the Respondent. By stipulation dated March 10, 1975, the parties agreed to place into evidence the deposition of that witness; marked Resp. Exh. 3, the deposition was accordingly received into evidence and the hearing was closed on March 13, 1975.

in charge over these men, and a leadman too. There is also what is called a kitchen department; apparently this is physically separate from the major warehouse, but also contains a display of kitchen equipment and a certain amount of stored such equipment, all for sale. There are also salesmen, working both in the front offices and away from the premises, truckdrivers, and other categories in a nearby building used in the Respondent's business.

In December 1972 the Company entered into a collective-bargaining agreement with Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 144, for a unit including shipping clerks, warehousemen, order fillers, etc. Holcomb, the Charging Party here, now 8-1/2 years an employee of the Company, first was a driver, but by 1972 had for several years been assistant foreman in the warehouse and also leadman. He continued as a leadman even after the contract was made. The first union steward under the contract was J. Rogers, Sr., and in 1973 Holcomb was designated steward in his place. Throughout the events giving rise to this proceeding—from the first day the union contract was made to the close of the hearing—all parties were in agreement that Holcomb was not a supervisor within the meaning of the Act, but only a rank-and-file employee entitled to all the protection of the statute.

One other very pertinent fact must be made clear at the outset. In the spring of 1974 Holcomb was giving orders to the other employees in the warehouse—assigning work, telling them what to do and when, seeing that the work flowed. The nominal foreman of the department—Jerry Monroe—had for some months been made a salesman, at his own request; the Company liked him and therefore obliged him in this way. He worked at a desk in the offices at the front of the building; the warehouse is in the rear. With this, leadman Holcomb obviously had even more "leading" to do than would had been the case with a "foreman" working with the men in the same area. And the record shows with utmost clarity that management was very pleased with the arrangement. By June 1974 there had already for several months been many complaints by warehousemen that Holcomb was too dictatorial in ordering people around to work, and what right did he have assigning work so pressingly and high-handedly anyway?—he only a leadman? The Company ignored all of these complaints—an understandable reaction.

On successive Saturdays in June—on the 1st and on the 8th—some kitchen equipment had to be moved in, or out of the kitchen department and its separate warehouse. The work was done by a supervisor there and by some salesmen. Holcomb, the union steward, thought that work belonged to the warehousemen, under the Teamsters contract, talked to some of his men, and was instrumental in having them file grievances, claiming the money must now be paid the warehousemen although they had not done the work. Two written grievances were filed over the June 1 incident—one by J. Rogers, Sr., and one by Herman Scharf, both on June 4 and both claiming 8 hours pay. Two others were filed over the June 8 incident, again one by Rogers and the other by Holcomb himself, these on June 14 and again both claiming 8 hours' pay.

There had never previously been any grievances processed under the contract then in effect covering the ware-

house employees. On June 9 the Respondent cut Holcomb's hourly pay by 25 cents. The complaint alleges this was punishment by management for having instigated the grievances and therefore a discrimination in employment violative of Section 8(a)(3) of the Act.

On July 11 Holcomb filed still another grievance in his own name, claiming that the 25-cents-per-hour reduction in his pay violated the contract then in effect.

All five of the grievances went to arbitration, and there was a hearing before the arbitrator on September 18, 1974. Holcomb was the only witness who testified on behalf of the Union and in support of the grievances. Two days later he was removed from his position as leadman and lost another 25 cents in hourly pay. Again the complaint calls this second reduction in pay unlawful discrimination and a further violation of Section 8(a)(3).

The Respondent denies any improper intent in either of the two 25-cent reductions in pay. As to the first, the Respondent explains it on the simple ground that Holcomb had erroneously been overpaid 25 cents per hour since way back in December 1972 when the Union contract was agreed upon, and that the change back, when made, was no more than a correction of an old mistake. The removal of Holcomb from his position as a leadman, and the further loss of 25 cents in pay, was forced upon it, according to the Respondent, by the complaints of warehousemen that they could not get along with the man, indeed that some had threatened to quit unless someone else were placed in authority to look over them. The Respondent insists the business of filing and processing the grievances had nothing to do with either change in pay.

#### Other Pertinent Facts; Conclusion

The extraordinary timing of the critical events gives rise to so strong an inference of causal relationship that absent the most convincing affirmative evidence of unrelated motivation in the Respondent, a conclusion of illegal intent against Holcomb is compelled. For almost 2 years the leadman was paid \$4.50 or \$4.75 per hour; he was never criticized for his work. Indeed management must have had a truly high opinion of his competence, if they could agree to have the foreman of the department virtually leave the warehouse and pursue a career as a salesman elsewhere. The personnel director, Lowell Jackson, testified in detail of his tremendous concern over this 25-cent matter, how he "explained . . . the situation" to the company lawyer, Mr. Duffy: "I contacted Mr. Duffy on three or four different occasions by telephone," asking the lawyer to try to bring "this thing to a head" directly with the Teamsters business representative. The Respondent's witnesses tried to create the impression this 25 cents had long raised a furor among the employees, but the testimony shows only the following. (1) When he saw his first paycheck at the time the contract was made, about a year and a half before July 1974, Holcomb wondered whether it was right or wrong; nothing was done about the doubt then and the Company just continued paying him what, without a doubt, it thought right. (2) Some months before July 1974 one or more plain warehousemen asked could they be paid 25 cents per hour more whenever they substituted as leadman during Holcomb's

absence; they did not receive it. Beyond this there was no problem so significant that it had to "come to a head," or required multiple calls for legal assistance.

Holcomb testified that on June 6 or 7 (this was 2 days after the first grievances over the kitchen department work were filed) Jackson told him he as being overpaid 25 cents and "if it became necessary he could even take me to court to get it back." Holcomb said the contract called for the money, and then asked "why this was happening" to him. Still according to Holcomb, Jackson "mentioned this thing at the kitchen . . . that it was primarily because of the trouble at the kitchen division also." On June 9 his pay was reduced.

On direct examination Jackson denied referring to the grievances when telling Holcomb he was overpaid. Was he aware of the grievances at that moment? "I don't think so. I think this was a few days before the grievances were even in our hands." Richard Walker, vice president, had already testified he had nothing to do with grievances, they normally do not come to his attention. On cross-examination Jackson was asked how quickly do grievances reach him. "I would say if they are filed one day that they are in my hands the same day. I know about them." And then: "Q. . . . when did you speak to Mr. Holcomb about the twenty-five cent increase? A. It had to be sometime after June 4 because of the pay schedule . . . ." Jackson was not a convincing witness.

There is more direct evidence that management knew about and resented Holcomb's attitude as to who was supposed to do the kitchen department work, and his activity in pushing the merits of the grievances already filed. Joe Walker, company president and the father of Richard Walker, talked to him in the presence of others on June 5. Holcomb testified that the owner loudly and forcefully expressed dissatisfaction with his work.

A. He told me that he was very dissatisfied with my work. He indicated to me that the work at the kitchen division was not our work; he told me that he was dissatisfied with the appearance, that the place was dirty, that the corners needed cleaning. I asked him what he wanted done first. Did he want the corners cleaned or did he want the work done? He said he wanted the work done, and, again, he emphasized that he was very dissatisfied with my work and that he would be watching me. He repeated this several times that he would be watching me.

Q. You said that he said that the work in the kitchen area was not your work?

A. Yes.

Q. Do you know what he was referring to?

A. He was referring to the grievances.

Q. What grievances?

A. The grievances that I processed.

JUDGE: What did he say?

WITNESS: He said that the work was not our work.

By M.S. Cooper:

Q. How do you know he was referring to the work of the kitchen area?

A. I had just processed two grievances I believe it

was the day prior to this and he said that this thing that the kitchen division I was wrong that it was not our work.

Holcomb continued to testify that at this point the son, Richard Walker, came by, joined in and: "He said that there probably wouldn't be any bonus paid over the trouble we were having at the kitchen division . . . A. What was said in that conversation by you and by Mr. Walker both? . . . A. He said that over the grievances of the kitchen division there would not be any bonus paid."

The president was unable to testify at the hearing and in his deposition, given 3 weeks after the end of the oral hearing, denied there was any reference to grievances during his diatribe against Holcomb; he said the talk occurred early in May. He also said that Holcomb then became upset and "proceeded to tell me he didn't take orders from me that he took his orders from the Union . . . I take my instructions from the Union." Walker continued that at this point, his son, hearing "this loud conversation," came by and said "if this thing kept on there wasn't going to be any bonus for anyone this year."

Consistent with the record as a whole, the president, too, said the man for years had been absolutely a competent and satisfactory employee. "I have never at any time said anything about Mr. Holcomb about his work . . . I never had complaints against Mr. Holcomb." What was it at that particular moment that provoked so sudden an unprecedented outburst? Holcomb said it was because of the grievances; Joe Walker said not so. The answer is clear enough in Richard Walker's testimony, for when called as a defense witness he virtually corroborated Holcomb. He was asked to repeat what he had said about possible loss of bonus when he heard his father talking with Holcomb and other employees—whenever it was that the criticism by the president was being voiced. His testimony follows:

I spoke about the trouble that it was causing the Company, the interruption of work at different times, some of the petty things I assumed were unnecessary as an officer of the Company, I could see where a lot of this was becoming very expensive. I had knowledge of expenses that were quite large and I made a statement back there for whatever good it would do that if things like this, as I recall my words, if things like this keep continuing I don't see how we will be able to pay a bonus to anybody.

\* \* \* \* \*

I mentioned the fact that I had seen, I had just seen an invoice I think it was \$1200 and that was partly what I had reference to. My thought was in mentioning this that maybe everybody will get together and say, hey, look; maybe they don't know this is costing money. I thought with that point in mind that maybe some of the others would get together and talk to each other and say, well, look, let's try to find another way to solve these things.

JUDGE: In the way of solving what?

WITNESS: The grievances, some of the grievances that I thought were little unnecessary to go through the arbitration and things of that nature. I thought we

could solve the cabinet situation or something that happened once in 6 years that we take down a display.

The word "cabinet" from the manager at that point of his testimony referred to certain of the kitchen equipment kept in the kitchen department, or kitchen warehouse, meaning kitchen cabinets, the type of equipment included in the things the Respondent sells. And the word "display" as used by the witness had reference, clearly upon the record as a whole, to the fact that in the kitchen department or warehouse, kitchen equipment was also placed on display for customers to see.

I read the son's testimony as corroboration of that of Holcomb. I credit Holcomb against Joe Walker and against Jackson. I find the Respondent cut his pay by 25 cents per hour to punish him for having filed the grievances, and to deter him from pushing them further, and thereby violated Section 8(a)(3) of the Act. It may well be that in the conversation that day, and it must have come in June, after the grievances were filed, Holcomb told the boss he took his orders from the Union. If he did, logic dictates an inference he must have been referring to the right to file grievances, and the right to claim the kitchen warehouse work as belonging to the Teamsters members. I cannot believe a leadman, so many years highly regarded by management, would say to the company president that on the question of whether the refuse cans should be covered he would heed the advice of the Union and not that of his employer.

I also find that Manager Richard Walker's threat, voiced to Holcomb and the employees then present, that the Respondent would withhold the Christmas bonus unless the employees ceased filing grievances under the union contract, constituted a violation of Section 8(a)(1) of the Act chargeable to the Respondent.

I reach the same conclusion as to the second reduction in pay 3 months later. Indifferent to the Walkers' admonitions to him not to press the Saturday work grievances on the ground that the Company could not afford to pay, he appeared as the sole witness, again pressing for money from the Company on September 18 before the arbitrator. According to the Walkers, on September 19 a new man was offered the job as foreman in fact over the warehouse, and on September 20 Holcomb was told that he was no longer leadman, with consequent loss of another 25 cents in pay. None of the assertions offered in explanation of why this action came at exactly that time, and not before or later, is convincing.

The basic affirmative defense is that Holcomb ceased being leadman because he could not get along with the warehousemen. As articulated in descriptive adjectives the problem was called one of personality conflict, clash of temperaments, Holcomb favoring one warehouseman (a brother-in-law) over others, his unpleasant mannerisms, his animosity, etc. Trouble there was between Holcomb and the men under him, for on June 19, 1974, seven of the nine signed a petition to the Company asking his removal as leadman. But none of the conclusionary descriptive language can alter the direct evidence of what exactly the men resented, and it was Holcomb's insistence that they all

work, and work hard. Thus Manager Walker said that a warehouseman named Powell said to him: ". . . he [Holcomb] keeps telling me to do this and do that' and he says, I don't know whether I am coming or going . . . . About the time I get ready to take my deliveries out he tells me to go unload a kitchen or something.'" Another warehouseman, Hamilton, also testified about Powell's complaint against the leadman: "Tom [Powell] was mad because . . . he had just took one out and he came right back and they sent him out with another one, and he thought that one of us other guys should have done it." The foreman, Monroe, testified an employee named Meyers complained to him: "that he [Meyers] would take the orders back and some of the guys would be standing and instead of Dick telling them to fill the orders he would have him go ahead and fill them when he had a man standing there which should have been filling them. . . ." Meyers himself made his complaint clearer: "at the time he was leadman he would order jobs to be done that they felt like he wasn't entitled to give orders; . . . They said that he was giving orders that he had no right to . . . . That he was giving orders that he had no right to give; that he was not the foreman; that he was a leadman. They did not think that they had to follow orders that he told them to do." Meyers also testified that he signed the June petition against Holcomb because another warehouseman named Wilson told him "we don't think he is capable of holding his position anymore and he is giving too many orders and we don't think this is right." From the testimony of warehouseman Hughbanks: "Well Dick was running the place not as a leadman but as a foreman which he was not." "Q. Was there any other reasons you signed the petition aside from that? A. No."

There is evidence that complaints of this kind had come to management quite before the signed employee petition of June 19. The Company did nothing about them. I find totally unpersuasive the purely self-serving and unsupported statements that the Company waited until September to hire a foreman because it could not find a qualified man, and did not replace Holcomb as leadman for fear it had no right to do so without the Teamsters consent. Manager Walker knows all about unions; he has been in collective-bargaining relations with the IBEW for his across-the-street operation—apparently unrelated to this electrical equipment wholesale business—for 25 years, negotiating a new contract every year. If he had any doubt about management's right to decide who was to give work orders to employees, all he had to do was ask the Teamsters business agent, and it would hardly have taken 3 months or more.

There is also indication on this record that one of the things warehousemen came to hold against Holcomb was the very fact he had pushed the grievances over the kitchen department work. Why this should have been so, I do not understand, but that question is beside the point here. The fact is all five of the grievances—four over the work assignment and the fifth over the 25 cents Holcomb lost in June—prevailed before the arbitrator following Holcomb's supporting testimony. But the fact he proved to be right in his grievances in no sense helps to prove the merits of the complaint in this case, for a man is protected when filing

grievances regardless of whether they are meritorious or not.<sup>2</sup> By like reasoning, he may not be discharged, or suffer any discrimination in employment, because he files or instigates grievances, even where the employer wins them all. It is therefore no comfort to the defense that in the opinion of one person or another the question whether the Respondent had a contractual right to reduce Holcomb's pay was a close one. The question here is not whether it violated the contract in the cut in pay, but whether it cut the pay when it did for reasons proscribed by this statute.

I find on the record as a whole that by reducing Holcomb's pay in September 1974 the Respondent committed an unfair labor practice in violation of Section 8(a)(3) of the Act.

#### THE REMEDY

Remedial action here requires that the Respondent raise Holcomb's hourly rate of pay by 25 cents twice, and reimburse him now for any money he may have lost because of the unlawful reductions of the past. There is some evidence in the record that the Respondent may already have complied with the decision of the arbitrator finding that the first cut in pay, of June 1974, was improper, and that it has already been restored to Holcomb, with compensation for money lost. In that event, there would be no occasion to reimburse him twice as to that particular discrimination. There is also no occasion here for reinstatement of any kind, for Holcomb was not removed from his job. I also do not think that the circumstances of the case justify an order that the Company restore Holcomb to the leadman's position he once held, for in truth it is a border line question whether he was functioning on behalf of management or not. Indeed, perhaps there would be less occasion for unfair labor practices in the future if a clearer distinction be maintained between rank-and-file employees, with consequent membership in the Union, and those persons empowered to see that people work the way the employer requires.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of Respondent described in section I, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor dispute burdening and obstructing commerce and the free flow of commerce.

#### CONCLUSIONS OF LAW

1. By reducing the hourly pay of Richard Holcomb in June and again in September 1974, the Respondent has engaged in and is engaging in unfair labor practices in violation of Section 8(a)(3) of the Act.
2. By the foregoing conduct and by threatening to dis-

continue a Christmas bonus unless the employees cease filing grievances through their union, the Respondent has engaged in and is engaging in violations of Section 8(a)(1) of the Act.

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

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

#### ORDER<sup>3</sup>

The Respondent, Walker Electric Co., Inc., Terre Haute, Indiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Reducing the pay of employees or in any other manner discriminating against them because of their union activities or because they file grievances pursuant to a collective-bargaining agreement.

(b) Threatening to discontinue Christmas bonuses unless the employees cease filing grievances through their union.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights of self-organization, to form, join, or assist Local 144, Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Restore to Richard Holcomb the reduction in hourly pay imposed upon him in June and again in September of 1974, in the manner set forth in the section herein called "The Remedy."

(b) Make whole Richard Holcomb for any loss of pay he may have suffered by reason of the Respondent's discrimination against him.

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

(d) Post at its place of business in Terre Haute, Indiana, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of said notice, on forms provided by the Regional Director for Region 25, after being duly signed by its representa-

<sup>3</sup> In the event no exceptions are filed as provided in 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.

<sup>4</sup> In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board"

<sup>2</sup> *Mushroom Transportation Co. Inc.*, 142 NLRB 1150 (1963), reversed on other grounds 330 F.2d 683 (C.A. 3, 1964) See also *Northwest Drayage Co.*, 201 NLRB 749 (1973).

tives, shall be posted by the Respondent immediately upon receipt thereof, and be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by it to insure that all said

notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 25, in writing, within 20 days from the date this Order, what steps the Respondent has taken to comply herewith.