

In the Matter of HUGHES TOOL COMPANY and UNITED STEELWORKERS  
OF AMERICA LOCALS NOS. 1742 AND 2457, C. I. O.

*Case No. 16-C-1018.—Decided May 27, 1944*

## DECISION

AND

## ORDER<sup>1</sup>

On April 15, 1944, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in certain unfair labor practices, and recommending that it cease and desist from the unfair labor practices found and take certain affirmative action, as set out in the copy of the Intermediate Report attached hereto. Thereafter, the respondent filed exceptions to the Intermediate Report; the Independent filed exceptions and a supporting brief; and the Union filed an answering brief. Oral argument, in which only the Union participated, was held before the Board in Washington, D. C., on May 18, 1944. The Board has considered the rulings of the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the respondent's exceptions, the Independent's brief and exceptions, the Union's answering brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the exceptions and qualifications set forth below.

1. We agree with the conclusion of the Trial Examiner that the respondent, under the facts shown by the record and set forth in the Intermediate Report, has refused to bargain with the Union as the exclusive representative of its employees within the appropriate units by the following acts, considered separately and collectively: (1) by according minority unions the right to present and negotiate the adjustment of grievances for their members, (2) by adjusting grievances of individual employees without affording the Union as the exclusive bargaining representative the opportunity to negotiate respecting their disposition, and (3) by granting check-off privileges to the Independent. We do not believe, however, that the Trial

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<sup>1</sup> On August 8, 1944, the Board issued an Order Amending Decision which is incorporated herein.

Examiner has stated with sufficient clarity the respective rights of the individual employee and groups of employees and of the exclusive bargaining representative with respect to the presentation and adjustment of grievances.

The Act confers on the representative selected by a majority of the employees in an appropriate unit the exclusive right to negotiate and contract in behalf of *all* employees in the unit concerning rates of pay, wages, hours of employment, and other conditions of employment. It thus grants to the exclusive representative the right to contract in behalf of *all* employees respecting the procedure by which grievances are to be presented and adjusted.<sup>2</sup> Prior to the execution of a collective bargaining contract between the statutory representative and the employer, any adjustment of a "grievance" constitutes both the establishment of a mode of handling grievances and bargaining respecting a condition of employment. The Act makes it clear that the right to bargain collectively concerning the establishment of a grievance procedure and to conduct all bargaining for each and every employee in the unit is vested solely in the statutory representative. After the execution of a contract, any adjustment of a grievance constitutes, if the subject matter involved is dealt with in the contract, an interpretation and application of the contract, or, if the subject matter is not dealt with in the contract, bargaining respecting a condition of employment. Again it is clear that these rights are vested exclusively in the statutory representative. The interpretation and application of the terms of a contract and the establishment of precedents involved in the adjustment of grievances are often as important, or more important, than the original collective bargaining which led to the signing of the contract. The statutory representative is exclusively entitled to negotiate concerning such interpretation, application, and precedents. No labor organization other than the representative designated by the majority is entitled to deal with the employer concerning any of these matters respecting employees within the unit.

We interpret the proviso to Section 9 (a) of the Act to mean that individual employees and groups of employees are permitted "to present grievances to their employer" by appearing in behalf of themselves—although not through any labor organization other than the exclusive representative—at every stage of the grievance procedure, but that the exclusive representative is entitled to be present and negotiate at each such stage concerning the disposition to be made of the grievance. If, at any level of the established grievance procedure, there is an agreement between the employer, the exclusive representative, and the individual or group, disposition of the grievance is thereby

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<sup>2</sup> Cf. *Atlantic Coast Line R. Co. v. Pope*, 119 F. (2d) 39 (C. C. A. 4), so construing the analogous provisions of the Railway Labor Act.

achieved. Failing agreement of all three parties, any dissatisfied party may carry the grievance through subsequent machinery until the established grievance procedure is exhausted.

The individual employee or group of employees cannot present grievances under any procedure except that provided in the contract, where there exists a collective agreement. At each step in the grievance procedure, where the contract provides for presentation by a union representative, as does the Union's contract in this case above the foreman level, the individual employee or group of employees has the right to present his or its grievance in person, with the union representative being present to negotiate with the employer representative concerning the disposition to be made of the grievance. Where there has been no grievance machinery provided by agreement between the employer and the statutory representative, the employer must bargain in good faith with the representative respecting the procedure to be followed. Only where the exclusive representative refuses to attend meetings, as prescribed in the grievance procedures established, for the purpose of negotiating in regard to the disposition of grievances presented by individuals or groups of employees, or otherwise refuses to participate in the disposition of such grievances, may the employer meet with the individuals or groups of employees alone and adjust the grievances. And any adjustment so effectuated must be consistent in its substantive aspects with the terms of any agreement which the employer may have made with the exclusive representative. Where the steps provided in the contract have been exhausted and after good faith negotiations the employer and the exclusive representative reach an impasse concerning the disposition of any grievance for which the contract does not provide arbitration or other solution, the employer is free to dispose of the grievance, provided, of course, that any such adjustment of the grievance is consistent in its substantive aspects with the terms of any outstanding contract between the employer and the exclusive representative.

We find that within 2 weeks of its certification of December 26, 1942, for the Main Plant and Aircraft Strut Plant, the Union requested the respondent to cease treating with the Independent respecting grievances and asked that "no disposition be made of any grievance unless and until" the Union was "called in." The respondent by a letter dated January 6, 1943, refused to grant these requests. On April 6, 1943, the respondent and the Union entered into a contract setting forth a specific grievance procedure which provides for the presence of a representative of the Union at each stage of the grievance procedure above the foreman level and which provides even at this level that "whenever the [Union] so desires, it may have present, any of its representatives." Despite the fact that the Union

was certified as the exclusive bargaining representative on December 26, 1942, the respondent, at all times thereafter, both prior and subsequent to the signing of the contract with the Union, has continued to accord to minority unions recognition as the representative of their members for the purpose of presenting and adjusting grievances; has bargained collectively with such minority unions; has paid representatives of minority unions for time spent with the respondent in handling grievances for their members; and at the hearing before the Board in February 1944, stated that it believed it had the right to engage in such conduct and was still doing so. In each of these respects the respondent violated its duty to accord exclusive recognition to the Union. Moreover, following the certification of December 26, 1942, the respondent, both prior and subsequent to the signing of the contract with the Union, persisted in negotiating and adjusting grievances of individual employees in disregard of the Union's request to be "called in." In so doing the respondent violated its duty to treat with the Union as the exclusive bargaining representative in that it unilaterally established a grievance procedure with respect to handling grievances of individuals; in that following the signing of the contract it ignored the grievance procedure therein contained; and in that it effected adjustments of grievances without affording the Union an opportunity to be present and negotiate in respect thereto.

On December 13, 1943, the Board certified the Union as the exclusive representative for the respondent's Dickson Gun plant. Although no written agreement between the respondent and the Union concerning this plant has been signed, respondent has, with respect to this plant, treated with minority unions and adjusted grievances of individuals in violation of its duty to the Union in the same manner as described above respecting the Main plan and Aircraft Strut plant.

2. The Trial Examiner properly rejected offers of proof made by the respondent and the Independent to the effect that the Union has refused to present grievances for employees who are not members of the Union. We believe that the proffered evidence is immaterial to the issues raised in this proceeding, but not for the reasons stated by the Trial Examiner.<sup>3</sup> Suffice it to say that the rights of the individual employees or groups of employees, as described above, to present grievances on their own behalf affords adequate protection for their interests. Accordingly, the failure or refusal of the Union to present grievances for an individual or group of individuals does not operate to deprive the Union of its rights under the Act as set forth herein.

<sup>3</sup> Footnote 6 of the Intermediate Report, and lines 14 and 15 page 7, being the last sentence of the third paragraph of Section III C, reading as follows: "The right to see that a grievance is presented by the recognized representative for the employer's consideration is not an empty right," are not adopted by the Board and are hereby deleted.

3. We are convinced, upon a consideration of all the facts, that the appropriate remedy in the circumstances of this case is to order the respondent to bargain collectively with the Union. In reaching this conclusion, we have given careful consideration to the fact that the Independent, prior to the issuance of the complaint, had claimed to represent a majority of the employees in the Main and Aircraft Strut plant unit, as well as to the fact that when the Independent was the certified representative at the Main plant the respondent accorded the Union recognition as a minority representative in substantially the same manner as it has since recognized the Independent. In our view, however, neither of these circumstances warrants a departure from the normal remedy which we apply in cases where there has been a refusal to bargain. The respondent, having failed to fulfill its obligations, is in no position to object to an order requiring it to accord the Union its rightful status under Section 8 (5) of the Act. The employees, having been denied a fair test of the collective bargaining contemplated by the Act, are presently not in a position to exercise a free and untrammelled choice as to bargaining representatives. The conditions of a free choice will be restored when, but only when, the employees are given a practical assurance that the respondent will accord their representative its rightful place, as demonstrated by the respondent's ceasing to engage in the practices herein found to be violative of the Act and by good faith bargaining with the Union for a reasonable period, including treating with the Union respecting all grievances in the manner described herein. See *Franks Bros. Co. v. N. L. R. B.*, decided by the Supreme Court April 10, 1944. Any benefits which may accrue to the Union and any claimed deprivation to the Independent, as the result of our bargaining order, are wholly incidental to the purpose of the order and arise solely from the circumstance that it was the Union, during its tenure as exclusive representative, rather than the Independent, during its tenure, which brought the matters considered in this case before us for adjudication.

#### ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Hughes Tool Company, Houston, Texas, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Steelworkers of America, Locals Nos. 1742 and 2457, affiliated with the Congress of Industrial Organizations, 1) as the exclusive representatives of all production and maintenance employees of Hughes Tool Company, Houston, Texas, at its Main plant and Aircraft Strut plant, including Class C colored employees in the maintenance department and those

assigned to the general machine shop and inspection department; cafeteria employees; janitors, janitresses, and matrons; Class C colored common laborers working in the forge shop and in the heat-treat and foundry-shop departments; employees classified on the respondent's books as F and E employees; the colored employees working in the pattern shop; shipping-department employees; material control-department employees; shop clerks; machinists, mechanics, helpers, and laborers attached to the engineering department; the colored truck drivers in the maintenance department; and station wagon drivers; but excluding executives, supervisory, clerical, office, and professional employees; printing shop employees; personnel-department employees; sales-department employees other than those employed in the shipping department; accounting-department employees other than shop clerks; day office porters; garage employees; parking lot girls; production-department employees; and engineers, draftsmen, chemists, metallurgists, and clerical employees of the engineering department; and 2) as the exclusive representatives of all production and maintenance employees of Hughes Tool Company, Houston, Texas, at its Dickson Gun plant, including janitors and janitresses; shipping department employees; shop clerks; machinists, mechanics, helpers and laborers attached to the engineering department; truck drivers in the maintenance department, office porters, cafeteria employees; garage employees; but excluding executives, clerical, office and professional employees; printing shop employees; personnel department employees, sales department employees other than those employed in the shipping department; accounting department employees other than shop clerks; parking lot girls; production department employees; engineers and draftsmen; chemists; metallurgists; clerical employees of the engineering department; and any supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees, or effectively recommend such action;

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with United Steelworkers of America, Locals Nos. 1742 and 2457, affiliated with the Congress of Industrial Organizations, as the exclusive representatives of all the respondent's employees included in the appropriate units described

in paragraph 1 (a) of this Order, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment;

(b) Notify all its employees included in the appropriate units described in paragraph 1 (a) above, that its practice of adjusting and settling grievances through negotiations with individual employees, groups of employees, and through any representative other than the Union is discontinued and that individual employees or groups of employees may continue personally to present grievances to the respondent but that such grievances will be adjusted only through negotiations with the Union; and further notify all its employees in said appropriate units that it has ceased deducting dues on behalf of any labor organization from the employees' wages except such deductions as are made pursuant to its contract with the Union;

(c) Post immediately in conspicuous places in its Main plant, its Aircraft Strut plant, and its Dickson Gun plant, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraph 1 (a) and (b) of this Order, and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) and (b) of this Order;

(d) Notify the Regional Director for the Sixteenth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Order.

#### INTERMEDIATE REPORT

*Mr. Elmer Davis*, for the Board.

*Mr. W. M. Streetman*, of Houston, Texas, for the respondent.

*Mr. Bliss Daffan*, of Houston, Texas, for the Union.

*Mr. Tom Davis*, of Houston, Texas, for the Independent.

#### STATEMENT OF THE CASE

Upon a first amended charge duly filed on January 27, 1944, by United Steelworkers of America, Locals Nos. 1742 and 2457, affiliated with the Congress of Industrial Organizations, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Sixteenth Region (Fort Worth, Texas), issued its complaint dated February 2, 1944, against Hughes Tool Company, Houston, Texas, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and notice of hearing thereon were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleges in substance that on or about December 26, 1942 and December 13, 1943, the Union requested the respondent to bargain with it as the exclusive representative of all the

respondent's employees in two separate appropriate units and that on those dates and at all times thereafter, the respondent refused and continues to refuse to do so.

Pursuant to notice, a hearing was held on February 28, 1944, at Houston, Texas, before William F. Guffey, Jr., the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. At the beginning of the hearing, a motion to intervene dated February 19, 1944, which had been filed with the Regional Director on behalf of Independent Metal Workers Union, Locals Nos. 1 and 2, herein called the Independent, was referred to the Trial Examiner for ruling. The motion was granted over the objections of counsel for the Union and the Board. The Board, the respondent, the Union, and the Independent were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. The respondent, having filed no answer to the complaint, stated on the record its denial of the alleged unfair labor practices. After all the evidence was adduced, motions to conform the complaint and the petition to intervene to the proof were granted. At the conclusion of the hearing counsel for the parties presented oral argument on the record. All parties were advised that they might file briefs with the undersigned. The Union filed a brief.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

#### FINDINGS OF FACT

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

Hughes Tool Company, the respondent herein, is a Delaware Corporation, engaged normally in the manufacture, sale, and distribution of specialized oil well drilling equipment. It is presently also engaged in production for the United States Army and Navy. The respondent maintains at Houston, Texas, three separate plants. One, known as the Main plant, is engaged in the production of oil well equipment; the second, known as the Aircraft Strut plant, is used for the production of airplane parts; the third, known as the Dickson Gun plant, is engaged in the production of gun tubes.

During the year 1943, the respondent purchased and used more than \$500,000 worth of raw materials. More than 50 percent of such raw materials was shipped to the respondent's Houston plants from points outside the State of Texas. During the same period, the respondent's sales of its products amounted to about \$1,000,000, approximately 50 percent of which was shipped to points outside the State of Texas. The respondent has sales representatives in practically every State and its products are distributed to almost all parts of the world.

##### II. THE ORGANIZATIONS INVOLVED

United Steelworkers of America, Locals Nos. 1742 and 2457 are labor organizations affiliated with the Congress of Industrial Organizations admitting to membership employees of the respondent.

Independent Metal Workers Union, Locals Nos. 1 and 2, are unaffiliated labor organizations admitting to membership only employees of the respondent.

##### III. THE UNFAIR LABOR PRACTICES

###### A. *The appropriate unit and the majority status of the Union*

On November 27, 1942, the Board issued a Decision and Direction of Election in which it found that the production and maintenance employees, with certain specified inclusions and exclusions, employed at the respondent's Main plant and

Aircraft Strut plant, constituted an appropriate unit.<sup>1</sup> On December 26, 1942, the Board certified the Union as the exclusive bargaining representative of all such employees. On April 6, 1943, the respondent and the Union executed a collective bargaining agreement by the terms of which the respondent recognized the Union as the exclusive collective bargaining representative of all employees in the above-stated appropriate unit. Since then, the respondent has recognized the Union as the bargaining representative of its employees in the unit found appropriate by the Board.

On November 11, 1943, the Board issued a Decision and Direction of Election in which it found that the production and maintenance employees, with certain specified inclusions and exclusions, employed at the respondent's Dickson Gun plant, constituted an appropriate unit.<sup>2</sup> On December 13, 1943, the Board certified the Union as the exclusive bargaining representative of all such employees. Although no written agreement between the respondent and the Union covering the employees in the appropriate unit at the Dickson Gun plant has been executed, the respondent has recognized the Union as the exclusive collective bargaining representative of such employees and has engaged in collective bargaining with the Union as such representative.

Neither the appropriateness of the two above-stated units nor the representative status of the Union among the employees in them is contested in this proceeding.

The undersigned therefore finds, as did the Board in the prior representation proceeding, that all production and maintenance employees of the respondent at its Main plant and Aircraft Strut plant, including Class C colored employees in the maintenance department and those assigned to the general machine shop and inspection department; cafeteria employees; janitors, janitresses, and matrons; Class C colored common laborers working in the forge shop and in the heat-treat and foundry-shop departments; employees classified on the respondent's books as F and E employees; the colored employees working in the pattern shop, shipping-department employees; material-control-department employees; shop clerks; machinists, mechanics, helpers, and laborers attached to the engineering department; the colored truck drivers in the maintenance department; and station wagon drivers; but excluding executives, supervisory, clerical, office and professional employees; printing-shop employees; personnel-department employees; sales-department employees other than those employed in the shipping department; accounting-department employees other than shop clerks; day office porters; garage employees; parking lot girls; production-department employees; and engineers, draftsmen, chemists, metallurgists, and clerical employees of the engineering department, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

It is also found that at all times since December 26, 1942, the Union has been and now is the duly designated representative of a majority of the employees in the above-stated appropriate unit at the Main and Aircraft Strut plants and that, by virtue of Section 9 (a) of the Act, the Union since said date has been and now is the exclusive representative of all the employees in said unit for the purposes of collective bargaining with the respondent in respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

The undersigned further finds, as did the Board in the prior representation proceeding, that all production and maintenance employees of the respondent at its Dickson Gun plant, including janitors and janitresses, shipping department

<sup>1</sup> *Matter of Hughes Tool Company*, 45 N. L. R. B. 821.

<sup>2</sup> *Matter of Hughes Tool Company*, 53 N. L. R. B. 547.

employees; shop clerks; machinists, mechanics, helpers and laborers attached to the engineering department; truck drivers in the maintenance department; office porters; cafeteria employees; garage employees; but excluding executives, clerical, office and professional employees; printing shop employees; personnel department employees; sales department employees other than those employed in the shipping department; accounting department employees other than shop clerks; parking lot girls; production department employees; engineers and draftsmen; chemists; metallurgists; clerical employees of the engineering department; and any supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees, or effectively recommend such action constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

It is also found that at all times since December 13, 1943 the Union has been and now is the duly designated representative of a majority of the employees in the above-stated appropriate unit at the Dickson Gun plant and that, by virtue of Section 9 (a) of the Act, the Union since said date has been and now is the exclusive representative of all the employees in said unit for the purposes of collective bargaining with the respondent in respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

*B. Background; the respondent's conduct upon which the allegation of a refusal to bargain is grounded<sup>3</sup>*

On November 13, 1941, the Board, acting upon the Independent's petition for investigation and certification, certified the Independent as the exclusive bargaining representative of the respondent's employees in a unit substantially similar to the unit found above to be appropriate for the Main plant and Aircraft Strut plant, except that the unit included only employees of the Main plant.<sup>4</sup> On January 12, 1942, the respondent and the Independent executed a collective bargaining agreement by the terms of which the respondent recognized the Independent as the exclusive collective bargaining representative of the employees in the unit found by the Board to be appropriate.

Subsequent to the certification of the Independent as the exclusive representative and prior to the certification of the Union on December 26, 1942, as the exclusive representative of the same employees, the respondent dealt with the Union concerning grievances presented by the Union on behalf of its members. The respondent, similarly, dealt with certain affiliates of the American Federation of Labor concerning grievances presented by them on behalf of their members who were included in the appropriate unit, and with individual employees and groups of employees concerning their own grievances.

During the course of the negotiations which culminated in the January 12, 1942, agreement between the respondent and the Independent, the respondent agreed to deduct the Independent's dues from the wages of the Independent's members upon individual written authorization of the employees. At about the same time, the respondent made a similar agreement with the Union, then a representative of only a minority of the employees in the appropriate unit.

The contract between the respondent and the Independent, which was executed on January 12, 1942, and which was effective for 1 year from that date, provided that the respondent would deduct the Independent's dues from the wages of the Independent's members who signed individual dues deduction authorizations and that the respondent would pay over the sums so deducted to the Inde-

<sup>3</sup> All of the material facts are undisputed.

<sup>4</sup> At the time the Independent was certified, the respondent operated only the Main plant. See *Matter of Hughes Tool Company*, 33 N. L. R. B. 1089, 36 N. L. R. B. 904

pendent. The agreement further provided that the Independent's members were free at any time to cancel the authorizations and that upon receipt of written cancellations the respondent would cease deducting the Independent's dues from the wages of those members who had cancelled the authorizations. Pursuant to the agreement some of the Independent's members authorized, and the respondent made, such deductions.

After the Union was certified and recognized as the exclusive bargaining representative, the respondent continued its practice of dealing with individual employees and groups of employees concerning their own grievances and with the Independent and the American Federation of Labor affiliates, at that time minority unions, concerning grievances presented by them on behalf of their members. Thomas M. Mobley, the respondent's public relations director, testified, and the undersigned finds, that the grievances so handled relate to such matters as delay in the posting of automatic wage increases, transfers from one shift to another, and promotions and failure to obtain promotions. The respondent also continued to deduct the Independent's dues from its members' wages. In accordance with the terms of the expired agreement between the respondent and the Independent, these dues deductions are made pursuant to an authorization signed by the employees whose dues are to be deducted. They are not necessarily made for all members of the Independent, but only for those who sign an authorization. They are discontinued upon written cancellation by the employee of the authorization. Mobley testified, and the undersigned finds, that the respondent does not presently "meet with the Independent on dues deductions", but that such deductions are merely a continuation of former practices.

After the Union was certified as the exclusive representative, it requested the respondent to cease making dues deductions on behalf of the Independent's members, and to refuse to dispose of grievances brought by the Independent on behalf of its members and to make no disposition of any grievance unless and until the Union was consulted.

On January 6, 1943, the respondent, by letter addressed to the Union, refused to cease making dues deductions on behalf of the Independent's members and refused to change its practice with respect to the handling of grievances. In support of its position respecting the handling of grievances the respondent quoted the proviso of Section 9 (a) of the Act<sup>5</sup> and stated: ". . . we have always felt and still believe that an individual employee or a group of employees have the right either themselves or through a representative of their choosing to present grievances to their employer."<sup>6</sup>

<sup>5</sup> This proviso states ". . . any individual employee or a group of employees shall have the right at any time to present grievances to their employer."

<sup>6</sup> The respondent and the Independent sought to adduce evidence to show that the Union refuses to handle grievances for employees who are not members of the Union. This evidence was excluded from the record and the parties made appropriate offers of proof. Whether or not the Union refuses to handle grievances for non-members is, in the undersigned's opinion, immaterial to the issues raised in this proceeding. The respondent's employees have designated the Union as their exclusive bargaining representative. The Act imposes upon the respondent the obligation to treat with that representative and no other. The Act gives the Board no authority to judge whether or not a labor organization properly discharges its duties as an exclusive representative. It gives an employer no license to refuse to deal with an exclusive representative or to deal with another merely because, in the employer's view, the exclusive representative fails to discharge its obligations. The employees and only the employees, may select their representative. The respondent's employees have done so. If they are dissatisfied with their present representative and desire to choose another, the Board's election machinery is available to them for the purpose of making that choice. But until a new choice is made, the respondent must deal exclusively with the Union whether or not the Union satisfies the respondent's standards concerning the Union's discharge of its burdens as an exclusive representative.

It is now contended that by continuing the dues deductions on behalf of the Independent's members and by dealing with individual employees and groups of employees concerning their own grievances and with the minority unions concerning grievances of their members, the respondent has refused and is refusing to bargain with the Union as the exclusive representative of the employees in an appropriate unit.

*C. Conclusions with respect to the handling of grievances*

The respondent contends that its conduct in the settlement of grievances is protected by the proviso to Section 9 (a) of the Act, which states that "any individual employee or a group of employees shall have the right at any time to present grievances to their employer." The determination of the issue thus raised presents the problem of harmonizing the meaning and effect of the statutory provision of Section 9 (a) of the Act protecting the status of the exclusive bargaining representative, and the proviso to that section extending a specific right to individuals or group of individuals. The result must be consistent with the broad policy of the United States, expressed in the Act and other statutes, to foster and protect the process of collective bargaining as a means of preventing interruptions to commerce.

It is not questioned that the Union, having been designated by a majority of the employees in an appropriate unit, is the exclusive representative for the purposes of collective bargaining of all the employees in that unit. It is contended, however, that the grievances settled by the respondent without consulting the Union are something separate and apart from collective bargaining. This contention, in the undersigned's view, is without merit. There is no distinct cleavage between collective bargaining and the settlement of grievances whether individual or group. Grievances and grievance procedures are normal and proper subjects of collective bargaining.<sup>7</sup> Indeed, if that were not so, the proviso to Section 9 (a) the Act would have been wholly unnecessary, for the handling of individual or group grievances then would, by the definition of terms, fall outside the scope of collective bargaining which is vouchsafed by the Act exclusively to the representative chosen by a majority of the employees in an appropriate unit. By reason of the Board's certification of the Union as the exclusive representative of the respondent's employees, as well as by the terms of the respondent's contract granting the Union exclusive recognition as such representative, the respondent is precluded from settling grievances with anyone other than the Union.

It is clear to the undersigned that the respondent has misconstrued the language of the proviso to Section 9 (a) of the Act. The proviso means exactly what it says and no more. That is, that an individual employee or a group of employees may present grievances to their employer. Having presented the grievances to the employer, the rights of the individual employee or group of employees respecting grievances cease and the settlement of those grievances must then be entrusted to negotiations between the employer and the employees' exclusive representative. It may seem at first blush that such a narrow construction of the proviso renders it meaningless on the plausible theory that the right to present a grievance is worthless unless accompanied by the right to prosecute and settle it. This, however, is not so. The proviso preserves to the individual employee or group of employees the opportunity to bring before the employer and the exclusive bargaining representative grievances which otherwise might be overlooked or for other reasons never presented

<sup>7</sup> *Matter of City Service Oil Company*, 25 N. L. R. B. 36, 44 en'd in part, *N. L. R. B. v. City Service Oil Co.* 122 F. (2d) 149 (C. C. A. 2); *Matter of Mooresville Cotton Mills*, 2 N. L. R. B. 952, en'd as mod. 110 F. (2d) 179 (C. C. A. 4); *Matter of The New York Times Company, a corporation*, 26 N. L. R. B. 1094.

to or considered by the employer. The right to see that a grievance is presented by the recognized representative for the employer's consideration is not an empty right.

This interpretation of the proviso is consistent with the broad policy enunciated by the Act and with the provisions of the Act requiring collective bargaining exclusively with the representative chosen by a majority of the employees. This interpretation, moreover, is compelled by a long line of decisions by the United States Supreme Court and numerous Circuit Courts of Appeals. Thus, in the *Virginian Railway* case<sup>8</sup> the Supreme Court, in construing the exclusive bargaining provisions of the Railway Labor Act, stated that the provisions of that act for an exclusive collective bargaining representative "... imposes the affirmative duty to treat only with the true representative, and hence the negative duty to treat with no other." In the *Jones & Laughlin* case<sup>9</sup> the Supreme Court in construing the National Labor Relations Act referred with approval to the above quoted language from the *Virginian Railway* case. In the *Highland Shoe* case<sup>10</sup> the Circuit Court of Appeals declared: "Clearly to bargain directly with one's employees is not to bargain with their designated exclusive representative." In *N. L. R. B. v. Knoxville Publishing Company*<sup>11</sup> the Circuit Court said, "The intent of the Act was to permit an employee to surrender to a collective agent his individual right to bargain with an employer, after which he no longer possesses this right during the life of the contract and the statute requires the employer to deal exclusively with the agent of his employees if one has been selected as provided." The type of grievances which the respondent admittedly settles with individual employees or groups of employees, either directly or through minority representatives—grievances concerning terms and conditions of employment—clearly are the proper subjects of collective bargaining. Since, as already noted, there is no real distinction between collective bargaining and the settlement of grievances, the respondent's practice of settling grievances with individual employees, groups of employees and the representatives of minority groups constitutes conduct proscribed by the language of the Act and the above-cited judicial pronouncements construing the Act. Strictly in point is the language of the Circuit Court in the *Humble Oil and Refining* case:<sup>12</sup> "So long as a majority of the employees in each plant freely choose to belong to or be represented by the Federations they are the bargaining representatives and the contracts they make can not be ignored. *Minority groups may separately present their grievances, but must submit to bargaining through the majority representatives.*"<sup>13</sup>

Any doubt remaining as to the proper construction of the proviso is dissipated by reference to the legislative history of the Act. During the hearings before the appropriate House and Senate Committees on the bill which eventually became the Act, the "majority rule" principle set forth in the bill was much discussed and criticized on the ground that it denied to minority groups the right of collective bargaining. During one such discussion the chairman of the Senate Committee on Education and Labor said:<sup>14</sup>

I did not think it was the intent of the proponents of this legislation and I do not think it was the intent of the proponents of this language not to permit groups to present grievances, nor was it intended to debar the minority

<sup>8</sup> *Virginian Railway Co. v. System Federation No. 40, et al.*, 300 U. S. 515.

<sup>9</sup> *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1.

<sup>10</sup> *N. L. R. B. v. Highland Shoe, Inc.*, 119 F. (2d) 218 (C. C. A. 1).

<sup>11</sup> 124 F. (2d) 875 (C. C. A. 6).

<sup>12</sup> *Humble Oil and Refining Co. v. N. L. R. B.* 113 F. (2d) 85 (C. C. A. 5).

<sup>13</sup> Emphasis supplied.

<sup>14</sup> Hearings, Senate Committee on Education and Labor, 74th Cong., 1st Sess. on S. 1958 pt. 3, p. 321 See also pp 318-19

groups from sitting in if the employer and the majority were willing, but in any event of their not sitting in any negotiations that they be separately heard by the employers and their grievances or their suggestions received, and in turn presented by him to the majority group. I did not think there was anything in this bill that prevented any or all groups from getting in to the employer their views and opinions prior to the signing of the contract between the employer and the majority group of employees.

During the testimony of Mr. William Green, president of the American Federation of Labor, before the House Committee on Labor, the chairman of the committee, explaining the intent of the proviso, suggested that perhaps the proviso should be clarified by adding:

*Provided, further, that if such grievances are presented to the employer, these grievances will be taken up by the employer and the representatives of the majority and settled.*<sup>15</sup>

Of this suggestion Mr. Green said: "What we wish is that it might state clearly that the individual employee shall be accorded the right to present grievances to his employer for adjustment. That is about as far as it should go."<sup>16</sup> The chairman replied, "I agree with you."<sup>17</sup>

What has been said above is equally applicable to the respondent's practice of adjusting grievances directly with individual employees and groups of employees and with minority unions on behalf of their members. That its practice of adjusting grievances with minority unions is proscribed by the Act is additionally clear from the Act's legislative history. When the bill which became the Act was originally submitted to the appropriate Senate and House committees, the Section 9 (a) proviso expressly provided that "any individual employee or group of employees" should have the right to present grievances to the employer "through representatives of their own choosing." After criticism of the language of the proviso as appearing to permit the employer to "build up another company union" the words "through representatives of their own choosing" were stricken from the proviso before passage of the bill.<sup>18</sup>

<sup>15</sup> Hearings, House Committee on Labor, 74th Cong., 1st Sess., on H. R. 6288, p. 211.

<sup>16</sup> It should be noted that Mr. Green's suggestion was merely for the presentation of grievances to employers by individual employees. It did not provide for the adjustment of those grievances with the individuals.

<sup>17</sup> *Ibid*

<sup>18</sup> During the hearings before the House Committee on Labor, the following colloquy between the chairman of the committee and Secretary Perkins occurred (Hearings, House of Representatives, Committee on Labor, 74th Cong., 1st Sess., H. R. 6288, p. 301):

The CHAIRMAN On Page 10, line 1, it provides—

"That any individual employee or group of employees shall have the right at any time to present grievances to their employer through representatives of their own choosing."

That looks to me as if the employer could build up another company union.

Secretary PERKINS I have proposed an amendment that would make that language read—

"That nothing in this section shall deprive any individual employee or group of employees of the right at any time to present grievances to their employer."

The CHAIRMAN Do you think that your proposed amendment would take care of that?

Secretary PERKINS Yes; that is our judgment

The CHAIRMAN In other words, your understanding is that if a majority of the plant employees decide to form a union and they were the ones to do the collective bargaining—suppose there was a minority of 40 percent and they went to the employer and presented their grievance, the collective-bargaining proposition would still have to be taken care of by the majority?

Secretary PERKINS That is my understanding.

See also Hearings, Senate Committee on Education and Labor, 74th Cong., 1st Sess., S. 1958, p. 69.

It is thus clear that the respondent's practice of adjusting grievances through negotiations with the Independent and the American Federation of Labor affiliates, minority unions in the instant case, on behalf of their members who are within the appropriate unit covered by the Board's certification of the Union, is directly contrary to the intention of Congress, and constitutes in effect a denial of recognition of the Union as the exclusive representative.<sup>19</sup>

Upon the foregoing considerations the undersigned concludes and finds that by adjusting grievances with individual employees and groups of employees and by adjusting grievances through negotiations with the Independent and the American Federation of Labor affiliates as the representatives of their members in the unit represented by the Union, the respondent, since December 26, 1942, has refused and is refusing to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit and that by such conduct the respondent has interfered with, restrained, and coerced and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

*D. Conclusions with respect to dues deductions*

The respondent's practice of deducting the Independent's dues from the wages of the employees who authorize such deduction amounts to a perpetuation of the pertinent provision of the contract between the respondent and the Independent beyond its expiration date. That it would be unlawful for the respondent and the Independent to execute a new contract providing for dues deductions at a time when another labor organization is the exclusive representative, is scarcely open to question. The undersigned can see no real distinction between a new contractual relationship and the respondent's unilateral extension of the old contract. To hold otherwise would permit a labor organization to continue to enjoy the fruits of its prior representative status notwithstanding the fact that the employees have seen fit to deprive it of that status. The deduction of dues is a proper subject for collective bargaining. It is a substantial benefit to any labor organization. To bestow such a substantial concession upon a minority union as a matter of grace when the majority union enjoys it as a matter of contract right is to deprive the majority union of a part of that which belongs to it as the exclusive representative and amounts to a refusal to recognize the majority union as the exclusive representative. Such an arrangement contributes immeasurably to the support of an organization which a majority of the employees have repudiated. It fosters an instability of labor relations which the Act was designed to eliminate or, at least, diminish.

At the hearing much was made of the fact that the deductions are made pursuant only to individual authorizations. But that is not a sufficient answer to the problem: The individual authorizations are made pursuant to the terms of a contract with a union which no longer represents the employees and are given effect after the contract has expired.

<sup>19</sup> Counsel for the Independent, in his argument before the Trial Examiner, relied upon the holding in *N. L. R. B. v. North American Aviation*, 136 F. (2d) 898 (C. C. A. 9) as establishing the propriety of the respondent's conduct in the instant case. In that case, however, the employer merely set up machinery for the handling of grievances directly with the individual employees. The practice of settling grievances through negotiations with minority unions was not involved. The instant case, therefore, is distinguishable on its facts from the *North American Aviation* case. Moreover, the undersigned is of the view that the decision in the *North American Aviation* case is in direct conflict with the broad policies and clear language of the Act, several decisions of the United States Supreme Court construing the Act, and the intent of Congress as evidenced by the legislative history of the Act.

But wholly aside from the contractual relationship between the respondent and the Independent, the deductions are unlawful. While the deductions are made in accordance with the terms of the expired contract, they are made pursuant to individual agreements between the respondent and the employees. Since the matter of dues deductions is a proper subject of collective bargaining, the respondent cannot lawfully contract with its individual employees concerning such deductions at a time when the employees are exclusively represented except pursuant to and within the framework of the contractual arrangements between the respondent and the employees' exclusive representative.

The undersigned concludes and finds that by deducting the Independent's dues from the wages earned by certain members of the Independent upon individually executed dues deduction authorizations, the respondent, since December 26, 1942, has refused and is refusing to recognize and bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit and by such conduct the respondent has interfered with, restrained, and coerced and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

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

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

#### V. THE REMEDY

Having found that the respondent has engaged in and is engaging in certain unfair labor practices, it will be recommended that it cease and desist therefrom and that it take certain affirmative action which the undersigned finds will effectuate the policies of the Act.

It has been found that the respondent has refused and is refusing to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit. It will be recommended, therefore, that the respondent inform all of its employees in the units above found to be appropriate that its practice of adjusting grievances through negotiations with individual employees, groups of employees and through any representative other than the Union is discontinued and that individual employees or groups of employees may continue personally to present grievances to the respondent but that such grievances will be adjusted and settled only through negotiations with the Union. It will also be recommended that the respondent inform its employees that it has ceased deducting dues on behalf of any labor organization from the employees' wages except such deductions as are made pursuant to its contract with the Union. It will be further recommended that the respondent upon request recognize and bargain collectively with the Union as the exclusive representative of its employees within the above-found appropriate units.

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

#### CONCLUSIONS OF LAW

1. United Steelworkers of America, Locals Nos. 1742 and 2457, affiliated with the Congress of Industrial Organizations and Independent Metal Workers Union, Locals Nos. 1 and 2, unaffiliated, are labor organizations within the meaning of Section 2 (5) of the Act.

2. All the production and maintenance employees of Hughes Tool Company, Houston, Texas, at its Main plant and Aircraft Strut plant, including Class C colored employees in the maintenance department and those assigned to the general machine shop and inspection department; cafeteria employees; janitors, janitresses, and matrons; Class C colored common laborers working in the forge shop and in the heat-treat and foundry-shop departments; employees classified on the respondent's books as F and E employees; the colored employees working in the pattern shop; shipping-department employees; material-control department employees; shop clerks; machinists, mechanics, helpers, and laborers attached to the engineering department; the colored truck drivers in the maintenance department; and station wagon drivers, but excluding executives, supervisory, clerical, office, and professional employees; printing-shop employees; personal department employees; sales-department employees other than those employed in the shipping department; accounting-department employees other than shop clerks; day office porters; garage employees; parking lot girls; production-department employees; and engineers, draftsmen, chemists, metallurgists, and clerical employees of the engineering department constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. All production and maintenance employees of Hughes Tool Company, Houston, Texas, at its Dickson Gun plant, including janitors and janitresses; shipping department employees; shop clerks; machinists, mechanics, helpers and laborers attached to the engineering department; truck drivers in the maintenance department; office porters; cafeteria employees; garage employees; but excluding executives; clerical; office and professional employees; printing shop employees; personnel department employees; sales department employees other than those employees employed in the shipping department; accounting department employees other than shop clerks; parking lot girls; production department employees; engineers and draftsmen; chemists; metallurgists; clerical employees of the engineering department; and any supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees; or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

4. United Steelworkers of America, Locals Nos. 1742 and 2457, affiliated with the Congress of Industrial Organizations, was on December 26, 1943, and at all material times thereafter has been the exclusive representative of all the employees in the unit set out in paragraph 2 above for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act and on December 13, 1943, and at all material times thereafter has been the exclusive representative of all the employees in the unit set out in paragraph 3 above for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

5. By refusing to bargain collectively with the United Steelworkers of America, Locals Nos 1742 and 2457 as the exclusive representatives of its employees in the said appropriate units, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

6. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

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

## RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends that the respondent, Hughes Tool Company, Houston, Texas, its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Steelworkers of America, Locals Nos. 1742 and 2457, affiliated with the Congress of Industrial Organizations as the exclusive representatives of all production and maintenance employees of Hughes Tool Company, Houston, Texas, at its Main plant and Aircraft Strut plant, including Class C colored employees in the maintenance department and those assigned to the general machine shop and inspection department; cafeteria employees; janitors, janitresses, and matrons; Class C colored common laborers working the forge shop and in the heat-treat and foundry-shop departments; employees classified on the respondent's books as F and E employees; the colored employees working in the pattern shop; shipping-department employees; material control-department employees; shop clerks; machinists, mechanics, helpers, and laborers attached to the engineering department; the colored truck drivers in the maintenance department; and station wagon drivers; but excluding executives, supervisory, clerical, office, and professional employees; printing shop employees; personnel-department employees; sales-department employees other than those employed in the shipping department, accounting-department employees other than shop clerks; day office porters; garage employees; parking lot girls; production-department employees; and engineers, draftsmen, chemists, metallurgists; and clerical employees of the engineering department and as the exclusive representatives of all production and maintenance employees of Hughes Tool Company, Houston, Texas, at its Dickson Gun plant, including janitors and janitresses; shipping department employees; shop clerks; machinists, mechanics, helpers and laborers attached to the engineering department; truck drivers in the maintenance departments; office porters; cafeteria employees; garage employees; but excluding executives, clerical, office and professional employees; printing shop employees; personnel department employees; sales department other than those employed in the shipping department; accounting department employees other than shop clerks; parking lot girls; production department employees; engineers and draftsmen; chemists; metallurgists; clerical employees of the engineering department; and any supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees, or effectively recommend such action;

(b) In any other manner interfering with, restraining or coercing its employees in the exercise of the rights to self-organization, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with United Steelworkers of America, Locals Nos. 1742 and 2457, affiliated with the Congress of Industrial Organizations, as the exclusive representatives of all the respondent's employees included in the appropriate units described in paragraph 1 (a) of these recommendations, with respect to rates of pay, wages, hours of employment and other terms and conditions of employment;

(b) Notify all of its employees included in the appropriate units described in paragraph 1 (a) above, that its practice of adjusting and settling grievances through negotiations with individual employees, groups of employees and through any representative other than the Union is discontinued and that individual employees or groups of employees may continue personally to present grievances to the respondent but that such grievances will be adjusted only through negotiations with the Union, and further notify all of its employees in said appropriate unit that it has ceased deducting dues on behalf of any labor organization from the employees' wages except such deductions as are made pursuant to its contract with the Union;

(c) Post immediately in conspicuous places in its Main plant, its Aircraft Strut plant and its Dickson Gun plant and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it has been recommended in paragraphs 1, (a) and (b) of these recommendations that it cease and desist; and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) and (b) of these recommendations;

(d) Notify the Regional Director for the Sixteenth Region within ten (10) days from the date of the receipt of this Intermediate Report what steps the respondent has taken to comply herewith.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report the respondent notifies said Regional Director in writing that he has complied with the foregoing recommendations, the National Labor Relations Board issue and order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3—effective November 26, 1943—any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing within ten (10) days from the date of the order transferring the case to the Board.

WILLIAM F. GUFFEY, JR.  
*Trial Examiner*

Dated April 15, 1944.