

In the Matter of U. S. AUTOMATIC CORPORATION and FEDERAL UNION  
No. 23459 (AFL)

*Case No. 8-C-1578.—Decided July 8, 1944*

*Mr. Russell Packard*, for the Board.

*Mr. Richard A. Stith*, of Amherst, Ohio, for the respondent.

*Mr. Alva Kemp*, of Elyria, Ohio, for the Union.

*Mr. Harry H. Kuskin*, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon a charge duly filed by Federal Union No. 23459, affiliated with the American Federation of Labor, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Eighth Region (Cleveland, Ohio), issued its complaint dated January 26, 1944, against U. S. Automatic Corporation, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, 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, accompanied by notice of hearing thereon, were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance: (1) that since September 3, 1943, the respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit concerning rates of pay, wages, hours of employment, and other conditions of employment; and (2) that the respondent, by the foregoing acts, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On February 1, 1944, the respondent filed its answer to the complaint, admitting the allegations respecting its business, the status of the Union as a labor organization, and the appropriateness of the unit for the purpose of collective bargaining, but denying that it had

engaged in unfair labor practices. On the same day, the respondent, the Union, and the Board entered into a stipulation agreeing upon a statement of facts to serve as the basis of the Board's Decision and Order and expressly, waiving further hearing, the issuance of an Intermediate Report, or Proposed Findings of Fact, or other procedure before the Board. The stipulation provides as follows:

IT IS HEREBY STIPULATED AND AGREED by and between U. S. Automatic Corporation, herein called Respondent, Federal Union No. 23459 (AFL), herein called the Union, and Russell Packard, Regional Attorney for the National Labor Relations Board, Eighth Region, herein called the Board, that the following statement of facts and the exhibits attached hereto shall have the same force and effect as though witnesses had testified with respect thereto and that said exhibits had been offered and received at a formal hearing on due notice.

I. Upon a Charge duly filed by the Union, the Board, by the Regional Director for the Eighth Region, issued its Complaint dated January 26, 1944, against Respondent alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce 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. A copy of said Complaint, accompanied by a Notice of Hearing, was duly served on Respondent and the Union. On February 1, 1944, Respondent filed its Answer to said Complaint, a copy of which was duly served upon the Union. Service of all said documents is hereby acknowledged.

II. The parties hereto expressly waive further hearing, Intermediate Report, Proposed Findings of Fact and other and further proceedings of and before the Board. This Stipulation and Agreed statement of Facts, together with the Charge, Complaint, Notice of Hearing and Answer of Respondent, shall be filed with the Chief Trial Examiner of the Board in Washington, D. C., and shall constitute the entire record in this proceeding. Upon said record the Board may make Findings of Fact and Conclusions of Law and issue a Decision and Order.

The record in this matter may be reopened by the Board upon notice to the parties, provided that, should that occur, the record will, upon request of any of the parties hereto, be reopened with respect to any or all issues herein.

III. Respondent is an Ohio corporation having its principal place of business and office at Amherst, Ohio, herein known as the Plant, where it is engaged in the manufacture of various screw machine products for the direct use of the United States armed forces and the war effort. The principal raw materials used by Respondent in the manufacture of its products are steel, brass and bronze. More than

fifty percent by value of the raw materials are received at the Plant from sources outside the State of Ohio. Likewise, more than fifty percent by value of the finished products are shipped from the plant to points outside the State of Ohio. The gross sales of Respondent during the calendar year 1943 amounted to more than \$1,000,000.00 and its purchases of raw materials during the same period were in excess of \$500,000.00. Respondent concedes that it is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

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

V. For a number of years prior to June 24, 1943, an unaffiliated labor organization, known as Amhurst Screw Product Workers, Inc., herein called ASPW, had been recognized by Respondent as the exclusive collective bargaining representative of Respondent's employees, although not certified under the procedures of the Act. On that date the American Federation of Labor, herein called the Federation, filed a Petition with the Regional Director for the Eighth Region of the Board alleging that a question affecting commerce had arisen concerning the representation of employees of Respondent, and requesting an investigation and certification of representatives. Thereafter, the Federation filed an Amended Petition with the Regional Director concerning this matter, known on the dockets of the Board as Case No. 8-R-1192. On July 8, 1943, the Federation, the ASPW and Respondent executed an Agreement for Consent Election among all employees of Respondent in an agreed appropriate unit consisting of all production and maintenance workers at the Plant, excluding clerical workers, foremen, and guards. Pursuant thereto, an election was held on July 20, 1943, among the employees of Respondent within the appropriate unit. Thereafter, on July 26, 1943, the Regional Director for the Eighth Region of the Board issued and served upon the parties his Report on Consent Election finding and determining that the Federation of Labor had been designated and selected by a majority of the employees in the agreed appropriate unit as the exclusive bargaining representative of the employees within said unit.

VI. Following the determination of the Regional Director of July 26, 1943, that the Federation had been designated the exclusive bargaining representative of the employees involved, as described above, that organization obtained a charter and became known as Federal Union No. 23459 (AFL), herein called the Union. Respondent expressly stipulates that the Union is the same organization as, and is identical with, the Federation with the change of name herein noted.

VII. Respondent stipulates that the appropriate unit agreed upon in the said Consent Election Agreement continues as the appropriate

unit of its employees for all purposes of the Act. Respondent further stipulates that the Federation represented a majority of its employees within said appropriate unit in July 1943 and that the Union continues to represent a majority of Respondent's employees within the said appropriate unit at the present time.

VIII. On September 3, 1943, Respondent and Federal Union No. 23459 executed an Agreement in which Respondent undertook to recognize the Union as the exclusive collective bargaining agency of all employees of Respondent excluding office workers, foremen and guards. A copy of said Agreement is attached hereto and made a part hereof as Exhibit A.<sup>1</sup> On October 8, 1943, the Union sent a letter to Respondent, a copy of which is attached hereto and made a part hereof as Exhibit B. On October 23, 1943, Respondent sent a letter to the Union, a copy of which is attached hereto and made a part hereof as Exhibit C. Acknowledgement of the receipt of said letters is hereby made.

IX. In its relationship with the ASPW, Respondent recognized and bargained with it as the exclusive representative of all employees regardless of whether they were members of the ASPW or were not members of that organization, said non-membership customarily being confined to the probationary period of employment. Upon the designation of the Union as the exclusive bargaining representative of the employees within the appropriate unit, as described above, Respondent adopted the policy of dealing with all employees who were not members of the Union, as individuals and without representation, participation or intervention by the Union.

X. On and after September 3, 1943, Respondent has negotiated, bargained and dealt in an individual manner, and without permitting representation, participation or intervention by the Union, with those of its employees who are not members of the Union concerning wage raises, promotions, transfers and upgrading. Respondent contends that such individual bargaining on its part with respect to those of its employees who are not members of the Union constitutes "presentation of grievances" within the meaning of the proviso to Section 9 (a) of the Act. As a result of such individual bargaining, dealings or negotiations, Respondent has made final determinations and taken action thereon with respect to such matters. Respondent on and after said date has dealt with those of its employees who are members of the Union only through the Union, and not individually as has been its policy since said date with respect to employees who are not members of the Union.

On and after September 3, 1943, Respondent has not given the Union prior notification of any dealings, bargaining or negotiations had be-

<sup>1</sup> Only Exhibits B and C, which are referred to in the Stipulation, are set forth in full in our findings of fact, *infra*; the others are referred to whenever necessary or material.

between Respondent and employees who are not members of the Union; permitted the Union to be present at such dealings, bargaining or negotiations; permitted the Union to present its views, negotiate, bargain or deal with Respondent concerning any of the issues raised in said individual bargaining; permitted the Union to participate in consideration or settlement of any issues raised in said individual bargaining or on the final determination with respect thereto; nor has it followed the procedures set up in Articles I and III of the above-mentioned Agreement with respect to any employees who are not members of the Union.

Respondent stipulates that the only action with respect to the Union that it has taken, and represents that it will take, concerning such individual bargaining is to notify the Union of the changes made as the result of such bargaining after they had been made, such action with respect to the Union being illustrated by the statements of Respondent set forth in Exhibit C hereof.

XI. Respondent represents that, should any grievance be raised in the future as to additional matters involved in the employment relationship with respect to employees who are not members of the Union, it will continue to negotiate, bargain and deal individually with such employees on all such matters in the manner set forth in Article X, above, without permitting representation, participation or intervention by the Union.

XII. Attached hereto and made a part hereof as Exhibit D is a list of adjustments or action taken since September 3, 1943, as a result of individual bargaining with employees in the manner described in Article X, above.<sup>2</sup>

XIII. There is no oral understanding or agreement which varies from or adds to this Stipulation and Agreed Statement of Facts.

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

#### FINDINGS OF FACT

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

U. S. Automatic Corporation, an Ohio corporation, is engaged at its plant in Amherst, Ohio, in the manufacture of various screw machine products for the direct use of the armed forces of the United States and for the war effort. During the year 1943 the respondent purchased for use in its business raw materials valued in excess of \$500,000, more than 50 percent of which was shipped to it from outside the State of Ohio. During the same period the respondent's

<sup>2</sup> The schedule lists 21 such adjustments or instances of action taken by the respondent, including 5 increases in rates of pay, 15 promotions combined with increases in pay, and 1 transfer.

gross sales of finished products exceeded \$1,000,000, more than 50 percent of which was shipped to points outside the State. The respondent concedes that it is engaged in commerce, within the meaning of the Act.

## II. THE ORGANIZATIONS INVOLVED

Amherst Screw Product Workers, Inc., unaffiliated, was a labor organization, and Federal Union No. 23459, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the respondent.

## III. THE UNFAIR LABOR PRACTICES

### A. *The refusal to bargain collectively*

#### 1. The appropriate unit

The parties stipulated, and we find, that all production and maintenance workers at the respondent's Amherst, Ohio, plant, excluding clerical workers, foremen, and guards, constitute a unit appropriate for the purposes of collective bargaining. We find further that such unit insures to employees of the respondent the full benefit of their right to self-organization and collective bargaining and otherwise effectuates the policies of the Act.<sup>3</sup>

#### 2. Representation by the Union of a majority in the appropriate unit

For a number of years prior to June 24, 1943, Amherst Screw Product Workers, Inc., an unaffiliated organization, herein called the ASPW, had been recognized by the respondent as the exclusive collective bargaining representative of the respondent's employees. On that date the American Federation of Labor, herein called the Federation, filed a Petition for Investigation and Certification of Representatives with the Regional Director. Thereafter the Federation filed an Amended Petition. On July 8, 1943, the respondent, the Federation, and the ASPW entered into an Agreement for Consent Election to be conducted among all the employees of the respondent in the unit heretofore found appropriate. In the election held on July 20, pursuant to the agreement, a majority of the employees in the appropriate unit designated the Federation as their exclusive bargaining representative. On July 26, 1943, the Regional Director certified that the Federation had been so designated. Thereafter the Federation obtained a charter and became known as Federal Union No. 23459 (AFL), herein referred to as the Union. The parties stipulated and we find that, except for the change of name, the Union is the same

<sup>3</sup> The respondent stipulated that the unit was appropriate for all purposes of the Act.

organization as the Federation, and that the Federation in July, and the Union at all times thereafter, have represented a majority of the employees in the unit heretofore found appropriate. We find further that at all times since September 3, 1943, the Union has been the exclusive representative of all the employees in said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.<sup>4</sup>

### 3. The contract

On September 3, 1943, the respondent and the Union entered into a maintenance-of-membership agreement in which the respondent recognized the Union as the exclusive collective bargaining representative of all its employees in the appropriate unit.<sup>5</sup> The contract contains provisions covering seniority, vacations, use of bulletin boards, length of the workday and workweek, payment of time and one half for overtime and for holidays on the basis of the "regular rate of pay," and allowance of bonuses for the second and third night shift employees. It makes no mention of existing rates of pay, but expressly leaves that matter open for further negotiation by providing that "Articles regarding hours, wages, and special rules [are] to be negotiated, and attached to [the] Agreement." Embodied in the contract is a grievance procedure, the pertinent provisions of which are set forth in Articles I and III of the agreement. Therein, the respondent agrees (1) that it will "negotiate with the accredited representative of the Union who may be chosen by its members for the purposes of settling any dispute which may arise during the operation of the Agreement"; (2) that "the Union shall select a Shop Committee and a Shop Steward shall be selected from each Department for the purpose of handling grievances and to see that the conditions of this Agreement are not broken by either the corporation or the members of the Union"; and (3) that the aggrieved employee shall present his grievance in the first instance to the department steward for settlement with the department foreman; that, failing agreement, the steward shall present it to the shop committee and the manager or his designated representative; that, if still unsettled, the case shall be referred to the president of the corporation and an accredited representative of the American Federation of Labor; and, finally, if no settlement has been reached after exhausting these three steps, the matter shall be arbitrated.

<sup>4</sup> There are approximately 520 employees in the appropriate unit.

<sup>5</sup> The unit defined in the contract refers to all employees rather than all production and maintenance employees, but lists the same excluded categories of employees as the unit herein found appropriate. It is clear, and we find, that the unit found herein to be appropriate and the one specified in the contract are identical.

#### 4. The refusal to bargain

In accordance with the stipulation of the parties, we find that since September 3, 1943, the respondent, without prior notification to the Union, has dealt, bargained, or negotiated concerning wage raises, promotions, transfers, and upgrading with individual employees within the appropriate unit who were not members of the Union and has granted raises to, and effected transfers, promotions, and upgrading of, such employees. On October 8, 1943, the Union wrote to the respondent the following letter of protest concerning the aforesaid practices:

We, the members of Federal Union #23459 of the American Federation of Labor, not only request but demand, that all wage adjustments of production workers be handled properly through our elected representatives (either department Stewards or Committeemen).

We also demand that no Foreman will bargain with any individual regarding wages (Union or non-union member) unless said steward of that department is notified and accompanies said individual.

We also demand that the management send written notices to all foremen regarding these demands.

In being elected the sole collective bargaining agent of all employees, we most sincerely believe that our demands should be granted.

On October 23 the respondent replied by letter, stating its position with respect to the Union's demands, as follows:

In reply to your letter dated October 8th, on the making of wage adjustments, we are of the same opinion as you where members of the Union are involved. Interviews on wage adjustments of Union members are to include the employee, a representative of the Management and a Union Steward or Committeeman.

But, we cannot agree that a Union Steward be included in the discussion of wages with a non-member employee. In the latter case, however, the Union will of course be notified that such an adjustment has been made.

Wage adjustments resulting either from an employee's request or from up-grading by the Company will be handled in these ways, with final decisions on rates made by the Management.

This reply is based on existing law, the Contract between the Company and the Union, signed September 3rd, and the present wage schedules approved by the Regional War Labor Board.

It is further stipulated, and we find that, since September 3, 1943, the respondent has not permitted the Union (1) to be present at such

dealings, bargaining, or negotiations with non-member employees; (2) to present its views, negotiate, bargain, or deal with the respondent concerning any of the issues raised in said individual bargaining; and (3) to participate in the consideration or settlement thereof.<sup>6</sup> The respondent concedes, in addition, and we find, that it has not followed the procedures established in Articles I and III of the aforesaid agreement with respect to any employees within the unit who were not members of the Union. Moreover, we find that it has expressed a fixed intention not to bargain collectively with the Union in the future concerning grievances that may arise as to additional matters involved in the employment relationship of non-member employees, by stipulating that, should any such grievance arise, it would continue as heretofore to negotiate and deal with the individual without permitting representation, participation, or intervention by the Union.

### 5. Conclusions

The respondent contends that both its contract with the Union as the exclusive representative of all the employees within the appropriate unit and the Act permit it to bargain on matters covering all phases of the employment relationship with employees within the unit who are not members of the Union, for the reason that such individual bargaining constitutes "presentation of grievances" within the meaning of Section 9 (a) of the Act.<sup>7</sup> The issue thus presented is whether the respondent has committed an unfair labor practice within the meaning of the Act (1) by refusing to negotiate with the exclusive bargaining agency concerning the disposition of grievances individually presented by non-member employees, in disregard of an existing grievance procedure providing for such negotiation, and (2) by bargaining instead with these individual employees.

We must resolve this issue against the respondent. The stated policy of the Act is to eliminate and mitigate the obstructions to interstate commerce by encouraging the practice and procedure of collective bargaining. To this end the Act protects employees in the exercise of their right to self-organization and to bargain collectively through a representative of their own choosing and imposes upon the employer the affirmative duty to bargain collectively with such representative.

<sup>6</sup> It is established also that, in its relationship with the ASPW, the respondent had, prior to June 24, 1943, bargained with it as the exclusive bargaining representative of all employees regardless of whether they were members of that organization.

<sup>7</sup> Section 9 (a) reads as follows:

Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

Thus, once a bargaining representative has been designated by a majority of the employees in an appropriate unit, the obligation of the employer to deal with such representative concerning terms and conditions of employment of all those within the unit becomes exclusive and carries with it a correlative duty not to treat with others. To disregard the agent selected by the majority as the bargaining representative of the whole unit and negotiate with certain employees individually, interferes with the rights of the majority of the employees to bargain through its representative, violates the essential principles of collective bargaining, and subverts the process established by the Act. These are well established principles which recently have been reemphasized by the United States Supreme Court.<sup>8</sup>

The existence of a collective bargaining agreement with the exclusive representative, as is the situation in the case before us, does not render these principles inoperative. It is the employer's obligation, as a continuing part of the bargaining process, to negotiate with the bargaining representative with respect to the application, interpretation, administration, or modification of the collective agreement.<sup>9</sup> In fact, absent any provision in the contract leaving certain areas open to individual bargaining, the only thing left to individual agreement is the act of hiring.<sup>10</sup> No such areas are left open in the agreement before us. On the contrary, the agreement specifically provides for a continuation of the collective bargaining process on all disputes arising out of the employment relationship including individual grievances.<sup>11</sup>

In the instant case we are confronted with the respondent's refusal to deal with the Union concerning grievances as to wages, transfers, promotions, upgrading, or any other matter involved in the employment relationship of individual employees within the appropriate unit who are not members of the Union. Such grievances are normal and

<sup>8</sup> *J. I. Case v. N. L. R. B.*, 321 U. S. 332; *Medo Photo Supply Corporation v. N. L. R. B.*, 321 U. S. 678.

<sup>9</sup> *N. L. R. B. v. Sands Mfg. Co.*, 306 U. S. 322, 342; *Rapid Koller Co. v. N. L. R. B.*, 126 F. (2d) 452, 459 (C. C. A. 7), cert. den. 317 U. S. 650; *N. L. R. B. v. Newark Morning Ledger Co.*, 120 F. (2d) 266, 287 (C. C. A. 3), cert. den. 314 U. S. 693.

<sup>10</sup> *J. I. Case v. N. L. R. B.*, 321 U. S. 332. *Matter of Hughes Tool Company*, 56 N. L. R. B., 981.

<sup>11</sup> The preamble states: "Recognizing that it is not possible in Agreements of this nature, to cover every contingency that may arise, the Union hereby agrees that during negotiations for the settlement of any differences that may arise, there shall be no cessation of work by the employees. The Employer agrees that there shall be no lock-out of employees during such negotiations."

Article I provides that the respondent "agrees to negotiate with the accredited representative of the Union . . . for the purpose of settling any dispute which may arise during the operation of this Agreement."

Article III sets out a grievance procedure which provides for direct participation by a union representative beginning with the first stage.

Article VIII states: "Articles regarding hours, wages, and special rules to be negotiated, and attached to Agreement."

proper subjects of collective bargaining.<sup>12</sup> The respondent itself has recognized this fact by bargaining with the Union concerning a grievance procedure, by including a provision covering the subject in its collective contract with the Union, and by conceding its obligation to follow this provision and to deal with a union representative concerning grievances of employees who are members of the Union. Matters pertaining to the administration, interpretation, or modification of the collective agreement normally arise as grievances. Negotiations on such matters, as on all grievances, are typically conducted through the grievance procedure established in the collective agreement, pursuant to negotiations with the exclusive bargaining representative.<sup>13</sup> This grievance procedure applies to all the employees in the appropriate unit and all are entitled to its benefits, which may not be waived even by agreement between the individual employee and the respondent.<sup>14</sup> The employees therefore have a right, and the respondent is obligated, to negotiate concerning grievances through a representative of the Union as provided in the collective agreement. As against this right and obligation, the proviso to Section 9 (a) of the Act extends to individuals or groups of employees "the right at any time to present grievances to their employers." To hold, as the respondent contends, that this proviso permits the respondent to bargain concerning grievances directly with the individual employees within the appropriate unit who are not members of the Union, would not only be inconsistent with the exclusive bargaining contract, but would run counter to the very practice and philosophy of collective bargaining as established in the Act and interpreted by the courts.<sup>15</sup>

<sup>12</sup> See *Matter of Cities Service Oil Company*, 25 N. L. R. B. 36, 44, enfd in part, *N. L. R. B. v. Cities Service Oil Co.*, 122 F. (2d) 149 (C. C. A. 2), wherein we held that "since grievances concern conditions of work within the meaning of Section 9 (a) of the Act, they are proper subjects for collective bargaining." See also *N. L. R. B. v. Bachelder*, 120 F. (2d) 574, 577-578 (C. C. A. 7); *Matter of Mooresville Cotton Mills*, 2 N. L. R. B. 952, 955, enfd as mod., *Mooresville Cotton Mills v N L R B*, 110 F. (2d) 179 (C. C. A. 4); *Matter of Wallace Mfg. Co.*, 2 N. L. R. B. 1081, 1090, enfd. *N. L. R. B. v. Wallace Mfg. Co.*, 95 F. (2d) 818 (C. C. A. 4); *Matter of The New York Times Company*, 26 N. L. R. B. 1094, 1105; and *Matter of Corn Products Refining Company*, 22 N. L. R. B. 824, 831.

<sup>13</sup> See e. g., Clinton S. Golden and Harold I. Ruttenburg, *The Dynamics of Industrial Democracy*, p. 43; Watkins and Dodd, *The Management of Labor Relations*, 1938 (1st Ed.), p. 709; The Twentieth Century Fund, *How Collective Bargaining Works*, pp. 51, 244, 314, 360, 362, 418, 566, 596, 644, 652, 736, 801, 858

<sup>14</sup> See *J. I. Case Company*, *supra*.

<sup>15</sup> As the Supreme Court stated in *J. I. Case Company*, 321 U. S. 332.

... advantages to individuals may prove as disruptive of industrial peace as disadvantages. They are a fruitful way of interfering with organization and choice of representatives; increased compensation, if individually deserved, is often earned at the cost of breaking down some other standard thought to be for the welfare of the group, and always creates the suspicion of being paid at the long-range expense of the group as a whole. Such discriminations not infrequently amount to unfair labor practices. The workman is free, if he values his own bargaining position more than that of the group, to vote against representation; but the majority rules, and if it collectivizes the employment bargain, individual advantages or favors will generally in practice go in as a contribution to the collective result.

See also *The Order of Railroad Telegraphers v. Railway Express Agency, Incorporated*, 321 U. S. 342

In our opinion the only interpretation consonant with the Act, its legislative history,<sup>16</sup> and judicial decisions, is to give the proviso its literal meaning by permitting individuals or groups of employees "to present grievances to their employer" by appearing in behalf of themselves at every stage of the grievance procedure set up in the collective agreement, regardless of whether it so specifies, but entitling the exclusive representative to be present and negotiate at each such stage concerning its views as to the subject of the grievance. The extension by employers to individuals or groups of employees of greater rights than these, would undermine the kind of collective bargaining which the Act seeks to encourage.

In refusing to deal with the Union concerning grievances covering the employment relationship of individual employees and in dealing, instead, directly with the individual employees, the respondent has refused to bargain exclusively with the Union and has interfered with the employees' rights to self-organization and to bargain collectively through representatives of their own choosing. Moreover, by taking the position that it will deal with the Union in respect to grievances only of member employees, the respondent has failed and refused to accord the Union the exclusive recognition to which it is entitled under the Act and has thereby also refused to bargain with it as the exclusive representative of all the employees in the unit. Finally, by establishing a different grievance procedure for employees in the unit who are not members of the Union, the respondent has unilaterally modified the collective agreement. The respondent recognizes the binding effect of the agreement by conceding its obligation to deal with the Union in respect to grievances of member employees in accordance with the procedure embodied in the agreement. However, this grievance procedure is binding upon the employer and all the employees within the appropriate unit. The agreement itself, contemplates negotiations with the Union on "any contingency" or "dispute which may arise."<sup>17</sup> The Union therefore had a right to be consulted and to bargain about any proposed changes in the grievance procedure.<sup>18</sup> Consequently, the respondents' conduct in changing the grievance procedure established in the collective agreement, without consulting and negotiating with the Union, also constitutes a refusal to deal exclusively with the duly chosen representative.

<sup>16</sup> See 74th Cong., 1st Sess., H. Rep. No. 1147, p. 20; 74th Cong., 1st Sess., on H. R. 6288, p. 211; 74th Cong., 1st Sess., S. Rep. No. 573, p. 13; 74th Cong., 1st Sess., on S. 1958, pt. 3, p. 321.

<sup>17</sup> See footnote 11, *supra*.

<sup>18</sup> See *The Order of Railroad Telegraphers v. Railway Express Agency Incorporated*, 321 U. S. 342; *Consolidated Aircraft Corporation v. N. L. R. B.*, 141 F. (2d) 785 (C. C. A. 9); *Matter of George E. Carroll, an individual d/b/a Carroll's Transfer Company et al.*, 56 N. L. R. B. 935.

We find that, by refusing to bargain with the Union concerning grievances covering the employment relationship of employees in the appropriate unit who are not members of the Union, by bargaining with individual non-member employees on such grievances, by refusing to recognize the Union as the exclusive representative of all the employees within the appropriate unit for the purposes of collective bargaining on such grievances, and by changing the grievance procedure established in the collective agreement, without consultation or negotiation with the Union, the respondent has refused and is refusing to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, and has interfered with, restrained, and coerced 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

We find that the activities of the respondent set forth in Section III, above, occurring in connection with the operations of the respondent as 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 certain unfair labor practices, we shall order it to cease and desist therefrom and to take certain affirmative action which we find will effectuate the policies of the Act.

Since we have found that the respondent has failed to bargain collectively with the Union, we shall order it, upon request, to bargain collectively with the Union as the exclusive representative of its employees within the appropriate unit. Since we have found also that the respondent has bargained individually with employees who were not members of the Union as a means of thwarting the rights of its employees under the Act, and since we consider such bargaining to constitute an obstacle to the full exercise of the right to collective bargaining, we find it necessary in order to effectuate the policies of the Act, to require the respondent to notify its foremen and each employee with whom it has bargained individually since September 3, 1943, that the respondent will not thereafter bargain with any of its employees with respect to any matter involving the employment relationship so long as the Union or any other agency shall be the exclusive bargaining representative of its employees.

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

#### CONCLUSIONS OF LAW

1. Amherst Screw Product Workers, Inc., unaffiliated, was a labor organization, and Federal Union No. 23459, affiliated with the American Federation of Labor, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. All production and maintenance workers at the respondent's Amherst, Ohio, plant, excluding clerical workers, foremen, and guards, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. Federal Union No. 23459, affiliated with the American Federation of Labor, was on September 3, 1943, and at all times thereafter has been the exclusive representative of all the employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. By refusing to bargain collectively with Federal Union No. 23459, affiliated with the American Federation of Labor, as the exclusive representative of its employees in the appropriate unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

5. 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.

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

#### ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, U. S. Automatic Corporation, Amherst, Ohio, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Federal Union No. 23459, affiliated with the American Federation of Labor, as the exclusive representative of all production and maintenance workers at the respondent's Amherst, Ohio, plant, excluding clerical workers, foremen, and guards;

(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 labor organizations, to join or assist Federal Union No. 23459, affiliated with the American Federation of Labor, or any other labor organization, 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 Federal Union No. 23459, affiliated with the American Federation of Labor, as the exclusive representative of all production and maintenance workers at the respondent's Amherst, Ohio, plant, excluding clerical workers, foremen, and guards, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Give separate written notice to its foremen and to each of its employees with whom it has bargained individually since September 3, 1943, stating that it will not thereafter bargain with any of its employees with respect to any matter involving the employment relationship so long as the Union or any other agency shall be the exclusive bargaining representative of its employees.

(c) Post immediately in conspicuous places throughout its plant in Amherst, Ohio, 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 Eighth 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.