

In the Matter of CONTINENTAL-DIAMOND FIBRE COMPANY AND HAVEG CORPORATION and DISTRICT 50, UNITED MINE WORKERS OF AMERICA

Case No. 4-R-1570.—Decided January 1, 1945

Mr. Charles A. Wolfe, of Philadelphia, Pa., for the Company.

Mr. Vernon Ford, of Wilmington, Del., for the Union.

Miss Ruth Rusch, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by District 50, United Mine Workers of America, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Continental-Diamond Fibre Company and Haveg Corporation, Marshallton, Delaware, herein called the Companies, the National Labor Relations Board provided for an appropriate hearing upon due notice before Eugene M. Purver, Trial Examiner. Said hearing was held at Wilmington, Delaware, on November 28, 1944. The Companies and the Union appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANIES

Continental-Diamond Fibre Company, herein called Continental, is a Delaware corporation with plants located in Delaware, Pennsylvania, Indiana, and in foreign countries. The Marshallton, Delaware, plant, the only one involved in this proceeding, is engaged in the partial manufacture of vulcanized fibre. Continental purchases raw ma-

terials consisting of rag paper and various chemicals and amounting to more than \$300,000 in value, annually. All of these materials are shipped to the Marshallton plant from points outside the State of Delaware. After the vulcanized fibre is partially manufactured at this plant, 90 percent of it is sent to Continental's Pennsylvania plant and 10 percent is sent to another Delaware plant. At these plants, the fibre is processed for ultimate sale to Continental's customers.

Continental denies that it is engaged in either interstate or intrastate commerce, inasmuch as the products of the Marshallton plant are sent to its other plants for further processing. This, it is alleged, is not commerce because the products are not being sold, but are for Continental's own use. Since Continental's Marshallton operations constitute an integral step in a commercial manufacturing process conducted in several States,¹ and since in connection therewith Continental causes substantial amounts of goods to be moved in the channels of commerce, this contention is wholly without merit.² We find that Continental is engaged in commerce within the meaning of the Act.

Haveg Corporation, herein called Haveg, is a Delaware corporation engaged at Marshallton, Delaware, in the manufacture of a chemically resistant plastic. During the course of a year, Haveg purchases raw materials consisting of asbestos and resins amounting to more than \$250,000 in value, all of which are shipped from sources outside the State of Delaware. For the same period, Haveg's products amount to more than \$500,000 in value, all of which are shipped to points outside the State of Delaware.

Haveg admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

District 50, United Mine Workers of America, is a labor organization admitting to membership employees of the Companies.

III. THE QUESTION CONCERNING REPRESENTATION

The Companies have refused to grant recognition to the Union as the exclusive bargaining representative of their production and maintenance employees, contending that the Board does not have jurisdiction over Continental and that the proposed unit of employees of Continental and Haveg is not appropriate for the purposes of collective bargaining.

¹ See *Matter of Continental-Diamond Fibre Company*, 59 N. L. R. B. 32, where the Company admitted that at its plant at Newark, Delaware, it is engaged in interstate commerce.

² *N. L. R. B. v. Fainblatt*, 306 U. S. 601 and *N. L. R. B. v. Schmidt Baking Co., Inc.*, 122 F. (2d) 162 (C. C. A. 4).

A statement of a Field Examiner, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.³

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The Union requests a unit composed of production and maintenance employees of both Companies excluding laboratory, technical, clerical, plant-protection, and supervisory employees. The Companies agree that the proposed unit is appropriate as to the categories of employees to be included and excluded. They contend, however, that separate units should be established for each company in the event that Continental's employees are found to be subject to the Act. The Companies assert that a single contract for the employees of both would be "impractical," but they do not clarify this contention, nor did they adduce any evidence to show that the employees of both Companies could not feasibly be represented for bargaining purposes in a single unit.

Continental and Haveg are separate and distinct corporations with Continental owning approximately 70 percent of the stock in Haveg. The president and vice president of Continental hold the same offices in Haveg and the vice president determines the labor policies for both Companies. Continental owns five acres of land on which its Marshallton plant is located. Haveg rents several buildings at the Marshallton plant from the other corporation. The two Companies have the same plant manager and superintendent at Marshallton. Although Haveg employs the plant manager, he is compensated by both Companies in proportion to the amount of time he spends in each plant. The plant manager hires employees for both Companies. Haveg employs no firemen, watchmen, or maintenance men since Continental maintains the premises. Continental has no laboratory; hence the laboratory employees whom the parties have agreed to exclude from the unit are all in Haveg's employ. There is only one plant entrance for both Companies and the employees of the two corporations punch the same time clock. There is an interchange of unskilled employees between the two corporations, each company reimbursing the other for the differential in the pay roll. In the event of a lay-off

³ The Field Examiner reported that the Union submitted authorization cards, of which approximately 61 bore the names of persons listed on the Companies' pay rolls, which contained the names of 108 employees in the appropriate unit. The cards were dated: 1 in April 1944, 8 in September 1944, 48 in October 1944, and 4 in November 1944. At the hearing, the Trial Examiner introduced 6 additional cards which were checked against Haveg's pay roll. The Field Examiner's report shows that 67 were Haveg employees and 41 were Continental employees and that there was a substantial showing among the employees of both Companies.

by either corporation, the other would try to absorb the employees concerned, and Continental, in such a case, would try to employ the workers who had been laid off at one of its other plants. Each company issues its own pay checks, but both pay rolls are made up in Continental's office. Since the employees of both Companies are engaged in the production of chemically treated materials, it is apparent that their skills and qualifications are not dissimilar.

In a previous case in which Haveg and the Union participated,⁴ the Union sought a unit of only Haveg's employees. At that time, Haveg contended that the only feasible unit was one composed of the employees of the two plants.⁵ In view of the close integration between the two corporations and their employees and on the basis of the entire record, we find that Continental and Haveg jointly constitute a single employer within the meaning of the Act as to their employees at Marshallton. We further find that a single bargaining unit composed of Continental and Haveg employees is appropriate.

We find that all production and maintenance employees of both Continental and Haveg, excluding laboratory, technical, clerical, and plant-protection employees, and all 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.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Continental-Diamond Fibre Company and Haveg Corporation, Marshallton,

⁴ The petition was withdrawn in *Matter of Haveg Corporation*, Case No. 4-R-872.

⁵ Moreover, Continental proposes in its brief filed in this proceeding that the employees of each corporation be given an opportunity to determine in a "Globe" election whether or not they desire to be represented in a single unit with the employees of the other corporation.

Delaware, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Fourth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by District 50, United Mine Workers of America, for the purposes of collective bargaining.

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