

Hostess Brands goes out blaming unions for its demise

By DON McINTOSH
Associate Editor

Hostess Brands CEO Greg Rayburn may have sold the business press on the claim that unions are to blame for his company's end, but nothing could be further from the truth, say leaders of 83,000-member Bakery Confectionery, Tobacco Workers and Grain Millers International Union (BCTGM).

"Blaming BCTGM for the liquidation is no more credible than blaming an isolated gust of wind for blowing over a tree, when it was the tree's shallow, rotted root structure that was actually responsible," the union said in a Nov. 19 filing in U.S. Bankruptcy Court.

Hostess, which filed bankruptcy Jan. 11 for the second time in a decade, announced Nov. 16 that it is no longer seeking to restructure but instead intends to liquidate, selling off its assets, including the right to make Wonder Bread, Twinkies, and 28 other well-known brands. But the company was run into the ground by management, not by its unions, says BCTGM President Frank Hurt.

In the '80s and '90s, Hostess bought up numerous competitors, was itself sold four times, and ended up heavily

in debt, but instead of paying down that debt, the company spent its resources buying back stock to drive its share price up. For decades, management stuck with its old product line as consumer tastes changed, and failed to invest in new equipment. The company added ingredients to lengthen its products shelf-life — so that it could close plants and cut delivery routes. But quality suffered and sales dropped, and gas prices rose, diminishing the savings on products that now had to be trucked farther. In 2002, \$575 million in debt, the company declared bankruptcy.

In bankruptcy, the company negotiated two rounds of wage and benefit concessions from its unions — principally BCTGM and the Teamsters — totaling \$107 million a year. The unions also agreed to layoffs and plant closures that brought the workforce down to about 19,000 from more than 30,000.

The company emerged from bankruptcy in 2009 with \$774 million in debt, under the ownership of a private equity company and two hedge funds. But Hurt says managers failed to use



savings from the union concessions to turn the company around. Hostess introduced no new products, continued to skimp on reinvestment, and cut back on advertising and marketing.

By mid-2011, the company was again having difficulty making payments on its debt, and in August 2011, it stopped making its required \$4 million a month in pension contributions in violation of its union contracts.

Then late last year, in what BCTGM later called evidence of bad faith, top managers had the company convert their performance bonuses into salary guarantees — at the same time that Hostess attorneys were preparing a second bankruptcy filing. For Brian Driscoll, who'd only been Hostess CEO since June 2010, it meant a raise

from \$750,000 to \$2.55 million.

On Jan. 11, Hostess filed for Chapter 11 bankruptcy protection, which allows a company to stay in business while it re-organizes and renegotiates terms with lenders, vendors, and employees. And under Section 1113 of Chapter 11, companies can reject or modify union contracts if unions turn down a company's final offer and the judge determines it's "necessary" for the reorganization to succeed.

In its bankruptcy filing, Hostess reported 2011 sales of \$2.5 billion and losses of \$341 million, and it listed \$1.3 billion in debt versus \$981.6 million in assets. Without a doubt, Hostess was drowning in debt, but instead of proposing that creditors take a loss, Hostess told the court it would not be able to emerge as a viable competitor unless it was relieved of significant financial commitments and work rules imposed by its collective bargaining agreements.

Yet most of Hostess' competitors are unionized and financially healthy, including Mexican multinational Bimbo, which entered the U.S. bread market in the mid-'90s. Today Bimbo is the biggest, and is overwhelmingly union in its baking operations, and about half unionized in its distribution.

BCTGM leaders say Hostess appeared to have no reorganization plan in its bankruptcy filing beyond trying to squeeze more concessions from workers.

Meanwhile, Driscoll himself resigned March 9, and named as replacement Rayburn, who'd been hired Feb. 22 as an expert on corporate liquidations. Rayburn is founder and owner of Kobi Partners, a restructuring advisory firm. Hostess is paying him \$125,000 a month.

After months of legal motions, Hostess presented to workers its demand for concessions. Teamsters approved Hostess-proposed concessions by a narrow 53 percent vote, but BCTGM members rejected them by an overwhelming 92 percent.

The offer BCTGM members rejected would have terminated their pension plan, doubled their health insurance premiums while worsening plan benefits, eliminated the eight-hour day, and reduced their hourly pay by 27 percent over five years, starting with an 8 percent cut in the first year. Under Hostess' proposal, a worker who began the contract at \$16.12 an hour would earn \$11.26 five years later. And on top of all that, workers were being asked to agree to the closure of 10 to 12 additional plants, without being told which ones would be closed.

In a Sept. 17 press statement after the vote, BCTGM President Hurt called it "an outrageously unfair proposal from a company that has destroyed the trust of its workers through years of mismanagement, greed and unfulfilled promises."

With its bakers refusing to agree to those terms, Hostess asked U.S. Bankruptcy Court Judge Robert Drain for permission to impose them anyway. It's becoming increasingly common for bankruptcy judges to rip up labor contracts that were negotiated over decades. Hostess had other contracts, for example with Cargill to purchase flour, sweeteners and wheat gluten.

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(International Standard Serial Number 0894-444X)
Established in 1900 at Portland, Oregon
as a voice of the labor movement.

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Published on a semi-monthly basis on the first and third Fridays of each month by the Oregon Labor Press Publishing Co. Inc., a non-profit corporation owned by 20 unions and councils including the Oregon AFL-CIO. Serving more than 120 union organizations in Oregon and SW Washington. Subscriptions \$13.75 per year for union members.

Group rates available to trade union organizations.
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