

A Review of the Consolidated Biscuit/Hearthside Food Solutions Workers Nine Year Struggle to Join the BCTGM

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The history of worker rights violations against the workers in McComb, Ohio at the former Consolidated Biscuit Company (CBC) facility — now owned by Hearthside Food Solutions/Wind Point Partners Private Equity— dates back to 2002.

The overwhelming majority – 560 of the 840 eligible voters – signed union authorization cards in 2002. However, the company deployed their anti-union campaign thus tainting the atmosphere for a free and clear election.

On August 15, 2002, the more than 800 workers at CBC finally had their opportunity to vote in a National Labor Relations Board (NLRB) election, but unfortunately employer management seriously violated the workers rights. The election was overturned by the U.S. Government and the workers were promised a re-run election.

Following the BCTGM's initial organizing drive in McComb, CBC repeatedly broke federal labor law and violated the rights of workers to organize. Twice, the NLRB ordered CBC (in out-of-court settlements) to promise to follow the law during the worker's organizing efforts.

The NLRB also won a favorable decision in December 2008 from the U.S. Court of Appeals (the nation's second highest court) reinstating with back pay those CBC employees and union supporters who had been illegally fired for their organizing activity. The Court not only ordered CBC to put the workers back on the job, but once again ordered the company to stop harassing the workers and breaking Federal law.

At the time of the court decision, the regional office of the NLRB said the company would be in contempt of court if they violated the courts order.

So, what did CBC do? They demonstrated their total disregard for Federal law, the NLRB and the court by promptly harassing the reinstated workers and violating the terms of both the previous settlements as well as the court order. The BCTGM asked that the case be forwarded to the NLRB Office of Contempt in Washington D.C.

If a company violates a settlement agreement with the NLRB (agreeing not to further violate workers' rights), or defies a decision by the Federal Court of Appeals enforcing a decision by the judicial side of the National Labor Relations Board, the enforcement side of the agency asks the Federal courts to find the company in Contempt of Court. That effectively puts the company under the supervision of the court and substantially raises penalties for continued violations of the law.

Throughout 2009, the BCTGM pursued contempt charges with the NLRB Office of Contempt, against CBC, hoping to achieve Injunctive Relief (10J) and a Gissel Bargaining Order, because of past egregious violations and wide spread abuse of worker's rights under Section 7 of the

ACT, including but not limited to the settlements in over a dozen 8(a)(3) charges and eight-five 8(a)(1) charges. (*An Injunctive Relief (10J) is a Federal Court ordering a company to stop illegal activity now and in the future. A Gissel Bargaining Order means a court has found that no remedy will make it possible for a free and fair election to be held and therefore orders the company to recognize and bargain with the union.*)

The BCTGM was successful in moving this case to the NLRB's Office of Advice, which swiftly moved it to the NLRB's Office of Contempt Litigation and Compliance. On September 2, 2009, the NLRB's Office of Contempt Litigation and Compliance determined that they should further investigate the allegations that appear to be in violation of the Court's judgment and decided to hold the formal settlement agreement in suspension, while deciding if the agency should institute civil contempt proceedings against CBC.

The BCTGM scheduled a January 15, 2010 meeting with the top officials/attorneys in the NLRB Office of Contempt Office, where the union submitted a Supplemental Memorandum of Law regarding the Sixth Circuit Bargaining Orders in hopes of achieving Injunctive Relief (10J) and a Gissel Bargaining Order. During this meeting, settlement talks took place where the BCTGM presented the NLRB with a list of extraordinary remedies, consistent with case law, based in part on our research.

On May 10, 2010, Hearthside Food Solutions (Division of Wind Point Partners Private Equity Investments) acquired Consolidated Biscuit through a bona fide purchase. In July of 2010, Hearthside accepted responsibility for remedying the allegations against CBC and accepted responsibility for future compliance with the U.S. Sixth Circuit Court, regarding the November 14, 2008 judgment.

In lieu of further litigation, the NLRB and Hearthside agreed that the allegations in the contempt petition be resolved and disposed by entry of a "Federal Court Consent Order."

On September 9, 2010, the NLRB filed a Petition for Contempt with the U.S. Sixth Circuit Court of Appeals and simultaneously, representatives from Hearthside, CBC and the NLRB entered into a "Stipulation for Entry of a Consent Order, by the U.S. Sixth Circuit Court of Appeals.

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On **January 10, 2011**, the United States court of Appeals for the Sixth Circuit, before Chief Judge Batchelder and Circuit Judges Daughtrey and Griffin, placed into Entry, the official Consent Order.

The BCTGM speculates that the NLRB 60 Day Notice will be posted sometime during the week of **January 23, 2011**.

The readings of the Notice and Consent Order will take place in the McComb plant on **February 3rd and 4th, 2011**.

The NLRB 60 Day Notice will come down on approximately **March 28, 2011**.

The re-run election from 2002 will take place approximately **30-42 days later**, or sometime at the end of **April 2011**.

The workers at CBC/Hearthside have had their protected labor rights violated for more than nine years and the BCTGM International Union had been fighting these workers the entire time without reprieve.

Now is the time for the workers to rise up and Vote Union Yes and finally gain a voice in their workplace!