

Interbake lawsuit

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Pretty please with ice cream in the middle?

Union-breaking case against Interbake goes to federal judge

By Roger Bianchini
Warren County Report

A federal trial stemming from a 48-count indictment alleging that one of the three largest cookie and cracker manufacturers in North America has engaged in illegal activities to thwart union organizing efforts at its Warren County plant concluded in Martinsburg, W. Va., on Feb. 10. At this point it can be only guesswork as to how long a federal judge will take before rendering a decision in the alleged union-busting case, but it could be months, and eventually years before a final resolution is achieved according to a representative of the Bakery, Confectionery, Tobacco Workers and Grain Millers (BCTGM) union.

“That is why the Employee Free Choice Act is so important,” BCTGM Union rep John J. Price says. “Up here where I am (in Ohio) a case has gone on for 6-1/2 years without resolution – there is no incentive to deter these companies [from anti-union activities]. There are 2000 pages of transcripts and 250 exhibits [in the Martinsburg trial]. The judge has set March 18 for briefs to be filed in that case. Say it takes until the end of August to review everything submitted and Interbake loses. They can appeal to DC and there’s another two years gone.”

The pending federal legislation Price referenced would simplify

the process of unionization of the workplace. It would allow unionization through the submission of a simple majority of worker signatures on union authorization cards. Currently, companies can contest such generally supportive moves toward unionization and require secret ballot votes on labor representation.

Price pointed out the Employee Free Choice Act would fine companies found guilty of violating national labor laws, such as are alleged in the current Warren County Interbake case, three times the amount of back pay owed employees found to have been wrongly terminated for union support.

And it is this scenario of alleged management harassment and firings of union supporters that is at the root of the federal case brought by the Baltimore Regional Office of the National Labor Relations Board (NLRB) against Interbake’s Warren County industrial bakery.

The plant specializes in cookies and ice cream sandwich wafers. Interbake’s website lists 1,100 employees at six locations in what it says is the third largest cookie and cracker manufacturing operation in North America. Interbake’s parent company is George Weston, a Canadian company founded in 1882. Interbake’s corporate offices are in Richmond, Va.

“Instead of concentrating on



making ice-cream sandwiches and cookies, that plant’s management seems focused on union busting,” Price says of the union’s read on Interbake’s management tactics at its Warren County plant. “We believe it reflects a diabolical plan on the company’s part. Unfortunately in 2007, employees were required to attend mandatory company meetings that put fear [of unionizing] into workers.”

The current federal suit alleges Interbake management began a pattern of worker intimidation and profiling following an initial pro-union authorization vote shortly after the plant opened in the spring of 2006. Price said at that time about 2/3’s of the Warren plant’s workers signed pro-union authorization cards. Then, despite what he calls a mutually beneficial past relationship between the national baker’s union and the company, Interbake declined to let BCTGM in as the plant’s employee representative. It was then the trouble started, according to Price.

“Given the history of the relationship between the company and the union I have no idea why they did that. As I said, that’s the million dollar question and it remains the million dollar question,” Price said of Interbake’s initial move against BCTGM as the labor representative of its Warren County workforce. Price said that Interbake and its parent company, George Weston, actually increased its market share and profitability from an earlier relationship with the baker’s

union based at a plant in North Sioux City, South Dakota. “The employer made money – they actually went from fourth to second in the industry during this relationship,” Price said.

Interbake’s Richmond-based attorney in the case, Mark Keenan, did agree with Price on that one point – that the union and company had a previously good working relationship based at Interbake’s North Sioux City, SD facility – but that’s about it as far as concurrence on the basic issues at stake in the federal suit goes.

Timing is everything

“In 2006 before we had hired any employees, the union was demanding that they be allowed to be the employees’ labor negotiations representative. The company wanted to preserve the right of workers to choose,” Keenan said of Interbake’s move toward a secret ballot on unionization. Keenan said the company believes a secret ballot is the most effective way to assure employee’s right to vote what they believe, without undue coercion from either side.

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Keenan also disputes Price’s estimate of initial and subsequent union support at the Warren County plant. He said Price’s own testimony at trial estimated the number of pro-BCTGM union authorization cards topping out between 55 and 60 percent, rather than the 66 percent Price’s referenced 2-1 margin implies. The Interbake attorney also stated that BCTGM Local 68 Business Manager Gary Oskian testified at trial that the union had “demanded” voluntary recognition as the Warren plant’s labor representative early in 2006 before the plant opened. At issue remains whether such a union “demand” predated a workforce expression of union support, be it 55 or 66 percent.

Keenan also said the company believes the timing of union allegations of worker coercion just prior to the April 2008 vote were prompted by the union’s expectation of a second consecutive loss by secret ballot of the plant’s employees. Keenan observed the union made no allegation of similar coercion in the wake of the 2007 election that saw unionization soundly defeated.

The disputed and tightly con-

tested 2008 vote came following a decisive, nearly 2-1 defeat of unionization in April 2007. Price says the union views such marked short-term turnarounds in union support at individual plants, as he believes was the case between 2006 and 2007 at Interbake’s Warren County plant, as indicative of concerted and often illegal management efforts to crush organized labor representation.

Keenan counters that if 60 percent or less of the plant’s workers signed the 2006 union authorization cards, the numbers to affect the 2007 secret ballot turnaround could be explained by a change of as few as 20 or so votes – “which is not nearly as dramatic a turnaround.”

Labor relations

The federal trial began on Oct. 27, and concluded after 27 days of testimony on alleged violations of the National Labor Relations Act at Interbake’s plant here. The complaint was filed on July 31, 2008, three months after a still disputed secret ballot on unionization in April 2008. Among the evidence heard by US Administrative Law Judge John T. Clark

was whether Interbake fired six employees for their union support prior to that April 16, 2008 election at which the company contends unionization was defeated by a 100-97 vote. Price says if the NLRB-enabled, but still contested votes of the four, fired employees are allowed to stand, the union wins the April election by a 101-100 count.

While the company says the contested employees were all fired for legitimate reasons, the union has a different read on the situation. Of fired union supporter John Robinson, Price said, “He had never missed a day; did all he was asked to do and achieved top seniority He was approached about a change to third, or the midnight, shift,” due to a specific personal situation. “All he did was question why, with his seniority, he would move to the third shift – and they fired him on the spot. Everybody at the plant knew why he was fired,” Price says.

Keenan asserts that the company’s effort to change Robinson’s shift was strictly due to medical limitations Robinson admitted to at trial. “He was a good employee but there were medical issues that limited what he could do,” Keenan asserts. Rather than shift other workers to accommodate Robinson’s situation, the company’s policy was to move Robinson to an open third-shift spot. Keenan characterized Robinson’s departure as almost a “self-termination” due to his medical limitations.

In addition to disagreeing on the particulars of specific terminations, Price and the union point to other methods of company harassment and coercion. Price cited “mandated” company meetings during which the union contends employees were threatened with lost retirement benefits and the specter of lost jobs if unionization was allowed at the plant. – “And the bottom line for any worker is they don’t want to lose their job. No wonder they were scared to talk to us after that,” Price said.

In contrast to the alleged series of mandatory management meetings the union believes were designed to scare workers away from union support, Price says the union was allowed scant opportunity for rebuttal at the plant in 2007. “We got only two, hour slots before and after shifts – it wasn’t a level playing field. Our tables were right across from management’s offices. We actually spent more time talking to managers than employees,” Price observed.

“I think that’s simply inaccurate,” Keenan counters. “Workers change their minds for a variety of reasons.” Of past labor violation allegations against Interbake in 2006, Keenan said that of 46 individual claims filed in 2006, 40 were either dropped by the NLRB or withdrawn by the union. Of the remaining complaints, Keenan says they were generally minor violations such as supervisors removing union materials from tables were they were legally set out for employees. He said the company decided it was not cost effective to litigate such minor offenses, and settled those cases out of court.

After the trial’s conclusion, one Interbake employee and union supporter spoke on condition of anonymity out of fear for his own job.

“I would like to emphasize that Interbake and it’s attorneys had a real good idea who was for union representation and who was not by the constant categorizing of

it’s workforce by many surveys like demographics. Removing workers from their workstations to ‘speak’ with them about their concerns but never taking any actions, was a clear sign of being profiled. All the while, problems in production were being ignored. Training was non-existent until this federal trial. The workers at Interbake have made the plant productive despite all the obstacles, however we knew we needed representation due to the treatment management instilled on us daily, like not being allowed to go home during a state of emergency one winter.

“At the very least, now Interbake has a split shop. But they could have taken the NLRB recommendation of remedy to re-hire the fired workers and count their votes to resolve the issue.

For some reason they will never admit, management chose to block their workers by whatever means necessary.”

“The Judge will decide whether or not the NLRB Regional Attorneys have proven the facts around the unlawful termination of BCTGM supporters Phillip Underwood, Connie Nelson, Christina Duval, Milo Malcomb, Clyde Stovall and John Robinson,” Price says. “Four of the six discriminees listed above voted in the April 16, 2008 election. Their votes will make the difference on whether or not 210 Interbake employees will have the right to collectively bargain a BCTGM union contract.”

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