IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MISSOURI
KANSAS CITY DIVISION

In re:		
INTERSTATE BAKERIES CORPORATION, et al.,	:	Chapter 11
	:	Case No. 04-45814 (JWV)
Debtors.	:	Jointly Administered
	:	**Hearing Date: March 12, 2008**
	:	**Hearing Time: 9:00 a.m.**
	:	**Obj. Deadline: March 5, 2008**

MOTION FOR ORDER UNDER 11 U.S.C. § 1113(C) AUTHORIZING REJECTION OF COLLECTIVE BARGAINING AGREEMENTS WITH CERTAIN LOCAL AFFILIATES OF THE BAKERY, CONFECTIONARY, TOBACCO WORKERS AND GRAIN MILLERS INTERNATIONAL UNION

Interstate Bakeries Corporation ("IBC" or the "Company") and eight[1] of its subsidiaries and affiliates, debtors and debtors-in-possession (collectively, the "Debtors"), submit this motion (the "Motion") for an order under 11 U.S.C. §§ 1113(c), substantially in the form of Exhibit A attached hereto, authorizing rejection of the Debtors' collective bargaining agreements with the following two local affiliates of the Bakery, Confectionary, Tobacco Workers and Grain Millers International Union ("BCTGM"): BCTGM Local No. 334 at IBC's bake shop in Biddeford, Maine (the "Biddeford Local"), and BCTGM Local No. 50 at IBC's bake shop in Wayne, New Jersey (the "Wayne Local") (collectively, the "Biddeford and Wayne Locals"). In support of this Motion, the Debtors respectfully represent as follows:

Preliminary Statement

1. IBC seeks to reject the collective bargaining agreements of two local affiliates of the BCTGM, one of the largest international unions representing IBC's employees. After the BCTGM negotiated for, evaluated, and supported necessary modifications to its 122 local affiliates' collective bargaining agreements with IBC, the memberships of 98 percent of the collective bargaining units represented by a BCTGM Local Union ratified those modifications. The memberships of the Biddeford and Wayne Locals, however, failed to ratify the proposed modifications. Because failed ratification votes do not constitute good cause to refuse a proposal that meets all of the requirements of Section 1113, the Biddeford and Wayne Locals' collective bargaining agreements, which collectively cover approximately 650 IBC employees, must be rejected.

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[1] The following subsidiaries' and affiliates' chapter 11 cases are jointly administered with Interstate Bakeries: Armour and Main Redevelopment Corporation; Baker's Inn Quality Baked Goods, LLC; IBC Sales Corporation; IBC Services, LLC; IBC Trucking, LLC; Interstate Brands Corporation; New England Bakery Distributors, L.L.C., and Mrs. Cubbison's Foods, Inc.

2. As explained in more detail below, as an integral part of its restructuring efforts, in June 2007, the Company engaged the representatives of the BCTGM in discussions regarding the Company's need for modifications to its collective bargaining agreements that would enable it to return to profitability and exit bankruptcy as a competitive and viable entity. On July 18, 2007, IBC provided the BCTGM with an initial proposal for modifications to all of the BCTGM's 122 collective bargaining agreements with IBC. The BCTGM formed an Advisory Committee comprised of BCTGM officers and representatives and representatives of a cross-section of BCTGM local unions (the "BCTGM Advisory Committee") -- including the top officials from Local 50 and Local 334, which represent approximately 650 employees at IBC's Biddeford and Wayne bake shops -- to engage in negotiations with IBC. IBC and the BCTGM Advisory Committee engaged in intense, around-the-clock negotiations from September 9 through September 12, 2007, and again met on September 25 and 26, 2007, regarding the terms of the proposal and reached a comprehensive labor deal on September 28, 2007 (the "Comprehensive Modification Agreement"). This Comprehensive Modification Agreement achieved important concessions in critical areas for IBC, including changes its health and welfare plan that will enable IBC to achieve significant labor cost savings and successfully restructure through implementation of its business plan.

3. In the Comprehensive Modification Agreement, the BCTGM agreed that the modifications contained in that agreement "are necessary in order for IBC successfully to restructure, secure exit financing and exit bankruptcy." Recognizing that it would be subject to separate ratification votes by the memberships of each of the BCTGM's local unions representing IBC's employees (the "Local Unions"), the BCTGM and the BCTGM Advisory Committee agreed in the Comprehensive Modification Agreement to "exert every effort to obtain fully

ratified Modification Agreements by all BCTGM Local Unions to be covered by the Modification Agreements by October 4, 2007, and to unanimously support and unanimously recommend ratification of such agreements." As a result of these efforts, 98 percent of the BCTGM's 122 collective bargaining units have ratified their Modification Agreements, including other bargaining units represented by Local 50, which, along with Local 334, recommended ratification to their memberships. The Biddeford and Wayne Locals' failure to ratify the proposed modifications came despite the fact that the BCTGM and BCTGM Advisory Committee negotiated for, evaluated, and supported the Comprehensive Modification Agreement, obtained significant changes to IBC's original proposal, including the addition of certain wage guarantees, a neutrality agreement with respect to union organizing activities, and a profit sharing program that essentially provides that ten percent of the Debtors' net income (as defined in the Comprehensive Modification Agreement) through 2014 will be paid back to eligible employees, capped at a cumulative $25 million. In addition, this rejection also came despite the fact that the Debtors' exit financing by Silver Point Finance, LLC ("Silver Point") is contingent upon modifications to IBC's collective bargaining agreements with the BCTGM in order to allow implementation of IBC's business plan. In other words, without a voluntary ratification by the Biddeford and Wayne Locals, or rejection authorized by this Court, IBC may be unable to exit bankruptcy and successfully restructure.

4. Accordingly, given the Biddeford and Wayne Locals' intransigence, IBC has no choice but to move to reject their collective bargaining agreements with IBC. If the Court authorizes rejection, IBC will only implement the applicable modifications contained in the Comprehensive Modification Agreement and will not otherwise alter the terms and conditions of employment of those employees represented by the Biddeford and Wayne Locals.

BACKGROUND

A. The Chapter 11 Filings

5. On September 22, 2004, eight of the Debtors each filed a voluntary petition in this Court for reorganization relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the "Bankruptcy Code"). Further, on January 14, 2006, the ninth debtor, Mrs. Cubbison's Foods, Inc., also filed a voluntary petition in this Court for reorganization relief under Chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

6. No trustee or examiner has been appointed in the Debtors' Chapter 11 cases. On September 24, 2004, the United States Trustee (the "U.S. Trustee") appointed the official committee of unsecured creditors (the "Creditors' Committee") in these cases.[2] On November 29, 2004, the U.S. Trustee appointed an official committee of equity security holders (the "Equityholders' Committee," collectively with the Creditors' Committee, the "Committees") in these cases.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding under 28 U.S.C. § 157(b)(2).

8. The statutory predicate for the relief sought herein is 11 U.S.C. § 1113.

B. The Debtors

9. Collectively, the Debtors are one of the largest wholesale bakers and distributors of fresh baked bread and sweet goods in the United States. The Debtors produce,

[2] The U.S. Trustee appointed the Creditors' Committee for the eight debtors that filed on September 22, 2004. No official committee of unsecured creditors has been appointed for Mrs. Cubbison's Foods, Inc.

market and distribute a wide range of breads, rolls, croutons, snack cakes, donuts, sweet rolls and related products under national brand names such as "Wonder®," "Hostess®," "Baker's Inn™," "Home Pride®," and "Mrs. Cubbison's®" as well as regional brand names such as "Butternut®," "Dolly Madison®," "Drake's®" and "Merita®." Based on independent, publicly available market data, "Wonder®" bread is the number one selling white bread brand sold in the United States and "Home Pride®" wheat bread is a leading wheat bread brand in the United States. "Hostess®" products, including "Twinkies®," "Ding Dongs®" and "HoHos®," are among the leading snack cake products sold in the United States. (Declaration of J. Randall Vance ("Vance Decl.") ¶¶ 3, 4.)

10. The Debtors currently operate 41 bakeries and approximately 630 distribution centers at various locations around the country. From these bakeries and distribution centers, the Debtors' sales force delivers fresh baked goods to tens of thousands of food outlets. The Debtors also operate approximately 730 bakery outlets (known as "thrift stores") located in markets throughout the United States. (Vance Decl. ¶ 5.)

11. IBC has approximately 24,000 employees, the majority of whose employment is covered by one of approximately 378 union contracts to which IBC is a party. (Declaration of Richard B. Cook ("Cook Decl.") ¶ 3). Most of the Debtors' union-represented employees are members of either the International Brotherhood of Teamsters ("IBT") or the BCTGM. (Id. ¶ 4.)

12. Interstate Bakeries is a corporation organized under the laws of the State of Delaware. The Debtors' principal executive offices are located at 12 East Armour Boulevard in Kansas City, Missouri. (Vance Decl. ¶ 6.)

RELIEF REQUESTED

13. IBC seeks an order under 11 U.S.C. § 1113(c) authorizing rejection of IBC's collective bargaining agreements with the Biddeford Local and the Wayne Local.

BASIS FOR RELIEF

I. Status of Chapter 11 Cases

14. IBC has been in Chapter 11 for more than three years. During this time, IBC has, among other things, created hundreds of millions of dollars in savings through the closure, elimination or termination of more than 1,000 bakeries, depots and retail outlets, over 2,000 distribution routes, and roughly 22 percent of its workforce, as well as the negotiation of hundreds of collective bargaining agreements. IBC has also developed, and soon hopes to implement a new, value-maximizing business plan. (Vance Decl. ¶¶ 7, 8.)

15. Recently, the Debtors achieved several key milestones on its path to reorganization. On November 5, 2007, the Debtors filed a proposed stand-alone reorganization plan and disclosure statement. On November 7, 2007, the Court approved the Debtors' proposed "stalking horse" transaction, a $400 million funding commitment by Silver Point to exit Chapter 11, as well as procedures for others to propose competing plan funding or asset sale bids. On January 25, 2008, IBC filed its amended disclosure statement and plan of reorganization, in which IBC, among other things, stated that no competing qualified bids were received by IBC, and therefore IBC is proceeding with its plan of reorganization based upon the exit financing proposed by Silver Point. On January 29, 2008, the Court approved IBC's first amended disclosure statement, finding that it contained adequate information for the purpose of soliciting creditor approval for its plan of reorganization. The reorganization plan confirmation hearing is scheduled for March 12, 2008. (Vance Decl. ¶¶ 9-12.)

16. The amended plan of reorganization is contingent on IBC reaching a mutually-acceptable agreement with the BCTGM and the IBT. IBC has not yet reached agreement with the IBT, but remains available and open to reaching a mutually-acceptable agreement. (Vance Decl. ¶ 13; Cook Decl. ¶ 4.) The IBT will hopefully choose to achieve the labor contingency by agreeing to modified labor contracts that will achieve the cost savings built into IBC's business plan. (Cook Decl. ¶ 4.) IBC continues to believe that its plan of reorganization represents the best alternative to maximize value for its constituents, build competitive advantage and secure jobs for its IBC employees. (Vance Decl. ¶ 14.) Implementation of the Company's modification proposals to the BCTGM, either through a consensual resolution or upon rejection of the respective agreements as a result of this Motion, is a necessary component of a successful restructuring. (Vance Decl. ¶ 28.)

II. IBC Has Complied With The Requirements Of Section 1113

A. IBC Has Proposed Targeted Modifications To Its Collective Bargaining Agreements That Are Necessary To Keep the Company In Business

17. On July 18, 2007, IBC provided the BCTGM with an initial proposal for modifications to its collective bargaining agreements with IBC. IBC then engaged in good faith arms-length negotiations with the union's Advisory Committee -- a committee composed of officers and representatives of the BCTGM and representatives of a cross-section of its Local Unions -- including the top officials from Local 50 and Local 334 -- to reach a Comprehensive Modification Agreement. (Cook Decl. ¶ 7.) The BCTGM and IBC engaged in these high-level negotiations because, as stated in the Comprehensive Modification Agreement, "the parties recognize that face-to-face negotiation of modifications on an individual basis with the Local Unions cannot reasonably be accomplished in the time necessary for IBC to exit bankruptcy." (Cook Decl. ¶ 10, Ex. A, at 1.) As a result, the BCTGM Advisory committed to "endeavoring to

obtain the agreement and ratification of those recommended modifications by all BCTGM Local Unions in an expeditious manner." (Cook Decl. ¶ 14, Ex. A, at 1.)

18. Following intense, around-the-clock negotiations from September 9, 2007 through September 12, 2007, and, following additional discussions and negotiation on September 25 and 26, 2007, IBC and BCTGM reached an agreement on September 28, 2007. (Cook Decl. ¶ 11.) The modifications contained in the Comprehensive Modification Agreement, taken as a whole, are designed to allow IBC to compete in the industry and survive as a going concern. (Cook Decl. ¶ 14.) As applicable to the Biddeford and Wayne Locals, these modifications include the following principal terms:

- One-year extensions of the existing expiration dates of local collective bargaining agreements;
- Additional wage increases beyond those provided in the existing local collective bargaining agreements;
- Modifications to health and welfare coverage, including:
    - Changing from a PPO or POS plan to an Open Access Plus plan,
    - Modifications to the initial eligibility period,
    - Reduction of out-of-network benefits to 60 percent,
    - Modification to prescription drug co-pays, and
    - Additional employee contributions to health and welfare coverage staggered over the 2009-2011 time frame;
- IBC's agreement to execute a neutrality agreement with respect to union organizing;
- IBC's agreement to "equality of sacrifice," by providing the BCTGM with certain more favorable terms, if any, reached with the IBT in subsequent negotiations; and
- IBC's agreement to establish a profit sharing program for the benefit of all IBC-union-represented, hourly or non-exempt employees which will essentially provide 10 percent of the Debtors' net income (as defined in the Comprehensive

> Modification Agreement) through 2014 to eligible employees, capped at a cumulative $25 million.

(Cook Decl. ¶ 21, Ex. A.)

19. In the Comprehensive Modification Agreement, the BCTGM Advisory Committee explicitly recognized that "such modifications are necessary in order for IBC successfully to restructure, secure exit financing and exit bankruptcy." (Cook Decl. ¶ 12, Ex. A.) After IBC and the BCTGM Advisory Committee reached the Comprehensive Modification Agreement, the BCTGM presented the agreement to its Local Unions and their memberships for ratification. (Cook Decl. ¶ 16.) At present, 98 percent of the 122 collective bargaining units represented by a BCTGM Local Union ratified the agreement as endorsed by the BCTGM and the BCTGM Advisory Committee, including other bargaining units represented by Local 50, which, along with Local 334, recommended ratification to their memberships.[3] (Cook Decl. ¶ 16.) The memberships of the Biddeford and Wayne Locals failed to ratify the Comprehensive Modification Agreement, however, despite recommendations by Local 50, Local 334, the BCTGM and the BCTGM Advisory Committee that the members accept the Modification Agreement. (Cook Decl. ¶ 17.) To date, IBC does not know what percentage of the Biddeford and Wayne Locals' collective membership of approximately 650 employees who voted to reject the Comprehensive Modification Agreement, nor the reasons for the rejection. (Cook Decl. ¶ 19.)

[3] BCTGM Local No. 6, which represents employees at IBC's bake shop in Philadelphia, Pennsylvania (the "Philadelphia Local"), also failed to obtain membership ratification of the Modification Agreement and a proposed Long Term Extension Agreement. However, IBC's collective bargaining agreement with the Philadelphia Local expired in 2005, while the Biddeford and Wayne Local agreements are still in effect. Because IBC was able to implement the Long-Term Extension and Modification Agreements in Philadelphia after bargaining to impasse with the Philadelphia Local, it is not seeking rejection of the Philadelphia Local collective bargaining agreement. (Cook Decl. ¶ 18.)

20. On February 14, 2008, IBC sent letters to Local 50 and 334 representatives, with copies to representatives of the BCTGM, formally initiating the process under Section 1113 for rejection of the Biddeford and Wayne Local collective bargaining agreements. The Company enclosed with each letter a copy of the Comprehensive Modification Agreement as the Company's Section 1113 proposal to the Biddeford and Wayne Locals. The Company offered that if the Biddeford and Wayne Locals wanted to discuss the proposal, or needed information about the proposal beyond that already provided to the BCTGM, they should contact the Company's representative. To date, the Company has received no response from the Biddeford and Wayne Local representatives, but has received comments from a BCTGM International representative. (Cook Decl. ¶ 20, Ex. B.)

21. As demonstrated below, while IBC has complied with all of the requirements of Section 1113, the Biddeford and Wayne Locals have rejected the Comprehensive Modification Agreement without good cause. Accordingly, IBC respectfully requests that this Court authorize rejection of the Biddeford and Wayne Locals' collective bargaining agreements.

Argument

I. The Court Should Authorize IBC Under Section 1113(c) To Reject Its Existing Collective Bargaining Agreements With The Biddeford and Wayne Locals

A. Section 1113(c) Authorizes The Court To Approve An Application To Reject A Collective Bargaining Agreement When The Debtor Has Complied With The Procedural Requirements Of Section 1113(b), The Union Has Failed To Accept Debtor's Proposal "Without Good Cause," And The Balance Of Equities Clearly Favors Rejection

22. Section 1113(c) of the Bankruptcy Code provides that:

> The court shall approve an application for rejection of a collective bargaining agreement only if the court finds that –

> (1) a trustee has, prior to the hearing, made a proposal that fulfills the requirements of [Section 1113] (b)(1);
> (2) the authorized representative of the employees has refused to accept such proposal without good cause; and
> (3) the balance of the equities clearly favors rejection of such agreement.

11 U.S.C. § 1113(c).

23. To analyze the sufficiency of requests under Section 1113(c), the Eighth Circuit relies upon a nine factor test based on the procedural elements of Section 1113(b) and the substantive elements of Section 1113(c). The test requires that: (a) the debtor made a proposal to modify the collective bargaining agreement, (b) the proposal was based on the most complete and reliable information available at the time of the proposal, (c) the proposed modifications were necessary to permit reorganization of the debtor, (d) the proposed modifications assured that all creditors, the debtor, and all other affected parties were treated fairly and equitably, (e) the debtor provided to the union such relevant information as was necessary to evaluate the proposal, (f) the debtor met at reasonable times with the union between the time of the proposal and the time of the hearing on the proposal, (g) the debtor conferred with the union in good faith at these meetings, (h) the union refused to accept the debtor's proposal without good cause, and (i) the balance of equities clearly favors rejection of the agreement. In re Family Snacks, Inc., 257 B.R. 884, 892 (8th Cir. 2001) (adopting the nine factor test originally set forth in In re Am. Provision Co., 44 B.R. 907 (Bankr. D. Minn. 1984)); see also In re Smith Mech. Contractors, Inc., No. 95-60030-S-11, 1995 WL 864676 (Bankr. W.D. Mo. June 26, 1995) (applying Am. Provision Co. test).

24. A debtor must establish by a preponderance of the evidence that it has satisfied each of these elements. Family Snacks, Inc., 257 B.R. at 892. After a debtor establishes compliance with each element, however, the burden shifts to the authorized representative in three instances. See In re Texas Sheet Metals, Inc., 90 B.R. 260, 263-64 (Bankr.

S.D. Tex. 1988). First, after a debtor identifies the information it gave to the union, the union must produce evidence that it was not given the "relevant" information it needed to evaluate the proposal. Texas Sheet Metals, Inc., 90 B.R. at 263; Am. Provision Co., 44 B.R. at 909-10. Second, when a debtor demonstrates that it met with the union, it falls to the union to produce evidence that the debtor did not confer in good faith. Texas Sheet Metals, Inc., 90 B.R. at 263-64; Am. Provision Co., 44 B.R. at 910. Finally, when the debtor produces prima facie evidence that the union lacked good cause to reject the proposal, the union must demonstrate that it did have good cause. See Truck Drivers Local 807 v. Carey Transp., 816 F.2d 82, 92 (2d Cir. 1987) ("Carey Transp."); In re Mile Hi Metal Sys., Inc., 899 F.2d 887, 892 (10th Cir. 1990) (the union has an "obligation . . . to explain its reasons for opposing the proposal").

25. When the debtor demonstrates compliance with the provisions of Section 1113, the court is authorized to approve rejection of collective bargaining agreements. Carey Transp., 816 F.2d at 92 (rejection of CBA allowed when debtor follows the procedures set forth in Section 1113(b) and makes the three substantive showings as required by the statute). In this case, as demonstrated below, IBC has satisfied the requirements of Section 1113, and the Court should authorize rejection of IBC's existing collective bargaining agreements with the Biddeford and Wayne Locals.

B. IBC Has Met All of the Requirements for Rejection under Section 1113

1. IBC Has Met the Procedural Requirements of Section 1113(b)

26. Seven of the nine factors set forth in the Section 1113 test relied upon in the Eighth Circuit are based on the procedural requirements of Section 1113(b). As demonstrated below, IBC has complied with each of these procedural requirements.

- The Debtor Made A Proposal To Modify The Collective Bargaining Agreements.

  After filing the Chapter 11 petitions in late 2004, on July 18, 2007, IBC delivered a

detailed initial written proposal to the BCTGM outlining modifications to the parties' 122 collective bargaining agreements that it believed were necessary to reorganize. That proposal was subsequently modified by agreement between IBC and the BCTGM Advisory Committee, and presented for ratification by the membership of the Biddeford and Wayne Locals. On February 14, 2008, the Company formally presented the Biddeford and Wayne Locals with the Comprehensive Modification Agreement as its proposal pursuant to Section 1113.

- The Proposal Was Based On The Most Complete And Reliable Information Available At The Time Of The Proposal. IBC's initial proposal and the Comprehensive Modification Agreement were based on the most complete and reliable information available to IBC at the time, including the Company's most recent revenue and cost projections arising out of its business plan.[4] (Cook Decl. ¶ 22.)

- The Proposed Modifications Were Necessary To Permit Reorganization Of The Debtor. IBC's Comprehensive Modification Agreement, which, for purposes of this Motion, is the Company's final 1113 proposal to the Biddeford and Wayne Locals, provides IBC with necessary health and welfare cost savings, as well as extensions to its existing collective bargaining agreements and other terms that will provide IBC with stability to implement its business plan in the years immediately following its exit from bankruptcy. (Cook Decl. ¶ 23.) On page 1 of the Comprehensive Modification Agreement, the BCTGM and its Advisory Committee explicitly

[4] See In re Smith Mech. Contractors, Inc., 1995 WL 864676 (proposal met standard when based on debtor's secured debt structure, liquidation analysis, tax returns, and an unaudited statement of income for prior fiscal year); In re Amherst Sparkle Mkt., 75 B.R. 847, 850-51 (Bankr. N.D. Ohio 1987) (proposal met standard when debtor

recognized that "such modifications are necessary in order for IBC successfully to restructure, secure exit financing and exit bankruptcy."[5]

- The Proposed Modifications Assure That All Creditors, The Debtor, And All Other Affected Parties Are Treated Fairly And Equitably. Under IBC's best analysis of the ultimate treatment of all constituencies, the Biddeford and Wayne Locals are not being asked to assume more than a fair share of the Debtors' cost-cutting and revenue-enhancing measures.[6] (Cook Decl. ¶ 24.) In fact, 98 percent of the collective bargaining units represented by a BCTGM Local Union have accepted the proposed modifications. Moreover, the Comprehensive Modification Agreement contains an "equality of sacrifice" provision that provides the BCTGM with certain more favorable terms, if any, reached with the IBT in subsequent negotiations. All employee groups are being asked to make sacrifices in IBC's reorganization. IBC also sought and obtained concessions from the approximately 18 percent of their workforce that is non-union totaling approximately $25 million each year (or approximately $5,550 per year for each non-union employee). These concessions took the form of suspending the salaried employee retirement program, reducing non-union employee health and welfare benefits, eliminating retiree medical coverage,

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relied on profit and loss reports, balance sheets for prior fiscal year, cash disbursement data, general ledger and payroll registers, and projections of performance).

[5] Proposed modifications are considered "necessary" if they increase the likelihood of a successful reorganization. In re Valley Steel Prods. Co., Inc., 142 B.R. 337, 341 (Bankr. E.D. Mo. 1992). See also Ass'n of Flight Attendants-CWA, AFL-CIO v. Mesaba Aviation, Inc., 350 B.R. 435, 449-50 (D. Minn. 2006) ("Mesaba") (noting that the Carey Transp. standard has been adopted by a majority of courts, that it is bolstered by the Eighth Circuit's holding in Family Snacks, Inc., and that it is designed to prevent a debtor from falling into liquidation or another Chapter 11 proceeding by ensuring that the debtor has the flexibility to compete following its reorganization).

[6] Courts look to the changes proposed, as well as concessions already made, and likely to be made, by creditors, stockholders or owners of the debtor, and non-union employees. See In re Kentucky Truck Sales, Inc., 52 B.R. 797, 802 (Bankr. W.D. Ky. 1985).

suspending the deferred compensation program, reducing annual incentive compensation awards and, with a few exceptions, eliminating annual merit salary increases since May 2004. In addition, IBC has eliminated two duplicative layers of sales management totaling 215 positions.[7] Lessors, vendors and suppliers have also made substantial financial contributions, unsecured creditors are unlikely to be paid in full, and it is expected that existing equity holders will be eliminated entirely. (Vance Decl. ¶¶ 15-17.)

- IBC Provided Relevant Information Necessary For The Union To Evaluate The Proposal. In July 2007, before beginning negotiations with the BCTGM, IBC provided the BCTGM and its Advisory Committee with presentations in which it outlined the Company's business plan and financial projections with, and without, the Company's proposed changes. (Cook Decl. ¶ 5.) In these presentations, IBC explained the reality of increased commodity prices, vigorous competition from bakeries with independent distributorships or without union agreements, and the need to modify its method of product distribution to meet customer needs. IBC also informed the BCTGM of the financial pressures it was under from other constituencies, including debt holders and unsecured creditors.[8] (Cook Decl. ¶ 6.) At the time it presented its initial 1113 proposal, IBC also expressed its willingness to

[7] See In re Appletree Mkts., 155 B.R. 431, 439 (S.D. Tex. 1993) (proposal was fair and equitable even when not requiring reductions in compensation for management, where union salaries were above competitive wage levels while management salaries were at or below prevailing wage levels, management had made other sacrifices in benefits and job cuts, and company could not reduce management salaries and still retain valued employees).

[8] See Valley Steel Prods. Co., 142 B.R. at 338 (obligation met where debtor offered yearly operating statements, consolidated balance sheets and a monthly bankruptcy operating report); In re Royal Composing Room, 62 B.R. 403, 412-13 (Bankr. S.D.N.Y. 1986) (a single sheet of paper which listed the union costs was "reliable and relevant information and complete enough to form a basis for reasoned consideration of [the debtor's] proposal"); 7 Collier, Bankruptcy at ¶ 1113.06[4].

provide additional information to the BCTGM or its financial advisors should they request it. (Cook Decl. ¶ 8.) The Company reiterated its offer to respond to information requests in its February 14, 2008 letter. Neither the BCTGM Advisory Committee nor the Biddeford and Wayne Locals ever informed IBC that they failed to receive all information necessary for to evaluate IBC's proposals. (Cook Decl. ¶ 9.) Indeed, the best evidence of the BCTGM Advisory Committee's belief that it did have sufficient information to evaluate the proposal is the fact that it reached the Comprehensive Modification Agreement with IBC.

- IBC Met With The BCTGM At Reasonable Times to Negotiate. Recognizing that, as stated in the Comprehensive Modification Agreement, "face-to-face negotiation of modifications on an individual basis with the Local Unions cannot be reasonably accomplished in the time necessary for IBC to exit bankruptcy," IBC and the BCTGM Advisory Committee negotiations from September 9, 2007 through September 12, 2007, and, following additional discussions and negotiation on September 25 and 26, 2007, reached an agreement on September 28, 2007.[9] IBC also offered to discuss the Comprehensive Modification Agreement with the Biddeford and Wayne Locals in its February 14, 2008 letter, but IBC has received no response. (Cook Decl. ¶¶ 11, 20.)

- IBC Has Conferred In Good Faith With The BCTGM To Reach Mutually Satisfactory Modifications. IBC diligently met with the BCTGM Advisory Committee for four days, reached numerous compromise terms, and was able to

negotiate a mutually-agreeable set of modifications that will allow the Company to survive as a going concern.[10]

2. IBC Has Met The Substantive Requirements Of Section 1113(c)

a) The Biddeford and Wayne Locals Do Not Have Good Cause To Reject The Comprehensive Modification Agreement

27. To approve rejection of a collective bargaining agreement, the court must be presented with evidence that the authorized representative refused to accept the proposal without good cause. 11 U.S.C. § 1113(c)(2). Nowhere in the Bankruptcy Code is the phrase "good cause" defined. Although the legislative history provides little guidance in this regard, it does indicate that this phrase should be narrowly interpreted in a workable manner. See 130 Cong. Rec. H7495 (daily ed. June 29, 1984) (remarks of Rep. Lungren) ("The phrase 'good cause' is undefined, but the conferees clearly believed that it should be interpreted narrowly by a reviewing court"); 130 Cong. Rec. S8888 (daily ed. June 29, 1984) (remarks of Sen. Thurmond) ("the intent is for these provisions to be interpreted in a workable manner"). As one court has noted, the "good cause" requirement:

> fosters the goals of good faith negotiations and voluntary modifications. It induces the debtor to propose only those modifications necessary to a successful reorganization while protecting the debtor against the union's refusal to accept its proposal without a good reason. Where the union rejects a proposal that is necessary, fair and equitable, it must explain the reasons for its opposition. On the other hand, if the union makes

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[9] In re Garofalo's Finer Foods, 117 B.R. 363, 372 (Bankr. N.D. Ill. 1990) (element satisfied where debtor met with unions only three times); Amherst Sparkle Mkt., 75 B.R. at 851 (element satisfied where debtor and union met just twice prior to Section 1113 hearing).

[10] See In re Indiana Grocery Co., 136 B.R. 182, 195-96 (Bankr. S.D. Ind. 1990) (debtor negotiated in good faith when it expressed willingness to negotiate on any point as long as the terms produced an overall 16.5 percent labor cost reduction). In determining whether an employer has satisfied the requirement to confer with the authorized representative in good faith, courts look for "conduct indicating an honest purpose to arrive at an agreement as the result of the bargaining process." Mesaba, 350 B.R. at 457 (quoting In re Blue Diamond Coal Co., 131 B.R. 633, 646 (Bankr. E.D. Tenn. 1991).

> counter-proposals that meet its needs while preserving the savings required by the debtor, its rejection of the debtor's proposal will be with "good cause."

In re Horsehead Indus., Inc., 300 B.R. 573, 587 (Bankr. S.D.N.Y. 2003) (citations omitted).

28. The Biddeford and Wayne Locals' lack of good cause is made eminently clear by the fact that the BCTGM and the BCTGM Advisory Committee—including representatives of Local 50 and 334—have agreed to the Comprehensive Modification Agreement and agreed to "exert every effort to obtain fully ratified Modification Agreements by all BCTGM Local Unions . . . and to unanimously support and unanimously recommend ratification of such agreements." The burden lies with the Biddeford and Wayne Locals to articulate in detail their reasons for their memberships' decision to decline to accept the Comprehensive Modification Agreement. See Carey Transp., 816 F.2d at 92, Texas Sheet Metals, Inc., 90 B.R. at 263-64; Mile Hi Metal Sys., 899 F.2d at 892 (the union has an "obligation . . . to explain its reasons for opposing the proposal").

29. The only response that the Biddeford and Wayne Local memberships made to the Comprehensive Modification Agreement was to reject it. The Locals that represent them have not informed IBC of the reasons for their memberships' rejection, which was contrary to the recommendation of their own union representatives. In such cases, where the union does not "address any way for the Debtor to perform under any agreement, or a modified agreement, which would contain terms to assist or accommodate the Debtor to overcome the losses it had sustained over several years and its inability to compete with non-union competitors," good cause is absent. Smith Mech. Contractors, Inc., 1995 WL 864676. Moreover, Courts repeatedly have recognized that where, as here, the proposed modifications are "necessary" and "fair and equitable," rejection by the union lacks good cause. In re Walway, Co., 69 B.R. 967, 974 (Bankr. E.D. Mich. 1987) ("The legislative history of § 1113 indicates that 'good cause' is not a

barrier to rejection if the proposal contains the specified 'necessary' modifications"); In re Allied Delivery Sys. Co, 49 B.R. 700, 704 ("If the proposal is necessary and is fair and equitable . . . then the union's refusal to accept it on the basis that the proposal is unjust . . . is not for good cause"). That necessity was recognized by the BCTGM Advisory Committee and the local representatives of the Biddeford and Wayne bake shops, and caused them to recommend ratification to all of their members to allow "IBC successfully to restructure, secure exit financing and exit bankruptcy." It is indisputable that IBC cannot successfully restructure without the cost savings contemplated in its Comprehensive Modification Agreement with the BCTGM. Without application of the terms of the Comprehensive Modification Agreement to all BCTGM-represented employees, Silver Point—the only entity willing to provide IBC with exit financing—has the ability to act on its contingencies and refuse to provide the necessary financing. As a result, the refusal of the Biddeford and Wayne Locals to ratify the Modification Agreement may well prevent IBC from exiting bankruptcy and successfully restructuring. Under these circumstances, the emotions stirred amongst the memberships of the Biddeford and Wayne Locals by the proposed modifications cannot provide them with "good cause" to reject the Comprehensive Modification Agreement. These undisputed facts are more than sufficient evidence that members of the two BCTGM locals failure to accept the Comprehensive Modification Agreement is without good cause.

3. The Balance Of The Equities Clearly Favors Rejection

30. Section 1113(c)(3) requires the Court to find that the balance of the equities clearly favors rejection of the collective bargaining agreements before approving the motion. The Second Circuit has crafted a six-factor test from the case law that has developed on this point to determine whether the balance of the equities clearly favors rejection of the agreement:

- The likelihood and consequence of liquidation if rejection is not permitted;

- The likely reduction in the creditors' claims if the bargaining agreement remains in force;

- The likelihood and consequences of a strike if the bargaining agreement is voided;

- The possibility and likely effect of any employee claims for breach of contract if rejection is approved;

- The cost-spreading abilities of the various parties, taking into account the number of employees covered by the bargaining agreement and the manner in which various employees' wages and benefits compare with those of others in the industry; and

- The good or bad faith of the parties in dealing with the employer's financial dilemma.

See Carey Transp., 816 F.2d at 92-93. Courts in the Eighth Circuit have adopted this six-factor test when determining the balance of equities. See, e.g., Mesaba, 350 B.R. at 462. The balancing of these factors must be undertaken in light of "the ultimate goal of Chapter 11," which is "the success of the reorganization." See Carey Transp., 816 F.2d at 92-93 (quoting NLRB v. Bildisco & Bildisco, 465 U.S. 513, 527 (1984)). Here, application of the six-factor test weighs strongly in favor of rejection of the collective bargaining agreements for the following reasons:

31. As set forth above, in the absence of an agreement to modify IBC's collective bargaining agreements with the BCTGM, IBC will not have access to Silver Point's exit financing, which is necessary to IBC's efforts to exit bankruptcy and successfully restructure. Without such exit financing by Silver Point, particularly given the absence of any other qualified bids to provide exit financing, liquidation is a likely alternative.

32. Absent agreement, and absent exit financing, the plan of reorganization, with its plan for payment of creditors' claims, will likely fail. The thousands of employees in the other collective bargaining units represented by the BCTGM have already ratified the

Modification Agreement necessary to the Company's restructuring. The Biddeford and Wayne Locals' employees should not be rewarded for refusing to make comparable sacrifices.

33. Although there is a risk of labor disruptions if the Court approves rejection of the Biddeford and Wayne Locals' agreements and IBC unilaterally imposes the applicable terms of the Comprehensive Modification Agreement, that possibility cannot control the decision on the Motion. If the Court denies IBC's Motion, IBC's plan of reorganization could not go forward. If the Court grants IBC's Motion, and its Biddeford and Wayne Locals strike, IBC will have to form a strike plan and continue operations as best it can. Regardless, a strike by two local units composed of 650 employees is more palatable than a liquidation of an employer with approximately 24,000 thousand employees. Moreover, the case law counsels that the possibility of a strike should not deter a court from authorizing rejection of a collective bargaining agreement if the debtors face the very real potential for liquidation absent rejection. Mesaba, 350 B.R. at 463. As the court stated in Horsehead Indus.:

> A strike is an inherent risk in every § 1113 motion, and in the end, it makes little difference if the Debtors are forced out of business because of a union strike or the continuing obligation to pay union benefits to avoid one. The unions may have the legal right to strike, but that does not mean that they must exercise that right. The union's right to strike carries with it the burden of holding the fate of the rank and file in its hands. Little purpose would be served by a strike if a strike results in the termination of operations and the loss of jobs by the strikers.

300 B.R. at 585.

34. The same analysis applies here. While there is a possibility of a strike if and when IBC imposes unilateral changes to the existing terms of employment, that possibility cannot be used to deny IBC the relief that is necessary for its survival.

35. If the employees represented by the Biddeford and Wayne Locals assert that they have the right to assert a claim for damages for breach of contract upon rejection, it will be for this Court to decide the extent, if at all, such damages would be permitted in a Chapter 11 proceeding.

36. The cost-spreading abilities of the parties also weigh in favor of rejection of IBC's collective bargaining agreements with the Unions. As discussed above, IBC has already reduced costs with its lessors, vendors and suppliers, unsecured creditors are unlikely to be paid in full, and existing equity holders are expected to be eliminated entirely. Management has taken substantial reductions in compensation and benefits, and hundreds of management positions have been cut. Under these circumstances, IBC has no choice but to seek additional cost reductions from its unionized employees. See In re Mesaba Aviation, Inc., 341 B.R. 693, 759 (Bankr. D. Minn. 2006) (finding that the cost-spreading factor weighed in favor of rejection where the debtor made a showing "that there simply [would otherwise] be no give in its financial structure to enable survival, with the ongoing diminution of revenue, the limitations on its future profitability, and the resultant mismatching of its existing labor cost structure"), rev'd and remanded on other grounds, 350 B.R. 435 (D. Minn. 2006). This is particularly true given that the vast majority of IBC's workforce is comprised of unionized employees. Carey Transp., 816 F.2d at 93 (where 66 percent of debtor's employees were unionized, this weighed in favor of the union being expected to bear a substantial portion of the needed cost-cutting measures).

37. The Debtors have acted in good faith, with an eye towards the ultimate reorganization of their operations and protection of all of their constituents, not just the unionized employees. The best evidence of IBC's good faith is the very agreement of the BCTGM and its Advisory Committee (and Local 50 and 334 representatives) to the

Comprehensive Modification Agreement, as well as the BCTGM's agreement that the modifications contained in the agreement are "necessary in order for IBC successfully to restructure, secure exit financing and exit bankruptcy," and that it and the Advisory Committee would "exert every effort" to obtain ratification of the Comprehensive Modification Agreement by the Local Unions. "The balance of equities nearly always will tip in favor of the party that seeks to reach a compromise and to that end negotiates in good faith." Smith Mech. Contractors, Inc., 1995 WL 864676 (quoting Royal Composing Room, Inc., 848 F.2d at 349). This record amply demonstrates IBC's good faith approach to dealing with its financial dilemma. For all these reasons, the equities clearly favor rejection of the collective bargaining agreements between IBC and the Biddeford and Wayne Locals.

II. Following Rejection, IBC Will Implement The Terms And Conditions Contained In The Comprehensive Modification Agreement.

38. If this Court authorizes the rejection of the Biddeford and Wayne Locals' collective bargaining agreements with IBC pursuant to Section 1113, IBC will only modify the terms and conditions of the employees represented by the Biddeford and Wayne Locals to the extent described in the Comprehensive Modification Agreement.

Conclusion

39. No previous request for the relief sought in this Motion has been made to this Court or any other Court.

WHEREFORE, for all of the foregoing reasons, to enable IBC to reorganize successfully, the Debtors request that the Court (a) grant the Motion, (b) authorize the Debtors to reject, pursuant to Section 1113, their collective bargaining agreements with the Biddeford and Wayne Locals, and (c) grant the Debtors such other and further relief as is just.

Dated: Kansas City, Missouri
February 21, 2008

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Attorneys for the Debtors
And Debtors-in-Possession

Exhibit A

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MISSOURI
KANSAS CITY DIVISION

In re:		
INTERSTATE BAKERIES CORPORATION, et al.,	:	Chapter 11
	:	Case No. 04-45814 (JWV)
Debtors.	:	Jointly Administered

ORDER UNDER 11 U.S.C. § 1113(C) AUTHORIZING REJECTION OF COLLECTIVE BARGAINING AGREEMENTS WITH CERTAIN LOCAL AFFILIATES OF THE BAKERY, CONFECTIONARY, TOBACCO WORKERS AND GRAIN MILLERS INTERNATIONAL UNION

Upon the motion, dated February 21, 2008 (the "Motion"), of Interstate Bakeries Corporation and certain of its subsidiaries and affiliates, debtors and debtors-in-possession in the above-captioned cases (collectively the "Debtors"), for an order (the "Order") under section 1113(c) of the United States Bankruptcy Code, 11 U.S.C. § 1113(c) ("Section 1113"), authorizing the Debtors to reject the collective bargaining agreements with two local affiliates of the Bakery, Confectionary, Tobacco Workers and Grain Millers International Union ("BCTGM"), specifically BCTGM Local No. 334 in Biddeford, Maine (the "Biddeford Local") and the BCTGM Local No. 50 in Wayne, New Jersey (the "Wayne Local") (collectively, the "Biddeford and Wayne Locals"); the Court finds that (i) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. §157(b)(2); (iii) venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; (iv) the statutory requirements of 11 U.S.C. §1113(c) have been met because: (a) the relief

granted herein is necessary to accomplish the Debtors' reorganization, (b) subsequent to filing the bankruptcy petitions but before filing the Motion the Debtors submitted proposals pursuant to Section 1113 (collectively, "Proposals") to each of the Biddeford and Wayne Locals, (c) the Proposals were based on the most complete and reliable information available, (d) the Proposals treat each union fairly and equitably, (e) the Debtors provided relevant information necessary for the Biddeford and Wayne Locals to evaluate the Proposals, (f) the Debtors remained available to negotiate with each Biddeford and Wayne Locals, (g) the Debtors conferred in good faith to reach mutually satisfactory modifications, (h) there is no good cause for the Biddeford and Wayne Locals to reject the Proposals, and (i) the balance of equities favors the relief that the Debtors seek pursuant to 11 U.S.C. §1113(c); (v) proper and adequate notice of the Motion and hearing thereon has been given and no other or further notice is necessary; and (vi) upon the record herein after due deliberation thereon good and sufficient cause exists for the granting of relief as set forth herein,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED.

2. The Debtors, are hereby authorized to reject the collective bargaining agreements between Interstate Bakeries Corporation and the Biddeford and Wayne Locals;

3. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any person.

Dated: March __, 2008

_____

Honorable Jerry W. Venters
UNITED STATES BANKRUPTCY JUDGE