

# Judge Denies Hostess's Bid To Scrap Teamsters Contract

**Rachel Feintzeig**

**May 14, 2012**

**2012 Dow Jones & Company, Inc.**

A judge Monday denied Hostess Brands Inc.'s bid to shed deals with its biggest union, the Teamsters, sending the bakery company back to the drawing board as it tries to claw its way out of its second bankruptcy in recent years.

Just a week after clearing Hostess to reject labor deals with the second-biggest union in the case, Judge Robert Drain reversed course when considering whether Hostess could use bankruptcy to replace its current collective bargaining agreements with the Teamsters with a fresh proposal engineered last month.

The problem with Hostess's last offer to the union---which would have slashed benefits and ended the union employees' participation in its most risky pension plans---boiled down to a few concrete issues, Drain said: a 1% difference between the pretax earnings projected under the company's proposal as compared to the union's proposal, and Hostess's intention to only shift existing employees into more stable multiemployer pension plans. Drain said he wanted to see new hires too included in those more stable pension plans, and he urged the company to increase its proposed contributions to the pension plans to the levels suggested by the union, thus closing that 1% gap.

"I would, however, be receptive to a motion that makes a proposal along the lines that I've outlined," Drain said, adding he'd be happy to take up the issue again during a possible sequel to the last month's two-day long evidentiary trial---but even happier if the parties settled the dispute out of court.

A Hostess attorney said even if Drain authorized the company to ditch the Teamsters contracts, it wouldn't move forward with that rejection just yet, instead opting for further negotiations. Drain's decision earlier this month to let Hostess reject collective-bargaining agreements with 35 local affiliates of the Bakery, Confectionery, Tobacco Workers and Grain Millers International Union remains just a form of permission, as opposed to action, with no deals actually rejected and no strikes disrupting the company's business. During the hearing Monday, Drain commended the Teamsters union's "level of knowledge" about Hostess and the company's problems.

"It appears to me that the union has as good idea about what is necessary for the debtors to reorganize---except for the [multiemployer pension plan] issue---as the debtors do," he said.

But he noted that the multiemployer pension plan issue is a big one---the "sticking point" during the trial---and he was clear that he thinks the union is on the wrong side of that

fight. Its desire to remain in plans that other companies are abandoning could drive away investors, Drain said, noting that it's simply "too much uncertainty for any entity" that might be willing to put in the money and work to turn the maker of Twinkies and Wonder Bread around.

"There is both a substantial legal and underlying economic risk of the debtors remaining in the [Teamsters' multiemployer pension plans] even under the new employer pool proposed by the union," Drain said.

Drain said he found all of the witnesses called by the union and the company during the trial---a group that included an economist, a union official and restructuring experts---to be credible and specifically praised Hostess's chief executive, Gregory Rayburn, who took to the stand after less than two months on the job.

"It appears to me that Mr. Rayburn has acted responsibly and affectively in stepping into the breach left by Mr. Driscoll," Drain said, referencing Brian Driscoll, the ex-CEO that abruptly resigned in March, leaving Rayburn, a restructuring expert and stranger to the baking industry, to take his place. Drain called the turnaround plan spearheaded by Rayburn "an improvement" on the one proposed by Hostess in February and commended him for rolling back pre-bankruptcy salary increases for management "that had the potential for truly poisoning the negotiations."

Hostess, based in Irving, Texas, filed for bankruptcy in January and soon sought to reject its collective bargaining agreements, saying it wouldn't be able to survive unless it shaved millions of dollars from its labor costs. The threat of liquidation has loomed large throughout the case, with both sides acknowledging that a strike by the unions---threatened if the company rejects the collective bargaining agreements---would spell the end of Hostess.