



Chartered by United Food & Commercial Workers International Union
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KIM C. CORDOVA
President

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Secretary-Treasurer

March 26, 2020

Sent via Email

Matthew Lovell
JBS, Labor Relations Manager
1770 Promontory Circle
Greeley, CO 80634
Matthew.lovell@jbssa.com

Re: COVID-19 Virus Exposure

Dear Mr. Lovell:

I am following up on our conversation yesterday in which you vaguely disclosed that one, if not more, employee(s) at the JBS plant in Greeley, CO, has tested positive for the COVID-19 virus. Obviously, you have not specifically identified that individual(s) to me, but I understand that he or she is a member of management.

Additionally, I have been informed that several supervisory and/or managerial personnel are apparently off work with flu-like symptoms. You have not indicated to us, at the present time, whether these individuals also have been diagnosed with the virus, although based on our conversation, you seemed to imply that more than the one diagnosed individual has already been tested.

Given these circumstances, I am asking you to identify to us, *today*, without revealing the name of the positively diagnosed individual(s) the following:

- The date(s) that the individual(s) tested positive for the virus.
- The department(s) that the individual(s) worked in during the fourteen (14) days prior to the diagnosis.
- The shift(s) the individual(s) worked during the fourteen (14) days prior to the diagnosis.

Obviously, this is critical information so that the Union may assess the potential exposure of our members to the COVID-19 virus. Of course, we expect that you will be doing the same, and, upon provision of the requested information, we must *promptly* work *together* to ensure the safety and health of our members, your employees, and, potentially, the general public.

As I am sure you are aware, the Health Insurance Portability and Accountability Act (HIPAA) is not implicated in these circumstances. As HIPAA makes clear, only covered entities are subject to its privacy limitations. Covered entities include health *plans*, healthcare *clearing houses* (such as billing services and community health and information systems) and healthcare providers that *transmit* healthcare data in a way regulated by HIPAA.

Obviously, JBS is not a covered entity. Moreover, even *if JBS were* a covered entity, HIPAA authorizes disclosures to prevent a “Serious and Imminent Threat.” *See* 45 CFR 164.512(j).

Moreover, even assuming HIPAA were implicated, disclosure is authorized as long as a “covered entity” makes reasonable efforts to limit the information disclosed to that which is the “minimum necessary” to accomplish the purpose. *See* 45 CFR 164.502(b) and (d).

Thus, in the first instance, HIPAA simply plays *no* role in our discussion. However, even if it did, it would fully authorize the disclosure of the information which we have requested because there is a serious and imminent threat to the health and safety of our members and your workers – and we are not requesting any specific identifying information which would reveal the name(s) of the individual(s) affected.

I would ask that you provide this information upon receipt of this communication, and certainly, at the very latest, no later than close of business today, so that the Union may determine next steps. We certainly will attempt to do so in conjunction with you.

It is beyond dispute that unions have extensive rights to information concerning any plans to protect their members and workers, including in particular, how we should jointly address these recent diagnoses during this public health emergency. There can be no dispute that unions are entitled to all information relevant to the union's ability to represent workers. *NLRB v. Acme Industry Co.*, 385 U.S. 432, 435-36 (1967) (citing *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956)). Under these circumstances, we believe it is self-evident that the information requested is not merely necessary, but absolutely required to ascertain the potential exposure of other union members and appropriate next steps. Those further steps, should, of course, be subject to JBS' "duty to bargain" over the effects of company decisions concerning the health and safety of our workers, including how JBS intends to comply with this national health emergency – including, in this circumstance, quarantines.

It is imperative that JBS act with alacrity to comply with our previous requests as more fully set forth in my prior letter to JBS of March 18, 2020, including *immediately* completing a deep clean of the plant, ensuring proper distancing in the plant, the provision of easily-accessible hand sanitizer throughout the plant, the ability to wash hands with soap and water on a consistent basis, and the provision of adequate PPE, including masks and gloves, among others. The health and safety of our members, your workers and indeed, the general public, is at stake. As a result, I believe that JBS *must* quarantine, with pay, all individuals who have come into contact with any JBS employee diagnosed with the COVID-19 virus, for a period of 14 days. Additionally, our walking stewards must be placed on paid employer-requested quarantine for a period of fourteen (14) days while we continue to discuss further appropriate actions.

These are perilous times for our members, and your workers. I am sure you will join with me in a collaborative effort to ensure that all individuals at the plant operate in an environment which is most protective of their health and safety. The risks are simply too great for us to engage in petty squabbles at this juncture. Let's put people first.

Sincerely,



Kim C. Cordova
UFCW Local 7 Union President
UFCW International Vice President

cc: Officers & Directors
Adriana Escobar
Jay Jackson
Dahir Omar
Swe Ko