



MAKING YOUR WORLD STRONGER

April 24, 2020

Kim Cordova
President
United Food and Commercial Workers Union, Local 7
7760 West 38th Avenue, Suite 400
Wheat Ridge, CO 80033

Re: Cease and Desist Violations of the CBA

Ms. Cordova:

As you know, both the United Food and Commercial Workers Local 7 (“Local”) and JBS USA Food Company (“JBS” or “Company”) face uncharted territory in working through the many challenges presented by COVID-19. Of course, we are both committed to ensuring employee safety while the Company’s Greeley processing facility (“facility”) maintains its operations. In light of this perilous situation, it is now more important than ever that the parties work together to adhere to their obligations under the collective bargaining agreement (“CBA”) and maintain labor peace.

Despite the importance of working together in this difficult time, it has come to the Company’s attention that the Local continues to engage in various activities designed to obtain – by means other than the grievance and arbitration process – outcomes governed by the CBA. In addition to the Local’s outright encouragement of unlawful self-help, we are aware of additional statements to the media and directly to employees subverting and otherwise violating express provisions of the CBA. In particular, it seems the Local has adopted a strategy of generating negative media attention and public opinion in an effort to unwind agreements made in the CBA and gain concessions from the Company as they relate to employee safety. These efforts, and the Local’s direct encouragement that employees withhold production clearly violate the no-strike commitments set forth in the CBA, among other provisions. I write to demand that you and all other agents of the Local cease and desist this conduct immediately.

Relevant Provisions of the CBA

Article 3 – Safety

Article 3 provides that the Company “has the sole responsibility to provide a safe and healthy workplace and to correct safety and health hazards” and that “[n]othing in th[e] agreement shall imply that the Union has undertaken or assumed any portion of that responsibility.” *Article 3, Section 1(A)*. Further, it was agreed that the “Company shall furnish all safety equipment necessary for the protection of hourly employees.” *Article 3, Section 4*. Finally, the parties committed that disputes over the Company’s compliance with this Article would be referred to grievance procedure. *Article 3, Section 6*.



If the Local believes the Company is not providing adequate PPE or should take other safety measures, its sole remedy is to file a grievance. In recognition of this exclusive remedy, on March 27, 2020, the Local filed a grievance alleging the “Company violated the CBA by failing to provide proper PPE and a safe workplace for its workers as a result of the COVID-19 pandemic.” That grievance is pending, and the parties are processing it in the usual course. Under these circumstances, the Local is not permitted to engage in self-help, mobilization, or corporate campaign activities against the Company outside of the grievance process in an effort to compel the Company to take specific safety precautions that the Local has alone determined should be implemented.

Article 8 – Company and Union Responsibility

As you know, Article 8 of the CBA states that “there shall be no strike, stoppage, picketing, honoring of any picket line, sympathy strike, slowdown, deliberate withholding of production or suspension of work on the part of the Union, its members, or any individual covered by this Agreement for any reason whatsoever.”

To be sure, this language is quite broad: it not only prohibits a “strike” in the traditional sense, but the Local has also agreed that it – and none of its members or anyone within the bargaining unit – will withhold or suspend production *for any reason whatsoever*. Thus, any act by the Local, its members, or anyone within the bargaining unit to withhold work or refuse to perform work constitutes a violation of this provision. The Company interprets this language to prohibit bargaining unit members from refusing to perform work because they have – contrary to guidance from local, state, and national health officials – unilaterally decided it is not safe to work. It also prohibits the Local from encouraging – whether directly or indirectly – that employees withhold production by refusing to work.

Also, under the express terms of Article 8, if such conduct occurs – either by the Local directly or any member of the Local or bargaining unit employee – then the “Union shall immediately declare publicly that such action is unauthorized and shall promptly order its members to resume their normal duties . . .” The Company expects the Union to maintain its contractual obligations not only to refrain from conduct prohibited by the CBA, but to *publicly* disclaim its position (more fully described below) that employees “have the right to refuse to work” and to direct employees that they must immediately return to work.

Article 35 – Waiver, Entire Agreement, and Severability

Pursuant to Article 35, the parties’ agreed that the current CBA is “the complete Agreement providing all benefits to which any employee may be entitled, and it is expressly understood and agreed that the Company has no obligation to any employee or employees other than those provided herein.” *Article 35, Section 1*. Further, the parties explicitly waived the right “to bargain collectively with respect to any subject or matter referred to or covered in th[e] Agreement . . . even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the time that



they negotiated or signed th[e] Agreement. *Article 35, Section 2*. Thus, pursuant to this Article, the Local cannot take any actions against the Company in an effort to coerce it to provide additional benefits to employees or renegotiate any provisions of the CBA.

The Local's Conduct

Throughout the last several weeks, the Local has engaged in a multi-faceted corporate campaign against the Company in an effort to coerce the Company to grant specific health and safety protocols demanded by the Union. Most recently, in a letter you sent dated April 21, 2020, you outlined more than three dozen protocols the Local wants to be implemented at the facility. Those demands span all manner of health and safety procedures, ranging from plant wide testing, to the Company's use of security guards, to the type of PPE employees are provided and how frequently they are provided. As you stated, "[t]he purpose of this communication is to highlight . . . what we believe JBS must do before Local 7 can be comfortable that the plant is in a position to re-open." There are other references throughout your letter that indicate the Company must implement the Union's proposals or the Union will recommend employees not return to work. The implication of your statements is that the Union will encourage employees to withhold production unless the Local's demands are met.

The Local's threat to discourage employees from returning to work has been effectuated, in part, through its media campaign against the Company.¹ For example, in an interview provided to Channel 7 news and published on April 22, 2020, you are quoted as describing the facility reopening as "reckless and irresponsible and could potentially be a death sentence" . . . "this is a human rights issue, the rights of our workers are important and they should not be sacrificed."² The clear implication of this statement is that employees should not return to work. Indeed, your intent to discourage workers from returning is borne out by Tony Kovaleski's reporting that, "the Union is saying they are trying to fight every way they can to keep the plant closed." *Id.*

The very next day, April 23, 2020, you are quoted in a Denver Post article regarding the facility's reopening. In that article, you are quoted as saying, "I cannot stand up as president of the union and say it

¹ The Company has also received multiple reports from employees that the Local is explicitly encouraging them not to return to work and to engage in a protest of the working conditions. If those reports prove true, it is yet another clear violation of the CBA.

² Tony Kovaleski, Contact7 Investigates, <https://www.thedenverchannel.com/news/investigations/this-could-potentially-be-a-death-sentence-jbs-union-president-responds-to-plans-to-reopen-plant>. A similar statement appears in the Denver Post's April 23, 2020 article in which you are quoted as saying, "the [Company is] just going to reopen and they're giving my workers a death sentence." <https://www.denverpost.com/2020/04/23/jbs-meat-plant-greeley-colorado-coronavirus-2/>.



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is safe to go back . . . and I think workers have the right to refuse to work in an unsafe environment.”³ You made such a statement despite your apparent recognition that “the union’s contract prohibits them from organizing a strike.” *Id.*

It is unfathomable that you would recognize the Local’s obligations under the CBA while at the same time state that employees have the right to engage in a work stoppage in direct violation of the CBA. As noted, no one – not the Local, Local members, or bargaining unit employees – may withhold production for any reason. Your statements to both the Company and the media suggesting that the plant should not reopen and that to reopen would be a “death sentence” for employees sends but one message: that employees should withhold production and not return to work. Moreover, your claim that employees “have the right to refuse to work” is absolutely false under the CBA.

The Local’s conduct also violates Article 3 because it is attempting to improperly coerce the Company into implementing particular health and safety benefits outside of the grievance and arbitration process; namely, plant-wide COVID-19 testing, specific PPE, and other requirements.

Indeed, in your letter titled “Closure of JBS Plant in Greeley and your April 13 Letter” dated April 14, 2020 you boasted that “considerable state, federal, and local pressure” to commence a testing regimen was “generated in no small part by Local 7 . . .” *April 14, 2020 Letter*, p. 2. You go on to suggest that such efforts from the Local caused the Company to “bend[] to public pressure and the adverse publicity generated for JBS . . .” *Id.* Thus, not only have you conceded your intent to create negative publicity for the Company in an effort to force it to conform to the Local’s demands, but you are apparently proud of your flagrant disregard for the Local’s obligations under the CBA.

The Union’s corporate campaign against the Company in an effort to obtain the specific safety protocols and health measures acts as a unilateral attempt to modify the CBA and is a violation of the National Labor Relations Act. The Local must immediately cease and desist its attempts to circumvent the CBA and extort additional benefits from the Company outside of the grievance and arbitration process.

If the Local is unsatisfied with the Company’s response to the COVID-19 pandemic, its remedy is under the grievance and arbitration process of the collective bargaining agreement. The Local may also seek additional remedies in the next round of contract negotiations. The Local, however, may not extort additional benefits or concessions from the Company through media and political pressures, or by encouraging a work stoppage.

Based on the Local’s statements, the Company now asks that it make a public declaration, consistent with Article 8 denouncing its claim (1) that reopening the facility is a “death sentence” for

³ Denver Post, April 23, 2020, *JBS to Reopen Greeley Beef Plant Friday Despite Ongoing Coronavirus Concerns*, <https://www.denverpost.com/2020/04/23/jbs-meat-plant-greeley-colorado-coronavirus-2/>.



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employees and (2) that employees may refuse to work. The Local's public statement must also direct employees that they must immediately return to work. The Local's failure to make such an announcement is yet another violation of the CBA.

Further, please immediately cease and desist the Local's corporate campaign against the Company. If the Local continues to engage in such conduct in violation of the CBA, the Company will seek the federal court's intervention under Section 301 of the Labor Management Relations Act and will, specifically, seek an injunction prohibiting such behavior as well as money damages from the Local.

I appreciate your attention to these matters and hope we can work together to ensure employees are able to return to work safely and that the Company and Local are able to maintain labor peace.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matthew J. Lovell", written in a cursive style.

Matthew J. Lovell
Head of Labor Relations, Health and Safety
JBS USA