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April 25, 2020

Matthew Lovell
Head of Labor Relations
JBS USA
1770 Promontory Circle
Greeley, CO 80634

Re: Cease and Desist Letter of April 24, 2020

Dear Matthew:

I am in receipt of your letter of April 24, 2020, which I received late yesterday after the Greeley plant had re-opened, and A Shift on the Kill side was in progress.

I could not agree more that we “face uncharted territory in working through the many challenges presented by COVID-19”. We have consistently striven to make meaningful attempts to ensure the safety of our members and the continued operation of the Greeley beef plant.

Unfortunately, your Cease and Desist letter, threatening to stifle our voice, and those of our members, as well as pursuing claims for unfounded, speculative, and unrecoverable damages is rife with numerous inaccuracies, suppositions, and erroneous conclusions that I won’t spend time rebutting in their entirety.

Our efforts on behalf of our members are nothing more than the exercise of our Constitutional and legal rights, regardless of how improperly you characterize them.

I want to respond, however, to some of your more glaring fallacious arguments or misstatements.

Regarding Article 3, you wrote:

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*.

You seem to suggest that by virtue of this Article, the Union is precluded from *even mentioning* the COVID-19 virus' impact on safety and the health of workers at the JBS plant to appropriate governmental authorities and decision makers. We believe that this suggestion is both legally unsupportable and factually absurd. Of course, there is a grievance procedure – and the Union, unlike JBS, has availed itself of it. That, however, is not the end of the discussion. Neither Local 7's nor our members' First Amendment rights are checked at the grievance procedure door. The grievance procedure does not reduce Local 7 to a status of mute and abject servility. We have *every* legal right to avail ourselves of the ability to petition our elected representatives, including Governor Polis, as well as his staff and applicable state and local agencies such as Colorado Department of Public Health and Environment (CDPHE), Colorado Department of Labor and Employment (CDLE), and Weld County Department of Public Health and Environment (WCDPHE) with our legitimate, material, and good faith concerns about the safety of our members at the JBS meat plant. The same holds true with respect to our communications with certain arms of the federal government, including the Centers for Disease Control and Prevention (CDC) and National Institute for Occupational Safety and Health (NIOSH).

The intent of the CBA, particularly Article 3, was *never* to render us mute with regard to our long-recognized Constitutional rights. Under your theory, for instance, Local 7 and its members would be barred from ever filing complaints with OSHA or the FDA concerning matters at the plant – to state that proposition is to rebut it. The JBS plant is not a feudal fiefdom, which operates at the whim of its management nobility – it can, and should, be regulated by the appropriate health and safety agencies which exist to protect the public and workers at the plant. I would also note that your contention that we are essentially “gagged and bound” by a provision in the CBA discussing safety is one that you are demonstrably late in making. We have been corresponding with applicable state and local agencies and the Governor's office for some time – you have been copied on virtually all of the communications. At *no time* have you ever indicated that you believe such communications were barred by the CBA provision you now rely upon. In fact, even a brief perusal of our communications would reveal that many of our suggestions as to steps that would benefit plant safety were, in fact, incorporated in some fashion or degree into the NIOSH recommendations issued on April 20, 2020.

Thus, we find your arguments with respect to Article 3 as unfounded as they are unpersuasive. To the extent you believe we have violated the CBA, please feel free to avail yourself of the CBA's dispute procedure.

As you note, 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.

Matthew, there has been *no* strike. There has been *no* work stoppage.¹ There has been *no* picketing, or honoring of any picket line. There has been *no* sympathy strike. There has been *no*

¹ The CBA of course does not prohibit the work stoppage occasioned by the plant closure in connection with Public Health Order 20-25.

slowdown. Nor has there been any “*deliberate withholding of production or suspension of work on the part of the Union, its members, or any individual covered by this Agreement . . .*” Those facts are incontrovertible. Strikingly at odds with your contention that there has been some violation by the Union or its members of Article 8 is the immutable fact that the plant has re-opened. To the extent that there have been any call outs of members on either the Friday A or B Shift (something that you have not even alleged in your letter) – any such call outs would be individual decisions made by individual employees, not Local 7. Indeed, as you very well know, in your notice to plant employees on Wednesday, April 22, JBS specifically stated:

“DO NOT COME TO THE PLANT IF YOU ARE SICK.”

Certainly, you cannot seriously be suggesting, after having *told your employees* that they should *not report sick* – that failing to report to work sick is a violation of the CBA. At this stage, we do not know, nor could you as of the time of writing the letter, how many individuals had or had not reported to work and/or were sick.

Additionally, as you well know, there was immense confusion with respect to *when* precisely the plant was being opened. The Local was told on April 20, 2020 by the applicable state and local public health agencies that *April 29, 2020* was a *contemplated* opening date. Yet, on that same day, JBS was contacting employees, telling them to report to work on Tuesday, April 21, 2020 – despite the fact that there had been no decision made by any applicable local, state, or even federal agencies as to when JBS could re-open. As it turned out, JBS had erroneously told some workers to report to work even without the permission of the health authorities, only to realize its error once we brought it to JBS’ attention. As a result, it had to retract its return to work communication.

Ultimately, although we had not heard anything from any public health organization, you informed us that the Kill side of the plant would be opening on Friday, April 24. We were unable to confirm that with CDPHE or WCDPHE until April 23, 2020. We then posted the plant re-opening on our Facebook page, since we were concerned that there was still residual and substantial confusion over when the plant might open – as noted, above. Naturally, there might be any number of other reasons that employees did not report to the plant – including that they had family members who had died from the virus, or were still hospitalized, among others. Local 7 has had no involvement in whether an individual has reported to work for their shift on the 24th. We bear no responsibility for the confusion created by JBS in its prior communication to employees, and of course, its statement that sick employees *must not* report to the plant (which was consistent with the NIOSH recommendations).²

Local 7’s Conduct

You referenced an April 21, 2020 letter in which you stated that we outlined more than three-dozen protocols the Union *wants* to be implemented at the facility. The operative word is *wants* – the CBA does not preclude us from *wanting* anything. We have every right under the CBA to make

² As you know, WCDPHE found that there was a culture of “work while sick” at the plant, at least as far as a number of employees, including management, and even health providers had reported such troubling circumstances to it.

suggestions – the grievance process is for when those suggestions have been ignored or rebutted, as, sadly, has been the case here. Additionally, the letter to you was nothing more than a re-capitulation of what we had communicated to the various state, federal, and local agencies that very same day. Our correspondence to you was part and parcel of our efforts to secure appropriate government responses to our legitimate concerns.

Moreover, the April 21, 2020 letter was generated after our receipt, and yours, of the NIOSH recommendations. It was simply to open up a line of *dialogue* as to our thoughts and input with respect to the NIOSH report, which we had both received only the day before. As I specifically stated:

My goal, here, is to let you know our strong thoughts concerning what still needs to be done with regards to a plant re-opening so that our goal of protecting the health and safety of our members (which you have repeatedly stated you share) – and your goal of re-opening the plant, to the economic benefit of JBS (and, yes, to our members if it is done safely) – are achieved.

The majority of the letter is simply our input and requests for clarification from JBS as to the NIOSH recommendations. My letter is replete with statements such as:

- “We would *suggest* that all frocks, gloves, and other protective gear be distributed on the lines rather than elsewhere so that social distancing may be observed.”
- “We *suggest*” that hand rails, ATMs, and other commonly-held items be cleaned at least every two hours;
- “We would *suggest* JBS provide face shields instead of safety glasses” for delineated reasons;
- “We would *ask* JBS to provide SDS or MSDS documents to workers and Local 7.”

And, I specifically concluded that:

We remain willing to work *jointly* with you to achieve these recommendations safety, expeditiously, and efficiently.

Despite your claim that if these suggestions were not met, “the Union will recommend employees not return to work” – there was *no* such statement contained anywhere within the letter, nor indeed, any suggestion of that. No such statement has ever been made. Similarly, your suggestion that our statements contained within them an implicit encouragement that employees withhold production unless the Union’s “demands” were met – is built on shifting sands of hyperbole and supposition without any factual basis. This is not a strong foundation upon which to rely for a Cease and Desist letter.

The Union simply wanted to continue to work with the applicable local, state, and federal entities, as well as JBS, to ensure that the plant would re-open *safely* and expeditiously – and as noted in many of our prior communications with those entities and yourself, we recognize the national importance of continuing the safe operation of the food chain.³ Any adverse publicity, such as community interest group

³ As noted, you were fully aware of our contact with these state and federal agencies, and raised no objections until yesterday. Moreover, you were fully aware of our contact with NIOSH as it is specifically mentioned in its

interviews, or media appearances by grieving family members, were not organized by Local 7 and are the direct result of the actions or inactions of JBS.

There has been no “threat” to discourage employees from returning to work. If we had no desire to have our members return to a plant which could safely operate, we simply would not have made *any* attempt to post the plant re-opening on our website – and would have left JBS to its own devices in terms of re-opening – something it had admittedly failed to do in a coherent fashion earlier this week.

As to portions of quotes that you attribute to me in your letter – I believe it is factually accurate that returning to work at the plant “could *potentially* be a death sentence.” After all, four workers at the plant have died of COVID-19, three of them our members. Aside from deaths at elder care centers and nursing homes, to the best of my knowledge, this is the greatest death toll at any single facility in Colorado. As to whether the plant is safe or not – *if* JBS fully complies with the recommendations of NIOSH, CDPHE, and the WCDPHE – that may well be the case. But of course, at this stage, we do not know whether those recommendations have, in fact, been fully complied with, or will be in the future. Time is the best test.

As to your contention that our efforts were made to obtain specific safety protocols as a modification of the CBA – I would only note that we have every right to take our case to the appropriate local, state, and federal agencies, as well as elected representatives. We did not issue Public Health Order 20-25 on April 10, 2020 – *closing* the plant – the relevant public health agencies did. We did not issue a host of findings and recommendations on April 20th – a branch of the CDC, NIOSH, did. Moreover, JBS has consistently, in its public relations campaigns in the press, stated that its decisions to implement a host of COVID-19 mitigation efforts were purely voluntary – as was JBS’ decision to close the plant. Thus, those public statements are completely inconsistent with a suggestion that you essentially bowed to some type of campaign of public pressure led by the Union. The unalterable fact is that the deaths of workers at your plant is not likely to lead to favorable publicity – and even the President and Vice President of the United States felt compelled to comment on the circumstances at the plant. Moreover, you at no point raised with CDPHE nor WCDPHE nor CDC/NIOSH that they could not regulate plant operations because that would be somehow be violative of the CBA. Such a position would stand logic on its head.

The CBA has not been modified – rather, JBS has been placed in a position of having its plant closed because of legitimate concerns regarding the safety and health of its employees, as forcefully articulated by local, state, and federal authorities, including the Executive Branch of the United States.

Under no circumstance will Local 7 direct that *all* employees, *regardless of their health status*, “must immediately return to work.” This would contravene *all* guidance from the CDC, the recommendations of NIOSH, and the clear recommendations and Order of both the CDPHE and WCDPHE. Moreover, it would be a direct contravention of your communication to all employees on Wednesday, April 22 “DO NOT COME TO THE PLANT IF YOU ARE SICK.”

recommendations from April 20, 2020, and there was no hint of any concerns with our contact with NIOSH until yesterday.

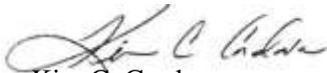
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We continue to be willing to work with you to assure the safe and effective operation of the plant. Threats of litigation, including seeking an injunction or monetary damages, only serve to divert all of our attentions from the more pressing issue of achieving our common goal of operating the plant safely and without further closures, in the future. No one's interest is served by a subsequent shut down as a result of an additional order from a local, state, or federal agency, or by litigation seeking to silence the Union from its lawful and Constitutional efforts. Toward that end, I remain willing to have further conversations with you and government leaders – though for obvious reasons not face to face – so that all of the issues, including those articulated in your letter of April 24, 2020, may be resolved.

Sincerely,



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

cc: Governor Jared Polis
Eve Lieberman, Colorado Governor's Office
Jill Hunsaker Ryan, Colorado Department of Public Health and Environment
Mara Brosy-Wiwchar, Colorado Department of Public Health and Environment
Patrick Teegarden, Colorado Department of Labor and Employment
Dr. Mark Wallace, Weld County Department of Public Health and Environment
John Gibbins, CDC National Institute for Occupational Safety and Health
Christa Hale, CDC National Institute for Occupational Safety and Health
Kendra Broadwater, CDC National Institute for Occupational Safety and Health