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United Food and Commercial Workers Canada Union, Local No. 401

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Dear Sirs and Madam:

***Re: Request for OHS Investigation and Stop Work Order at Cargill***

I act for United Food and Commercial Workers Canada Union, Local No 401 (the “Union”). Last week the Union wrote to report a death and a serious injury in connection with the Cargill Limited o/a Cargill Meat Solutions (“Cargill”) workplace in High River, and seek assistance in obtaining Cargill’s compliance with Sections 40(5) and (6) of the *Occupational Health and Safety Act*, SA 2017 c O-2.1 (the “*Act*”). The Union is the certified bargaining agent at Cargill for “all employees ... except office, clerical, training, nursing laboratory, sales and purchasing personnel.”<sup>1</sup>

**Request for Orders**

I write today to request that Alberta Labour and Immigration (the “Department”) and Alberta Occupational Health and Safety (“Alberta OHS”) (collectively “Alberta”) issue an order under Section 60(1) of the *Act* directing that Cargill stop work until such time as:

- Cargill has complied with all its obligations under Section 40 of the *Act*;
- Cargill, in participation with the Union, has identified all hazards posed by COVID-19 in the worksite and established satisfactory written policies and procedures to mitigate those hazards;
- Alberta OHS has completed its investigation under Section 53 of the *Act* (the “Investigation”) and made its report public; and
- Alberta OHS has addressed the deficiencies the Department’s assessment of Cargill’s safety measures, as detailed below.

In the alternative, should the Department and Alberta OHS decline the requested order, the Union asks Alberta at minimum provide written confirmation that an OHS Officer will be assigned to observe Cargill’s resumption of harvest on Monday, May 4, 2020, and then again on the first day of resumption of fabrication planned to take place on Wednesday, May 6, 2020, and be present for sufficient time on each day to observe physical distancing in

<sup>1</sup> Alberta Labour Relations Board Certificate No C-70-2018

employee transportation, during breaks, during lunch, and at shift change; collect documentation of Cargill's safety policies and procedures; and address all other outstanding health and safety matters listed below under the heading "Outstanding OHS concerns." Given that prior inspections and meetings with Alberta OHS at the site this month have produced reports that have neglected to address concerns raised by the Union, the Union insists that any Officer assigned to observe the resumption of production be accompanied by a Union Representative of the Union's choosing.

The Union further requests that the Department and Alberta OHS find that Cargill has not complied with Sections 40(1),(5) and (6) of the *Act* and issue an order under Section 59(1) directing the employer to comply with those sections. Despite announcing its plans to resume production on Monday, May 4, 2020 Cargill has failed to conduct an investigation or produce a report on the injuries and death (the "serious incidents") from COVID-19 in connection with its worksite with the participation of the Joint Worksite Health and Safety Committee (the "JHSC") in accordance with Section 40 of the *Act*. Cargill has failed to commence these actions or fulfil these duties, despite Deputy Minister Shawn McLeod's April 26 letter stating that Cargill was directed by Alberta OHS to do so.

In the Union's last letter dated April 22, 2020 it noted one Intensive Care Unit (ICU) hospitalization and one death due to COVID-19 amongst Cargill employees. These numbers have since increased significantly. On April 28, 2020, Dr. Brent Friesen confirmed seven hospitalizations of Cargill employees, including five employees admitted to ICU. Despite this, the Union notes no Alberta OHS Officer has contacted the Union or any union representatives on the JHSC about a serious incident investigation in accordance with Section 53 of the *Act*.

Given the imminent resumption of production planned at Cargill, the Union asks for an urgent response to this request for remedies before 4:00 p.m, Friday, May 1, 2020.

### **Outstanding OHS concerns**

On Monday April 27, 2020 Occupational Health and Safety Officer Ryan Schur (the "Officer") attended Cargill's facility to conduct an in-person inspection (the "Inspection"). Several members of Cargill's management team also attended, as did Devin Yeager, UFCW 401 Coordinator – Food Processing, Packing & Manufacturing.<sup>2</sup>

Mr. Yeager asked the Officer if the Inspection was part of a serious incident investigation under Section 53. The Officer informed Mr. Yeager it was not. Mr. Yeager also asked if employees would be spoken to as they would be able to provide the best information as to what occurs in the plant. The Officer advised he was not speaking with other employees for the Inspection.

Mr. Yeager notes several deficiencies in the Officer's report of the Inspection, "Cargill 2 report ohs-203667-wsp-01-cd-04a final" (the "Report"), and his notice to produce, "Cargill NTP Report OHS-203667-WSP-01-CD-05A Final" (the "NTP"):

- Cargill has shared no documentation of a COVID-19 hazard assessment, or any safety documents, with the Union or the JHSC union representatives, nor has it included them in the identification of COVID-19 hazards at the plant. This deficiency is not addressed in the Report or the NTP. This is a clear breach of the *Act* and the Code. Further, the Report and NTP do not address the lack of any written documentation of safety policies and procedures with regard to COVID-19. The Officer requested these materials during the Inspection and Cargill was unable to produce them because they "were working on it."
- The Report and NTP failed to address the fundamental problem of overcrowding during breaks presented in the plant's common areas including the locker room, restrooms, cafeteria and lunchrooms, which was raised by Mr. Yeager during the Inspection. The spacing and reassignment of lockers is not sufficient to address this issue.
- The Report and NTP do not address that crowding is a function of several factors including scheduling, breaks, and line speeds. None of these factors are addressed by the Report or NTP, other than adjacently by the Officer's admission he couldn't observe any actual work.

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<sup>2</sup> A clarification on the Report's statement on attendees: while two bargaining unit members also took part in the tour, the member identified as "Cargill Ergonomics Monitor (hourly/UFCW member, active JHSC member)" is to the best of the Union's knowledge an Employer appointment to the JHSC.

- The Report states that the employer has provided the Officer with “photographs of the men’s washroom that confirm sufficient physical dividers have been installed in-between the urinals”. Physical distancing of urinals was raised by Mr. Yeager, but the employer has not provided such photographs to the Union or the Union representatives to the JHSC.
- The Report and NTP do not address a row of tightly spaced equipment hooks located on a wall on the fabrication floor, which would create a bottleneck for physical distancing. The Officer identified this as a concern verbally during the Inspection.
- The Report and NTP do not address the need to enforce policies on physical distancing, hand washing and other mitigation measures. The Officer stated during the Inspection that policies were of little use without enforcement. Cargill was unable to provide any documentary evidence of enforcement or how they planned to address this in the future.
- The Report does not address the spacing of microwaves in the lunch room. The Officer asked if the spacing of the microwaves creates lineups. Mr. Yeager confirmed that the spacing and number of microwaves available creates significant lineups that interfere with social distancing – this same concern was raised by Union representatives to the JHSC in prior discussions with Officer on April 14 and 15, 2020.
- The Union also notes that several concerns raised by the union representatives to the JHSC in the April 14 teleconference call with the Officer and Cargill representatives to the JHSC, and in the April 15 virtual tour, were never addressed by the Officer in the Report, the NTP, or any prior documents. To the best of the Union’s knowledge these concerns have not been addressed at any meeting of the JHSC, or in any Cargill policy. These include:
  - o Staff shortages requiring staff to cross-train each other in close proximity and without adequate PPE;
  - o Staff shortages requiring maintenance staff to cover several departments (they are typically assigned only to one department);
  - o High noise levels on the fabrication floor leading to close contact between employees, supervisors when communicating;
  - o Provided masks becoming soiled quickly with sweat and fluids from production, interfering with employees’ ability to breathe, and causing fogging of safety glasses; and
  - o Inadequate PPE being provided to walking stewards, who in their duties are required to listen to employees’ concerns from all areas of the facility.
- The NTP and the report do not address Cargill’s policies and procedures for recalling employees back to work who have self-isolated, quarantined, been confirmed as COVID-positive or as a close contact of a COVID-positive individual. This has been a matter of public media discussion and the Union has received multiple reports of employees being called to return to work contrary to guidance from Alberta Health Services (AHS) and the Chief Medical Officer of Health. The Union identified glaring issues with Cargill’s records (ie. identifying hospitalized employees as available for work), yet this concern was not investigated by the Officer during the Inspection, nor was it addressed in the Report or the NTP. The Union has since heard from members who have been instructed to come into the plant to clean out their lockers, despite being in quarantine or self-isolation.
- The NTP and the report do not address Cargill’s apparent lack of any plan to inform employees of the availability of buses. Cargill has not shared any details of bussing with the Union or the union representatives to the JHSC. Nor has Cargill provided adequate information to employees about the time and availability of bus service since announcing the transportation program yesterday. The Union has fielded multiple calls on this issue and is unable to provide members with any assurances about the safety or availability of this transportation option.

Finally, the Union notes that during a Government of Alberta telephone townhall the evening of April 29, 2020, the Union heard that the Department has toured Cargill with AHS this week and has deferred to AHS’s advice that Cargill has implemented sufficient safety measures. It is highly concerning that the Union, and as a result workers, were excluded from these inspections and none of these documents, observations or advice given by Alberta Health Services, adopted by the Department and allegedly implemented by Cargill has been shared with the Union or union representatives to the JHSC.


## Conclusion

One of the Act's fundamental purposes is to ensure workers are informed of hazards in their workplace, the means to eliminate or control them, and "the right to meaningful participation in health and safety activities pertaining to their work and work site, including the ability to express health and safety concerns" (s.2). The *Act* provides several mechanisms for workers to have an active involvement in the identification of workplace hazards, and the process to mitigate those hazards. It also provides Alberta OHS a mechanism to ensure compliance with the *Act*.

Alberta OHS and the Minister have an obligation to ensure compliance with the *Act*. Ensuring worker participation and worker concerns are addressed are critical in any effort to control the COVID-19 hazard and precisely why the *Act* requires their input and participation. Further, If Alberta OHS does not enforce those provisions of the *Act* that provide a role for worker's concerns to be addressed, and does not address worker's concerns when it conducts inspections of the workplace, then workers will lose faith in the safety of the worksite and the government's enforcement of the laws which purport to protect them.

For the foregoing reasons the Union requests that Alberta grant the remedies and take further steps to ensure worker concerns are addressed.

Yours truly,



**Mark Wells**  
Legal Counsel  
UFCW Local 401, Edmonton

MW/as

CC Thomas Hesse, President, UFCW Local 401  
Devin Yeager, Coordinator – Food Processing, Packaging & Manufacturing, UFCW Local 401