

LABOUR RELATIONS BOARD

UNFAIR LABOUR PRACTICE COMPLAINT

Pursuant to Sections 12(2)(e) and 16(1) of the *Labour Relations Code* RSA 2000 c. L-1

I. COMPLAINANT:

United Food and Commercial Workers Canada Union, Local No. 401 (the “Union”)

MAILING ADDRESS:

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CONTACT PERSON:
Devin Yeager
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LEGAL COUNSEL:
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II. NAME OF EMPLOYER AND AFFECTED PARTY AGAINST WHOM THE COMPLAINT IS BEING MADE (RESPONDENTS):

Cargill Limited (the “Employer” or “Cargill”) and the Government of Alberta (the “Government”)

MAILING ADDRESS:

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CONTACT PERSON:
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Government of Alberta
Minister of Labour and Immigration
Members of Executive Council
Executive Branch
107 Legislature Building
10800 - 97 Avenue
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CONTACT PERSON:

The Honourable Jason Copping, Minister of Labour and Immigration

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III. SECTION AND SUB-SECTION WHICH ARE ALLEGED TO HAVE BEEN VIOLATED:

1. The Union alleges that the Employer has violated sections 148(1)(a)(ii) and 149(1)(a)(i), (ii), (viii), (b) and (c) of the *Code*.

IV. PARTICULARS

Background

2. The Employer operates a beef processing facility just outside of High River, Alberta (the "Facility"). The Facility is a fully integrated operation with slaughtering, fabrication, rendering and hide operations.
3. The Union is the certified bargaining agent for all "*employees of Cargill Foods Division at the High River Plant except office, clerical, training, nursing, laboratory, sales, and purchasing personnel*". Approximately 2000 employees are in the bargaining unit. Additional non-bargaining unit workers are on site, including contractors. Two shifts at the plant run daily: the day shift which ends at 3 or 4 pm, and the afternoon shift (2nd shift) which ends at midnight. A large number of employees work in two main departments: Harvest Operations where cows are slaughtered and Fabrication operations where the beef is processed. After the beef is slaughtered it is placed in a cooler for approximately three (3) days before it can go to Fabrication.
4. The Employer and Union are parties to a collective agreement that expires on December 31, 2020 (the "Collective Agreement"). The Collective Agreement has a number of provisions

with respect to guarantees of work and layoff (see Articles 5, 6 and 12) and health and safety (see Article 15). Worker health and safety is one of the Union's core missions and the Union's ability to effectively represent and advocate for its members' physical security is at the core of its *raison d'être*.

5. On March 11, 2020 the World Health Organization declared COVID-19 a global pandemic.
6. On March 17, 2020 the Alberta Government declared a state of public health emergency to combat the COVID-19 pandemic. The effects of the pandemic are unprecedented and, to borrow a term from other legal claims that recognize unique and foundational interests, *sui generis*. Managing this pandemic requires a higher level of cooperation and consideration to ensure that everyone's interests, including vulnerable workers' interests, are safeguarded.
7. On March 20, 2020 the Union sent a letter to Dale LaGrange, General Manager of the Facility, asking for a number of precautions to be taken at the Facility to protect workers from COVID-19, including increased distance between work stations, reconfiguration of work schedules to allow for greater distancing, and reduced line speeds to allow for greater cleanliness (**Attachment A**).
8. On March 23, 2020 Tanya Teeter, Vice President of Labour for the Employer, responded outlining some changes that were being put in place or considered (**Attachment B**).
9. On March 30, 2020 Devin Yeager, Union Coordinator – Food Processing, Packaging & Manufacturing Division, sent an email to Devin Tretiak, Cargill Employee Relations Sr Specialist, copied to Rob Hale, Cargill Employee Experience/Employee Relations Market Leader, asking to have a meeting with Union representatives and Management representatives to discuss the Facility's response to COVID-19, including measures such as social distancing, temperature screenings, and other measures being undertaken or ones that could be undertaken. Mr. Yeager suggested the parties could meet once or twice a week. On April 2, 2020 Mr. Hale responded that the Employer had limited availability to have such meetings and did not provide any availability for a meeting (**Attachment C**). To date no such meeting has occurred.
10. On April 3, 2020 in response to inquiries from the Union, Ms. Teeter wrote to Union President Thomas Hesse, outlining the Employer's approach to temperature screenings at the plant (**Attachment D**).
11. On or about April 6, 2020 the Union learned that an employee at the Facility had tested positive for COVID-19. Joe Attwood, UFCW 401 Labour Relations Officer, heard this from a member. Mr. Atwood followed up with the Employer and the information was confirmed by Mr. Hale. Mr. Atwood made clear to Mr. Hale that the Union should have been, and wanted to be, informed of information like this given the obvious safety concerns to members.
12. During the week of April 6, 2020 the Union understands that employees began calling into work or were sent home by the Employer's nurse because they were suffering from COVID-19 symptoms. The Employer did not advise the Union of the numbers of people who were experiencing symptoms.

13. The Union understands that on or about April 7, 2020 Alberta Health Services (AHS) visited the Facility. The Union was not previously informed of and did not participate in this visit.
14. On April 7, 2020 Ms. Teeter advised Mr. Yeager that AHS had made no recommendations about the Employer's operations. Ms. Teeter said if AHS was going to provide a report then at that time, without knowing what the contents would be, she could commit only to sharing it verbally. The Employer has not shared further information or documentation from AHS with the Union.
15. It is unclear what, if any additional, safety precautions were taken by the Employer as they did not consult or review them with the Union.
16. On April 8, 2020 Mr. LaGrange posted a letter to employees advising that an individual tested positive for COVID-19 and reminding employees of Alberta Health guidelines to avoid gatherings over the holiday weekend (**Attachment E**).
17. By April 10, 2020 the Union understood from the Employer that there were then five (5) confirmed COVID-19 cases at the Facility.
18. By April 12, 2020 the Union was hearing reports from members who were doing their own inquiries with co-workers trying to determine the number of positive infections. Some members were reporting numbers in the range of 18-20 positive infections.
19. On April 12, 2020 Ms. Teeter advised Mr. Yeager that there were then 38 confirmed COVID-19 cases at the Facility: 4 contractors, 5 salaried employees, and 29 bargaining unit members.

Improper Interference

20. On April 12, 2020 President Hesse sent a letter to Mr. LaGrange expressing concern about the diagnoses of COVID-19 at the Facility and other packing plants and asked for the following:
 1. An immediate 2-week closure of your plant to conduct a comprehensive assessment of its safety.
 2. Guaranteed full compensation for every single employee during this temporary shutdown. There is no reason why workers' livelihoods AND lives can't be protected.
 3. An immediate meeting with Union officials, experts, and government officials of appropriate competency and jurisdiction to design clear and enforceable rules around health and safety in your workplace.
21. The Union forwarded the letter to its members at Cargill and posted it on their website (**Attachment F**).
22. At approximately 8:00 pm on April 12, 2020 Mr. Yeager spoke briefly to Ms. Teeter who asked if the Union was instigating a work stoppage. Mr. Yeager explained that they were not

and reiterated that the Union was asking for the Employer to close the Facility for two weeks to address safety concerns given the rapid increase of COVID-19 cases.

23. On April 13, 2020 Ms. Teeter called Mr. Yeager and they spoke at approximately 9:00 am. Ms. Teeter advised Mr. Yeager that apparently a large number of employees did not show up for work, which resulted in the Employer having to slow production. Mr. Yeager again advised Ms. Teeter that the Union had not directed employees not to come to work. Ms. Teeter expressed that it was the Employer's view that the Union's letter was irresponsible and led to people not attending work; as a result, the Employer was going to lay off the entire afternoon shift, effective immediately and without the notice required in the Collective Agreement, because the Union's actions created circumstances beyond the Employer's control. Mr. Yeager asked Ms. Teeter to put that position in writing and Ms. Teeter declined and advised she would send him a copy of a notice going up later that day.
24. When Union Steward Jamie Welsh-Rollo returned to work the morning of April 13, 2020 after being home on isolation she was confronted and questioned by her supervisor, Chris Korth, who alleged that the Union's letter had caused the Employer to be short-staffed.
25. That afternoon the Employer released the following statement to the media before providing anything to the Union:

As we continue to prioritize the health and safety of Cargill employees, we have decided to temporarily reduce shifts at our High River protein plant. This will allow us to minimize the impact of COVID-19 and continue follow health department guidelines. This was a difficult decision for our team, but our values are guiding our actions.

We want our employees and the community to know we care. We've taken extra steps to focus on safety and remain operational – including temporary wage increases, bonuses and waiving co-pays for COVID-19 testing. We also implemented additional safety measures like temperature testing, enhanced cleaning and sanitizing, prohibiting visitors, adopting social distancing practices where possible and offering staggered breaks and shift flexibility. Our facility will be back to operating at full capacity as soon as it is safe to do so.

Every person affected is a valued member of our team. Our employees are working hard to keep food on tables in local communities. While this location is working at reduced capacity and we adapt to operating during a pandemic, our work doesn't stop. Cargill provides an essential service to the world—providing the ingredients, feed and food that nourishes people and animals. We are working with farmers and ranchers, our customers and our employees to supply food in this time of crisis and keep markets moving.

(Attachment G)

26. Late in the day on April 13, 2020 Ms. Teeter finally sent a letter to President Hesse advising that

...due to unforeseen circumstances beyond our control and the increasing impact of the COVID-19 pandemic on our operations, including an increased impact on employee attendance and 2nd shift management personnel, we are taking the necessary step of temporarily suspending 2nd shift Fabrication and Harvest Operations, effective immediately.

(Attachment H, "April 13 Letter")

27. The April 13 Letter indicates that *"Our goal is to ensure that 2nd shift employees who are willing and able to report to work can continue to do so on the day shift"*. The Employer went on to advise they anticipate being back to full operations in 7-21 days. While the letter concludes by advising that *"The intent of this shift change is to better ensure the safety of our workplace..."* there are no actual details about how the shift change would accomplish that.
28. While the April 13 Letter details some safety measures the Employer had taken, there were some new ones of which the Union was previously unaware such as screening between work stations and the use of masks. The Union is unaware of how long the new measures had been in place at the time of the letter, but as of the 13th no masks were available to workers, management personnel only had faceshields, social distancing was not occurring on the Facility floor, and the Employer had ceased splitting up break times due to lack of staff.
29. The April 13 Letter also emphasizes the Employer's frustration with the Union's April 12, 2020 letter which advocated for members' safety; the Employer asserts the Union was being "highly inflammatory."
30. In the April 13 Letter the Employer states that it was working with Alberta Health Services and following their directions, however the Employer had not provided the Union with any information in respect to their directions, despite Mr. Yeager asking for this information.
31. The Employer also sent a letter to 2nd shift Fabrication and Harvest employees advising that the 2nd shift was suspended and asking employees to advise if they were willing to work on the day shift (**Attachment I**). The letter also informed employees that if they were unwilling to work or if work was not available, they would be temporarily laid off without pay. The Employer disregarded the Collective Agreement provisions in re-organizing the workforce and put the onus on employees in an attempt to pressure them into working.
32. On the morning of April 14 2020 the Employer instructed the Harvest employees via Facebook not to come in to work and sent some employees home who did report. The Union understands this was because the Employer's decision to immediately cancel the 2nd shift the day before without notice left no employees to process the killed beef and there was a backlog. Harvest employees remained off work for the remainder of the week. The Employer has not advised whether employees who attended work will receive reporting pay.
33. The Employer was quoted in the High River Online paper on April 14, 2020 as saying *"during the slowdown, some employees will be temporarily laid off"* (**Attachment J**).

34. Late in the day on April 14, Mr. Hale emailed the Union advising that there was work available on the day shift for 2nd shift Fabrication employees and there would be no layoffs of these employees (**Attachment K**). Harvest employees with fabrication experience were asked to report to work day shift fabrication.
35. Joint OHS Committee meetings are scheduled to be held on the second Tuesday of every month. Renee Sikki, Cargill Health and Safety Manager, cancelled the April 14, 2020 meeting.
36. However, on the morning of April 14, 2020 the Employer called an OHS Committee meeting, although not all members were present; only two union members were allowed to attend. At the meeting Union committee member and bargaining unit member Myriam Tukku asked if Mr. Yeager could call into the meeting. This request was ignored. Two government OHS Officers were present via skype. At the meeting the four Employer representatives reviewed various safety measures put in place. The Union members attempted to point out that not all information was accurate, such as that only supervisors had been given face shields. They also explained that the Employer had not allowed the designated Union Steward to carry out her duties, whereby the Steward observes working conditions and speaks to workers about any issues, since mid-March. When a Steward was allowed to do this, which occurred sporadically, it was someone chosen by the Employer, and no PPE was provided to the Steward. The Union members also raised concerns that supervisors were not maintaining proper social distancing when giving instructions or training employees. Further, after the Employer's canceled the second shift, many employees were being moved around and employees were being called upon to train other employees without proper distancing. Another concern expressed by Union members was whether appropriate quarantine rules were being followed by the Employer with respect to whether workers should stay at home or come to work.
37. The OHS Officer on the phone asked whether the Employer had a Hazard Assessment for COVID. Ms. Sikki's response was that they had looked at the Hazard. No Hazard Assessment was conducted with the OHS Committee or workers and none has been provided to the OHS Committee, workers, or the Union. The Employer has also not provided any minutes of the April 14, 2020 meeting.
38. On April 15, 2020 Ms. Tukku received notification at 12:40pm that Alberta Occupational Health and Safety wanted a virtual tour of the plant at 2:00pm. Ms. Tukku was allowed to depart her work station on the Fabrication floor at 1:58pm to attend. No other Union representative or bargaining unit member was notified and/or attended. Ms. Tukku was not given the opportunity to speak to the OHS Officer who was taking virtual tour.
39. On April 15, 2020 Mr. Hale contacted the Union because the Employer was concerned about a simple Union sign notifying of a Union townhall phone call scheduled on Sunday, April 19, 2020(**Attachment L**). The Employer claimed the sign was on Employer property, although they provided no confirmation. Mr. Hale again followed up with the Union demanding the sign be removed immediately. Mr. Yeager pointed out to Mr. Hale that it was strange the Employer had time to deal with this but not answer the Union's questions about the health and safety of the workers.

40. On April 16, 2020 the Union participated in a call with AHS Zone Officials and the Employer. During the call Calgary Zone Medical Officer of Health Dr. Hu said he would provide a report to the Union with AHS's recommendations to the Facility to deal with COVID-19 and the measures taken. Also during the call Ms. Teeter committed to sharing the Employer's Business Resumption Protocol with the Union.
41. On April 17, 2020 Mr. Hale advised Mr. Yeager that Harvest Operations would begin on April 20, 2020 on the day shift. All day and 2nd shift employees were to report to the day shift (**Attachment M**). Harvest operations did not begin on April 20, 2020.
42. At approximately 7:00 pm on April 17, 2020 Ms. Teeter advised President Hesse that a town hall phone call with AHS and Alberta Government officials had been arranged for Saturday, April 18, 2020, in which employees could send or call in questions for Cargill, the Government or AHS to answer. The Union was not consulted about this call nor asked to participate. The town hall call was scheduled for the day before the Union's own town hall, which was known to the Employer and the Government. President Hesse responded that this call would undermine the Union and add confusion (**Attachment N**).
43. On the morning of April 18, 2020 President Hesse emailed Minister of Labour Jason Copping objecting to the town hall and asking for it be cancelled (**Attachment O**).
44. During the April 18, 2020 town hall, and in various media reporting on Friday, August 17, 2020, the Government's Business Resumption in Alberta plan with respect to meat packing facilities with COVID-19 cases was referenced (the "Business Resumption Plan") (**Attachment P**). At no time did the Employer ever mention or consult with the Union with respect to the Business Resumption Plan and the Union was only provided with a copy on Saturday evening after the Employer's town hall. While the Government advised in the media and on the town hall call that it had consulted with worker representatives, it had not consulted with the Union, the Union that represents the two largest meat packing plants in the Province. Further Minister of Agriculture and Forestry Devin Dreeshen concluded the call, echoing the Employer's anti-union comments from the April 13 Letter. Minister Dreeshen said "I would like to encourage everyone not to get distracted by misleading noise and inflammatory rhetoric" and went on to encourage them to listen to the Government's daily updates.
45. The Business Resumption Plan was signed on April 14, 2020. When the Employer provided this to the Union on the evening of Saturday, April 18, 2020 it advised this was the recommendations that the Government Relations official had committed to provide on April 16, 2020 (see para 40 above).
46. On April 18, 2020 the Employer finally provided the Union with a list of employees and their work status. It disclosed that 659 employees were not at work due to COVID-19 related reasons. However, the accuracy of the list is questionable given it showed a member as able to work when they were in fact in hospital due to COVID-19.
47. On April 20, 2020 the Employer announced it would be idling the plant. Ms. Teeter advised Mr. Yeager that it would take a period of time to do so. Later that day Mr. Yeager wrote to Ms.

Teeter asking for further details about the shut-down and pay information for employees (**Attachment Q**).

48. On April 20, 2020 the Union also learned that one of their members from the Facility died from COVID-19. That individual was marked as available to work on the Employer's list provided on April 18, 2020. The media reported that this member called in sick on Friday April 17, 2020 and passed away on Saturday.
49. On April 21, 2020 Mr. Yeager again wrote to Ms. Teeter asking for details on the shut-down and pay information for employees. Ms. Teeter responded at 4:23pm with some further information (**Attachment R**).
50. At about the same time Ms. Teeter was communicating with Mr. Yeager on April 21, 2020, the Employer gave a letter to employees leaving the Facility advising of the shut-down (**Attachment S**). The letter advised employees that they would be paid their weekly guarantee for the current week, and the week of April 27, 2020.
51. On April 22, 2020 the Union wrote to the Employer and Government reporting the death and serious injury of two of its members and asking that an OHS investigation be commenced and that the Union be involved (**Attachment T**). The Employer had not notified the Union of any investigation it was undertaking with respect to the member who passed away or the member who was hospitalized despite its obligation to conduct an investigation involving the workplace occupational health and safety committee, under s. 40 of the *Occupational Health and Safety Act*.
52. On April 22, 2020 during the Government's daily COVID press briefing it was announced that OHS had commenced an investigation in relation to the COVID-19 outbreak at Cargill and JBS. This was the first the Union heard of this.
53. On April 22, 2020 Mr. Hale advised Mr. Yeager that Fabrications employees who worked during the week would receive their guarantee and so would Harvest workers (**Attachment U**).
54. On April 23, 2020 President Hesse wrote to Alberta Premier Jason Kenney about safety measures that should be put in place at workplaces such as Cargill (**Attachment V**).
55. On April 24, 2020 at approximately 6:00 pm Ms. Teeter advised Mr. Yeager that OHS planned to take a tour of Cargill on April 27, 2020 and advised that he could join the tour.
56. On April 24, 2020 the Union filed a grievance with respect to the COVID-19 outbreak at the Facility (**Attachment W**). Specifically, the Union requested that:

The Employer provide the union with a written agreement that it will not resume production until it has satisfied the Union's President, or senior designate appointed by the President, acting on behalf of the members working at Cargill, that the work site is safe.

57. On April 26, 2020 Union Counsel, Mark Wells, wrote to Ms. Teeter seeking further information about the tour (**Attachment X**). The next day, Employer Counsel, Alison Adam, responded to Mr. Wells providing some further information (**Attachment Y**).
58. Mr. Yeager attended the tour at the Facility with OHS on April 27, 2020. On the tour Mr. Yeager asked OHS if the tour would be supplemented with interviews of employees, as the Facility was not in operation at the time of the tour. He was told that all that was occurring was the tour. While the OHS officer asked for a number of documents from the Employer, none were provided. The Employer repeatedly questioned Mr. Yeager about taking photos of the same area that the OHS officer was videoing.
59. On the tour Mr. Yeager also asked what the Employer's plan was with respect to reopening as employees were advising him that supervisors were calling them stating the Facility would be opening on Monday, May 4, 2020. Ms. Sikki said "we are not here to talk about that today." Mr. Yeager put this same question to Mr. LaGrange, who provided a near-identical response.
60. On April 26, 2020 the Deputy Minister of Labour wrote to Mr. Wells advising that OHS had issued a demand to the Employer to carry out an investigation pursuant to s. 40 of the OHS Act (**Attachment Z**). The Employer has not contacted the Union with respect to this investigation.
61. On April 28, 2020 OHS provided a report of the tour (**Attachment AA**). The Employer was ordered to take certain actions with respect to the employee locker rooms and washrooms. The Union has not received any confirmation the order has been complied with. Further neither OHS or the Employer has addressed employee concerns with respect mask use raised by employees in the meeting on April 14, 2020 or the issue of training and instructions being given without appropriate distancing.
62. On April 28, 2020 Alberta Health Services held a virtual townhall meeting with Facility workers. Dr. Friesen of AHS reported 766 employees or contractors were confirmed as infected with COVID-19, and 60 others were likely infected but could not be swabbed. Of those workers, 8 were in hospital and 5 were in intensive care. The Union was not consulted about this call or asked to participate.
63. There remains ongoing confusion around whether employees will be receiving reporting pay for April 13, 2020 and whether employees are receiving their guaranteed hours of work pay for the weeks of April 13, 20, and 27, 2020.
64. The Union has received an outpouring of questions and concerns from employees about what will be happening next with respect to their return to work and safeguarding their safety.
65. On April 29, 2020 Mr. Yeager wrote to Ms. Teeter again asking about the Employer's plans to reopen, as employees advised they were continuing to receive phone calls telling them the Facility would re-open on May 4, 2020 (**Attachment BB**). At approximately 1:30pm Ms. Teeter called Mr. Yeager and advised that the Facility would be re-opening on May 4, 2020. Mr. Yeager expressed concerns over the lack of communication to the Union with respect to

what was happening. Ms. Teeter provided minimal details about reopening plans only saying that she would provide him a copy of the notice given to employees.

66. On April 29, 2020 at approximately 2:00 pm Cargill issued a media statement announcing they would be re-opening the Facility on May 4, 2020 (**Attachment CC**). Employer sets out a number of details about how it plans to address worker safety upon the resumption of operations. The Employer never consulted the Union on these measures nor even provided them with the media statement.
67. On April 29, 2020 at approximately 4:16 pm Ms. Teeter sent President Hesse a copy of the letter the Employer was sending to employees about the re-opening (**Attachment DD**, the "Reopening Letter"). Ms. Teeter's email referenced that the Employer had reviewed President Hesse's letter to the Premier and asserted that the Employer had addressed a number of the concerns. At no time did the Employer ever review the Union's April 23, 2020 letter with the Union.
68. The Reopening Letter to employees advises employees that the Facility will reopen on May 4, 2020 and that employees are required to attend work on May 4, 2020. The letter contains several misleading and inaccurate comments about the Union:
 - a. The letter states: "Cargill will be reopening the High River facility on May 4. This decision comes after significant deliberation among the Cargill leadership, as well as discussions with your Union and support from health authorities and other regulators." The Employer did not have discussions with the Union about reopening the Facility and only told the Union they were doing so 30 minutes before they publicly announced it.
 - b. The letter lists a number of safety measures the Employer asserts they have undertaken including "Providing both virtual and in-person tours of the plant to OH&S, Alberta Health Services, CFIA, and the union so they can see firsthand the work being done to protect and minimize the risk to our employees while on site." This statement is misleading as the Union on the April 27, 2020 tour asked a number of questions related to safety measures that were not answered by the Employer.
 - c. The Employer goes on to say that "We share the same goal as the UFCW-ensuring your health and safety. We look forward to continuing to work with your Union to keep employees safe as our High River plant reopens." To say the Employer has been working with the Union is disingenuous at best. This statement is misleading and designed to leave employee with the impression that the Union condones the reopening.
 - d. The Employer advises employees that they can contact the Employer directly if employees have any questions.
 - e. The letter concludes with the following:

We have also been in communication with the local UFCW, inviting them to be part of an April 16 discussion with AHS and subsequent meetings. While our views and approach differ, we believe that we share the same goal: to ensure your safety and wellbeing. It's our hope we can continue to work with our labour partners at the UFCW to focus on your health, protect your jobs and ensure the ability for you to provide for your families, while fulfilling our purpose to feed Canadians.”

This statement is inaccurate and misleading. While the Union was a part of the April 16 discussion with AHS they have not been included in any other meetings with AHS. It is also misleading to say they have been working with the Union when in fact they have largely ignored the Union and have not dealt with them in any substantive way as detailed above.

69. On April 29, 2020 the Government and AHS held another town hall meeting in which workers were invited to call in and ask questions. Dr. Hinshaw was also on the call. Once again the Union was not invited to participate. In the call it was confirmed that there were 821 cases in Cargill workers or contractors for a total of 1268 including linked cases.
70. On April 30, 2020 Mr. Wells wrote to the Deputy Minister of Labour, the OHS Investigations Unit Director, and the Employer asking for the Facility to remain closed until various investigations occur and safety concerns are addressed (**Attachment EE**). Mr. Wells set out in detail the Union's and workers' ongoing safety concerns and the Government's and OHS's refusal to provide the Union with relevant information or discuss safety concerns.

V. SUMMARY AND BASIS OF THE APPLICATION

71. The Employer suspended the 2nd shift operations, resulting in lost shifts, confusion, fear, and uncertainty to employees in retaliation for the Union representing their members and advocating on their members behalf on issues of health and safety. By taking this retaliatory action the Employer is trying to ensure workers fear for their employment, attend work and not exercise their right to a safe and healthy workplace.
72. Further, the Employer has refused to substantively deal with the Union with respect to the COVID-19 outbreak at the workplace, creating mass confusion, and interfering with the Union's ability to represent its members in a most critical time. There is an ongoing failure on the part of the Employer to consult with and include the Union in discussions and decisions related to COVID-19, while at the same time the Employer is taking its message directly to employees and/or allowing the Government to do it for them. The Employer's decision to reopen the Facility again created fear, confusion and uncertainty. The Employer failed to consult with the Union on this decision or give them appropriate Notice. The Employer's communication to employees in respect to the reopening was inaccurate and misleading and /or designed to create employee distrust in the Union. The Employer's conduct has served to interfere with the representation of employees by the Union and the employees' rights to representation in violation of s. 148(1)(a)(ii) and 149(b) of the *Code*. Employees are particularly vulnerable during this time of pandemic and in light of the rapid increase in

COVID-19 cases at their workplace; ignoring their Union and retaliating against employees for their Union advocating for employees' health and safety is particularly egregious interference with representational rights.

73. The Employer's conduct has also discriminated against the affected employees in regard to their employment and/or any term or condition of their employment in violation of ss. 149(1)(a)(i)(ii)(viii) of the Code. By taking this action the Employer also sought to compel employees to cease to be a member of a trade union in violation of s. 149(1)(c) of the *Code*.
74. The Government has violated s. 148(1)(a)(ii) by acting on behalf of the Employer in excluding the Union from representing its members with respect to how the COVID-19 outbreak is being handled at the Facility and by discrediting the Union to its members and the general public. The Government also caused further confusion to employees by stating they had discussed the Business Resumption Plan with unions and worker representatives, when it had not discussed it with the largest worker representative in the province and the representative of Cargill employees. Additionally, scheduling its town hall to the exclusion of the Union on the day before the Union's own town hall was an attempt to circumvent the Union.

VI. SPECIFIC REMEDIES REQUESTED

75. On the basis of the above, the Union seeks the following remedies:
 - A. A declaration that the Employer and Government has violated the Code;
 - B. An order that the Employer and Government cease and desist in violating the Code;
 - C. An order that any employees who lost pay or benefits in the weeks of April 13, 20, and 27 be compensated and be made whole.
 - D. An interim order appointing an independent, qualified, out-of-province investigator, directed to conduct interviews with a substantial number of employees, including those on the health and safety committee, to identify and investigate their health and safety concerns, collect those concerns and make a report to the parties.
 - E. An interim order that the facility not resume production until the Employer and Government have met with the Union to discuss the findings of the investigator's report, referred to above in D, and reach an agreement on a) a Hazard Assessment that incorporates all concerns identified by the independent investigator and b) a course of action to address the hazard of COVID-19 in the facility.;
 - F. An interim order that a Union Representative be present at the work site when production resumes and following to observe working conditions, the Employer will be provide appropriate PPE;

- G. An interim order that the Employer will report to the Union daily, the number of call-ins and the reasons why, and diagnosed cases, and potential exposures in the workplace;
- H. An interim order that a Union Representative will be involved in any meetings or tours undertaken by OHS, Alberta Health or AHS;
- I. An order that the Employer deliver notices to employees setting out the Board's orders in this matter;
- J. An order that the Employer meet with the Union forthwith to discuss the current health and safety issues and then regularly thereafter;
- K. An order that the Union and affected employees be provided damages;
- L. Any of the above remedies on an interim basis; and
- M. Any other order or direction that is appropriate in the circumstances.

DATED at the City of Calgary, in the Province of Alberta, this 1st day of May 2020.



Devin Yeager for UFCW Local 401