

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 25**

**BUNGE MILLING, LLC,**

**Employer,**

**and**

**Case No. 25-RC-262150**

**BCTGM, Local 280, et al.**

**Petitioner.**

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**REQUEST FOR BOARD REVIEW OF REGIONAL DIRECTOR’S ORDER FOR  
MAIL- BALLOT ELECTION**

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NOW COMES the Respondent, Bunge Milling, LLC (“Bunge”), by its attorneys, James Huff and Todd Nierman, pursuant to Section 102.67 of the National Labor Relation Board’s (“NLRB” or “Board”) Rules and Regulations, and respectfully submits this Request for Review of the Regional Director’s Decision and Direction of a Mail-Ballot Election, dated July 27, 2020 (Exhibit 1 or “Order”), which was held on September 11, 2020 at 12:00pm EST. (“Election”).

**INTRODUCTION**

The Board should grant Bunge’s Request for Review because the Regional Director of Region 25, Patricia K. Nachand, abused her discretion in ordering a mail-ballot election in this matter. The factual record belies Ms. Nachand’s baseless concerns about the threat of COVID-19 in Greene County, Indiana—the location of the milling facility where both the Union and the Employer proposed to conduct a traditional in-person, manual election on behalf of all full-time and regular part-time production and maintenance employees, including lead, lab, shipping, receiving employees, employed by the Employer at its Worthington, Indiana facility. The Order also contains inaccurate analysis of the COVID-19 risk in Greene County with respect to the number of confirmed COVID-19 cases, transmission rates, and positivity rates. (Exhibit 1). To be fair to Ms. Nachand, she admits that her analysis of Greene County is flawed : “It is not possible for me to know if these numbers represent an increase in the number of

infections, a reflection of more widespread testing or better reporting.” (Order, Pg. 6)

Finally, the Order contains illogical reasoning pertaining to the threat of COVID-19 to the Board Agent who, with no teleworking requirement, would be responsible for overseeing the manual election at the facility. In short, the Order’s “evidence” is clear that the Regional Director is applying a statewide analysis of Indiana instead of the countywide analysis. To compound this error in thinking, the Regional Director applies her lens literally to a polling place that has operated continuously since the pandemic started where workers have reported to work daily without incident since the start of the pandemic.

Bunge now respectfully requests the Board to grant its Request for Review on the following compelling grounds pursuant to Section 102.67(d)(1)-(4) of the Board’s Rules and Regulations:

1. There are compelling reasons to grant review of the Regional Director’s Order because this case presents the ideal “appropriate proceeding” to address the Board’s policy of holding manual elections during the COVID-19 pandemic. *Pace Southeast Michigan*, 2020 NLRB LEXIS 418, \* 1 fn. 1 (Aug. 7, 2020) (unpublished);

2. The Order raises a substantial question of law because it embodies an unreasoned departure from the Board’s strong preference for in-person, manual elections over mail-ballot elections;

3. The Regional Director’s Order is clearly erroneous on various substantial factual issues related to the threat of COVID-19 in Greene County, Indiana and, therefore, prejudices both Parties;

4. The Regional Director is clearly erroneous on various substantial factual issues related to her office’s ability to conduct a mail-ballot election, and the United States Postal Service’s ability to provide the adequate support for such an election;

5. The Order has resulted in prejudicial error to the Parties, who asked for and agreed to an in-person election at the safe worksite of the employees.

Accordingly, Bunge respectfully requests that the Board grant its Request for Review.

**FACTUAL BACKGROUND**

**I. PROCEDURAL HISTORY**

On June 24, 2020, the Bakery, Confectionery, Tobacco Workers, and Grain Millers (“BCTGM”) filed an RC Petition in which it requested to hold an in-person, manual election at the Bunge facility located in Worthington, Indiana. (Exhibit 2 BCTGM’s RC Petition). There is no dispute between the Parties about whether to hold an in person election.

On July 9, 2020, the Parties submitted their Stipulated Election Agreement in which the Parties requested that an in-person, secret-ballot election be held on-site at Bunge’s facility in Worthington. The Parties stipulated to a number of COVID-19 protective procedures all of which could be found in General Counsel Memorandum 20-10 entitled “Suggested Manual Election Protocols.” (GC 20-10). The Parties’ stipulations and supporting exhibits are attached hereto and fully incorporated herein. (Exhibit 3 Stipulated Record and Exhibits).

On July 23, 2020, Bunge filed a brief and Offer of Proof in support of holding a manual election, to which the Parties had already agreed and stipulated. (Exhibit 4 Bunge’s Brief and Offer of Proof). Bunge requested that the Regional Director approve the Stipulated Agreement and direct a manual election. In the brief, Bunge laid out its safety procedures that would be in place during a manual election.

On July 27, 2020, Regional Director Patricia K. Nachand issued her Decision and Direction of a Mail-Ballot Election to begin on August 10, 2020 at 11:00 a.m. (Exhibit 1).

## **II. CURRENT COVID-19 CONDITIONS IN GREENE COUNTY, INDIANA.**

The Regional Director intentionally misinterpreted COVID-19 data to ensure the Parties did not obtain their preferred method of holding an in-person, manual election in this matter. Although endowed with considerable discretion to select the manner of representation elections, the Order does not reflect a Regional Director who is exercising her discretion reasonably.

The Regional Director goes to some length to distort the reality of the COVID-19 situation in Indiana in order to frame Greene County and Worthington, Indiana as unsafe to conduct an in-person election. As explained below, rather than evaluating the COVID-19 situation where the facility is located with a discerning analysis, the Regional Director focuses on cherry-picked data relating to the state of Indiana. When the Regional Director does reference Greene County data she fails to accurately describe

the COVID-19 situation in Greene County. This failure to consider the factual circumstances as they exist where the facility is located is a red flag for abuse of discretion and is clearly erroneous. Likewise, the Regional Director advances multiple inaccurate interpretations of Governor Holcomb's executive orders casting an in-person election as inconsistent with active government orders. Again, the Regional Director's reasoning is mistaken.

For these reasons, it is necessary to elaborate on the COVID-19 situation on the ground in Greene County while explaining the meaning of Governor Holcomb's latest executive orders.

**A. Back on Track Indiana – Indiana State Government Orders in Place**

“Hoosiers, it was eight weeks ago, when I first spoke to you about the unprecedented scourge attacking our state and the steps we would take to fight it. For these past weeks, I've said that we were only at the beginning of what would be along race and there are many miles to go. Today I can report, that thanks to the discipline and actions of 6.7 million Hoosiers, we are ready to move ahead in a measured way.” said Indiana Governor Eric Holcomb, dated May 1, 2020. (Exhibit 5 Governor Holcombs May 1, 2020 Covid-19 Remarks). Governor Holcomb laid out a five stage plan of reopening the state safely. Stage 1 represented the most restrictions on business and citizens and stage 5 represented a complete reopening of the State with social distancing and masks required. (Exhibit 6 Back on Track Indiana Plan).

On July 4, 2020, Governor Holcomb announced the state of Indiana was moving to Stage 4.5 of the reopening plan. At Stage 4.5, indoor dining was allowed as long as the restaurant was at 75% capacity or less; indoor bar seating could continue as long as it was at 50% capacity or less; Movie theaters, bowling alleys, and similar facilities were allowed to operate at 50% capacity. Under Stage 4.5, social gatherings were limited to no more than 250 people. (Exhibit 6 Back on Track Indiana Plan). These were the government restrictions in place as the Regional Director assessed the state of Indiana. Stage 4.5 had no effect on the continuing operations of Bunge's Worthington facility and they would have had no impact on holding a manual election.

On September 26, 2020, the State of Indiana moved to Stage 5. Stage 5 enables all businesses

to open with no restrictions. Social Distancing and face masks continue to be required. There are no travel restrictions, large gathering restrictions, or any other restriction which could possibly impair an in-person election.

It is important to note that the Cybersecurity & Infrastructure Security Agency (“CISA”) recognizes the Food and Agriculture Sector, the sector that Bunge is in, as “critical infrastructure.” As critical infrastructure, Bunge has stayed open throughout the pandemic. Bunge’s employees have come to work 24 hours a day, 7 days a week to continue to support the food supply chain. These essential workers were on-site the day of the proposed in-person, manual election without incident. Similar to *Aspirus Leweenaw Hospital* and *Airgas USA, LLC*, holding an in-person, manual election would not have increased exposure risk or even changed employees’ work schedules.

**B. COVID-19 Data for Greene County and Worthington, Indiana.**

The state of Indiana tracks COVID-19 statistics across the entire state and provides a tool to assess positive test results and positive cases by region and county. As of September 28, 2020, Greene County boasts one of the lowest positivity rates in the State of Indiana with a 3.1% positivity rate.<sup>1</sup> However, the data was even better when the Regional Director reviewed the data. Greene County data shows that for the week of July 20, 2020 there were only 16 positive cases in the County. The so called “spike” that the Regional Director mentions in her order was likely the result of increased testing in the County. COVID-19 testing doubled in Greene County during July. The Regional Director’s characterization of the “spike” is also misleading. Despite the numbers being slightly higher than June due to increased testing, Greene County saw relatively consistent numbers of cases in July:

Week of	July 6, 2020	July 13, 2020	July 20, 2020	July 27, 2020
Cases	12	6	16	17

(Exhibit 7 Weekly Cases Greene County). As is evident from the chart above, there was no “spike” in July. The

<sup>1</sup> <https://www.coronavirus.in.gov/2393.htm> Accessed September 28, 2020

only outlier in the data is a decrease in cases on July 13, 2020.

Worthington, Indiana, where the facility is located and where the election would have taken place, was also unique in its low COVID-19 exposure. Of the 409 total COVID-19 cases that have occurred in Greene County, Indiana since March 2020, only 21 cases or 5.1% originated in Worthington, Indiana. (Exhibit 8 Cases Broken Down by Municipality). This means that total population exposure in Worthington, Indiana is 0.77%. A majority of cases in Greene County occurred in the City of Linton, Indiana on the other side of Greene County, Indiana. Linton, IN has nearly four times the population of Worthington, Indiana. Worthington, Indiana had the lowest exposure percentage of any municipalities in the County that had COVID-19 cases.

**C. The Regional Director’s Erroneous Interpretation of COVID-19 Data.**

The Regional Director provides an inaccurate and incomplete survey of COVID-19 data in Greene County. The chief issue with the Regional Director’s data analysis is the undue focus she places on alleged case “surges” in Greene County, Indiana and the State of Indiana itself. The truth is there was no surge in Greene County. Further, the Regional Director’s attempt to use Governor Holcomb’s executive order which required everyone over the age of 8 to wear a mask is also misplaced. First, Bunge had been requiring masks and face coverings at the facility as part of its COVID-19 safety plan. Second, the face mask order merely expanded elements which were already part of the reopening plan.

The Regional Director then goes on to state that the spike in cases is “sufficient to establish that there **is no seen improvement** in COVID conditions...” (emphasis added) (Order, Pg. 6). This, again, is outright false as there had been marked improvement in COVID conditions:

Week of	April 27, 2020	May 4, 2020	May 11, 2020	May 18, 2020
Cases	49	51	13	6
Week of	July 6, 2020	July 13, 2020	July 20, 2020	July 27, 2020
Cases	12	6	16	17

This is not the analysis of a Regional Director who is interested in undertaking a level, dispassionate assessment of the current COVID-19 circumstances on the ground in Greene County and Worthington, Indiana. A discretionary decision like how to hold an election is meant to be an impartial decision. Here, the Regional Director shows no interest in impartiality when she considers the present state of the COVID- 19 pandemic in Greene County. The Regional Director does not properly consider positivity rates, transmission rates, or tests administered. Instead, the Regional Director is extrapolating data without reasonable support and arguing, based on no identifiable statistical process, that Greene County is experiencing a “spike” in new cases.

**D. The Regional Director Misrepresents Current Indiana Orders.**

The Regional Director relies heavily on Governor Holcomb’s Executive Order 20-36 (which in fact eases COVID-19 restrictions) as support for her decision to order a mail-ballot election. (Exhibit 9 Executive Order 20-36). Specifically, the Regional Director points to Governor Holcomb’s order to “limit large gatherings at this time.” (Order, Pg. 6). Importantly, the Regional Director fails to identify that the Executive Order limits “large gatherings” to 250 people or less, nearly five times more people than who are employed at the entire facility. In fact, the Regional Director fails to provide any analysis whatsoever of the restrictions in Executive Order 20-36 and also fails to identify that any restrictions listed (be that face masks, symptom checking, or other PPE) had already been put in place by the facility since March 2020. Rather, the Regional Director merely states, as a general proposition, that there are unidentified tightened restrictions in Indiana necessitating greater vigilance. (Order, pg. 6). This paltry analysis falls short of any thoughtful, complete analysis to which the Regional Director could claim she exercised appropriate reasonable discretion in arriving at her decision.

As it happens, Executive Order 20-36 did not make any material changes to services at Bunge Worthington or to essential employees, like Bunge employees. It did not tighten any restrictions whatsoever on the ability of essential workers to perform their jobs on-site. No executive order would have impacted the election. This is simply another example of the Regional Director showing inattentiveness to the data and details relevant to determining the appropriate manner of conducting an

election.

Bunge's essential workers are well trained on the safety processes to mitigate COVID-19. They have continued to work and will continue to work in the COVID-19 environment safely. The Regional Director abused her discretion when she failed to recognize that Bunge employees were essential workers.

**E. The Regional Director Failed to Properly Account for and Evaluate Region 25's ability to conduct a mail-in ballot election and for the United States Postal Service to support the Region in conducting a mail-in ballot election.**

Recent data definitively and empirically demonstrate that mail ballot elections significantly **diminish** turnout. During the week of March 7 to 13, 2020, more than 93% of manual ballot elections had a participation rate above 80% — only two out of thirty elections (6.7% of manual elections) resulted in lower rates. *See Wainfleet Co.*, No. 03-RC-256434 (63% rate); *Growing Seeds at Crystal Springs, Inc.*, No. 19-RC-256529 (75% rate). Yet, from March 14 to June 9, Regional Directors exclusively ordered mail ballot elections and ***nearly 40% of elections had a participation rate of 80% or less.*** Indeed, COVID-19-related mail ballots have resulted in a very significant decrease in voter turnout compared to typical manual ballot elections. *See, e.g., Paragon Sys., Inc.*, No. 09- RC-259023 (55%); *River Mkt. Comm. Co-op* No. 18-RC-256986 (54%); *Univ. Protection Serv., LLC*, No. 10-RC-257846 (52%); *Triple Canopy, Inc.*, No. 27-RC-257463 (37%); *Am. Sec'y Programs, Inc.*, No. 05-RC-256696 (36%); *Children & Adult Disability Ed. Servs.*, No. 04-RC- 256028 (40%).

The Regional Director failed to properly account for or evaluate the disenfranchisement effects of a mail-in ballot election. Both Region 25 and the United States Postal Service (“USPS”) were inadequately prepared to handle a mail-in ballot election. Region 25 lacked the proper procedures to securely issue ballots to Bunge employees. Region 25 sent multiple ballots to employees and communicated to other employees about voided ballots. (Exhibit 10 Employers

Objections to the Conduct of the Election). These breakdowns call into question the legitimacy of the election. Questions that would not have been raised if the election had been conducted in-person. Further, the USPS was unable to get multiple ballots to Region 25's office for tally.<sup>2</sup> This led to additional voter suppression and disenfranchisement.

Of the twenty-three eligible voters, only 16 valid ballots were counted. (Exhibit 11 Tally of Ballots). Six ballots which were mailed by voters timely and fully compliant with the Region's instructions, did not arrive in time for the vote count. Thus, less than 70% of the eligible voters decided the fate of all eligible voters. Six voters were disenfranchised through no fault of their own. (Exhibit 10 Employers Objections to the Conduct of the Election). If voter turnout is of the utmost importance in representation cases, and the Board generally favors manual elections over mail ballot elections, the Board should overturn the instant decision. Again, here, eligible voters come to work every day – they were present in the facility, election or no election. Furthermore, election or no election, they will safely interact just as much and in just the same fashion, following Bunge's COVID-19 protocol, wearing masks, and observing appropriate social distancing. They should receive one of the major quintessential protections of the Act: a manual, secret ballot election.

Finally, the Regional Director relied on the agreed voting arrangements to support her decision. She states that the Board Agent would need to spend one or more nights in a hotel. She is again mis-stating facts. The Bunge facility is only a ninety-minute drive from the Region 25 offices. A Board agent would not have needed to spend nights in a hotel to conduct a manual election at Bunge. Furthermore, as shown above, a hotel in Greene County, Indiana is likely safer

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<sup>2</sup> <https://www.nbcnews.com/politics/2020-election/u-s-postal-service-warns-numerous-states-mail-ballots-may-n1236825> (last accessed August 19, 2020).

than the Regional Office which is situated in Marion County, Indiana.

## **ARGUMENT**

### **I. LEGAL STANDARD FOR GRANTING REVIEW**

Section 102.67(d) of the Board's Rules and Regulations provides that the "Board will grant a request for review only where compelling reasons exist therefor[e]" Accordingly a request for review may be granted only upon one or more of the following grounds:

(1) That a substantial question of law or policy is raised because of:

(i) The absence of; or

(ii) A departure from, officially reported Board precedent.

(2) That the Regional Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.

(3) That the conduct of any hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.

(4) That there are compelling reasons for reconsideration of an important Board rule or policy.

Here, the Regional Director abused her discretion by ordering a mail-ballot election, including but not limited to ignoring or haphazardly analyzing the COVID-19 data for Greene County, Worthington, Indiana, and Governor Holcomb's executive orders. Her abuse of discretion is severe enough to satisfy all four grounds for review. Accordingly, the Board should grant Bunge' Request for Review.

### **II. REVIEW IS APPROPRIATE BECAUSE THIS ELECTION PRESENTS COMPELLING REASONS FOR THE BOARD TO ADDRESS ITS POLICY ON MANUAL ELECTIONS DURING THE COVID-19 PANDEMIC.**

There are compelling reasons to grant review of the Regional Director's Order because this case presents the ideal "appropriate proceeding" to address whether a manual election, as opposed to a mail-ballot election, is more appropriate during the COVID-19 pandemic. § 102.67(d)(4); *see, e.g., Pace Southeast Michigan*, 2020 NLRB LEXIS 418, \* 1 fn. 1 (Aug. 7, 2020) (unpublished); *Roseland Community Hospital*, 2020 NLRB LEXIS 296, \*1 fn. 1 (May 26, 2020) (unpublished).

The time is ripe to address this issue on review. The workforce of the Bunge Worthington Facility are essential, critical infrastructure workers who have safely run a food processing facility during the COVID-19 pandemic. Bunge employees are uniquely capable of implementing all of the additional recommendations for a safe manual election in GC Memo 20-10 because Bunge has implemented those safety procedures prior to the issuance of the memo. Accordingly, there is a compelling reason to grant review under Section 102.67(d)(4).

**III. REVIEW IS APPROPRIATE BECAUSE THE ORDER RAISES A SUBSTANTIAL QUESTION OF LAW RELATED TO THE BOARD'S STRONG PREFERENCE FOR MANUAL ELECTIONS.**

A separate compelling reason exists to grant review because the Order raises a substantial question of law. § 102.67(d)(1). The Order reflects an unreasoned departure from the Board's strong preference for in-person, manual elections over mail-ballot elections. *San Diego Gas and Elec.*, 324 NLRB 1143, 1144 (1998) (expressing preference for manual elections and articulating narrow circumstances when a regional director may properly direct a mail-ballot). Specifically, the Order does not meet the "extraordinary circumstances" threshold which the Board has had occasion to define for the pandemic era.

**A. "Extraordinary Circumstances" during the Coronavirus Pandemic.**

In the several cases in which the Board has denied review of mail-ballot elections during the pandemic, it followed a familiar explanatory formula. Citing to the pandemic's extraordinary circumstances, Regional Directors sometimes directed mail-ballot elections, as union organizers insisted, over employers' objections. The Board denied many of these requests for review based on the exact same two reasons. These reasons do not apply in the present election.

In almost all the above referenced cases, citing to *San Diego Gas and Electric*, the Board first reaffirmed its strong policy preference in favor of in-person elections over mail-ballot elections. It then recognized Regional Directors have discretion, in "extraordinary circumstances," to permit mail-ballot elections outside of the guidelines set forth in *San Diego Gas and Electric*.

The reasons the Board upheld the Regional Directors' direction of mail-ballot elections are

twofold and almost the same in each of these cited cases:

(1) Reliance “on the extraordinary federal, state, and local directives that have limited nonessential travel, and required the closure of nonessential businesses”; and

(2) Mandatory telework at the regional offices charged with conducting the various elections. Based on these two consistent reasons, the Board denied many of the requests for review above and found the Regional Director did not abuse their discretion in directing a mail-ballot election based on “extraordinary circumstances.”

Here, however, there are no recognized “extraordinary circumstances” warranting a mail-ballot election in this representation election. The Board specifically and consistently refers to (1) government directed closures; and (2) mandatory teleworking by NLRB employees as qualifying “extraordinary circumstances” under *San Diego Gas and Elec.* Neither of these conditions exist in Greene County, Indiana or Indiana at large now. Bunge is open for business with no government directed closures as are the bars, restaurants, and retail establishments in the state. All the members of the proposed unit are reporting to work as usual. The only differences are the enhanced virus control measures Bunge has already implemented that are consistent with or exceed CDC guidelines and Governor Holcomb’s executive orders. (Exhibit 6). Likewise, the Board Agent responsible for conducting the election is not under a telework mandate.

**B. The Regional Director’s Criticisms of Bunge’ Plan for an In-Person, Manual Election are Contrived and Lack Evidentiary Basis.**

The Regional Director criticizes the Parties’ Stipulated Agreement to hold a manual election as somehow increasing the exposure risk of participants in the election. (Order, p. 7). The Regional Director goes on to argue that this design “will greatly extend the time period the Board Agent and observers will spend together,” which a mail-ballot election could avoid. *Id.* This position ignores the basics of social distancing without identifying any true deficiencies in Bunge’s enhanced virus control protocols or proposed plan to conduct a safe in-person election. By reducing the amount of participants in the voting room to only the voter and other essential participants, expanding the time to vote, regularly sanitizing the voting room, and staggering voters in shifts, Bunge is allowing for increased social-distancing and

less congregation of participants in the voting room at one time. The Regional Director does not seem to grasp these basic concepts, let alone provide any justification for why the design is deficient or unsafe. To the contrary, the Regional Director simply arrives at the summary conclusion that there will be increased “danger to the Board Agent,” though she does not identify any support for this position. This conclusory analysis therefore presents yet another example of how the Regional Director has failed to justify her decision, which amounts to an abuse of her discretion to order a mail-ballot election.

**IV. REVIEW IS APPROPRIATE BECAUSE THE REGIONAL DIRECTOR’S ORDER IS CLEARLY ERRONEOUS ON VARIOUS SUBSTANTIVE FACTUAL ISSUES, THEREBY PREJUDICING THE PARTIES.**

An additional compelling reason to grant review of the Order is grounded in the multitude of material factual errors underlying the Regional Director’s decision to order a mail-ballot election. § 102.67(d)(2). Bunge discusses these factual inaccuracies at length above in the Factual Background section. Suffice to repeat here are the Regional Director’s consistent misinterpretation of COVID-19 data in Greene County, Worthington, Indiana and similar misreading and misapplication of Governor Holcomb’s executive orders. These factual errors prejudice both Parties because Bunge and the petitioning union alike wanted an in-person, manual election from the start. Instead, the Regional Director’s office created an artificial dispute between the Parties on whether to hold a mail-ballot election and decided the “dispute” based on unsubstantiated and cherry-picked facts. Now, as it stands, neither Party got an in person election, and a determinative number of voters were disenfranchised. This is clear prejudice to the Parties.

**V. REVIEW IS APPROPRIATE BECAUSE THE ORDER HAS RESULTED IN PREJUDICIAL ERROR TO THE PARTIES.**

The Board should grant review of the Regional Director’s Order because the Regional Director’s conduct in issuing the decision has resulted in prejudicial error to the Parties. § 102.67(d)(3). As stated above, the Parties both elected to hold a manual election. The Regional Director has taken every step and made every argument—no matter how baseless—in order to prevent the Parties from holding their preferred method of election. It is clear the “extraordinary circumstances” discussed above do not exist

in this case, yet the Regional Director refuses to consider reasonable methods to hold a safe manual election in one of the safest counties in Indiana. Because no extraordinary circumstances exist, and no other circumstances exist to hold a mail-ballot election under *San Diego Gas and Electric*, the Order represents clear prejudicial error.

**CONCLUSION**

For the foregoing reasons, the Board should grant Bunge’s Request for Review because the Regional Director abused her discretion in ordering a mail-ballot election rather than an in-person election.

Dated this 30<sup>th</sup> of September 2020.

**Bunge Milling, LLC**

By: /s/ Todd M. Nierman  
Todd M. Nierman, Esq.  
OGLETREE, DEAKINS, NASH,  
SMOAK AND STEWART, P.C.  
111 Monument Circle, Suite 4600  
Indianapolis, IN 46204  
317.916.1300 (phone)  
317.916.9076 (fax)

**CERTIFICATE OF SERVICE**

I certify that I caused the Request for Board Review of Regional Director’s Order for Mail-Ballot Election to be served this 30<sup>th</sup> day of September, 2020 on the representative of the Union John Price at *jprice@bctgm.org*.

By: /s/ Todd M. Nierman  
Counsel for Bunge Milling, LLC

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# **EXHIBIT 1**



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 25  
575 N Pennsylvania St Ste 238  
Indianapolis, IN 46204-1520

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (317)226-7381  
Fax: (317)226-5103

July 27, 2020

[leonardo.olavarrieta@bunge.com](mailto:leonardo.olavarrieta@bunge.com)

Leonardo Olavarrieta  
Bunge Milling, LLC  
7383 N. 100 W.  
Worthington, IN 47471

[jprice@bctgm.org](mailto:jprice@bctgm.org)

John J. Price  
BCTGM, Local 280 a/w Bakery,  
Confectionary, Tobacco Workers and  
Grain Millers International Union, AFL-CIO, CLC  
1822 B West Franklin Street  
Evansville, IN 47712

Re: Bunge Milling, LLC  
Case 25-RC-262150

Dear Mr. Olavarrieta, and Mr. Price:

This letter will confirm the details of an election arranged in the above matter pursuant to the Regional Director's Decision and Direction of Election. It also provides information about posting the election notices.

Please be advised that in a mail ballot election, the election begins when the mail ballots are deposited by the Region in the mail.

**Election Arrangements**

The arrangements for the election in this matter are as follows:

**Date Parties Must Advise Regional Office of Additions to Voter Eligibility List:**  
July 29, 2020

**Date and Time Mail Ballots to be Sent to Voters:** August 10, 2020 at 11:00 a.m. EDT

**Date Voters Are Requested to Notify Regional Office if Mail Ballot Not Received or Replacement Ballot Is Needed:** August 17, 2020

**Date Mail Ballots From Voters Must Be Received by Regional Office:**  
September 3, 2020

**Date, Time and Place of Ballot Count:** The ballot count will be held on September 11, 2020 at 11:00 a.m. EDT via electronic means with party representatives participating remotely at which time they must voice any challenges to any of the ballots.

To make it administratively possible to have election notices and ballots in a language other than English, please notify the Board agent immediately if that is necessary for this election. Also, if special accommodations are required for any voters, potential voters, or election participants to vote or reach the voting area, please tell the Board agent as soon as possible.

### **Posting and Distribution of Election Notices**

The Employer must post copies of the attached Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted at least 3 full working days prior to 12:01 am on the day of the election and must also distribute the Notice of Election electronically to any employees in the unit with whom it customarily communicates electronically. In this case, the notices must be posted and distributed **before 12:01 a.m. on Wednesday, August 5, 2020**. The employer's failure to timely post or distribute the election notices is grounds for setting aside the election if proper and timely objections are filed. However, a party is stopped from objecting to the nonposting or nondistribution of notices if it is responsible for the nonposting or nondistribution.

To make it administratively possible to have election notices and ballots in a language other than English, please notify the Board agent immediately if that is necessary for this election.

### **Voter List**

The employer must provide the regional director and parties an alphabetized list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters, **accompanied by a certificate of service** on all parties.

To be timely filed and served, the list must be *received* by the regional director and the parties by Wednesday, July 29, 2020. **The region will no longer serve the voter list.** The employer's failure to file or serve the list within the specified time or in the proper format is grounds for setting aside the election whenever proper and timely objections are filed. However, the employer may not object to the failure to file or serve the list in the specified time or in the proper format if it is responsible for the failure.

The list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional%20Forms%20for%20Voter%20List.docx).

Pursuant to Section 102.5 of the Board's Rules and Regulations, the list must be filed electronically by submitting (E-Filing) it through the Agency's website ([www.nlr.gov](http://www.nlr.gov)), unless the Employer provides a written statement explaining why electronic submission is not possible or feasible. The Employer must also electronically serve the list on the other parties. To file electronically, go to **www.nlr.gov**, click on **E-File Documents**, enter the **NLRB case number**, and follow the detailed instructions. The burden of establishing the timely filing and receipt of the list is on the sending party.

If there are any questions, please feel free to contact Field Examiner JESSICA CHOLEWA at telephone number (317) 991-7640 or by email at [Jessica.cholewa@nlrb.gov](mailto:Jessica.cholewa@nlrb.gov). The cooperation of all parties is sincerely appreciated.

Very truly yours,

/s/ Patricia K. Nachand

PATRICIA K. NACHAND  
Regional Director

Enclosures:

1. Regional Director's Decision and Direction of Election
2. Designation of Observer Form
3. Notice of Election
4. Description of Procedures in Election and Post-Election Representation Case Procedures (Form 5547)

cc: [todd.nierman@ogletreedeakins.com](mailto:todd.nierman@ogletreedeakins.com)  
Todd M. Nierman  
Ogletree, Deakins, Nash, Smoak &  
Stewart, P.C.  
111 Monument Circle, Suite 4600  
Indianapolis, IN 46204

## DESIGNATION OF OBSERVER(S)

Re: Bunge Milling, LLC  
Case 25-RC-262150

**Bunge Milling, LLC** hereby designates the individual listed below to act as its observer during the election in the above case.

Observer's Name	Observer's Job Title
1.	

I certify that each of the above-named individuals is an employee of the Employer and is not a supervisor within the meaning of Section 2(11) of the Act.

\_\_\_\_\_  
Bunge Milling, LLC

(Name of Party)

**By:** \_\_\_\_\_

(Signature)

\_\_\_\_\_  
(Representative Name: Print or Type)

\_\_\_\_\_  
(Representative Title)

\_\_\_\_\_  
(Date)

**Note:** Board law prohibits any statutory supervisor from serving as an election observer. Section 2(11) of the National Labor Relations Act states: "The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

**DESIGNATION OF OBSERVER(S)**

Re: Bunge Milling, LLC  
Case 25-RC-262150

**PETITIONER BCTGM, Local 280 a/w Bakery, Confectionary, Tobacco Workers and Grain Millers International Union, AFL-CIO, CLC** hereby designates the individual listed below to act as its observer during the election in the above case.

<b>Observer's Name</b>	<b>Observer's Job Title</b>
1.	

I certify that each of the above-named individuals is an employee of the Employer and is not a supervisor within the meaning of Section 2(11) of the Act.

BCTGM, Local 280 a/w Bakery, Confectionary, Tobacco Workers  
and Grain Millers International Union, AFL-CIO, CLC

\_\_\_\_\_  
(Name of Party)

**By:**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Representative Name: Print or Type)

\_\_\_\_\_  
(Representative Title)

\_\_\_\_\_  
(Date)

**Note:** Board law prohibits any statutory supervisor from serving as an election observer. Section 2(11) of the National Labor Relations Act states: "The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

**DESCRIPTION OF ELECTION AND POST-ELECTION  
REPRESENTATION CASE PROCEDURES**

**Election** – A secret ballot election will be conducted by an agent of the National Labor Relations Board on the date and at the time(s) and location(s) specified in the Notice of Election. Unless the election is conducted by mail ballot, each party if usually represented by an equal number of observers at the polls during the election. When a voter appears to vote, the voter is asked to state his or her name and is given a ballot to take to a voting booth and mark in secret. The voter folds the marked ballot and then drops it into a ballot box without showing the marking to anyone. Parties or the Board agent may challenge for good cause the eligibility of a voter to participate in the election. A challenged voter will place his or her ballot in a special envelope before placing it in the ballot box. After the time for voting has concluded but before counting the ballots, the Board agent will see if the parties can agree to resolve some or all of the challenges. The Board agent will then count the ballots and prepare a Tally of Ballots and make that Tally available to the parties. If the unresolved challenged ballots will not determine the outcome of the election, the challenged ballots are never opened and no determination is made on the voters' eligibility. If the remaining challenged ballots are determinative of the results of the election, those challenged ballots will be sealed in a special envelope in front of the parties and stored in a safe in an NLRB office.

**Challenged Ballots** – If the challenged ballots are determinative, the regional director will send a letter to the parties after the election, listing the challenged voters and asking the parties to submit a statement of position with respect to the challenge to the ballot of each voter listed above detailing why each of the challenged individuals is or is not eligible to vote. The regional director will then determine whether it is necessary to conduct an investigation or schedule a hearing to resolve the determinative challenges.

**Objections** – Within 7 days after the Tally of Ballots has been prepared, any party may file objections to the conduct of the election or to conduct affecting the results of the election. The objections must be submitted within this time frame, regardless of whether the challenged ballots are sufficient in number to affect the results of the election. The objections must contain a short statement of the reasons for the objections and be accompanied by a written offer of proof identifying each witness the party would call to testify concerning the issue and summarizing the witness's testimony. Upon a showing of good cause, the regional director may extend the time for filing the offer of proof. The party filing the objections will serve a copy of the objections, but not the written offer of proof, on each of the other parties to the case, and include a certificate of service with the objections. The objections may be E-Filed through the Agency's E-Filing system. Objections may also be submitted by facsimile transmission, but the filer must also file an original for the Agency's records.

**Certification in the Absence of Objections, Determinative Challenges, and Runoff Elections** -- If no timely objections are filed, no runoff election is required to be held, and the challenged ballots are insufficient in number to affect the results of the election, the regional director will issue a certification of the results of the election, including certification of representative where appropriate.

**Regional Office Investigation and Decisions without a Hearing** -- A Board agent may be assigned to conduct an administrative investigation of determinative challenges and objections. If the regional director determines that the evidence described in the offer of proof would not constitute grounds for setting aside the election if introduced at a hearing, and the regional director determines that any determinative challenges do not raise substantial and material factual issues, the regional director will issue a decision disposing of the objections and determinative challenges, and a certification of the results of the election, including certification of representative where appropriate.

**Notices of Hearing on Challenges and/or Objections** -- The regional director will schedule the hearing on challenges and/or objections 21 days after the preparation of the tally of ballots or as soon as practicable thereafter, unless the parties agree to an earlier date. In some cases, the regional director may consolidate the hearing concerning

objections and challenges with an unfair labor practice proceeding before an administrative law judge. In any proceeding involving a consent election where the representation case has been consolidated with an unfair labor practice proceeding for hearing, the administrative law judge will, after issuing a decision, sever the representation case and transfer it to the regional director for further processing. If there was no consent election, the administrative law judge's recommendations on objections and/or challenges that have been consolidated with an unfair labor practice proceeding will be ruled upon by the Board if exceptions are filed or adopted in the absence of exceptions.

**Voluntary Resolution** -- An objecting party may wish to withdraw its objections. The withdrawal may be oral or written. When objections are withdrawn, the regional director may issue the appropriate certification. If the parties agree to set aside the election and conduct a new one, the Board agent will prepare a written agreement for their signature and approval by the regional director. Agreement of the objecting party is not required.

**Hearing on Challenges and/or Objections** -- The hearing will continue from day to day until completed unless the regional director concludes that extraordinary circumstances warrant otherwise. Any party will have the right to appear at the hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the objections and determinative challenges that are the subject of the hearing. Post-hearing briefs may be filed only upon special permission of the hearing officer and within the time and addressing the subjects permitted by the hearing officer.

**Hearing Officer's Report and Exceptions** -- After the hearing, the hearing officer will prepare and serve on the parties a report resolving questions of credibility and containing findings of fact and recommendations as to the disposition of the post-election issues. Within 14 days from the issuance of that report, any party may file with the regional director exceptions to that report and a supporting brief if desired. A copy of the exceptions and any supporting brief must immediately be served on the other parties and a statement of service filed with the regional director. Within 7 days from the last date on which exceptions and any supporting brief may be filed, or such further time as the regional director may allow, a party opposing the exceptions may file an answering brief. A copy of the answering brief must immediately be served on the other parties and a statement of service filed with the regional director. Thereafter, the regional director will decide the matter or make other disposition of the case. If no exceptions to the hearing officer's report are filed, the regional director may decide the matter upon the record or make other disposition of the case. The decision of the regional director will be final unless a request for review is granted by the Board.

Briefs in support of exceptions and answering briefs may not exceed 50 pages, excluding the subject index and table of cases and authorities, unless permission is obtained from the regional director by motion, setting forth the reasons for exceeding the limit, filed not less than 5 days (including Saturdays, Sundays, and holidays) before the date the brief is due. If a brief filed exceeds 20 pages, it must contain a subject index with page references and an alphabetical table of cases and authorities. All documents filed with the regional director must be double spaced and on 8 ½ by 11-inch paper, and be printed or otherwise legibly duplicated.

**Request For Review by the Board** -- In stipulated and directed election cases, any party may request Board review of the regional director's post-election decision. The request for review must be filed with the Board within 14 days of the director's post-election decision and must be served on the regional director and the other parties. This may be combined with a request for review of the regional director's decision to direct an election. A statement of service must also be filed with the Board. Any party opposing the request for review may file a statement in opposition within 7 days after the last day for which the request for review must be filed. If the Board grants the request for review, the parties have 14 days from the order granting review to file briefs with the Board. A party seeking review must identify a significant, prejudicial error or some other compelling reason for Board review.

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 25

BUNGE MILLING, LLC<sup>1</sup>

Employer

and

BCTGM, LOCAL 280, A/W BAKERY,  
CONFECTIONARY, TOBACCO WORKERS AND  
GRAIN MILLERS INTERNATIONAL UNION, AFL-  
CIO, CLC<sup>2</sup>

Petitioner

Case 25-RC-262150

DECISION AND DIRECTION OF ELECTION

This case is before me pursuant to a stipulated record entered between the parties on July 15, 2020.<sup>3</sup> The parties waived their right to a pre-election hearing and stipulated that the sole issue is whether the election should be conducted in person or by mail ballot, which is a non-litigable matter.<sup>4</sup> The Board has delegated its discretion in determining such arrangements to Regional Directors. *San Diego Gas and Electric*, 325 NLRB 1143, 1144 (1998). Although election arrangements, including the voting method, are not litigable matters at a pre-election hearing, the positions of the parties were solicited for consideration. The parties agree that a manual election is appropriate and that it is possible to conduct a manual election safely notwithstanding the issues related to the COVID-19<sup>5</sup> pandemic. After carefully considering the arguments made by the parties on this issue, I find that a mail ballot election is appropriate under the extraordinary circumstances currently presented by the COVID-19 pandemic.

CONCLUSION

Based upon the entire record<sup>6</sup> in this matter, I conclude as follows:

1. The Employer is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.<sup>7</sup>

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<sup>1</sup> The Employer's name appears as amended by the stipulated record.

<sup>2</sup> Petitioner's name appears as amended by the stipulated record.

<sup>3</sup> All dates are in 2020, unless otherwise noted.

<sup>4</sup> See *Representation-Case Procedures*, 84 Fed. Reg. 69524, 69544 fn. 82 (Dec. 18, 2019) (citing *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366, 1367 (1954)).

<sup>5</sup> Throughout this decision, the terms "COVID-19," "COVID," and "Coronavirus" are used interchangeably.

<sup>6</sup> Per the stipulated record, the Employer submitted a written statement entitled "Brief and Offers of Proof"; Petitioner did not submit any written statement.

<sup>7</sup> The Employer, a Delaware corporation with corporate headquarters located in Chesterfield, Missouri and places of business throughout North America including in Worthington, Indiana, is engaged in the business of milling corn flour. The parties stipulated that during the 12-month period ending July 15, 2020, a representative period, the

2. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.
4. There are no contract bars or any further bars in existence that would preclude the Region from processing the petition.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

***Included:*** All full-time and regular part-time production and maintenance employees, including lead, lab, shipping, and receiving employees, employed by the Employer at its Worthington, Indiana facility.

***Excluded:*** All temporary employees, office clerical employees, professional employees, managers, guards and supervisors as defined in the Act, and all other employees.

#### DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by BCTGM, LOCAL 280 A/W BAKERY, CONFECTIONARY, TOBACCO WORKERS AND GRAIN MILLERS INTERNATIONAL UNION, AFL-CIO, CLC. For the reasons described below, I have determined that a mail ballot election will be conducted in this matter.

##### 1. Employer Operations

The Employer maintains a facility in Worthington, Indiana, where it is engaged in the business of milling corn flour. The Employer employs approximately 28 employees in the proposed bargaining unit.

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Employer purchased and received at its Worthington, Indiana facility goods valued in excess of \$50,000 directly from points located outside the State of Indiana.

## 2. The Parties' Positions

The parties agree that a manual election is appropriate. In asserting that a manual election would be safe under the circumstances and pose minimal risks to all individuals present, the parties propose that multiple safeguards could be implemented for a manual election to reduce the risk of COVID-19. These safeguards are listed at paragraph 14 of the parties' proposed Stipulated Election Agreement<sup>8</sup> which is part of the stipulated record. These proposed safeguards are largely in accordance with the suggestions included in General Counsel Memorandum 20-10 entitled "Suggested Manual Election Protocols" (GC 20-10) issued on July 6 and include:

- deep cleaning/sanitization and sterilization of the election site the day before each voting period,<sup>9</sup> followed by inspection by Board Agent and parties via video conference;
- provision of a conference room at the Worthington facility capable of providing social distancing and separate entrance and exit ways;
- floor markings for social distancing;
- separate shielded tables for Board Agent, observers, voting booth and ballot box;
- single-use disposable writing instruments and glue sticks for voting procedures;
- hand sanitizer and wipes provided throughout election area;
- mandatory mask-wearing with masks and gloves available on-site;
- certification by the Employer 24 to 48 hours preceding election certifying that polling area is clean and the COVID status of individuals at the facility, including those who are COVID-positive or have had contact with a COVID-positive individual; awaiting COVID results; or exhibiting COVID symptoms;
- certification of COVID status at time of election by all party representatives, observers, and anyone seeking to participate in any election proceedings;
- 14-day post-election notification by parties of COVID status of any election participants.

The Employer also argues that manual elections are normally favored by the Board and provide the best opportunity for employees to exercise their right to vote.<sup>10</sup> The Employer points out that none of its employees have tested positive for COVID-19, which it attributes to

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<sup>8</sup> I rejected the parties' proposed Stipulated Election Agreement based on their desire for a manual election.

<sup>9</sup> In the event of a manual election, the parties agreed to a two-day election with two separate polling periods from 6:30 a.m. to 8:30 a.m. on July 29 and 6:30 p.m. to 8:30 p.m. on July 30.

<sup>10</sup> In specifically arguing that mail ballot elections result in low voter participation, the Employer provides data referencing percentage rates for participation in NLRB mail ballot elections held since March 2020. Notably, the Employer does not provide any source for the data it references. Thus, it is difficult to address the Employer's arguments regarding that data. In any event, I note that given the current state of the pandemic, there is no likelihood voter turn-out would be at a "normal" participation rate even if a manual ballot election were to be conducted. Additionally, post-election procedures remain available to the parties for eligibility concerns.

the safety measures it has implemented at its facility. This includes social distancing, daily employee temperature checks, screening employees for COVID-19 symptoms, mandated use of masks and other personal protective equipment (PPE), and implementation of strict sanitization and disinfection procedures.

### 3. A Mail Ballot Election Is Appropriate

The Board's decision in *San Diego Gas*, 325 NLRB at 1145, recognizes that Board elections should, as a general rule, be conducted manually and specifies well-settled guidelines for determining whether a mail ballot election would normally be appropriate. In *San Diego Gas*, the Board also recognized that "there may be other relevant factors that the Regional Director may consider in making this decision" and that "extraordinary circumstances" could permit a Regional Director to exercise his or her discretion outside of the guidelines set forth in that decision. *Id.*

Consistent with the recognition of the discretion afforded to Regional Directors in extraordinary circumstances in *San Diego Gas*, on April 17, 2020, the Board issued an announcement regarding the COVID-19 pandemic titled, "COVID-19 Operational Status," which states in pertinent part:

Representation petitions and elections are being processed and conducted by the regional offices. Consistent with their traditional authority, Regional Directors have discretion as to when, where, and if an election can be conducted, in accordance with existing NLRB precedent. In doing so, Regional Directors will consider the extraordinary circumstances of the current pandemic, to include safety, staffing, and federal, state and local laws and guidance.

On July 6, General Counsel Peter Robb issued GC 20-10 setting forth suggested election protocols while specifically noting that it is not binding on Regional Directors because the Board not the General Counsel has authority over matters of representation. Among other things, the General Counsel proposes, as agreed to by the parties, self-certification that individuals in proximity to the polling place, including observers and party representatives, have not tested positive for COVID-19, or come into contact with someone who tested positive within the preceding 14 days, and are not awaiting test results, along with identifying the number of individuals exhibiting COVID-19 symptoms. However, the U.S. Center for Disease Control and Prevention's (CDC's) "current best estimate" is that 50% of COVID-19 transmission occurs

while people are pre-symptomatic and 40% of people with COVID-19 are asymptomatic<sup>11</sup> and would neither be identified nor have sought testing. Moreover, GC 20-10 does not provide an enforcement mechanism for any of its suggestions other than canceling an election, which would delay resolution of the question concerning representation. A mail-ballot election avoids these concerns.

Recently, the Board has denied review of several mail ballot elections ordered by Regional Directors under the current COVID-19 circumstances, citing the local, state and federal directives and the current pandemic conditions in the local area as evidence that the Regional Director did not abuse his or her discretion. See *TDS Metrocom LLC*, 18-RC-260318 (unpublished June 23, 2020); *Vistar Transportation, LLC*, 09-RC-260125 (unpublished June 12, 2020); and *Roseland Community Hospital*, 13-RC-256995 (unpublished May 26, 2020).<sup>12</sup> Most recently, on July 14, 2020, the Board again affirmed that it will continue to consider whether manual elections should be directed based on the circumstances then prevailing in the Region charged with conducting the election. See *Brink's Global Services USA, Inc.*, 29-RC-260969 (unpublished July 14, 2020).<sup>13</sup> Accordingly, I find that the COVID-19 pandemic is an extraordinary circumstance based on the current surge of COVID-19 in Indiana, including the local area (election location, location of employees who would travel, and the areas that would be traveled through to get to the election site); local, state and federal guidance; and the ongoing uncertainties presently created by COVID-19.

COVID-19 has created a public health crisis, responsible for upwards of 142,000 deaths in this country.<sup>14</sup> Currently, the number of new COVID-19 cases continues to climb and is surging in several areas of the country. Unfortunately, Indiana is no exception. As of April 17, the date of the Board's Operational Status Update, the average daily number of confirmed positive cases (based on a rolling seven-day average) was 468. It is now 775, continuing its week-long upward trajectory.<sup>15</sup> While COVID cases in Indiana decreased steadily in May to June, since about June 25, the number of confirmed cases continues to climb dramatically.<sup>16</sup>

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<sup>11</sup> "COVID-19 Pandemic Planning Scenarios" (updated July 10, 2020). <https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html> (last accessed July 23).

<sup>12</sup> In these decisions, the Board also cited to the fact that the Regions involved were under mandatory telework. Although Region 25 is not currently under mandatory telework as of the time of this decision, operating practices, safety protocols and telework status of employees is closely monitored based on local conditions and recently, local conditions reflect an increase in the number of COVID cases. In exercising my discretion to order a mail ballot under these circumstances, I rely on the remaining factors identified by the Board in its April 17 announcement and as I describe below.

<sup>13</sup> The Decision and Direction of Election in *Brinks Global* issued after the NLRB Agency lifted its mandatory telework requirement.

<sup>14</sup> <https://www.cdc.gov/covid-data-tracker/#cases> (accessed July 23).

<sup>15</sup> Indiana Coronavirus Map and Case Count, *New York Times*. Retrieved from <https://www.nytimes.com/interactive/2020/us/indiana-coronavirus-cases.html> (accessed July 23).

<sup>16</sup> <https://covidtracking.com/data/state/indiana> (accessed July 23).

While Indiana Governor Eric Holcomb lifted Indiana's stay-at-home order on May 1 and started easing coronavirus restrictions, on July 15 he announced that the state would not advance to its final stage of its reopening plan until at least July 31 and that current restrictions (75 percent capacity at restaurants, 50 percent at bars, nightclubs and other entertainment venues, etc.) would remain in place.<sup>17</sup> Over the weekend of July 17 to 18, Indiana had its worst two-day surge of COVID-19 cases since records began being kept in early March with almost 1800 Indiana residents being documented with coronavirus; 927 of those cases were reported on July 18, the second-highest amount of reported cases in a single day since the biggest one-day outbreak occurred on April 26 when 946 state residents contracted COVID-19.<sup>18</sup> On July 22, Governor Holcomb announced starting July 27 everyone over the age of 8 will be required to wear a mask both indoors and outside wherever social distancing is not possible.<sup>19</sup> As of July 23, Indiana ranks 21<sup>st</sup> in the nation in confirmed COVID-19 cases with approximately 58,673 cases and 2,666 confirmed deaths.<sup>20</sup> Greene County, where the election is to take place, has not been spared from COVID-19, having recently experienced an uptick in positive cases in the last two weeks.<sup>21</sup> It is not possible for me to know if these numbers represent an increase in the number of infections, a reflection of more widespread testing or better reporting. However, it is sufficient to establish that there is no seen improvement in COVID conditions and that there continues to be spread of COVID, factors which lead me to conclude there is too much risk to holding a manual election at this time or in the near future.

The CDC explains that COVID-19 is primarily spread from person to person and that a person may become infected when an "infected person coughs, sneezes or talks" or by "touching a surface or object that has the virus on it, and then by touching your mouth, nose or eyes."<sup>22</sup> Guidance issued by the CDC recommends "limit[ing] in-person contact as much as possible." This guidance is echoed by the state's recent mandatory mask proclamation as well as the Indiana State Department of Health recommendation to limit large gatherings at this time.<sup>23</sup> To avoid the unlikely possibility of contracting COVID-19 through the mail, the CDC simply advises: "After collecting mail from a post office or home mailbox, wash your hands with soap and water for at least 20 seconds or use a hand sanitizer with at least 60% alcohol."<sup>24</sup> Although

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<sup>17</sup> <https://www.lakeshorepublicradio.org/post/indiana-keeps-its-reopening-plan-hold-through-july#stream/0> (accessed July 23).

<sup>18</sup> <https://www.localnewsdigital.com/2020/07/20/indiana-has-bad-coronavirus-weekend/> (accessed July 23).

<sup>19</sup> <https://www.indystar.com/story/news/health/2020/07/22/indiana-coronavirus-governor-announces-mandatory-face-masks/5488294002/> (accessed July 23)

<sup>20</sup> <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (accessed July 23).

<sup>21</sup> <https://www.co.greene.in.us/departments/division.php?structureid=85> (accessed July 23).

<sup>22</sup> U.S. Center for Disease Control and Prevention, COVID-19 Guidance Documents, Coronavirus disease 2019 (COVID-19) Factsheet – CDC, *What you should know about COVID-19 to protect yourself and others* (available at: <https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf>) (accessed July 23).

<sup>23</sup> See, Executive Order 20-36, signed by Governor Holcomb on July 16.

<sup>24</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/essential-goods-services.html> (accessed July 23).

it has not directly addressed Board elections, the CDC has issued guidance on elections in general. Its “Considerations for Election Polling Locations and Voters” states that officials should consider alternative voting methods where permitted, and that “[v]oting alternatives that limit the number of people you come in contact with or the amount of time you are in contact with others can help reduce the spread of COVID-19....”<sup>25</sup> This election would also involve significant two-day overnight travel to the facility by a Board Agent and party representatives for early morning and late evening voting periods. The CDC continues to maintain that “[b]ecause travel increases your chances of getting infected and spreading COVID-19, staying home is the best way to protect yourself and others from getting sick.”<sup>26</sup> At this time, sending Board agents to conduct the election would risk the exposure of everyone at the facility. Eligible voters, along with other employees who may come into contact with the Employer’s participants, Board agents, and party representatives, would risk being exposed to the virus and spreading it to participants, the community, and their families. Therefore, the number of people placed at risk for exposure is much greater than just the number of employees eligible to vote.

Manual election procedures inherently require substantial interaction among voters, observers, party representatives and the Board agent, all of whom must be present at the Employer’s facility. The Board Agent, observers and party representatives participate in a pre-election conference in which they must inspect the voting area and check the voter list. The Board Agent and observers must be present in the same space for the duration of the election period. In this regard, the proposed two-day voting period will greatly extend the time period the Board Agent and observers will spend together. In addition, the hours proposed by the parties for the polls to be open would necessitate the Board Agent spending at least one if not two nights at a location close to the Employer’s facility since the polls would open at 6:30 AM on the first day and not close until 8:30 pm on the second day. This would, of course, also increase the danger to the Board Agent. Given the availability of a mail ballot election, ordering a manual election under the current circumstances would be in direct contradiction to the federal, state and local guidance, all of which advise avoiding in-person contact, which a manual election necessitates. This guidance is even more critical now given the resurgence of COVID-19 statewide.

Furthermore, a mail ballot election avoids the uncertainties created by COVID-19. For example, it is now well-established, although the exact percentage is uncertain, that certain individuals infected with COVID-19 will remain asymptomatic and display no symptoms. It may take several days for a person who has been infected to start displaying symptoms, even though they are contagious prior to display of symptoms. As a result, despite the proposed screening measures, infected individuals could participate in the election, unknowingly exposing co-workers,

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<sup>25</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (accessed July 23).

<sup>26</sup> U.S. Center for Disease Control and Prevention, Coronavirus in the United States- Considerations for Travelers available at <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-in-the-us.html> (accessed July 23).

party representatives, observers, and the Board Agent, who, along with the observers, will be in the voting area for a very long and sustained period of time. A mail ballot election eliminates this risk.

Moreover, if an employee tests positive for COVID-19, suspects they may have COVID-19 due to symptoms, has an elevated temperature, or must be quarantined due to COVID-19 exposure, they will be deprived of their vote in a manual election, as there is no absentee ballot or remote voting options under the Board's manual election rules. A mail ballot election avoids this significant pitfall and ensures all have an opportunity to vote regardless of their exposure to COVID-19 or health status. Furthermore, there is no known date at which the guidance and circumstances I have described above will change. As a result, a mail ballot election in this matter will allow for holding of the election "at the earliest date practicable" consistent with the Board's Rules and Regulations Section 102.67(b).

In the parties' stipulated record and the Employer's written statement, the parties propose various safety measures to mitigate COVID-19, largely in accordance with the suggestions made in GC 20-10. I have carefully considered the Employer's suggestions and the suggestions in GC 20-10. Ultimately, as GC Memo 20-10 recognizes, the decision to conduct the election by mail ballot is within my discretion. In this case, as I have already described, we have not reached a safe enough juncture in the pandemic. I have determined that the most appropriate course of action at this time is to follow accepted guidance to limit in-person contact and travel within the state.

A mail ballot election would also meet the procedure and safeguards necessary to ensure the fair and free choice of bargaining representatives by employees. I note that neither party has argued that the petitioned-for employees would be unable to understand the mail balloting procedure. There is no contention that the addresses of the eligible employees are not known or up to date. Any mail ballot election, held at any time under any circumstances, includes and ensures procedures by which an employee who has not received a ballot in a timely manner may receive a duplicate. There is no evidence that the mail service in Indiana, the state in which the mail ballots will be sent and received, has been disrupted. Mail balloting provides no additional risk to Board Agents, parties, voters, or the public and is consistent with current guidance of limiting in-person contact and travel. Even in the midst of this pandemic, the Region has already successfully conducted a number of mail ballot elections. Although an in-person count may be infeasible, arrangements can be made for a virtual remote count that provides all the safeguards of a traditional count.

For the above reasons, I find that the appropriate and most responsible measure to ensure a safe election is a mail ballot election. A mail ballot election will eliminate the risk of

unnecessarily exposing employees, Board agents, party representatives, and their families to COVID-19, and it will ensure that the Unit employees have the opportunity to vote promptly.

#### ELECTION DETAILS

I have determined that the election will be conducted through mail ballot. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit by personnel of the National Labor Relations Board, Region 25, on August 10, 2020, at 11:00 a.m. EDT. Voters must return their mail ballots so that they will be received at the National Labor Relations Board, Region 25 office by the close of business on September 3, 2020. The mail ballots will be commingled and counted via electronic means at 11:00 a.m. EDT on Friday, September 11, 2020 with party representatives participating remotely.

To help avoid the untimely return of a ballot, any person who has not received a ballot by August 17, 2020, or otherwise requires a duplicate mail ballot kit, should contact the Region 25 office in order to arrange for another mail ballot kit to be sent to that employee.

#### VOTING ELIGIBILITY

Eligible to vote are those in the unit who were employed during the bi-weekly payroll period ending July 26, 2020, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

#### VOTER LIST

As required by Section 102.67(1) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses,

available personal email addresses, and available home and personal cellphone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **July 29, 2020**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word (.doc or .docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

#### POSTING OF NOTICES OF ELECTION

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

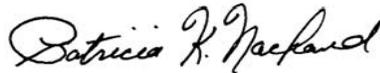
### RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review must be E-Filed through the Agency's website. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.<sup>27</sup> A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Although neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board, all ballots will be impounded where a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision, if the Board has not already ruled on the request and therefore the issue under review remains unresolved. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated: July 27, 2020



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PATRICIA K. NACHAND  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 25  
575 N Pennsylvania St Ste 238  
Indianapolis, IN 46204-1520

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<sup>27</sup> On October 21, 2019, the General Counsel issued GC Memorandum 20-01, informing the public that Section 102.5(c) of the Board's Rules and Regulations mandates the use of the E-filing system for the submission of documents by parties in connection with the unfair labor practice or representation cases processed in Regional offices. The E-Filing requirement went into immediate effect on October 21, 2019, and the 90-day grace period that was put into place expired on January 21, 2020. Parties who do not have necessary access to the Agency's E-Filing system may provide a statement explaining the circumstances, or why requiring them to E-File would impose an undue burden.





United States of America  
National Labor Relations Board  
**NOTICE OF ELECTION**



**INSTRUCTIONS TO EMPLOYEES VOTING BY U.S. MAIL**

**PURPOSE OF ELECTION:** This election is to determine the representative, if any, desired by the eligible employees for purposes of collective bargaining with their employer. (See VOTING UNIT in this Notice of Election for description of eligible employees.) A majority of the valid ballots cast will determine the results of the election. Only one valid representation election may be held in a 12-month period.

**SECRET BALLOT:** The election will be by secret ballot carried out through the U.S. mail under the supervision of the Regional Director of the National Labor Relations Board (NLRB). A sample of the official ballot is shown on the next page of this Notice. Voters will be allowed to vote without interference, restraint, or coercion. Employees eligible to vote will receive in the mail *Instructions to Employees Voting by United States Mail*, a ballot, a blue envelope, and a yellow self-addressed envelope needing no postage.

**ELIGIBILITY RULES:** Employees eligible to vote are those described under the VOTING UNIT on the next page and include employees who did not work during the designated payroll period because they were ill or on vacation or temporarily laid off. Employees who have quit or been discharged for cause since the designated payroll period and who have not been rehired or reinstated prior to the date of this election are not eligible to vote.

**CHALLENGE OF VOTERS:** An agent of the Board or an authorized observer may question the eligibility of a voter. Such challenge must be made at the time the ballots are counted.

**AUTHORIZED OBSERVERS:** Each party may designate an equal number of observers, this number to be determined by the NLRB. These observers (a) act as checkers at the counting of ballots; (b) assist in identifying voters; (c) challenge voters and ballots; and (d) otherwise assist the NLRB.

**METHOD AND DATE OF ELECTION**

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At 11:00 a.m. EDT on Monday, August 10, 2020, ballots will be mailed to voters by personnel of the National Labor Relations Board, Region 25. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Monday, August 17, 2020, should communicate immediately with the National Labor Relations Board by either calling the Region 25 Office at (317)226-7381 or our national toll-free line at 1-844- 762-NLRB (1-844-762-6572).

All ballots will be commingled and counted via electronic means on Friday, September 11, 2020 at 11:00 a.m. EDT. In order to be valid and counted, the returned ballots must be received in the Region 25 Office prior to the counting of the ballots.



United States of America  
National Labor Relations Board



**NOTICE OF ELECTION**

**INSTRUCTIONS TO EMPLOYEES VOTING BY U.S. MAIL**

**VOTING UNIT**

**EMPLOYEES ELIGIBLE TO VOTE:**

Those eligible to vote are: All full-time and regular part-time production and maintenance employees, including lead, lab, shipping, and receiving employees, employed by the Employer at its Worthington, Indiana facility during the payroll period ending July 26, 2020.

**EMPLOYEES NOT ELIGIBLE TO VOTE:**

Those not eligible to vote are: All temporary employees, office clerical employees, professional employees, managers, guards and supervisors as defined in the Act, and all other employees.

(See next page for sample ballot image)



**UNITED STATES OF AMERICA**  
National Labor Relations Board  
25-RC-262150



**OFFICIAL SECRET BALLOT**

For certain employees of  
**BUNGE MILLING, LLC**

Do you wish to be represented for purposes of collective bargaining by  
**BCTGM, LOCAL 280 A/W BAKERY, CONFECTIONARY,  
TOBACCO WORKERS AND GRAIN MILLERS  
INTERNATIONAL UNION, AFL-CIO, CLC?**

**MARK AN "X" IN THE SQUARE OF YOUR CHOICE**

**YES**

**NO**

**DO NOT SIGN OR WRITE YOUR NAME OR INCLUDE OTHER MARKINGS THAT WOULD REVEAL YOUR IDENTITY. MARK AN "X" IN THE SQUARE OF YOUR CHOICE ONLY. If you make markings inside, or anywhere around, more than one square, you may request a new ballot by referring to the enclosed instructions. If you submit a ballot with markings inside, or anywhere around, more than one square, your ballot will not be counted.**

The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.

United States of America  
National Labor Relations Board

**Instructions to Eligible Employees Voting  
By United States Mail**



**INSTRUCTIONS**

1. MARK YOUR BALLOT IN SECRET BY PLACING AN X IN THE APPROPRIATE BOX. DO NOT SIGN OR WRITE YOUR NAME OR INCLUDE OTHER MARKINGS THAT WOULD REVEAL YOUR IDENTITY.
2. IF YOU SUBMIT A BALLOT WITH MARKINGS INSIDE, OR ANYWHERE AROUND, MORE THAN ONE SQUARE, YOUR BALLOT WILL NOT BE COUNTED. YOU MAY REQUEST A NEW BALLOT BY CALLING THE REGIONAL OFFICE AT THE NUMBER BELOW.
3. IT IS IMPORTANT TO MAINTAIN THE SECRECY OF YOUR BALLOT. DO NOT SHOW YOUR BALLOT TO ANYONE AFTER YOU HAVE MARKED IT.
4. PUT YOUR BALLOT IN THE BLUE ENVELOPE AND SEAL THE ENVELOPE.
5. PUT THE BLUE ENVELOPE CONTAINING THE BALLOT INTO THE YELLOW ADDRESSED RETURN ENVELOPE.
6. SIGN THE BACK OF THE YELLOW RETURN ENVELOPE IN THE SPACE PROVIDED. TO BE COUNTED, THE YELLOW RETURN ENVELOPE MUST BE SIGNED.
7. DO NOT PERMIT ANY PARTY – THE EMPLOYER, THE UNION(S), OR THEIR REPRESENTATIVES, OR AN EMPLOYEE-PETITIONER – TO HANDLE, COLLECT, OR MAIL YOUR BALLOT.
8. MAIL THE BALLOT IMMEDIATELY. NO POSTAGE IS NECESSARY. For further information, call the Regional Office at: (317) 226-7381 or (317) 991-7643

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**TO BE COUNTED, YOUR BALLOT MUST REACH THE REGIONAL OFFICE**

**BY Thursday, September 3, 2020**

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# RIGHTS OF EMPLOYEES

## **Under the National Labor Relations Act, employees have the right:**

- To self-organization
- To form, join, or assist labor organizations
- To bargain collectively through representatives of their own choosing
- To act together for the purposes of collective bargaining or other mutual aid or protection
- To refuse to do any or all of these things unless the union and employer, in a state where such agreements are permitted, enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the union that they object to the use of their payments for non representational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).

## **It is the responsibility of the National Labor Relations Board to protect employees in the exercise of these rights.**

The Board wants all eligible voters to be fully informed about their rights under Federal law and wants both employers and unions to know what is expected of them when it holds an election.

If agents of either unions or employers interfere with your right to a free, fair, and honest election, the election can be set aside by the Board. Where appropriate, the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

## **The following are examples of conduct that interfere with the rights of employees and may result in the setting aside of the election:**

- Threatening loss of jobs or benefits by an employer or a union
- Promising or granting promotions, pay raises, or other benefits to influence an employee's vote by a party capable of carrying out such promises
- An employer firing employees to discourage or encourage union activity or a union causing them to be fired to encourage union activity
- Incitement by either an employer or a union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a union or an employer to influence their votes.

## **The National Labor Relations Board protects your right to a free choice**

Improper conduct will not be permitted. All parties are expected to cooperate fully with this Agency in maintaining basic principles of a fair election as required by law. The National Labor Relations Board as an agency of the United States Government does not endorse any choice in the election.



**NATIONAL LABOR RELATIONS BOARD**  
*an agency of the*  
**UNITED STATES GOVERNMENT**



United States of America  
National Labor Relations Board  
**NOTICE OF ELECTION**



**INSTRUCTIONS TO EMPLOYEES VOTING BY U.S. MAIL**

RIGHTS OF EMPLOYEES - FEDERAL LAW GIVES YOU THE RIGHT TO:

- **Form, join, or assist a union**
- **Choose representatives to bargain with your employer on your behalf**
- **Act together with other employees for your benefit and protection**
- **Choose not to engage in any of these protected activities**
- **In a State where such agreements are permitted, the Union and Employer may enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the Union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the Union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).**

It is the responsibility of the National Labor Relations Board to protect employees in the exercise of these rights.

**The Board wants all eligible voters to be fully informed about their rights under Federal law and wants both Employers and Unions to know what is expected of them when it holds an election.**

**If agents of either Unions or Employers interfere with your right to a free, fair, and honest election the election can be set aside by the Board. When appropriate, the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.**

The following are examples of conduct that interfere with the rights of employees and may result in setting aside of the election:

- **Threatening loss of jobs or benefits by an Employer or a Union**
- **Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises**
- **An Employer firing employees to discourage or encourage union activity or a Union causing them to be fired to encourage union activity**
- **Making campaign speeches to assembled groups of employees on company time where attendance is mandatory, within the 24-hour period before the mail ballots are dispatched**
- **Incitement by either an Employer or a Union of racial or religious prejudice by inflammatory appeals**
- **Threatening physical force or violence to employees by a Union or an Employer to influence their votes**

The National Labor Relations Board protects your right to a free choice.

**Improper conduct will not be permitted. All parties are expected to cooperate fully with this Agency in maintaining basic principles of a fair election as required by law.**

**Anyone with a question about the election may contact the NLRB Office at (317)226-7381 or visit the NLRB website [www.nlr.gov](http://www.nlr.gov) for assistance.**

# **EXHIBIT 2**

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**RC PETITION**

DO NOT WRITE IN THIS SPACE	
Case No. <b>25-RC-262150</b>	Date Filed <b>6/24/20</b>

**INSTRUCTIONS:** Unless e-Filed using the Agency's website, [www.nlr.gov/](http://www.nlr.gov/), submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petitioner; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

**1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE** - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

<b>2a. Name of Employer:</b> BUNGE INC	<b>2b. Address(es) of Establishment(s) involved</b> (Street and number, City, State, ZIP code): 7383 N. 100 West, Worthington, IN 47471
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<b>3a. Employer Representative - Name and Title:</b> Mr. Leonardo Olavarieetta	<b>3b. Address</b> (if same as 2b - state same): Same as above
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<b>3c. Tel. No.</b> 812-798-2108	<b>3d. Cell No.</b>	<b>3e. Fax No.</b>	<b>3f. E-Mail Address</b> Leonardo.Olavarieetta@bunge.com
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<b>4a. Type of Establishment</b> (Factory, mine, wholesaler, etc.) Com Flour Milling	<b>4b. Principal Product or Service</b> Corn Flour	<b>5a. City and State where unit is located:</b> Worthington, IN <b>47471</b>
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<b>5b. Description of Unit Involved:</b> <b>Included:</b> All full time and regular part-time production and maintenance employee, including lead, lab, shipping, r <b>Excluded:</b> all temporary employee, office employees, managers, guards, and supervisor as defined in the act.	<b>6a. Number of Employees in Unit:</b> <b>28</b>	<b>6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
--	--	---

Check One:  7a. Request for recognition as Bargaining Representative was made on (Date) \_\_\_\_\_ and Employer declined recognition on or about (Date) \_\_\_\_\_ (If no reply received, so state).  
 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

<b>8a. Name of Recognized or Certified Bargaining Agent</b> (If none, so state) N/A	<b>8b. Address:</b>
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<b>8c. Tel. No.</b>	<b>8d. Cell No.</b>	<b>8e. Fax No.</b>	<b>8f. E-Mail Address</b>
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<b>8g. Affiliation, if any:</b>	<b>8h. Date of Recognition or Certification</b>	<b>8i. Expiration Date of Current or Most Recent Contract, if any</b> (Month, Day, Year)
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9. Is there now a strike or picketing at the Employer's establishment(s) involved? No If so, approximately how many employees are participating? \_\_\_\_\_  
(Name of Labor Organization) \_\_\_\_\_, has picketed the Employer since (Month, Day, Year) \_\_\_\_\_

10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)

<b>10a. Name</b> N/A	<b>10b. Address</b>	<b>10c. Tel. No.</b>	<b>10d. Cell No.</b>
		<b>10e. Fax No.</b>	<b>10f. E-Mail Address</b>

**11. Election Details:** If the NLRB conducts an election in this matter, state your position with respect to any such election:  
If COVID-19 is issue than mail ballots

<b>11a. Election Type:</b> <input checked="" type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail	<b>11b. Election Date(s):</b> July 7th and 8th	<b>11c. Election Time(s):</b> 5:30 am - 7:30am and 2pm-4pm	<b>11d. Election Location(s):</b> Employers conference room at plant
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<b>12a. Full Name of Petitioner</b> (including local name and number): BCTGM Local 280	<b>12b. Address</b> (street and number, city, State and ZIP code): 1822 B West Franklin Street, Evansville, IN
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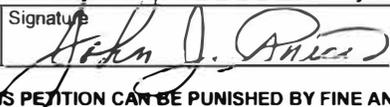
**12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent** (if none, so state):  
Bakery, Confectionery, Tobacco workers and Grain Millers International Union, AFL-CIO,CLC

<b>12d. Tel. No.</b> 812-422-5001	<b>12e. Cell No.</b> 240-271-5213	<b>12f. Fax No.</b>	<b>12g. E-Mail Address</b>
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<b>13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.</b>	
<b>13a. Name and Title:</b> John J. Price, International Director of Organization	<b>13b. Address</b> (street and number, city, State and ZIP code): Same as above

<b>13c. Tel. No.</b> same as above	<b>13d. Cell No.</b> 240-271-5213	<b>13e. Fax No.</b>	<b>13f. E-Mail Address</b> JPrice@BCTGM.org
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I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print) JOHN J PRICE	Signature 	Title International Director of Organization	Date 06/17/20
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**WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT**

2020 JUN 24 PM 2:06

RECEIVED  
MLRB REGION 25

# **EXHIBIT 3**

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 25**

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**BUNGE MILLING, LLC**

**Employer**

**and**

**BCTGM, LOCAL 280 A/W BAKERY,  
CONFECTIONARY, TOBACCO  
WORKERS AND GRAIN MILLERS  
INTERNATIONAL UNION, AFL-CIO,  
CLC**

**Case 25-RC-262150**

**Petitioner**

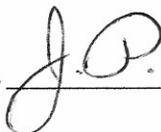
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***STIPULATION OF RECORD***

The parties in this matter stipulate and agree that:

1. On June 24, 2020, BCTGM, Local 280 a/w Bakery, Confectionary, Tobacco Workers and Grain Millers International Union, AFL-CIO, CLC (herein referred to as "the Petitioner") filed with Region 25 a petition seeking to represent certain employees of Bunge Milling, LLC (herein referred to as "the Employer"). The petition is attached as Exhibit 1.
2. On June 25, 2020, Region 25 served on the parties the petition and a Notice of Representation Hearing in this matter. A copy of this Notice of Representation Hearing and the Affidavit of Service for the Notice of Representation Hearing and petition is attached as Exhibit 2.
3. The parties have been informed of the procedures at formal hearings before the National Labor Relations Board by service of the Statement of Standard Procedures with the Notice of Representation Hearing. By entering into this stipulation, the parties waive their right to a pre-election hearing before a Hearing Officer in this matter.
4. To the extent the formal documents in this proceeding do not correctly reflect the names of the parties, the formal documents are amended to correctly reflect the names as set forth above.

PET Initials



ER Initials \_\_\_\_\_

TMN

5. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
6. The Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Commerce facts are as follows:

The Employer is a Delaware corporation with corporate headquarters located in Chesterfield, Missouri and places of business throughout North America, including Worthington, Indiana, where it is engaged in the business of milling corn flour. During the last twelve months, a representative period, the Employer purchased and received at its Worthington, Indiana facility goods valued in excess of \$50,000 directly from suppliers located outside the state of Indiana.

7. There are no contract bars or any further bars in existence that would preclude the Region from processing the petition.
8. The following unit is an appropriate unit within the meaning of Section 9(b) of the Act:

**Included:** All full-time and regular part-time production and maintenance employees, including lead, lab, shipping, and receiving employees, employed by the Employer at its Worthington, Indiana facility.

**Excluded:** All temporary employees, office clerical employees, professional employees, managers, guards and supervisors as defined in the Act, and all other employees

9. The Employer's payroll periods are biweekly and end every-other Sunday. The most recent payroll eligibility ending date at the time of the signing of this stipulation was July 12, 2020.
10. The sole issue that precludes reaching a stipulated election agreement in this case is whether or not the election should be conducted in-person or by mail ballot. The parties are not in dispute about any other issues related to this election. A copy of a proposed stipulated election agreement signed by the parties is attached as Exhibit 3, but the Regional Director has declined approval of that agreement.
11. The Employer and Petitioner will each e-file on the NLRB's website their position in writing (herein "written statement") on the method of election issue by the close of business (5:00 p.m. ET) on Thursday, July 23, 2020. The written statement should also be served on the other party by the same deadline. The written statement should outline the party's position on the appropriateness of an in-person or mail ballot election. If a party is a proponent of an in-person election, the written statement must also describe how the proposed health and safety precautions for an in-person election adequately address the current COVID-19 pandemic conditions relevant to this election and the party's proposed date(s), time(s), and place(s) for directing an in-person election.

12. This stipulation, its exhibits, and each party's written statement will constitute the entire



# Exhibit 1

FORM NLRB-502 (RC)  
(2-18)

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**RC PETITION**

**DO NOT WRITE IN THIS SPACE**

Case No. <b>25-RC-262150</b>	Date Filed <b>6/24/20</b>
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**INSTRUCTIONS:** Unless e-Filed using the Agency's website, [www.nlr.gov/](http://www.nlr.gov/), submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

<b>1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE</b> - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.			
<b>2a. Name of Employer:</b> BUNGE INC		<b>2b. Address(es) of Establishment(s) involved (Street and number, City, State, ZIP code):</b> 7383 N. 100 West, Worthington, IN 47471	
<b>3a. Employer Representative - Name and Title:</b> Mr. Leonardo Olavarieetta		<b>3b. Address (if same as 2b - state same):</b> Same as above	
<b>3c. Tel. No.</b> 812-798-2108	<b>3d. Cell No.</b>	<b>3e. Fax No.</b>	<b>3f. E-Mail Address</b> Leonardo.Olavarieetta@bunge.com
<b>4a. Type of Establishment (Factory, mine, wholesaler, etc.)</b> Corn Flour Milling		<b>4b. Principal Product or Service</b> Corn Flour	
<b>5b. Description of Unit Involved:</b> Included: All full time and regular part-time production and maintenance employee, including lead, lab, shipping, r Excluded: all temporary employee, office employees, managers, guards, and supervisor as defined in the act.		<b>5a. City and State where unit is located:</b> Worthington, IN <b>47471</b>	
Check One: <input type="checkbox"/> 7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about (Date) _____ (If no reply received, so state). <input type="checkbox"/> 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.		<b>6a. Number of Employees in Unit:</b> 28	
<b>8a. Name of Recognized or Certified Bargaining Agent (if none, so state)</b> N/A		<b>8b. Address:</b>	
<b>8c. Tel. No.</b>	<b>8d. Cell No.</b>	<b>8e. Fax No.</b>	<b>8f. E-Mail Address</b>
<b>8g. Affiliation, if any:</b>		<b>8h. Date of Recognition or Certification</b>	<b>8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)</b>
<b>9. Is there now a strike or picketing at the Employer's establishment(s) involved?</b> <u>No</u> If so, approximately how many employees are participating? _____ (Name of Labor Organization) _____, has picketed the Employer since (Month, Day, Year) _____			
<b>10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)</b>			
<b>10a. Name</b> N/A	<b>10b. Address</b>	<b>10c. Tel. No.</b>	<b>10d. Cell No.</b>
		<b>10e. Fax No.</b>	<b>10f. E-Mail Address</b>
<b>11. Election Details:</b> If the NLRB conducts and election in this matter, state your position with respect to any such election: <i>If COVID-19 is issue than mail ballots</i>		<b>11a. Election Type:</b> <input checked="" type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail	
<b>11b. Election Date(s):</b> July 7th and 8th	<b>11c. Election Time(s):</b> 5:30 am - 7:30am and 2pm-4pm	<b>11d. Election Location(s):</b> Employers conference room at plant	
<b>12a. Full Name of Petitioner (including local name and number):</b> BCTGM Local 280		<b>12b. Address (street and number, city, State and ZIP code):</b> 1822 B West Franklin Street, Evansville, IN	
<b>12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state):</b> Bakery, Confectionery, Tobacco workers and Grain Millers International Union, AFL-CIO,CLC			
<b>12d. Tel. No.</b> 812-422-5001	<b>12e. Cell No.</b> 240-271-5213	<b>12f. Fax No.</b>	<b>12g. E-Mail Address</b>
<b>13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.</b>			
<b>13a. Name and Title:</b> John J. Price, International Director of Organization		<b>13b. Address (street and number, city, State and ZIP code):</b> Same as above	
<b>13c. Tel. No.</b> same as above	<b>13d. Cell No.</b> 240-271-5213	<b>13e. Fax No.</b>	<b>13f. E-Mail Address</b> JPrice@BCTGM.org
<b>I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.</b>			
Name (Print) JOHN J PRICE	Signature 	Title International Director of Organization	Date 06/17/20

**WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**  
**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

Exhibit 1

2020 JUN 24 PM 2:06

RECEIVED  
MLRB REGION 25



**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 25**



<p><b>BUNGE, INC.</b></p> <p style="text-align: center;"><b>Employer</b></p> <p style="text-align: center;"><b>and</b></p> <p><b>BCTGM, LOCAL 280</b></p> <p style="text-align: center;"><b>Petitioner</b></p>	<p style="text-align: center;"><b>Case 25-RC-262150</b></p>
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**NOTICE OF REPRESENTATION HEARING**

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 10:00 AM EDT on **Thursday, July 16, 2020 a hearing will be conducted telephonically or by video**, if the parties do not voluntarily agree to an election. If a hearing is necessary, the hearing will run on consecutive days until concluded unless the Regional Director concludes that extraordinary circumstances warrant otherwise. At the hearing, the parties will have the right to appear in person, or otherwise, and give testimony. Before the hearing begins, the NLRB will continue to explore potential areas of agreement with the parties in order to reach an election agreement and to eliminate or limit the costs associated with formal hearings.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, BUNGE, INC. must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that it is received by them by no later than **noon** Eastern time on **Wednesday, July 08, 2020**. Following timely filing and service of a Statement of Position by BUNGE, INC., BCTGM, LOCAL 280 must complete its Responsive Statement of Position responding to the issues raised in the Employer's Statement of Position and file it and all attachments with the Regional Director and serve it on the parties named in the petition such that it is received by them no later than **noon** Eastern on **Monday, July 13, 2020**.

***Procedures for Filing Request for Review:*** Pursuant to Section 102.5 of the Board's Rules and Regulations, all documents filed in cases before the Agency must be filed by electronically submitting (E-Filing) through the Agency's website ([www.nlrb.gov](http://www.nlrb.gov)), unless the party filing the document does not have access to the means for filing electronically or filing electronically would impose an undue burden. Documents filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden.

## Exhibit 2

Detailed instructions for using the NLRB's E-Filing system can be found in the [E-Filing System User Guide](#)

The Statement of Position and Responsive Statement of Position must be E-Filed but, unlike other E-Filed documents, must be filed by noon Eastern on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position and Responsive Statement of Position are not required to be filed. If an election agreement is signed by all parties and returned to the Regional office after the due date of the Statement of Position but before the due date of the Responsive Statement of Position, the Responsive Statement of Position is not required to be filed.

Dated: June 25, 2020

/s/ Patricia K.Nachand

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PATRICIA K. NACHAND  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 25  
575 N Pennsylvania St Ste 238  
Indianapolis, IN 46204-1520

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

<b>BUNGE, INC.</b>  <b>Employer</b>  <b>and</b> <b>BCTGM, LOCAL 280</b>  <b>Petitioner</b>	<b>Case 25-RC-262150</b>
---	--------------------------

**AFFIDAVIT OF SERVICE OF: Petition dated June 24, 2020, Notice of Representation Hearing dated June 25, 2020, Description of Procedures in Certification and Decertification Cases (Form NLRB-4812), Notice of Petition for Election, and Statement of Position Form (Form NLRB-505).**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on June 25, 2020, I served the above documents by electronic mail and regular mail upon the following persons, addressed to them at the following addresses:

Leonardo Olavarieetta  
BUNGE, INC.  
7383 N. 100 West  
Worthington, IN 47471  
leonardo.olavarieetta@bunge.com

John J. Price  
BCTGM, LOCAL 280  
1822 B West Franklin Street  
Evansville, IN 47712  
jprice@bctgm.org

June 25, 2020

Date

JAMILA L FRANKLIN and Josh Hinkle, Designated  
Agent of NLRB

Name

/s/ JAMILA L FRANKLIN /s/ Josh Hinkle

Signature

EXHIBIT 3

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**STIPULATED ELECTION AGREEMENT**

**Bunge Milling, LLC**

**Case 25-RC-262150**

The parties **AGREE AS FOLLOWS:**

**1. PROCEDURAL MATTERS.** The parties waive their right to a hearing and agree that any notice of hearing previously issued in this matter is withdrawn, that the petition is amended to conform to this Agreement, and that the record of this case shall include this Agreement and be governed by the Board's Rules and Regulations.

**2. COMMERCE.** The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c).

The Employer, Bunge Milling, LLC, is a Delaware corporation with corporate headquarters located in Chesterfield, Missouri and places of business throughout North America, including Worthington, Indiana, where it is involved in the business of milling corn flour. During the last twelve months, a representative period, the Employer purchased and received at its Worthington, Indiana facility goods valued in excess of \$50,000 directly from suppliers located outside the state of Indiana.

**3. LABOR ORGANIZATION.** The Petitioner is an organization in which employees participate, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work and is a labor organization within the meaning of Section 2(5) of the Act.

**4. ELECTION.** A secret-ballot election under the Board's Rules and Regulations shall be held under the supervision of the Regional Director on the date and at the hours and places specified below.

**DATES: HOURS:**  
Wednesday, July 29, 2020 6:30 am to 8:00 am  
and and  
Thursday, July 30, 2020 6:30 pm to 8:00 pm

**PLACE: Conference Room at the Employer's facility located at  
7383 N. 100 W., Worthington, IN 47471**

If the election is postponed or canceled, the Regional Director, in his or her discretion, may reschedule the date, time, and place of the election.

**5. UNIT AND ELIGIBLE VOTERS.** The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees, including lead, lab, shipping, and receiving employees, employed by the Employer at its Worthington, Indiana facility; BUT EXCLUDING all temporary employees, office clerical employees, professional employees, managers, guards and supervisors as defined in the Act, and all other employees.

## EXHIBIT 3

Those eligible to vote in the election are employees in the above unit who were employed during the **payroll period ending June 28, 2020**, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off.

Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls or by mail as described above in paragraph 4.

Ineligible to vote are (1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, (2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and (3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

**6. VOTER LIST.** Within 5 business days after the Regional Director has approved this Agreement, the Employer must provide to the Regional Director and all of the other parties a voter list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available personal home and cellular telephone numbers) of all eligible voters. The Employer must also include, in a separate section of that list, the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge. The list must be filed in common, everyday electronic file formats that can be searched. Unless otherwise agreed to by the parties, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. The font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. When feasible, the list must be filed electronically with the Regional Director and served electronically on the parties. The Employer must file with the Regional Director a certificate of service of the list on all parties.

**7. THE BALLOT.** The Regional Director, in his or her discretion, will decide the language(s) to be used on the election ballot. All parties should notify the Region as soon as possible of the need to have the Notice of Election and/or ballots translated.

The question on the ballot will be "Do you wish to be represented for purposes of collective bargaining by BCTGM, LOCAL 280 a/w Bakery, Confectionary, Tobacco Workers, and Grain Millers International Union AFL-CIO, CLC?" The choices on the ballot will be "Yes" or "No".

**8. NOTICE OF ELECTION.** The Regional Director, in his or her discretion, will decide the language(s) to be used on the Notice of Election. The Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted, at least three (3) full working days prior to 12:01 a.m. of the day of the election. The Employer must also distribute the Notice of Election electronically, if the Employer customarily communicates with employees in the unit electronically. Failure to post or distribute the Notice of Election as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

**9. NOTICE OF ELECTION ONSITE REPRESENTATIVE.** The following individual will serve as the Employer's designated Notice of Election onsite representative:

Initials 

## EXHIBIT 3

Leonardo Olavarrieta  
Bunge Milling  
7383 N. 100 W., Worthington, IN 47471  
P: (812) 798-2108 F: (812) 875-2187  
E: leonardo.olavarrieta@bunge.com

**10. ACCOMMODATIONS REQUIRED.** All parties should notify the Region as soon as possible of any voters, potential voters, or other participants in this election who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in the election need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, and request the necessary assistance.

**11. OBSERVERS.** Each party may station an equal number of authorized, nonsupervisory-employee observers at the polling places to assist in the election, to challenge the eligibility of voters, and to verify the tally. Each party may designate an observer or observers to participate in the count, including challenging the eligibility of voters.

**12. TALLY OF BALLOTS.** Immediately upon the conclusion of the last voting session, all ballots cast will be comingled and counted and a tally of ballots prepared and immediately made available to the parties.

**13. POSTELECTION AND RUNOFF PROCEDURES.** All procedures after the ballots are counted shall conform with the Board's Rules and Regulations.

**14. OTHER STIPULATIONS.** The Parties agree to the following measures in order to protect voters, observers, party representatives, Board personnel, and any other individuals:

- a) The election place agreed to above is sufficiently spacious to allow for six-foot distancing between individuals and has a separate entrance and exit to allow individuals to safely flow through the polling area.
- b) Each party will have no more than one (1) representatives present for the pre-election conference and ballot count.
- c) Each party will have one (1) observer at each voting session. The Board Agent will provide each observer with a separate copy of the voter list and a sanitized pen with which to mark the voter list.
- d) The agreed upon election times and safety precautions are sufficient to provide for appropriate social distancing and prevent voters from crowding in and around the polling area at the same time.
- e) The Employer will thoroughly clean and sanitize the election area no earlier than 24 hours before each voting session begins.
- f) In advance of the election, the Employer will place markings on the floor leading into and out of the polling area to depict traffic flow through the



### EXHIBIT 3

polling area and place markings inside the polling place to enforce six-foot distancing requirements.

- g) The Employer will provide separate tables for each election observer, the Board Agent, the ballot booth, and the ballot box. Each table must be spaced at least six feet apart.
- h) The Employer will erect plexiglass barriers of sufficient size to separate observers and the Board Agent from each other, voters, pre-election conference attendees, and ballot count attendees.
- i) The Employer will provide at least 50 sanitized pens or pencils without erasers and a receptacle in which voters and participants can place pens or pencils after individual use.
- j) The Employer will provide glue sticks or tape to seal challenge ballot envelopes if necessary.
- k) The Employer will place hand sanitizer at the entrance and exit to the polling area.
- l) The Employer will provide all election observers with masks, gloves, hand sanitizer, and disinfecting wipes.
- m) At least 24 hours before the pre-election conference, the Employer, Petitioner, and Board Agent will participate in a video conference to inspect the polling area to confirm appropriate safety measures are in place.
- n) All voters, observers, party representatives, and other participants will wear masks in accordance with CDC guidance while in the polling area during all phases of the election, including the pre-election conference, voting times, and the subsequent ballot count.
- o) The Agency will provide the Board Agent running the election with a mask, face shield, disposable clothes covering (if requested), gloves, hand sanitizer, and disinfecting wipes.
- p) No earlier than 48 hours but no later than 24 hours before the election, the Employer will submit to the Regional Director via e-filing on the NLRB website the certification attached herein as Attachment A. Based on the certification, the Regional Director will consider whether the election should be held as scheduled.
- q) All party representatives, observers, and any other individuals seeking to participate in the pre-election conference, observe the election, or observe the ballot count must submit to the Board Agent the certification attached herein as Attachment B. Individuals who are not a party, party



EXHIBIT 3

representative, or an observer must stay at least 15 feet away from the Board Agent at the pre-election conference or the ballot count.

r) All parties agree to notify the Regional Director in writing, within 14 days of the close of the election, if any individuals present in the facility on the day(s) of the election:

1. have tested positive for COVID-19 (or has been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested) within the prior 14 days;
2. are awaiting results of a COVID-19 test;
3. are exhibiting symptoms of COVID-19, including a fever of 100.4 or higher, cough, shortness of breath; or
4. have had direct contact with anyone in the previous 14 days who has tested positive for COVID-19 (or who are awaiting test results for COVID-19 or have been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested).

BCTGM, LOCAL 280 a/w Bakery,  
Confectionary, Tobacco Workers, and  
Grain Millers International Union AFL-CIO,  
CLC

Bunge Milling, LLC

(Employer)

(Petitioner)

By:

*Todd M. Nipoman* 7/9/2020  
(Signature) (Date)

By:

(Signature) (Date)

Print

Name:

*Todd M. Nipoman*

Print Name:

*09/15/2020 DEAN*

Recommended:

*Tiffany Limbach*  
TIFFANY LIMBACH, Field Attorney

07.10.20

(Date)

Date approved:

Regional Director, Region 25  
National Labor Relations Board

*TN*

EXHIBIT 3

Case Name: \_\_\_\_\_

Case Number: \_\_\_\_\_

CERTIFICATIONS\*

The polling area is consistently cleaned in conformity with established CDC hygienic and safety standards

\_\_\_\_\_ Yes                      \_\_\_\_\_ No

Within the preceding 14 days, the number of individuals have been present in the facility who:

Have tested positive for COVID-19 (or has been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested) within the prior 14 days	
Are awaiting results of a COVID-19 test	
Are exhibiting symptoms of COVID-19, including a fever of 100.4 or higher, cough, or shortness of breath	
Have had contact with anyone in the previous 14 days who has tested positive for COVID-19 (or who is awaiting test results for COVID-19 or has been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested)	

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\* Must be submitted to the Regional Director no earlier than 48 hours before the election but no later than 24 hours before the election. If the certification is not timely provided, the Regional Director or designee has the discretion to cancel the election.

EXHIBIT 3

Case Name: \_\_\_\_\_

Case Number: \_\_\_\_\_

CERTIFICATIONS\*

Within the preceding 14 days, the individual named below (please initial below):

Has not tested positive for COVID-19 (or has been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested) within the prior 14 days	
Is not awaiting results of a COVID-19 test	
Is not exhibiting symptoms of COVID-19, including a fever of 100.4 or higher, cough, or shortness of breath	
Has not had contact with anyone in the previous 14 days who has tested positive for COVID-19 (or who is awaiting test results for COVID-19 or has been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested)	

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\* Must be submitted to the Board agent into order to participate in the pre-election conference or at the ballot count or serve as an observer.

EXHIBIT 3

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**STIPULATED ELECTION AGREEMENT**

**Bunge Milling, LLC**

**Case 25-RC-262150**

The parties **AGREE AS FOLLOWS:**

**1. PROCEDURAL MATTERS.** The parties waive their right to a hearing and agree that any notice of hearing previously issued in this matter is withdrawn, that the petition is amended to conform to this Agreement, and that the record of this case shall include this Agreement and be governed by the Board's Rules and Regulations.

**2. COMMERCE.** The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c).

The Employer, Bunge Milling, LLC, is a Delaware corporation with corporate headquarters located in Chesterfield, Missouri and places of business throughout North America, including Worthington, Indiana, where it is involved in the business of milling corn flour. During the last twelve months, a representative period, the Employer purchased and received at its Worthington, Indiana facility goods valued in excess of \$50,000 directly from suppliers located outside the state of Indiana.

**3. LABOR ORGANIZATION.** The Petitioner is an organization in which employees participate, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work and is a labor organization within the meaning of Section 2(5) of the Act.

**4. ELECTION.** A secret-ballot election under the Board's Rules and Regulations shall be held under the supervision of the Regional Director on the date and at the hours and places specified below.

**DATES: HOURS:**  
**Wednesday, July 29, 2020 6:30 am to 8:00 am**  
**and and**  
**Thursday, July 30, 2020 6:30 pm to 8:00 pm**

**PLACE: Conference Room at the Employer's facility located at  
7383 N. 100 W., Worthington, IN 47471**

If the election is postponed or canceled, the Regional Director, in his or her discretion, may reschedule the date, time, and place of the election.

**5. UNIT AND ELIGIBLE VOTERS.** The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees, including lead, lab, shipping, and receiving employees, employed by the Employer at its Worthington, Indiana facility; BUT EXCLUDING all temporary employees, office clerical employees, professional employees, managers, guards and supervisors as defined in the Act, and all other employees.

## EXHIBIT 3

Those eligible to vote in the election are employees in the above unit who were employed during the **payroll period ending June 28, 2020**, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off.

Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls or by mail as described above in paragraph 4.

Ineligible to vote are (1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, (2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and (3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

**6. VOTER LIST.** Within 5 business days after the Regional Director has approved this Agreement, the Employer must provide to the Regional Director and all of the other parties a voter list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available personal home and cellular telephone numbers) of all eligible voters. The Employer must also include, in a separate section of that list, the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge. The list must be filed in common, everyday electronic file formats that can be searched. Unless otherwise agreed to by the parties, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. The font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. When feasible, the list must be filed electronically with the Regional Director and served electronically on the parties. The Employer must file with the Regional Director a certificate of service of the list on all parties.

**7. THE BALLOT.** The Regional Director, in his or her discretion, will decide the language(s) to be used on the election ballot. All parties should notify the Region as soon as possible of the need to have the Notice of Election and/or ballots translated.

The question on the ballot will be "Do you wish to be represented for purposes of collective bargaining by BCTGM, LOCAL 280 a/w Bakery, Confectionary, Tobacco Workers, and Grain Millers International Union AFL-CIO, CLC?" The choices on the ballot will be "Yes" or "No".

**8. NOTICE OF ELECTION.** The Regional Director, in his or her discretion, will decide the language(s) to be used on the Notice of Election. The Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted, at least three (3) full working days prior to 12:01 a.m. of the day of the election. The Employer must also distribute the Notice of Election electronically, if the Employer customarily communicates with employees in the unit electronically. Failure to post or distribute the Notice of Election as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

**9. NOTICE OF ELECTION ONSITE REPRESENTATIVE.** The following individual will serve as the Employer's designated Notice of Election onsite representative:

## EXHIBIT 3

Leonardo Olavarrieta  
Bunge Milling  
7383 N. 100 W., Worthington, IN 47471  
P: (812) 798-2108 F: (812) 875-2187  
E: leonardo.olavarrieta@bunge.com

**10. ACCOMMODATIONS REQUIRED.** All parties should notify the Region as soon as possible of any voters, potential voters, or other participants in this election who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in the election need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, and request the necessary assistance.

**11. OBSERVERS.** Each party may station an equal number of authorized, nonsupervisory-employee observers at the polling places to assist in the election, to challenge the eligibility of voters, and to verify the tally. Each party may designate an observer or observers to participate in the count, including challenging the eligibility of voters.

**12. TALLY OF BALLOTS.** Immediately upon the conclusion of the last voting session, all ballots cast will be comingled and counted and a tally of ballots prepared and immediately made available to the parties.

**13. POSTELECTION AND RUNOFF PROCEDURES.** All procedures after the ballots are counted shall conform with the Board's Rules and Regulations.

**14. OTHER STIPULATIONS.** The Parties agree to the following measures in order to protect voters, observers, party representatives, Board personnel, and any other individuals:

- a) The election place agreed to above is sufficiently spacious to allow for six-foot distancing between individuals and has a separate entrance and exit to allow individuals to safely flow through the polling area.
- b) Each party will have no more than one (1) representatives present for the pre-election conference and ballot count.
- c) Each party will have one (1) observer at each voting session. The Board Agent will provide each observer with a separate copy of the voter list and a sanitized pen with which to mark the voter list.
- d) The agreed upon election times and safety precautions are sufficient to provide for appropriate social distancing and prevent voters from crowding in and around the polling area at the same time.
- e) The Employer will thoroughly clean and sanitize the election area no earlier than 24 hours before each voting session begins.
- f) In advance of the election, the Employer will place markings on the floor leading into and out of the polling area to depict traffic flow through the



### EXHIBIT 3

polling area and place markings inside the polling place to enforce six-foot distancing requirements.

- g) The Employer will provide separate tables for each election observer, the Board Agent, the ballot booth, and the ballot box. Each table must be spaced at least six feet apart.
- h) The Employer will erect plexiglass barriers of sufficient size to separate observers and the Board Agent from each other, voters, pre-election conference attendees, and ballot count attendees.
- i) The Employer will provide at least 50 sanitized pens or pencils without erasers and a receptacle in which voters and participants can place pens or pencils after individual use.
- j) The Employer will provide glue sticks or tape to seal challenge ballot envelopes if necessary.
- k) The Employer will place hand sanitizer at the entrance and exit to the polling area.
- l) The Employer will provide all election observers with masks, gloves, hand sanitizer, and disinfecting wipes.
- m) At least 24 hours before the pre-election conference, the Employer, Petitioner, and Board Agent will participate in a video conference to inspect the polling area to confirm appropriate safety measures are in place.
- n) All voters, observers, party representatives, and other participants will wear masks in accordance with CDC guidance while in the polling area during all phases of the election, including the pre-election conference, voting times, and the subsequent ballot count.
- o) The Agency will provide the Board Agent running the election with a mask, face shield, disposable clothes covering (if requested), gloves, hand sanitizer, and disinfecting wipes.
- p) No earlier than 48 hours but no later than 24 hours before the election, the Employer will submit to the Regional Director via e-filing on the NLRB website the certification attached herein as Attachment A. Based on the certification, the Regional Director will consider whether the election should be held as scheduled.
- q) All party representatives, observers, and any other individuals seeking to participate in the pre-election conference, observe the election, or observe the ballot count must submit to the Board Agent the certification attached herein as Attachment B. Individuals who are not a party, party

EXHIBIT 3

representative, or an observer must stay at least 15 feet away from the Board Agent at the pre-election conference or the ballot count.

- r) All parties agree to notify the Regional Director in writing, within 14 days of the close of the election, if any individuals present in the facility on the day(s) of the election:
  1. have tested positive for COVID-19 (or has been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested) within the prior 14 days;
  2. are awaiting results of a COVID-19 test;
  3. are exhibiting symptoms of COVID-19, including a fever of 100.4 or higher, cough, shortness of breath; or
  4. have had direct contact with anyone in the previous 14 days who has tested positive for COVID-19 (or who are awaiting test results for COVID-19 or have been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested).

**BCTGM, LOCAL 280 a/w Bakery,  
Confectionary, Tobacco Workers, and  
Grain Millers International Union AFL-CIO,  
CLC**

**Bunge Milling, LLC**  
(Employer)

(Petitioner)

By:

\_\_\_\_\_  
(Signature) (Date)

By:

*John J. Price* 7-9-20  
\_\_\_\_\_  
(Signature) (Date)

Print  
Name:

\_\_\_\_\_

Print Name:

John J. Price

Recommended:

*Tiffany Limbach* 07.10.20  
\_\_\_\_\_  
TIFFANY LIMBACH, Field Attorney (Date)

Date approved:

\_\_\_\_\_

**Regional Director, Region 25  
National Labor Relations Board**

EXHIBIT 3

Case Name: \_\_\_\_\_

Case Number: \_\_\_\_\_

CERTIFICATIONS\*

The polling area is consistently cleaned in conformity with established CDC hygienic and safety standards

\_\_\_\_\_ Yes \_\_\_\_\_ No

Within the preceding 14 days, the number of individuals have been present in the facility who:

Have tested positive for COVID-19 (or has been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested) within the prior 14 days	
Are awaiting results of a COVID-19 test	
Are exhibiting symptoms of COVID-19, including a fever of 100.4 or higher, cough, or shortness of breath	
Have had contact with anyone in the previous 14 days who has tested positive for COVID-19 (or who is awaiting test results for COVID-19 or has been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested)	

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\* Must be submitted to the Regional Director no earlier than 48 hours before the election but no later than 24 hours before the election. If the certification is not timely provided, the Regional Director or designee has the discretion to cancel the election.

EXHIBIT 3

Case Name: \_\_\_\_\_

Case Number: \_\_\_\_\_

**CERTIFICATIONS\***

Within the preceding 14 days, the individual named below (please initial below):

Has not tested positive for COVID-19 (or has been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested) within the prior 14 days	
Is not awaiting results of a COVID-19 test	
Is not exhibiting symptoms of COVID-19, including a fever of 100.4 or higher, cough, or shortness of breath	
Has not had contact with anyone in the previous 14 days who has tested positive for COVID-19 (or who is awaiting test results for COVID-19 or has been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested)	

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\* Must be submitted to the Board agent into order to participate in the pre-election conference or at the ballot count or serve as an observer.

# **EXHIBIT 4**

You have E-Filed your document(s) successfully. You will receive an E-Mail acknowledgement noting the official date and time we received your submission. Please save the E-Mail for future reference. You may wish to print this page for your records

**Note:**This confirms only that the document was filed. It does not constitute acceptance by the NLRB

**Please be sure to make a note of this confirmation number.**

**Confirmation Number:** 1046247641

**Date Submitted:** Thursday, July 23, 2020 2:36 PM (UTC-05:00) Eastern Time (US & Canada)

**Submitted E-File To Office:** Region 25, Indianapolis, Indiana

**Case Number:** 25-RC-262150

**Case Name:** Bunge Milling, LLC

**Filing Party:** Employer

**Contact Information:**

**Todd Nierman**

*111 Monument Circle, Suite 4600, Indianapolis, IN 46204*

*Ph: (317) 916-2119*

*Additional Phone: (317) 916-1300*

*E-mail: todd.nierman@ogletree.com*

*Additional E-mails: laura.watson@ogletree.com*

**Attached Documents:**

Other:Bunge Milling, LLC's Brief and Offers of Proof.PDF

[Start Another E-Filing](#)

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 25**

**BUNGE MILLING, LLC,**

**Employer,**

**and**

**Case 25-RC-262150**

**BCTGM, LOCAL 280 A/W BAKERY,  
CONFECTIONARY, TOBACCO WORKERS  
AND GRAIN MILLERS INTERNATIONAL  
UNION, AFL-CIO, CLC,**

**Petitioner.**

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**BUNGE MILLING, LLC's BRIEF AND OFFERS OF PROOF**

Bunge Milling, LLC (“Bunge”) files its Brief and Offers of Proof in support of holding a manual election, to which the parties have already agreed in their signed Stipulated Election Agreement. Bunge respectfully requests that the Regional Director approve the Agreement and a manual election be directed. All facts stated herein shall be deemed offers of proof and shall be considered as evidence in the record.

**I. Manual Ballots Are Preferred By the NLRB**

It is well established that manual balloting is preferred because the Board recognizes the value of having Board agents present in person to monitor the conduct of the election. *San Diego Gas & Electric*, 325 NLRB 1143, 1144 (1998). Mail or “mixed” ballot voting only exists when necessary to “enhance the opportunity of all to vote.” *NLRB Casehandling Manual*, Part 2, Section 11301.2 (January, 2017).

In *San Diego Gas & Electric*, the Board directed that Regional Directors should consider “at least” the following factors suggesting mail ballots could be appropriate: where eligible voters are ‘scattered’ because of geography and/or work schedules; and where there is a strike, a lockout or picketing in progress. *San Diego Gas & Electric*, 325 NLRB at 1145.

If any of these factors exist, then the Regional Director should also consider the following: the desire of all the parties, the likely ability of voters to read and understand mail ballots, the availability of addresses for employees, and finally, the efficient use of Board resources. *Id.* As to the last factor, it may only be considered if one or more of the other factors set forth above exist. Board resources cannot be used as the sole basis for ordering a mail ballot. *San Diego Gas & Electric*, 325 NLRB at 1145, n. 8 (Regional Directors should not order mail ballots based solely on budgetary concerns).

The Board's role is to ensure maximum voter participation and does not extend to any of the other political, health or other issues surrounding COVID-19. Here, every eligible voter is present and working their regular shifts in a single, fully-operational physical location. This fact, standing alone, should end any inquiry into mail ballot issues. The best "opportunity to vote" clearly involves a manual, supervised election at the voters' place of employment.

Here the parties' desires are reflected in a negotiated, signed Stipulated Election Agreement. The Parties spent considerable time analyzing the Employer's rather complex schedule to arrive at voting arrangements that maximize voter participation. Those arrangements are memorialized in the signed Stipulated Election Agreement.

The Board's own actions strongly suggest that manual elections remain fully viable despite COVID-19 issues. The Board's April 1, 2020, announcement states: "[T]he General Counsel now has advised that appropriate measures are available to permit elections to resume in a safe and effective manner, which will be determined by the Regional Directors." News Release, NLRB Office of Public Affairs, (April 1, 2020). Had the Board intended to adopt a "mail ballot only" approach, it surely would have said so.

Moreover, on July 6, 2020, the General Counsel issued Memorandum 20-10 outlining the recommended protocols for a safe manual election. Had the Board or General Counsel intended to adopt a "mail ballot only" approach, it or he surely would have said so.

Importantly, here the parties incorporated all of the General Counsel's recommended protocols in their signed Stipulated Election Agreement. The facility at which the election would be held is only 81 miles from Indianapolis. The drive time is less than 90 minutes. The assigned Board Agent could commute to the two day election. No overnight hotel stay is needed.

## **II. Manual Ballots Are Appropriate In This Case**

### **A. Company Actions**

At all times, the facility involved in this proceeding operates in a safe manner. At all material times, the facility's workforce and operations have remained uninterrupted by any COVID-19 issue.

The Company's facility functions in full accordance with **and in excess of** all Center for Disease Control ("CDC") guidelines. And, as noted, the Stipulated Election Agreement contains all of the General Counsel's guidelines.

Consistent with these mitigation efforts, the Company's facility has **no confirmed cases of COVID-19 infection or work-related exposure.** Put simply, the facility and its personnel practice the Company's highest safety protocols to ensure safety and well-being.

## **B. Indiana Reopening**

Along with Company action, Indiana has progressed to Stage 4.5 (out of 5.0) of its reopening plan. Retail, gyms, restaurants, offices and industries have reopened, subject to social distancing guidelines. The facility at which the election would be held is in Greene County, Indiana. As of July 15, 2020, Greene County has had only 200 reported cases of COVID-19.

Bunge has already instituted most guidelines and/or recommended practices, including social distancing of 6 ft. where possible, temperature taking daily, following building occupancy restrictions, modifying work stations and other work areas to ensure social distancing, face coverings and other PPE, reducing “bi-directional” foot traffic where possible, hygiene stations before and after entry to Company buildings and vehicles, regular cleaning and disinfection of all surfaces, and frequent cleaning and disinfection of high-touch surfaces, clear signage and communication regarding protocols, limited sharing of materials, including office items such as pens, screening, and a detailed safety plan that all employees have received training on.

## **C. Mail Ballots have Lower Participation**

The Board and its Regional Directors must balance any extraordinary circumstances with its absolute obligation to ensure maximum voter participation. The past several months have demonstrably shown that mail ballots result in significantly lower voter participation. In early March, prior to the pandemic declaration, 77% of manual ballots had a 90% or above participation rate. Approximately 93% of manual ballots had a participation rate of 80% or above.

However, since about March 14, the results are even more troubling. Nearly 40% of recent mail ballot elections have had a participation rate of 80% or less. That is an increase of nearly 600% in low-voter turnout compared to early March.

From the Board’s perspective, that empirical data should be unacceptable considering the Board’s role to ensure maximum voter participation and the as-near-to-zero-risk as possible that the Company can ensure for this manual election.

With these employees already at work, precautions already in place, and additional precautions set forth in the signed Stipulated Election Agreement, the Regional Director should follow the NLRB’s own preference for manual elections, and follow the same best practices used by other election officials.

## **III. Conclusion**

The fact remains that no NLRB election, grocery store trip, or any other incident requiring interaction with another human being will be zero-risk in the near future. However, a manual election here will incur as near to zero risk as possible with all the protocols in place. As stated earlier, the Company is willing to institute any protocol practicable to ensure a manual election.

As to the viability of mail ballots, Board precedent and voter safety compel a manual ballot in these circumstances. None of the factors listed by Board precedent as permitting consideration

of a mail ballot are present. There is no pending job action of any kind. The voters are not “scattered” in any sense contemplated by the Board. All of them work at a single location under conditions carefully controlled by the Company to protect their health and safety. Thus, not only is a manual ballot actually safer for the voters in the instant circumstances, but manual voting has a proven record of ensuring higher percentage of voter participation, which is an integral duty of the Board.

The Company’s facility is and has been safely operational with a full complement of eligible voters. All CDC, local and other guidelines are in place. As stated above, **no confirmed or even suspected cases of COVID-19 exist at the Company’s facility.** The parties have agreed to all General Counsel Guidelines to ensure a safe election. The facility has proper ventilation and lighting. The voting room and its immediate vicinity are more than adequate to sustain the limited number of voters (25) with due regard to social distancing. The facility houses a set group of employees and is not open to the public. Put simply, the Company’s facility undoubtedly constitutes a far safer environment than the average supermarket, restaurant, gym, liquor store or other place of business now open in Indiana that the average person (and, no doubt, most Board agents) have visited throughout the pandemic. In fact, the Board Agent assigned to the election likely resides in an Indiana county with more reported cases than the small number of cases in Greene County where the facility is located.

In the final analysis, there is no reason to justify a mail ballot in this matter.

The Company reserves the right to file a request for review of the Regional Director’s decision, as well as objections to the election.

Respectfully submitted,

By: /s/ Todd M. Nierman  
Todd M. Nierman, Esq.  
OGLETREE, DEAKINS, NASH,  
SMOAK AND STEWART, P.C.  
111 Monument Circle, Suite 4600  
Indianapolis, IN 46204  
317.916.1300 (phone)  
317.916.9076 (fax)

Counsel for Bunge Milling, LLC

Dated: July 23, 2020

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 25**

**BUNGE MILLING, LLC,**

**Employer,**

**and**

**Case 25-RC-262150**

**BCTGM, LOCAL 280 A/W BAKERY,  
CONFECTIONARY, TOBACCO WORKERS  
AND GRAIN MILLERS INTERNATIONAL  
UNION, AFL-CIO, CLC,**

**Petitioner.**

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**CERTIFICATE OF SERVICE**

I do hereby certify that on July 23, 2020, a true and correct copy of the foregoing Brief was *Electronically Filed* on the NLRB's website <http://www.nlr.gov>.

Also, I do hereby certify that a true and correct copy of the foregoing Brief has been served by electronic mail this 23 day of July, 2020 on: John J. Price at [jprice@bctgm.org](mailto:jprice@bctgm.org) and Patricia K. Nachand at [patricia.nachand@nlrb.gov](mailto:patricia.nachand@nlrb.gov).

By:           /s/ Todd M. Nierman            
Counsel for Bunge Milling, LLC

43602351.1

# **EXHIBIT 5**

**GOVERNOR ERIC J. HOLCOMB**  
**Getting Indiana Back on Track**  
**May 1, 2020**

*Remarks as prepared for delivery*

Hoosiers, it was eight weeks ago, when I first spoke to you about the unprecedented scourge attacking our state and the steps we would take to fight it.

For these past weeks, I've said that we were only at the beginning of what would be a long race and there are many miles to go.

Today I can report, that thanks to the discipline and actions of 6.7 million Hoosiers, we are ready to move ahead in a measured way.

I want to share those measured next steps that we'll take together to begin to reopen our state.

But before I do that, I need to say a few words of remembrance and appreciation, to reflect on those we've lost, and to thank the heroes who've been on the front lines, saving lives – all, despite great personal risk.

I'm a history buff, and I'm reminded in this moment in the Gettysburg Address, when Lincoln said, "The world will little note ... what we say here," and added that no speaker – even one of his power and eloquence – had the power to dedicate, consecrate... or hallow that sacred ground.

Lincoln was acknowledging that words are inadequate to the task of honoring the fallen. Words cannot capture the pain and grief so many of us are feeling.

When we provide our daily updates, we use a lot of numbers, the number of COVID cases, the number of hospitalizations, the number of deaths.

But let us never, ever, forget for one second that the more than 1,000 Hoosiers we have lost to this disease are not numbers.

They are our grandparents and parents and children ... our friends and neighbors and loved ones.

Each life was precious, and, like ripples in a pond, each touched scores of people in ever-widening circles. We are all grieving, and the depth of our grief is commensurate to how much we loved them.

And, so, we will honor their memories by never forgetting them – their smiles, their laughter, their love, their wisdom, their good works while they were here.

We will also never forget the countless heroes who have answered this call, during this crisis.

At a time when we all have been touched by loss, we have also been filled with immense pride and gratitude at the countless acts of generosity and sacrifice, coming out in every corner of our state.

On behalf of all Hoosiers, thank you, thank you to all the health care workers who put their lives on the line every day to protect us.

When the pandemic came, the call went out to Indiana's nearly 17,000 licensed physicians and more than 150,000 nurses. Joining them were thousands of more volunteers.

That includes the nurse practitioner of 30 years who was about to retire but sprang into action, the army veteran who works full time in a hospital but added nights and weekends so he could help even more, the mental health therapist who said she would do anything to be of service.

In our greatest hour of need, you are there for us.

And of course that includes our own Dream Team of medical experts: Doctors Box, Sullivan, Rusyniak, Weaver, Kaufmann, and Dauss.

The Lieutenant Governor and I also share our appreciation for all those essential workers who are keeping us safe, keeping us fed, keeping the lights on, and keeping the shelves stocked: our police officers and our fire fighters, our farmers and food producers and supermarket cashiers, our long-haul truckers and delivery drivers and trash collectors.

All of you are working unselfishly, so we can continue living without a far worse disruption.

I share our appreciation for the ministers and priests and rabbis and imams, and all those who are comforting us in our suffering and grief.

I also share our appreciation for everyone who has taken this virus seriously and kept their distance – despite the hardships. Your patience and discipline have helped keep the terrible toll from being even worse.

Finally, I want to share my appreciation to all Hoosiers for rising together in our time of crisis.

There have been too many acts of caring, kindness and ingenuity to share – everything from companies and individuals donating food and money to making needed medical equipment and researching treatments and testing to working overtime to do whatever it takes to serve those most in need.

But I think it was Captain John Mehling, of the Fishers Fire Department, who captured it best.

He said: “For all the madness this pandemic has wrought, it has also brought out a deeper humanity and empathy than the likes most have seen in this lifetime. It is an honor serving a community ... in a state which not only touts ‘Hoosier Hospitality’ but lives it.”

John’s comments are not isolated.

Across Indiana, we have witnessed a spirit of cooperation and caring for others that has touched my heart. May this spirit of appreciation for one another carry on long after the torment of COVID-19 is behind us.

We are doing this together!

And together, we will overcome this disease, and come out a stronger Indiana.

Now let me turn to the next steps to getting Indiana back on track.

I know this has been a very challenging time for Hoosiers. COVID-19 has disrupted our lives beyond description, brought grief to so many and financial difficulties to many more.

When we planned our initial response to this global virus, our goal, our mission was clear: slow the spread and flatten the curve in order to protect our health care system from a surge. That response remains data-driven.

That will continue to be our practice as we consider a sector-by-sector reset with the goal of getting Indiana back on track.

We will follow 4 guiding principles to determine how plans to reopen various sectors of the economy move forward:

First – that the number of hospitalized COVID-19 patients statewide has decreased for 14 days.

Our current data show that, as a state, COVID patient admissions have decreased over the past 2 weeks.

Second, that the state retain its surge capacity for critical care beds and ventilators.

Currently, state-wide ICU bed and vent availability has remained above 40% and 70% respectively for the last 2 weeks.

Personal protective equipment – or PPE – is critical for businesses as they resume operations, with masks in particular demand. The state is working with Hoosier companies that have already converted their lines of work to PPE or currently supply such materials.

We're developing the Indiana Small Business PPE Marketplace to provide reliable access to PPE for small businesses that need help to comply with safe workplace precautions.

Businesses and non-profit entities with fewer than 150 employees and registered to do business in Indiana will be eligible. More details will be outlined in the coming days.

In addition, we will be distributing 300 million dollars to counties, cities and towns via a population-based formula, which is the first installment from the Coronavirus Relief Fund.

The third principle is that we can test all Hoosiers who are COVID-19 symptomatic.

At the outset of the virus, Indiana deployed a dozen strike teams to congregate settings – especially nursing homes – to quickly respond to suspected COVID cases. These teams will continue to play a vital role in keeping Indiana on track and will focus on detecting new cases as early as possible.

To help in the early detection of new cases, the state has partnered with OptumServe to add 50 testing locations in strategically located parts of the state.

These sites will enable over 100,000 more Hoosiers to get tested per month, and aide in the early detection of new cases.

Hoosier employers, employees, and consumers can have confidence anyone concerned they may be sick due to their symptoms, or having been in contact with someone who is, will have the ability to get tested.

Which leads me to our fourth guiding principle for getting Indiana back on track – which is to contact all individuals who test positive for COVID-19 and expand contact tracing.

We will aggressively track new cases through a centralized contact tracing program to help slow the spread of the virus.

While ISDH, in cooperation with local health departments, has engaged in contact tracing since the first positive case of COVID-19 was reported in early March, centralized contact tracing will begin May 11. This will enable the state to ensure all future cases are tracked and recorded in a uniform and timely fashion.

All Hoosiers who test positive in the future will receive a text, email, and a call from one of the state's over 500 contact tracers currently being onboarded. These tracers will identify other Hoosiers potentially at risk and help provide resources individuals may need.

So, to ensure we can make steady progress getting Indiana back on track, we will continue to watch that our number of hospitalized COVID-19 patients are diminishing, that we retain sufficient critical equipment, that we're able to test all citizens who might be symptomatic, and that we can track those who test positive.

Given the trends moving in the right direction on all 4 fronts, I am ready to announce the next steps.

We have developed a 5-stage roadmap that with our collective efforts, can help us reach the goal of having Indiana back on track by July 4th – Independence Day.

Of course, this roadmap is subject to change. New guidance is provided regularly and more is known about this disease every day.

Since March 24, we've been hunkered down. We're calling this Stage 1.

During this time, essential manufacturing, construction, infrastructure, government, business, healthcare and other critical businesses and operations have been open, while K-12 school buildings remain closed and all their activities are canceled.

Since Monday, Hoosiers have been able to resume having elective medical procedures.

Stage 2 will roll out over the next 3 weeks.

Nearly all of Indiana will move to Stage 2 this Monday, May 4th.

Marion and Lake – our two most populous counties – may begin Stage 2 on May 11<sup>th</sup> to ensure our new testing and contact tracing programs are up and running. Cass County, which recently had an outbreak, may start Stage 2 May 18<sup>th</sup> to make sure they don't overwhelm the health care system.

As we work to get back on track, we must still protect the most vulnerable among us.

That's why, in Stage 2, Hoosiers 65 and over and those with high-risk health conditions – who are the most susceptible to the coronavirus – should remain at home as much as possible.

In Stage 2, we'll be easing restrictions in a measured way – although local governments may impose more local strict guidelines as conditions dictate.

We are lifting the essential travel restrictions and permitting social gatherings of up to 25 people, following the CDC's social distancing guidelines.

State government offices will begin to open for limited interaction with the public.

In addition, the remaining manufacturers, industrial and other infrastructure operations that had not been considered essential will also open.

Retail and commercial businesses will open at 50% capacity.

Examples include apparel, furniture, jewelry and liquor stores that have been operating as curbside or delivery only.

Shopping malls may open at 50% capacity with indoor common areas restricted to 25% capacity.

Restaurants and bars that serve food may open starting May 11 at 50% capacity, but bar seating will remain closed.

Personal services, such as hair salons, barber shops, nail salons, spas and tattoo parlors also may open on May 11 by appointment only and must follow social distancing guidelines.

Those who work in office settings are encouraged to continue to work remotely whenever possible. In fact, if anyone can work from home, we encourage you to continue to do so.

Before I discuss Stage 3, let me make this one point clear: Starting May 8<sup>th</sup>, for all 92 Indiana counties, indoor worship services may also convene, following specific social distancing guidelines – while those 65 and older and those at elevated risk will be asked to stay home.

Our preference is that you continue virtual and outdoor services. And church leaders – we need you to keep your congregations safe.

If health indicators remain positive, on May 24<sup>th</sup> we'll move to Stage 3.

Individuals at risk, including those over 65, may venture out cautiously. Those who can work remotely should continue to do so.

Social gatherings of up to 100 people may occur.

Retail stores and malls may move to 75% of capacity.

Movie theaters may open at 50% capacity and mall common areas – such as food courts and sitting areas – may further open to 50% capacity.

Playgrounds, tennis courts, basketball courts, pools, campgrounds and gyms and fitness centers may open with restrictions and social distancing.

All the while, we will be constantly monitoring what is happening in every community across our state.

We will be looking at hospital admissions, how many ventilators and critical care beds are available in each region, our capacity to test more Hoosiers, and how our contact tracing system is working.

That is the data that has guided us every day since this emergency began, and we're not going to let off the gas now.

We will continue to monitor every day.

And while we're hopeful that we have the momentum to move into this stage later in May, we will be cautious and make the best decisions for Hoosiers based on the situation at that time.

If still on track, on June 14<sup>th</sup> we'll advance to Stage 4.

We hope we can open up the state even more in mid-June – to get you back to even more of the activities you and your family are used to – and missing so much in recent weeks.

In Stage 4, face coverings will be optional and social gatherings of up to 250 people may take place, and large venues may open with adherence to social distancing guidelines.

State government buildings will reopen to the public.

Professional office building employees may resume work at full capacity.

Retail stores, malls open at full capacity with social distancing guidelines in place.

Dining room service may open at 75% capacity, bar seating in restaurants may open at 50% capacity.

Cultural, entertainment and tourism may open at 50% capacity.

This includes museums, zoos, bowling alleys, aquariums, and like facilities.

Recreational sports leagues and tournaments may resume, and amusement parks, water parks and like facilities may open at 50% capacity.

Our goal is to have all areas of the state reach Stage 5 beginning July 4th.

Even in Stage 5 we will continue to do social distancing, but conventions, sports events, fairs, festivals, state fair and like events may resume and remote work will be optional.

Retail stores, malls, restaurants, bars, nightclubs, gyms and personal services may operate at full capacity.

Restrictions will be lifted at amusement parks, water parks and like facilities.

At this time, we will decide how to approach the next school year.

So, Hoosiers, this is our 5-Stage plan to get Indiana back on track. It's a methodical, step-by-step plan for steady progress which we'll carefully monitor.

You can read more about this at [BackOnTrack.in.gov](https://www.backontrack.in.gov).

Now comes the hard part.

As life starts to slowly return to normal, making progress towards being fully back on track will require constant vigilance – from all of us.

As we lift restrictions and more people return to work, visit a store or restaurant, and participate in more activities, the number of COVID-19 cases will increase.

If we cannot continue to meet our 4 guiding principles, all or portions of the state may need to pause, or even return to an earlier phase of our stay-at-home order.

In other words: this is up to each of us, and all of us.

A.J. Foyt – 1 of only 3 men who have won the Indy 500 four times, was once asked about his strategy for winning.

He said, “The race is won in the last 50 laps.” He knew that the keys to such a long race are patience, discipline and perseverance.

My friends, I have seen with my own eyes your incredible patience, discipline and perseverance.

And I've learned from this moment of trial, that there is nothing we cannot do when we work together.

And I truly believe that because of what we will do together, future historians will look back on this moment and say for Hoosiers, this was their finest hour.

# **EXHIBIT 6**

# STAGE 1

MARCH 24<sup>TH</sup> - MAY 4<sup>TH</sup>

- Elective procedures permitted as of April 27; one person may accompany the patient for services
- Essential manufacturing, construction, infrastructure, government, business, healthcare, and other critical businesses and operations open as outlined in Executive Order 20-22
- Essential retail businesses providing necessities of life such as grocery stores, pharmacies, hardware, building materials, and more open as outlined in Executive Order 20-22
- Restaurants and bars with restaurant service may offer carryout, curbside, and delivery services
- Retail stores may offer call-in or online ordering with curbside pickup and delivery
- State parks are open
- Golf courses are open
- Campgrounds are closed except for permanent RV and cabin residents
- State government operations continue without public access to buildings
- Only essential travel is allowed
- Social gatherings with no more than 10 people are allowed
- K-12 school buildings are closed and all activities are canceled until June 30

# WHAT'S OPEN, WHAT'S CLOSED

## BACK ON TRACK INDIANA: STAGE 1 - MARCH 24<sup>TH</sup> - MAY 4<sup>TH</sup>

PLEASE NOTE THE ROADMAP IS SUBJECT TO CHANGE BASED ON CDC GUIDANCE AND OTHER NEW INFORMATION

<b>All Hoosiers</b>	Stay at home; leave home only for essential work or necessities	Maintain social distancing of at least 6 feet	Remote work whenever possible	No social gatherings of more than 10 people	Recommend use of cloth face coverings in public
<b>Manufacturing, Industrial, Construction</b>	Essential work permitted				
<b>State, County &amp; Local Government</b>	Operational but buildings closed to public				
<b>Professional Office Settings</b>	Essential businesses open with social distancing & CDC measures	All other professional services conducted remotely			
<b>Retail, Malls, Commercial Businesses</b>	Online, call-in with curbside pickup or delivery only				
<b>Healthcare</b>	Nursing homes remain closed to visitors	Elective procedures allowed to resume April 27; one person may accompany a patient			
<b>Restaurants, Bars with Restaurant Services</b>	Carryout, curbside, and delivery only				

CONCLUDED

# WHAT'S OPEN, WHAT'S CLOSED

## BACK ON TRACK INDIANA: STAGE 1 - MARCH 24<sup>TH</sup> - MAY 4<sup>TH</sup>

<b>Bars &amp; Nightclubs</b>	Closed
<b>Personal Services</b> (Hair, Nails, etc.)	Closed
<b>Gyms, Fitness Centers, &amp; Similar Facilities</b>	Closed
<b>Cultural, Entertainment, Sports Venues, Amusement &amp; Water Parks, Tourism Sites</b>	Closed; state parks remain open with social distancing Golf courses open
<b>Playgrounds, Outdoor Courts, Recreational Sports, Youth Training Facilities</b>	Closed
<b>Other</b>	Campgrounds closed except for permanent RV or cabin residents K-12 buildings, facilities, and grounds closed through June 30

CONCLUDED

# STAGE 2

MAY 4<sup>TH</sup> TO MAY 21<sup>ST</sup>

STAGE 2 MAY BEGIN MAY 4 FOR ALL INDIANA COUNTIES EXCEPT: Cass, Lake, and Marion counties.

STAGE 2 MAY BEGIN ON MAY 11 FOR: Lake and Marion counties.

STAGE 2 MAY BEGIN ON MAY 18 FOR: Cass County.

*Please note that local governments may impose more restrictive guidelines.*

## GUIDELINES FOR ALL HOOSIERS

- Hoosiers 65 and over and those with high-risk health conditions should remain at home whenever possible. This is the population that is most vulnerable to the coronavirus
- Recommend that residents wear face coverings in public settings. Residents should also continue to practice social distancing and good hygiene
- Social gatherings of no more than 25 people may take place following the CDC social distancing guidelines. The coronavirus is often spread among groups of people who are in close contact in a confined space for an extended period of time. This limit applies to such events as wedding receptions, birthday parties, Mother's Day gatherings, and others where people are in close physical contact for extended periods of time
- Essential travel restrictions are lifted; local non-essential travel allowed
- Continue remote work whenever possible

## RELIGIOUS SERVICES - MAY 8

- Religious services may convene inside places of worship. There are specific practices that should be considered for in-person services that are driven by social distancing guidelines and protections for those 65 and older and individuals with known high-risk medical conditions. Examples of services include weddings, funerals, and baptisms. See the Revised Guidance for Places of Worship for more complete details

## WHAT OPENS

- Manufacturers, industrial operations, and other infrastructure that has not been in operation may open following OSHA and CDC guidelines. General guidance for these industries may be found in this document
- About half of the state's Bureau of Motor Vehicle branches will open with services by appointment only; the remainder of branches will continue to open over the next two weeks
- Public libraries may open according to their own policies and CDC guidelines

## WHAT'S OPEN, WHAT'S CLOSED

- County and local governments will make decisions based on their policies and CDC guidelines
- Retail and commercial businesses, including those that have been open for the necessities of life during previous executive orders, may operate at 50% of capacity. Examples include apparel, furniture, jewelry, and liquor stores that have been operating as curbside or delivery only
- Shopping malls may open at 50% capacity with indoor common areas at 25% capacity
- Those who work in office settings are encouraged to continue to work remotely whenever possible but may return to offices in small waves

### WHAT OPENS

These business sectors may open a week after the start of Stage 2

- Personal services, such as hair salons, barber shops, nail salons, spas, and tattoo parlors. By appointment only with operational limitations. Employees must wear face coverings, work stations must be spaced to meet social distancing guidelines, and other requirements must be met. Customers should wear face coverings to the extent possible
- Restaurants and bars with restaurant service may open at 50% capacity with operational limitations. Bar seating will be closed with no live entertainment. Servers and kitchen staff must wear face coverings

- State government executive branch offices will begin limited public services, and employees will begin to return to offices in small waves
- Boating is permitted, but boaters must follow social distancing guidelines
- Visitors to beaches and shorelines must adhere to the social gathering and social distancing guidelines

### WHAT REMAINS CLOSED

- Individuals are not allowed to visit patients in assisted living/nursing home facilities
- Bars and nightclubs
- Gyms, fitness centers, community centers, and like facilities
- Cultural, entertainment, sports venues, and tourism sites
  - o This includes museums, zoos, festivals, parades, concerts, fairs, sports arenas, movie theaters, bowling alleys, aquariums, theme parks, recreational sports leagues and tournaments, and like facilities
- Playgrounds, tennis courts, basketball courts, amusement parks whether indoors or outside, tourist sites, water parks, and social clubs
- Congregate settings for seniors, adult day cares remain closed through at least May 31
- Casino operations
- Community swimming pools, public and private
- Residential and day camps
- Campgrounds, except for those living permanently in RVs or cabins

## WHAT'S OPEN, WHAT'S CLOSED

### K-12 Educational Institutions Remain Closed

- All buildings, facilities, and grounds for K-12 educational institutions, public or private, will remain closed through June 30, 2020, except for the purposes previously allowed in Executive Orders pertaining to this public health emergency.
- Educational institutions (including public and private pre-K-12 schools, colleges, and universities) may be open for purposes of facilitating distance learning, performing critical research, or performing essential functions, provided that social distancing of 6 feet per person is maintained to the greatest extent possible.
- Educational institutions that were previously closed and are reopening for these purposes must perform enhanced environmental cleaning of commonly touched surfaces, such as workstations, countertops, railings, door handles, and doorknobs. Use the cleaning agents that are usually used in these areas and follow the directions on the label. Provide disposable wipes so commonly used surfaces can be wiped down by employees before each use.
- The Indiana Department of Education, in consultation with the Indiana State Department of Health, shall develop guidance for graduation ceremonies, including virtual graduation, drive-in ceremonies, and in-person ceremonies with the number of participants limited to the number allowed in the governor's executive order and provided social distancing requirements are met.

CONCLUDED

# WHAT'S OPEN, WHAT'S CLOSED

## BACK ON TRACK INDIANA: STAGE 2 – MAY 4<sup>TH</sup> - 21<sup>ST</sup>

THE ROADMAP IS SUBJECT TO CHANGE BASED ON CDC GUIDANCE AND OTHER NEW INFORMATION

Stage 2 may begin on May 4 for all Indiana counties except Cass, Lake, and Marion.

Stage 2 may begin on May 11 for Lake and Marion.

Stage 2 may begin on May 18 for Cass County.

Local governments may impose more restrictive guidelines.

<b>All Hoosiers</b>	Some restrictions lifted	Continue remote work whenever possible	65 and older and high-risk citizens should stay at home whenever possible	Essential travel restrictions lifted; stay close to home	Recommend all residents wear face coverings in public settings	No social or mass gatherings of more than 25 people	Religious services may convene inside places of worship on May 8
<b>Manufacturing, Industrial, Construction</b>	Open; must meet OSHA, CDC guidelines	Screen employees daily; utilize face coverings according to best practices guidelines	Make provisions to maintain social distancing	Consult industry best practices	Provide employees, customers w/ your COVID-19 policies		
<b>State, County &amp; Local Government</b>	Some BMV branches will open by appointment only on May 4; limited public access to state buildings begins May 11	Screen employees daily; face coverings highly recommended	Make provisions for social distancing	Provide employees, customers with your COVID-19 policies	County, local governments determine their own policies	Public libraries may reopen according to their own policies	
<b>Professional Office Settings</b>	Remote work encouraged whenever possible; as needed, return workers in small waves	Screen employees working in offices daily	Make provisions for social distancing				
<b>Retail, Malls, Commercial Businesses</b>	Open at 50% of capacity; pickup, delivery preferred	Mall common areas limited to 25% capacity	Screen employees daily; utilize face coverings according to best practices guidelines	Highly recommend employees & customers wear face coverings	Social distancing provisions for employees & customers	Consult industry best practices	Provide employees and customers with COVID-19 policies
<b>Healthcare</b>	Nursing homes remain closed to visitors	Congregate settings for seniors, adult day cares closed through at least May 31					

# WHAT'S OPEN, WHAT'S CLOSED

## BACK ON TRACK INDIANA: STAGE 2 - MAY 4<sup>TH</sup> - 21<sup>ST</sup>

<b>Restaurants, Bars with Restaurant Services</b>	Dining room service may open at 50% capacity a week after the start of Stage 2	Bar seating closed; no live entertainment	Screen employees daily; employees must wear face coverings	Consult Indiana Restaurant & Lodging Association best practices	Provide employees and customers your COVID-19 safety plan
<b>Bars &amp; Nightclubs</b>	Closed				
<b>Personal Services (Hair, Nails, etc.)</b>	Open by appointment only; beginning a week after the start of Stage 2	Work stations spaced to meet social distancing guidelines	Screen employees daily	Employees and customers must wear face coverings	Consult industry best practices; provide and post COVID-19 safety plan
<b>Gyms, Fitness Centers, &amp; Similar Facilities</b>	Closed				
<b>Cultural, Entertainment, Sports Venues, Amusement &amp; Water Parks, Tourism Sites</b>	Closed; state parks remain open with social distancing; golf courses open				
<b>Playgrounds, Outdoor Courts, Recreational Sports, Youth Training Facilities</b>	Closed				
<b>Other</b>	Campgrounds closed except for permanent RV or cabin residents	Boating allowed; must follow social gathering guidelines	Visitors to beaches and shorelines must adhere to social gathering and social distancing guidelines	K-12 buildings, facilities, and grounds closed through June 30; DOE developing special guidance for graduation ceremonies	

# STAGE 3

MAY 22<sup>ND</sup> TO JUNE 13<sup>TH</sup>

LAKE, MARION, AND CASS COUNTIES MAY MOVE TO STAGE 3 ON JUNE 1

## GUIDELINES FOR ALL HOOSIERS

- Hoosiers 65 and older and people with known high-risk medical conditions should limit exposure at work and in their communities
- Continue remote work when possible
- Face coverings are recommended
- Social gatherings of up to 100 people may take place following the CDC social distancing guidelines. The coronavirus is often spread among groups of people who are in close contact in a confined space for an extended period of time. This limit applies to wedding receptions, parties, and other events where people are in close physical contact for extended periods of time
- Assisted living facilities and nursing homes remain closed to visitors; this guidance will continue to be evaluated
- No travel restrictions

## SUGGESTED SOCIAL GATHERINGS VENUE GUIDANCE

For a single defined space, all public and private meetings or gatherings may have up to 100 people when social distancing can be accomplished and other sanitation

measures are implemented. It is highly recommended that tools be used to complete a health screening for attendees.

For locations with multiple, clearly separate areas, such as separate banquet rooms or multiple sports fields, each separate area may have up to 100 in each section or segment with these accommodations:

- Ensure separate gatherings do not commingle
- Within each segment/gathering, ensure 6 feet of social distancing between each table with no more than 6 individuals at any table, and for classroom, auditorium, bleacher or other style seating, ensure 6 feet of separation between individuals or household units
- Ensure separate and designated restroom facilities for each site/gathering that can adequately provide services for attendees
- Provide hand sanitizer or other prevention supplies
- Attendance is prohibited if individuals are sick or recently exposed to COVID-19. It is highly recommended that tools be used to complete a health screening for attendees

Multi-day meetings or gatherings are strongly discouraged.

## STAGE 3: WHAT'S OPEN, WHAT'S CLOSED

### WHAT OPENS

- Retail stores and malls may move to 75% of capacity while maintaining social distancing
- Mall common areas, such as food courts and sitting areas, are limited to 50% capacity
- Gyms, fitness centers, yoga studios, martial arts studios, and like facilities may open with restrictions. Class sizes and equipment must be spaced to accommodate social distancing. Limited class sizes. Equipment must be cleaned after each use, and employees are required to wear face coverings. No contact activities are permitted. See additional guidance
- Community tennis and basketball courts, soccer and baseball fields, YMCA programs, and similar facilities may open with social gathering and social distancing guidelines in place
- Community pools may open according to CDC guidance
- Campgrounds may open with social distancing limitations and sanitation precautions. See additional guidance
- Youth summer day camps may open on June 1. See additional guidance
- Community recreational youth and adult sports may resume practices and conditioning, adhering to social gathering and social distancing guidelines. Contact sports, such as football, basketball, and wrestling, where players typically come into contact with other players, are not permitted. Conditioning and non-contact drills may take place

- Adult day service programs offered through the state's Bureau of Developmental Disabilities Service may begin June 1; congregate senior settings remain closed. See additional guidance
- Raceways may open with no spectators. See additional guidance
- Day care facilities and day care facilities at schools are encouraged to open
- State park inns reopen

### WHAT REMAINS CLOSED

- Playgrounds
- Overnight youth camps
- Bars and nightclubs
- Cultural, entertainment, and venues
- Amusement parks, water parks, and tourism sites
- Festivals, fairs, and parades
- K-12 buildings, facilities, and grounds closed for school-sponsored education, sports, and other activities through June 30; day care at school facilities encouraged to open
- Movie theaters

## STAGE 3: WHAT'S OPEN, WHAT'S CLOSED

### BACK ON TRACK INDIANA: STAGE 3 - MAY 22<sup>ND</sup> - JUNE 13<sup>TH</sup>

PLEASE NOTE THE ROADMAP IS SUBJECT TO CHANGE BASED ON CDC GUIDANCE AND OTHER NEW INFORMATION. LAKE, MARION, AND CASS COUNTIES MAY MOVE TO STAGE 3 ON JUNE 1. Move forward in accordance with key principles; local governments may impose more restrictive guidelines.

<b>All Hoosiers</b>	65 and older and high-risk citizens use caution and limit exposure in community	Continue remote work whenever possible	Recommend all residents wear face coverings in public	Social gatherings permitted up to 100 people	No travel restrictions		
<b>Manufacturing, Industrial, Construction</b>	Open; must meet IOSHA, CDC guidelines						
<b>State, County &amp; Local Government</b>	Limited public access to state government buildings; employees return to office buildings in waves	Use tools to screen employees daily	Make provisions for social distancing	County and local governments determine their policies	Public libraries may reopen according to their own policies		
<b>Professional Office Settings</b>	Remote work encouraged whenever possible	Bring employees to offices in waves	Use tools to screen employees daily	Make provisions for social distancing			
<b>Retail, Malls, Commercial Businesses</b>	Open with restrictions of 75% of capacity; maintain social distancing	Mall common areas limited to 50% capacity	Use tools to screen employees daily	Highly recommend employees and customers wear face coverings	Make provisions for employees to maintain social distancing	Consult industry best practices	Provide employees and customers with COVID-19 policies
<b>Healthcare</b>	Assisted living, nursing homes remain closed to visitors; guidance will continue to be evaluated	Adult day services offered through Bureau of Developmental Disabilities Services may open June 1	Congregate senior settings remain closed				
<b>Restaurants, Bars with Restaurant Services</b>	Dining room service open at 50% capacity	Bar seating closed; no live entertainment	Use tools to screen employees daily; employees must wear face coverings	Consult Indiana Restaurant & Lodging Association best practices	Provide employees and customers with your COVID-19 safety plan		

# STAGE 3: WHAT'S OPEN, WHAT'S CLOSED

## BACK ON TRACK INDIANA: STAGE 3 - MAY 22<sup>ND</sup> - JUNE 13<sup>TH</sup>

<b>Bars &amp; Nightclubs</b>	Closed				
<b>Personal Services</b> (Hair, Nails, etc.)	Open by appointment only	Work stations spaced to meet social distancing guidelines	Use tools to screen employees daily	Employees must wear face coverings; customers must wear face coverings to the extent practical	Consult industry best practices; provide and post your COVID-19 safety plan
<b>Gyms, Fitness Centers, &amp; Similar Facilities</b>	Open with restrictions; see guidance	Screen employees daily; employees must wear face coverings	Class sizes or equipment must be spaced to accommodate social distancing	Equipment must be cleaned after each use	Limit class sizes
<b>Cultural, Entertainment, Sports Venues, Amusement &amp; Water Parks, Tourism Sites</b>	State parks open with social distancing; state park inns open	Drive-in theaters may open	Raceways may open with no spectators; see guidance		
<b>Playgrounds, Outdoor Courts, Recreational Sports, Youth Training Facilities</b>	Playgrounds closed, community tennis and basketball courts, soccer and baseball fields open with social distancing and social gathering guidelines	Community pools may open according to CDC guidance	Summer day camps for children may open June 1; see guidance	Community recreational youth and adult non-contact sports practices may resume; social gathering and distancing guidelines required	
<b>Other</b>	Campgrounds open with social distancing limitations, sanitation precautions; see guidance	Boating allowed; must follow social gathering guidelines	K-12 buildings, facilities, and grounds closed for school-sponsored education, sports, and other activities through June 30; day care at school facilities encouraged to open	Visitors to beaches and shorelines must adhere to social gathering and social distancing guidelines	

# STAGE 4

JUNE 12<sup>TH</sup> - JULY 3<sup>RD</sup>

## **GUIDELINES FOR ALL HOOSIERS**

- Hoosiers 65 and older and those with known high-risk medical conditions should adhere to social distancing guidelines and remain cautious at work and in their communities
- Continue remote work as needed
- Face coverings are recommended
- Social gatherings of up to 250 people may take place following the CDC social distancing guidelines. The coronavirus is often spread among groups of people who are in close contact in a confined space for an extended period of time. This limit applies to wedding receptions, parties, and other events where people are in close physical contact for extended periods of time
- Outdoor visitation may take place at assisted living facilities and nursing homes; guidelines continue to be reviewed and updated
- \* Hospital visitations encouraged with precautions

## **WHAT OPENS**

- State government building access available by appointment
- Professional office building employees may resume work at full capacity with adherence to social distancing
- Retail stores and malls open at full capacity with social distancing guidelines in place
- Dining room food service may open at up to 75% capacity as long as social distancing is observed
- Bar seating in restaurants may open at 50% capacity as long as social distancing is observed
- Bars and nightclubs may open at 50% capacity adhering to social distancing guidelines
- Cultural, entertainment, and tourism sites may open at 50% capacity. This includes museums, zoos, aquariums, and like facilities
- Movie theaters, bowling alleys, and similar facilities may open at 50% capacity, adhering to social distancing guidelines

## STAGE 4: WHAT'S OPEN, WHAT'S CLOSED

- Non-contact community recreational sport leagues or teams, public or private, may resume games, leagues, and tournaments on June 12
- Contact community recreational sport leagues or teams, public or private, may resume games, leagues, and tournaments on June 19 when the host or sponsoring venue has submitted to the local health department and posted publicly, a COVID response plan that includes precautions in place and being taken to ensure overall protection of competitors, coaches, officials, staff, and spectators. Such plans must be submitted at least 72 hours in advance of the event. All social gathering limits must be followed. Please see Executive Order 20-32
  - The organizations at these links have prepared guidance for resuming amateur sports that may be helpful in preparing COVID response plans:  
[https://aiha-assets.sfo2.digitaloceanspaces.com/AIHA/resources/Reopening-Guidance-for-Amateur-Sports\\_GuidanceDocument.pdf](https://aiha-assets.sfo2.digitaloceanspaces.com/AIHA/resources/Reopening-Guidance-for-Amateur-Sports_GuidanceDocument.pdf)  
<https://www.aspenprojectplay.org/return-to-play>
- Raceways may open at 50% grandstand capacity
- Pari-mutuel horse racing may begin with no spectators at Hoosier Park and Indiana Grand facilities
- Charity gaming and casinos may open June 15 with the approval of the Indiana Gaming Commission
- Venues may open at a 50% capacity with adherence to social distancing guidelines
- Amusement parks, water parks, and like facilities may open at 50% capacity; reservations are encouraged to limit the number of customers at any one time
- Playgrounds may reopen; wash hands and use sanitizer frequently

### WHAT REMAINS CLOSED

- Conventions, fairs, festivals, parades, and similar events

## STAGE 4: WHAT'S OPEN, WHAT'S CLOSED

### BACK ON TRACK INDIANA: STAGE 4 - JUNE 12<sup>TH</sup> - JULY 3<sup>RD</sup>

PLEASE NOTE THE ROADMAP IS SUBJECT TO CHANGE BASED ON CDC GUIDANCE AND OTHER NEW INFORMATION. All counties may move to Stage 4. LaGrange and Elkhart counties should move with caution based on recent testing results. Move forward in accordance with key principles; local governments may impose more restrictive guidelines.

<b>All Hoosiers</b>	65 and older and high-risk citizens remain cautious and social distance	Remote work as needed	Face coverings recommended	Social gatherings permitted up to 250 people	No travel restrictions
<b>Manufacturing, Industrial, Construction</b>	Open; must meet IOSHA, CDC guidelines				
<b>State, County &amp; Local Government</b>	State offices open by appointment	Screen employees daily	Provisions for employees to maintain social distancing	County and local governments determine their policies	Public libraries may reopen according to their own policies
<b>Professional Office Settings</b>	May resume in-office work at full capacity	Screen employees working in offices daily	Make provisions for employees to maintain social distancing		
<b>Retail, Malls, Commercial Businesses</b>	Open at full capacity; maintain social distancing	Screen employees daily	Recommend employees and customers wear cloth face coverings	Consult industry best practices; provide and post your COVID-19 safety plan	
<b>Healthcare</b>	Outdoor visitation may take place at assisted living facilities and nursing homes; guidelines continue to be reviewed and updated	Day services for adults with disabilities open; other congregate settings remain closed	Hospital visitations encouraged with precautions		
<b>Restaurants, Bars with Restaurant Services</b>	Dining room service open up to 75% capacity as long as social distancing observed	Bar seating open at 50% capacity; social distancing required	Use tools to screen employees daily; must wear face coverings	Consult Indiana Restaurant & Lodging Association best practices	

## STAGE 4: WHAT'S OPEN, WHAT'S CLOSED

### BACK ON TRACK INDIANA: STAGE 4 - JUNE 12<sup>TH</sup> - JULY 3<sup>RD</sup>

<b>Bars &amp; Nightclubs</b>	Open at 50% capacity; social distancing practices must be observed	Use tools to screen employees daily; must wear face coverings	Consult industry best practices	Provide employees and customers with your COVID-19 safety plan
<b>Personal Services</b> (Hair, Nails, etc.)	Appointments preferred	Work stations spaced to meet social distancing guidelines	Use tools to screen employees daily	Employees must wear face coverings; customers must wear face coverings to the extent possible Provide and post your COVID-19 safety plan
<b>Gyms, Fitness Centers, &amp; Similar Facilities</b>	Open with restrictions; see guidance	Screen employees daily; must wear face coverings	Class sizes or equipment must be spaced to accommodate social distancing	Equipment must be cleaned after each use Limit class sizes
<b>Cultural, Entertainment, Sports Venues, Amusement &amp; Water Parks, Tourism Sites</b>	Cultural, tourism facilities such as museums, aquariums may open at 50% capacity  Racing, karting may open at 50% spectator capacity	Venues such as concert and event spaces may open at 50% capacity  Many arts, venues and cultural organizations have prepared reopening guides. Examples may be found at links in the Back On Track plan	Amusement parks, water parks, etc., may open at 50% capacity; reservations encouraged	Charity gaming, casinos may open June 15 with approval of Indiana Gaming Commission Pari-mutuel horse racing may resume with no spectators at Hoosier Park and Indiana Grand Movie theaters, bowling alleys, similar facilities may open at 50% capacity
<b>Playgrounds, Outdoor Courts, Recreational Sports, Youth Training Facilities</b>	Non-contact community recreational sports games, leagues, and tournaments may resume on June 12	Contact community recreational sports games, leagues, and tournaments may resume June 19 according to Executive Order 20-32	Playgrounds may reopen; wash hands and use sanitizer frequently	
<b>Other</b>	Campgrounds open with restrictions	Boating allowed; must follow social gathering guidelines	K-12 buildings, facilities, and grounds closed for school-sponsored education, sports, and other activities through June 30; day care at school facilities encouraged to open	Visitors to beaches and shorelines must adhere to social gathering and social distancing guidelines

# STAGE 4.5

JULY 4<sup>TH</sup> - SEPTEMBER 25<sup>TH</sup>

Local governments may impose more stringent guidelines  
**K-12 schools operating according to locally determined schedules**

## GUIDELINES FOR ALL HOOSIERS

- Hoosiers 65 and older and those with known high-risk medical conditions should adhere to social distancing guidelines and remain cautious at work and in their communities
- Face coverings are required according to Executive Order 20-42
- Social gatherings of up to 250 people may take place following the CDC social distancing guidelines. The coronavirus is often spread among groups of people who are in close contact in a confined space for an extended period of time. This limit applies to wedding receptions, parties, and other events where people are in close physical contact for extended periods of time, particularly in indoor locations
- Outdoor and indoor visitation has resumed at assisted living facilities and nursing homes, in accordance with ISDH visitation guidelines
- Congregate meals and activities at senior centers remain closed
- Hospital visitations encouraged with precautions

- Organizations that utilize volunteers are encouraged to re-engage them for activities. Use appropriate screening and precautions. Hoosiers 65 and older and those with high-risk medical conditions should look for ways to assist online or from home

## STAGE 4 RESTRICTIONS THAT CONTINUE

- Dining room food service may operate at up to 75% capacity as long as social distancing is observed
- Bar seating in restaurants may operate at 50% capacity as long as social distancing is observed
- Bars and nightclubs may operate at 50% capacity adhering to social distancing guidelines. Seated-only operations are encouraged
- Cultural, entertainment, and tourism sites may operate at 50% capacity. This includes museums, zoos, aquariums, and like facilities
- Movie theaters, bowling alleys, and similar facilities may operate at 50% capacity, adhering to social distancing guidelines
- Raceways may operate at 50% grandstand capacity

## STAGE 4.5: WHAT'S OPEN, WHAT'S CLOSED

- Venues may operate at a 50% capacity with adherence to social distancing guidelines

### STAGE 4 RESTRICTIONS THAT CONTINUE

- Amusement parks, water parks, and like facilities may operate at 50% capacity; reservations are encouraged to limit the number of customers at any one time
- Personal services continue operations with restrictions
- Gyms, fitness centers and other workout facilities continue operations with restrictions

### IN STAGE 4.5

- K-12 school operations, extra-curricular and co-curricular activities have resumed
- Pari-mutuel horse racing and county and state fair racing may operate with 50% spectator capacity
- Youth overnight camps are allowed. See guidance
- Fairs, festivals and other similar outdoor events may open and conventions may resume. Requirements for gatherings and events are below

## REQUIREMENTS FOR EVENTS

### SOCIAL GATHERINGS AND MEETINGS ARE LIMITED TO NO MORE THAN 250 ATTENDEES

- A “social gathering” or meeting is an event, assembly, or convening that brings together multiple people, individually or from separate households, in a single space, indoors or outdoors, at the same time and in a coordinated fashion where a significant purpose is to interact with others — like a wedding, family reunion, party, barbecue, picnic, club, banquet, or conference.
- Social gatherings and meetings are limited to no more than 250 people.

### SPECIAL OR SEASONAL EVENTS

- A special or seasonal event is an event, assembly, or convening of multiple people from separate households in a single space, indoors or outdoors, at the same time but where the significant purpose is not necessarily for the purpose of individuals interacting with others outside of one’s household – like weekly summer concerts or movies-in-the-park, fairs, festivals, carnivals, parades, graduation ceremonies, community holiday celebrations, conventions, fundraisers, sport or racing competitions, outdoor shows, and other outdoor entertainment events.
- Special or Seasonal Events where the total attendance will be in excess of 250 individuals (according to capacity limits in Stages 4 and 4.5) must have an event plan approved by local health officials before proceeding.

## STAGE 4.5: WHAT'S OPEN, WHAT'S CLOSED

### OTHER EVENTS NOT COVERED

- This guidance does not apply to school classrooms; areas where people may be in transit such as an airport; settings in which people are in the same general space at the same time but doing separate activities, like medical offices, hospitals, or business environments such as offices, internal meetings solely among employees of a single business, retail stores, and restaurants where people may be working, shopping, or eating in the same general area but are not gathering together in an organized fashion. Religious services are excluded. The activities of these events are subject to separate requirements and guidance.

### GENERAL CONSIDERATIONS

- The more people an individual interacts with at an event and the longer that interaction lasts, the higher the potential risk of becoming infected with COVID-19 and COVID-19 spreading
- Additionally, the higher the level of community transmission in the area that the gathering or event is being held, the higher the risk of COVID-19 spreading
- COVID-19 transmission may occur more easily indoors than outdoors
- Health Departments and event organizers should continue to assess, based on current conditions, whether to significantly reduce the number of attendees for gatherings, or even postpone or cancel the event
- Per the CDC, the highest risk events are large in-person gatherings where it is difficult for individuals to remain spaced at least 6 feet apart and attendees travel from outside the local area

### EVENT PLANS

The following requirements apply to special or seasonal events where there will be more than 250 people in total attendance:

- a. Event organizers must develop and submit to the local health department a written plan outlining the steps to be taken to mitigate against COVID-19. Each plan must address the following issues:
  - Capacity Limits - outline steps that will be taken to ensure the overall capacity does not exceed allowable limits set out in Stage 4 or 4.5 and social distancing can be achieved. For example, outdoor concert venues are limited to 50% of capacity. Event organizers should consider whether to stagger or cap attendance, limit the number of people present at any given time, issue tickets with staggered start times, limit attendance duration
  - Guest Information - provide appropriate information to guests to stay home if sick or part of a vulnerable population, engage in social distancing, increase handwashing, etc. Use signage and other tools to make guests aware of COVID precautions

## STAGE 4.5: WHAT'S OPEN, WHAT'S CLOSED

- Staff & Volunteer Screening – identify measures that will be taken to appropriately screen staff and volunteers for COVID-19 symptoms. Use questionnaires, take temperatures, or both
  - Social Distancing Measures – identify measures that will be employed to ensure attendees engage in social distancing such as one-way flow of attendees, ground markings, seat markings, etc. Allow space for seating between vehicles
  - Increased Sanitation – provide steps that will be taken to ensure the event space is appropriately cleaned and sanitized, that high touch areas have increased cleaning; and additional handwashing or hand sanitizing is available. Examples are no food samples, drink refill stations or communal condiment areas; touchless payment; water fountains used to refill bottles only; increase ventilation
  - Face Coverings – face coverings are required
  - Compliance – identify event staff or volunteers who will monitor and ensure compliance with the approved plan. Examples: Use staff to direct the flow of attendees, have a COVID-19 point of contact for all staff/volunteers
- b. Monitoring & Enforcement – event planners must have sufficient event staff or volunteers present during the event to monitor and ensure compliance with the approved plan and other Executive Order directives
- c. Plan Submission Timeline –
- Plans must be submitted at least 7 days in advance of the event
- d. Local health departments must review and approve or disapprove event plans.

## STAGE 4.5: WHAT'S OPEN, WHAT'S CLOSED

### BACK ON TRACK INDIANA: STAGE 4.5 - JULY 4<sup>TH</sup> - SEPTEMBER 25<sup>TH</sup>

#### LOCAL GOVERNMENTS MAY IMPOSE MORE STRINGENT GUIDELINES

Please note the roadmap is subject to change based on CDC guidance and other new information.

<b>All Hoosiers</b>	65 and older and high-risk citizens remain cautious and social distance	Remote work as needed	Face coverings required, Executive Order 20-42	Social gatherings permitted up to 250 people	No travel restrictions
<b>Manufacturing, Industrial, Construction</b>	Open; must meet IOSHA, CDC guidelines				
<b>State, County &amp; Local Government</b>	State government complex open. Visitors and state employees are required to wear masks in indoor public areas, with exceptions	Screen employees daily	Provisions for employees to maintain social distancing	County and local governments determine their policies	Public libraries may reopen according to their own policies
<b>Professional Office Settings</b>	In-office work at full capacity	Screen employees working in offices daily	Make provisions for employees to maintain social distancing		
<b>Retail, Malls, Commercial Businesses</b>	May operate at full capacity; maintain social distancing	Screen employees daily	Recommend employees and customers wear cloth face coverings	Consult industry best practices; provide and post your COVID-19 safety plan	
<b>Healthcare</b>	Indoor and outdoor visitation for long-term care facilities has resumed. See guidance	Congregate gatherings for seniors remain closed	Day services for adults with disabilities may operate; other congregate settings remain closed	Hospital visitations encouraged with precautions	
<b>Restaurants, Bars with Restaurant Services</b>	Dining room service may operate at up to 75% capacity as long as social distancing observed	Bar seating may operate at 50% capacity; social distancing required	Use tools to screen employees daily; employees must wear face coverings	Consult Indiana Restaurant & Lodging Association best practices	

## STAGE 4.5: WHAT'S OPEN, WHAT'S CLOSED

### BACK ON TRACK INDIANA: STAGE 4.5 - JULY 4<sup>TH</sup> - SEPTEMBER 25<sup>TH</sup>

<b>Bars &amp; Nightclubs</b>	May operate at 50% capacity; social distancing practices must be observed	Seated-only operations are encouraged	Use tools to screen employees daily; employees must wear face coverings	Consult industry best practices	Provide employees and customers with your COVID-19 safety plan	
<b>Personal Services</b> (Hair, Nails, etc.)	Appointments preferred	Work stations spaced to meet social distancing guidelines	Use tools to screen employees daily	Employees must wear face coverings; customers must wear face coverings to the extent possible	Provide and post your COVID-19 safety plan	
<b>Gyms, Fitness Centers, &amp; Similar Facilities</b>	Operate with restrictions; see guidance	Screen employees daily; employees must wear face coverings	Class sizes or equipment must be spaced to accommodate social distancing	Equipment must be cleaned after each use	Limit class sizes	
<b>Cultural, Entertainment, Sports Venues, Amusement &amp; Water Parks, Tourism Sites</b>	Cultural, tourism facilities such as museums, aquariums may operate at 50% capacity	Venues such as concert and event spaces may operate at 50% capacity	Amusement parks, water parks, etc., may operate at 50% capacity; reservations encouraged	Charity gaming, casinos opened June 15 with approval of Indiana Gaming Commission	Pari-mutuel horse racing and county and state fair racing may operate with 50% spectator capacity	Movie theaters, bowling alleys, similar facilities may operate at 50% capacity
	Racing, karting may operate at 50% spectator capacity	Many arts, venues and cultural organizations have prepared reopening guides. Examples may be found at links in the Back On Track plan	Conventions may resume following the Gatherings and Events guidelines in Executive Order 20-36	Fairs, festivals and similar events may resume according to provisions of Executive Order 20-36	Requirements for events with more than 250 attendees may be found on page 24	
<b>Playgrounds, Outdoor Courts, Recreational Sports, Youth Training Facilities</b>	Non-contact community recreational sports games, leagues, and tournaments resumed on June 12	Contact community recreational sports games, leagues, and tournaments resumed June 19. Must adhere to Executive Order 20-32	Playgrounds open; wash hands and use sanitizer frequently			
<b>Other</b>	Campgrounds may operate with restrictions	Boating allowed; must follow social gathering guidelines	K-12 school operations, extra-curricular and co-curricular activities have resumed	Visitors to beaches and shorelines must adhere to social gathering and social distancing guidelines		

# STAGE 5

SEPTEMBER 26<sup>TH</sup> - OCTOBER 17<sup>TH</sup>

## GUIDELINES FOR ALL HOOSIERS

- Face coverings are required for all Hoosiers according to Executive Order 20-43
- Maintain social distancing of 6 feet, especially in public spaces and when you are in close contact with others who are not members of your household
- Wash your hands frequently; use hand sanitizer when hand-washing is not available
- Do not go to work or other locations when you feel sick or symptomatic
- Hoosiers 65 and older and those with known high-risk medical conditions should remain vigilant about protecting their exposure to COVID
  - Limit gatherings with those outside of your household or regular social bubble
- Hoosiers who will be in contact with individuals 65 and older and those with known high-risk medical conditions should remain vigilant about exposure
  - Consider obtaining a COVID test before prolonged exposure to high-risk individuals. A COVID test before visiting may enable you to make an informed decision about contact with other persons. Do not visit if you are positive or symptomatic
  - Maintain 6 feet of social distancing indoors and outdoors and wear a mask for the protection of other individuals and yours
  - Maintain hygiene standards

# STAGE 5

SEPTEMBER 26<sup>TH</sup> - OCTOBER 17<sup>TH</sup>

## ALL SUBJECT TO FACE COVERING REQUIREMENTS IN EXECUTIVE ORDER 20-43

- Size limitations removed for social gatherings and meetings
  - Face coverings are required
  - Social distancing of at least 6 feet is required between non-household members
  - Organizers of events that will have more than 500 people are required to submit a written plan to their local health department. See Event Plan section
- Restaurants and bars that offer food service open at full capacity
  - Bar section customers must be seated, whether at a table or counter
  - Social distancing required as a seating consideration
  - Provisions must be made so individuals, households or parties are spaced six feet apart from another individual, household or party
- Bars and nightclubs open at full capacity
  - Customers must be seated, whether at a table or counter
  - Social distancing required as a seating consideration
- Indoor and outdoor venues of all types may open at full capacity
  - Social distancing of at least 6 feet is required among non-household members, especially for indoor events where attendees may be gathered for extended time periods. The coronavirus is often spread among groups of people who are in close contact in a confined space for prolonged periods of time
  - Singing or speaking loudly, such as coaching or cheering, increases the spread of respiratory droplets and the risk for COVID-19 transmission. Please take appropriate precautions to socially distance and consider additional spacing when engaged in these activities
  - Businesses should make customers aware of the precautions they are taking to ensure safety
- Senior centers and congregate nutrition sites may reopen according to Family and Social Services Administration guidance. Detailed guidance may be found on [backontrack.in.gov](https://backontrack.in.gov) under the Industry Guidelines section.
- Personal services may resume normal operations. Face coverings and social distancing are required
- Gyms, fitness centers and workout facilities may resume normal operations. Face coverings and social distancing are required
  - Consider limitations on class sizes and spacing of equipment
  - Continue cleaning regimen after each equipment use and class
- Nursing homes and assisted living facilities are required to provide visitation opportunities. Detailed guidance may be found on [backontrack.in.gov](https://backontrack.in.gov) under the Industry Guidelines section.

## COLOR-CODED METRICS

The state of Indiana has developed a color-coded system to report on the prevalence of the coronavirus in each county. The system measures weekly cases per 100,000 residents and the 7-day all tests positivity rate. The map is updated each Wednesday at noon.

- Each county is assigned a color based on the average of scores for the two metrics
  - **BLUE** means the county has a positivity rate of less than 5 percent and less than 10 new coronavirus cases per 100,000 for the week
  - **YELLOW** means the county has a positivity rate of 5 percent to 9.9 percent and 10-99 new coronavirus cases per 100,000 for the week
  - **ORANGE** means the county has a positivity rate of 10 percent to 14.9 percent and 100-199 new cases per 100,000 for the week
  - **RED** means the county has a positivity rate of 15 percent or greater and 200 or more new cases per 100,000 for the week
- The color-coded system was developed to assist schools with decision-making about operations based on the level of coronavirus in their counties. Communities should use the color-coded system to make decisions about their businesses, community and social activities
  - **BLUE** – There is minimal community spread and activities are recommended to continue at current levels
  - **YELLOW** – There is moderate community spread and increased awareness and safety vigilance should be taken
  - **ORANGE** – There is high community spread
  - **RED** – There is very high community spread

When a community reaches YELLOW, communities should begin to consider if local restrictions should be put into place. If a county reaches ORANGE or RED status, the state Department of Health will consult with local health officials about reasons for the higher percentages and make recommendations about steps that should be taken locally to reduce positivity and slow the spread of coronavirus.

- The county map may be found on the coronavirus dashboard on the state Department of Health website at [www.coronavirus.in.gov](http://www.coronavirus.in.gov)
- School recommendations may be found at [https://www.coronavirus.in.gov/files/COVID-19-Schools\\_color%20level%20recommendations.pdf](https://www.coronavirus.in.gov/files/COVID-19-Schools_color%20level%20recommendations.pdf)

### EVENT REQUIREMENTS

#### SIZE LIMITATIONS ARE REMOVED FOR SOCIAL GATHERINGS AND MEETINGS

- A social gathering or meeting is an event, assembly, or convening that brings together multiple people, individually or from separate households, in a single space, indoors or outdoors, at the same time and in a coordinated fashion where a significant purpose is to interact with others – such as a wedding, family reunion, party, barbecue, picnic, club, banquet or conference
- Attendees at any such gathering or meeting are required:
  - To wear a face covering in public spaces
  - To be seated 6 feet apart from persons who are not in the same household or cohort
  - Provide hand sanitizer or hand-washing areas
- Those 65 and older and those who are medically high risk should not attend; those who do should be extremely cautious as they are particularly susceptible to death from COVID-19
- Those who are sick, symptomatic or have tested positive for COVID-19 should not attend

#### SPECIAL OR SEASONAL EVENTS

- A special or seasonal event is an event, assembly, or convening of multiple people from separate households in a single space, indoors or outdoors, at the same time but where the significant purpose is not necessarily for the purpose of individuals interacting with others outside of one's household – such as a concert, movie-in-the-park, fair, festival, carnival, parade, ceremony, community holiday celebration, convention, fundraiser, sport or racing competition, outdoor show, and other outdoor entertainment events
- Special or seasonal events for which total attendance will be in excess of 500 are required to submit an event plan to local health officials
  - This requirement will enable local health officials to know about large events that have higher risk potential for the spread of COVID-19 and better enable initiation of contact tracing

### EVENT PLANS

When more than 500 people will attend a special or seasonal event:

- a. Event organizers must develop and submit to the local health department a written plan outlining the steps that will be taken to mitigate against COVID-19. Each plan must include:
  - Guest Information – identifying the appropriate information to be provided to guests to stay home if sick or part of a vulnerable population, engage in social distancing, increase handwashing, etc.
  - Staff & Volunteer Screening – identifying measures to be taken to appropriately screen staff and volunteers for COVID-19 symptoms
  - Social Distancing Measures – identifying measures to be employed to ensure attendees engage in social distancing such as use of multiple entrances, designated seating, one-way flow of attendees, ground markings, distance between seating/tables, etc.
  - Increased Sanitation – outlining steps to be taken to ensure the event space is appropriately cleaned and sanitized, that high touch areas have increased cleaning, and that additional handwashing or hand sanitizing is available
  - Face Coverings – identifying face coverings will be required and the measures to be taken to ensure coverings are worn
  - Compliance – identifying the number of event staff or volunteers who will be available and sufficient to monitor and ensure compliance with the approved plan
- b. If the event is in a county where the coronavirus status is orange or red, the event host should consider limiting attendance or taking other precautions.
- c. Monitoring & Enforcement – event planners must have sufficient event staff or volunteers present during the event to monitor and ensure compliance with the plan and other Executive Order directives.
- d. Plan Submission Timeline –
  - Plans must be submitted 14 days in advance of the event
- e. Local health departments may request adjustments.

### EVENTS NOT COVERED

- An event plan is not required for school classrooms; areas where people may be in transit, such as an airport; businesses, offices, retail stores, and restaurants where people are working, shopping, or eating in the same general area but are not gathering together in an organized fashion. Religious services are excluded. These activities are subject to other requirements, including mandatory face coverings and social distancing

# **EXHIBIT 7**

## Greene County COVID-19 Statistics – Updated 9/28/2020

*Expect historical data to change as data is reported to the Greene County Health Department*

Week*	Start Date	Total	Confirmed, Positives	Clinical Cases	Deaths	LTC Deaths	LTC Residents	LTC Employees	OPTUM Testing**
1	23-Mar	1	1	--	--	--	--	--	
2	30-Mar	10	10	--	--	--	--	--	
3	6-Apr	12	12	--	2	1	5	--	
4	13-Apr	18	17	1	3	3	6	7	
5	20-Apr	7	7	--	3	2	--	--	
6	27-Apr	51	49	2	2	2	38	6	
7	4-May	52	51	1	8	7	43	6	
8	11-May	13	13	--	6	6	2	8	34
9	18-May	6	6	--	2	2	2	2	32
10	25-May	2	2	--	2	2	2	--	49
11	1-Jun	7	7	--	3	3	--	--	56
12	8-Jun	6	5	1	1	1	--	1	46
13	15-Jun	3	3	--	--	--	--	--	112
14	22-Jun	0	0	--	2	2	--	--	140
15	29-Jun	5	5	--	1	1	--	--	223
16	6-Jul	12	12	--	--	--	--	--	398
17	13-Jul	7	7	--	1	1	--	--	439
18	20-Jul	17	17	--	1	--	--	--	462
19	27-Jul	18	18	--	--	--	--	--	428
20	3-Aug	10	10	--	--	--	--	--	298
21	10-Aug	21	21	--	--	--	--	--	400
22	17-Aug	61	61	--	1	--	--	--	328
23	24-Aug	29	29	--	--	--	--	--	343
24	31-Aug	19	19	--	--	--	--	--	359
25	7-Sep	18	18	--	--	--	--	--	237
26	14-Sep	17	18	--	--	--	--	--	229
27	21-Sep	9	9	--	--	--	--	--	139
<b>Totals</b>		<b>432</b>	<b>427</b>	<b>5</b>	<b>38</b>	<b>33</b>	<b>98</b>	<b>30</b>	<b>4752</b>

\* Monday through Sunday

\*\*The number of individuals tested at the OPTUM Care site includes non-Greene County residents.

# **EXHIBIT 8**

**Suppression occurs when there are either less than 5 cases to a zip code or zip code's population is less than 1,500. If there are no cases at all, the zip code's information will read "No Cases." Percentage is case count divided by the zip code's population.**

Zip Code	Case Count	Percentage	Population
47424 – Bloomfield	74	0.78%	9,525
47438 – Jasonville	58	1.19%	4,798
47441 – Linton	229	2.41%	9,269
47443 – Lyons	Suppressed	Suppressed	Suppressed
47449 – Newberry	Suppressed	Suppressed	Suppressed
47453 – Owensburg	Suppressed	Suppressed	Suppressed
47459 – Solsberry	27	0.69%	3,795
47465 – Switz City	Suppressed	Suppressed	Suppressed
47471 – Worthington	21	0.77%	2,727

**Please visit the Indiana State Department of Health's Novel Coronavirus (COVID-19) Dashboard at <https://www.coronavirus.in.gov/2393.htm> for more Indiana, district 7 and Greene County COVID-19 information. The webpage is interactive; hover over the county for Greene County specific information and use filters to see district 7 data. All data displayed is preliminary and subject to change as more information is reported to the Indiana State Department of Health (ISDH). The ISHD statistics includes all testing reported by hospitals, clinics, private providers, and the Greene County Health Department's COVID-19 test site. District 7 consist of the following counties: Vermillion, Parke, Putnam, Vigo, Clay, Owen, Sullivan, and Greene.**

# **EXHIBIT 9**

# STATE OF INDIANA

## EXECUTIVE DEPARTMENT INDIANAPOLIS

EXECUTIVE ORDER 20-36

**FOR: BACK ON TRACK INDIANA: CONTINUATION OF STAGE 4.5**

TO ALL WHOM THESE PRESENTS MAY COME, GREETINGS:

**WHEREAS,** on March 6, 2020, I issued Executive Order 20-02 which declared that a public health emergency exists throughout the State of Indiana as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and a confirmed report of the disease in our State and this initial declaration has been extended by me in Executive Orders 20-17, 20-25, 20-30 & 20-34;

**WHEREAS,** on March 11, 2020, the World Health Organization declared COVID-19 to be a global pandemic and, on March 13, 2020, the President of the United States declared a national emergency with respect to this dangerous virus;

**WHEREAS,** as of the date of this Executive Order, the virus has now spread to every county in our State, with over 54,000 confirmed cases and over 2,600 deaths;

**WHEREAS,** as Governor, under Indiana's Emergency Management and Disaster Law, Ind. Code ch. 10-14-3 ("Emergency Disaster Law"), I have authority to take actions necessary to prepare for, respond to and address a public health disaster emergency including the following:

- making, amending and rescinding the necessary orders, rules and regulations to carry out the response to a public health disaster emergency;
- suspending the provisions of any regulatory statute prescribing the procedures for conduct of state business, including the orders, rules or regulations of any state agency if strict compliance with any of these provisions would in any way prevent, hinder, or delay necessary action in coping with the emergency;
- transferring the direction, personnel, or functions of state departments and agencies or units for performing or facilitating emergency services; and
- using any and all available resources of state government and of each political subdivision of our State as reasonably necessary to cope with the public health disaster emergency;

**WHEREAS,** in addition to the authority granted to me by the Indiana General Assembly, the Indiana State Department of Health (ISDH) has been granted authority under Title 16 of the Indiana Code to take measures in connection with prevention and suppression of disease and epidemics;

**WHEREAS,** the Indiana Occupational Safety and Health Agency (IOSHA) has authority under Title 22 of the Indiana Code to inspect and take steps to ensure businesses are operating a workplace free from recognized hazards that are causing or likely to cause death or serious physical harm to employees;

**WHEREAS,** to reduce and slow the spread of COVID-19, the Centers for Disease Control and Prevention (CDC) and the ISDH recommended implementation of mitigation strategies to contain this virus including limitations on large gatherings and social distancing measures;

**WHEREAS,** in order to take all necessary steps to increase containment of this virus, I have issued various Executive Orders including a stay-at-home order, closure of state government buildings and restrictions on in-person dining at restaurants;

**WHEREAS,** by consulting with experts utilizing a data-driven approach to make decisions based on facts, science, and recommendations from experts in health care, business, labor, and education, we began to reopen our Hoosier economy while prioritizing Hoosiers' health in reopening our economy;

**WHEREAS,** to continue mitigation of COVID-19 and to lower the risk of a resurgence, a measured and staggered approach to reopening businesses and entities has been instituted. Five stages were outlined with each ensuing stage being subject to fewer restrictions and limitations than the previous stage, as follows:

- Stage 1 began with the stay-at-home directive issued on March 23, 2020, and continued until May 4, 2020 when Stage 2 commenced;
- Stage 2 began the reopening of Indiana on May 4, 2020, and continued until May 22, 2020 when Stage 3 commenced;
- Stage 3 continued the reopening of Indiana on May 22, 2020, and continued until June 12, 2020, when Stage 4 commenced;
- Stage 4 further expanded the reopening of Indiana, beginning on June 12, 2020, and expired at 11:59 on July 3, 2020; and
- Subject to continuing improvement, Stage 5 was scheduled to begin at 12:01 a.m. on July 4, 2020, however, Stage 5 was replaced by Stage 4.5 which began at 11:59 p.m. on Friday, July 3, 2020, and is set to expire at 11:59 p.m. on Friday, July 17, 2020;

**WHEREAS,** as the impact of COVID-19 for each county has varied, the impact in each county will be continually assessed to determine which stage applies to a particular county at the end of each time period. If the impact of COVID-19 is minimal or has significantly lessened, the county may be permitted to advance to the next stage. However, if the impact of COVID-19 has increased or failed to lessen, the county may be required to stay at the current stage or return to a prior stage;

**WHEREAS,** for a county to advance to the next stage or be required to stay at a current stage or return to a prior stage, the following factors will be considered: i) the number of hospitalized COVID-19 patients; ii) the capacity for critical care beds and ventilators; iii) the ability to test for COVID-19; and iv) the capacity for contact tracing;

**WHEREAS,** since the reopening of Indiana began on May 4, 2020, the number of hospitalized COVID-19 patients has recently increased; our capacity for critical care beds and ventilators is stable; our testing for COVID-19 is available to all Hoosiers; and our ability to contact trace is available and ongoing in all 92 counties; however, the percentage of positive cases compared to the number of tests performed has increased in recent days and thus, warrants additional monitoring before a significant lessening of further restrictions occurs;

**WHEREAS,** throughout many areas across the United States, there are preliminary signs of increased coronavirus spread and evidence of resurgence in areas where there has been significant reopening of businesses and easing or disregard of mitigation efforts; and

**WHEREAS,** based on all of the above, Indiana must refrain from transitioning fully into Stage 5 and must, instead, remain in Stage 4.5 while continuing to take measures to protect Hoosiers from the spread of this dangerous virus.

**NOW, THEREFORE,** I, Eric J. Holcomb, by virtue of the authority vested in me as Governor by the Indiana Constitution and the laws of the State of Indiana, do hereby order:

**1. Continuation of Stage 4.5**

- a. All Indiana counties, except Elkhart county, will continue in Stage 4.5 until 11:59 p.m. on Friday, July 31, 2020.
- b. All individuals in counties in Stage 4.5 shall follow the directives in Executive Order 20-32 as modified by Executive Order 20-35 and this Executive Order.

- c. Individuals in Elkhart county will remain in Stage 4 through 11:59 p.m. on July 31, 2020, and must continue to adhere to the directives in Executive Order 20-32, Stage 4.
- d. Executive Orders 20-32 and 20-35 are extended and remain in full force and effect.
- e. Unless otherwise specified, nothing in this Executive Order prohibits a county or political subdivision from imposing more stringent requirements than in this Executive Order or Executive Orders 20-32 & 20-35.

**2. Additional Requirements for Gatherings and Events**

*a. Gatherings and Meetings:*

- i) As set out in Executive Order 20-32, all public and private meetings or gatherings (outside a single household or living unit or religious service), whether familial, social, governmental, philanthropic or otherwise, may have up to two hundred fifty (250) people provided social distancing requirements can be achieved and maintained and other sanitation measures are implemented at the site where the meeting or gathering occurs. A host of the meeting or gathering is encouraged to ensure a health screening process for attendees is instituted.
- ii) A “social gathering” is an event, assembly, or convening that brings together multiple people, individually or from separate households, in a single space, indoors or outdoors, at the same time and in a coordinated fashion where a significant purpose is to interact with others — such as a wedding, family reunion, party, barbecue, picnic, club, banquet, or conference.
- iii) All gatherings and meetings, including social gatherings, are limited to no more than 250 people.

*b. Special or Seasonal Events:*

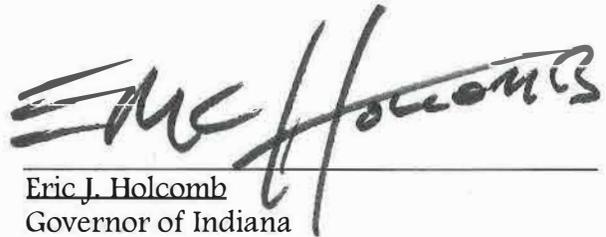
- i) A special or seasonal event is an assembly or convening of multiple people from separate households in a single space, indoors or outdoors, at the same time but where the main purpose is not necessarily for individuals to interact with others outside of one’s household but to attend a single event and/or events of limited duration – such as weekly summer concerts or movies-in-the-park, fairs, festivals, carnivals, parades, graduation ceremonies, community holiday celebrations, conventions, fundraisers, sport or racing competitions, shows, or other entertainment events.
- ii) Special or seasonal events scheduled to occur on or after July 23, 2020, and where the total attendance is expected to exceed 250 individuals, must have an event plan approved by local health officials before proceeding.
- iii) Event Plan: Event organizers must develop and submit to the local health department a written plan outlining the steps to be taken to mitigate against COVID-19. Each plan must address the following issues:
  - a) Capacity Limits – outlining what steps have been taken and will be taken to ensure the overall capacity does not exceed allowable limits set out in Stage 4 or Stage 4.5 and how social distancing will be achieved;
  - b) Guest Information – identifying the appropriate information to be provided to guests to stay home if sick or part of a vulnerable population, engage in social distancing, increase handwashing, etc.;
  - c) Staff & Volunteer Screening – identifying measures to be taken to appropriately screen staff and volunteers for COVID-19 symptoms;
  - d) Social Distancing Measures – identifying measures to be employed to ensure attendees engage in social distancing such as use of multiple entrances, designated seating, one-way flow of attendees, ground markings, etc.
  - e) Increased Sanitation – outlining steps to be taken to ensure the event space is appropriately cleaned and sanitized, that high touch areas have increased cleaning, and that additional handwashing or hand sanitizing is available;
  - f) Face Coverings – identifying if face coverings are recommended or required; and

- g) Compliance – identifying the number of event staff or volunteers who will be available and sufficient to monitor and ensure compliance with the approved plan and other Executive Order directives.
- iv) Plan Submission Timeline:
  - a) For events scheduled to occur between July 23 – 26, 2020, plans must be submitted as soon as practicable but at least 72 hours in advance.
  - b) For events occurring on or after July 27, 2020, plans must be submitted at least 7 days in advance of the event.
- v) Local Health Department Approval: Local health departments must review and approve/disapprove event plans.
- vi) Monitoring & Enforcement: Event planners must have sufficient event staff or volunteers present during the event to monitor and ensure compliance with the approved plan and other Executive Order directives.

IT IS SO ORDERED.



IN TESTIMONY WHEREOF, I, Eric J. Holcomb, have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, on this 16<sup>th</sup> day of July, 2020.

  
Eric J. Holcomb  
Governor of Indiana

ATTEST: Connie Lawson  
Secretary of State

 060

# **EXHIBIT 10**

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 25**

**BUNGE MILLING, LLC,**

**Employer,**

**and**

**Case 25-RC-262150**

**BCTGM, LOCAL 280 A/W BAKERY,  
CONFECTIONARY, TOBACCO WORKERS  
AND GRAIN MILLERS INTERNATIONAL  
UNION, AFL-CIO, CLC,**

**Petitioner.**

**EMPLOYER’S OBJECTIONS TO THE CONDUCT OF THE ELECTION**

Pursuant to the Regional Director’s Decision and Direction of Election dated July 27, 2020, the National Labor Relations Board (the “Board”) conducted a mail-ballot representation election for twenty-five (25) full-time and regular part-time employees working at Bunge Milling, LLC’s (“the Employer”) Worthington, Indiana location. The parties had agreed to have a manual election. In fact the parties had entered into a signed stipulated election agreement for a manual election. The Regional Director ignored the parties’ wishes, refused to approve the parties’ signed agreement, and improperly ordered a mail ballot election under circumstances that Board law dictates required a manual election. Ballots were mailed to voters on August 10. At least one voter did not receive a ballot. And at least one voter was mailed three ballots. Ballots were counted on September 10, 2020.

According to the Regional Office, of the ballots mailed out to eligible voters, only seventeen (17) (68%) arrived back at the Regional Office by the time the vote count began. One of those ballots was deemed void because the voter had not signed the envelope. Of the sixteen (16)

remaining ballots, ten were cast for the Petitioner and six against the Petitioner.<sup>1</sup>

Pursuant to Section 102.69(a) of the Board's Rules and Regulations, the Employer files these Objections to the Conduct of the Election. The election must be set aside due to the Region's mishandling of the election and the resulting voter disenfranchisement.

OBJECTION #1: The Regional Director erred as a matter of law when she refused to honor the parties' signed Stipulated Election Agreement and, over the parties' objections, ordered a mail ballot election without sufficient justifying circumstances. She further erred when she failed to take into account well publicized issues (lost mail and delays) with U.S. Mail delivery in setting a date for the vote count. The result is that six employees were disenfranchised when their ballots were either lost in the mail or arrived at the Regional Office after the vote count.

OBJECTION #2: A determinative number of ballots (6) which were properly cast by eligible voters and timely deposited in the U.S. Mail in full accordance with the NLRB's instructions, were not counted on September 10. According to Region 25, these six missing ballots did not arrive at the Regional Office prior to the ballot count. Whether they have arrived since then is not known to the Employer. What is known is that six employees (26% of the unit) were disenfranchised due to no fault of their own. If the election is not set aside, (or these votes counted if they have arrived), only sixteen voters will decide an election for twenty-three employees. When the number of disenfranchised voters is this large and the evidence shows each voter mailed his or her ballot well in advance of the September 10 count, the Board's interest in protecting employee free choice must weigh heavier than a procedural interest in finality.

OBJECTION #3: The Regional Office mailed three ballots to Scott Wicker. Jasmine Watson never received a ballot. It is possible that the Regional Office likewise mailed multiple

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<sup>1</sup> Prior to the vote count the parties agreed to strike the names of two former employees (Levi Powell and Rayann Cooper) from the voting list leaving twenty-three (23) eligible voters.

ballots to other voters. Wicker and Watson are in a relationship. A Regional Office representative told Wicker and/or Watson to let Watson use one of Wicker's ballots. Watson used one of Wicker's ballots as her own. Yet no ballot for Watson was among the ballots available to count on September 10. Curiously, a ballot with the name "Scott Wicker" printed on the external envelope, but not signed, arrived at the Regional Office. It was voided because it was not signed. The irregularities in the Regional Office's handling of the mail ballot process, coupled with the serious problems identified in Objections #1 and #2, are grounds to set aside the election under established Board and Court precedent.

HEARING REQUESTED: The Employer requests a hearing on the genuine issues of material fact raised by these Objections. The Employer submits separately its Offer of Proof in accordance with the Board's Rules and Regulations. The Employer requests that the Regional Office preserve all ballots and envelopes it has received or does receive in this matter, as these documents are relevant to these Objections.

**Bunge Milling, LLC**

By: /s/ Todd M. Nierman  
Todd M. Nierman, Esq.  
OGLETREE, DEAKINS, NASH,  
SMOAK AND STEWART, P.C.  
111 Monument Circle, Suite 4600  
Indianapolis, IN 46204  
317.916.1300 (phone)  
317.916.9076 (fax)

Dated: September 18, 2020

**CERTIFICATE OF SERVICE**

I certify that I caused the Employer's Objections to The Conduct of Election to be served this 18<sup>th</sup> day of September, 2020 on the representative of the Union John Price at *jprice@bctgm.org*.

By: /s/ Todd M. Nierman  
Counsel for Bunge Milling, LLC

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# **EXHIBIT 11**

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

Date Filed

Case No. 25-RC-262150

6/24/2020

Date Issued SEPTEMBER 11, 2020

City INDIANAPOLIS

State IN

Type of Election:  
(Check one:)

(If applicable check either or both:)

- Stipulation
- Board Direction
- Consent Agreement
- RD Direction Incumbent Union (Code)

- 8(b) (7)
- Mail Ballot

BUNGE MILLING, LLC  
Employer

and

BCTGM, LOCAL 280, A/W BAKERY,  
CONFECTIONARY, TOBACCO WORKERS AND  
GRAIN MILLERS INTERNATIONAL UNION,  
AFL-CIO, CLC

Petitioner

### TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of tabulation of ballots case in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters 23
2. Number of Void ballots 1
3. Number of Votes cast for PETITIONER 10
4. Number of Votes cast for XX
5. Number of Votes cast for XX
6. Number of Votes cast against participating labor organization(s) 6
7. Number of Valid votes counted (sum 3, 4, 5, and 6) 16
8. Number of challenged ballots 2
9. Number of Valid votes counted plus challenged ballots (sum of 7 and 8) 16
10. Challenges are (not) sufficient in number to affect the results of the election.
11. A majority of the valid votes counted plus challenged ballots (Item 9) has ~~not~~ been cast for PETITIONER

For the Regional Director

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For BUNGE MILLING, LLC (VIA ELECTRONIC MEANS)

For BCTGM, LOCAL 280, A/W BAKERY, CONFECTIONARY, TOBACCO WORKERS AND  
GRAIN MILLERS INTERNATIONAL UNION, AFL-CIO, CLC (VIA ELECTRONIC MEANS)

For