



Spring Membership Meeting – March 16, 2021 Meeting Report

The Independent Bakers Association had its Spring Membership Meeting on Tuesday, March 16 via Microsoft Teams. **IBA Chair Dan Mulloy** of 151 Foods calls the meeting to order at 2:04 pm EDT and thanks the meeting's sponsors. **IBA Treasurer Ron Tremayne** of AB Mauri opens the meeting with the treasurer's report. Despite an unprecedented year, IBA finishes 2020 in the black. IBA gains new members to the association, including: Highland Baking Co., H&S, Alpha Baking Co., U.S. Bakery, and C.H. Guenther & Son.

Although many 2020 events were cancelled or replaced with virtual meetings, IBA looks forward to meeting in-person in 2021. The Annual Meeting in Washington, DC is slated for June 22-24, 2021. If an in-person event is not permitted, a virtual meeting will take place on June 23 and 24. IBA also looks forward to the fall PACK EXPO event on September 27, 2021 in Las Vegas, NV. **IBA President Nick Pyle** moves approve minutes from the fall 2020 IBA meeting, the motion passes.

IBA will conduct its 2021 Memorial Internship for the June Annual Meeting. All interested parties should reach out to Nick Pyle. IBA is also preparing to grant its 2021 Denk award to two congressional recipients. The nomination list currently includes Senator Rand Paul (R-KY), Senator Mike Braun (R-IN), Senator Mark Kelly (D-AZ) and Senator Kyrsten Sinema (D-AZ). Meeting participants decide Sens. Braun and Sinema should receive the award this year.

IBA President Nick Pyle moves to industry updates. The first order of business is the Grain Food Foundation's (GFF) wheat checkoff. Last summer, IBA decided to oppose GFF's wheat checkoff proposal. IBA's position is that a checkoff won't work for grains due to the highly branded nature of bread products. Instead of contributing to a checkoff program, companies would rather use those dollars to advertise their own products.

In September, GFF's wheat checkoff proposal was electronically published in the *Federal Register* with an official publication date scheduled for the next day. Instead, GFF pulled the proposal and sought more industry support. IBA surveyed wholesale bakers about GFF's wheat checkoff proposal: less than 26% of bakers support a checkoff program, and 90% support and "up-front" industry referendum. IBA shared these results with Secretary of Agriculture Tom Vilsack last month.

IBA General Counsel Elizabeth Veland moves on to COVID-19 relief. She highlights some of the American Rescue Plan (ARP), including focusing on the \$86 million bailout for multiemployer pension plans and stabilizing funding for single employer plans. Elizabeth calls it, "a temporary band aid for a gaping wound." Other aspects of the ARP include extending unemployment benefits, extended tax breaks for paid and sick leave, \$7.25 billion to the Paycheck Protection Program, and \$75 million to Occupational Safety and Health Administration to boost auditing and workplace safety rules.

Nick Pyle moves to honor **IBA Member John Popp** of Aunt Millie's. John is being inducted in the American Society of Baking's Industry Hall of Fame. Nick highlights John's participation in IBA for over 40 years and his impact on the baking industry. Meeting participants congratulate John and reflect on fond memories they have of him. They approve Nick's resolution to honor John.

Nick Pyle presents his 2022 midterm election outlook. Nick says the 2020 election came down to six counties in Pennsylvania, Nevada, Arizona, Michigan, Georgia, and Minnesota. These six states plus Florida will be the battlegrounds in the 2024 presidential election. Others are too far behind to be factors. For 2022, there are 34 Senate seats up for election, of which 20 are republican and 14 are democrat. There are five republican senators retiring with no democrats announcing retirement yet. On the House side, there are currently 221 democrats and 212 Republican held seats. Nick

predicts a “free for all” in 2022 House races. The Census redistricting, which is due in August, will play a major role. California may lose a seat for the first time in history.

BakePAC, IBA’s Political Action Committee, was involved in 28 races during 2020. Of those elections BakePAC supported, we won 88% of House incumbents, won 43% of Senate incumbents, won 66% of House open seats and won 33% of Senate open seats.

Nick Pyle and Elizabeth Velander move on to the Washington update. The first issue is worker classification under federal law, specifically how to determine whether a worker is an “independent contractor” or an “employee” for purposes of the Fair Labor Standards Act (FLSA). There is no uniform test to determine whether a worker is an employee or independent contractor at the federal level. Most federal laws use the common law “control” test, but the FLSA uses the “economic realities” test, which relies on multiple amorphous factors.

The Trump Administration tried to clear up some confusion around this test, publishing a final rule in the *Federal Register* in January that makes it easier for businesses to classify their workers as independent contractors who are not protected under the FLSA. However, the Biden Administration is now proposing to rescind this rule, along with another Trump Administration rule on “joint employers.” The joint employer rule makes it harder for businesses to be held liable as a joint employer when their franchisees or contractors violate the FLSA.

IBA is very concerned about these efforts, as they risk upending many business models that utilize independent contractors. IBA recognizes that this is a trend at the state level as well, so it retains lawyers in both New Jersey and New York to oppose any measures that would turn many independent contractors into employees. The worst-case scenario would be the widespread adoption of California’s highly restrictive “ABC” test. IBA’s goal is to have more jurisdictions adopt the common law “control” test.

IBA supports the “Modern Worker Empowerment Act,” introduced in both the U.S. House and Senate this session. This bill would amend the FLSA to harmonize the definition of employee with the common law. Unfortunately, the “Modern Worker Empowerment Act” is competing with the “Protecting the Right to Organize” (PRO) Act. The PRO Act is a pro-union bill that adopts the “ABC” test for purposes of the National Labor Relations Act (NLRA). Furthermore, the PRO Act would drastically restructure America’s labor laws resulting in economic upheaval that would cost millions of American jobs, threaten vital supply chains, and greatly diminish opportunities for entrepreneurs and small businesses. Elizabeth offers a brief snapshot of the most concerning provisions of the bill, including, but not limited to removing workers’ right to a secret ballot and instituting “card check,” handing over confidential employee data to unions without consent, eliminating state “Right to Work” laws and allowing forced union dues.

Elizabeth notes that many of the bill’s provisions would implement policies that have previously been rejected on a bipartisan basis in Congress, overturned by the judicial system, and withdrawn by federal agencies. In a National Association of Manufacturer’s survey, 97% of respondents familiar with the PRO Act said it would negatively impact operations and damage relationships with manufacturing workers. The U.S. House of Representatives passed the PRO Act, but the bill faces opposition in the Senate and is not likely to pass without democrats abolishing the filibuster.

Elizabeth Velander moves to the federal government’s efforts to increase safety in the workplace. She points to the \$75 million given to OSHA as part of the American Rescue Plan (ARP), which is expected to boost auditing and enforcement of workplace safety rules. OSHA recently released a National Emphasis Program (NEP) that targets industries where workers are at a high risk of contracting COVID-19, including food manufacturing. The Biden Administration is also expected to issue new temporary rules this week to mandate at least the CDC and OSHA guidelines, which recommend that workers wear masks and maintain six feet of distance, even after vaccination. She advises that employers should prepare themselves for potential increased OSHA enforcement efforts.

Elizabeth says that employers should be cautious if they choose to mandate that employees be vaccinated. Although the Equal Employment Opportunity Commission (EEOC) suggested that employers may mandate employees be vaccinated, a mandatory vaccination program could be difficult to enforce without potentially violating various laws, such as the Americans with Disabilities Act (ADA) and Title VII of the Civil Rights Act of 1964. If employers mandate or strongly encourage their employees to be vaccinated, they will need to make exceptions to avoid violations of the ADA (due to an

employee's medical contraindication for vaccination) and Title VII (due to an employee's sincerely held religious belief). At bottom, they should ensure that employee information remain confidential.

Nick Pyle moves on to school nutrition. Nick confirms the Child Nutrition Reauthorization Bill will occur this Congressional session. This covers the Child and Adult Care Feeding Program, School Breakfast Program and School Lunch Program. The last update to the Child Nutrition Reauthorization Bill occurred in 2010 and new nutrition rules will need to be adopted in line with the new Dietary Guidelines for Americans.

Elizabeth Velander next discusses food labeling. While the Nutrition Facts Panel compliance date was January 1, 2021, FDA will not focus on enforcement actions for manufacturers with less than \$10 million in annual food sales this year. The National Bioengineered Food Disclosure Standard compliance date is January 1, 2022. IBA and other members of the Food and Beverage Industry Alliance sent USDA a letter requesting that it exercise enforcement discretion for products that do not yet bear the disclosure on their label or in labeling materials for an additional year until January 1, 2023.

Elizabeth mentions that Post Consumer Brands recently settled a lawsuit accusing it of making misleading health claims on its cereals. As part of the settlement, Post will no longer use labeling terms including "no high fructose corn syrup," "less processed," "wholesome," "smart," and "nutritious" on products where 10% or more of the calories come from sugar. Kellogg shelled out \$20 million to settle a similar lawsuit that claimed its use of the term "lightly sweetened" on its Frosted Mini-Wheats and Smart Start cereals was misleading. However, a similar lawsuit against General Mills was dismissed in 2019 because the judge ruled consumers "cannot plausibly claim to be misled" about the sugar content since products had clear labeling on package fronts and sides.

Also in the labeling realm, Elizabeth notes that the FASTER Act is expected to pass Congress this session. The FASTER Act would require that sesame be labeled as an allergen on packaged foods. This would make sesame the ninth food allergen for which the U.S. Food and Drug Administration (FDA) requires plain-language labeling.

Nick Pyle turns the discussion to IBA's Sugar Refund Program, which continues to produce strong results. IBA's infographic video has over 10,000 YouTube views over. Many people who follow Sugar Refund on social media have written their members of Congress on our behalf of sugar. The Sugar Refund campaign will be active until the Farm Bill is completed.

The meeting concludes with a roundtable discussion on baking issues. **IBA Member Glenn Campbell** of Campbell Systems talks to the group about combustible dust regulations. While bakers have not been looked at as closely as other manufacturers, there are occasional instances where OSHA has come down on bakers for this issue. Glenn references new NFPA in 2015/2016 that streamlined multiple regulations concerning combustible dust. Campbell stresses bakeries must do dust collection if dust is emitted. At the end of 2020, every bakery must now have Dust Hazard Analysis. Campbell suggests bakers look for dust sources, dust control and open electrical plug ins. Flour dust, however, is barely explosive. No meeting participants have yet to deal with OSHA on this issue. Please reach out to glenn@campbellsystemsinc.com with any questions.

Elizabeth Velander surveys IBA members to see if they were having palm oil shortages. Representatives McKee Foods and Turano Baking Co. said they have not experienced any shortages yet, but the issue is on their radar. Elizabeth explained that palm oil shipments from Malaysia are being detained by Customs and Border Patrol (CBP) due to forced labor concerns. Elizabeth is working with a coalition of industry, associations, and regulators to address this issue.

Hearing no further issues for discussion, Dan Mulloy concludes the meeting at 3:41 pm EDT.

Respectfully Submitted,

Chris Mulloy, IBA Secretary