

# Employee Voice:

## Unionization in grocery cooperatives

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As cooperative grocers observe an increase in unionization drives, many have voiced questions about the process and the best response. Cooperative principles, including democratic control, economic participation, and concern for community theoretically make cooperative grocers and unions natural allies.

Like cooperatives, unions typically embrace democratic methods of leadership. They value economic participation and seek to ensure that employees providing a service receive a fair share of the economic benefit. Likewise, unions are often involved in their communities, whether by involvement in supporting local nonprofit organizations, assisting in local political campaigns, or providing space and in-kind support to the communities. One example of the latter is the support provided by the United Steelworkers to worker-consumer cooperative initiatives in Cincinnati, Ohio.

In light of such shared values, while some commentators and even board members initially react to unionization with concern that it will interfere with the cooperative's business, managers and board members may find that handling the process well can generate benefits to both the cooperative and its employees.<sup>i</sup>

In fact, fair labor standards are another of the values held in common between unions and consumer grocery cooperatives. Many cooperative groceries offer fair trade products, because the production workers involved receive fair benefits and working conditions in exchange for their labor. Thus, it is natural for employees of cooperatives selling fair trade products to desire a formal process to ensure their own fair labor conditions.

In theory, many cooperative grocery managers and board members may not object. In practice, however, unions may use disruptive tactics developed in campaigns against large corporations that display little concern for the co-op employees. In response, some cooperatives unfamiliar with the legal process of union organization in the United States may inadvertently commit errors. Thus, a relationship that could be collaborative and serve all parties may become unnecessarily antagonistic.

This article is intended to assist in the development of a collaborative and mutually beneficial relationship. For example, the co-op employees at the Wedge and Linden Hills in Minneapolis (now merged under Twin Cities Co-op Partners), and Central Co-op in Seattle are unionized and successfully cooperate with management to address their needs.

### Honoring employee rights and avoiding pitfalls

Pursuant to the National Labor Relations Act (NLRA), employees have the right to form, join, or assist labor organizations, to bargain with representatives of their choosing, and to engage in collective activity for the purpose of bargaining and improving working conditions.<sup>ii</sup> This means that employees may speak freely about forming a union, hold union meetings during breaks and off hours at the workplace, distribute union literature in break rooms or lunchrooms, and use social media to communicate. They may act collectively, such as signing a petition, delivering a letter to management, or even conducting a rally to voice concerns.

It is the employees' choice whether to have union representation. To ensure that employees make this choice without undue pressure, the NLRA forbids employers from interrogating employees about their union support, engaging in surveillance of their employees' union activities, dominating the formation of a union, interfering with employees' rights to act collectively, and discriminating against union supporters.<sup>iii</sup> A violation of the NLRA is an unfair labor practice, and a charge complaining of the practice may be filed with the National Labor Relations Board. Such charge may be filed both to correct an employer's (or union's) wrongdoing, but also as a precursor to protest the alleged misconduct, or to circulate publicity against the cooperative.

Cooperatives, whose managers and directors embrace collaboration, must therefore take care not to commit an unfair labor practice by discussing with employees their desire for a union. The seemingly harsh restrictions detailed in the previous paragraph exist to ensure that employers cannot bully employees into voting against the union—a common practice in less collaborative workplaces.

Thus, cooperative grocery managers and board members should not ask who is responsible for the union campaign, monitor employees' conduct, or even ask employees what issues led to interest in the union. Managers and board members should not take any action against employees for involvement in the campaign—rather, they should respect that unionization is the employees' decision. If board members or managers strongly desire to communicate with the employees, it may be helpful to do so in the presence of a union representative.

Managers and boards are not, however, prohibited from all communication. They may share opinions on whether they believe unionization is right for the store, and while they cannot dominate the employees' choice, they

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can articulate a preference for one particular union over another. Managers and board members can explain that once a union is chosen, the parties are obligated to bargain, but that employees will have no guarantee of improved employment terms from bargaining. No employment terms are guaranteed, nor can either side force an agreement with specific terms. Managers and directors should refrain from threatening specific consequences of unionization, such as decreased benefits, or increased employee discipline.

### The NLRB and union elections

To obtain an election to form or join a union, the union or employees must file a petition for representation before the National Labor Relations Board (NLRB)<sup>iv</sup>. While the union should provide the employer with a copy of this petition, employers will also be contacted by an employee of the NLRB to schedule an election. Typically, the employer will also receive a notice of hearing, which sets a date for the NLRB to conduct a hearing. Such hearing is only necessary if the parties disagree on the appropriate bargaining unit of employees eligible to vote.

If the bargaining unit, or group of employees sought to be represented, is an appropriate one, the NLRB will encourage the parties to enter a consent election or stipulated election agreement. In both types of agreement, the parties waive the right to a pre-election hearing. In a consent election, any post-election disputes are decided by a NLRB regional director. Pursuant to a stipulated election agreement, such a decision may be appealed to the full National Labor Relations Board.

Under either agreement, the employer should have the opportunity to dispute the unit and proceed to hearing—or agree to an election, including agreement on details such as election date, time, and location(s). Any initial hearing, if needed, happens fairly quickly, as does the election itself. Research shows that in a traditional workplace, the greater the delay, the greater the opportunity an employer has to influence employees' votes. Given the imbalance of power between employers and individual employees, national labor policy is intended to provide employees an environment in which to freely make their own decisions about unionization.

### Suggested forms of communication

A common dilemma faced by a consumer cooperative grocery is how best to communicate with its member-owners during a union organizing drive. Again, it is important for managers and board members to respect the employees' choice, although they may articulate a preference.

A safe approach may be a joint communication with the union, informing cooperative members that employees have chosen to have an election held to determine whether they wish to have union representation and that the cooperative will respect the decision. The parties could include the timeline set by the NLRB for an election. They should also explain that if the union is elected, representatives of the cooperative and the union will then negotiate over terms of employment.

If a joint communication is not possible, any communication should be kept factual to avoid allegations of interference or coercion. Managers and directors can inform cooperative members that an election petition has been filed, that an election has been held, and that the co-op will respect the employees' decision. If unions publish negative opinions about the co-op, board members may inform the members of their belief that they have complied with the law. Managers can assure member owners that the cooperative plans to continue providing the best service and products possible. Of course, managers and board members may also seek input from the co-op's member owners.

### Tactics to promote a collaborative approach

Because of the similar values of cooperatives and unions, there is great opportunity for cooperative unionization to be collaborative. Yet sometimes it can be the union that takes an initially antagonistic approach. (This is understandable, since in the cutthroat capitalism of today's economy, unions typically encounter an extremely harsh and often unlawful response to their presence.)

One potential approach could be to immediately reach out to the union in a campaign, suggesting a meeting with the union and employee representatives. The co-op could explain that it will not interfere with employees' rights, but also encourage the union to likewise refrain from antagonistic tactics.

Another approach is for the parties to enter into neutrality agreements, in which an employer agrees to remain neutral in employee organizing efforts. In return, agreements can require that the union refrain from picketing, conducting a rally, or disparaging the employer. They can include a requirement that either side provide 48- or 24-hour notice (or any other time frame) before any protest, or before either party involves the press or outside third parties. In other words, the terms of these neutrality agreements can be negotiated.

If the cooperative is struggling to create a healthy working relationship during the unionization process, it may consider calling in a mediator to assist the parties in moving forward. There are a number of private mediators, attorneys, and consultants available for this service. The cooperative could also consider contacting the Federal Mediation & Conciliation Service.<sup>vi</sup>

Most modern collective bargaining agreements have evolved from contracts initially created in industrial settings. Once employees have elected union representation, the cooperative can negotiate contract terms that better respond to its needs. Perhaps employee cross-training is necessary, or a grievance procedure different than the existing boilerplate language might be needed. While the cooperative cannot dictate how the union conducts business, it can propose that employees have a role in negotiations and/or dispute resolution. Co-ops should also consider proposing labor-management committee meetings, where problems can be resolved without use of a formal grievance process.

### Conclusion

A union organizing campaign can be an emotional time. Cooperative managers and board members should not take any employee or union actions personally, and should refrain from responding to employees with retaliation. Instead, they could embrace the similarities between cooperative values and the democratic nature of employees having union representation. Unions give a voice to employees—a voice that, along with those of cooperative member-owners, deserves to be heard. □

<sup>i</sup>See, e.g., "Let's Talk About Unions in Co-ops," by Heather Wright, CG #181, Nov.-Dec. 2015.

<sup>ii</sup>National Labor Relations Act ("NLRA"), 29 U.S.C. § 157.

<sup>iii</sup>NLRA, 29 U.S.C. 29 U.S.C. § 158.

<sup>iv</sup><https://www.nlr.gov>.

<sup>v</sup>NLRB Rules and Regulations, § 102.62. The advantage to a consent election is generally to obtain finality in a shortened time frame, alleviating lengthy litigation.

<sup>vi</sup>FMCS is a federal government agency, with information available at <https://www.fmcs.gov>.