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## Member Labor, Member Loans Threatened

### *La Montanita and Co-op Food Fair*

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During 1990, long-standing but little noticed regulatory threats to member labor and member loan programs were carried out against cooperatives.

At La Montanita Co-op Supermarket in Albuquerque, New Mexico, members formerly had the option of working for three hours per week in exchange for an 18 percent discount on purchases. An order by the Department of Labor to pay all such workers a minimum wage, and the threat of further legal obligations around workers compensation and taxation of employees, forced the co-op to radically reduce its working member program. The full story at La Montanita is presented in the following article.

A similar threat to apply minimum wage requirements was received by Co-op Food Fair in Independence, Missouri. Food Fair has about \$3 million in annual sales, comparable to La Montanita, but a much smaller paid workforce of about 20 employees. At Food Fair, the DOL visit was a followup to a year-old issue involving overtime pay for salaried employees. Food Fair has about one hundred participants in its "Gold Star member labor program, mostly low income and retired seniors. In this co-op, members earn a 5 percent discount in exchange for 3 hours of work per week. When the visiting official first mentioned enforcing minimum wage requirements for these members, said general manager Bill McCurry, "My first reaction was, 'You must be joking!'" Unfortunately, she wasn't.

Interestingly, in both cases the attention of DOL officials was first brought to bear on the co-op's member labor program through the initiative of an employee or former employee.

In a separate area, additional concerns about the vulnerability of co-op member programs have been raised by a U.S. Supreme Court decision which held that promissory notes issued by an Arkansas co-op should be subject to securities regulations. Meeting securities requirements can be a very expensive and involved process, and most cooperatives ignore these laws -- but not necessarily with impunity. See "Member Loan Legal Issues," *CG* #35.

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#### **By Robin Seydel**

On May 25, 1990, the Department of Labor, a federal agency, gave La Montanita Co-op Supermarket thirty days to cease its coreworker program. Through the program, co-op members could work in the store for three hours per week for an 18 percent discount on their purchases. The program, much like that found in co-ops across the country, was an integral part of the co-op, encouraging membership and creating the feeling of community.

Approximately one and a half years earlier, the Department of Labor (DOL) had come to the co-op for the first time on a routine check of our records. These inspections occur, the DOL said, when a business reaches a specific size. At the time, we had over 60 employees and were nearing \$3.2 million in annual sales. On that visit, the DOL found a few errors in our handling of comp time and overtime.

About a year later, the DOL returned to see that we had corrected our errors. At the time of this visit, the coreworker program was brought to their attention. After reviewing the program, the DOL gave the co-op thirty days to guarantee that every "volunteer" receive minimum wage for their work through the discount, or to cease the program.

We hired Eric Sirotkin, an attorney specializing in labor law and a longtime co-op member, to file a request for an extension. In all, two extensions were granted.

From late May through early August, a task force worked to think through our options and gather information. The task force included members of the board of directors, staff, coreworkers and other members. The issue was further discussed at a June general membership and was addressed through the newsletter and in a series of special mailings to members. During the course of our information gathering we recognized that even if we won what could be a long and costly court battle, the DOL could still force us to cease the program in the related areas of worker's comp and tax issues (FICA, FUTA).

For a period of time, members of the task force were leaning toward organizing to secure a legislative exemption to the Fair Labor Standards Act. It would take a concerted national movement of co-ops to get an exemption to this federal law, passed by Congress. We spent a good deal of time calling co-ops around the country to get a feel for the kind of support we would have. The responses weren't encouraging.

Most co-ops were not interested at the moment or did not have the resources to support the nationwide effort it would take.

Faculty at the Center for Cooperatives at the University of Wisconsin had at one time organized to create a similar exemption. The process of getting the bill in and out of federal legislative committees and tacked onto a major bill had so watered down the original exemption, they told us, that it was hardly recognizable -- and the bill was defeated. Another piece of pertinent information caused us to stop and think: winning even the watered down version of the bill would have placed co-ops among some of the most corrupt and abusive business interests in the nation -- not a particularly palatable thought for any of us.

As we pieced together the information, it seemed that the most sensible option was to create a member participation program that complied with the restrictions set out in the Fair Labor Standards Act. The DOL had made it extremely clear that we could not have members working in the store in what they deemed hourly wage positions; these include repacking, bagging, unloading trucks, etc. Interestingly, the DOL said utilizing volunteers in this manner gave us an unfair advantage over commercial supermarkets.

In consultation with Eric and after a survey of coreworkers and members, we created a program that we feel is in compliance with the law and that enables members to work on board and outreach committees. These board and outreach committees utilize the executive privilege aspect of the law, and we feel that this is in compliance. Board committees include membership, education, outreach, senior citizen and special needs, finance, elections. Outreach projects include working with the public schools, senior centers and other organizations to conduct education and information sharing on nutrition, natural foods and the cooperative way, as well as tours of the co-op and education on food irradiation, sustainable/organic agriculture, and consumer awareness.

There is another member participation option, that of "skilled" members, who have certain skills for which they are paid elsewhere. They may use those skills for the co-op in exchange for a purchase discount. This aspect of the program is similar to an independent contractor relationship.

Co-op members and more specifically coreworkers went through a period of rage when their program and discount were threatened. During this period, their anger was often misdirected at the co-op itself and at some of the staff and board in particular. For some, this was one of the more difficult aspects of the problem.

On August 7, members met to vote on what they wanted the co-op to do. Anger aside, the members came together in an almost unanimous vote to avoid the expensive court battle, cease the coreworker program as it was, and come into compliance with the DOL. They also voted to begin the new member program consisting of the two forms of participation just described.

Since that time, member participation has dropped considerably. However, there are some members that are participating in the new program, and their numbers are growing. An increasing number of skilled members have offered their services and are being integrated into the co-op workforce as needed. Members who work either on committees or as skilled participants still work three hours for an 18 percent discount (good for three weeks). Board members, committee chairpersons, and the member participation coordinator work together to record member participation and to ensure that members get their shopping credit. Each household may participate on only one committee for discount credit, but members are encouraged to be as active as they wish.

Staffers and members alike still miss the old coreworker program. However, as more and more members become accustomed to the new program, good work is being done for the co-op and for the community.

See also "Member Labor Legal Issues," in CG #42 September-October 1992.

*See other articles from this issue: [#032 January - February - 1991 \(/issues/32-january-february-1991\)](#)*