

## **An Open Letter to East End Food Co-op Members Regarding the Decision to End Our Volunteer Program**

By: Heather Hackett, Marketing & Member Services Manager

I've spoken a little bit with some of you at the Annual Meeting and elsewhere about the decision to end the Co-op's Volunteer Program. First and foremost, what I'd like to say is that this decision was not taken lightly, and it's not an outcome that's benefitted anyone or that anyone was happy to see come to pass.

In the last few months I've heard people talk about "both sides" of this issue and really, I don't think that's an accurate portrayal of this situation. This isn't an issue with a right or wrong answer; a for or against side. I was a volunteer myself and the program was housed within my department, so it's been no small thing for me to accept the necessity of this decision – as well as to grasp the ramifications for our membership and for our Co-op. We're all owners of this Co-op – and if there's one thing I think that we can ALL agree on, it is that we are ALL feeling the loss of the program.

I'm glad that we were able to create another opportunity to gather together to discuss this very important topic, and I was encouraged to see so many folks present. As we determine where we go from here, the Co-op can only benefit from the involvement and feedback of our members.

At the meeting on November 6<sup>th</sup>, several members shared reasons why they believe we should have retained the program, or approached the decision differently. One document that's been circulated in support of this perspective is a list of 86 co-ops that still have member-worker programs. But what I think is important to share with you is that those co-ops aren't the whole story. The reality is that many co-ops in the country have ended their volunteer programs, including our closest neighboring food co-op located in Erie, PA.

The Neighborhood Food Co-op in Carbondale, IL, is a co-op that ended their program just a few short months before we did. Their board's communications to members included the following reason: "Because the working owner does not comply with the Fair Labor Standards Act."

They went on to say: "While we are sad to bring the program to a close, the board's responsibility is to ensure that we are running a legally viable business. We recognize that working owner programs have long been a part of the cooperative tradition, and an example of cooperative values, but without a change in federal or state law, we cannot continue the working owner program."

Other co-ops with longstanding volunteer programs have also been finding ways to modify their programs in efforts to make them more compliant with legal regulations. The most common method is by altering the program to be community service based. We were well aware of this

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trend when we began our initial exploration of establishing our own community service based program. There are 2 key examples I'd like to highlight here:

### La Montanita

La Montanita is a co-op in New Mexico that features a thriving community service based program. They developed this program after coming under scrutiny from the Department of Labor (DOL) in 1990 and were given 30 days to dismantle their in-store member-worker program.

This co-op invested significant time in exploring ways to fight back and according to staff member Robin Seydel, at the time they determined that "even if [they] won what could be a long and costly court battle, the DOL could still force [them] to cease the program in the related areas of worker's comp and tax issues."

At the time, their co-op sought to create a concerted national movement of co-ops to get an exemption in the Fair Labor Standards Act for co-ops, and knew that such a measure would have to be passed by Congress.

As Robin reported at the time: "Most co-ops were not interested at the moment or did not have the resources to support the nationwide effort it would take." As a result, they established their community service based program and though they feel it's in compliance and it was a significant enough change at the time that the DOL didn't pursue further action, according to our legal counsel and others, it's still not 100% guaranteed that this program is legal.

### City Market

City Market in Vermont is another co-op that has begun the process of dismantling their in-store volunteer opportunities, but plans to maintain a community service based program. Not only was I aware of their program at the time that we began to explore our service-based idea, but they were actually directly consulted in how such a program might work in terms of establishing the relationships with non-profits and how to administer benefits.

It is true that they feel their program is compliant, and they've spoken publicly on the topic, but given the constraints of the law, and the fact that it has not yet been tested, it's still a gray area that can't be considered a certainty.

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And unfortunately, it seems that most co-operators I have talked to have found themselves in a similar situation, where they want to believe they're operating legally and would not ever plan or want to put their co-op at risk. In addition, frankly, some co-ops are also just not aware of the risk. This includes a number of start-ups that have contacted us since this decision was announced publicly, and others that have just recently become aware of the risk but have retained their programs with the hope that it never comes under scrutiny. Even just this past month at a cooperative event in Philadelphia I heard from a board member at a co-op with a program who said, "Well, hopefully they don't come after us anytime soon..."

It is due to this uncertainty that our board and GM made this decision on our behalf. Though it's easy to see why some folks disagree, or feel confused about why other co-ops are continuing to do what we are saying we cannot, what we feel is that it is a risk we cannot afford to ignore.

And it's a risk that a lot of newer co-ops getting started have also recognized as one that isn't worth taking. Primarily, I'd like to make note of the Monadnock Co-op, located in Keene, New Hampshire. Incorporated in 2010, this co-op's board contracted with the National Cooperative Grocer Association (NCGA) Development Co-op to plan the co-op's store design and layout, project fundraising, and guide management through the first three years of operations.

For those of you who are unaware, NCGA is a business co-op of which East End Food Co-op is also a member. NCGA represents over 143 food co-ops operating over 190 stores in 38 states with combined annual sales of over \$1.7 billion and over 1.3 million consumer-owners. They support a number of the co-ops on the list that's been compiled of places retaining their programs. But in the instance in which they had their hands deeply involved in the development of a start-up co-op, the end result was a co-op that did not have a working-member program.

Monadnock's website addresses this via a Q&A for members on this topic:

***Q: Why don't we have a member worker program like other co-ops?***

***A: Some food co-op's offer a "working member" program, where individuals volunteer to receive discounts on their co-op purchases. While there are pluses and minuses to this type of program, generally the national trend and recommendation is to avoid this program. Our co-op chose not to implement a discount program for the following reasons:***

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- *Our Co-op is committed to providing fair wages and good benefits to our employees. Member worker programs often do not pay a minimum wage (in the form of a discount) for the work provided. Not only does this not fit within our values, it's against the law and some Co-ops have been fined for violations by the Department of Labor.*
- *Many stores have found it very difficult to keep volunteers up-to-date on the co-op's current rules, regulations and policies, as well as sufficiently trained on giving great customer service, when they only work 1 or 2 hours a week or month.*
- *We would have to cover volunteers under our workers compensation insurance, which can be very difficult if not impossible to do.*

Though I realize that what one co-op does will not indicate what's best for all co-ops, let alone our Co-op, I want to make sure that folks understand we are not going out on a limb with this decision. And we are not inflating the risks any more so than other co-ops seeking to eliminate or modify an existing program, or those avoiding instituting such a program.

If you ask me, if we want to impact a real change for not just our co-op, but for all co-ops, the way to do that isn't to argue about the decision we made here, but rather to examine the regulations that are causing many co-ops just like ours to make similarly difficult decisions and put our efforts towards reshaping those regulations in a way that supports the cooperative movement as a whole. And perhaps that's something we can begin to explore in moving forward.

In closing, I want to note that we haven't given up on the idea of a volunteer program. While we can't make any guarantees that we'll be able to find alternative arrangements that preserve the spirit of our program, we will work with legal counsel and other co-ops to explore any opportunities that exist. It does not seem likely that a program that could be established would resemble the one we are accustomed to having, given that even the co-ops championing their programs have steered clear of such formats. But if a community service based program is deemed possible and within a reasonable level of liability, then we will certainly continue the work we had already begun on establishing that program with great enthusiasm. We welcome your input if you have done research on this topic, or have ideas. If you would like to share any ideas or feedback, you can reach me at [memberservices@eastendfood.coop](mailto:memberservices@eastendfood.coop).

*\*Note from the author: this publication was adapted from my speaking notes for the Volunteer Program Discussion Meeting on 11/06/2014. Because my speaking opportunity was cut short I have decided to share these ideas with members online. The references for all quotes and information are available through the various articles linked on our website.*