

The Honest Weight Food Cooperative

- The HWFC is Incorporated under the New York State Cooperative Corporation Law and the New York State Business Corporation Law.
- Since its inception in 1976 it has functioned as an owner operated cooperative, with members providing financial investment, labor and management.
- Over the yeas HWFC has grown from our original 20 worker owners to approximately 1200 worker owners.
- We have moved from our original Quail Street location, to Central Avenue, to our current location on Watervliet Avenue, each move an expansion and tribute to our success as an owner operated co-op.
- With expansion, employees were hired to supplement, and NOT supplant the owner workers.
- The Co-op is ruled by our Bylaws, which make members our lifeblood.

Board Action of October 20, 2015

- The Board met and voted : “Consistent with the ByLaws Task Force recommendation, the board will end member labor on the floor and administration by January 1, 2016. The Board will make a good faith effort to engage the membership in the process.”
- A Notice of this action was placed on the bulletin board late Friday afternoon October 23, no e-mail or other means of notice sent to members.
- The Board has, since last week scheduled any “informational” meetings to justify their improper action and to JUSTIFY ENDING WORKER OWNERS.
- The Board has relied upon legal advice that we might not be in compliance of “the law.” No specific Federal or state law, statute, regulation or case has been cited.

Our Membership Position

- Neither the Board nor their attorney have cited any relevant Federal or New York State statute, regulation, administrative rule or case law which states that HWFC as currently functioning, is illegal or non-compliant.
- **At best** the Board states we MIGHT not be in compliance with “applicable laws” but never state what those laws are, other than the FLSA (minimum wage).

- As a duly authorized and registered Co-op in the state of New York, we are by definition a: business owned by and democratically controlled by the worker owner member. This is reaffirmed by our own ByLaws: these members govern the Co-op.
- In order for employment regulations to be imposed on a business there must be a legitimate employer-employee relationship to regulate.

Legal Argument

- Cooperatives are entitled to different tax and regulatory treatment than other types of entities. Liggett v. Lee 288 U.S. 517,579.
- Under the cooperative association form of organization, the worker members supply their own capital at their own risk; select their own management and supply their own direction for the enterprise...and then receive the fruits of their co-operative endeavors. Puget Sound Plywood v. Commissioner 444 T.C. 305, 307-8.
- In Fleming v. Palmer, 123 F 2d 749, the federal Court of Appeals found that members of a co-op were subject to the FLSA (Fair Labor Standards Act) BECAUSE THE BUSINESS WAS A SHAM CO-OP THAT HAD PREVIOUSLY BEEN A REGULAR FOR PROFIT CORPORATION.
- In Fleming the Court found that there was no true Co-op because the business was **not** controlled by the member workers. Our Co-op has ALWAYS been controlled by the worker members. (See HWFC ByLaws sec. 330.1)

Legal Argument (cont.)

- In Fleming the main issue before the court was whether the business was controlled by the worker members or the incorporators. HERE MEMBERS CONTROL.
- Most significantly, in Fleming the government wanted the court to rule on the application of the FLSA to cooperatives controlled by members.
- The court declined and said this was “unnecessary” and declined to rule on the issue. (Id. 762.)
- By implication, if the court made a distinction between a sham co-op and an co-op actually controlled by worker members to reach the conclusion that the FLSA applied to a sham co-op, then it does not apply to a true worker owner co-op. Otherwise, why make the distinction.

- No Court since then has ruled that there is a blanket application of the FLSA to a true cooperative.

Legal Argument (cont.)

- The employment status of members of worker cooperatives has been specifically addressed by the NLRB (National Labor Relations Board) where cooperative members are included within an “employee” group created to negotiate with Management.
- The question before the NLRB was the degree to which the member workers were empowered to implement the policies and practices of the business. Worker-members found to have an “effective voice” were generally NOT considered to be employees. Brookings Plywood Corp. 98 NLRB 794, 788-89.
- This distinction between employees and worker owners was confirmed and expanded in United Furniture Co. 67 NLRB 1307.
- The KEY test is, “does the worker owner control the co-op?” WE DO.

Conclusion

- There is no applicable Federal or New York State statute, regulation, administrative rule or case law which states that HWFC as currently functioning, is illegal or non-compliant.
- The HWFC has received no inquiry or notice from any Federal or New York State agency that it is not in compliance with “applicable laws.”
- The Board has unilaterally voted to end the worker owner program and remove members from the floor and management without any direct or indirect threat from a governmental regulatory agency.

Conclusion (cont.)

- The current Board seeks to terminate worker owner participation and control by:
 - A.) Expanding voter rights (read “control”) to non-working members so as to eliminate worker owner control and place us under the case law cited above, thus effectively ending our existing program.
 - B.) Placing all power and decision making in the Board and Management, thus dis-embowling the cooperative, leaving only the corporate structure.

Fear is a Powerful Tool against the Uninformed

- The Board has disseminated information implying that they acted out of “fiduciary duty” but fails to mention that this duty runs to the very worker members whom they seek to eliminate.
- The Board has suggested that the State Labor Department is going to fine member owners “jointly and severally” and that everyone is individually exposed to hundreds of thousands of dollars in damage. This is a fiction!
- There is no Labor Department fine and there is no history WHATSOEVER of the New York State Labor Department taking punitive action against worker members of a legitimate co-op.
- The precipitous actions of the Board are based upon nothing more than rumor, innuendo, and “legal advice” sought with questionable motive.
- Do not let the secrecy surrounding the Board’s emergency actions intimidate you.

YOU ARE THE CO-OP!