# INSIDE THE COOP HEARING PROCESS

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By Jess Powers

*This story is the second of a two-part series on the dispute resolution process at the Coop. See also: How the Dispute Resolution Process at the Coop Works.*

In the first part of this story, I reported on the rules and procedures of the dispute-resolution process and interviewed members of the Dispute Resolution Committee (DRC). While *Gazette* reporters are assigned to cover hearings, a few high profile "cases" and member comments at General Meetings (GM) suggest that there is murkiness about the dispute-resolution process, especially because the DRC sometimes asks the *Gazette* not to publish the story. This raises a question of the appropriate balance between respecting confidentiality and being transparent to Coop members. How much should members know about uncooperative behavior by fellow members?

When there is a grievance at the Coop due to issues such as theft of time or product or, more recently, due to lack of compliance with mask wearing, members can file complaints. Complaints are investigated by the DRC, parties and witnesses are interviewed and all stakeholders seek a resolution. At times, the process can clear up an interpersonal misunderstanding. In other cases, a letter provides a gentle warning that the behavior cannot continue because it violates Coop rules.

Of the 20 or 30 cases annually, only two or three escalate to a hearing, generally because the behavior is ongoing and not remedied by the investigation process. Hearings are scheduled by the Hearing Administration Committee, conducted by the Hearing Officer Committee, and observed by a panel of randomly selected Coop members (the Hearing Group) and a *Gazette* reporter.

The hearing is the most legalistic part of the dispute-resolution process and can result in termination of Coop membership. Out of respect for the confidentiality of the accused, the other people involved in the process can't openly comment on the proceedings. The accused person can publicly complain that the process is unfair. But unless he or she is willing to have an open hearing, the other members involved are in an untenable position because they can't speak about the case.

For these reasons, the hearing can provoke controversy. As our society examines failures in the criminal justice system and adversarial legal processes, how might the Coop re-think its own hearing system, with dual goals of preserving order and respect

at the Coop and holding people accountable, with care?

> “SOMETHING HAS TO BE DONE WHEN PEOPLE ARE UNCOOPERATIVE. IF THERE WASN’T THIS PROCEDURE, HOW WOULD THAT HAPPEN?”
>
> *ANDY FELDMAN, COOP MEMBER SINCE 1979*

## TRANSPARENCY AND COOP PECULIARITIES

Some members of the Hearing Officer Committee (HOC) did not respond to requests to be interviewed for this article; another responded to a few questions by email. A second HOC member commented anonymously that addressing previous cases or decisions would be “in tension” with the committee’s objectives of confidentiality and impartiality. Considering that the *Gazette* is a primary vehicle to share information with membership, this seemed like an unusual position.

At the January 2022 GM, new rules were passed to publish the names of committee members on the Coop website, to require annual or twice-a-year updates on committee activities at the GM (depending on how “essential” the committees are), and to require committee updates in the *Gazette* at least two times a year.

Andy Feldman, a professional photographer, part-time family court mediator and Coop member since 1979, volunteered to help create the initial grievance process. (I first met Feldman 15 years ago while working at a nonprofit that provided mediation services.) He recollected a GM where two Disciplinary Hearing Committee members (as it was then called) were up for re-election. One of them was unable to attend the meeting and received more votes than the candidate who was present. “The curmudgeons had a target,” he mused. In other words, people tend to lash out when a process is closed, whether intentionally or not.

## WHAT DO HEARING ADMINISTRATORS AND OFFICERS DO?

The Hearing Administration Committee (HAC) schedules the hearing and venue and manages logistics and administration on the day of the hearing. They receive a list of 200 randomly selected Coop members and contact them by phone or text to serve on the Hearing Group. By most accounts, the role of the Hearing Officers Committee (HOC) is limited. They ensure that the hearing runs smoothly. Any Coop members who participate as witnesses only attend for the duration of their testimony. The Hearing Group—a panel of Coop members that is different every time—decides whether a member violated the rules, and it is the HOC that ultimately decides the consequences of their actions.

Dominique Bravo, an attorney and associate executive director of the Center of Race, Law and Justice at Fordham Law School, was a member of the HAC years ago and recently rejoined. She explained that at a hearing, the DRC functions as a prosecutor, presenting a case; and that the HOC, similar to judges, run the hearing. The other members of the HAC, Kathy Kadagishvili and Israella Mayeri, were elected at the February 22 GM.

Marian Hertz is a litigation lawyer on the HOC. A seasoned HOC member, her experience of more than a decade and familiarity with the written guidelines help to provide a fair hearing. She added, by email, that it's a "unique setting involving the very tiny number of Coop members who possibly are not following the rules . . . and not being 'cooperative'" in a way that is not fair to the wider Coop community. Hertz said that the HOC will confer ahead of a hearing "about how to phrase questions for the Deciding Group to determine [whether or not a particular rule or rules were violated] at the hearing."

Members of the HOC and HAC earn FTOP credit for their efforts. They work when there is an arbitration or hearing and are not part of standing committees with regularly scheduled meetings.

## HOW DOES THE HEARING PROCESS CONTINUE TO IMPROVE?

Feldman describes an iterative process that has evolved over time. He believes that Coop members involved in the dispute resolution process try to do the right thing under difficult circumstances.

Since the process is confidential, and the hearing officers make recommendations, Coop members generally don't have full knowledge of the proceedings. The question arises: How can improvements evolve further?

Hertz stated that the "usual process of presentation . . . at a GM needs to be followed." Bravo's goal is to ensure that the process is as fair as possible. She welcomes feedback and pointed out that "we can make changes." She added that only Coop members are currently permitted to attend a hearing; an accused member cannot bring a nonmember as a character witness or for social support.

> "MOTIVATIONS ARE VARIED. SOMETIMES IT'S CLEAR THAT THERE'S AN UNDERLYING PROBLEM DRIVING PEOPLE TO STEAL."
>
> ***SABINE RHYNE, FORMER GENERAL MANAGER AT THE BRATTLEBORO FOOD CO-OP***

## RESTORATIVE JUSTICE AT BRATTLEBORO FOOD CO-OP

If, as Elena McCalla of the DRC mentioned in the first part of this series, the legalistic nature of the Coop's hearing process "could take a healing component," what can we learn from other coops?

At the Brattleboro Food Co-op (BFC) in Vermont, "Motivations are varied. Sometimes it's clear that there's an underlying problem driving people to steal," shared Sabine Rhyne, former General Manager at the BFC. Since the BFC, like most food coops, is

open to the general public, it's a markedly different environment from the PSFC. When there is an issue with a BFC shareholder saying offensive things or threatening an employee, for example, the BFC management sets up a meeting to discuss it.

Anyone who is banned from shopping at the BFC is generally given one more chance after a period of separation of six months to a year. An individual can then ask for re-admittance and offers a verbal acknowledgment of intention to comply with the agreed-upon norms moving forward.

At the height of the opioid crisis, BFC began a collaboration with the state attorney's office and the local police department's restorative justice center to triage cases of theft and to have an alternative outside of criminal punishment. For those struggling with addiction, working through solutions such as community accountability or counseling might be a better option than being forced to lose membership. The successes of supporting people through the accountability process, though rare, "were really awesome," Rhyne adds.

## EMOTIONAL TOLL

Back at the PSFC, Bravo pointed out that most hearings have to do with theft of time or product. Generally, a hearing does not get called until a member's inappropriate or illegal behavior has persisted after multiple warnings have been issued. Bravo recalled a former member who expressed contrition after "stealing a lot of time." The consequence for an accusation of ongoing time theft is revocation of Coop membership. This can impact a household: if one member's status is revoked, nobody in that home can remain active.

"It can be overwhelming," Feldman admitted. Although he is no longer part of the dispute-resolution process, he recalls that bearing witness to "that kind of energy" was draining. "Something has to be done when people are uncooperative," he continued. "If there wasn't this procedure, how would that happen?"

A Coop hearing slated for Saturday, February 26, 2022, was canceled when the member voluntarily resigned.

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