COOP MEMBER EXPELLED AFTER REPEATED MASK-WEARING VIOLATIONS

July 4, 2022

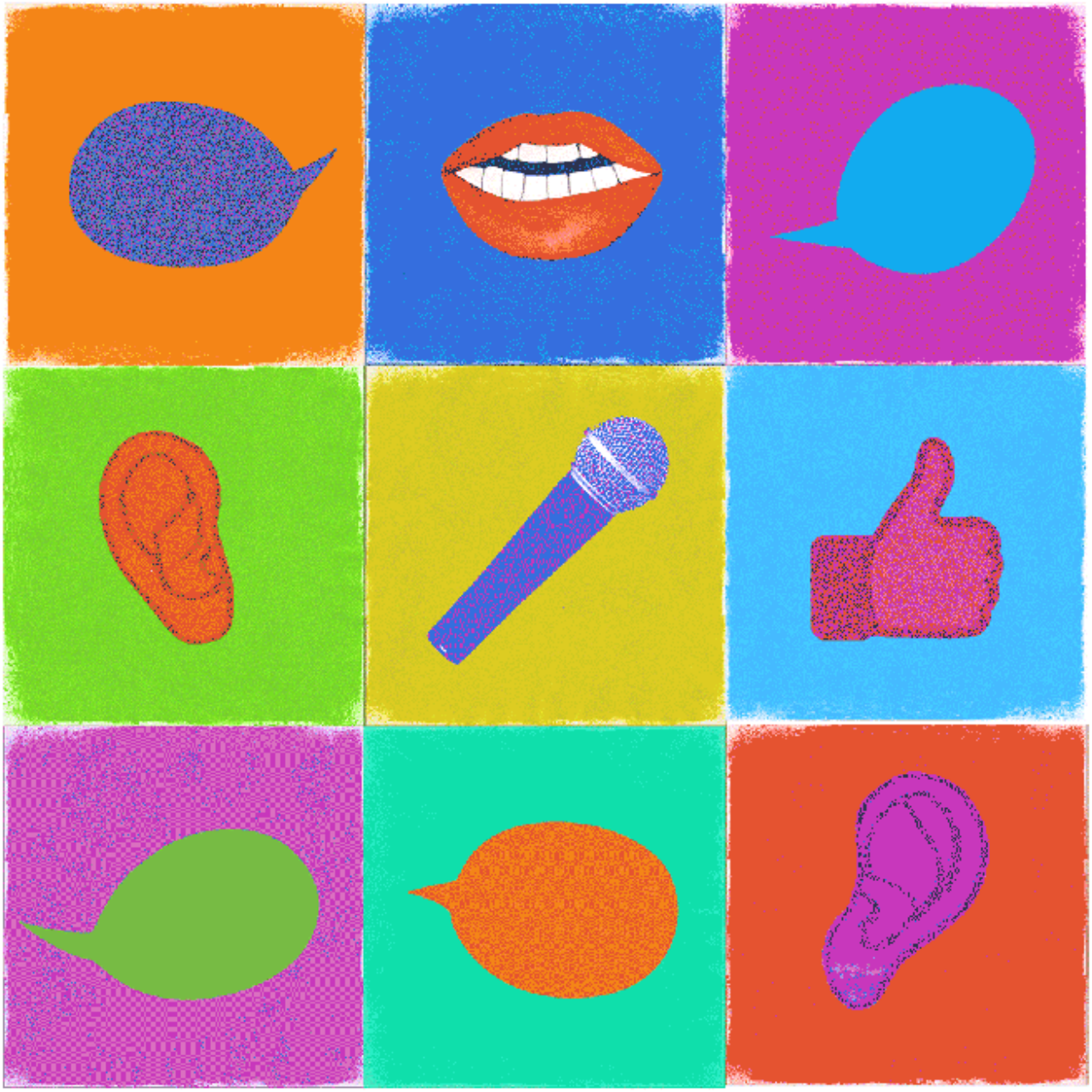


ILLUSTRATION BY CATY BARTHOLOMEW

By Jess Powers

On May 12, 2022, a Coop Hearing was held to determine whether a member violated rules on Dec. 10 and 20, 2020, and exhibited extremely uncooperative behavior. As described in previous pieces regarding the dispute resolution process, participants in-

cluded the accused individual, various witnesses on both sides, members of the Hearing Administration Committee, the Dispute Resolution Committee (DRC), the Hearing Officers Committee, and 15 Coop members who served as the Hearing Group, each with responsibilities to ensure a fair outcome.

For transparency, the *Linewaiters' Gazette* reports on hearings but the name of the accused is withheld to protect confidentiality. At the request of the committees involved, all names are withheld.

After a year and a half of delays due to the pandemic, members gathered in a spare assembly room at the Picnic House in Prospect Park. The Hearing Administration Committee organized the logistics, arranged the date and venue, and contacted a list of randomly selected Coop members to serve as a Hearing Group. There were a few bumps: not enough copies of documents were made and participants were not miked, occasionally making it difficult to hear. Members of the Hearing Officers Committee kept the proceedings on track and would ultimately decide on a penalty based on the decision of the Hearing Group. After serving for a few hours, only nine of the 15 Hearing Group participants voted on whether the member violated the rules, per the PSFC Disciplinary Procedures.

The accused and committee members introduced themselves. Two members of the DRC shared the results of the investigation. The accused, who will remain anonymous, is a lean white woman in her 60s who wore green clogs and introduced herself as a dancer and a healer.

The investigator began by explaining that the accused member had exhibited a "flagrant disregard for Coop rules" by repeatedly refusing to wear a mask, had altercations with staff and cashiers, and rejected COVID-19 as a "conspiracy theory." She had a history of refusing to adhere to Coop rules and had been put on probation in the past.

After an incident is reported, an investigation is conducted and, depending on what is

learned, one of nine pre-hearing actions takes place, ranging from a verbal warning to work-slot adjustments. For a dispute to rise to the level of a hearing, the rule-defying behavior must be generally egregious and continue despite attempts to remedy it. The accused is given the option to resign or to have a hearing or arbitration to determine whether they will remain a Coop member.

The accused interjected that she was “not informed about the ability to bring witnesses” until the last minute. A Hearing Officer stated that the disciplinary hearing letter the woman had received included specific details about the process and that other rules and procedures are available online. He also reiterated that the matter at hand was to discuss what was alleged to have happened on Dec. 10 and 20, 2021 and that what occurred years before was only relevant if it pertained to this discussion.

The first witness, A.M., joined the Coop 25 years ago, worked as a paid checkout worker during the pandemic when member labor was suspended, and subsequently was hired full-time to the Coop staff. She recalled the accused wearing a mask under her chin as she approached checkout and A.M. asked her to put it on properly. The accused responded that “masks don’t protect us.” A.M. explained that it was the policy of the Coop. The accused pulled the mask up and replied, “Are you happy now?” A.M. countered, “You don’t need to be so rude,” to which the accused responded loudly, “You’re the rude one.”

> FOR A DISPUTE TO RISE TO THE LEVEL OF A HEARING, THE RULE-DEFYING BEHAVIOR MUST BE GENERALLY EGREGIOUS, AND CONTINUE DESPITE ATTEMPTS TO REMEDY IT.

A.M. said that it was “not an easy time for folks,” between the stress of the pandemic, long lines, and few people allowed into the Coop at a time. She said that some members didn’t realize that the paid cashiers were Coop members, and that a few people were aggressive or disrespectful every week. Cashiers were instructed not to engage

these folks further and to call on permanent staff if support was needed. In this case, A.M. was unnerved by the incident and was encouraged to file a report.

When given a chance to ask questions, the accused immediately apologized to A.M. She explained that since joining the Coop 26 years ago, she observed increasing amounts of “micromanagement” and that she was frustrated with the adoption of rules on mask-wearing.

After receiving a letter from the DRC, it would likely have been possible to resolve the case by apologizing to the parties involved and following the mask-wearing rule. The accused explained, however, that she wanted “to be heard.”

A witness who was unable to attend the hearing in person submitted a letter confirming that she witnessed the incident at the adjacent checkout. She stated that the accused “explained why masks do not work” and became “combative.”

The investigators learned that, following the incident at the checkout, the accused went to the Service Desk outside the office to inquire about the mask policy. Another witness who was unable to attend recounted in written testimony that the accused began to yell after hearing her options. She shared that the accused said that people were “trying to control her” and that she was “yelling her theories.”

After the incidents on the first date, a warning letter was sent by mail on Dec. 18. A popup screen alerted the entrance desk worker when the accused arrived to shop. The letter was also presented by hand to the accused by a Membership Coordinator. The accused was given a mask and allowed to shop on Dec. 20, the date of the second incident.

A Membership Coordinator (MC) at the Coop for over a decade was the next witness. She alluded to previous challenges with the accused and the Hearing Officer restated that prior bad acts are not relevant to this discussion. When the accused questioned the MC on her testimony, a representative exchange ensued:

Accused: “As a squad leader, I did things very differently. There was dancing, good music during our shift.”

MC: “Nothing wrong with that.”

Accused: “I have creative energy, I’m being nice, a person who thinks differently and acts differently. It could be frustrating, nobody hearing what you’re saying.”

MC: “I tried to help you with this, I said to go to a General Meeting [Coop decision making process]. Screaming in the aisle is not the way. I came into the frozen aisle, there you were.”

Accused: “I was frustrated. I was not the only member frustrated. It was the wrong time, wrong place. The woman who was on me… I started singing, trying to channel my energy. I was singing too [loudly], told I shouldn’t dance. I’m an artist. My memory is the word ‘fascist,’ not acting as a cooperative, as a ‘fascist organization.’”

MC: “You’re absolutely right, you said ‘fascist.’ I don’t remember ‘organization.’ By the time I got to you, two more people were present. It was a little wild, that’s why they got staff. People felt uncomfortable… I understand frustration totally, but there has to be some common ground. You seem to be very often outside of that common ground.”

Accused: “Every society has somebody who is a little different.”

A former member of the DRC, P.V., testified about an investigation in 2018. It was relevant only in order to demonstrate that there was a pattern of behavior. A letter shared in the welcome packet and later questions asked by the accused revealed that the prior issues involved arriving late or leaving work shifts early, bringing a child to shifts, and not providing adequate direction as a squad leader. A previous investigation led to a six-month probationary period, which was successfully fulfilled. P.V. shared the impression that the accused followed the rules that made sense to her,

not the Coop rules in general.

> IN HER TESTIMONY, THE ACCUSED ACKNOWLEDGED THE PAST INCIDENTS AND DESCRIBED BEING EXAMINED “UNDER A MICROSCOPE.” SHE DESCRIBED HERSELF AS HAVING A “PERSONALITY OF PASSION” THAT PEOPLE MISINTERPRET.

J.B., a witness for the accused, has worked in food processing and been a Coop member since 2008. She met the accused over a decade ago at a New England dance camp and described her as being community-minded, conscientious, high-spirited, and an amazing teacher.

In her testimony, the accused acknowledged the past incidents and described being examined “under a microscope.” She described herself as having a “personality of passion” that people misinterpret. She shared a family tragedy and said that she received a lot of love and support from the Coop at that time. She expressed feeling attacked in the years since and admitted to acting defensively toward administrative staff in response. She described herself as being “big into conflict resolution.”

The accused also described anxiety and having difficulty breathing while wearing a mask, adding that she had an “ADA card.” The DRC investigators responded that this “never came up” in conversations with her and added that the process to apply for a medical exemption was described in the attachment to the letter dated Dec. 18.

The 15 members of the Hearing Group were allowed to ask questions. They approached the situation with care. One member asked why the accused couldn’t put aside her personal beliefs about masks, having “presented [herself] as a person who likes to spread love.” The accused responded: “I am spreading love, by telling the truth. You’re not getting enough oxygen [wearing a mask], I have a different way of seeing it.”

When asked if she was aware that a mask mandate was in place in the state of New York on the dates in question, the accused countered: “It’s not a law, it’s a mandate. The Governor cannot make laws, they can only administer them. They attempted to trick everyone. We don’t have to follow it.”

A DRC member clarified that many mask-wearing cases came before the committee during the pandemic. With the exception of this one, they were de-escalated and resolved by claiming a medical exemption, through workarounds or designated shoppers. She explained that the accused was uncooperative on the phone and the investigator “couldn’t have a constructive conversation with her.” The accused “would not back down from the idea that a mask is wrong, and she is right.” She explained further that this was not the outcome the DRC wanted. The accused responded that she didn’t have a conversation over the phone or that it was so brief that she didn’t recall it.

The remaining nine members of the Hearing Group were reminded that the “intention is irrelevant.” They were to decide whether the accused violated a rule on Dec. 10 and 20 and whether she exhibited “extremely uncooperative behavior.”

We left the Picnic House while the Hearing Group deliberated.

The Hearing Group decided that the rules were broken on those dates and the accused exhibited extremely uncooperative behavior. The Hearing Officers then decided that expulsion is the appropriate penalty. The reasoning was two-fold: first, that was the penalty in other cases where members exhibited uncooperative behavior, and second, the context of a global pandemic before a vaccine was widely available made this behavior particularly uncooperative.

Members of the various committees involved in the dispute resolution process are working to refine and continually improve the process. Any proposed changes will be presented during a General Meeting for Coop members to vote on. In this case, Coop peers decided that expulsion was the most appropriate outcome.

Jess Powers works in emergency management and enjoys adventures in nature and eating. IG: @foodandfury

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INSIDE THE COOP HEARING PROCESS

July 4, 2022



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.

Jess Powers works in emergency management and enjoys adventures in nature and eating. IG: @foodandfury