COOPERATIVES AND UNIONS: WHY CAN'T WE JUST GET ALONG?

The Co-Operative And Its Workers, A Symposium
June 15-17th, 2006
Saint Mary's University
Halifax, Nova Scotia
Canada

Dan Bell
Senior Program Coordinator
Ohio Employee Ownership Center
Kent State University
Kent, Ohio
South of the Border
dbell@kent.edu

COOPERATIVES AND UNIONS:
WHY CAN'T WE JUST GET ALONG?

This paper explores the ambivalent relationship between worker-owned cooperatives and unions. It will focus on their competing interests, their common interests, the evolving role of unions in worker-owned companies and examples of success and failure.

You have probably heard the story of the scorpion that convinced the frog to carry it across a river. Halfway across, it stings the frog, which means both will drown. The frog does not understand. The scorpion explains that it had no choice; it was in its nature.

I once met with a group of employees exploring an employee buyout of a failing paper mill in southwest Ohio. I asked them why they thought they would do any better. They gave an example. Pointing to a large machine, they explained that it broke down regularly, resulting in lost production. The repairs were only temporary until permanent replacement parts could be installed. They went on to explain, that the mill had been bought and sold three times over the past two years, and that two owners ago, the parts had been purchased and were still sitting in a store room. When they became the owners, they were going to install these parts.

But would they really cooperate with management as employee owners, or, like the scorpion, would the decades of confrontational labor-management relations, be too engrained a part of their nature that they would sink their own company?

What a Difference Cooperation Makes!

That was the case for North Coast Brass and Copper, a 100% employee owned company in Cleveland, bought from BP America Chase Copper and Brass to avoid an announced shut down. The new CEO, counting on greater cooperation to carry out a challenging business plan, found himself up against, not only an entrenched union leadership unwilling to change, but an entrenched group of managers, equally resistant to change. Critical gains in efficiency needed to meet the heavy debt service were impossible to reach under these circumstances, and the company failed in 1990, after less than two years. For more on North Coast Brass and Copper, and descriptions of three other union led buyouts, see *Groban Olson Employee Ownership Case Studies* (Groban Olson , Deborah,, http://www.esoplaw.com/casestud.htm).

But North Coast is the exception, not the rule, suggests a study of 17 democratic ESOPs where employee ownership did not last, *When Democratic ESOPs Fail* (*Owners At Work*, Winter 1996-97, Ohio Employee Ownership Center, http://dept.kent.edu/oeoc/publicationsresearch/Winter1996-7/DemFailWinter1996-7.html). While 14 reported poor labor-management relations before the buyout, only two reported that these poor relations continued while employee-owned and contributed to their failure.
To the contrary, unions in employee-lead buyouts are more likely to cooperate with

management, recognizing that management now works for their membership. Textileather and Republic Engineered Steels are two good examples.

Textileather, another 100% employee owned company in Toledo had the opposite results. In 1991, GenCorp decided to close down the unprofitable division, but was willing to sell it to the 200 plus employees, instead. The Amalgamated Clothing and Textile Workers Union (ACTWU) supported the buyout and joined with management in building successful employee participation. Training in participative practices was implemented from the beginning and an effective jointly led employee involvement structure resulted in a 28% increase in productivity, a 40% drop in scrap, and greatly reduced machine down time in the first year. The company was immediately profitable.

Despite this positive experience, the employees confirmed that their primary goal was job security, not ownership. In 1996, when the acquisition debt was paid off, management and the employees agreed to sell the company to Canadian General Tower. The buyer not only paid 160% of the valuation price, but also agreed to increase wages, bring in additional work creating more jobs, and give the employees the first right of refusal if it decided to sell in the future.

Can Management Serve Two Masters? Holding Management Accountable

Republic Engineered Steels (RESI) was also 100% employee owned. Its 4500 employees, spread among eight plants in four states and primarily organized by the United Steel Workers (USW), chose to buy this bar mill division from LTV to avoid a shutdown. The contract included appendix H-1, which defined the employee participation structure. Work groups would meet regularly to identify opportunities for change. They could implement actions that only affected their area; other proposals would be kicked up to the department level. Similarly, proposals could be kicked up to the plant level and finally to the H-1 committee at the corporate level. The H-1 committee was a joint labor-management committee. To get this structure to work, 100 managers and their corresponding 100 union representatives trained jointly for a week to become co-facilitators. Union and management also formed a joint committee to direct the ownership training program.

With a solid foundation built, the company implemented a program called "Target Eighty." The goal was to cut $80 million out of the $800 million annual expenses. This was achieved in only eighteen months, not by concessions in compensation, but from the generation of effective ideas from the employees on improving operations.

http://dept.kent.edu/oeoc/publicationsresearch/Winter1995-6/FutureWin1995-6.html

Two events destroyed this positive working relationship between union and management. First, management convinced the employees to let RESI go public, in order to raise cash to buy back preferred stock issued to employees as part of the buyout financing. The employees rolled over $20 million from an existing retirement plan, in exchange for preferred stock that paid 16% dividends each year. Management miscalculated the price

that these shares would obtain, disappointing the employees and shaking their confidence in management. Management also appeared to be less responsive to the employee owners as it took on public shareholders.

The second event was the deep plunge that the price of steel took in the late 1990s. Instead of taking advantage of the participative structure, which had been methodically put in place, to respond to the crisis, management went back to its traditional style of running the company, implementing changes without employee input. The union became so frustrated that it eventually sought out an investor to buy the company, giving up ownership in order to dislodge an entrenched management.

Unions have other ways of getting management's attention, short of selling the company. For example some choose the traditional union weapon – the strike. Such was the case of the USWA at Republic Storage Systems. The employees of this 100% employee-owned company chose to go on strike, ostensibly over a few pennies; in fact, this was their way of expressing a vote of no confidence regarding the CEO. Soon after, the CEO did resign and the employees found a new leader they were prepared to follow. In fact, when the entire plant was severely damaged from a flood that put it under six feet of water, employees came in on their own time to clean up the disaster.

So why do employee owners need unions anyway?

One way to look at the role of unions is to observe the balance of power that exists between the three branches of government. The legislative branch makes the laws, as the board of directors in a company sets policy by which management must manage. The executive branch implements or executes the laws on a daily basis, as management runs the day-to-day operations. While in most ESOPs, employees do not participate in the election of the board, even where this decision is passed through to them, the right to vote does not protect any individual employee from the power that management enjoys to hire and fire for example. Just as the judicial branch protects individual citizens from the misuse of power by an executive, the union protects individual workers from the arbitrary use of power by management. Cooperative by-laws may include certain protections from arbitrary dismissal, requiring a review of some management decisions by a separate committee of members. Especially where membership is a relatively small number, management finds itself continuously under the scrutiny of those who have the authority to vote it out.

Collective bargaining is another role that unions play. In a cooperative or an ESOP practicing open book management, the employees have full access to the company's financial information. With such transparency, the union negotiating team does not have to guess about what the company can afford, it has the information required to calculate what is available for compensation. Using this as a frame of reference, the unions are in a better position to bargain for realistic agreements throughout the industry. Via the union, information flows both ways. The unions help the coop members put their situation within the context of industry wide working conditions and compensation practices.

Access to large group rates on things like health insurance or multi-employer pensions can be another advantage that unions bring, especially in the case of cooperatives, which tend to be much smaller than ESOP companies.

Unions also bring a ready made communication structure, which can be helpful in building an ownership culture.

What do unions have against worker owned cooperatives, anyway?...

….The deceptive practices of sellers for one thing!

The International Brotherhood of Teamsters has good reason to be suspicious of employee ownership. In the late 1980s, trucking companies convinced their union employees to accept company stock held in an ESOP in exchange for concessions. The IBT took a hands-off position, neither opposing nor encouraging employee ownership.

The trucking industry was in the process of consolidating and company owners were looking for concessions from the IBT in order to remain competitive. Some hit upon the idea of exchanging stock for concessions. The only problem was that the stock was in companies whose only value was the revenue stream; the owners kept the trucks in a separate company from which they were leased. When a company failed, the stock became worthless as there were no assets.

One of the Ohio Employee Ownership Center's first employee buyout efforts was Atlantic Foundry. The owners had announced a shutdown, because the foundry was unable to turn a profit. A quick analysis showed that the revenues did cover the direct costs, generating a gross profit, and with sufficient volume, indirect costs could be covered and funds would be available for debt service. Despite this good news, the USWA was not showing much support for the buyout effort, and eventually took a clear position opposing it. Why was the union not willing to help these workers save their jobs?

The Steelworkers were looking at the bigger picture and had an obligation to represent *all* of their members, including retirees. The reason the owners said the foundry was losing money was that it was saddled with obligations to past workers and simply did not generate sufficient income to cover this additional non-operating expense. Deeper analysis revealed that the owners had withdrawn a significant amount of non-operating assets and placed them in a separate company. Since the obligations to the retirees were not shown on the Balance Sheet as liabilities, the funds withdrawn were considered available retained earnings. The owners had offered to sell the company "for a song" as long as the workers took the retiree obligation with them. The USWA believed the new company would fail if saddled with this obligation and the retirees would have a more difficult time going after the original owners.

In the case of a deceptive seller, like Atlantic Foundry, the union did exactly the right thing, to the benefit not only of its active and retired union members, but also the

potential future worker owners. Had the USWA not drawn attention to the deceptive offer, the workers would have taken on more debt (the obligation to the retirees) than the operations could service. This would have left them bankrupt and unemployed and the retirees with a more difficult legal battle in any attempt to go after the original owners.

In essence, the active employees and the seller were negotiating a sale based on the risk capital of an absent voice – the retirees. The union brought that voice to the table. With this transparency, a more feasible transaction could be proposed. For example, a fair value could be placed on the retiree obligation. A trust could be funded with a note from the new worker owned company, equal to the fair market value of the operating business, and with cash from the seller to cover the balance. Of course, this was exactly the outcome that the unethical sellers were attempting to avoid in the first place. Needless to say, the foundry still sits idle today, two decades later.

….The threat of decertification for another!

For the most part, if a company did not have a union before becoming employee-owned, it probably will not form a union later. Employees reason, "If we didn't need a union when we were owned by someone else, why would we need one now that we own the place?" And similarly, companies that had a union before the buyout continue with the union under employee ownership. Two exceptions, Plymouth Locomotive and Brainard Rivet, suggest that decertification comes not at the initiative of the workers, but rather as an outcome imposed upon them as a requirement for getting the buyout deal to go through. In the case of Plymouth Locomotive, the owners refused to sell to a union workforce. The UAW agreed to decertification in order to let the buyout move forward. In the case of the Brainard Rivet Division of Textron, the employees decertified the union in order to be acquired by Fastener Industries, a successful 100% employee-owned company.

As for the local union leaders that drive the buyout home? How does the membership show its gratitude for saving their jobs? I have yet to see a union leadership complete an employee buyout and then get re-elected. The members associate the leaders with the sacrifices they begin to experience immediately after buying the company. Since they did not end up on the street, they return to the state of denial about it ever actually happening. Instead, they compare the current situation with the way things were before the threat of shut down appeared – And they hold the current leadership to blame.

On the other hand, sometimes organizing drives do succeed at employee owned companies. These exceptions take place, for example, when employees see management usurping control for itself. For example, if managers control the initial board of directors, they can appoint a trustee who is willing to follow their direction. This is not illegal, so long as they do not direct the trustee to violate the duty to protect the participants retirement assets. While management may be beneficial owners of only a minority of th company stock, and the union employees may be beneficial owners of a majority, management had positioned itself as the controlling shareholder group. Employees may see organizing a union as the most effective way of establishing a balance of power. Such

was the case at Voto Sales and Manufacturing. After establishing a Steelworkers local, the employees were able to get the ESOP modified to pass through voting rights directly to the participants, in effect, bringing management under the control of the owners again.

Sometimes, employee owners do not organize out of some dissatisfaction with the company, but rather as a sign of solidarity with the labor movement. Cooperative Home Care Associates is a large worker owned cooperative of home healthcare providers that has a mission of raising the standard of pay and benefits for the entire industry. When union organizers began a campaign, the coop members welcomed them, not because they needed representation, but because they felt a sense of solidarity with the union, as both shared a common mission of improving the working conditions of home health care workers.

….The possibility of weakening an industry-wide collective bargaining agreement!

I was contacted by a worker coop member not too long ago, who was searching for some guidance on resolving a difficult conflict between his coop and the union which organizes a few of its employees. Most of the workers joined the coop and supported the buyout. A few of the workers, who are represented by a union, chose not to become members. In order to generate the surplus necessary to pay off the acquisition debt, the members agreed to make a number of changes to their wages and benefits. The union insisted that the terms of the collective bargaining agreement not be altered. The coop members believed that to stick to the contract would be unfair to the members who were not in the union, because they were making sacrifices to help the coop survive. And if all of the members were compensated as the union members expected to be, the business would fail. Since one of the cooperative principles is autonomy from the control of outside organizations, it seemed inappropriate for the union to be insisting on sticking to the contract, when even the members affected were willing to adapt.

What coops sometimes fail to understand is that a union is not dealing with their company in a vacuum. They have to bargain with the entire industry, in an effort to get the best deal they can for all their members. Any time they agree to a lower cost contract with one employer, it undercuts their bargaining position with all of the other employers. Each employer will expect to get the same contract as the competition. The end result is that wages fall. Industry-wide worker solidarity is just as important to the union members as autonomy is to coop members.

What can we do about it?

In the case of the dispute over the union contract, the situation is more complicated. Both worker-owned cooperatives and labor unions share the goal of improving income and working conditions. Cooperatives do this through direct democracy at the company level. Members are encouraged to participate actively in decision making on a regular basis. When coops interact with other coops, they typically form secondary cooperatives which are also actively controlled by the member coops, which run them to serve their common

needs. One might say that coops tend toward decentralization, while unions depend on centralization in order to create enough power to off set that of the owners.

Unions depend on numbers to build their strength. They need to maintain a degree of discipline among their numerous locals, insisting on a certain degree of uniformity around key issues. Labor's most effective method of getting what it wants is the collective refusal to work. If the central leadership cannot count on each Local to follow its direction, the threat of a strike loses its credibility. When a link in the chain breaks, the whole movement can suffer.

Cooperatives, on the other hand value democracy down to each and every individual. Every individual has a right to participate equally in decisions about things like compensation policies. Coop members do not like being restricted in their decision making by factors external to the cooperative. The pressure to conform to an industry-wide master contract, into which the coop members had no input, is a violation of their autonomy. The fact that the contract requires the coop to exclude union members from participating in the economic sacrifices that other members are facing, threatens internal solidarity and equality.

It may be possible to satisfy both the need to respect the industry-wide collective bargaining agreement and the coop members' right to compensate all members fairly and according to cooperative values. In theory, the monthly compensation package is simply an advance on each coop member's share of the revenue, net all non-labor expenses. The union contract calls for some employees to get a greater advance than others, but the allocation of patronage offers an opportunity to set things right.

Surplus is adjusted to include the amount that the union members were paid above what the coop members have agreed to accept as a requirement for funding the purchase. This increases the total amount of surplus to be allocated as patronage. This is then allocated according to the coop's formula, for example, hours worked. Since the decision about how to reward the owners is not a collective bargaining issue, the union should have no concern about it, as long as their members are paid according to the contract.
CORRECT
The higher pay received by the union members as employees can be offset by a lower share of the surplus as owners. In the example on the next page, the coop members agree that in order to meet the debt service on their acquisition loan, each member needs to accept a $6000 reduction in compensation, $4000 in year one and $2000 in year two. Since the union members would not be participating in this reduction, the amount would be deducted from their individual capital accounts. and they can only afford to pay outside of the in order to If the coop considers the total cost of compensation as an advance on patronage, then it could choose to advance whatever is required to satisfy the collective bargaining agreement to the union members, and advance whatever it considers reasonable to the non-union coop members. By tracking what the union members would have received under the coop compensation policy applied to the non-union members, one can determine whether the union members were paid more or less than what they

would have received. The difference would be applied to the member's internal capital account.

Reconciliation of Coop and Union Policy: Period 1

Period 1	Union	Non-Union	Adjusted	Cash
Revenue			$ 180,000	$ 180,000
Non-compensation expenses			$ 140,000	$ 140,000
Surplus before compensation expenses			$ 40,000	$ 40,000
Actual pay	$ 22,000	$ 18,000		$ 40,000
Pay according to the coop policy	$ 18,000	$ 18,000	$ 36,000	
Surplus after compensation			$ 4,000	$ -
Patronage	$ 2,000	$ 2,000		
Less excess advance on patronage	$ 4,000	$ -	$ 4,000	$ -
Individual capital account				
Beginning balance	$ -	$ -	$ -	$ -
Ending balance	$ (2,000)	$ 2,000	$ -	$ -

Period 2	Union	Non-Union	Adjusted	Cash
Revenue			$ 190,000	$ 190,000
Non-compensation expenses			$ 145,000	$ 145,000
Surplus before compensation expenses			$ 45,000	$ 45,000
Actual pay	$ 22,000	$ 20,000		$ 42,000
Pay according to the coop policy	$ 20,000	$ 20,000	$ 40,000	
Surplus after compensation			$ 5,000	$ 3,000
Patronage	$ 2,500	$ 2,500		
Less excess advance on patronage	$ 2,000	$ -	$ 2,000	$ -
Individual capital account				
Beginning balance	$ (2,000)	$ 2,000	$ -	$ -
Ending balance	$ (1,500)	$ 4,500	$ 3,000	$ 3,000

Period 3	Union	Non-Union	Adjusted	Cash
Revenue			$ 200,000	$ 200,000
Non-compensation expenses			$ 150,000	$ 150,000
Surplus before compensation expenses			$ 50,000	$ 50,000
Actual pay	$ 22,000	$ 22,000		$ 44,000
Pay according to the coop policy	$ 22,000	$ 22,000	$ 44,000	
Surplus after compensation			$ 6,000	$ 6,000
Patronage	$ 3,000	$ 3,000		
Less excess advance on patronage	$ -	$ -	$ -	$ -
Individual capital account				
Beginning balance	$ (1,500)	$ 4,500	$ 3,000	$ 3,000
Ending balance	$ 1,500	$ 7,500	$ 9,000	$ 9,000