A National Survey of Worker Cooperative Bylaws and Operating Agreements

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Purpose and Background

As a leading national technical assistance provider to new and established worker cooperatives, The ICA Group is frequently tasked with supporting worker-owners in drafting or revising their co-ops’ bylaws or operating agreements. Through our practice, we have developed widely used template legal documents and facilitative processes to help worker-owners think through a variety of critical questions that can help ensure that these central legal documents create the framework for the successful operation of cooperative businesses that align with members’ visions and values. Of course, we are far from the only organization helping worker co-ops to draft these kinds of documents, and different providers make different recommendations. Even within the co-ops we support, there ends up being considerable diversity between these documents due to the unique needs and preferences of different groups of worker-owners. To continuously learn and improve our own work in this area, and to support the development of the larger field, we conducted a survey of governing documents from co-ops across the US. We hope these findings will help co-ops and co-op technical assistance providers better understand how specific choices about any given co-op’s governing documents fit into larger national trends.

Methodology

ICA reviewed bylaws and operating agreements (hereafter referred to, in sum, as “governing documents”) from 38 US-based worker cooperatives (3.8% of the roughly 1,000 worker cooperatives estimated to be operating in the US)\(^1\). Outreach was conducted directly to co-ops our team had worked with as well as co-op networks and peer organizations that provide similar support to co-ops. We endeavored, within the bounds of the resources available to us, to ensure that our sample was large and diverse enough to provide genuine insight into national trends but acknowledge that further research using larger and more randomized samples may be merited in the future.

Cooperatives that provided governing documents for this survey are based in eight different states and operate in thirteen different industries ranging from healthcare to construction to media (see charts below). They range significantly in size and age and are organized under a variety of legal forms including LLCs, corporations, and cooperative corporations. They include both businesses that were formed as cooperatives as well as businesses that converted to worker ownership after several years of operation.

\(^1\) Democracy at Work Institute
Governing documents were reviewed to identify how they addressed nearly forty different questions that ICA Group believes address the essential operations of cooperative governance. The remainder of this report highlights key findings from that analysis.
Defining Cooperative Membership

The overwhelming majority of governing documents reviewed (84%) defined a single class of co-op members, often enumerating their various rights and responsibilities. However, a minority of governing documents (16%) did include more than one class of members. Co-ops with multiple classes of membership did not fall into neat categories but rather reflected unique approaches for those specific co-ops such as the inclusion of a category of voting membership for a larger cooperative umbrella organization, the inclusion of an “inactive” category for members taking an extended absence, or the inclusion of a category for “collective members” (non-owners with some limited voting rights).

Membership Eligibility

Regarding tenure, of the governing documents reviewed, 87% specified a minimum tenure of employment before workers can become members. Of those specifying a tenure, the length ranged from 3 months to 5 years. The average length was 1.13 years, and the median was 1 year. Additionally, of those specifying a minimum tenure, 24% included both a length of employment and a minimum number of hours worked. Many governing documents also allowed the board or membership to waive the tenure requirement on a case-by-case basis.

Regarding employment status, 79% of governing documents explicitly specified whether part-time workers could become members. Among those that did specify, 90% allowed at least some part-time members (sometimes with a minimum number of weekly hours), and 72% did not place any restrictions on part-time employees becoming members.

Several governing documents included additional requirements for membership eligibility ranging from participating in governance training and observing member meetings to residency requirements, peer reviews, and producing formal written requests to join the cooperative.

Admission and Removal of Members

Regarding the process through which eligible candidates become members, 97% of governing documents specified roles for the existing membership and/or board in making that determination. Of these, 35% required a vote of the board and 65% required a vote of the membership. Interestingly, 11% required the involvement of both bodies, with either the board needing to recommend a candidate prior to a membership vote or vice versa. In terms of the decision-making process, 77% identified a specific process and among these 22% required a simple majority vote, 30% required a supermajority vote, and 48% required consensus or unanimity.
Conversely, somewhat fewer governing documents (71%) included a process for removing members. Of these, 41% placed that power in the hands of the board, 48% placed that power in the hands of the membership, 7% allowed either the board or the membership to remove members, and 4% required a specially designated separate body to decide on membership removal. In terms of a decision-making process, only 8% required a simple majority vote to remove a member, 67% required a supermajority, and 25% required some form of consensus or unanimity (generally with a caveat excluding the member under consideration for removal from the quorum). It is also worth noting that many governing documents included formal hearings and appeals processes as part of member removal.

Member Buy-Ins

A slim majority of governing documents reviewed (60%) did not enumerate a specific price for membership shares, opting to grant the co-op flexibility to set that price through other means. Of the 40% that did specify a figure the costs ranged from $1-$6,000 with an average cost of $1,877 and a median of $1,000. 47% of governing documents explicitly identified that buy-ins could be made on a payment plan. None prohibited this practice.
Member Meetings and Decision-Making

All governing documents ICA reviewed required at least one annual member meeting. 60% included a specific target date for that meeting, 16% required meetings more than once per year and 5% required members to meet at least monthly. In terms of recording these meetings, 53% of governing documents included language about keeping “meeting minutes” and 5% referred to keeping “meeting notes,” but 42% made no explicit reference to minutes or notes. Also notable is that only one set of governing documents included a reference to a “member coordinator” role tasked with supporting member governance.

All but one of the governing documents reviewed set a quorum for member decision-making. Of these, 5% set a threshold of less than a majority of members, 49% required a simple majority, 32% required a supermajority, 8% required either all members or all members minus one to be present, and 5% included quorum calculations that were specific to the decisions being made on a given agenda.

Boards of Directors

89% of governing documents included language defining and empowering a board of directors. 65% of cooperatives have a representative board with fewer than all members serving, while 11% left all decisions to the membership. 24% of governing documents articulated a structure where all co-op members were automatically members of the board.

Among governing documents for co-ops with a representative board, 72% provided a range of possible board sizes, 16% legislated a fixed number of seats, and 12% did not specify board size at all. Among those specifying a range or specific number, the average number of members (using the midpoint of the ranges and excluding those ranges with no maximum size) was 5.89 and the median was 5.

Governing documents exhibited some variability in defining who was eligible to serve on the board. Regarding having managers serve on the board, 81% of co-ops with representative boards allowed the practice, 11% required it, and 8% prohibited it. Regarding having non-member “outside” board members serve, 56% of co-ops with a board allowed the practice but almost all of these included a cap to keep outsiders in the minority. Only one set of governing documents reviewed required the board to maintain a seat for at least one outsider.

56% of co-ops with a board of directors included a board term length in their governing documents. These ranged from 1 to 3 years with an average of 2.16 and a median of 2.

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2 Please note, ICA strongly recommends that cooperatives record meeting minutes as opposed to notes, as minutes can be referred to as official documents when it comes to legal, corporate, or financial actions.
Only 12% imposed limits on the number of consecutive terms someone could serve on the board and no governing documents included lifetime term limits.

Quorum requirements generally favored tolerating some absences with 60% requiring a simple majority, 23% requiring a supermajority, and only 3% requiring all members to be present. Notably, 6% did not include a quorum requirement, and 9% set quorum requirements that were contingent on either the current size of the board or the specific decisions to be made at a given meeting.

In delegating responsibilities within the board of directors, 88% of governing documents that included a board listed specific officer roles. All of these included both a treasurer and a secretary or clerk role. 93% included a president, 17% included a board chair, and 27% included a vice president. Additionally, 86% of governing documents for co-ops with a board included allowing the board to delegate specific powers to committees.

Amendments

In 45% of cases, the power to amend governing documents was left exclusively to the membership, 40% of co-ops allowed either the board or the members to make amendments, 11% articulated a process requiring both bodies to ratify a change, and only 3% placed the power to amend solely in the hands of the board.

Who can make amendments to the bylaws?

- 47% Members
- 39% Board
- 11% Members or Board
- 3% Members and Board
Additionally, many governing documents placed limitations on the types of amendments that could be made by specific bodies. 29% limited the specific sections of the bylaws that could be unilaterally amended by the board of directors. These often included sections such as the procedure for amending or repealing the governing documents, the provisions for election or removal of directors, and the terms of member eligibility. Similarly, 26% of governing documents required either consensus or higher-than-usual supermajority thresholds for the membership to amend certain sections. These often included status as a worker cooperative, sale/merger/consolidation/dissolution, member eligibility, and changes to voting procedures.

Cooperative Finances

All governing documents reviewed included some system of internal capital accounts, although there was some variation in both the language used to describe those systems and in their operational substance. 18% used a “non-standard” description of patronage that varied significantly from the ICA model bylaws, 13% did not use the language of “qualified written notices of allocation”, and only 61% included language that explicitly defined the value of the firm as the sum of internal capital accounts while 39% did not.

Substantive differences in handling cooperative finances included that 21% of governing documents articulated a calculation of patronage based on something other than total hours worked. Some of these alternatives include caps on total patronage hours, patronage based on the number of projects worked on, and other special formulas determined by the board of directors. Additionally, while a large majority (87%) of governing documents defined a collective or reserve account. Of these, 26% legislated a specific minimum distribution to this account, while the rest enabled greater flexibility for these allocations.

Other Findings

We also sought to understand how many governing documents required membership in a cooperative organization, something ICA has only started recommending in recent years. We found that only 16% of governing documents included this as a requirement and an additional 8% included language stating the co-op may join such an association but did not require them to do so.

Additionally, we studied how many governing documents included the kinds of policies we might normally expect to see in a member manual or similar document. In total, 18% of reviewed governing documents included such policies as: dispute resolution processes, non-compete and non-solicitation policies, decision-making matrices, and others.

We also uncovered many unique and interesting practices not found in ICA’s model bylaws. These merit further exploration and do not lend themselves to the same types of
descriptive statistical analysis included in this report. However, a few interesting examples included the identification of a “partnership representative” for tax purposes, a dissenter’s bill of rights, a policy for capital accounts to accrue interest, open board meetings and policies requiring all members access to all meeting minutes, requirements that the board issue an annual report, maximum pay ratios, policies for accelerated payout of internal capital accounts to individuals of retirement age, a right to equitable hours, and a rotating (rather than electoral) system for members to be selected for the board.