



## HOW TO BECOME A WORKER SELF-DIRECTED NONPROFIT

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### Why worker self-direction in a nonprofit?

We should have had a wake-up call long ago. The fact that so many people make fun of the inefficiencies, slowness, and corruption of nonprofits indicates that we should rethink conventional nonprofit structures and practices. The flaw is not in the concept of a nonprofit. It is in the culture that has developed around nonprofits, and the vested interests that maintain it. A core principle in the design of nonprofits is that they don't distribute earnings to private individuals. That makes nonprofit corporations a powerful platform from which to accomplish work that benefits communities, providing a shield against the strong pull toward generating private wealth. We should not abandon nonprofits. We should just rethink them.

There are at least three ways in which worker self-directed nonprofits might be even better able than conventionally structured nonprofits to fulfill their missions. They are potentially: **1) more effective, 2) more accountable and 3) more sustainable than conventional nonprofits.**

### Legal Considerations

#### Some of the Legal Constraints of Public Benefit Nonprofits and 501(c)(3)s

- The need to have a 51% financially dis-interested Board.
- The need to avoid private benefit, inurement, and excess benefit transactions.
- The need for a conflict of interest policy and clear documentation of how conflicts are navigated (for example, hiring and compensation decisions are made by Board).

#### Role of the Board

- Legal duties of Board cannot be waived or completely delegated. Must operate under the "ultimate direction" of the Board, but Boards can decide to delegate their duties if the decision to do so is prudent and in the best interests of the organization.
- Need to adhere to procedural formalities, or a plaintiff could "pierce the corporate veil" and sue a Board member. A primary benefit of being a corporation is the shield of liability for directors, staff, etc. So it's important to "act like a corporation."

#### Legal Options for Giving Control to Workers:

- **Resolutions:** The primary legal tool is Board resolutions that empower staff with control over certain decisions and activities. Such resolutions should preferably be for a specified period of time, so that the staff can carry on their work with the reasonable expectation that the Board will not interfere. However, such resolutions should probably not be indefinite, or a court could find that the Board has delegated to the point of unreason.
- **Employee Class of Members:** In addition, the nonprofit could structure as a membership organization and have a class of members comprised of staff who elect particular Board seats. This brings up the question of who the other members and other Board seats will be (who is the most obvious stakeholder group for the

organization)? Still, the only way the Board can delegate management to staff is by Board resolution, described above.

- **Board Seats for Workers:** The nonprofit could also designate Board seats that must be filled by staff, so long as interested Directors are not more than 49%. In this case, the organization must be very good about using conflict of interest policy. It may be good to have at least one Board seat filled by a worker, to ensure that there is a direct link of communication between staff and Board.
- **Articles or Bylaws:** The Articles or Bylaws probably could not delegate much governance power to staff, since the decision to adopt worker self-direction must be made based on a present determination that it is best for the organization. However, the Articles and Bylaws could include values that privilege worker control, to ensure that the Board must, at the very least, consider the benefits of worker control and give that option due weight and consideration.
- **Written Policies:** Whatever system of worker self-direction adopted by the organization should be clear, in writing, and available to all staff and Directors.

### Sample Board Resolution for Worker Self-Direction

*The Board hereby resolves that, based on the successful track record of ORGANIZATION's staff and activities, in view of the talents and skills of current staff, and based on emerging principles and best practices for the management of nonprofit organizations, it is in the best interest of ORGANIZATION and most effectively and efficiently advances ORGANIZATION's mission if ORGANIZATION employees primarily direct the strategy and tactics of the organization. The Board affirms that ORGANIZATION staff may make day-to-day decisions and set longer-term strategy for the organization until May 1, 2016, at which time the Board shall review and may re-affirm or revoke this resolution, in view of the best interests of the organization.*

*Regardless of the above, the role of the Board shall always be to fulfill its duty of care by closely monitoring the activities of the organization, regularly reviewing financials and operational matters, and intervening in decisions it believes to be harmful, overly risky, illegal, threatening to the organization's tax exempt status, or contrary to the mission of the organization.*

*In addition, all decisions about staff compensation and benefits and hiring decisions shall be made by the Board, with staff input. Such decisions shall ultimately be discussed and voted on by the Board without staff present. The Board shall also review and approve any other decision that could result in financial benefit or other form of private gain for employees.*

### Suggested Reading

- *Reinventing Organizations*, by Frederick Laloux
- *Holacracy*, by Brian Robertson (forthcoming)
- *The Revolution Will Not be Funded* (book excerpts available at <http://www.utne.com/politics/revolution-will-not-be-funded-nonprofit-industrial-complex.aspx>)
- *Grassroots Fundraising Journal* published by Grassroots Institute for Fundraising Training (GIFT)
- SELC's organization policies available at [www.theselc.org/new-economy-in-practice](http://www.theselc.org/new-economy-in-practice)