

LEGAL

A contradiction exists between any business and certain agencies of the State. There are also contradictions between a business and its competitors, vendors, and customers. At various stages, these contradictions must move into the Legal arena to be resolved. Hence, any business must plan to expend some of its resources in the Legal struggle. NB had notable experience in this area, both with the State and with other businesses. As the character of the struggle was different in each case, we will review our experiences with the State and commercial enterprises separately.

The consistent thread running through NB's legal struggles with the State is the strategic aim of protecting NB's capital resources from being drained by the various established forms of taxation. Our first experience in this area came during the period of transforming NB from a corporation to a co-operative. At this time, 1980-81, PNB (the Corporation) was carrying a significant balance due on various taxes to the State (Federal, State, Unemployment, etc.). While the particularities of dealing with each tax grouping differed, the general aim was the same: a) shelter the emerging co-operative from having to assume any of these back taxes; and b) as much as possible, insulate individuals from being held personally accountable for coming up with the money owed. As regards the aim of sheltering the co-op, the principle steps involved were to make sure that legally (and practically) there was a complete break between the old Corporation and the emerging Co-op. This was accomplished by

wording the contracts of the business sale to explicitly relieve the co-op of any tax liability. In addition, all files and records of the Corporation were removed from the bakery after the sale, and changes to the management structure were made to limit the carryover of officers from the Corporation to the Co-op.

Individuals were protected from liability by making a tactical decision to direct the IRS's investigation toward only one individual, limiting the number of fronts we would need to defend. Individual's assets were shifted so that the State was placed in a situation where the person who they determined to be accountable for paying the taxes had no assets to sieze- even the IRS can't get blood from a turnip! In this way, payment of the corporation's back taxes were kept to a small fraction of the original debt.

The second major legal struggle with the State took place with the Department of Economic Security (DES). The DES brought claim against the Co-op after receiving Unemployment Compensation forms from three former worker/members. The basic question was whether the Co-op was bound to submit Unemployment Tax payments to the DES. The Co-op had two principle aims in this struggle: a) to defend the legal concept of the worker/member in a Co-operative; and b) to insulate the Co-op from the tax burden posed by DES. Prior to the claim by DES, the Co-op had successfully petitioned the local office to be exempt from paying taxes to DES. However, after receiving claims from the former workers, the DES moved to

reverse this ruling. In an official hearing (in which the 'claimants' never even showed up) the Co-op, through testimony from the officers and a legal brief, defended its contention that an employee/employer relationship did not exist at NB. However, the referee ruled against the Co-op, primarily to avoid taking responsibility for making any controversial statements in this 'grey' area of the law.

The DES moved to enforce a complicated (and immaterial) formula for extracting taxes from NB. However, NB and its Counsel made it clear that this case was central to the basic concept of what constitutes a Co-operative and were willing to take their appeal as far as necessary to get a fair hearing. The case was eventually appealed at the next level and a ruling was made in NB's favor. In sum, it was shown that with persistence and unwillingness to submit to intimidation (a vital tool of the legal system, as will be shown below) the legitimate interests of the Co-op could be defended.

In the arena of commercial legal struggles the same qualities of persistence and unwillingness to yield to intimidation are central to understanding the bakery's history. Our first legal battle came in 1980 when the bakery was sued by its former landlords for backrent and equipment that supposedly belonged with the property the bakery vacated. The bakery contested this claim. As with many future cases, it eventually became clear that a negotiated settlement where both sides could feel they came away with something was better than a costly court case. The

major cost of actually bringing any litigation to the courts was a key factor in all of the bakery's legal struggles.

Initially, we were intimidated by the threat of legal action; particularly in the case of collections on Accounts Payable. Threatening letters from collection agencies, phone calls at all hours of the day and night, legal summons, were all tactics of intimidation to get us to pay up to Vendors. Through struggle, we came to learn a great deal about the different levels of legal action that a Vendor can initiate and how to respond to these tactics. Again, a basic concept was to deal from a position of strength wherever possible, negotiate to avoid actual litigation, and not to panic in the face of threats. Over the years NB gained experience in handling these collection attempts by Vendors. The bakery's survival over the last two years must be attributed, in part, to legal maneuvering to protect its assets and maintain cash flow.

A particularly instructive legal action took place over the years 1982-84 with a sub-contractor of specialty bakery products. After evidence of deliberate shorts on our orders and sub-standard products they were dropped as a Vendor, leaving a considerable balance due on our account. They sued for this amount and the bakery counter-sued, citing the problems noted above. What was significant about the process was that the case was left largely in the hands of the lawyers, resulting in attorney's fees that soon amounted to more than was even at stake in the suit! By not being firm and clear with our lawyer about what our minimum and

maximum aims were in the process, the case was able to drag on for two years without resolution. Within months of finding new Counsel we were able to reach a settlement that was handled largely through the insurance companies. Again, the high cost of litigation (particularly when the potential payoff is relatively small) can be used as a tool to force a negotiated settlement.

The Chapter 11 process was NB's final legal campaign. The aim of the Chapter 11 filing was quite clear: to give NB relief from its creditors for a period of time to allow us to continue to operate and search for the capital that was needed to move to a higher stage of operation. Chapter 11 essentially insulated the bakery from all attempts to collect on our debts and, under the protection of the State, we were able run the business at a profitable level. It should be noted that a business of NB's size does not typically file for protection under Chapter 11. It is an extremely labor-intensive process (business and legal labor) with numerous bureaucratic requirements that would normally discourage a business of our size from even filing. Our access to low-cost legal aid and performing many of the functions ourselves that would normally be handled by counsel allowed us to complete the process. Throughout the process we also found that instead of being antagonistic to our tactic, creditors proved to be either understanding of our situation or, due to the relative insignificance of our debt, just plain disinterested in the process. There was never any significant challenge by a creditor throughout the entire period that we operated under Chapter 11.

In summary, we learned through our legal struggles that there is power in understanding the forces in contradiction in any process. With the proper analysis and preparation we were able to overcome many of the control factors that are built into the system to insure that small business do not receive proper protection under the law. At the same time we were able to confront those same control factors as we had internalized them on an individual level.