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PROCEEDINGS

23rd NATIONAL CONFERENCE OF BARGAINING AND MARKETING COOPERATIVES, JANUARY 6-7, 1979, LAS VEGAS, NEVADA

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PREFACE

This is a report of the proceedings of the 23rd National Bargaining Conference held January 6-7, 1979 in Las Vegas, Nevada. The conference was jointly sponsored by the cooperatives program of the Economics, Statistics, and Cooperatives Service (ESCS) of the U.S. Department of Agriculture and the National Committee of Agricultural Bargaining and Marketing Associations. ESCS prepared this report as a part of its activity of arranging and conducting the conference at the request of bargaining and marketing cooperatives.

These proceedings include speeches at the conference and related information. Opinions expressed here reflect the views of the participants and do not necessarily represent the views or policies of the U.S. Department of Agriculture. Use of commercial names does not constitute endorsement.

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Washington, D.C. 20250 August 1979

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INFLATION, THE ANTI-INFLATION PROGRAM AND AGRICULTURE

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The interest and concern with inflation has increased dramatically over the last 10 years as the problem has become more deeply entrenched in the U.S. economic system, and traditional remedies have failed to curb the pressures.

The current problem had its roots in part in the midsixties when the economy became overheated by a combination of civilian and military demands which accelerated rapidly under a Government policy of large deficit spending during the Vietnam War. Prices increased at a 1.2-percent annual rate during 1961-64. This period was characterized by falling wholesale prices for farm products and processed foods and weakness in prices of crude materials and imports. However, from 1964 to 1969, prices were increasing at an annual rate of 3.6 percent (table 1). The inflation rate in 1969 reached 5.4 percent, reflecting the tighter labor markets, slower productivity growth, and high capacity utilization brought on by the accommodating fiscal and monetary policy of the midsixties. While excessive demand was clearly the force behind the beginning of this inflationary spiral, Government policy did not shift dramatically toward restraint until fiscal year 1969, when a $25-billion deficit in FY 1968 was converted to a $3-billion surplus in FY 1969. The abrupt shift in fiscal policy, coupled with a tighter monetary policy, was a main factor in bringing on the 1969-70 recession.

Table 1--Economic indicators reflect growing problem for the seventies

Period	Consumer price index	Output per manhour	Compensation per manhour	Unit labor costs	Import prices	Wholesale prices raw materials	Net federal budget 1/
	Annual percentage rate						Bil. dol.
1961-64	1.2	4.5	4.7	--	--	--	- 6
1964-69	3.6	2.2	6.3	4.0	2.1	2.8	-25
Recession 1969-70	5.8	2.3	7.2	4.5	7.4	4.0	3
1970-71	4.3	2.9	6.6	3.6	3.7	2.1	-23

1/ Selected fiscal years: 1964, 1968, 1969, 1971.

The 1961-69 expansionary phase of the business cycle had been the longest on record. The troublesome legacy of the prolonged period of excessive demand in the late sixties may be at the heart of today's problems. This period permanently altered the inflationary expectations of consumers and businessmen and, in turn, modified the wage bargaining and pricing behavior of the participants in the system.

The first evidence of this modified behavior came to light during the 1970 recession. The sharp cut in Federal spending and tighter monetary policy resulted in weaker aggregate demand, with a corresponding rise in the unemployment rate to over 5 percent and excess capacity in many sectors. In theory, this would result in slower wage increases and finally lower price inflation. However, unit labor costs continued to rise and wage increases did not slow in spite of the slack labor markets. The inflation rate remained at nearly 6 percent in spite of a 40-percent increase in the unemployment rate.

The failure of the inflation rate to ease in the face of rising unemployment was the first indicator that higher unemployment would bring a distressingly small rate of deceleration in inflation. This tradeoff had been at the heart of the traditional aggregate demand adjustment approach to curing inflation, and the erosion of its effectiveness is critical to understanding the need for a comprehensive anti-inflation program.

The first year of the recovery (1970-71), buoyed by economic stimulus from a $23-billion Federal budget deficit, did offer the promise of some easing in the inflationary pressures. This may indicate that the moderating impacts of the aggregate demand adjustment have longer lags since it is necessary to overcome inflationary expectations. The inflation rate slowed to around 4 percent, reflecting a slightly slower rate of increase in wages and an increase in productivity. However, the pace of the recovery was slow and the inflation and unemployment rates were high by historical standards. Furthermore, the confidence in the dollar was being undermined by a steady deterioration in the balance on current account.

The New Economic Policy (NEP) announced by the Nixon Administration on August 15, 1971, was motivated in large part by the deteriorating balance-of-payments prospects and an impending request to convert $2 billion into gold. Economic conditions, at that time, appeared favorable for generating a viable economic recovery with a little more stimulus. The NEP contained three elements: (1) suspension of dollar convertibility into gold and imposition of an import surcharge to deal with balance-of-payments problems, (2) requests to Congress for an investment tax credit and other tax changes to stimulate output and employment, and (3) imposition of a 90-day freeze on prices, wages, and rents. The freeze and the system of controls that followed were intended as short-term complements to the other policy changes and as a program to speed up the disinflation process already underway. In fact, the intent of Phase III, implemented in January 1973, was to provide a way station out of mandatory controls and to secure continued cooperation in a program of wage and price restraint. However, the unexpected explosion in worldwide price levels in 1973 meant the extrication of most of the economy from controls was not completed until April 1974, after an additional price freeze which was particularly damaging to U.S. agriculture.

The debate continues over the relative effectiveness of the wage/price controls. While some improvement carried into 1973, the sequence of events which followed left the controls and their performance in disarray (table 2).

The price surge, which began in 1973 and continued through the 1973-75 recession, was the culmination of a number of factors which served to redefine the role of the U.S. economy in the international economic system and to raise serious questions about traditional economic analysis of aggregate demand policy. Many domestic basic materials industries were operating at capacity to fuel the demands of the growing economy. World food supplies dropped sharply and U.S. consumers suddenly found themselves bidding aggressively for products on world markets. The strength and coincidence of the economic booms in most large industrial countries led to a worldwide explosion in prices as excessive demand worldwide pushed prices higher.

Table 2--Economic indicators reflect inflation in slack economy

Period	Consumer price index	Output per manhour	Compensation per manhour	Unit labor costs	Import prices	Wholesale prices raw materials	Net federal budget 1/
	Annual percentage rate						Bil. dol.
1971-73	5.5	1.9	7.2	5.2	6.2	23.3	-23
Recession 1973-75	11.1	-2.6	10.9	13.8	31.2	2.6	-45
1975-77	6.1	1.9	8.5	6.6	6.2	2.0	-66
1977-78	8.0	0.1	9.3	9.2	6.4	16.2	-45

1/ Selected fiscal years: 1972, 1975, 1976, 1977.

The United States was further disadvantaged by the devaluation of the dollar and a subsequent slide in its value further aggravated the trade sector account. Many analysts feel that the international monetary system in effect before August 1971 enabled the United States to avoid importing inflation impulses during the later sixties, when the dollar was becoming progressively more overvalued. With the move to flexible exchange rates, the United States was more open to the importation of the inflationary pressures of other economies, which may have resulted from excessive dollar outflows in the sixties.

With the economy under pressure both from within due to skyrocketing basic raw material prices and externally from rising import prices, the oil embargo and the actions taken by the international cartel to raise fuel prices pushed the economy into the most severe recession since the thirties.

The double-digit inflation ended during the 1973-75 recession, but the recovery period, 1975-77, still reflected a 6-percent rate of price increase. Even after factoring out the transitory effects, the underlying rate of inflation was once again well above historical levels. During this period, prices of food, fuel, and imports were not significantly outrunning the general inflation rate. This was the second consecutive recession which had failed to slow the rate of inflation markedly from the pre-recession levels. The persistence of rapid inflation in a slack economy such as 1975-77 was a new phenomenom in the United States and suggested that the underlying rate of inflation, conditioned by the expectations of consumers and business, may now be around the 6-percent level. The breaking of this inflationary psychology must be at the heart of any anti-inflation program.

The inflation of 1975-77 was widespread and in the aggregate was balanced between wages and prices. All private groups had understandably sought to protect their own interests by passing on higher costs of items they bought in the form of higher prices of the goods and services they sold. With unit labor costs rising by over 6 percent, business was merely a transmission belt for inflation when it increased its prices by 6 percent. And consumers, facing a 6-percent increase in prices, sought pay increases above 8 percent to merely maintain a longrun pattern of real gains that they had come to expect in line with the gains in productivity.

In 1978, while special factors such as sharply rising food prices augmented the underlying rate of inflation, the absence of gains in productivity pushed unit labor costs near the double-digit level and left the potential for significant inflationary pressure well into 1979. The inflation rate was near 8 percent, raw material prices were accelerating, and productivity gains were at a standstill. The uncertainties

over inflation and the likely impact in a heavy wage bargaining year made it essential that a strong, comprehensive program be implemented to moderate the pressure, provide guidance for the economy, and alter the prevailing inflationary psychology.

The past 10 years have provided a number of lessons in dealing with inflation. First, the inflation/unemployment tradeoff is apparently much smaller than previously thought, and the lags much longer. Evidence suggests that modern advanced societies operating at nearly full employment have entrenched expectations of inflation and thus an inflationary bias. In the past, excess demand heated up the economy and recessions actually reduced prices. Now the economy begins to inflate before there are signs of excess pressure, as if in anticipation of what will be coming. The revision of prices downward requires longer and deeper recessions than seem acceptable by current standards. We have had a national policy of full employment which undergirds our stated political goals. In previous cycles, the public had a deeper fear of recession, unemployment, and debt. Today, we have numerous built-in, counter-cyclical programs to ameliorate the downside of the cycle. The typical citizen does not feel that prolonged depression is likely, or that the financial constraints will be severe. Businessmen, reflecting the same beliefs, are less likely to reduce prices when markets soften, because they feel the markets will improve soon. Similarly, with high unemployment unlikely and the financial burden eased, workers keep up the pressure for higher wages with more confidence, in spite of slack labor markets. And, business provides less resistance to the high wage pressure, if they can merely pass along the increases as markets improve. As a result of all these factors, prices are sticky on the downside. Increases in unemployment brought on by restrictive fiscal and monetary policy buy a very small decline in the rate of inflation.

The second lesson is that, during periods of excess demand, mandatory wage/price controls disrupt the market system and create perverse expectations and responses by consumers and businessmen. Thirdly, there are exogenous factors, such as weather and its impact on world food supplies, which will always be present and must be treated as transitory phenomena whose impacts must run their course. To interfere is only to elicit distorted signals from the market, which will create even further problems. Finally, one must recognize that there is no quick fix for the problem of inflation. It will take a long concerted effort on the part of everyone to bring the rate of inflation down to acceptable levels.

The Anti-Inflation Program

The Government's anti-inflation program is a comprehensive program for the public and private sector which contains three basic elements:

1. Tighter fiscal-monetary policy

   The FY-1980 budget will be designed to reduce the Federal deficit to $30 billion.

   The Federal Reserve has taken steps to strengthen the position of the dollar internationally and to restrict the growth in the money supply.

2. Evaluation of Federal and other Government regulatory programs and policies

   A review of Government programs which contribute to inflation or impede productivity growth will be examined carefully. Many of the sources of inflation are structural in nature and require a micro approach to selective industries.

3. Voluntary wage and price standards

The standards are designed to provide guidance to the private sector in bringing the wage/price spiral under control. It will take responsible action and commitment in the private sector to complement the anti-inflation efforts in the public sector. While the guidelines have received the greatest attention, they are only one part of the long-term solution.

Agriculture and the Anti-Inflation Program

The food and agriculture system will be impacted by all elements of the program. Tighter fiscal and monetary policy will have impacts upon aggregate demand and prevailing market interest rates and will affect the demand for agricultural products and the availability of loanable funds. However, these impacts should be moderate for most producers.

The review of Government programs and policies offers an opportunity for the food and agriculture system to overcome many of the constraints on productivity that have plagued it for years. While agricultural productivity has continued to increase year after year, the balance of the food delivery system has stagnated to a significant degree. Government transportation regulations will receive particular attention. All Government programs, including farm programs, will come under increased scrutiny in terms of inflationary impacts.

The voluntary wage/price standards are designed to give the private sector guidance in making responsible decisions consistent with the Nation's efforts to control inflation. The standards are designed to bring inflation more in line with the 1975-77 period as a first step toward easing pressures (see table 2 reference periods). The voluntary price standard provides for an 0.5-percent reduction in the rate of price increases in the program year relative to the rate of increase in the base period 1975-77. The rate of increase cannot, however, exceed 9.5 percent. Increases of 1.5 percent or less would be considered in compliance, irrespective of the base period rate. Raw agricultural products are excluded from this standard. However, many of the purchased inputs of the farm sector are subject to the standard on a voluntary basis. If a company cannot meet the price deceleration standard, it can attempt to meet a profit-margin limitation, which limits margins in the program year to less than the average of the best 2 out of the last 3 years. However, they can be no greater in dollar magnitude than the base year, with adjustments for volume, and a 6.5-percent increase for general inflation.

In food manufacturing and processing, the potential volatility of raw material prices (agricultural products are exempt) necessitates an optional selective margin standard if the firm chooses not to use the profit-margin limitation standard. In these areas, the increase in gross margins cannot exceed the base period gross margins by more than 6.5 percent after adjustment for volume. The retail and wholesale trade may use a percentage gross margin standard.

The Department of Agriculture and the Council on Wage and Price Stability are jointly monitoring farm and food price developments at all levels of the system, from farm inputs to raw product prices to retail prices. This effort is designed to monitor price changes at various levels of the food system, identify the sources of significant movements or lack of movement in food prices, and develop policy alternatives to reduce inflation in the sector.

The wage standard, in general, suggests an annual average increase in pay rates of 7 percent or less with adjustments for fringe benefits and productivity increases. Multi-year contracts may not have a single year with a rate of increase in excess of 8 percent.

The wage standard is consistent with the price deceleration standard to bring the rate of inflation in line with the 1975-77 base period. Table 3 illustrates the relationship between the wage standard, the price decelerator, and the base period rate of price increases.

Table 3--Wage/price compatibility in program year

Item	Change
	Percent
Wage standard	7.0
Legislated payroll costs	+ .5
Compensation per manhour	7.5
Productivity increases	-1.75
Unit labor costs	5.75
Deceleration standard	- .5
Base period price increase	6.25

If the wage standard could be met and the gains in productivity achieved, the rise in unit labor costs could be significantly reduced relative to the past year (table 3). This moderation coupled with the deceleration standard could bring the rate of price increase to 6 to 6.5 percent during the program year.

Many analysts have examined the problem of inflation, and although they do agree that inflation is bad, they cannot agree upon a culprit. Large Federal budget deficits, excessive rates of growth in the money supply, wage contracts which perpetuate the vicious wage-price spiral, excess profits for corporations, and excessive government regulation are often cited. The list has grown larger as the inflation problem has become more deeply entrenched in the economy.

The actual culprit could be most aptly identified by the well-known quote, "We have met the enemy and they are us." The true source of inflation, be it the result of public or private sector action, is each U.S. citizen as a voter and consumer. If our political and market systems have generated an inflationary bias, it is a reflection of the collective action of the participants. The problem of inflation will only be resolved when responsible actions are taken by each and every citizen.

MECHANICS OF BARGAINING

BARGAINING IN THE BROILER INDUSTRY

A. William Jasper
Director, Poultry Department
American Farm Bureau Federation

In the late fifties and early sixties, when broiler growers became dependent on commercial firms for contracts under which they could raise broilers, we began to hear of broiler grower discontent.

As integrated broiler firms became more competitive, growers were forced to share the burden of narrower operating margins and lower net returns to the industry. Gordy observed, "While much of the risk of growing broilers had been transferred to integrators or contractors, loss of independence and lower incomes caused some growers to become disenchanted. They opted for an organization that could represent them and bargain with their contractors for improved contracts." 1/

Farm Bureau spent approximately 5 years evaluating the contract broiler industry, with particular emphasis on the grow out sector. A major conference was held in Washington, D.C. in 1962 to focus on the situation. During 1964 and 1965, 4,000 individual growers were interviewed face to face in an effort to get facts and opinions.

A broiler bargaining program was launched in January 1966. Although it was terminated in 1972, possibly prematurely, it changed the character of the American broiler industry. It improved it.

It will be difficult for me to avoid philosophizing as I recite this piece of history. I will endeavor, however, to keep my philosophical comments to a minimum. For the record and for students of agricultural bargaining, I will mention that I gave a talk in 1970 entitled "Sociological Aspects of Contract Farming" in which I delved rather heavily into the philosophical arena. 2/

Organizational Activities

We helped broiler growers organize in 15 States. Because of the bargaining nature of this endeavor, organizational activities were carried out by the American Agricultural Marketing Association (AAMA) and the various State Farm Bureau-affiliated marketing associations.

1/ J. Frank Gordy, "Bargaining Activities Played A Role," American Poultry History, 1823-1973, American Printing and Publishing, Inc., Madison, WI, 1974, pp. 385-386.
2/ Talk given at the Midwest Seminar, sponsored by the American Poultry and Hatchery Federation, Des Moines, Iowa, December 3, 1970.

Schedule

In late January 1966, our organizational activities got underway in the Southeast, followed by similar efforts the following March in the midsouth. States included Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Missouri, North Carolina, and South Carolina.

We made a specific point of not going into new areas until a grower survey had been completed and a definite request made for such new areas to be brought into the program. Following this procedure, we started organizational activities in Delmarva in June 1968. Delmarva includes the Eastern Shore areas of Delaware, Maryland, and Virginia. We also had a very limited amount of organizational activity in central Virginia.

Later in 1968, we started organizational activities in Maine, again in response to grower requests that we do so. This was followed by organizational work in the summer of 1970 in Oregon and Washington.

We never had an organized broiler grower bargaining program in other major broiler States, notably California and Pennsylvania, although we did hold some grower meetings in the Keystone State. We also held one broiler grower meeting in Connecticut, but there was no organizational activity. There were, in fact, some areas of those States where we did organize that were left alone, primarily because we did not hear from the growers.

Opposition

We had considerable opposition during the organizational phase of our broiler program. The integrators themselves certainly did not hide their feelings about what they considered "their growers" being organized. In Alabama and Mississippi we met with practically all of the integrators in group meetings before we launched the program and discussed openly why the program was being initiated and what our objectives were. These meetings did not pacify many of the integrators.

The range in subsequent integrator actions and reactions certainly was wide. Some integrators seemed to pay us scant attention, while others went to great lengths to discourage our organizational activities. The extreme situation can best be described by saying that in one area of central Mississippi we had to take the growers' membership dues after dark, in cash, behind barns, and not give receipts. In more than one instance, the integrators would have their servicemen drive around our meeting locations with company trucks to discourage growers from participating in the meetings. In other instances license plate numbers of growers attending meetings were jotted down, and the growers usually had a visit from their servicemen the following day.

Most integrators belonged to the National Broiler Council. While we always maintained an open posture with the council, that organization did not hide the fact that it would oppose us at every turn. Likewise, there were several other regional and State trade associations which expressed open hostility toward us.

Although the opposition was not universal, extension service personnel in several States and counties made it clear that they weren't on our side. In fact, they made it abundantly clear that they were on the other side.

We did not have many friends in USDA, with the notable exception of the Packers and Stockyards Administration (P&SA). In fact, we got precious little help from the Farmer Cooperative Service's administration of the Agricultural Fair Practices Act and virtually no assistance when enforcement responsibilities were transferred to the Agricultural Marketing Service.

A goodly portion of the press was openly hostile toward our organizing efforts. A major exception was BROILER INDUSTRY, which gave us strong editorial support. Some publications made an effort to appear neutral, but when we met individually with the editors, it was clear they weren't on our side. We received valuable broadcast support from Marvin Vines, farm service director, Radio Station KAAY, Little Rock.

Organizational Structure

AAMA served as a common agent for the broiler organizing and bargaining activities in the various States. Dr. Kenneth Hood was the general manager of AAMA. I served as manager of the poultry division. Troy Barton, our field coordinator, later succeeded me as division manager. Each of the State Farm Bureaus participated in the broiler bargaining activity through their respective marketing affiliates. A coordinator was appointed in each State to work on the broiler bargaining program. Often, this assignment was in addition to other responsibilities which that particular individual may have had.

Insofar as possible, we operated the broiler program on a "centrally controlled" basis. I had no direct authority over the State coordinators. We did have an AAMA fieldman located in the Delmarva area who was responsible to me. For all practical purposes, we operated under a federated structure. While this approach is feasible, it certainly is not the easiest way to get the job done! We had policy advisory committees that helped us develop our basic broiler bargaining program. There were advisory committees at the county and State levels, and we had an AAMA Broiler Advisory Committee. Growers were appointed to these committees without regard to their association with any particular integrator. Recommendations came forward from the counties and were sifted through the State broiler advisory committees and ultimately considered by the AAMA Broiler Advisory Committee. Those advisory committee recommendations that were approved by the AAMA board of directors became the basis of our operational program.

We also had action committees. We sometimes called these "plant" committees. They consisted of from three to five growers representing a particular integrator. Growers on these action or plant committees all raised broilers under contract with a particular firm. These committees made recommendations, within policy, dealing with a particular company's contract, settlement sheet, or other management practices.

State bargaining associations were responsible for carrying out bargaining activities with particular integrated broiler companies operating strictly within a given State. When a company operated in more than one State, it was considered a regional or a national contracting company, depending on the extent of its operations. Bargaining responsibilities on the regional and national levels were the responsibility of the AAMA.

The Program

One of the first things we did in carrying out our activities was to have all the advisory committees meet, first at the county level, then at the State level, and finally at the national level. As a result of all these advisory committee meetings and the recommendations that came therefrom, we developed what we called our "12-Point Program." For example, one of the points in the first 12-point program was to get written, legal contracts for all growers. At the end of the first year of operations, the advisory committees looked at the 12-Point Program and evaluated it in terms of accomplishments, a procedure that was repeated each year. If one of the points had been achieved, obviously it would be put aside. The committees might reemphasize points where we recommended entirely new areas for consideration. Therefore, each year our program was updated, and we moved on to new objectives.

Through our advisory committee procedure, we evolved a total program in the broiler area that involved legislative and regulatory activities, market research, economic education, economic services, and other projects designed to have an influence on our efforts to strengthen the broiler growers' bargaining power with their contractors. We also were concerned with improving the broiler growers' position in noneconomic matters. We constantly stressed that our activities could not be conceived with the idea of doing the impossible or of forcing prices to uneconomic levels. Most of our membership understood that a bargaining group could not hope to receive prices any higher than competitive forces in the market would permit.

Operations

Our broiler bargaining program was weighted quite heavily in the beginning with an information and education program. We carried on a continuing program of research so that we had solid facts on which to base our claims. We used published research, and did original research. We devoted a lot of time to analyzing contracts and settlement sheets. At that point, one couldn't begin to tell how well a broiler grower would fare by reading his contract. It was absolutely essential that his settlement sheets be evaluated.

Our research also involved the development of typical cost budgets based on various investment factors, interest rates, repayment periods, and regional industry practices. These cost budgets proved to be one of our better bargaining tools, and they also became quite useful to a number of companies whose managers, surprisingly, hadn't sharpened their pencils quite as much as they might have.

One of our major creations was a model contract that could be adapted to any individual company operation and adjusted for differing area practices.

Practically all the research material we developed was published in one form or another. The information always was given to our grower members by means of newsletters and at meetings. We provided most of our information to the press, and were grateful that most of it was published.

Meetings with Contractors

Armed with the research material that we developed, our basic program and specific recommendations developed by the individual plant committees, we made every effort to carry on meaningful negotiations with the contractors. We experienced some outright refusals by contractors to meet with us. Through time and persistence, however, we usually broke these barriers. While we preferred to conduct formal bargaining, we often ended up with what I would call a "love-in."

Don't be fooled by the term "love-in." Many of these sessions yielded most satisfying results. The integrator could always say that he hadn't bargained with the association, but we often were pleased to see some or all of our recommendations accepted at a later date.

There were instances where we carried out quite formal negotiating sessions. These varied in character from open, frank discussions with a company president or manager, for example, to sessions where we might have the company president, two or three vice-presidents, a lawyer, and a recording secretary present.

We experienced every degree of success and every degree of failure in these negotiating activities. Overall, however, we had far more successes than failures. I can cite a specific instance when we went to a company and asked its acceptance of 21 recommendations. We got affirmative response on 19 of them, including one that dealt with higher grower payments.

Other Activities

In addition to our informational and educational work and bargaining per se, those of us involved in the broiler program participated in many other activities. We served on USDA committees, we met with various agencies of the Department to get understanding and to accomplish some of our objectives, and we attended various trade association meetings and conferences. We were invited on occasion to attend a broiler company function, and we accepted all such invitations.

We met with editors and trade association executives in an effort to get better understanding. When invited, and we often were, we spoke at trade association meetings and before a variety of organizations, including some that basically were not agriculturally oriented but had an interest in our program.

We met with bankers and other credit agencies to give them a better understanding of broiler growers' financial concerns. We encouraged better lending practices, and scored some notable successes.

We represented growers at some administrative hearings held by the Packers and Stockyards Administration. We also represented growers on day-to-day dealings with P&SA.

No program would be "for real" if a few crises did not arise. We always were "at the ready," and moved expeditiously when the alarm was sounded. As one example, our National Broiler Advisory Committee chairman was cut off by his contractor without advance notice during a mid-Friday afternoon. By Monday morning we had him reinstated!

Finally, in this area of other activities, we helped growers with individual problems to the fullest extent possible. We held no brief for inefficiency, but we did try to help growers with poor records to improve their grow-out performance, sometimes with the understanding help of an integrator who was convinced that the grower deserved just one more chance.

Program Results

Were there any grower benefits derived from our program? There most certainly were, and I would like to list just a few. For example, we:

1. Developed a valuable information service on all aspects of the broiler industry.

2. Compared payment schedules of broiler contractors throughout the United States.

3. Helped bring about better chick quality in some instances, improved feed quality in others, and secured better methods of calculating feed conversions.

4. Secured written contracts including long-term contracts in a few instances...contracts that spelled out obligations of contractors and growers.

5. Caused contractors to provide understandable settlement reports and to become more conscious of cost accounting.

6. Negotiated specific increases in grower payments in numerous instances and negotiated minimum guarantees and higher payments for improved housing in some cases.

7. Negotiated with some contractors to share or absorb condemnations and fuel and litter costs.

8. Eliminated grower fears of joining our association (with some notable exceptions) by obtaining passage of the Agricultural Fair Practices Act. (This Act may very well not have become law without strong support and action by broiler growers working through Farm Bureau.)

9. Obtained Packers and Stockyards Administration regulations governing relationships between integrators and growers. These regulations require better weighing practices for live broilers and require integrators to provide growers with copies of any and all reports that affect their grow-out payments.

This list could go on and on, but time doesn't permit. In looking through my records, however, I noted that broiler growers who organized in Maine experienced a 25- to 30-percent increase in grower payments in 1 year, and you can be sure those increases were not on the drawing board when the growers decided to organize. About 2 years later, some broiler growers in Oregon and Washington, who were not organized, had their grow-out payments slashed to the tune of 3 cents a bird. In addition, up to $800 per grower was withheld for mandatory annual membership dues in their respective State fryer association.

We believe that our efforts also resulted in a number of benefits to broiler integrators or contractors. For example, we:

1. Helped the integrators tidy up an industry that had grown like "Topsy."

2. Educated many integrators on grower problems and concerns.

3. Caused integrators to become more efficient in their dealings with growers.

4. Caused the National Broiler Council to create a grower committee (which, unfortunately, operated under rather oppressive ground rules because of its integrator orientation).

5. Caused the National Broiler Council to develop a code of ethics.

6. Obtained the P&SA regulations mentioned earlier which soon proved to be as beneficial to most integrators as they were to growers.

Program Termination

The Farm Bureau broiler bargaining program was terminated in 1972. If Ken Hood, his successor Harold Hartley, Troy Barton, and I had had our way, the program would not have been ended. The officers and directors had to face the facts with less emotion. Some of the facts were these:

1. Too few growers were involved. There always were some free riders, and there always will be in any voluntary program. Also, a number of growers had the attitude of "What did you do for me today?" Further, we found that many growers would rather please their contractors than themselves.

2. We lacked adequate financing. This is directly related, of course, to the size of our membership. At our peak we had approximately 20 percent of the broiler growers in the United States signed up in our program. It should be noted, however, that we had a much higher percentage of the potential

membership in certain areas and virtually 100 percent of the potential with some particular companies.

3. Growers did not have adequate laws pertaining to bargaining. It was most discouraging at times, and with particular companies, to constantly be refused recognition. The uphill grind becomes wearing over time. If companies were required to deduct members' dues when authorized by the members to do so, membership work would be reduced enormously. I call this the inertia effect.

4. Some of our leaders--national, State, and local--didn't have the stomach for this type of activity which, in itself, is a real character-building exercise. Often the aims and objectives of our program created political conflicts and other problems with the agribusiness community for a number of our top leaders. This made it difficult to organize in some areas, impossible in others.

5. NFO attempted to organize broiler growers in Alabama in early 1970. While their goals were laudable, their approach created considerable distrust, led to confrontations between and among neighbors, and open conflict between some growers and various companies, and stiffened the resistance of the integrators to any form of grower organization.

6. Finally, we experienced continuing, strong, and sometimes excessively hostile opposition to our organized bargaining efforts by a number of groups referred to earlier.

National Broiler Marketing Association

Your program committee asked me to say a few words about the late National Broiler Marketing Association (NBMA). A Capper-Volstead agricultural marketing cooperative, NBMA was organized in September 1970. Its purpose was to create effective marketing power for its more than 40 integrated member firms in their dealings with buyers, primarily retailers and institutional customers. NBMA performed other services, including the export of broilers on behalf of its members.

NBMA was challenged by the Justice Department, which contended that integrated broiler firms were not eligible to join together and obtain the protection of the Capper-Volstead Act. After a long drawn-out legal battle, including a separate, private class action suit, the Supreme Court sided with the Justice Department and held that some of NBMA's members did not qualify as farmers under the Capper-Volstead Act. Therefore, NBMA was declared not to be a legitimate Capper-Volstead cooperative. NBMA no longer exists.

Farm Bureau stayed out of this affair until it reached the Supreme Court. While we detested the ambulance-chasing activities of the litigants in the private class action suit, we felt the need to file an amicus curiae brief for the sole purpose of defending the integrity of the Capper-Volstead Act. We do not believe that Capper-Volstead was designed to permit nonagricultural corporate integrators to deal with each other on the matter of price.

Broiler Bargaining in Other Countries

The contract system of broiler production has become quite widespread throughout the world. To my knowledge, however, organized efforts by broiler growers to bargain on a group basis have occurred only in Canada, the United Kingdom, and Australia.

Canada

Canada has opted for marketing boards as a means of bargaining with processors. Provincial boards in every Province except Newfoundland have the power to establish grower quotas and to set minimum prices which processors must pay. As of last December 29, Canada has a national broiler marketing agency to which all Provinces belong except Alberta, Manitoba, and Newfoundland.

The power the Provincial boards have would be considered astounding by most observers here. There is no question that broiler growers in Canada have bargaining power. When I look at the quota system in operation, however, and the limits to grower expansion, coupled with failure to insure the utmost in economic efficiencies, I have to question the longrun desirability of this approach for the Canadian nation as a whole.

England

Broiler bargaining activities in England are carried out on a rather loose basis, where the National Farmers Union of England and Wales attempts to speak on behalf of its grower members. The NFU program is somewhat akin to our research, information, and educational activities. It is my understanding that considerable time is devoted to contract analysis.

Interestingly enough, much impetus and some ideas for this program came from us, largely through publicity and correspondence, but also through face-to-face contact.

Broiler integrators in the United Kingdom took a different tack than American contractors, particularly in the earlier years. The integrators held periodic meetings with their contract growers, at which time they fed them sandwiches and ale, then encouraged them to discuss their problems. Outside speakers often were invited to talk on a wide variety of topics. Having participated in several such meetings, I can attest to their soothing effect.

Australia

Broiler growers in all of the major broiler producing States in Australia have legal bargaining rights. Legislation is at the State level. In spite of the differences in the legislation passed in each of the States and dire predictions that this would lead to the demise of the Australian broiler industry, the broiler industry down under is alive and thriving!

Again, we provided considerable input into the Australian broiler bargaining situation. Some of this was accomplished by correspondence, in addition to face-to-face contacts with growers, integrators, and State ministers of agriculture.

Conclusions

We conducted a broiler bargaining activity that was controversial in nature. In my opinion, we did the right thing at the right time. Our efforts were subject to constant scrutiny by a multitude of advisory committees in the counties, States, and at the national level. Our approach was to be reasonable, rational, respectable, and right.

To have a militant demeanor is appropriate, in my opinion; however, it is possible to be too militant. I have drawn the following conclusions:

1. Our program was highly effective in helping to tidy up the contractual broiler industry and in bringing to an end some undesirable aspects and abuses of the system. In the process, we materially improved grower returns in all areas and substantially raised payment levels in the so-called low-paying areas.

2. For a program of this nature to be totally successful, it is necessary to have:

   a. Total support and dedication of the officers, directors, and staff of the association and other organizations with which it might be affiliated, at all levels of operation.

   b. Total support of the grower members.

   c. Legal authority to require contractors to meet with legitimate bargaining associations and bargain in good faith. Authority also is needed to have contractors check off member dues.

   d. Trained staff persons who are thoroughly knowledgeable about the industry in question and who do not over-promise or lead growers to have unrealistic expectations.

3. While central control is more effective, the federated structure is an acceptable one within which to operate a bargaining program.

4. The AAMA program, in my opinion, should not have been terminated. It would have been most appropriate and highly desirable to have continued an organized broiler bargaining activity in the ensuing years, during which time there was a bigger pie to divide.

5. We should have national bargaining legislation, and when we do some organization should get on with the job of bargaining for growers on a group basis and bring to an end the power disparity favoring contractors who prefer to deal with contractees on a one-to-one basis.

6. Finally, to be successful in any bargaining activity, it is essential to have strong legal support and the willingness to fight, even create, some legal battles. This would require a sizable fund to enable the bargaining association to put its money where its mouth is.

HIGH-MOISTURE CORN MARKETING

Nyal Rydalch
Idaho Farm Bureau Federation

Our high-moisture corn program began in the early spring of 1978 at the request of several cattle feeders who wanted to secure a supply of feed under contract.

The first meetings with growers and feeders explored the possibilities of a program and developed program guidelines. In these meetings, the objective of selling high-moisture corn and pricing the sale based on the Denver U.S. No. 2 corn price quotes were agreed upon. We also agreed to work toward pricing corn on its feed value in comparison with other feed grains available to the feeders in the area.

In the following two meetings, we agreed on the specific terms of the contract and a base price of $4.00 per hundredweight (cwt.) for 13-percent moisture corn. Also, we developed four options that producers could choose from in selling their high-moisture corn and determined the number of acres the feedlots would purchase. The four options were:

1. Cash price of $4.00 per cwt. shall be payable on December 15, or 15 days after completion of harvest, whichever is latest.

2. Cash price of $4.00 per cwt. with payments to be made as follows: one-third during December 1978, one-third during February 1979, and one-third during April 1979. With interest at 0.83 percent per month on the unpaid balance for February and April payments.

3. Market price schedule: seller and buyer agree to price high-moisture-corn grain sold under this contract by using the average weekly price quotes for U.S. #2 yellow corn on the Denver market for the months of November, January, and March, with payments to be made by the buyer in December, February, and April. The parties hereto agree that FARM BUREAU MARKETING ASSOCIATION of Idaho shall obtain said average from the publication Grain Market News, issued from Portland, Oregon, and when obtained, payments shall be made as follows: approximately one-third of the total cwt. will be paid for at the November average price during the month of December 1978; one-third of the total cwt. will be paid for at the January average price during the month of February 1979; and one-third of the total cwt. will be paid for at the March average price during the month of April 1979.

4. Buyer and seller agree that the price of high-moisture-corn grain sold under this option shall be established in the same manner as under option #3 above for November; that said price per cwt. shall be paid during December for the total cwt. delivered under this option.

Out of 240 contracts signed, 81 were on option #1, 123 on option #3, 34 on option #4, with 2 on option #2. Our experience has shown very little support for option #2; it will be dropped from future contracts.

Our next objective was to get many corn growers into meetings and sign contracts. We used radio, newspapers, and press releases to contact growers to sign contracts. In about 2 weeks time we had nearly 8,000 acres under contract.

The acreage needed by some feedlots was obtained in this first sign up. Others needed more feed, and the contract was still available in areas nearest those feedlots.

We ended our first year adventure in high-moisture corn with about 9,000 acres under contract; we delivered 45,406,081 pounds of 13 percent corn.

In order to help determine harvest dates, we employed three persons to visit growers' fields and check moisture and maturity of the corn. These persons were to help determine when the high-moisture-corn pits should be opened to receive corn and to help the combine operators determine which fields should be harvested first. We have gained a lot of experience in our first year's operation that will make the program better for 1979.

Buyers and sellers are happy with the program, and we look forward to expanding the acreage and number of feedlots for 1979. There are always some adjustments to any program in its first year. Because of the input by some feedlots that had been in the program over the year, our adjustments have been minor.

The objective of pricing high-moisture corn based on feed value and the current market price at delivery time has proven beneficial to continuing a program, as both buyer and seller are making a sale and purchase at market prices. Many times when a fixed price, such as option #1, is the basis for a contract sale, either the buyer or seller finds himself in an undesirable position price-wise at the time of delivery.

Extending payments and price over a 6-month period on the contract has presented some benefits and also some problems. The feeder likes to obtain his feed supply and extend feed payments over a 6-month period, but he doesn't like the problem of not being able to assign a fixed feed cost to a pen of cattle he is feeding for someone else.

THE MARKETING AGENCY IN COMMON APPROACH TO BARGAINING

Robert J. Van Liere
Associated Milk Producers, Inc.

Will it fly? Seventy-five years ago, Orville and Wilbur Wright provided the world with an answer as they tinkered with their airplane.

I mention the experience of the Wright Brothers because there were skeptics in our area as we worked to get a common marketing agency off the ground in the Chicago Milkshed. Although we did fly by the seat of our pants sometimes in those early days, I can tell you that Central Milk Producers Cooperative (CMPC) is off the ground, but we do run into turbulent weather from time to time.

I am pleased to speak with you today about our common marketing agency in Chicago. I will share with you some of my thoughts, opinions and observations. But, unfortunately, I can not offer you a magic formula that will put all of the pieces in place. The chemistry involved is one of trust, commitment, and confidence.

In the past several years I have received inquiries from all parts of the country. These people want to know: "How do you get a common marketing agency off the ground?" Their intentions are sincere because they believe that a united bargaining front will be of value to their members.

Since 1956, I have been involved in organizing and working with federations of cooperatives. In that time I have seen many cooperatives and cooperative leaders that have used the cooperative only for their own benefit but did not pursue the cooperative philosophy beyond their own backyard. They thereby failed to reap the benefits and, yes, dollars available in the market. There are cooperatives and cooperative leaders who think of entering into programs that involve cooperative cooperation.

As a joint marketing effort of 13 dairy cooperatives representing nearly 16,000 Grade A dairy farmers, CMPC has three distinct objectives that we hold are in the public interest. They are: (1) to increase marketing efficiencies, (2) to increase returns to milk producers, and (3) to carry on marketing and dairy product promotion programs. As in any business, the needs of all members, processors, and consumers must be served.

A common marketing agency, such as CMPC, would not be possible without the Capper-Volstead Act. Even today as we discuss ways and means of cooperative bargaining to gain market power, the saber rattling continues in Washington as self-appointed reformers seek to dismantle Capper-Volstead. Not many days go by that we don't hear charges relating to "unduly enhancing prices."

Personally, I think Senator Capper simply stated the rebuttal to this charge more than 50 years ago when this legislation was being debated. He said: "Some economists have maintained that this (marketing agencies in common) might permit a possibility of abuse and create a monopoly. But a farmers' monopoly is impossible. If the cooperative marketing association makes its price too high, the result is inevitable self-destruction by overproduction in the following years."

CMPC has its roots in two organizations that represented many dairy cooperatives working together on behalf of dairy farmers: The Federated Dairy Cooperatives and Associated Dairymen, Inc. Federated Dairy Cooperatives set up a special premium pool in the Chicago Order in late 1959. It was the first common marketing agency in the Chicago Order, and it bumped along until 1966, when the Chicago Federal Order was voted out. Associated Dairymen, Inc. was formed in 1964 with a membership of about 36 associations throughout the Midwest and South. It engaged a committee of land grant college milk marketing economists to study and recommend improvements in Midwest and Southeastern milk markets. The recommendations included creation of a reserve standby pool, elimination of seasonal variations in Class I milk prices, realignment of Class I milk prices, and other projects possible only through joint activities.

Associated Dairymen, Inc. made two attempts to bargain for prices above the Federal order minimums and was unsuccessful, primarily because it could not guarantee against the risks to which each member association was exposed in the bargaining process.

After these failures, many cooperative members of Associated Dairymen began consolidating into regional full service cooperatives. By 1968, much of this consoldiation had been completed.

I have outlined the early history of joint bargaining efforts because it provides us with instructive experience in forming common marketing agencies.

These, I believe, are basic criteria that must be met if a joint marketing agency is to get off the ground:

1. There must be two or more viable cooperatives with the following attributes: good strong leadership, the desire to work together, the desire to perform certain functions together, and the desire to return more money to farmers than the individual cooperative can do alone.

2. Marketing conditions over a wide geographical area must support an agency relationship.

3. Handlers of the product must fully understand the total program if they are to support it.

4. Organizations must be flexible enough to keep marketing programs up to date to meet marketing conditions, if necessary on a monthly basis.

5. Programs should be developed that are directly or indirectly beneficial not only to producers, but also consumers.

6. Independent and impartial auditing and recordkeeping must be provided.

7. Costs of programs and administration must be budgeted.

8. Cooperatives must be willing to compromise.

9. Cooperatives must be willing to listen to and recognize problems of customers.

10. Designated leadership of the agency must have support.

11. A compatible working relationship with government agencies should be developed and sustained.

12. Programs must work within the legal authority granted to cooperatives.

What is CMPC today and how does it operate? CMPC is a federated cooperative association representing individual dairy cooperatives in Wisconsin and northern Illinois, incorporated under the laws of Wisconsin. Last year, CMPC had 14 members, but a recent merger combined two of the cooperatives. CMPC is the marketing agency for more than 90 percent of the milk pooled under the Chicago Federal Milk Order.

By 1968, the Chicago market had a new regional Federal milk order that greatly expanded the marketing territory while consolidating several local milk orders. This was a great impetus to CMPC as it also gave us greater numbers of cooperatives to form CMPC. We feel our CMPC programs are complementary to the Federal order programs.

CMPC as we know it today got off the ground in July 1968. We did not fly very high then, but ever since then, CMPC has announced monthly an over-order Class I price applicable to all handlers who receive milk from an association of producers for weom CMPC is the marketing agent.

CMPC has the support of the individual cooperative member association because of its performance in the marketplace. Over the past 10 years, CMPC has improved Chicago Order 30 dairy farmer income by more than $60 million over the minimum Federal order milk price. For the first 11 months of 1978, producers received more than $3.6 million in extra income.

CMPC is a limited purpose cooperative. It has no stock, no assets, no employees. Its cash is turned over every month. A board of directors consists of representatives of each cooperative who vote on a weighted volume basis. All CMPC policy comes from the board of directors. The pool supervisor, a certified public accountant, carries out administrative functions, and is employed by the accounting firm.

While CMPC is primarily concerned with bargaining, our members usually pool their talents when we attend Federal order hearings as well.

AMPI Mid-States is the authorized marketing agency for CMPC. The other members of CMPC consist of both strictly bargaining cooperatives and operating cooperatives. Three of the cooperatives also bottle milk in Federal Order 30.

Although we're all competitors out in the country, at the CMPC board table we think first CMPC. Although this is a fragile relationship, it works because of the extra dividends CMPC generates for both the cooperative and its members.

Member cooperatives sign contracts with CMPC authorizing it as their marketing agent to market all milk at prices, terms, and conditions of sale established by CMPC. Among the internal committees of CMPC is a price development committee that bargains among itself as well for price. The mix on that committee is sensitive to market conditions throughout the area.

What are the programs carried out by CMPC that gain the support of the handlers?

First of all, a common pooling agent assures all buyers that only one price is charged to competing buyers. This price is announced by first-class mail to the handlers and is in effect until further notice.

CMPC has also developed several other programs to move milk.

A transportation or hauling credit is applicable on both Class I and Class II milk and recognizes the increased cost of moving milk. One of our basic programs is the surplus disposal program. Handlers who support CMPC, in effect, are purchasing services from CMPC. One of these is handling surplus milk during the flush season. This milk is manufactured by CMPC members with plants. Handlers further recognize that CMPC is obligated to furnish a committed supply during the short season. In the 10 years of CMPC, we have experienced both extremes. All dispatching is done in the Chicago AMPI office where marketing employees are on call even during the weekend. You never know when an emergency situation will pop up when you are dealing with several hundred plants.

Our pool data is published monthly, although all information from handlers is strictly confidential. Other CMPC safeguards include an independent audit annually in addition to an internal audit on a regular basis.

Although CMPC is the marketing agent for more than 90 percent of the milk on the Chicago Order, the program would not fly if it did not have the acceptance of most milk buyers.

To be fair to our customers, CMPC has a program where credits are issued when lower priced milk comes into the market. This, of course, is an ongoing thing. CMPC has struggled this year a little because our credits so far in the first 11 months of 1978 were $2 million. The program would not survive if credits were not issued and handlers were forced to compete unfairly.

The two main producer groups who are not affiliated with CMPC are the National Farmers Organization and the Farmers Union Milk Marketing Cooperative. Both groups have been repeatedly asked to join CMPC, because, although their members receive the superpool benefits, they share none of the costs. It's also a little ironic that one of these national organizations has come out in favor of the proposed national bargaining bill. In CMPC, we already have the machinery that has proven its ability to bargain and market for premium prices.

While 1978 figures are not final, I would like to review the performance of the 1977 superpool. The average number of producers was 15,972. Total dollars brought into the pool amounted to $13,177,550. Of this amount, $6,088,718 was paid directly to producers. This amounted to 6.4 cents per cwt. of milk. Another $2,808,538 was lost to dairy farmers because of competitive credits issued to meet the lower priced milk offered by other groups.

In 1977, another $105,225 was paid to the standby pool on Class I sales in the Chicago market. (The standby pool is another marketing agency in common that represents cooperatives from Minnesota to Florida and Texas. Its main function is to move milk from surplus to deficit areas.)

Funds obtained through CMPC bargaining efforts are also used to carry out promotion and nutrition education programs of the Milk Foundation and the Dairy Council of Wisconsin. Last year, $518,666 was targeted for this purpose.

Another $518,666 was earmarked for other marketing programs of CMPC. Earlier I mentioned that one of the fundamentals to survival of CMPC was a need for flexibility. Besides the basic superpool, CMPC has developed another program to move milk to handlers when some plants would prefer to keep the milk home and capitalize on a strong cheese market.

Superimposed on the superpool structure is an individual handler pool distribution to reward plants which ship to the fluid market. This is a program that was developed within CMPC and supported by the board of directors.

The other main category of pool fund uses in 1977 was administrative and legal. This total came to $327,645 and was one-third of one cent per cwt. of milk. CMPC is a defendant in several legal cases involving other handlers and other producer groups. In one case, CMPC has been forced to go to court to recapture money legally owed them.

Up until now, I've mentioned very little about the specifics of bargaining. Most hard bargaining takes place within CMPC, as we feel our complete program of quality, service, and equitable pricing is of value to our customers.

This past year has seen a flurry of activity as the basic manufactured milk price kept rising all year. Our superpool pricing is added to the Federal order announced prices, so you can see as the Government price rose, CMPC had to make several price adjustments throughout the year.

As executive secretary of CMPC, most of my time is spent with our cooperative members who sometimes have to be reminded of the big picture. It's easy to understand though that their first concern is their own shop. Then, too, the bargaining process would not be complete without open lines of communication on an individual basis with our customers. The CMPC record of service and dependability is readily acknowledged by our handlers, yet we must be ever alert to changing marketing conditions as well as changing needs of our handlers.

In summary, CMPC provides many tangible benefits in the public interest, foremost among them orderly and stable milk marketing. We are not without problems in CMPC, nor do we have total support of all producers and handlers. The glue that holds CMPC together is the market stability that CMPC fosters. More than $60 million in direct producer payments in the last 10 years is another motivation for continued support of CMPC by member cooperatives.

As for the future, common marketing agencies, particularly in the milk business, will be under fire by various reformers both in and out of Government. The bigger struggle will not be in hammering out bargaining techniques as producers to obtain a better price in the market, but in fighting to preserve the legislative machinery that enables farmers to collectively market their products.

RECENT LITIGATION INVOLVING ASSOCIATIONS

SOME ARGUMENTS FROM THE TESTIMONY OF THE MICHIGAN AGRICULTURAL MARKETING AND BARGAINING ACT TRIAL

James D. Shaffer
Professor, Department of Agricultural Economics
Michigan State University
Chairman, Michigan Agricultural Marketing and Boarding Board

In September 1977, the matter of the Michigan Canners and Freezers Association, et. al. versus the Michigan Agricultural Marketing and Bargaining Board and the Michigan Agricultural Cooperative Marketing Association was heard in Circuit Court. This matter was part of the process of testing the constitutionality of the Michigan Agricultural Marketing and Bargaining Act (Public Act 344 of 1972). The action commenced in Circuit Court in March 1974. The case reached the Michigan Supreme Court without developing a factual record. The State Supreme Court remanded the case to Circuit Court for a hearing. The Supreme Court retained jurisdiction, and the opinion of the Circuit Court will return directly to the Supreme Court.

While there are a number of issues of law and procedure dealt with through briefing and stipulation of facts, the hearing dealt primarily with the constitutional question: Does the act exceed the police power of the State of Michigan?

In the Michigan Supreme Court decision remanding the case, Justice Williams says:

> ". . . the police power attribute of state sovereignty may be properly exercised through regulations which tend to foster the health, order, convenience and comfort of the people and to prevent and punish injuries and offenses to the public. It has as its object the preservation and/or improvement of social and economic conditons affecting the community at large. Such power is elastic in nature, changing shape as varying social conditions demand change . . . as a matter of law, the party challenging the Act carries the burden of overcoming the presumption of constitutionality which accrues to the Statute. To overcome this presumption, Plaintiff must show either that there is no public purpose to be served by the Statute or that there is no reasonable relationship between the remedy adopted by the legislature and the public purpose."

I will attempt to identify some of the important arguments addressed to the questions raised by the Supreme Court concerning the need for the act, the beneficial or detrimental consequences, potential problems created or solved, and evidence that the remedies embodied in the act are or are not reasonably related to the purpose of alleviating the problems. Since the testimony amounted to about 1,600 pages and summary briefs exceeded 300 pages, this short discussion will obviously not be very comprehensive.

Plaintiffs argued there was no need for the act. They contended that markets for farm products in general and products covered by the act specifically were competitive and that without the act there was no imbalance in bargaining powers. Growers have bargaining power because they have alternatives. They can produce alternative crops

or sell to competing handlers if they do not like the offer of a particular handler. The market responds well to changes in supply and demand. Actions to attain countervailing power are misguided attempts to interfere with the market. The competitive market results in an equilibrium price, and artificial attempts to get a higher price will result in unsold products and generally will disrupt efficient use of resources.

Defendants argued that the market for farm products was not perfectly competitive and equitable, and that the idea of perfect competition was an abstract concept which did not describe reality. In many situations, processors controlled access to the market and growers were taken advantage of because of the perishability of the product. A number of specific examples were presented.

Plaintiffs argued that although the total number of processors has declined, the largest firms have a declining share of the market. Further, processor profits have not been excessive compared with other industries, which indicates they do not have excessive market power. Defendants argued that the number of processor buyers within a local area are few and declining. The local markets do have oligopsonistic characteristics. The relatively few buyers take into consideration what other buyers do. Defendants argued that evidence exists of the price leadership, that particular buyers set prices, and that these prices influence what other buyers will pay. It was pointed out that one of the plaintiff's witnesses testified that part of his job was to set prices, and another testified that he opposed bargaining in Michigan because high bargained prices in Michigan would influence prices in the West.

Plaintiffs argued that farmers are not disadvantaged as a group. Incomes of farmers are comparable with other groups when land appreciation is taken into consideration, and the trend is toward higher incomes for farmers. Further, Michigan farmers are not less well off than other farmers, especially if off-farm earnings are considered. Farmers of the groups covered by the act are not uniquely disadvantaged. Defendants argued that farmers were not receiving equitable returns for labor and investments. They emphasized fluctuating incomes, the fact that 1973 was an unusual period of high incomes for farmers, and that farmers often produced at prices below the total cost of production.

Defendants argued that the question of the balance of bargaining power was not simply one of grower-processor relationships. Without effective bargaining associations, a grower is a residual claimant in a system where others have a capacity to influence their terms of trade. Processors, wholesalers, and retailers are large enough that they have some influence on their prices. But more importantly, their costs for labor, utilities, transportation, containers, and other inputs are not based on flexible, competitive prices. Given a consumer price, all of these input costs are subtracted, and the farmer gets squeezed from both sides. Almost everyone in the U.S. economy is organized or has some capacity to influence returns, and the need for farmer bargaining must be considered in this broader context.

Considerable testimony related to fluctuations in prices and price uncertainty. Defendants argued that as residual claimants, growers are subject to great fluctuations in net incomes. They frequently sell at prices below total cost of production, and it is disastrous for individual farmers and expensive to society as a whole to have such unstable prices and incomes. Plaintiffs argued that it is average incomes over a period of time that matter, and that farmers can and should diversify production in order to avoid the consequences of fluctuating prices from individual crops. Defendants argued that effective bargaining would reduce the magnitude of fluctuations in prices and incomes and would thus reduce bankruptcies and provide a more reliable and perhaps less expensive farm product supply over the long run. Defendants also suggested that evidence exists that some processors would, as a matter

of strategy, encourage farmers to enter into production with substantial specialized investments, and then capture the value of the fixed assets by paying prices above variable costs but below total costs.

Plaintiffs argued that, at least in the short run, growers' associations with exclusive agency bargaining would bargain for excessively high prices with many negative consequences. They argued that if small, inefficient farmers received the cost of production, consumer prices would greatly increase and large efficient farmers would become rich. They argued further that Michigan must operate in a national market and, if higher prices were bargained for Michigan, processors would leave the State, leaving growers without necessary market outlets. Because of the national character of the market, Michigan growers cannot get better terms of trade over the long run and thus the bargaining is simply an added cost for nothing.

Defendants agreed that the terms of trade a Michigan association could achieve were limited by competition from other States. They argued an association in the interest of its members would seek reasonable terms and would avoid prices which would disadvantage Michigan processors. However, where a processor had been staying in business only by paying below the true market price and generally taking advantage of growers' vulnerable situations, such a processor might be forced out of business. They did not believe growers should subsidize inefficient processors. An association would not seek to achieve prices above the cost of production of the least efficient producer. Actually, if small growers are least efficient as alleged, the act in practice allows them an exclusion, and there would be little pressure within an association to achieve prices at their cost of production.

Plaintiffs argued that higher farm prices bargained by growers as a result of power established by the act would increase consumer prices, thus disadvantaging poor consumers, and would also result in the loss of consumer sales.

Defendants presented information showing that a very modest improvement in raw product price could result in a very significant improvement in net income to growers. This would result in a small percentage increase in consumer prices, because raw product was a small part of the cost of the finished product. Further, they argued that bargaining would not increase prices enough at the consumer level to have a significant impact on sales.

Plaintiffs presented information on processors leaving the State and discontinuing processing after the enactment of the act and considerable testimony by processors as to intentions to leave if the act continued in force. Defendants presented evidence of new processing operations in the State and argued that processors discontinued operation in other States as well.

Plaintiffs argued that higher prices which might be bargained in the short run would result in growers expanding production and, especially where long-term fixed costs were involved, would in the long run result in lower prices to growers. The experience in respect to marketing orders in California and specifically the Jamison studies on tree fruits in California were cited.

Defendants raised the question that if shortrun prices would expand production, resulting in lower prices in the long run, why were processors opposed to the act? They emphasized that mature bargaining by responsible growers' organizations would not result in the excessive prices and overproduction hypothesized by plaintiffs.

Plaintiffs argued that bargaining disrupted the relationships between growers and processors. Before bargaining, processors had very good relationships with most of their growers and found it profitable to serve grower needs by supplying inputs and information. Bargaining interfered with this relationship. Several growers testified

that they had tie-in arrangements with processors which were disrupted by the bargaining agreements. That is, they had been willing to sell some products for less in order to get access to the processor for other commodities. When bargaining required a minimum price for the bargained product, the arrangement no longer worked. Thus, they argued, bargaining disadvantaged both growers and processors by imposing costs on processors, interfering with the services they provided, and disrupting coordination.

Defendants argued that bargaining should reduce costs of procurement by reducing the need for fieldmen. The association provides a procurement service. Also, by providing improved communication between growers and processors, improved coordination was possible which should be a benefit to the processor and grower by improving timing and product specification. Defendants argued further that, without bargaining, growers were at a disadvantage in respect to information. Bargaining created information, increased access to information, and made it possible for growers to develop an organization to provide information and spread the costs to all growers who benefited. Plaintiffs responded that growers had no problems in obtaining information without the bargaining association and provided testimony that growers believed they had information about market prices.

Plaintiffs argued the act is unworkable because it reduces flexibility and capacity to adjust quickly to changes in supply and demand conditions. It creates timing and planning problems by requiring negotiations and arbitration. A single negotiated price is set and is inappropriate for an entire season. A price may be set too high, resulting in products being wasted, because they will not be purchased and cannot be sold at the negotiated price. Defendants argued that there is nothing in the act that requires inflexibility in pricing. Negotiations could be used to determine a formula which would adjust price based upon changes in supply and demand factors. The arbitration procedure allows products to be delivered and processed while the final price is determined by arbitration, thus avoiding loss of perishable products due to lack of settlement in negotiations.

In practice the negotiated price has been minimum, and typically the price has increased during a season. Plaintiffs argued that since some products usually sold above the bargained price, the growers did not benefit, but lost by having to pay a marketing fee to the association. Defendants argued that the objective in bargaining has been to establish the true market value of products. Because of imperfections in the market, including lack of information, prices without bargaining were frequently less than true market value. Thus, bargaining is part of a process of price discovery and assuring that all participants know that price. Identifying the minimum price at harvest is critical in the pricing. It is expected that the price would increase during the season if the commodity is storable because of the storage costs.

Plaintiffs argued that the act would reduce the quality of product because of setting of minimum quality specifications. Defendants argued quality could be improved. Bargaining could include specification of quality characteristics most desired by processors. By including most of the product under bargaining, discipline in regard to quality could be imposed. They cited the case of asparagus, where improved quality standards have been bargained and the quality of the pack has been improved.

Plaintiffs argued both that the act established a cartel for Michigan products and at the same time argued that it failed to provide for supply control to make the cartel work. Defendants pointed out that the act did provide for the possibility of limited supply management. An association could bargain for price and require that all sales to Michigan buyers by members of the bargaining unit be at or above that price. And the act provides that an accredited association is the exclusive sales agent for members and thus has a capacity to direct quantities marketed. At the same

time processors can import raw product into the State. Thus, the act does not create a monopoly. It provides a mechanism for bargaining and establishing true market value, not monopoly prices.

Plaintiffs argued that although minimum prices were negotiated, if the price were set too high, growers would not be able to find a buyer and would lose as a result of not being able to sell their crop. Defendants argued that an association would bargain for prices which were in the longrun interest of growers. Generally, plaintiffs assumed associations would bargain for maximum shortrun price advantage, and defendants argued associations would bargain responsibly, taking into consideration the longrun interest of growers and would avoid the problems of overpricing. Defendants pointed out that the act provided for bargaining for quantity. However, in practice to date, negotiations usually have not involved quantities. However, being able to bargain for quantity is important, especially for contracted vegetables for processing.

Plaintiffs argued that the arbitration procedure is unworkable and biased in favor of an association. They pointed out that in every case of arbitration under the act, the award had been in favor of an association, and that the list of people provided by the Agricultural Marketing and Bargaining Board as potential arbitrators was biased because the board consisted of members who favored growers. Defendants argued that the act provided reasonable guidelines for arbitrators and the fact that awards went to associations reflected the fact that the associations' last offers were more reasonable than those of the handlers. They pointed out that the two parties to the arbitration agreed to the selection of the third party arbitrator in every case but one, and in that case a retired circuit judge was selected, following the procedure of elminating names from a panel supplied by the board. They also argued that the board had asked handlers to submit names of potential arbitrators but that handlers had not responded.

Plaintiffs argued that a large percentage of growers, those who are small, were excluded from the bargaining units and that this would disadvantage small growers. Defendants agreed that a large number of growers who produced small quantities were not included in the bargaining units as defined. However, those who were excluded produced a small percentage of the total quantity. The reasons for exclusion are the high transaction costs and a general lack of interest among small growers. Producers of small quantities of a specific commodity are not necessarily small farmers. Small growers are advantaged, not disadvantaged, by exclusion. They receive the advantage of having minimum terms of trade established without having to pay the marketing fee. Besides, any small producer may join the association and receive all the benefits of membership.

Plaintiffs argued that there was no way of assuring performance of an accredited association. The act simply provided a means of assuring the association an opportunity to collect large marketing fees. Voluntary associations had to perform. The fact that many voluntary bargaining associations failed was because they were not performing in their members' interests. Defendants argued that the act established a number of mechanisms to assure an association reflected member's preferences and maintained performance standards. The board provided an oversight function, established maximum marketing fees, and required an annual report showing that all fees collected were used to meet legitimate bargaining expenses. Every member of the bargaining unit could join the accredited association and vote for the bargaining committee members. Bargaining committees have to be members of the bargaining unit and they control the bargaining process. It is illegal for the association to discriminate against members of the bargaining unit who are not members of the association. In addition, the act provides for a procedure by which members of a bargaining unit may vote for an association to lose accreditation.

While plaintiffs argued that the act disrupted orderly marketing, defendants argued that the act established an orderly procedure. They pointed out that prior to the act, growers were forced to adopt tactics which interrupted the orderly flow of products, including withholding actions and picketing. Products spoiled in the process. Since the act, no such practices have been necessary.

Plaintiffs argued that the Act severely restricts the rights of processors and growers to deal with each other on a direct basis. All growers in a bargaining unit lose their freedom to deal individually with handlers and to make the best arrangement they can. Handlers suffer a similar loss of their flexibility and freedom. Plaintiffs' objection is not to bargaining in general, but to specific provisions of the act such as compulsory arbitration and exclusive agency bargaining. Exclusive agency bargaining requires all members of a bargaining unit, members and nonmembers of an accredited association alike, to be represented by the accredited association. Plaintiffs further argued that the act was a labor model and was inappropriate for farming, because farmers were businessmen selling products from their labor and investments. Further, adequate opportunity exists for farmers to form bargaining associations without the act.

Defendants argued that the act contributes to effective bargaining. Voluntary bargaining associations are difficult to develop and maintain because some processors provide incentives for not joining. Before the act, some processors had been unwilling to recognize grower bargaining associations. Processor practices undermined the grower associations. Processors controlled access to markets which made it possible to subtly discourage membership in bargaining associations. Individual growers had an incentive to ride free by letting others pay for bargaining while they got equal benefits. Growers testified that they felt strongly that those who share in the benefits of bargaining should pay their fair share. Also, it is much more effective to bargain with a larger portion of a commodity within the bargaining unit. It is appropriate countervailing power in an imperfect market. As to the issue of freedom, it is an issue of whose freedom. Without the act, a minority of growers can make effective bargaining impossible for the majority who wish it, thus restricting the freedom of the majority.

As I mentioned in the beginning, the testimony and briefs in this hearing were extensive and this short presentation could not be comprehensive. Others listening to or reading the proceedings would report it differently. I did not attempt to report in the words of the participants, but rather attempted to summarize what I perceived to be the essential arguments of the two sides. This was in some cases difficult because of the extensive and sometimes confusing testimony.

This raises another issue. Is there a better way of presenting the issues to the courts in a case of this type? The arguments were not presented with great clarity. Some of the economic arguments were complex. Oral testimony without notes left a good deal to be desired. Cross examination tended to be incomplete because of the difficulty in developing the sequence of questions.

Two changes in procedure might improve the quality of the court record. The first would be to include written testimony, especially by the expert witnesses. The written testimony would be subject to oral cross examination. This would allow a careful and systematic presentation. Second, it should be possible for non-lawyer experts to engage in the cross examination process. With the extensive litigation involving economic policy it becomes important to develop procedures to facilitate the best presentation of the issue.

Several other issues are involved in the case in addition to the police powers issue which was the major issue of this Circuit Court hearing. Plaintiffs argued that (1) the U.S. Congress preempted State action in regard to farmer bargaining, (2) that

the act violates Federal antitrust laws and that the Capper-Volstead Act does not protect associations organized under the act, (3) that the act exceeds the scope of the title, and (4) that the Agricultural Marketing and Bargaining Board followed improper procedures in the process of defining bargaining units and accrediting associations.

The legal process grinds slowly. Following an opinion from the Circuit Court, the Michigan Supreme Court will render a decision. It is possible that litigation in Federal Courts will follow. It may be some time before the constitutionality of the act is settled.

STATUS REPORT ON POTATO GROWERS OF IDAHO LITIGATION INVOLVING THE AGRICULTURAL FAIR PRACTICES ACT OF 1967

Gerald L. Murphy
General Manager
Potato Growers of Idaho, Inc.

Idaho potato crop production in 1978 was 97 million cwt. or nearly 5 million tons, largest of any State and 30 percent of the U.S. fall crop. It was the largest cash crop in the State and involved 365,000 acres.

The principal market for our potatoes is for processing into frozen products, mostly french fries. The second largest is the fresh market, where the sale of premium quality potatoes in cartons to the restaurant trade brings the highest return and is accompanied by the sales of 10-pound sacks to grocery stores. The third largest market is for processing into dehydrated potatoes, mostly by eastern Idaho firms, who also pack and ship fresh potatoes. The fourth market is for seed potatoes, sold to commercial growers. We share with other Pacific Northwest States 82 percent of the frozen potato market, which uses nearly 4 billion pounds of product.

Although the potato producing area extends nearly 300 miles, around 75 percent of the production is within a 160-mile stretch of the Snake River between Burley and Rexburg, where the markets for potatoes exist for both processing and fresh use. Partly because of the dual market opportunity in this area, growers are mostly unwilling to collaborate to the point that potatoes would be handled by the cooperative, or that growers would submit to a voluntary production program. With an annual crop with comparative ease of entry into the producing business and few alternate crops, such efforts can easily be frustrated by buyers.

As the principal potato producers' association with nearly half the potatoes raised by our 1,500 members, our services include being the bargaining agent for preseason contracts, representing the member in witnessing the inspections of contract deliveries and a source of potato market information.

In 1978, we negotiated contracts with 9 of the 10 largest processors whose volume represents well over 90 percent of the State's production of potato products. The 10th processor and its dealings with Potato Growers of Idaho, Inc. (PGI) are the subject of this presentation.

One of the largest potato processors who enjoys a strong position in the retail frozen potato market did not reach an agreement with PGI. This firm has a very capable procurement department staff whose members do their homework and cultivate good grower relations. Until 1978, they also maintained a good relationship with PGI and its leadership. Prior to our first formal negotiation meeting there were signs

that our relationship was deteriorating. In an informal dinner meeting, a company procurement official expressed annoyance over two of our actions:

1. Our rejection of the company's proposal for an incentive contract based on qualities of the peeled potato. We had based our position on the view that the data was inadequate to serve as a reliable guide to forecasting grower returns on such a contract. Also, we were concerned that the results could be too easily manipulated by changing the amount of peeling loss.

2. Procurement personnel were also openly concerned over the organization of both a regional and a continental federation of potato grower associations during the latter part of 1977. Increased awareness of grower bargaining leaders to developments in other areas was apparently irritating.

It was in that context that the first formal negotiation meeting was held early in February. The company offered the same contract as last year, with no price increase, while the association proposed a 12-percent increase. Just a day earlier, the largest processor made a first offer of a 6-percent increase. The company's spokesman refused to entertain an understanding about how many acres the firm would buy from members, or even that they would buy any acres. The first meeting ended with the understanding that we would present their offer at grower meetings the following week. They said they would discuss the contract with others, too, but denied they would "go to the field" and offer the contract.

As testimony later revealed, the company had already printed a contract before the first meeting which would provide an increase of 4-5 cents over the 1977 contract, and they began offering the contract to independents 2 days after the first meeting. The company offered growers "unlimited acreage" if they would sign the contract. Such an offer could not be made unless the increased acreage were taken from the association members. Meanwhile, members were denied a business opportunity due to their membership commitment and our reliance on the company's word that we were negotiating. A few growers were told that there would be a price adjustment if the PGI settlement was higher.

The company had made some progress in filling its needs by the second meeting on February 20, but many growers had rejected the offer. Some did so because they were not allowed to examine the contract at leisure.

The second meeting was devoted mostly to discussions of a base price adjustment formula to establish the returns for the second year. It concluded with the understanding that we were still negotiating. During the meeting the company increased its offer to correspond with the terms offered to independents.

Following the second meeting, the company increased its procurement efforts and secured many commitments, warning that this would be the last offer and that their requirements were nearly filled. Meanwhile, company representatives were telling the association representatives that they were holding acres for their own members.

The third meeting, on March 3, began with a company spokesman saying that 1978 acreage available to members was virtually nil. We asked what we were meeting for, and were told that there might be some acreage for members on the 1979 crop. When asked to indicate how many acres, the company refused to say. The meeting was concluded in a bitter atmosphere and negotiations were terminated by both parties.

Notwithstanding the representation that acreage available to members was nil, additional contracts were awarded to nonmembers within 2 weeks and continued to be offered for nearly 2 months.

The effect on member growers who supply the company was and continues to be devastating. Nearly all the resignations tendered in the ensuing 6 months were from company growers. A membership campaign brought in three times as many new members; however, none of them were growers for this company.

Following this procurement activity, the largest processor withdrew its first offer, ostensibly for other reasons, and in April offered a lower priced contract. Settlement was reached at 9 cents below the first offer.

At our March 8 meeting, the executive committee authorized legal action, first calling for a letter of protest from our attorney to the president of the company, and a reasonable time to respond. Their being no response, the board of directors supported the executive committee action to authorize litigation, seeking relief under the Agriculture Fair Practices Act. The case was assigned to and is being handled by our association counsel, Lloyd Walker and Associates of Twin Falls.

A complaint was filed in the U.S. District Court in Boise in early April. The company retained the counsel of one of the Nation's most prominent antitrust law firms, located in Washington, D.C.

The U.S. Department of Agriculture-Farmers Cooperative Service helped us with information by preparing a digest of their experience with the act.

Testimony was taken in June from PGI negotiators, the vice-president of procurement and a company fieldman. More than 6,000 documents were turned over to the defense attorney following a document request from the company.

Defense filed a motion to dismiss on the grounds that PGI was not an eligible plaintiff and that the act was intended to protect growers, not associations. Also, the defense asked that damages be denied, since individual growers would be free to seek additional damages.

The PGI complaint sought damages of $3.6 million, based upon the loss of business opportunities to members and on the industry-wide impact the company action had on contract prices.

A hearing on the motion to dismiss was held in August, and memoranda in support of and in opposition to the motion to dismiss were submitted by plaintiff and defense.

One of the defense attorney's claims regarding the complaint might be of interest. The act is not designed to eliminate normal inducements from a handler to a producer, or a handler's refusal to deal with producers for any reason other than a desire to interfere with the producer's right to join a cooperative. This is covered in the "disclaimer of intention to prohibit normal dealing" and the defense claims that the complainant has the burden of proving:

1. That one or more of the practices enumerated in this section was committed.

2. That such commission was knowingly made.

3. That the motivation for such commission was one or more of the reasons in this section (interference with the producer's free choice).

A key point of the plaintiff's case is the recognition that handlers are not required to bargain but that once a handler commences to bargain, his conduct is subject to the provisions of the act.

Late in November, the judge made the decision to uphold PGI's standing to seek an injunction to prevent future violations of the Agriculture Fair Practices Act. He dismissed all other claims, including damages, and our position to seek injunctions to void the company's grower contracts and to void contracts to regular member company growers.

PGI decided to continue the case and scheduled testimony from company fieldmen from the Burley area, where the principal procurement effort was made. We have deferred a decision on whether to appeal the November 30 decision.

The next step is to discover proceedings with the company documents. We have learned of the advantages of prompt use of shredders by companies in the commodity procurement business.

Several attempts have been made to settle the case. Thus far the company is unwilling to commit to a future relationship which would not involve the contested procurement practices. PGI leaders would like to have avoided litigation in the first place. Our options were extremely limited, and at stake was a major loss of position among growers and all other processors as the potato bargaining agent for Idaho growers.

We had no grand illusions about the Agricultural Fair Practices Act, but it was the only remedy available. Our experience with the act leaves us disappointed, especially with the right of the buyer to refuse to deal with the grower's bargaining association.

This experience has led the association to endorse a State agriculture bargaining bill at our recent annual convention. We are pleased to have the support and endorsement of the Idaho Farm Bureau. A bill will be introduced in the near future and prospects for passage appear to be good. The Idaho legislature has the highest percentage--35--of farmers of any State. A reasonable bill properly presented can earn the support of farmers, small businessmen, rural community leaders, labor leaders, and liberals sensitive to discrimination issues.

Another development which clouds the issues and leaves uncertain the future relationship between potato buyers and sellers is a grand jury investigation of potato pricing practices. An estimated 60 firms, associations, and individuals have been subpoenaed during the past 11 days to provide a wide range of documents and testimony. The action was initiated by the antitrust division of the Justice Department and has proceeded on the recommendation of the U.S. Attorney General. The grand jury was impaneled on December 18 and is expected to conduct its investigation over the next 18 months. While a number of grower associations and farmers have been subpoenaed, the Justice Department indicates that they are only witnesses and not targets of the investigation.

A THREAT TO FARMER BARGAINING ASSOCIATIONS

William J. Thomas, Jr.
California Food Producers, Inc.

The California Tomato Growers Association (CTGA) represents approximately 70-75 percent of the 800 growers who produce over 85 percent of the Nation's supply of processing tomatoes. The farm value of processing tomatoes often exceeds $400 million in California. The trend has been to double production each decade, which is consistent with the present growth expectations and favorable economic position of tomatoes for processor and grower alike.

Tomatoes provide growers a certain amount of flexibility in their annual cropping pattern. However, this flexibility is decreasing as equipment costs escalate, canner contracts become more difficult to obtain, and competing crops offer less attractive returns. The annual aspect to tomatoes also gives the canners flexibility to manipulate growers, because new supply sources become available each season. The trends mentioned above (operation costs and cannery contracts) tend to give increased advantage to the processor.

CTGA is a cooperative formed under statutes of the Food and Agricultural Code, State of California, for the purpose of bargaining on behalf of grower members with the 28 tomato processors in California for price and terms of contract. The association does not take possession or title to the members' tomato crops. Its sole responsibility is to act as the exclusive bargaining agent for its member-growers. In order to maintain that position as exclusive bargaining agent, the contract between the grower-member and the association prohibits the grower from signing individual contracts for sale of tomatoes, except under a purchase and sales agreement (master contract) approved by the association. Each year after the association has approved this agreement with the canner, the grower may sign an individual contract for sale of his tomatoes under the master contract. 1/

Such prohibition is common in the industry and is necessary and at the heart of collective bargaining. The master contract controls other contradictory terms contained in any individual grower/canner contracts executed with the processor subsequent to the master contract. These individual grower/canner contracts are in effect solely in specific matters not covered by the master contract.

The Plan

During 1977, one processor devised a new method of payment for the 1978 tomato crop. This plan, called a "grower participation plan," provided for payment to the grower of 85 percent of the price to be negotiated with CTGA (that price being unestablished at the time) for its members. This 85-percent figure was all the plan guaranteed the grower for his produce. The canner was to operate throughout the canning season until the following summer, which constitutes the end of his crop marketing year. At that point, the canner would give an accounting on the

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1/ Section 5 of the association/grower membership agreement sets this forth as follows:

"Each year during the term of this Contract, Association shall for the purpose of establishing or fixing the minimum terms and conditions of sale of the processing tomatoes of Member to any person, firm, or corporation, prescribe or approve the form and substance of the Purchase and Sales Agreement to be entered into and executed by and between Member and the buyer of Member's processing tomatoes, and such contract shall be designated as an 'Approved Contract.'

"During the term of this Contract, Member shall not sell any processing tomatoes to any buyer except pursuant to a Purchase and Sales Agreement approved by Association and designated as herein provided. Each year after Association has established and fixed the minimum terms and conditions of sale and has prescribed or approved the form and substance of the Purchase and Sales Agreement to be entered into between Member and the buyer of Member's processing tomatoes, Association will approve at the request of Member a Purchase and Sales Agreement for Member's processing tomatoes for that year complying with the terms and conditions fixed and established by Association and which is in the form and substance prescribed or approved by Association." (emphasis added)

profitability of that crop. If the accounting determined the cannery had recovered its expenses, it would share that profit with the grower. Thereby, the grower could recover from 85 percent of the price negotiated by the CTGA to possibly 100 percent, and theoretically, on exceptional occasions, the grower could recover over 100 percent of the CTGA price.

The canner did not submit the plan as part of the bargaining procedure but advanced it directly to growers in the field. In spite of the fact that the plan's payment depended on the price bargained for with the association, the plan was being sold in the field before the cannery had effectively bargained with the association for the establishment of that price.

Consequently, growers were reluctant to sign up under such a plan, and, in fact, had reservations regarding the operation of the program. This position was best measured by secret ballot elections of all growers for that cannery, where all but five growers voted to reject the plan. The association submitted several suggestions for amendment to the plan which might have made it acceptable to growers; however, the canner rejected such modifications with "take it or leave it."

The most distressing factor was that the canner was offering the plan to growers at a time when they were prohibited by legal obligations (the membership contract with the association) from signing an individual contract under the plan before terms had been negotiated between the cannery and the association.

The Problem

Because of the limited interest from growers, the canner needed a device to promote grower participation in the program. One possible method would have been to bargain the terms of the plan with the association and make amendments desired by the grower community. Instead, however, the canner retained the plan as originally designed and adopted the policy of requiring growers to sign at least 50 percent of their acres under the plan or lose that acreage. This penalty feature of the plan which has given rise to the tremendous controversy cost growers dearly on the 1978 crop.

The processor knew that grower members of the association were legally prohibited from signing up under the plan by virtue of the CTGA membership agreement. The original interest generated in the proposal was therefore with those growers who were not members, because those growers were free to sign (they had no contract prohibition and no bargained price to protect) and because 50 percent of the acreage of member growers that could not be committed to the program would become available to nonmember growers.

Member growers were being coerced into either signing this proposal in violation of their bargaining agreement or losing all or part of their tomato acreage. Their other long-range choice, to avoid losing all or part of their acreage to such programs in successive years, was to resign membership in the bargaining association.

The canner knew that members of the association were in no position to sign under such a plan. It was therefore a hollow offer to association members. Thus, by virtue of their membership in the bargaining association, growers were unconsciously discriminated against relative to the terms of purchase.

The Price Differential Factor

During the contract bargaining activity in early March, the canner established a position of $45 per ton as the base price for tomatoes purchased under a normal cash contract for the 1978 season and offered that price to the association and its grower members. The canner's "participation plan" would therefore guarantee the grower only 85 percent of the $45 per ton base price. Any further payment would depend upon the profit obtained by the canner in its internal operations.

In order for CTGA members to sign individual contracts with the canner (on either a cash or a "participation" basis), the association must first have accepted the $45 base price offered by the canner and thereby terminated further negotiations for a higher price. (The final price negotiated in July 1978, some months later for the 1978 crop, was $54 per ton.) The canner, however, did not require nonmember growers to accept the $45 per ton base price to sign a contract. Rather, it solicited contracts from nonmembers without a specific price limitation to its current $45 base price position, with a guarantee to increase that price to match any higher price negotiated during the continued bargaining with CTGA.

Thus, the price and terms offered by the canner to CTGA members were inherently unequal to those offered to nonmember growers, since the nonmembers were allowed to protect the full acreage they desired to produce by signing contracts which did not require acceptance of the current price offer and guaranteed any further price increases negotiated by the association. Such unequal terms and bargaining practice not only discriminate against members of the association, but reward nonassociation members through the guaranteed "price increases."

The Result

Because of the canner's activity during the 1978 season, association members growing for the canner lost 50 percent of their acreage. For many growers this was a travesty on their farming operation. For the cannery, this resulted in a great percentage of its acreage now being grown by nonmembers, a result desired by that particular cannery.

Because the plan will generally allow a canner to purchase a commodity cheaper than that purchased by other processors, those who may have no inherent interest in dealing in an unconscionable manner will be forced to do so to effectively compete. Other canners may follow suit in tomatoes and perhaps in other commodities thereafter. This will result in chaos because of the numerous differing payment plans that will be forced on growers. Also, if processors are not paying the bargained price or its equivalent, bargaining becomes only a fictitious activity. Overall, the result has been a serious threat to the concept of farmer cooperative bargaining in California.

This was not a one-time passing action by one canner in one commodity. Even after the last 1½ years of extensive challenge, that canner has just announced that it will demand 30 percent of its acreage to be under the plan next season. Should the canner hold that position, the cannery will virtually eliminate having to deal with members of the bargaining association.

Interference/Restraint and Coercion of Grower Rights.

California and Federal statutes protect growers from processors interfering with or coercing association members in exercising their choice to belong to and participate in bargaining associations.

We believe the factual situation as described above does violate growers' statutory protections as discussed below:

California

Section 54431 (a) of the California Food and Agricultural Code states:

"It is an unfair trade practice, and unlawful, for any processor, handler, distributor, or agent of any such person, or for any other person, to do any of the following:

"(a) Interference with, restrain, coerce, or boycott producers in the exercise of the rights which are guaranteed pursuant to Section 54402." (emphasis added)

Federal

Section 2303 (a) & (c) of the Federal Agricultural Fair Practices Act of 1967 states:

"It shall be unlawful for any handler knowingly to engage or permit any employee or agent to engage in the following practices:

(a) To coerce any producer in the exercise of his right to join and belong to or to refrain from joining or belonging to an association of producers, or to refuse to deal with a producer because of the exercise of his right to join and belong to such an association; or

(c) To coerce or intimidate any producer to enter into, maintain, breach, cancel, or terminate a membership agreement or marketing contract with an association of producers or a contract with a handler; or" (emphasis added)

The plan directly interferes with the free choice of growers to belong to cooperative bargaining associations. No member growers succumbed to the coercive tactics and signed into the plan, and they lost 50 percent of their acres. We have, however, had several growers file for withdrawal from the association as a direct result of the manner by which the plan was advanced to growers in order to be a "favored grower" (nonmember) and be free to sign whatever the canner offered them in the future. Therefore, it is the position of the association that the activities of the canner "interfered" with growers' freedom of membership in an association as per California Food and Agriculture Code section 54431(a) and the Federal Agricultural Fair Practices Act section 2303(a) & (c).

The plan results in direct and indirect coercion of growers in their right of membership in bargaining associations and directly coerces growers to enter into this contract with the processor. There can be no greater coercion or inducement placed upon growers than the loss of one-half of their principal crop. The entire design of that 50-percent loss of acreage for failure to sign under the plan was to encourage growers to sign into this plan, notwithstanding their contractual prohibition and personal preferance not to do so. This should be clearly coercive and violative of growers' rights as pursuant to Section 54431 (a) of the California Food and Agricultural Code and Section 2303 (c) of the Federal Agricultural Fair Practices Act.

The plan restrains growers in their right to meaningful membership in bargaining associations. The tactics and program of the canner strikes at the very heart of agricultural commodity bargaining. In so doing, the program violates the policy of California and the Federal Governments to have meaningful cooperative bargaining associations for participation of growers. This coercive mandate upon

the grower to sign into the plan and jeopardize the price bargained by the association restrains growers' participation in the bargaining process as established by State and Federal statutes.

Discrimination Against Association Members.

Section 54431(b) of the California Food and Agricultural Code states:

"It is an unfair trade practice, and unlawful, for any processor, handler, distributor, or agent of any such person, or for any other person to do any of the following:

"(b) Discriminate against any producer with respect to price or other terms of purchase of any raw agricultural commodity, by reason of the producer's membership in, or contract with, any cooperative bargaining association." (emphasis added)

Section 2303 (b) of the Federal Agricultural Fair Practices Act of 1967 states:

"It shall be unlawful for any handler knowingly to engage or permit any employee or agent to engage in the following practices:

(b) To discriminate against any producer with respect to price, quantity, quality, or other terms of purchase, acquisition, or other handling of agricultural products because of his membership in or contract with an association of producers; (emphasis added)

The canner made an "offer" of its plan to members and nonmembers alike. But, it was wholly within the canner's knowledge and the foundation of its design that CTGA members were legally unable to sign by virtue of their contract with the bargaining association. The offer to association members by the canner was therefore a hollow offer. The result is that, by virtue of their membership contract with the bargaining association, growers were discriminated against relative to the terms of purchase in violation of the above listed State and Federal statutes.

The inherently unequal offers presented to members and nonmembers discriminatorily disadvantaged member growers, as their acceptance of the $45 base price (necessary to arrive at the association master contract and thereafter allow growers to sign individual contracts) would have precluded further bargaining. In retrospect, this would have cost growers $9 per ton of tomatoes on base price (difference of $45 and $54 price finally contracted) as well as other provisions ultimately extracted through bargaining. Nonmember growers were free to sign at $45 per ton without jeopardy, as the canner's offer to them included the increase in price to whatever was bargained with the association. This discriminatory price structure violates these sections of applicable law.

Duty to Bargain in Good Faith

Existing Food and Agricultural Code Section 54431(e) requires that canners bargain in good faith with the association, stating:

"It is an unfair trade practice, and unlawful, for any processor, handler, distributor, or agent of any such person, or for any other person to do any of the following:

"(e) Refuse to negotiate or bargain for price, terms of sale, compensation for commodities produced under contract, and other contract provisions relative to any commodity which a cooperative bargaining association represents."

This is the section of California law which has received such widespread acclaim, as it places upon the processor the duty to bargain with the bargaining association.

The Federal law contains only the provision in 2303 (a) which prohibits the processor from refusing to deal with a producer by virtue of his membership in an association.

The canner did not bargain in good faith with the association, by virtue of its attempt to individually deal with association members and to sign with them a contract provision which would undermine the price negotiating process. Additionally, the canner during this time was not in good faith negotiations with the association to settle a master contract or to bargain acceptable terms for the particular plan.

Department of Food and Agriculture Market Enforcement

The most important factors in considering which remedial avenue to pursue are that they are readily available, timely, and offer adequate relief. These are the criteria for designing bargaining statutes. Individual litigation by the wronged grower is often costly, extends 2-3 years, and subjects growers to possible discrimination by the processor. The departments of agriculture at State and local levels ought to have responsive enforcement bureaus to assure compliance with these statutes, by providing remedies and protections to growers.

CTGA initially sought enforcement of Food and Agricultural Code Section 54431 through the division of market enforcement with the department of food and agriculture. Despite our view that the canner's activity clearly resulted in interference, coercion, and discrimination in violation of Section 54431 of the Food and Agricultural Code, the department did not initially feel that the existing statutory language covered this problem.

The reluctance by agency enforcement bureaus to take aggressive action, particularly in complex matters of first instance, has been a universal experience. (This is the reason that the proposed amendments to the Federal statute contain provisions mandating certain action by the U.S. Secretary of Agriculture.)

It was only after significant political pressure that the California department of food and agriculture revised its position and has now embarked upon investigation of the charges brought by CTGA. It is far too early to predict the result of this enforcement activity; however, some action is promised.

Ligitation

After the department of food and agriculture initially refused to move forward on the CTGA complaint, the association filed an action under the State statutes in the California courts. This litigation is only in the early pre-trial stages and promises to be protracted litigation. It emphasizes the need for bargaining laws to clearly designate the right of bargaining associations to bring actions on their own behalf, as well as on the behalf of their members. It likewise points out the need for significant actual and statutory damages to be available to the parties, including the association, as a deterrent to the processors and to negate the necessity of individual growers being named parties if they are concerned with possible retaliation from processors. (These concepts have been incorporated in the proposed amendments to the Federal act).

State Legislation

After the initial rejection of the charges by the department of food and agriculture, the association felt that there was a need for legislation to clarify the existing provisions of the Food and Agricultural Code guaranteeing the association's right to bargain with processors for commodity price and protecting growers from such coercive penalties if they do not sign into such plans. Many legislative tactics could be taken. Following are examples of some possible alternatives.

AB 2653 responded directly and narrowingly to the canner's sales tactic

Specific language proposed in AB 2653 added a subsection to the Food and Agricultural Code Section 54431 stating that it was an unfair trade practice for a processor to:

> "Discriminate against or penalize any producer member of a cooperative bargaining association with respect to price, quantity, or other term of sale for his failure to enter into any contract or agreement for the sale of a commodity at a price less than that established through bargaining with the bargaining association."

Even though this was aimed exclusively at the actions of this one processor and the language would have not affected any other processor, the legislative opposition to our efforts was universal from proprietary canners, and the bill was withdrawn by the author at the final committee hearing before passage due to processor pressure.

Price offer differentials

In response to the problem of a canner's offer to non-member growers of a price or terms more attractive than that offered at the same time to members of the association, the following language may be appropriate.

> "It is an unfair trade practice, and unlawful, for any processor to offer or enter into any contract for the purchase of any commodity at a price in excess of or on terms more favorable than price and terms currently offered to the cooperative bargaining association."

Negotiation of participation plans

One way to protect growers from manipulation by the processors would be to mandate that processors bargain the terms of their plans with bargaining associations, as opposed to direct dealing with association members. This would provide the necessary grower protections and consistency. Once agreement is reached, then the processor could promote its plan in the field with all growers--members and nonmembers free to sign as they choose. Such amendment of the Food and Agricultural Code Section 54431 to remedy this situation might include the following language:

> "It shall be unlawful for any processor to pay members of a bargaining association less than that which was negotiated between that processor and the bargaining association."

Membership agreements

Another concept relative to the protection of bargaining associations' legally binding membership agreements may be to disallow a processor the right to make offers to association members which would necessitate their violation of such membership contracts.

"It shall be unlawful for a processor to offer to or enter into any contract or agreement with a grower member of a cooperative bargaining association, compliance with which would call for the grower to violate the terms of his membership agreement with such cooperative bargaining association."

Food and Agricultural Code Section 54402

As set forth above, the Food and Agricultural Code makes it an unfair trade practice for a processor to interfere, coerce, or restrain growers in the rights guaranteed by Section 54402. Section 54402, however, is very narrow and only guarantees the right for growers to voluntarily join and belong to bargaining associations. No language exists in these sections relative to growers' rights to participate actively in bargaining associations or to protect the operation of associations.

Therefore, possible amendment of Section 54402 would make the law much stronger and might read as follows:

"The efficient production and marketing of agricultural products by growers is of vital importance to their welfare and is in the public interest of this State. Because agricultural products are produced by numerous individual growers scattered throughout the State, their ability to market and bargain effectively for fair prices and terms of sale of their products is adversely affected unless they are free to join together in cooperative associations of producers as authorized by law.

"It is hereby stated to be the policy of the State of California to encourage and protect the right of any farmer to voluntarily form, join, and participate in cooperative bargaining associations and to be free from interference, restraint, and coercion from processors or their agents in the exercise of these and other concerted activities for the purpose of collective bargaining and exercising other rights provided by this chapter."

Codify limitations on participation plans

An additional approach might be to deal head on with the entire issue of participation plans and similar payment devices and codify an independent section which would set the legal parameters for such plans. Possible issues would include minimum initial payment, timeliness of payment, rights for grower involvement or inspection, minimum final price, lawful factors to include in computing formulas, limitations on schemes to persuade grower involvement, and protection of the bargaining concept.

Summary

CTGA is not attempting to devise a system to make participation type contracts unlawful. Instead, it is working for a system to guarantee that they cannot be a tool which offers processors an escape from dealing with grower bargaining associations and being bound by the terms thereby negotiated.

Likewise, the tactics used to get growers to sign into such plans cannot be allowed to be coercive and provide a scheme whereby processors can select against association members.

Growers have the right to bargain with processors to establish price and terms of contracts. Members should be guaranteed that they can enjoy the terms so negotiated.

If they have that guarantee, minor adjustments in payment and terms can be offered and growers can accept if they deem it to be more advantageous to them than the base negotiated. But, they should have equal freedom to reject the alternative and rely on the position they bargained. Conversely, this plan did not give growers such a choice; instead, it demands they sign into this plan at the canner's terms or not grow that portion of their crop. This is the same market condition which existed before farmer bargaining (farmers are given a price on a "take it or leave it" basis with no significant individual rights) and deemed unacceptable by the State and Federal Governments.

FARM LABOR ISSUES

PREVENTING FOOD LOSSES DUE TO THIRD PARTY STRIKES

Ronald A. Schuler
President
California Canning Peach Association

Many of you recall that the topic I spoke about last year was "Food Losses: Weather: Yes; Labor--No." I talked in detail about the losses we incurred in the California canning fruit and tomato industry in 1976 because of an 11-day work stoppage. Our raw produce losses represented about $90 million.

Cannery wages lost during that 11-day strike were about $38 million, and farm wages lost netted to $33 million. I outlined some alternatives that could be used between the unions and the processor or handler at the bargaining table to reach a settlement without a work stoppage or strike. These included early negotiations, strike-work agreement, final offer arbitration, no strike and binding arbitration, and mediation-arbitration--also called "Med-Arb"--which are just a few of the alternatives being utilized by various industries throughout the country.

The California Canning Peach Association, sought legislation, and tried to introduce two bills a year ago. I realized through my visits with many others involved in processing crops throughout the Nation that it was the same old story--"it happened in California; it is not going to happen to me; of course, it's not going to happen to my crops; I'm not going to be faced with that same situation."

I guess the whole reason our association is so strongly involved can be summarized in a letter that a grower director of mine recently wrote: "We do not want to interfere with the rights of unions and canneries to bargain with each other. But at the same time, I do not want them to interfere with my right to make a living." I think that really sums up what occurred to us in 1976. Once the strike was resolved, a 3-year contract was signed. Now on June 30, 1979, that contract expires.

We continued to seek legislation last year. In July 1978, we were fortunate enough to have Congressman Bernie Sisk--who had already announced that he was going to retire at the end of that term--introduce HR-13541, known as the "Perishable Food Protection Act of 1978." The contents of that bill were very similar to what I outlined in my speech last year, and it was presented to the 95th U.S. Congress on July 19. We stated that either party--the union or the handler, canners in this case--could ask for a mediator to be appointed by the Secretary of Labor and the Secretary of Agriculture. The only change we made in the final bill was that either party, the union or the handler and/or the Director of the State agriculture department, could request that three arbitrators be appointed. The contents of that bill were very strong in that it moved forward to require arbitration. The canners did not liked it, nor did the unions, needless to say, as they believed it took away their right to strike, which is their leverage in bargaining. Consequently, it was opposed. The unions were involved in writing and drafting, and finally agreed not to be involved anymore and let Bernie go ahead and introduce the bill. At that time, they indicated

that come "hell or high water," they would oppose it, and that no one was going to take away their right to strike.

The 95th Congress adjourned this past year, and now we're going into the 96th Congress. The bill HR-13541, which gave us a glimmer of hope, died with the conclusion of that 95th Congress. However, I think we were instrumental in causing the unions and the handlers to realize that another severe work stoppage with the inflation rate that exists today, and the cry that food costs are rising so rapidly, that legislation would come to pass. Therefore, they have taken some steps forward in comparison to where we were in January of 1976.

Just this past week, a joint release from the Teamsters' California State Council of Cannery and Food Processing Unions, and California Processors, Inc., stated the following: "Both of these bargaining groups recognize the serious and adverse economic impact of work stoppages to the food processing industry, union members, growers and other related industries. With this recognition in mind, the parties have mutually agreed on a procedure during the forthcoming negotiations which should enhance the likelihood of a contract settlement without a strike. This procedure does not eliminate the possibility of a strike occurring. But both parties realize and accept the responsibility of exploring and pursuing all possible means of resolving bargaining differences without a strike."

The procedure that they've set forth is as follows. Both parties would exchange proposals no later than February 7, 1979. The negotiation process would be divided into three discussion stages: (1) non-economic, (2) fringe benefit exchange, and (3) wages and related economic matters. If agreement is not reached by June 1, 1979, the parties agree to implement the following mediation recommendation procedure commonly called now "Med-Rec." They have announced that Willard Wirtz, Washington, D.C., formerly U.S. Secretary of Labor (1961-69) and a distinguished specialist in the field of labor relations, will participate in the final negotiating sessions beginning June 5 and attempt to mediate unresolved issues. If the parties are unable to resolve any issue, Mr. Wirtz has agreed to issue a report and recommendation to both parties not later than June 21, 1979. Both parties will meet separately during the last week of June to consider and vote on the settlement terms, including the recommendation of the mediator. Each party will notify the other promptly of the results of these meetings, and if the last point of the recommendations is not ratified by the members of both parties, they will then be considered to be at an impasse.

They concluded their press release by saying the parties believe that the above procedure will focus attention on key issues, expedite negotiations, and create a climate for a peaceful settlement. They also said that quite possibly they may reach an impasse, but at the same time they have indicated to us in direct questioning that they hoped that this would achieve a settlement. Both parties have indicated they do not want to strike, and more importantly is the fear that if we were to have a strike, they would be faced with legislation which neither party wants.

We do not intend to forget what happened to the growers in California in 1976; there might not be a strike in 1979. But, if a 3-year contract is signed, we could face a strike in 1982. If they only succeed in achieving an annual contract because of the wage and price situation as it may exist in the 11th hour of the current contract which expires June 30, we must move forward. We also have to look at this new language of "Med-Rec," hoping from the grower's standpoint that it brings forth a successful conclusion without a work stoppage. The demands of both sides and the report of the mediator will be made public, so that we as growers will have an opportunity to respond to it and, through political action, we can cause the agreement to be reached.

As an association, we are going to continue to seek reintroduction of our legislation. We are now working with a lobbyist in Washington who has the wherewithal, we hope, to find other sponsors besides just the Californians who are directly involved in the areas where canning crops are grown. We need support from all of you and the States that you represent, in order to achieve passage of the legislation. It must pass through some committees that are definitely stacked pro-labor and it will be an uphill battle. Our major accomplishment has been in the steps taken in order to reach some agreement as to ways and means of accomplishing contract agreement without a strike. Therefore, our inputs have already been felt. When you hear of the reintroduction of legislation to prevent strikes affecting third parties at harvest time of perishable products, I encourage you to ask your Congressmen to take action.

FARM LABOR ISSUES IN THE MIDWEST

Paul Slade
Ohio Farm Bureau Federation

A recent farm labor dispute in Ohio could change the whole Midwest tomato industry. It could also affect the pickle industry, the fruit growing industry, and other industries that depend upon migrant labor in the Midwest. This ripple effect will be felt not only in Ohio, but in Indiana, Michigan, and many other States. California will also be affected, because the labor problems faced by many of our tomato growers will cause change to machine harvesters, much to the regret of many of our small, family-type farmers back in Ohio. Growers will need large acreages to support a machine, thus causing the demise of smaller growers. We could see a shift of tomato acreage back to the Midwest.

NBC's three-part series on migrants recently gave the feeling that the farmers were saying "to hell with Mexicans." This is not true. We have used wisely and fairly the hand labor that comes every year to help harvest our crops. Many of these people have settled--some permanently--in our areas. I can cite numerous examples where they have become permanent fulltime agriculture employees.

The feelings of tomato growers of Ohio are expressed in this letter sent to our Farm Bureau magazine by a farm wife in northwestern Ohio. A Libby plant and most of the labor problems are located there. I'd say the average acreage of the growers around this plant is 25 acres--not very large in the eyes of California growers. Most use family labor to help plant and care for these tomatoes, then use migrants to help harvest. I think she summarizes pretty well the feelings of the small grower. "There are more than two sides to any dispute and since FLOC, the Farm Labor Organizing Committee group that is causing the labor disputes, has been so well covered by the news media, and Libby refuses to be involved, the farmer is given credit for the problem. Just what has the farmer done to earn the national claim to 'fame'?"

We've found it's very difficult to dispel the poor migrant image. Two parts of the series were filmed in the Leipsic, Ohio area. Much of the film ended up on the cutting room floor and tended to make farmers look silly. One tomato grower was asked in the film that was shown if a 10- or 12-year old kid should be in school and he stated: "No, (he) didn't think that kid should be in school." What he actually said was, "I don't think the child should be in school; that's not my decision to make, it's the decision of the parents. If they want the child in school, fine, if they don't, fine." And they left that segment out and just put the one segment in, an example of how the news can be handled to make points the way they feel.

We found it very difficult to get accurate coverage of this labor strike and situation. The poor housing situation for the migrants is always held up, even though the housing is inspected by the State Board of Health and licensed each year before the migrants arrive. Growers also provide stoves, refrigerators, tables, chairs, washers, water, gas and electricity.

The migrants tell us they have never made as much money as they have made here in the past 6 to 8 weeks in tomatoes, but NBC states how little they make. The short season worked by the migrant laborer causes this total income problem. A wage study conducted by Ohio State University with migrants who were working in fields showed they made a substantial hourly wage, much higher than any Federal or State minimum. Actual study of the Ohio Bureau of Employment Services last year showed these laborers made $4.50 to $5.00 an hour in tomato harvesting. If farmers could pay up to 50 cents a hamper and make it totally uneconomical to hire labor, it still would not solve the income problem of the migrants. The problem is one of yearly income. Labor has been able to put together a length of employment through sugar beets, pickles, tomatoes and fruit crops in the Midwest. This gives migrant labor a good annual wage. However, this has eroded, so that labor is going to be more and more dependent on individual crops. If we machine-harvest tomatoes, pickle crops will have to stand on their own. The sugar beet crop is pretty well mechanized and could stand on its own now without the need for labor.

So, the ripple effect on Michigan apple growers is that they will have to pay more for labor just for that crop. Breaking the chain of employment of migrants for these different crops will have an adverse effect on their total annual income from those seasonal crops.

Our grower wife's letter goes on: "Ray Santiago (leader of FLOC) states, 'We want to earn enough so we don't have to depend on social programs and can live like other workers in this country." She asks, "Is it fair to expect the farmers to provide their hospitalization, transportation expenses, licenses, and insurance costs for their trucks for the short period of time they are here? If these people are not given their annual employment in the future, we surely are going to see more and more social welfare programs, in order to take care of them when they are back in the Valley of Texas.

"It is reported that FLOC chanted to pickers in the field to attempt to get them to join the strike. It was not reported that these chants included the threats of broken windshields, slashed tires, and accidents happening to those migrants and their children who would not follow their commands. It did not report that some of the members entered the field illegally throwing rocks. It also did not report that farmers themselves had kept their workers from the fields, and that the workers have left the fields now in fear of their lives.

"So what will be the results? Baldemar Valesquez has intimated that their goals this year were to recruit as many followers as possible, obtain what concession they could, and then leave the tomatoes to rot in the field, to increase their bargaining power next year. There are many of the 30 to 40 acre farm families that plant and grow and care for their tomatoes, who will not invest their time and money in planting tomatoes again. The bigger tomato farmers will invest in harvesters and use local help which is readily available in this area." I'd like to stop here because I think she hit upon the thing that is happening. We are seeing a shift from the smaller acreage growers, the 10-, 15-, 25-acre growers who have really been the backbone of the industry of Ohio, to the larger growers who will machine harvest. And, we'll see the demise of the migrant labor system in Ohio as we know it now.

One processor, Campbell Soup, is already in the field signing contracts. Their contract is based on machine harvest only. They will not contract with any grower who

does not have a machine. It's going to be field run. Electronic sorting devices will be put on the lines in the factory. They feel this will eliminate the need for most of labor to ride on the tomato harvesters, getting it down to maybe 2 or 3 rather than 12 they've had riding the machine to sort. This is the movement of the industry in Ohio. We're going to see more and more processors going to machine harvest.

She goes on and says, "Who will be the losers? The farmers will plant other crops, many of the local FLOC committee will continue their jobs in industry around Ohio. The FLOC leaders will move on to other places, solicit more funds, and the migrants who really want to work will be out of a job."

The Campbell Soup Company and growers of Campbell are receiving numerous calls from the Valley of Texas and Florida where migrants are now employed, saying they want to get back to work. The truth is their jobs are not going to be there. It will be a completely mechanized harvest at Campbell Soup.

There will be adjustments made in the tomato industry in northwestern Ohio. The industry will be stronger in the long run, because we will have fewer growers, larger growers, and machine harvest will not depend on migrant labor and all the problems that have gone with them. The losers are going to be the migrants themselves, because they are going to lose their annual income by losing one or more crops.

Yes, there's going to be this ripple effect; we're going to see pickle crops having to stand on their own, and we're going to use less labor to harvest apples and fruit crops. The effect will be felt throughout the whole Midwest.

FARM LABOR ISSUES IN CALIFORNIA

William J. Thomas, Jr.
California Food Producers, Inc.

I was very interested in Paul Slade's remarks about what's going on in Ohio farm labor. There is a certain similarity with that which we experienced in the California agricultural labor arena. The California agricultural labor scene is a good example of what to avoid in other jurisdictions.

An act was passed in 1975, the first ever comprehensive act for organizing farm workers, in that the National Labor Relations Act excludes domestics and farm laborers from its provisions.

There is nothing more boring than a recitation of provisions of the law, but it is tough to talk piftalls in a Farm Labor Act without telling you a little bit about it. I will draw some parallels to the National Labor Relations Act with which you may be familiar. Many provisions are roughly parallel to the bargaining statutes, with components regarding recognition, unfair labor/trade practices, and the bargaining obligation. Under the California Agricultural Labor Relations Act (ALRA) if a union or group of employees is able to secure a petition signed by 50 percent of the employees working at any time (at least half the number at peak work period), an election will be conducted within 7 days.

An employer under the National Act can voluntarily recognize a union and call for an election himself. After the petition is served, it might be 30 to 90 days or longer before an election is held; under our act you'll have an election within 7 days. If you have a strike, the election must be held within 48 hours. Even a 7-day election does not provide sufficient counter campaigning time with employees before the election.

The bargaining unit under the California Act includes all farm employees--temporary and seasonal, skilled and non-skilled, office workers, and hand laborers. All employees are members of the same bargaining unit with the exception of supervisors/agents of the employer. Therefore, there is no separate election, no separate collective bargaining, or different unions. This is far different from the National Act.

When an election petition is filed, the employer is required to persent the names and home addresses of all his employees within 72 hours. That information is given to the union.

Numerous provisions and remedial sanctions unique to the California Act favor the unions. The unions have attempted to get some of these provisions into the National Labor Relations Act. Such reforms were defeated by the employer community in Washington last year. One particularly noteworthy item called the "make-whole remedy," is applicable to employers who fail to bargain in good faith with a certified union. The Agricultural Labor Relations Board (ALRB), in effect, will write a contract and impose it on the employer under the premise that this is what the employer would have signed had he bargained. Under board decrees, such contracts would impose minimum wage rates of $3.13 per hour and fringe benefits--pensions, health plans, overtime pay, shift premiums, paid vacations/holidays, and standby time. This is one of the most detrimental provisions of our act, for two reasons. First, the only way an employer can get court review of his challenges to misconducted elections is to refuse to bargain. He must set forth such objections during his defense of the unfair labor practice charge filed pursuant to his failure to bargain. This means the employer must prevail in his court case or face perhaps hundreds or thousands of dollars penalty. Such penalties discourage employers from pursuing appeals because of the deterence of the make-whole remedy. The second problem has to do with the obvious penalty nature of such an impacting award.

Another provision has to do with secondary boycotts and secondary picketing allowed under the California Act, a detrimental and far-reaching difference between the laws.

Decertification is the procedure whereby employees of a ranch with a certified union want to vote the union out. These elections are allowed in California only if employers have already signed a contract with the union. Negotiations with the UFW can go on for years. Throughout, the employer may have seriously disgruntled employees, but the only way they can petition for decertification elections is if the employer signs a valid collective bargaining agreement with the union. This provision, unique to the California Act, seriously interfers with employees' free choice of representation.

Jurisdiction is the last specific area I'll discuss. One of the most serious differences between the State and the national act has to do with language in our act which gives "exclusive jurisdiction" to the Agricultural Labor Relations Board and thereby tacitly denies employers direct access to the courts. This means if unions engage in unlawful picketing, violence, blocking entrances and exits to and from your farm or business, or unlawful trespass, the employer does not have a right to get an injunction. Until such injunction is procurred, law enforcement officers cannot engage in peace-keeping efforts. The procedure, to date successfully argued, is that the ALRB would go to court for you. If the board decided to act, there would be a 2- to 5-day delay in obtaining any injunction in these serious cases.

This Act as emergency legislation was enacted in August of 1975. The yearly operation of this Board was going to cost the State of California an estimated $1.3 million. Immediate problems commenced when the Governor appointed a board with three members sympathizing with or directly connected with the United Farm Workers, one from

the Teamsters, and one from the agricultural community. The general counsel, which may be the most important position in the act's administration, came from the union ranks. The executive secretary of the board and the chief administrative officer likewise were union sympathizers.

The board began to staff the agency and this is where we in the agricultural community failed somewhat because we made no effort to place either our people or neutral people on the staff at headquarters or in the field offices.

The board, once appointed, moved forward and provided us with some ideas of the injustices that lay ahead for growers. The board proposed regulations heavily implementing the statutes in favor of the UFW. Among the most notable was the access regulation for which there is nothing parallel in the national act. This regulation provides that in all instances union organizers have the right to come onto your property and conduct organizing activities. This was later narrowed to an hour before work, an hour during lunch, and an hour after work. It is a serious violation of growers' property rights and the right to conduct business to let a handful or a few dozen UFW organizers come and disrupt your operations in their attempts to convince employees to unionize. This is a serious and detrimental departure from the labor law precedence and should be avoided if at all possible.

Another significant provision of the regulations is that if the union signs up only 10 percent of your work force, the employer is required to turn over his entire payroll lists together with their home street addresses so that the union can go to the homes of your employees and conduct their organizing activities.

The level of activity in the first month of operation should give you an idea of the furor concerning agricultural labor in California. In the first month (August/September), 194 elections were held involving 30,000 employees, 500 unfair labor practices complaints were issued, and there were objections filed pursuant to 75 percent of the elections held. In October, the board announced it had spent its entire $1.3 million budget. It was given another quarter of a million dollars by the legislature. At the end of 4 months, the board had conducted 423 elections involving 50,000 employees and issued nearly 1,000 unfair labor practice complaints. By comparison, the National Labor Relations Board in its first 10 months of activity held 31 elections involving 7,000 employees and received objections to only 30 percent of the elections held.

The ALRB had spent all of the second allotted budget after 6 months of operation, and was shut down for lack of funds. The outrage from the agricultural community was severe and directed to the bias of the board and its agents. Board agents, field examiners, attorneys, and hearing officers had little experience, little training, and significant bias which resulted in great expense to growers involved in unfair labor practices hearings. When unfair labor practice charges were filed against an employer, it cost between $10,000 to $150,000 and more to defend unfair labor practices cases.

The legislature formed an oversight committee of ALRB operations at the beginning of the next fiscal year. The ALRB was funded for its second year with a budget of $6.7 million. Three new board members were appointed including the chairman who was known to be a liberal pro-labor member of the National Labor Relations Board. Since that time, we have not seen control of the bias or the problems, but we have seen more sophistication.

The biggest battles in the second year were not so much between the farm organizations and the UFW as between the Teamsters and the UFW. In some cases, we were benefactors of that dispute. However, the Teamsters and UFW entered an agreement in March 1977, whereby the Teamsters would no longer conduct organizational activity

on ranches in California. It was thought this would be an open door situation for the UFW people with their law, administered by their people, and without competition from other unions. However, such UFW success has not come to pass.

Dissent by this time had arisen among the employees of the ALRB. Many employees of the board filed and created their own union--ALRB employees' union. I do not know how an agency can maintain an impartial posture while engaged in organizing a union themselves.

The UFW, frustrated by the lack of funds and limited success in the fields, went to the voting public with a proposition. This would add pro-union provisions to the act and weaken the law which would prevent the legislature from making amendments. Both sides committed large resources and effort in the election which resulted in a UFW defeat by a 3 to 1 ratio.

Between December 1976 and June 1977, there were only 188 elections held and 652 unfair labor practices charges filed. In the fiscal year 1977-1978, $8.6 million was appropriated for the agency's budget, and for the 1978-79 budget, $8.2 million was appropriated for agency operation.

Even though the Teamsters are out of the picture, there are a couple of small unions in California that pretty much had their roots in the Teamster organization. There were a few new contracts being signed with the UFW in late 1977 as the union took a different, more businesslike trend at the bargaining table. In short, the UFW began to act like a union, as opposed to a social movement.

The principal organizational activity in California has been in the vegetable and grape commodities, especially with those growers connected with the major packing houses; although lately the citrus industry has had considerable trouble. In processing tomatoes, we have not seen large-scale organizing activity since 1975, but we certainly know we are vunerable as soon as the union wants to tackle our industry. The processing tree fruit people have pretty much been left alone.

It is interesting to look at what has happened in recent months. From June to December 1978, there were only 45 elections held in field agriculture, of which 28 have come to some determination. (Challenged ballots held up the determination of a few elections.) Analyzing the 28 that have come to determination over the course of that period: UFW has won only 8, Independent Union of Agricultural Workers won 3, International Union won 9, Fresh Fruit and Vegetable Workers Union won 1, the employers (No Union) won 9. We perceive this major change in the numbers of elections and results as a light at the end of the tunnel.

Another major new development has to do with decertification elections. This is the procedure where employees already under union representation decide they want to call for an election to vote out the union. We have seen the board protect activity of the union by refusal to hold decertification elections once filed by employees. On other occasions, such elections have been held and the board has refused to count the ballots.

Employees are concerned with several provisions within the UFW contracts, most particularly with a provision called the "Citizenship Participation Day Fund." Under this provision an employee is required to forfeit the equivalent of one day's wages into the fund for the union's political purposes. Many employees refused to participate in this type of activity and were desciplined by the union. Therefore, they attempted to bring action against the union regarding such a fund. Additionally, union contracts regarding wages and fringe benefits are not usually superior to those offered on similar non-union ranches; therefore, much interest has been generated in decertifying the union.

We have seen considerable turnover and turmoil within the union ranks this fall. Some top attorneys have left and we have seen turnovers in the executive committee of the union. We do not know all of what has been going on within the UFW, but there is certainly some unrest within.

Another event that may interest many in attendance is the granting of substantial Federal monies directly to the UFW. Four grants amounting to approximately $2 million were given in the course of a 6-month period from Federal agencies (the Department of Labor, Community Services Agency, and HEW). An attempt was made to challenge the concept and the procedures regarding these grants. However, progress has been difficult with the agencies in spite of Congressional help and pointed criticism by the Government Accounting Office. I'm afraid other Federal monies will be routed to the UFW to protect and help them in specific areas where they are having difficulty being effective in the field. One such area may be their health plans which are not very effective.

All we need from agriculture's standpoint is a fair act (we can function reasonably comfortably under something as close to neutral as the National Labor Relation Act), if we have an agency that is not biased. With seven or eight amendments in our act which would parallel the Federal procedures and with a fair and unbiased board and agents, we would survive that which we are experiencing.

APPENDIX TO PAPER BY WILLIAM J. THOMAS

Several things have happened in the California agricultural labor arena since this talk was given.

1. The Vegetable Master Contract between the UFW and 29 major lettuce and vegetable growers and packers terminated January 1, 1979. The UFW declared a general strike before it had even submitted its full economic package to the growers. This strike immediately affected most Imperial Valley growers harvesting lettuce. The strike was temporarily effective largely becuase the union engaged in widespread violence, coercion, and property damage. Roving bands of union picketers numbering several hundred to over a thousand lined the fields, pelting vehicles and employee buses with rocks, and occasionally stormed the fields to drive workers away. By the end of the several-week harvest season, the strike's effectiveness had somewhat dissipated.

The months of May/June mark the lettuce harvest in the Salinas Valley and the strike moved there. The union, however, knew they could not be effective against all the Salinas Valley vegetable growers, so they selected only a few as their strike targets.

It is apparent that the strike even against only these few employers will fail in the absence of mass violence. Consequently, much violence and widespread arson has been directed on the ranches, packing sheds, vehicles, and even within the community (homes and motels housing workers have been burned).

2. Additionally, the union has announced general consumer boycotts against iceberg lettuce and Chiquita bananas (Chiquita is owned by United Brands which also owns Sun Harvest Farming Company).

From January to May, the union stayed rigid with their original contract offer. Growers originally offered a package of 21 percent over a 3-year contract, with an 11-percent increase in the first year and lesser increases in the other 2 years, bringing the minimum wage in the first year up to $4.12 from $3.70 per hour. The union has demanded a 1-year contract with $5.25 per hour minimum which they recently reduced to $5.20.

The real economics, however, lie in the piece rate wages which presently range from $8.58 to $12.70 and the union demand ranges from $13.37 to $22.07 per hour.

Before settlement of this dispute, the union will have to realize that its failure in this unreasonable strike will hurt more than help its social movement. The ranch economic issues are not its true motivations but instead it is looking for national notoriety which this strike has already provided.

3. Harrison Williams, Senator from New Jersey, came to California over objections of the California farm community. He held hearings regarding the strike and how the farm labor issues should be regarded at the national level in light of California's laws. California growers did not heavily participate in these hearings. We anticipate further interest at the national level regarding this strike and farm labor in general.

4. Also, since the first of the year, it is interesting to note the organizational activity of the UFW in California fields. Such figures indicate that the UFW is not having such widespread success at the farm level.

PETITIONS FOR CERTIFICATION FILED FROM JANUARY 1, 1979 TO MAY 1, 1979

13 petitions filed	Elections won	3 decertifications filed	
UFW	4	dismissed	3
International union agricultural employees	1		
No union	1		
Challenged ballots determinative	2		
Dismissed/withdrawn	5		

DEALING WITH BARGAINING ASSOCIATIONS

DEALING WITH BARGAINING ASSOCIATIONS--A PROCESSOR'S EXPERIENCE

Charles E. Bailey
Regional Manager-West Coast Agriculture
Division of H.J. Heinz Company

I am here at the invitation of Robert F. Holt, executive vice president of the California Tomato Growers Association and also the current president of the National Committee of Cooperative Agricultural Bargaining and Marketing Associations. I have known Robert for approximately 20 years, having first met him when we were lobbying for an extension of the braceros program in Washington, D.C. Little did I know at that time that I would eventually be dealing with Robert on tomatoes in California on a daily basis.

I am here to give you a "report card" on your performance of bargaining for price and contract terms on specific commodities.

I think it appropriate that I give you a little background on the Heinz Company in order that you can understand more fully the comments that I am going to make throughout my talk today.

The H. J. Heinz Company had its origin in the kitchen of a farmhouse in Sharpsburg, Pennsylvania, in 1869. Today, the H. J. Heinz Company is a worldwide organization devoted to the human purpose. Its 34,000 employees work primarily in more than 40 major locations spanning all the continents. They draw upon global land and sea resources for raw materials, which they transform into hundreds of products for retail and food service markets in more than 150 countries and territories. They follow the highest standards of quality and nutrition in their work which consists of the production and sale of processed food products and food ingredients. The Heinz USA Division of which I am a part is one of 16 divisions of the company.

We feel, and in fact, recognize that agricultural bargaining cooperatives are here to stay. In recent years some of the cooperatives in bargaining for price and contract terms have developed credibility and integrity, which are a credit to the agricultural community.

I have always worked for a proprietary food processing company. Therefore, I have limited knowledge of a cooperative organization. But, I would like to sound an alarm, because I am very concerned by the way in which the processing industry is gradually being dominated by cooperative processors, specifically, in California. Approximately 60 percent of the apricots for canning in California are processed by cooperatives, 85 percent of the freestone peaches for canning are processed by cooperatives, 40 percent of the cling peaches are processed by cooperatives, 35 percent of the asparagus is processed by cooperatives, 60 percent of the pears for canning are processed by cooperatives, and 25 percent of the tomatoes are processed by the cooperatives, and this figure is rising.

I believe that in several years you will find the Apricot Producers of California, California Freestone Peach Association, the California Canning Peach Association, California Asparagus Growers Association, the California Canning Pear Association, and the California Tomato Growers Association dealing with the cooperative processors for anywhere from 30 to 90 percent of the volume on particular commodities. There is going to be a serious conflict when you have overlapping directorships between cooperative processors and cooperative bargaining associations, and it is going to be very difficult to set price and contract conditions that represent realistic commodity values. When I say realistic values, I mean values based on supply and demand and certainly not favoring either processor or grower. It will be very difficult under the conditions I have just outlined for growers to assure themselves a fair market price for their processing crops. You people who are members of bargaining cooperatives have a very difficult job ahead of you if you are going to continue to represent the grower in getting the fairest price and contract conditions on the various commodities.

I sound the note of warning because I have heard the forecast from Dr. Eric Thor, a noted economist for the Giannini Foundation, who less than 2 years ago, at a meeting at University of California-Davis, forecast that the H. J. Heinz Company and the Campbell Soup Company would be the only tomato processors operating as proprietary processors in the State of California in the near future. It was Dr. Thor's opinion that all other processors would have some other type of cooperative structure involving their tomato growers. I don't know whether I would go so far as to agree with Dr. Thor, but again, the trend is very obvious and we have certainly seen it moving in that direction the past 2 years.

Maybe there should be a pronounced effort to sever all ties between cooperative bargaining and cooperative processing and this is possibly one way to face the future, certainly in California.

I would like to get back to the subject that was assigned to me, namely, our experience in dealing with cooperative bargaining associations.

I heard a story many years ago about dealing with a cooperative bargaining group in the Pacific Northwest. I presume that this group is still in business, although if they are, I am sure they have survived only because they have matured and have recognized some basic economics in their particular commodity. Just prior to the board of directors agreeing to a seasonal contract, the president would come to a processor and sign a contract 24 to 36 hours prior to the board's official action. The reason given by the president was that he wanted to be sure he had a home for his crop and the hell with everybody else. I think you can understand my mixed feelings about that group. I am sure that this was an isolated incident, although I heard it happened 2 years in a row. I would hope that this group deals a little differently now than it did in the sixties.

The next cooperative bargaining group that I dealt with was in the Midwest. It was a rather loose organization with no clear-cut objectives. It seemed to me like there was always one or two individuals who were loud, boisterous, and demanding who could shout down anyone in the room; therefore, they were the leaders. I would hope that type of activity has disappeared; that particular group is badly splintered and really has not done a job for its members. That State has not grown in food processing.

I have viewed cooperative bargaining on the East Coast, to some extent in the South, and in Canada on various commodities. All such organizations have had some difficulty in obtaining growth for their members as well as for their industry. There may have been problems beyond their control, but I certainly would not consider them to be successful.

There have been times when I have been openly critical of cooperative bargaining on the various commodities in California and of the overlapping ties between cooperative processors and cooperative bargaining. I will have to admit that in the last 4 to 5 years, cooperative bargaining has matured to the point that it is a very important part of the industry.

I truly believe that an agricultural producer must make a commitment to cooperative bargaining, which may lead to a sacrifice. On the other hand, those who seem to be committed are the most stable industry-oriented individuals and are the real leaders. A number of Heinz tomato, pear, and apricot growers are members of cooperative bargaining organizations. In some cases, they are active leaders in these organizations, and I will have to admit that most of them seem to be more knowledgeable on industry problems than nonmembers. In most cases, I find it easier to deal with these people on questions of processing, growing, and grading, because they often know of the problem before I ever open up the discussion.

We, as a company, take pride in the fact that we treat cooperative bargaining members and nonmembers alike. We are criticized regardless of what we do. Nonmembers accuse us of favoring members and vice versa. But we do make every effort to treat all alike and at no time will we influence a Heinz grower on his decision to join or drop from membership in a cooperative bargaining oganization. We feel it is his decision and only his.

I am particularly impressed with the California Tomato Growers Association's program in recent years. Over a period of time, Robert Holt and Jack Hayes, among others, have worked closely with the H. J. Heinz Company to solve industry problems. They really have shown a very mature and sound approach to solving these problems. I think the program that most impressed me was when the CTGA made an effort to reduce the volume of foreign material in tomatoes and, most recently, their attempt to reduce broken and cracked tomatoes in the delivery of tomatoes to the processor. In both cases, they caught considerable hell from their members, but at the same time there was a very substantial reduction made on both foreign material and broken and cracked tomatoes. In my estimation, this shows a very strong desire to strengthen the industry.

I have not worked as closely with the California Canning Pear Association or the Apricot Producers of California. Pears and apricots are commodities that we buy in California. But, I am sure that these two organizations are gaining credibility and respect as time goes by. Today, I am only singling out the California Tomato Growers Association because I feel we have worked very closely with them. We have made considerable progress for the mutual benefit of both parties.

I would like to close my comments with a few thoughts that I am sure some of your people don't agree with:

1. Cooperative bargaining has in general matured to where it is respectable, and credibility has been gained where the groups have met industry problems head on and at least attempted to solve the problems from an industry standpoint rather than just taking the grower's side.

2. Cooperative bargaining is in my estimation more sophisticated, better organized, and certainly more productive in California.

3. I realize that there are some processors who will not agree with me but I feel that strong bargaining cooperatives are essential for survival of the commodity in a geographic area. I don't mean to imply that a bargaining cooperative should price itself out of the market from the standpoint of strength, but it certainly should represent its members in getting price and conditions that can be considered competitive.

4. The tie between processor cooperatives and bargaining cooperatives should be severed as soon as possible, in order to eliminate potential conflict of interest. This becomes absolutely mandatory as the processor cooperatives account for a higher percent of a given commodity.

Changes from the traditional relationships between cooperative bargaining and cooperative processing groups are absolutely essential if growers of a particular commodity are to realize a fair market value, and if proprietory processors are going to survive.

EXPERIENCES UNDER THE AGRICULTURAL FAIR PRACTICES ACT OF 1967

SOME COMMENTS ON THE AGRICULTURAL FAIR PRACTICES ACT

John C. Chernauskas
Director of the Marketing Division
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U.S. Department of Agriculture

The Agricultural Fair Practices Act was created by Congress a little more than 10 years ago. Its purpose was to provide farmers as complete freedom of choice as possible in exercising their right to join, or not to join, an association of producers.

Section 4 of the act was to be their insurance of this freedom. That section of the act prohibits actions designed to interfere with a producer's free choice to belong to an association or to deal directly with other handlers. It makes it unlawful for any handler or association of producers knowingly to:

1. Coerce a producer in the exercise of his right to belong or not belong to an association.

2. Refuse to deal with a producer because of the exercise of his right to belong to an association.

3. Discriminate against a producer because of membership in an association.

4. Coerce any person to enter into, maintain, breach, cancel, or terminate a membership or marketing contract with an association or a contract with a handler.

5. Induce a producer to refuse or cease to belong to an association or terminate an agreement with a handler.

6. Make false reports about associations or handlers.

7. Conspire to do any of the foregoing.

This section is, of course, the heart of the bill. During Congressional hearings, it received the greatest attention by witnesses both pro and con. The concepts of coercion, discrimination, and intimidation are very broad ones, but the committee felt they were sufficiently definite to provide an adequate guide to the courts and to the parties affected to enable them to determine what actions are prohibited.

The legislative history of the act shows that Congress desired to give farmers greater economic power in the marketplace. This act, along with several others, is part of a national policy directed toward better farm prices and the encouragement of stronger, more effective farmer cooperatives.

The act gives producers some flexibility in enforcing fair practices by handlers. A producer, or an association, may detail the facts of a violation to the Secretary of Agriculture. If the Secretary agrees that a violation of the act has occurred, he will refer the matter to the Attorney General, who may bring suit to enjoin the handler from using the prohibited practices. A producer may also bring suit on his own behalf in a Federal district court to obtain an injunction against a handler and to recover any damages which may have resulted from the unfair practices. Congress also recognized that going to court might be expensive for a producer, so the act allows for reasonable attorney fees to the prevailing party. This, of course, could cut the other way if the producer lost and the handler prevailed in the lawsuit.

It is quite common, where a Federal act allows for the award of reasonable attorneys fees, to see a rather large volume of litigation by lawyers eager to apply the Congressional mandate. This has not been the case in the Fair Practices Act. The reason for this, apparently, is Section 5 of the act which states:

> "Nothing in this chapter shall prevent handlers and producers from selecting their customers and suppliers for any reason other than a producer's membership in or contract with an association of producers, nor require a handler to deal with an association of producers."

This language was included in the bill in an attempt to be fa[illegible] the handlers and also to maintain competition. The Congressional committee was well aware of the problems of handler and cooperative competition, as shown in the committee report indicating the reasons cotton and tobacco were excluded from coverage of the Act.

> "The committee gave extensive consideration to the problems of cotton and tobacco before it decided to recommend their exclusion from the act. Witnesses representing cotton ginners and warehousemen testified that they are in direct competition with cooperative cotton ginners and warehousemen. Inducements such as rebates, trucking, loans, and trading stamps are regularly offered by both cooperatives and other handlers to attract the farmer's business. If the other handler is successful, the farmer usually does not join the cooperative; and there was considerable apprehension that such inducements, since they could result in the farmer not joining the cooperative, might fall within the prohibitions of the bill. That was not the purpose of the bill. It is not intended to lessen competition between cooperatives and other handlers; and such competition is beneficial to the farmer. While the bill has been modified in a number of respects to make it clear that normal and appropriate business dealings between a producer and a handler which incidentally may or will result in the producer's decision not to join a cooperative are not prohibited, these changes were not considered sufficient in the case of cotton handlers who are in daily competition with cooperative handlers engaged in identical handling operations, but not subject to the same injunctions.

> "Because of the difficulty in finding language which would make it clear that a cotton handler could safely compete with a cooperative handler without being continually prepared to prove the motive for his actions, and because the evidence indicated that the cotton cooperatives did not need the protection of the bill, the committee has recommended exclusion of cotton."

It is now abundantly clear that many of the so-called "proper" business practices that result in a handler dealing with, or not dealing with, a producer, and many competitive activities Congress found existing in the cotton industry were also prevalent in varying degrees with the other agricultural commodities coverd by the act. Therein lies the basic problem with the Agricultural Fair Practices Act: the

necessity to prove that an otherwise allowable business practice which results in a refusal to deal with a producer was actually practiced to intimidate the producer in his relationship with a cooperative.

In order to establish a violation, obtain a Federal injunction, or to obtain damages, the Attorney General or aggrieved producers have to show that the actions of a handler were intentional and had a direct effect on the exercise of a producer's choice to join, or not to join, or to maintain membership with a cooperative association. It is quite clear that any sophisticated handler, or even a handler cooperative, can probably come up with a number of good business reasons to discriminate against particular producers on a basis other than association membership.

A survey of cases directly involving the Agricultural Fair Practices Act since 1968 reveals qualified success in only seven cases. Those are cases in which the court issued an injunction or the handler agreed to discontinue certain practices. In 19 other cases, the files were generally closed because of insufficient evidence, or no concrete grounds for action. The determination of "insufficient evidence" was usually tied to Section 5 of the act, where a handler established some reason, other than association membership, for the action taken.

One limited success was in a case which the Secretary of Agriculture brought against the Lawson Milk Company of Ohio. 1/ In that case, the milk handler dropped a producer after the producer joined the association. The producer's contract with Lawson contained a clause which gave Lawson the right to cancel its agreement with the producer if the producer joined an association. The evidence before the court included an exchange of letters, and, of course, the Lawson contract, which suggested that the sole reason Lawson dropped its producer was because the producer joined the association. A pivotal point in the case was that Lawson had apparently not attempted to deal directly with the producer after the producer became an association member. The court entered an injunction against Lawson precluding the handler from refusing to deal with the producer because of association membership, and requiring Lawson to drop that paragraph from its form contract. The case, however, illustrates many of the difficulties in enforcement. The Federal judge, noting the disclaimer provisions in Section 5, described the Act as a "Creature of conflicting intent fraught with seemingly inconsistent and paradoxical provisions." For instance, if Lawson had attempted to deal directly with the producer, and either the producer or the association insisted that Lawson deal through the association, Lawson could have dropped the producer without violating the act.

Another limited success was obtained in Florida where the Secretary brought an action against a "broiler" chicken handler. The evidence suggested that the company had threatened to cut off farmer members of the Southern Broiler Growers Association, and that the primary organizer and president of the association was dropped as a producer because of his affiliation and leadership in the association. By court stipulation, the handler agreed to reinstate the association president and not discriminate against members.

Similar limited success was obtained in Ohio in 1972 against Hunt Wesson Foods. In that case, Hunt dropped a large group of producers who had joined an association, although the same producers had supplied Hunt in previous years, and Hunt awarded contracts to nonmember growers in approximately the same amount the association members had previously produced. The court entered an injunction against Hunt and the case was later settled.

1/ United States v. Lawson Milk Company of Ohio, 386 F. Supp. 227 (N.D. Ohio 1974).

Even these victories, however, serve to illustrate the inadequacies of the act. Although Congress initially considered including possible fine and jail sentence provisions in the bill, these were removed in the Congressional amendment process. As a result, one Iowa newspaper termed the Act a "toothless failure," and a Ralph Nader associate described the act as a "triumph of form over substance."

Successful prosecution under the act requires solid evidence and is a considerable drain on time and money resources. About the best you can hope for is a court order to tell a handler to stop what he is doing.

The facts of some cases where court action was not taken might show the extent of the problem created by Section 5 of the act. In one case, an Oregon fruit and vegetable handler refused a contract with individual association members until a contract with the association was negotiated. No association contract was reached, but the handler signed agreements with two members who had sought to withdraw from the association. The Secretary of Agriculture concluded that the handler's actions could be considered as inducement or coercion to break or terminate association membership; however, when the case was referred to the Attorney General, he did not agree, and the case was closed. In another case, a State of Washington vegetable handler paid nonmembers a price it had refused to agree with an association to pay. The Justice Department, similarly, declined to prosecute this case.

In many other cases, the Secretary concluded that the facts were not sufficient to bring an action. Thus, there was no violation of fair practices where a milk handler dropped producer members of an association, based on a management decision that the company was being maligned in an association effort to induce producers to join the association. In another case, the Agriculture Department concluded there was no violation of the act where a large cooperative solicited membership from smaller cooperatives, if no special inducements were offered. The Department, in yet another case, concluded that two handlers were not in violation by refusing to deal with a vegetable growers' association, and that it was lawful for the handler to insist on dealing directly with producer members.

There are actions a producer may take in addition to, or instead of, the Agricultural Fair Practices Act, in order to assert freedom of choice on whether or not to join an association. For example, an element of the Associated Milk Producers, Inc. antitrust litigation a few years ago involved negative coercion against nonmember producers. AMPI agreed to stop these practices. In a still pending case, Eastern Milk Producers Association v. Lehigh Valley Co-op, Eastern used the act only incidentally in its complaint against Lehigh Valley. 2/ Eastern focused more directly on the State law, which has a purpose similar to the Federal act, and on a common law tort of wrongdoing, that of interfering with a contractual relationship, or inducing breach of contract. In this case, Judge William Ditter, in Philadelphia, entered a preliminary injunction against Lehigh because of prima facie evidence that Lehigh interfered with contract obligations between Eastern and 16 of Eastern's producers. The Court of Appeals affirmed Judge Ditter's decision, and the case is now back before the District Court on the issue of whether or not a permanent injunction should be issued.

After the Court's decision in the Lawson case, I am not aware of the Department of Justice bringing a fair practices case at the request of the Secretary of Agriculture. It would also appear that the number of fair practice complaints requesting prosecution by the Secretary have been minimal.

2/ Eastern Milk Producers Association v. Lehigh Valley Co-op, 448 F. Supp. 471 (E.D. Pa. 1978).

What does the experience under the act by both the government and industry indicate? One could say that Congress was right when it said that the act's concepts of coercion, discrimination, and intimidation are broad ones. However, Congress missed the mark when it said that such concepts were sufficiently definite to provide an adequate guide to the courts and affected parties. Based on experience under the act to date, we must conclude that it is not likely that the Agricultural Fair Practices Act will serve as an effective deterrent, except in the most obvious circumstances.

AGRICULTURE AND INTERNATIONAL AFFAIRS

THE ROLE OF AGRICULTURE IN INTERNATIONAL AFFAIRS

Frederick J. Heringer, President
California Farm Bureau Federation

I've been a part of several organizations besides Farm Bureau and have served as president of the California Tomato Growers Association. I am also a 20-year member of the board of the California Canning Peach Association. Such commodity groups are at the heart of the economic interest of farmers and ranchers. But it can't be done by individual groups alone. That is why I am proud of the efforts by Farm Bureau in California and the Nation in providing an umbrella for all of us to work together for the common good.

One place we all can work together is in the area of international affairs. I not only think we can, I think we must come together to preserve a healthy, viable American agriculture.

The concept of trading is simple, but the idea of trading internationally is very complex. It has given a prominence to agriculture in international affairs, specifically in the fields of economics, politics, and security. The reason is simple. Food is a life necessity.

We are in a period of major changes that will alter the flow of agricultural trade affecting producers and consumers alike. I'd like to address some of these changes and raise some of the possibilities that may occur in the near future.

It boggles the mind to review recent events on the international scene:

For instance:

1. Recognition of the People's Republic of China.

2. Essential conclusion of SALT II with the Soviet Union.

3. A large increase in the price of OPEC oil (now, there's a bargaining group!!).

4. A new civilian government in Iran.

5. Conclusion of the agricultural negotiations at Geneva.

6. Formation of an international commodity agreement on certain dairy products.

7. A nearly concluded peace in the Middle East.

8. A new Euro-currency.

9. The International Monetary Fund is selling its gold.

10. An international low for the dollar and record balance of payments deficit.

Last year, the U.S. agricultural exports to Taiwan were over $600 million dollars; only $64 million worth went to PRC. With recognition comes increased trade. Taiwan has been a big buyer of unmilled corn and wheat, tobacco, hides, soybeans, and cotton. Taiwan needs U.S. products for both food and export income. Reduced trade with Taiwan, coupled with increased trade with the PRC, will probably mean that in the short term, gross agricultural exports may be reduced. But, in the long run, exports will expand greatly. It would appear that there is room for the agricultural economies of both our nations to grow when you compare our production advantages on the plains of the United States and those of the PRC.

Back to point number two: the conclusion of the Second Strategic Arms Limitation Treaty discussions. .... On first glance, it appears unlikely that discussions on reentry vehicles and intercontinental ballistic missile deployments could affect agricultural producers. But they really do. Ever since the early seventies, we have had trouble gaining access to the market of the Soviet Union. It seems like we in California would have a clean entry at Vladivostok. We would supply the people of Eastern Russia with fruits and vegetables as we do Hong Kong, but we can't. So why don't we?

The problem lies in the political relationship between Moscow and Washington. At the center of that relationship is Salt II. Successful conclusion of the SALT discussions would mean easier access to the USSR for American farmers. However, I must raise a point of caution to producers of products which the Soviets want to sell here. They have been wanting to make a deal where they would concede an increase in the guaranteed purchase of grains and would gain so-called "most favored nation" status for easier access to the U.S. market. If granted, it would mean that the United States would charge the lowest available duty on imports from the USSR. Presently, the highest rate is charged, often double or triple the lower rate. So, while we may see a guaranteed 12 to 15 million metric tons of grain exported to the Soviet Union in future years, we may also have some competition in brandy, horses, sheep skins, fur skins, nuts, vegetable extract, essential oils, and casein. Imports of casein were up 250 percent in 1977, totaling $1.7 million dollars from the USSR. And if the Soviets secure the lowest duty access to other GATT countries, they will become an even greater threat to our cotton producers in the United States. Thus, the outcome of SALT II is important to our wallets as well as our security.

Continuing our list of recent events: the increase of 14 percent in the price of OPEC oil will affect agricultural trade. A simple analysis shows that those products which are most energy intensive will be strained due to cost, and those crops in demand by the dollar-rich OPEC countries will be aided. As petroleum costs increase, crops such as dried fruit and nuts, tobacco, herbs, and spices will be economically pressured. However, the benefits should accrue to poultry, rice, wheat flour, animal feeds, vegetable oil, apples, prepared vegetables, and certified seed.

OPEC has become a major force in the world and may continue to grow more influential with the reduced influence of the super powers and the rise of the oil-rich nations. Agricultural trade will be affected by their decisions over which the United States will have little or no influence.

Our exports of live cattle, wheat, rice, barley, corn, oil cake and meal, tobacco, fats and tallow, and soybean and cottonseed oil will likely be affected by the change of government in Iran. But Iran's exports will also be affected, so we may see fewer

imports of pistachio nuts (which need a little help in California), dates, sheep skins, as well as a few spices which can be helpful for U.S. producers of caraway, anise, and coriander.

Our fifth item, and one of the most important, is the conclusion of the multilateral trade negotiations in Geneva. The negotiations involve tariff reductions on thousands of import categories, and possibly 10 trade codes, which may reduce those ever-present non-tariff restrictions. Many of you were involved in promoting our interests in citrus, nuts, fruits, and meats. So you probably know that Congress gave the President the authority to conclude such tariff agreements. Approximate tariff reductions of 33 percent were included in the proposed agreement.

I would like to mention a few of the trade codes which cover the areas of countervailing duties, import safeguards, government procurement, customs valuation, technical barriers such as labeling, commercial counterfeiting, and international commodity agreements on beef and dairy products. The matter of customs valuation has perpetually troubled American farmers. If such a code can prevent illegal valuation at the border in order to avoid paying the full duty, then it will serve our best interest. It's long been known that an asparagus grower-shipper in Mexico can make a deal with a U.S. importer to give the customs officer in Nogales an artificially low value which results in a low duty. His duty book says 17.5 percent duty, but if the produce is undervalued, then the duty paid drops to the benefit of the shipper and the importer and to the detriment of the American producers. The new code calls for the customs officers to use the transaction value which may help catch some of the doubledealing.

Another code that is ambitious is that on commercial counterfeiting. Labels are constantly pirated in foreign countries. Especially vulnerable are those labels which have developed a premium market. It's not too difficult to duplicate the image or logo of Sunkist, Diamond, Levi's, Sun Maid, or Ocean Spray, so that a naive foreign consumer thinks he is getting the real thing. While it is hard to imagine how such illegal activities might be policed, it is encouraging that the effort is being made to control it on an international basis.

Returning to our list, we find international commodity agreements. The United Nations Conference on Trade and Development (UNCTAD), which is the developing nations' answer to GATT, has called for at least 15 international commodity agreements. The aim is to smooth the roller coaster effect of prices on some commodities produced in the developed world. The developing nations see less fluctuation on the world market as a steadying device for their economies. While developing countries need steadier economies, I'm not sure that their problem is entirely external. Their own instable governments constitute a huge stumbling block. Consequently, the Farm Bureau opposes international commodity agreements, because they include a number of countries which are instable. If these developing countries cannot put their own houses in order, then there is little hope for a combination of countries, the majority of which are developing, to do the same thing. We should note that they want commodity agreements on grains, cotton, and timber, as well as the one on certain dairy products.

However, when we consider that some 14 countries can detonate a nuclear device, it's certain that the National Security Agency will give an ear to such nuclear powers as India, Brazil, and other participants in UNCTAD. The foreign policy of our country has always rated security above economics and rightly so. But, we have to remember that agreements may be made to the advantage of certain countries and to the disadvantage of U.S. farmers, for reasons that appear to be extraneous to agriculture. An example is the role played by Cuba in the International Sugar Agreement negiations. Nevertheless, the U.S. negotiators were instructed to make a deal that included Cuba.

On dairy products, it looks as though we have an international commodity agreement where certain countries will have their export price of powdered milk controlled when it is used for animal feed. If the program is implemented, it, too, will be a change for international agriculture affairs. If it works to the advantage of the internationally predominant nations, there may be more commodity agreements controlling our prices in the eighties.

Let's turn now to the peace agreement in the Middle East. Just as with the Soviet Union, trade issues there are a peripheral item to peace relations and can be used as an international pawn. For example, the U.S. Generalized System of Preferences (GSP), which allows duty-free access to the United States, was designed for developing countries only. But, Israel was also included in the list of beneficiaries for a reason that had little to do with its economic status.

We may have needed a concession from Israel and gave duty-free entry in return. If peace can be maintained throughout the Middle East, Israel and Egypt may devote more energy toward building their economies through nonmilitary means. They will need more raw products and eventually more consumer goods. Israel may increase purchases of wheat, corn, sorghum, and soybeans. Egypt may increase purchases of wheat, corn, baby goods, tobacco, soybeans, cotton, fats and tallow, cottonseed oil, and poultry.

On the other hand, Israel could produce more fruits and vegetables to compete on the European market if it decided to increase government incentives. Citrus is especially important to watch in future trade relations with Israel.

This brings me to the new Euro-currency. It's basically a common currency for the European Community of trading partners. But the French are holding up any agreement on the new currency until a system of agricultural subsidies acceptable to them is worked out. They are blocking development of the European monetary system until their farm price problems are solved. Blending the Euro-currency with the Common Agricultural Plan will be difficult, but it should help trade once it is completed.

Meanwhile, the German and Benelux farmers feel they are being ripped off to the benefit of the French in the farm payments system. Also, their internal inefficiency can be our advantage over them in the rest of the international market.

If a Euro-currency is implemented, for the use of a U.S. exporter, it will be easy to trade with any of the nine countries in the community. A multinational exporter will need to concern himself with one currency fluctuating against the dollar rather than nine. It could help in increased exports of almost anything from the United States.

Next on our list is the International Monetary Fund shedding itself of its gold. The IMF has a lot of gold in its sacks, and large sales of gold have a depressing effect on its price. So much so that gold is not the real barometer of the value of currencies that it should be. Now, this complicated thing has not affected us too much, but it does affect developing countries who have great purchasing potential for our farm products. As the experts explained it to me, developed countries have hard currency and the developing nations' money is soft (meaning unexchangeable). Their best standard for valuation has been gold in the past. So the system--with IMF releasing its gold stocks--may be getting back to normal values. If it doesn't, the valuation problem could have drastic effects on the trading ability of the developing countries.

Finally, we should consider the sagging dollar and the balance of payments... With the announcement of the nearly 15-percent increase in OPEC oil, the dollar is down again. It makes our exports attractive and our imports expensive. It pressures our balance of payments into a deeper deficit. Again, however, this could be some

good news for agriculture. It appears as though President Carter has taken a look at the possibility of giving exports a priority in our international economic policy. I support that thinking all the way, as do most agricultural organizations, and I urge everyone to let the White House know how we feel.

My points, I hope, are clear. Practically every international event that occurs in the world has some effect on agriculture.

SUPPORTING NEW BARGAINING LEGISLATION

VIEWPOINT OF AMERICAN FARM BUREAU FEDERATION

Kirk Miller
American Farm Bureau Federation

I have developed most of my comments today around the theme of the three C highway to effective marketing and bargaining legislation. And the three C's I have chosen stand for coordination, cooperation, and communication.

When we talk about dealing with any kind of legislative package, we have to talk about coordination of our efforts with allied interests. The organizations represented in this room need to coordinate their efforts not only in Washington, D.C., but also at the State level, and even at the Congressional district level.

One thing we plan to do at the national level is to have some type of an ad hoc coordinating group in Washington that would meet periodically. We are already participating in groups of this type on other bills and other issues, and we think that it will be necessary in order to move the National Agricultural Bargaining Bill through Congress. We suggest that somebody from each one of the States might want to take this idea back to the State and establish a committee to coordinate the activities as they take place back at the State and local level.

The second C is cooperation. This is very important to us because as you can see from the organizations that are represented on this panel today, we have enlisted the support of all the major general farm organizations with the exception of the National Farmers Organization. We are attempting to eliminate or at least minimize the nitpicking and the changes that can be foreseen in the National Agricultural Bargaining bill as it moves through the legislative process. Those of you who have not read Randy Torgerson's book on the last attempt to enact national marketing and bargaining legislation might find it very interesting reading material. One thing that Randy pointed out in the book was that the general farm organizations often had conflicts in the type of legislation they wanted. We think that particular problem has been overcome. We see a great effort to cooperate on this issue and we appreciate that. One of the things we need to do to enhance our cooperation is to utilize existing groups and personnel. There are discussions among some groups to hire a lobbyist or additional staff in Washington or somewhere to coordinate the efforts on this issue. We think that this would be additional, unnecessary expense. Additional layers could become an encumbrance that could slow down the efforts to get national bargaining legislation.

Finally, the third C is communication. We get the feeling in Washington sometimes the farmers out here don't understand all the intricacies of the bill we are dealing with. We also know quite well those farmers are going to be the ones who are turned to by members of Congress, either when they are back home in the district or are elsewhere on Congressional visits in Washington. We think it is very important the State organizations and the bargaining organizations out there do everything they can to make farmers aware of the provisions of this bill.

I think the second thing we need to do in the area of communication is to talk about communicating with handlers to eliminate confusion and misunderstandings over what we are trying to do. I don't think we are going to change their minds, but I think we at least need to have them talking about the facts rather than whatever they perceive to be the facts. Finally, under the area of communication, we need to talk to our friends in agriculture such as our extension leaders and university personnel. The fact that the university personnel have not caught up with us in what we are trying to do with marketing and bargaining legislation has troubled many of us. I think there are very few people in the professional and educational community who have really taken a look at what could be done with the marketing and bargaining legislation in the form of setting up models and moving ahead to try to provide a broad base of understanding out in the country.

In order to move the legislation, many things need to be done during the next year. We need to hold some sort of national legislation kickoff in Washington, D.C., with a briefing session before everybody takes off to hit the Hill. This is going to have to involve members of bargaining co-ops from all over the country. We intend to involve members of our own organization. It would be helpful to demonstrate a broad base of support and a large number of people in this effort. We need to develop some kind of discussion brochures: the kind that helps farmers understand what we are dealing with and what we are talking about. We also need to prepare a slide/tape presentation. We probably need to have weekly or biweekly coordinating meetings in Washington. Non-Washington based associations should hold some type of coordinating meetings in their States and then relay information that's developed there back to the Washington groups for our use and vice versa.

The associations need to meet with their Congressional leaders back in their districts, while the members are home. We think that this will be very important. As you know, Congress is going to be confronted with a lot of issues: tax cut legislation, all types of anti-inflation legislation, a major trade package. If you really seriously want marketing and bargaining legislation, it's going to be up to you folks to help lay the groundwork back home in the districts.

We need to publicize our progress. I think that we have to make people aware that this is a dynamic effort. It is an ongoing effort. It is going to be a positive effort. We need to make people aware of that. We need to make them feel comfortable being a part of it. We need to indicate and initiate interest in compatible State legislative activity. If some of the processor companies feel that they are facing the possibility of maybe as many as 40 or 50 different State marketing and bargaining bills, they may change their attitude a little bit as they look toward national marketing and bargaining legislation. So we welcome States to get involved in some type of State legislation.

Finally, the last item on my list is patience. I know that farm people have discussed marketing and bargaining legislation for a long time. I know that those of you who are out there working with the associations and trying to deal with farmers on a day-to-day basis find it a little uncomfortable sometimes trying to reassure farmers that we are working on this issue. This is not the kind of issue that will be resolved overnight. So we may as well face this fact right up front and be patient as we deal with it.

In summary, I think that you can count on the Farm Bureau to continue to cooperate, coordinate, and communicate our interest in this issue. We stand ready to work with all the groups that are involved in it.

VIEWPOINT OF NATIONAL FARMERS UNION

Robert G. Lewis
National Farmers Union

I think that the National Agricultural Bargaining Bill is one of the most fundamental pieces of agricultural legislation since the Capper-Volstead Act. But it is going to be very, very difficult to convince farmers out in the country, including Farmer Union members, and perhaps other farmers also, that this is so. I am not going to dwell on the immediate possibilities of the bargaining bill. Instead, I want to talk about several things that I think are even more significant than the bargaining bill itself.

I think that each one of us, and our organizations, have a good deal to be humble about. We have, in America, farmers who are the most efficient and the most productive in the world, but they are getting the cheapest prices for their product of any farmers on earth. American farmers are over-organized to death. We have every kind of organization in agriculture, so thick that they stumble all over each other. But when it comes to public policy, farmers are way back near the end of the line.

For example, the Carter Administration is continuing the preceding administration's price support policies, which have permitted the prices received by farmers in the United States to drop to the lowest levels in real terms in history except for a couple of years at the very bottom of the depression in the 1930's.

In contrast to that, when the steel industry got in trouble, they got a variable duty system very much like the farmers in the Common Market in Europe have. Incomes and wage levels were not reduced, but protected and improved. Steel workers are making about three times the average wage considered appropriate for farmers, and much more for their investment as well. Protection has enabled the steel companies to increase their profits, and the steel workers to increase their wages. Much of the same kind of thing has been going on for the textile industry, and for a much longer time.

When Lockheed Aircraft Company and Penn Central Railroad Company went broke, the Government bailed them out to the tune of hundreds of millions of dollars of government aid, credit assistance, and so on, and the companies were not required to make any reductions in management salaries and certainly not in wage returns.

But during the same period, America's biggest farming industry also went broke. America's cattle producers took losses in one single year alone, in the market value of U.S. cattle herd, of about $20 billion. Now what did the Government do for cattlemen? Nothing to preserve the opportunity of the farmer and the rancher to get paid for their families' labor; nothing to insure a return on the farmer's and rancher's investment; nothing but a little help to borrow some money to live on and to try to cover some losses and to survive. The public has enjoyed a 4-year orgy of cheap hamburger, and we have eaten up 20 million mother cows and daddy bulls in this country, and who knows how many farmers and ranchers got eaten too? And now after feasting on the goose, one of the most prominent activities of the public and the Government is to look around the world to see if there are some more golden eggs out there that we can import.

Well, you wonder what all this has to do with bargaining. As I said at the beginning, there are several things that are more important about this bargaining legislation exercise than the bill itself. One of these is the fact that we are here together, and that we are getting together out in the country, and that we are going together before the public and before the Congress to ask to it pass this bargaining bill.

Another very significant thing is that this exercise is bringing us all to concentrate our minds on the principles and the procedures and the methods and the techniques of bargaining, and these have applications and implications that go far beyond bargaining for the price of tomatoes or peaches or peas or what have you.

The fact is that these procedures apply to the big picture and the big picture is that we are not living in a "free market" economy.

We are living essentially in a negotiated economy. And that is where we will continue to live in the forseeable future whether we like it or not.

Farm organizations have never had much trouble in agreeing about the acceptability of negotiating with handlers over the prices we get for our commodities in the private sector. Where the dispute has arisen is over the question of how acceptable it is to negotiate for prices and income support measures through the political process. In my estimation, that question is now moot.

We are having Government regulation thrust upon us, whether we like it or not, whether we believe in it or not. The rain falls with impartiality upon the just and the unjust alike, and we all get wet. It is becoming fairly easy to put aside our old quarrels about whether we believe in rain or not. For example, the Farmers Union, the Farm Bureau, the Grange, and any other farm organization that I know about, reacted instantly and with identical outrage against the moves by the Government in 1973 to embargo exports of agricultural commodities. We all recognized at once that the Government was regulating the prices of our commodities, and we recognized at once and immediately that the regulation was not fair.

Another case in point is the current war on inflation. I am against "inflation," or at least I am against some high prices, and I am against the disruption and the severe adjustments that are being forced upon our economy and our farmers' economy among others. But mark my words, there will be many instances in this "war on inflation" where farmers and farm organizations are going to have to be very careful and assiduous in protecting the farmers against being made "cannon fodder" in the war on inflation for everybody else's benefit.

There is another instance that is maybe a little farther off on the horizon, but it is even taller. That is this question of "undue enhancement" of prices under the Capper-Volstead Act. We are going to have a mighty hard bargaining session, over a long period of time, about defining just what price level is "undue enhancement" of prices and what is only "due enhancement."

For all of these crises and others, we are going to have to know how to use the methods and the techniques and the devices and the disciplines of bargaining. We are going to have to know how to defend what farmers are getting, and what they need to get to be treated equitably in our society. We'll have to insure that when the Government determines what price it will regulate for us--to the extent that it will influence and regulate prices we'll have to do our level best to protect the interest of farmers in getting a fair rate of return for their labor, their investment, their risk, and their management.

The sooner we begin to learn the procedures, practices, and techniques of bargaining, the better off we'll be. And that goes for the producers of the big commodities--the grains, soybeans, cotton, and so on--even though bargaining as strictly defined may not be in the immediate future for them. If we grain producers, cattle producers, soybean producers, and cotton producers don't bargain ourselves, we had better watch what the tomato producers and the cling peach producers and the others are doing and learn from them how to make it work in the big arena.

So that's another important thing about this bargaining bill! It is requiring us and disciplining us to focus our attention on what we need to learn so we can conduct ourselves effectively in the arena of public policy in the years ahead.

Tony Dechant, the national president of the Farmers Union, has written a letter to President Grant of the Farm Bureau. President Grant has replied to Tony Dechant, and Bob Lewis has gone to Chicago and talked to the Farm Bureau about organizing farmers into bargaining associations. These discussions are not complete and they are continuing.

And that's not all. Out in the country, other Farmers Union leaders are talking about bargaining with the leaders of the Grange and the Farm Bureau and other farm organizations as well. They are talking about working together in their States to organize bargaining associations where bargaining is needed by farmers.

Out in Ohio at this very moment, the Ohio Farmers Union and the Ohio Farm Bureau are working together to write articles and bylaws for a bargaining association for tomato growers. A steering committee, comprised of three members of the Farmers Union and three members of the Farm Bureau, has been working with the staffs of the Farm Bureau and the Farmers Union in Ohio for months to plan and organize this bargaining association. Within days, Farmers Union organizers and Farm Bureau organizers are gong to start out down the road signing up members to membership agreements in the new tomato growers' association. This new cooperative will provide that each farmer-member may choose for himself whether his membership dues shall be paid to the Farmers Union or the Farm Bureau. Farmers in Ohio are testing whether this approach is one by which they could work together on the things they can agree about, while preserving their right and opportunity to work separately and against each other on the things that they must disagree about. If that possibility can be realized in Ohio and elsewhere across the country, it will be a far more significant thing than either the Capper-Volstead Act or this bargaining bill, and that doesn't deprecate the great importance of that legislation.

In terms of efforts and in terms of result, these may seem like small things. Very few can notice that these things have made any perceptible change in the farm policy landscape. But don't be sure that everything is the same and that everything will stay the same. When water changes in temperature between 33 degrees and 211 degrees, it makes very little change in the physical properties of the water. But when water changes in temperature one degree more than 211 or one degree lower than 33, the change in its physical properties is drastic and sudden.

VIEWPOINT OF NATIONAL COUNCIL OF FARMER COOPERATIVES

Robert N. Hampton
Vice President, Marketing and International Trade
National Council of Farmer Cooperatives

I see the bargaining bill as a classic case of how we need to consider negotiating through political action. I would like to elaborate a little bit more on some of the earlier comments in terms of the nuts and bolts of what we are faced with in getting a bargaining bill.

Bob Lewis put this in perspective by viewing bargaining as one important tool for accomplishing the things that we need to do in improving farmers' income position. It's important that you and your membership give this vital tool priority in your thinking if we are to have any hope of success in the passage of this bill.

Awareness of the need for grass-roots action has become a dominant factor in political action today. It's always been important, but I think it is recognized as never before that it is a basic step toward getting results. Nothing makes more impact on legislators than an urgent message from the farmers, from the grass roots. So I would add to Kirk Miller's "C List" the word commitment. It will take commitment all the way down the line to have hopes of passage of this bill.

Jim Shaffer's recital yesterday of the arguments mustered by the opposition to farmers' bargaining activity tells us how tough the fight will be to enact a good faith bargaining bill. Most of you in this room are familiar with the long and hard efforts that have gone into the drafting of the bill which was finally introduced first in 1978 by Congressman Ammerman of Pennsylvania. But that is only a small first step, compared with the work required to pass the bill.

The grass-roots support needed to pass this bill is going to have to be more than a one-shot effort; it's going to have to be a continuous effort. It will require great patience because there is little reason to believe that the fight will be less difficult on this bill than it was on the original fair practices bill, which I think most of you remember. Farmers, as I said, will have to give this very high priority in their thinking and let Washington know about it. Congressmen have an uncanny knack of knowing just how strongly their constituents feel about an issue and whether a spokesman for a national organization is reflecting a deep feeling or just some limited representation of back-home concern about that issue.

Now let's consider some of the problems we face in trying to enact this bargaining bill. Those of us here representing farmers' interests have made every effort in designing this bill to make it conform to the public interest, as well as to improve the farmers' position in the marketplace. I think that it's now impossible to get any kind of legislation passed that isn't truly in the public's long-term interest.

I don't believe that it is exaggerated when we hear warnings that unless farmers get a fairer shake in the market our efficient system commonly known as the family farm system will be replaced by something else which may not serve the public interest as well. So, it is important that we strive not only for better price, but for realistic price levels that fit the demand and supply situation. We need to demonstrate both credibility and responsibility in our marketing and legislative efforts. I think this is why so much discussion has gone into the provision for accreditation in this bargaining bill, and why in the final analysis it was decided that the Secretary of Agriculture would be in the best position to decide whether a bargaining association is organized in a way to benefit both farmers and the public.

Some argue that the bill should provide more specific guidelines for determining which bargaining groups should be accredited, but it is hard for me to see how a specific guideline such as share of production, for example, could fit all situations. The integrity of the Secretary, however, in representing the public as well as the farmers' interests, is our best defense against critics who might charge that the requirement for good faith bargaining would be of damage to the public and the consumers. The need for demonstrating that accredited bargaining associations would have a responsible attitude which would serve their own long-term as well as public interests is absolutely vital if Congress is to be persuaded to pass legislation of this type. Bargaining cooperatives can and often do benefit the industry, including proprietary processors. However, there is great fear by many processors that some bargaining groups will be less responsible. We need to do everything possible to relieve that concern if we are to lessen to any significant degree the vigorous opposition which this bill will face.

We need also to bring a better understanding, especially within agricultural circles, of how bargaining efforts are complementary to rather than in conflict with

other cooperative and governmental activities on behalf of farmers. I am optimistic that we are going to get some useful insights from the commendable work that is being conducted at Michigan State. I think that is dealing with an absolutely critical issue to clear up misunderstandings or misperceptions of how bargaining and other activities are interrelated.

The broad support of the national organizations represented on this panel is an important step toward broader understanding of bargaining objectives and functions. But some important farm leaders are yet to be convinced that bargaining is an adequate tool or that it doesn't divert effort from other activities which they consider to be more productive. There are still differing views, too, on how bargaining cooperatives should relate to the processing cooperatives, and these views must be reconciled through a great deal of discussion in order to maximize agricultural support for this legislation.

You will recall that passage of the fair practices act came only after a long and arduous legislative battle, and was accomplished only with the vital support of such prestigious Congressional leaders as Senator Aiken. Later on, in some of the bargaining efforts, we've had the benefit of the leadership and the prestige of Congressman Sisk. Now that kind of Congressional support is an important consideration in building the case in Congress for this kind of legislation.

The influence of one leader of the status of Senator Aiken can have great impact on many votes in Congress for a bill. We in Washington have made considerable efforts to get Congressional sponsors of comparable stature for this good faith bargaining bill, but it is going to be tough to do unless you folks at the grass-roots level can come up with some levers which we haven't found yet. I urge all of you to beat the drums with your Congressman to accomplish this and to build a wider awareness of nationwide interest in this bill which will be helpful in convincing top Congressional leaders that they should support it too.

It is especially important to all of you who have Congressmen on the agriculture committee to communicate with them frequently. As I said before, this, like any other political action, cannot be conducted on a one-shot basis. It is going to take a lot of work. It is going to take continuous work. When you contact your Congressman, in writing or in person if at all possible, do your best to keep him very much aware of the strength of interest for the bill throughout the country.

VIEWPOINT OF THE NATIONAL GRANGE

Robert M. Frederick
Legislative Director
The National Grange

I am pleased to announce strong National Grange support for the national bargaining legislation which will be reintroduced in the U.S. Congress shortly.

This legislative effort has been underway for quite some time. It has its roots in the Aiken bill--S.109--which led to the Agricultural Fair Practices Act of 1967 and subsequent bargaining legislation introduced by Representative Bernie Sisk of California and then Senator Walter Mondale of Minnesota in the early seventies.

The legislative history of these efforts to increase farmers' bargaining power makes it clear that members of the agricultural community as well as their representatives in Congress were not united in their thinking on bargaining legislation.

The National Grange had changing views on S.109, as the various versions came before the committees. In the end, the Grange opposed S.109. I am afraid our position at that time was more concerned with the philosophical rather than the legislative objectives. When we went through the last attempt to pass national bargaining legislation--early in the seventies--the Grange, while maintaining our general support for marketing and bargaining legislation, did not support any of the bills as introduced. I don't believe any purpose would be served by reviewing our objections to the Sisk and Mondale bills. The importance of the above is that the main points we objected to in 1971 are not in the compromise legislation as introduced in the 95th Congress.

It is important to remember that one reason bargaining legislation has not been taken more seriously by Congress since 1971 is because of the lack of unity among the general farm organizations and the various commodity groups. Thanks to Bill Swank, Noel Stuckman, Bob Holt, Gerry Marcus, John Datt, Bob Lewis and others, the bill under consideration today has the wide support necessary to become law--if we are all dedicated to that objective.

In 1865, the Grange authorized the sending of a member to study the cooperative movement and especially the Rochdale cooperatives in England. The 1876 session of the National Grange was almost completely devoted to cooperatives, marking a historic beginning of the organized cooperative movement in America which the Grange spearheaded and continues to support.

With the passage of the Robinson-Patman Act, the Grange was convinced that its ownership of cooperatives was not compatible with the laws we had helped to pass, and we gradually withdrew from co-ops with few exceptions. Whether this was good business sense or not is perhaps debatable, but the point we wish to make at the present time is that we have not lost our interest in cooperatives, nor in associations of cooperatives, or bargaining associations that exist for the purpose of improving farm income.

Indeed, the record will show that we have been a consistent supporter of all major cooperative goals, including much of the specific legislation sponsored by the National Council of Farmer Cooperatives or by the National Rural Electric Cooperative Association.

Joseph G. Knapp's book "The Rise of American Cooperative Enterprise" gives an excellent analysis of Grange cooperative policy and achievement:

> "...the Grange contributed materially to the growing cooperative movement. While the total extent of the cooperative business done through the Grange or its agencies was not impressive, the training in cooperative thinking and methods given by the Grange did much to provide leadership for the new cooperative forces. Of particular importance was the policy followed by the Grange in aligning itself with other groups to achieve cooperative objectives that could not be encompassed by the Grange alone. The Grange not only encouraged its members to participate in the formation and operation of strong cooperative organizations independent of the Grange, but even welcomed the coming of another general farm organization--the American Farm Bureau--as a necessary business organization for agriculture."

To facilitate the formation of strong cooperative associations, the Grange's cooperation committee in 1920 recommended "the passage by Congress of legislation guaranteeing the right of collective bargaining and cooperative marketing of farm products" and urged the "passage of comprehensive, cooperative legislation by the federal government and uniform cooperative laws by States." It also declared: "Plans

must be made for the proper short-time financing of the farmer during the movement of grain and food products, permitting their marketing in an orderly manner as the market demands."

The Grange does not view any bargaining legislation as a substitute for existing agricultural legislation. Bargaining, to be even remotely successful, must have a degree of supply control. Past farm programs and the present act have production control features that can serve as a bargaining base. In addition, commodity loan programs, acreage allotment and marketing quotas, on-farm storage provisions, acreage diversion and conservation programs, producer payments, Federal marketing orders and agreements, and the reseal programs are the start of increased bargaining power for farmers and must be retained. All of these programs and tools have been and are elements of market power for farmers. The Grange, for one, will not exchange these programs for the removal of the opposition to the pending bargaining legislation.

Please permit me to update National Grange policy regarding agricultural marketing and bargaining. At the 101st annual session in 1967 and again at our 104th annual session, the delegate body of the National Grange adopted a resolution to create a National Grange Marketing and Bargaining Committee. The charge to this committee was to study and make recommendations to the delegate body pertaining to the role the Grange would play in the marketing of agricultural products, and what direction the Grange should take in providing increased market power to agricultural producers. The following is quoted from the committee's report:

"The National Grange should continue to support its long-standing position that producers of agricultural commodities need increased bargaining power in the market places so as to have a beneficial effect on price.

"It is the recommendation of the National Grange Marketing and Bargaining Committee that the National Grange, due to its structure, should not become a bargaining agent for agricultural producers.

"However, we do believe and recommend that the National Grange become more active in assisting cooperative marketing and/or bargaining associations in their marketing or bargaining efforts and assist in the organization of new commodity groups for the purpose of their becoming marketing or bargaining agents for their commodity.

"We further believe that if the cooperative and bargaining associations are to be successful their members must be willing to accept the responsibility of placing the necessary controls on themselves in order to adjust supply to demand in their efforts to obtain an acceptable price.

"It is also the Committee's recommendation that the National Grange Executive Committee meet with present operating marketing and bargaining cooperatives to ascertain if the Grange can cooperate with them in enhancing their marketing and bargaining position.

"In our efforts to increase farm income through cooperative marketing and bargaining associations, we must not lose sight of the fact that Federal and State marketing order and agreement programs still remain an effective 'self-help' tool. We therefore recommend that the National Grange adopt as their National Policy the extension of the provisions of the Agricultural Marketing Agreement Act of 1937 to include all commodities. In addition, the enabling legislation should be amended to provide protection for the family farm so that the marketing control provisions will not reduce the family farm's production below a viable economic unit.

"We further recommend that State Granges should be encouraged to work within their own State governments to enact beneficial State marketing and bargaining legislation. Likewise, State and local Granges should be alert to the opportunities of providing leadership in the formation of State and local marketing and bargaining associations.

"The decision of the Grange to throw its strength behind present bargaining and marketing groups comes after long and deep study and research.

"Rather than further splinter the strength of agricultural producers, it has been decided to combine forces wherever possible with those trying to obtain a parity price in the market place through bargaining, marketing, and supplying producers with the necessary information to obtain the top dollar for their products.

"This new direction of the Grange is to receive top priority, first, to pass necessary legislation and, second, to urge and join with present groups to become involved in pricing and production control as well as marketing agencies which are necessary to succeed in the market place."

Over the years, a considerable number of farm bargaining cooperatives have been organized. Some have been operating for several decades and are highly successful; others have fallen by the wayside for reasons familiar to us all.

The enactment into law of the proposed bargaining legislation can go a long way in providing the bargaining climate that will lead to a higher percentage of successes, but it will not guarantee success. The disciplines within the bargaining group perhaps are just as important to that success as the law.

One of the primary concerns of the National Grange is the preservation of the family farm structure. In our judgment, cooperative marketing and bargaining hold out the greatest hope for their survival as a viable economic unit in American agriculture.

The changing structure of farm marketing, vertical integration, and the demise of the open market to establish price sets forth the primary function of a bargaining association--that of providing a forum for the setting of price and other terms of sale. With the continued demise of the open market, family farms will also continue to decline, unless legislation is passed to enhance the success of effective bargaining associations.

My position is not shared by some leading marketing and bargaining authorities; for instance, the National Farmers Organization feels that legislation is not necessary for farmers to bargain effectively. That may be true, but under the NFO formula for success--the blocking of large quantities of a product--it requires marketing and production disciplines that a vast majority of producers cannot or at least have not been willing to accept. I admire their leadership dedication and wish them well. They are sincere in their efforts and are deeply concerned about the future of family agriculture.

In doing some research in preparation for this panel, I came across a news article sent to me in 1971. The article reviewed a speech made by Dr. Eric Thor, then Administrator of the Farmer Cooperative Service. I would like to share with you Dr. Thor's thoughts on "who will stay in the driver's seat?"

"If farmers turn their production over to marketing cooperatives, they will control agriculture. If they turn production over to bargaining associations, they'll lose control, be more like labor, and as a result,

probably get consumers down on agriculture and be hurt in the process. The control of agriculture will be decided in the next few years, and at this point in time farmers hold the key.

"Additionally, if farm supply cooperatives do not either join with a strong marketing cooperative or form a marketing branch, they have little chance for survival. Of these two alternatives, joining with a strong marketing cooperative provides for greater long-term profit opportunity for farmer-members."

In describing the structural changes taking place in the food and agriculture industry, Thor predicted the emergence of four major possibilities:

1. Farmers organized into bargaining associations to negotiate price and terms of contracts with buyer. Farmer bargaining, however, poses some complex problems, he said, due to the decline of terminal markets and the resulting difficulties in determining a fair price for commodities.

   Farmers' bargaining can, at best, only be an interim step toward developing a stable agriculture.

2. Large food corporations integrated back from the ultimate consumer to farm production.

   "If increasing numbers of farmers insist on using cooperative bargaining associations to negotiate price and terms of contracts with processors and packers, then it is highly probable that more of the corporate processors will become actively engaged in farming.

3. Large multiple-product farmer cooperatives integrated forward from the farm to the ultimate consumer.

   In this regard, Thor said, forward-integrated cooperatives (such as Land O'Lakes) should offer the farmer his greatest potential for obtaining the maximum return for his management, labor, and investment.

4. Joint ventures between farmer cooperatives and food corporations integrated from the farmer to the ultimate consumer.

   Food converters, according to Thor, will depend on contracts to provide the quantity and quality of the products they need. However, as they contract forward, they will also contract backward. As contracts are made with farmers, either by the cooperatives or the food converters, established markets can expect to close. When this happens, the supply-demand marketplace is lost and new techniques need to be developed to set the value of commodities.

I don't know all of Dr. Thor's reasons for the above statements. But I do know that some of the strong support that bargaining legislation had in the early seventies has eroded and in some cases, with good reason. This does not mean that bargaining legislation time has come and gone. But it does mean that we in the general farm organizations must become the spearhead of the effort to obtain effective bargaining legislation. We cannot afford to let our differences cause further eroding of legislative support, and above all, we must subordinate our own selfish interest of attempting to use the bargaining function as a membership building tool.

BARGAINING ASSOCIATIONS

HOW BARGAINING ASSOCIATIONS ARE FINANCED

Gail N. Brown
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San Francisco, California

For most of my professional career, I have worked primarily with processing and marketing cooperatives and with food processing corporations. During that time I have, of course, been aware of the bargaining associations, particularly those in California. However, for the first time I have taken a closer look at some representative bargaining associations to review their financial statements and get some feel of how they are financed.

At the request of Bob Holt, executive secretary of the California Tomato Growers Association and President of the National Bargaining Committee, several associations furnished me financial statements and other data. The response was limited to six associations furnishing usable information, four of which were in California. The data were sufficient to develop some representative financial ratios and conclusions about bargaining association financing. However, in the future, I believe it would be most interesting and helpful if this study could be expanded to include substantially more associations.

Before reviewing the data for the bargaining associations, I think it would be helpful to understand how the organizations you bargain with are financed. Exhibit I shows some weighted average financial ratios for 20 food processing corporations and 20 marketing cooperatives with fiscal years ending on or after December 31, 1977.

Data for 1977, while not shown, are similar to the 1978 data. Further, the percentage ratios are about the same for large companies as for small companies. Generally, the cooperatives are more highly leveraged than are the corporations. The cooperatives have less equity and working capital and more long-term debt, but cooperatives seem able to operate with less working capital, because of deferred raw product payments to members. The lower equity, along with corresponding greater amounts of long-term debt, results in higher interest costs for the cooperatives.

Dairy cooperatives are probably the largest group of bargaining entities. They control most of the Nation's milk supply, and are the pipeline by which much of the fluid milk moves to other handlers and processors. Data have been summarized for 18 dairy cooperatives in Exhibit II.

The dairy cooperatives have substantially different financial ratios than do the food processing and marketing corporations and cooperatives. The working capital and investment in fixed assets are substantially less. This is because much of the milk delivered by producer-members is sold in bulk form and does not require as large an investment in fixed assets or value added by processing. This is not to say that some of the dairy cooperatives do not have extensive production facilities for the manufacture of dried milk, cheeses, ice cream, or butter. Some of these facilities are for the purpose of handling surplus milk during flush periods.

Exhibit I

	20 food processing corporations	20 marketing cooperatives
	1,000 dollars	1,000 dollars
Average sales	959,500	$121,000
	Percent	
Percent of sales:		
Earnings before taxes	6.8	1/
Working capital	17.9	6.1
Fixed assets, net	17.3	15.4
Total assets employed	54.3	52.2
Long-term debt	10.4	8.8
Equity	27.6	15.1
Other ratios:		
Earnings, before taxes, on--		
Assets employed	12.5	1/
Equity	24.6	1/
Long-term debt or equity	37.7	58.3
Equity to assets employed	50.9	28.9
Equity, plus long-term debt, to assets employed	70.1	45.7

1/ Earnings data are not available for the cooperatives because of accounting methods employed by some cooperatives.

Practically all dairy cooperatives deduct a per-unit capital retain from each monthly payment to producer-members. These retains are either in the form of stock or, more generally, in the form of a revolving fund certificate. At the end of the fiscal year, earnings, determined after charging the monthly milk payments to cost of sales, are allocated as a patronage refund, either in cash or in paper.

Recent financial data from the six bargaining associations are summarized as Exhibit III. The percentage ratios are weighted averages, but simple averages are not substantially different.

The revenues do not include pool sales or other sales, but represent fees charged to processors, members' dues and retains, and interest income. The revenues ranged from $200,000 to over $500,000. Working capital, measured as a percentage of revenues, ranged from about 20 percent to 135 percent. Total assets employed (current assets, investments and other assets, and fixed assets) ranged from 55 percent to a high of over 350 percent of revenues. However, the spread of the percentage of members' equities to assets employed was much narrower, ranging from about 40 percent to over 95 percent.

How much working capital and net investments should a bargaining association have? The average of working capital to revenues for the group is 66.6 percent. Working capital equal to 100 percent of one year's revenues would be desirable. Total assets, including working capital and investments, for the group is about 200 percent of revenues. It has been an axiom of trade associations that an association should have reserves sufficient to operate at least 1 year without any revenues coming in.

Exhibit II

	18 dairy cooperatives
	1,000 dollars
Average sales	347,500
	Percent
Percent of sales:	
Earnings before taxes	0.8
Working capital	2.7
Fixed assets, net	5.2
Total assets employed	19.7
Long-term debt	2.9
Equity	7.4
Other ratios:	
Earnings, before taxes, on--	
Assets employed	3.8
Equity	10.3
Long-term debt to equity	40.0
Equity to assets employed	37.3
Equity, plus long-term debt, to assets employed	52.2

The foregoing is based on averages; the needs of individual associations will vary. The real answer to how much capital is required will depend on the nature of the bargaining association, its objectives, and on the results of both short-term and long-range financial planning. If planning indicates additional financing is required, it generally will have to be provided by members in revolving funds and capital investments or by net-of-tax retained earnings. Generally, the financing will not come from long-term debt because of the lack of a borrowing base in the form of fixed assets.

In reviewing the data submitted, it appears that there are a number of ways by which bargaining associations create revenue and capital. Some have a fee paid directly by the processor. Some have a fee charged to members which is deducted from payments to members by processors. Some associations have a dues structure combined with a retain program. There are associations with a combination of methods. Some of the associations treat cooperatives and the cooperative members the same as they do corporations and the association members delivering to the corporations. Others treat the cooperatives differently. It appears, based on my limited review, that the more successful bargaining associations treat cooperatives and their members somewhat the same as corporations.

What is the best method? The real answer, I suppose, is that you do what is necessary to meet and maintain your capital requirements.

One of the significant conclusions I have come to is that cooperatives and corporations need the bargaining associations. As more and more raw product is processed by cooperatives or by corporations with open-end contracts, it is vitally necessary to have a meaningful raw product transfer price established. Without strong bargaining associations, this transfer price sometimes is difficult to establish.

Exhibit III

	Six bargaining associations
	1,000 dollars
Average revenues:	424,020
	Percent
Percent of revenues:	
Working capital	66.6
Total assets employed	200.0
Members' equity	134.0
Other ratios:	
Working capital	2.6 to 1.0
Percentage of equity to total assets employed	67.0
Members' equity analysis:	
Revolving funds and other allocated equities	40.9
Retained earnings	59.1
Total	100.0

To understand the importance of this transfer pricing problem, it is necessary to understand the single pool method of accounting for pool proceeds used by many cooperatives. This involves taking the various commodities received from members into cost of production at established prices or prices paid by cash buyers, and then distributing net earnings on the basis of those established values. This method of taking members' raw product into cost of production at established values also enables the cooperatives to prepare meaningful financial statements comparable to their corporate competitors. The single-pool method of accounting for pool proceeds is illustrated in Exhibit IV.

Exhibit IV

		Proceeds allocated to patrons			
	Established market value	Multiple pool		Single pool	
Product	1,000 Dollars	Dollars	Percent	Dollars	Percent
Beans	5,000	950	19.0	500	10.0
Corn	2,000	200	10.0	200	10.0
Carrots	3,000	(150)	(5.0)	300	10.0
	10,000	1,000	10.0	1,000	10.0

As indicated, even though carrots lost money on an actual or multiple-pool basis, it received a full percentage share of the total earnings, as shown in the single-pool column. In another year, carrots might be profitable and beans might be in a loss position. The single-pool method has the advantage of providing an even flow of earnings to producers of all commodities. It also makes elaborate bookkeeping methods unnecessary to determine earnings by each commodity processed by the cooperative.

This system is only useful as long as meaningful values can be established for members' raw product deliveries, which all members of the cooperative are willing to accept. The lack of a reliable cash price for a major commodity can create problems for a cooperative processing a number of commodities and operating on the single-pool basis. If an effective bargaining association for that commodity could be formed, it could be helpful in determining a valid established value or transfer price acceptable to all members of the cooperative.

Even for single-commodity cooperatives, such as walnuts, prunes, and raisins, a reliable established value is helpful. For example, there must be reliable and acceptable relationships within the commodity itself for variety, size, and grades. Also, the established value can be used in the accounting process to produce meaningful financial statements which can be used as a management tool and which are comparable with corporate competitors. In fact, the American Institute of Certified Public Accountants has established a committee, of which I am a member, to develop an industry accounting guide for cooperatives. It is currently considering the proper accounting treatment for members' raw product where a fixed price is not paid. In such cases, the committee believes that the use of a reliable established market or cash price in determining cost of production and inventory values is appropriate and preferable to the method which does not charge any raw product cost to operations and values inventories at net realizable market value, with resulting proceeds/earnings which are not comparable to other business entities. The committee presently believes that the net realizable market method of valuing inventories is also acceptable, although not as preferable as using an established value.

What is the future role of bargaining associations? I believe there is a continuing need for them, particularly in California with our many specialty crops, and where more and more processing of fruits,, dried fruits and nuts is being done by cooperatives or on open-end contracts. In addition, the associations can provide other services such as marketing surplus raw product and joint advertising programs and can work with processors in marketing growers' raw product on an orderly and profitable basis to all. Soundly financed bargaining associations can do the most effective job. How much capital is required depends on the nature of the association, its objectives, and the results of timely and appropriate short- and long-range financial planning.

Attendance List

Agricultural Council of California
- Cal Adams
- Lee Ruth

American Cotton Shippers Association
- Neal Gillen

American Farm Bureau Federation
- Bill Jasper
- Kirk Miller

American Institute of Cooperation
- Owen Hallberg
- Beryle Stanton

Apricot Producers of California
- Gene Bays
- Ed Maring
- Bill Sloan
- Julius Traina
- Ralph Watters

Associated Milk Producers, Inc.
- Lynn E. Elrod
- Mrs. Lynn E. Elrod
- Robert J. Van Liere

Boone Valley Soybean Processing
- Glenn Hobart

Ralph B. Bunje - Agricultural Marketing Consultant
- Elizabeth Bunje
- Ralph B. Bunje

California Canners & Growers
- Bruno Filice
- Les Heringer
- Loyd McCormick

California Canning Peach Association
- Barbara Cavaiani
- Ugo Cavaiani
- Jeannette Grant
- Steve Grant
- Dennis Icardi
- Marilyn Icardi
- Gary Little
- Ronald A. Schuler

California Canning Pear Association
Mort French
Mrs. Mort French

California Citrus Mutual
Adin A. Hester

California Farm Bureau Federation
Dick Hartmann
Frederick J. Heringer
Mrs. Frederick J. Heringer
Henry Voss

California Farmer Magazine
Don Rozee

California Food Producers, Inc.
William J. Thomas, Jr.

California Tomato Growers Association
Bev. Hayes
Jack Hayes
Bob Holt
Kay Holt
Judy La Grande
Kristine La Grande
Mike La Grande
Ron La Grande
Carl Schneider
Jane Schneider

Central Washington Farm Crops Association, Inc.
Jack Hollmeyer
Jerry Williams

Cherry Central Sales
Duane Frens
Mrs. Frens

Colorado Cooperative Council
Donald Knowlton

Dairymen, Inc.
Joe Westwater

Fremont Pickle and Tomato Growers Association
John Havens
Eula Molyet
Paul Molyet

Farm Foundation
Walt Armbruster

Filbert Growers Bargaining Association
Don Maltby
Mrs. Don Maltby

Hanson, Bridgett, Marcus, Milne & Vlahos
Gerald D. Marcus

H. J. Heinz Company
Charles E. Bailey
Peggy Bailey

Idaho Farm Bureau
Nyal Rydalch

Inter-State Milk Producers Cooperative
Paul E. Hand

Landmark, Inc. (Ohio Farm Bureau)
Robert Hester

Lindsay Olive Growers
Earl S. Fox
Ray Scott

Maryland Milk Producers
Ralph Strock

Michigan Agricultural Cooperative Marketing Association, Inc.
Ronald Baiers
Kenneth Bull
Tim Bull
Tom Butler
Keith Burmeister
Max D. Dean
Harry A. Foster
Howard Gilmer
Lester Kober
Max Kokx
Glenn LaCross
Peter Morrison
Donald Nugent
Robert Peabody
Elton R. Smith
Noel W. Stuckman
Harold Thome
Gene Veliquette
William S. Wilkinson

Michigan Agricultural Marketing & Bargaining Board
Thomas J. Moore

Michigan Milk Producers Association
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Compton Chase-Lansdale
Jim Shaffer

Mississippi State University
G. Wayne Malone

National Council of Farmer Cooperatives
Robert N. Hampton

National Farmers Organization
Oren Lee Stanley

National Farmers Union
Robert G. Lewis

National Livestock Producers Association
Charles A. Pratt

The National Grange
Robert M. Frederick

Nationwide Insurance Company
Joseph W. Carlton
Harry P. Metz
G. Willard Oakley
Dwight W. Oberschlake
Leonard E. Schnell
Robert W. Summer
Robert E. Walker
Wendell Weller

Norbest Turkey Growers
Owen Sumsion

Ohio Agricultural Marketing Association
Ralph Gillmor
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C. William Swank
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Reed Varian
Mrs. Reed Varian

Ontario Vegetable Growers Marketing Board
Hank Csinos
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Harry Dougall
Hank Vander Pol

Oregon-Washington Pea Growers Association
James Ferrel
Mrs. James Ferrel
Helen D. Rea
H. Tremayne Rea

Potato Growers of Idaho, Inc.
Al Johnson
Gerald L. Murphy

Raisin Bargaining Association
- Harry Avedisian
- Kalem Barserian
- Robert Gonzalas
- Henry Klein
- Harley Nakamura
- Henry Panduro
- John Pakchoian
- Sam Hinkle
- Earl Roque
- Fred Taniguchi
- Leo Weber

Sunsweet Growers, Inc.
- Eyvind Faye

Howard Sachs Farms, Inc.
- Howard Sachs
- Mary Sachs
- Joan Sachs
- Thomas Sachs
- Bob Rimelspach
- Adeline Rimelspach

Soy-Cot Sales, Inc.
- Lloyd J. Smith

Touche Ross & Company
- Gail N. Brown

United Egg Producers
- Al Pope
- Penny Pope

University of Arizona
- Robert S. Finch

University of Florida
- Ralph A. Eastwood

University of Virginia
- J. A. C. Hetherington

Utah Council of Farmer Cooperatives
- Morris H. Taylor

Vegetable Bargaining Association of California
- Bill Taylor
- Bob Mills

Washington State Legislature (House of Representatives)
- Rick Slunaker

Washington Asparagus Growers Association
- Betty Aaron
- J. Hugh Aaron
- John Carson
- Harold Clayton
- Gene R. Coe
- Hazel Coe
- Richard L. Martin
- Norman Schoessler
- Marilyn Schoessler

Western Washington Farm Crops Association
- Pete Sword

Wisconsin Federation of Cooperatives
- Rod Nilsestuen

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- John Helmuth

USDA, Economics, Statistics, and Cooperatives Service
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- Martin Blum
- Kenneth Farrell
- Louise Griffith
- Gene Ingalsbe
- Randall Torgerson

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- Terry N. Barr

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